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October 14, 2016

Honorable Solomon A. Metzger, ALJ
Office of Administrative Law
Quakerbridge Plaza, Building 9
Mercerville, NJ 08625-0049

Re: Leonor Alcantara et. al., v. David Hesse et. al.

OAL Docket No: EDU 11069-2014 S

Agency Ref. No. 156-6/14

Dear Judge Metzger:

Please accept Petitioners' letter brief in response to the motion by Lakewood Board of Education to participate.

N.J.A.C § 1:1-16.6 provides that "(a) Any person or entity with a significant interest in the outcome of a case may move for permission to participate."

"Significant interest' has not yet been defined by an appellate court. Usually, the 'interest' necessary will be self-regulating. To permit participation, the judge must conclude that the expressed interest is likely to add constructively to the case without causing undue delay or confusion." 37 *New Jersey Practice, Administrative Law and Practice* § 5.21, at 263 (Steven L. Lefelt, et al.).

Petitioners and the Lakewood Board of Education do not share all interests in common. "Petitioners represent the stakeholders in public education in Lakewood, a political minority decreasing in size every year. They have no hope

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for relief from the elected branches of government. They look toward the Office of Administrative Law to assert their rights in the same manner as other disenfranchised minorities have historically petitioned judges to affirm their rights." (Petitioners' Response to Motion to Dismiss at 27-28.)

Petitioners recognize this potential divergence of interest and respectfully request:

- 1) The BOE will be prohibited from settling the matter with the DOE or moving the matter to Superior Court.**

This request is entirely appropriate. Participants do not share the same status as the parties. Under "N.J.A.C. 1: 1-16.5 [which] provides for a more limited form of involvement in the proceeding as a 'participant. . . ."

[S]uch participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact."

Petition of Public Service Electric & Gas Company for Approval of the Energy Strong Program, BPU Dkt. Nos. E013020155; G0130201562013, N.J. PUC LEXIS 307, at 6 Final Decision (October 16, 2013).

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Participation can be limited to filing a brief. The "Division of Alcoholic Beverage Control requested participant status in the matter, pursuant to N.J.A.C. 1:1-12.6 [currently § 1:1-16.6]. Participant status was granted, and the Division filed a brief pursuant to N.J.A.C. 1:1-12.6(c)(2)." *Canal St. Pub v. City of Paterson*, 6 N.J.A.R. 221, 226 (1982).

However, to the extent that the BOE has an "expressed interest [that] is likely to add constructively to the case," Petitioners consent to the full participation of the BOE and respectfully request:

2) The BOE will offer assistance to Petitioners' requests for witnesses and documents.

Moreover, to the extent that the BOE's participation will not cause "undue delay or confusion," Petitioners respectfully request further that:

3) Respondents do not conduct additional discovery because of the participation of the BOE.

Petitioners suggest that movants be included in the November 9, 2016 telephone conference so that all issues pertinent to their participation be resolved.

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Respectfully Submitted,

/s/ Arthur H. Lang

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