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VIA E-MAIL / VIA HAND DELIVERY / VIA UPS OVERNIGHT MAIL

July 8, 2019

The Honorable Susan Scarola, ALJ
Office of Administrative Law
9 Quakerbridge Plaza
P.O. Box 049
Trenton, New Jersey 08625

Re: Alcantara, Leonor, Individually and as G/A/L for E.A. et. als.

v.

Hespie, David, Comm. of Ed., NJ State Bd. of Ed. & NJ Dept. of Ed.

OAL Dkt. No.: EDU-11069-2014 S / Agency Ref.: 156-6/14

Dear Judge Scarola:

As Your Honor is aware this office represents the interests of the Lakewood Township Board of Education (“Board” and/or “District”) in connection with the above-referenced matter.

As Your Honor is further aware only through an OPRA request that the undersigned filed last September (2018) with the New Jersey Department of Education (“NJDOE”), and, their *belated* response (**EXHIBIT “A”**) there is no

longer a question as to the Petitioners¹ and District's position that a "T&E" ("Thorough and Efficient") Education can only be provided in Lakewood *via* State Aide advances (i.e., "Loans") that now total approximately **\$82,878,813.00** cumulatively as of July 7, 2019.²

Moreover, as Professor Trachtenberg previously pointed out (both in person and via correspondence) as the *vassal* State (READ - the Lakewood School District) has State appointed Monitors since 2014, per State statute (N.J.S.A. 18A:7A-56), State Aide ("Loans") can only be made after the State appointed Monitor(s) review the District's financial status and approve same based on "NEED". This, in fact, has occurred since 2015 and is undisputed.

Upon information and belief, the State (New Jersey Department of Education) will attempt to "muddy the waters" commencing tomorrow, July 9, 2019, by *alleging* that the Administration/Board "mismanaged", etc., the District. Lest one "fall for this" "distraction" (READ – red herring and colossal waste of time) please note that all of the Audits referenced below occurred in 2014 and onward when the State Monitors "ran" (and continue) to "run the district".³

¹ *Mr. Lang, in my opinion, is owed gratitude by ALL in Lakewood for his continued perseverance.*

² Reference is made to Pages 8&9 of Your Honor's prior DECISION of January 2019 (*See also, EXHIBIT "B"*).

³ Please note that hundreds of public school children and I are forever grateful to State Monitor Azzara for his assistance in a matter involving a now NJDOE approved school matter, and, for consistently arguing the District has a" revenue problem not expenditure problem "as he testified in front of Your Honor, all without the blessings of the State.

MOTIONS / DEFICIT

Specifically, when the first (1st) Monitor, Michael Azzara, was appointed in April 2014 *it appears* that the District’s deficit was **-\$6,066,945.00 (deficit)**.

[Please note that Interim Business Administrator /Board Secretary Robert S. Finger who *previously* worked for the District in the capacity of Business Administrator resigned in November 2010. Moreover, please further note that the District’s “Financial Balance” when Business Administrator Finger resigned in 2010 was **+\$2,189,026.00 (no deficit)**, *almost solely to his credit*.]⁴

As to the undersigned, when I “left” the district in 2012 the District had a surplus of \$2,836,523.00, however, upon Business Administrator Finger and my return to the District in 2017 the District’s financial situation had vastly changed, including, but not limited to:

1. A negative Fund Burden with loans of approximately

⁴ The District’s End of Year Financial positions were/are as follows:

2009-2010 - +\$2,077,301.00
2010-2011 - +\$2,189,026.00
2011-2012 - +\$2,830,5223.00
2012-2013 - \$1,142,896.00
2013-2014 – (negative deficit) -\$6,066,945.00
2014-2015 – (negative deficit) -\$2,952,286.00
2015-2016 – (negative deficit) - \$6,824,542.00
2016-2017 – (negative deficit) - \$4,353,898.00
2017-2018 – (negative deficit) - \$2,100,041.00
2018-2019 – (negative deficit) -\$28,182,090.00
2019-2020 – (negative deficit) -\$36,033,862.00

(EXHIBIT “B”)

-\$18,662,861.00;

2. The amount of State Aide Advance (READ - - “Loans”) as follows:

2015-2016 - **\$4,500,000.00**

2016-2017 - **\$5,640,783.00**

2017-2018 - **\$8,522,628.00**

with *additional* “LOANS” of **\$28,182,090.00** for 2018-2019, and, as of July 7, 2019 **\$36,033,086.00** for 2019-2020. (Please note that according to the State Monitor and Interim Business Administrator an additional \$16 million dollars is likely required, pending additional information requested from the New Jersey Department of Education, albeit, not yet provided despite repeated unanswered requests. **(EXHIBIT “C”)**

LEGAL FEES

In addition, please note that as to the legal fees for the period of 2012-2017 despite the Lakewood School District losing/settling/etc. every student case filed against it by the undersigned, including, no less than eighteen (18) public school children of *Latino* backgrounds who sought additional special education

services, compensatory education, and out-of-district services, nevertheless legal fees sky rocketed⁵, in part as follows:

<u>SCHOOL YEAR</u>	<u>TOTAL</u>	<u>METHFESSEL WERBEL LAW FIRM & SCHNECK SMITH LAW FIRM</u>	<u>MICHAEL I. INZELBUCH ESQUIRE⁶</u>
2014-2015	\$993,072.00	\$788,627.00	\$166,503.00
2015-2016	\$927,835.00	\$709,916.00	\$155,970.00
2016-2017	\$1,081,468.00 (as of May 18,2017)	\$588,819.00	\$474,830.00

(EXHIBIT “D”)

[Upon information and belief, in 2011-2012 legal fees to the undersigned were \$303,524.00 with, upon information and belief, **ZERO** being paid to other attorney special education matters.]

COURTESY / HAZARDOUS BUSSING

As to courtesy/hazardous bussing, upon information and belief, the District was set to abolish same in 2015, however, the New Jersey Department of Education (“NJDOE”) itself allowed same to continue based on a well-

⁵ Lest anyone forget the State actually authored a Report wherein legal fees in 2012 -14 were in excess of \$1 million dollars with the district’s then new law firm expending more than \$100,000.00 in claiming that the undersigned had an overall conflict so, something both the Superior Court and OAL did not agree with.

⁶ Pursuant to the IDEA “fee shifting” occurred.

documented need through and including 2015 year, evidencing the increased State Aide/loans in 2015 (SEE EXHIBIT “A”, Pages 8-9). This was just another example evidencing that the vassal state, to wit, ALL Lakewood children and taxpayers are at the whim of political decisions made by the State, something that must come to an end.

Since then the District has not, *upon information and belief*, rendered any payment for courtesy/hazardous bussing for either public nor non-public students. However, the Township / Municipal Government in Lakewood has funded the entire cost of public (only) courtesy/hazardous busing from school year 2016-2017 through June 2019 to wit:^{7 8}

- 2016-2017 - \$1,662,624.00
- 2017-2018 - \$1,055,084.00
- 2018-2019 - \$1.7 million

TOWNSHIP RESPONSIBLE FOR HAZARDOUS / COURESY BUSSING

⁷ As the State “LSTA” legislation has ended as of June 30, 2019 there is no firm commitment that the Township (Municipal Government) will, or, will not provide any monies for public students who are not entitled to mandated bussing.

⁸ There were approximately **2965** public students who were provided courtesy/hazardous bussing in 2018-2019 utilizing Township, not District monies. As to the approximate **13,500** non-public students, all, to the credit of the LSTA, were based on “NEED” and without the District paying any additional monies. Unfortunately, should the LSTA nor be re-created(or some County wide entity) , thousands of children will be traveling to and from school without bussing, and resulting in traffic “nightmares” throughout the Lakewood and beyond as has, unfortunately been proven and seen in the past.

At its' last Board meeting (July 1, 2019) the Board "passed" a Resolution that states, in part (**EXHIBIT "E"**):

RESOLUTION

"E. HAZARDOUS BUSING FOR PUBLIC AND NON-PUBLIC STUDENTS

That the Board authorize the Board Attorney to take any and all necessary legal action to ensure that the Township of Lakewood pay for the cost of hazardous/courtesy busing for public and non-public students as the township through their construction approval process and land use regulations is responsible to ensure safe and adequate transportation routes for all students."

Conversations have *already* occurred between the Board and the Township as to this important matter.

The genesis of the District's position is proven, as known case law requires a Township to provide roads, sidewalks, and non-hazardous routes to school aged children, something that former Governor Chris Christie, *upon information and belief*, always "chided" Lakewood Township about despite their efforts to keep pace with development in the fastest growing municipality in the State.

SEPARATE BUSSING GIRLS/BOYS

The constant baseless refrain that bussing boys/girls is illegal is a blatant “untruth” and disregards previously decided legal precedent wherein the District *prevailed* at the Office of Administrative Law (“OAL”), the Commissioner level, and at the Appellate Division in the matter of George Osborne v. Township of Lakewood, (EDU-6438-02) wherein I had the privilege of representing the school district (**EXHIBIT “F”**).

As to the cost of same, and, efficient utilization of buses, the Administration and the Board have been advised by the LSTA and the Monitor that the cost effectiveness and ratios exceed what occurred while the District was mandated and/or opted to provide such bussing, and, is vastly improving.

LAND USE ISSUES

The Board and Administration have made their “concerns” well known to the Township, Planning Board, Zoning Board, etc., as to the growth concerns of Lakewood as it effects the District. Moreover, at the *upcoming* July 10, 2019 Board Meeting additional **RESOLUTIONS** will be considering as to same including, but not limited to:

1. Requesting notice of every application filed in the Township in an effort to voice District concerns;

2. Requesting the ability to communicate and/or participate as to every application before the Zoning and Planning Board that impacts the school district;
3. Requesting land developers/builders to consider the impact of additional cost for transportation costs, etc.

(partial listing above only)

PAYMENT TO NJDOE ASSIGNED MONITORS

It *appears* that the District has paid for no less than three (3) State (“NJDOE”) appointed MONITORS since 2014, as follows:

1. **MICHAEL AZZARA** Start Date: April 25, 2014 – End Date: April 27, 2018 Total Payments to Mr. Azzara **\$472,248.00**
2. **THERESA POLLIFROME-SINATRA** – State Date February 2, 2015 – End Date: March31, 2017 Total Payments to Ms. Sinatra **\$202,416.00**
3. **DAVID SHAFTER**⁹ – Start Date: October 1, 2014 and on-going until today. Total payments to Mr. Shafter **\$365,044.00** as of June 30, 2019.

GRAND TOTAL - \$1,039,708.00

⁹ Monitor Shafter, like Monitor Azzara, has testified in this matter that the District has “an expenditure problem, not a revenue problem.” Moreover, Mr. Shafter similarly has advised the NJDOE as to the needs of Lakewood, and, often awaits political decisions coming forth from Trenton.

AUDITS

CHAPTER 192/193

In June 2008 the District received a State AUDIT as to **Chapter 192/193** services *demanding* repayment of **\$2,979,824.00**. *Only* after legal action was initiated *by the undersigned* with the assistance of David Rubin, Esq., Viola S. Lordi, Esq., and Edward Dauber, Esq., and countless experts ALL PAID FOR BY THE THIRD-PARTY VENDORS (per the Contract I drafted prior to the Audits). The amount was reduced to \$859,820.00 (.29%) only after litigation was filed. Unfortunately, the District's new Board Counsel in 2013 discontinued the legal process and the District agreed to refund the State in the amount of **\$859,802.00** in 2013. (**EXHIBIT "G"**).

TITLE I

In May 2014 the District received a State Audit as to **Title I** services **demanding** of the District **\$3,939,095.41** that was not contested, not appealed, despite a CONTRACT that the undersigned had previously prepared during my tenure as Board Counsel (through April 2012) that similarly to the above, very likely would have indemnified the District. *Upon information and belief*, the

District did not seek reimbursement/contribution from the third-party vendors while under the supervision of the State Monitor.¹⁰

The Board at its' *upcoming* July 10th Board Meeting will be requesting a refund of said monies and/or the ability to charge same and/or seek indemnification from third-party (3rd) vendors, the New Jersey Department of Education ("NJDOE") State Monitors and/or *then* counsel. [Please note that the Board has already spoken with the then Title I coordinator and staff who report that "answers" were readily available to the Audit but, *upon information and belief*, not actively pursued.]¹¹

LOANS / STATE AIDE

The Board at its *upcoming* July 10th Board meeting will be discussing options to have all "Loans" forgiven, as, under the NJDOE supervision "Loans"

¹⁰ See attached Audit of Title I dated May 19, 2014 (**EXHIBIT "H"**) seeking **\$3,939,095.41** and the Departments September 19, 2014 response (**EXHIBIT "I"**) as to the correspondence of former Board Counsel, Marc H. Zitomer, Esq., that was limited. (**EXHIBIT "J"**) that was categorically rejected.

The net result was the District was the District was obligated to render payment to the New Jersey Department of Education of **\$3,939,095.41**.

I myself discussed same with Monitor Azzara while still using the district who, unfortunately, not made aware of same.

¹¹ Granted, the current situation of the District is not perfect , however, as surely the NJDOE County Monitor and Deputy Commissioner will testify (and have written) the District is in a much better state since 2017.

have commenced and increased while the New Jersey Department of Education (“NJDOE”)/State were well aware that the monies were needed for “T&E” as evidenced by the correspondences from 2014 to current evidencing same, and, recently produced via a “suggestion” of this Court in the matter of Lakewood Twp. Bd. of Educ. V. NJDOE, EDU-08386-19 (**EXHIBIT “K”**).

CHAPTER 193

In February 2016 the Board was requested to return **\$1,325,452.00** in *alleged* improper payments (**EXHIBIT “L”**).

It is interesting to note that: (1) the payments made by the Board in 2012-2013 were specifically made after the undersigned, in my prior tenure as Board Counsel, was incorrectly advised that similar payments in 2012 were not allowed despite numerous legal opinion and documentation that supported the contrary; (2) the District, nevertheless, continued payments without challenging the prior finding.¹²

At the *upcoming* July 10, 2019 Board Meeting the Lakewood Board of Education will be considering the option of challenging same and/or recoup monies from the State, etc.

¹² It appears that no appeal as to same occurred.

TOTALS

It (sadly) *appears* that the New Jersey Department of Education (“NJDOE”) demanded the District to render the following Audit monies despite likely contractual obligations of third parties to possibly indemnify the District and the possible *failure* of others to effectively challenge same as had been done in the past¹³, to wit:

CHAPTER 192 (2013)

-\$859,802.00

PLUS

TITLE 1 (2014)

-\$3,939,095.41

PLUS

CHAPTER 193¹⁴

-\$1,325,452.00

PLUS

EX AID AUDIT¹⁵

¹³ See above as to Chapter 192.

¹⁴ *Upon information and belief*, the Department actually requested millions of additional dollars (reportedly), however, same was “blocked” by State Monitor Azzara. While the District and the undersigned truly appreciate Mr. Azzara’s assistance this proves, yet again, that the “Empire” (“NJDOE”) “picks and chooses” what it seeks to extract from the vassal State, Lakewood . Should Robert Ortley testify in this matter it is our hope that he will be questioned as to same.

\$709,047.00

PLUS

ASSA / DRTRS

\$2,308,499.00¹⁶

SPECIAL EDUCATION

It is noted that there are **1256** public school children who receive special education services of which 407 are sent to New Jersey Department of Education out-of-district placements with inadequate funding provided by the State .

It is noted that the District, since my return, (July 2017) has created the following additional special education classes/offerings in-district in accordance with Federal and State law [the Least Restrictive Environment (“LFRE”) mandate] (and more cost effective) with the active assistance and encouragement of Deputy Commissioner Glenn Forney and State Monitor David Shafter, to wit:

- Self-Contained class at Piners Elementary School
- Self-Contained class at Clifton Avenue Grade School
- Self-Contained Autistic class at Piners Elementary School

¹⁵ Final documentation as to same cannot be located at this time, however, based upon the documentation attached hereto *appears* to be in the amount of **\$709,047.00 (2014) (EXHIBITS “M” & “N”)**.

¹⁶ See **EXHIBIT “O”** that does not appear to have been “appealed”.

- Self-Contained Preschool class at Spruce Street Elementary School
- Additional “Inclusion” classrooms at LECC
- (Projected September 2019) – four (4) additional K-2 self-contained and inclusion classrooms

CONCLUSION

It is the Lakewood School District and Board’s *prayer* that Your Honor will not delay this Hearing any further and **FIND** that the New Jersey Department of Education (“NJDOE”) has previously, and, currently agreed that the Lakewood School District cannot provide a “T&E” (“Thorough and Efficient”) education **regardless** of any *alleged* mismanagement, *failure* to appeal, etc., (since 2013 to current) as previously requested by Petitioners counsel, Arthur Lang, Esq., Professor Trachtenberg, and myself.¹⁷

Nevertheless, should Your Honor allow the State (New Jersey Department of Education) (“NJDOE”) to produce witnesses who will do nothing but attempt to “bash” the District/Administration/Board/etc., the undersigned respectfully requests that **I** be allowed to directly cross-examine any and all Stated witness as to same since the Board, and only the Board, has all of the information to rebut/refute same.

¹⁷ Please note that the Board is not “making light” of the serious nature of same , but, in part, as described above will review all options in the appropriate forum .

The Honorable Susan Scarola, ALJ
Re: Alcantara et. als. v. Hesper et als.
OAL Dkt. No.: EDU-11069-2014 S / Ref.: 156-6/14
Page - 16 –
July 8, 2019

Respectfully submitted,

Michael I. Inzelbuch,
Esquire
MICHAEL I. INZELBUCH, ESQ.

MII/sn

EXHIBIT ATTACHMENTS

cc: Arthur Lang, Esquire (for Petitioners)
Paul Tractenberg, Esquire (Participant)
Jennifer Hoff, DAG (for Respondent)
Geoffrey N. Stark, DAG (for Respondent)
Laura Winters, Superintendent of LBOE
Robert Finger, Interim Business Administrator/Board Secretary LBOE
State Monitor David Shafter
Board President & Honored Board of Education Members

Dictated Only