

Justice Delayed and the Strange Case of Lakewood’s Public School Students: Is the State of New Jersey Trying to Back Away from the Constitutional Guarantee of a Thorough and Efficient Education for All Students?

For almost 50 years, in more than 30 opinions, the New Jersey Supreme Court has made clear that the education clause of the state constitution guarantees every student in New Jersey’s public schools, and especially those students who bring disadvantages to school with them, a high quality, “thorough and efficient” (T&E) education. The constitutional benchmarks for T&E relate not just to the inputs provided students and to the educational outcomes that result, but also to broader societal measures—whether students are prepared to be effective citizens and competitors in the contemporary labor market. Although the State can delegate some educational responsibility to local school districts, the ultimate responsibility for T&E rests upon the State.

Adequate funding to assure T&E must be certain, transparent and not subject to annual governmental discretion. Such assurance should enable school districts to engage in effective educational planning. The School Funding Reform Act of 2008 (SFRA) is supposed to be the vehicle for guaranteeing that. In a 2011 decision by the state supreme court finding that SFRA was “facially constitutional,” the court insisted that full funding of SFRA was a condition of its constitutionality. In fact, though, SFRA has only been fully funded once, in the very first year of its operation. The court also indicated that SFRA’s constitutionality “as applied” would depend upon future circumstances and how well SFRA worked in assuring districts of the funding necessary to meet their particular needs given their student populations. A major part of the State’s responsibility related to its adjusting of SFRA funding to meet future contingencies, statewide or in particular districts.

The road the State has traveled in implementing SFRA over this past dozen or so years has been a bumpy one. Fluctuating economic circumstances and growing political divisiveness have taken their toll, as has increasing income and wealth inequality. Several current lawsuits signal the escalating constitutional issues. In one, the Jersey City school district is complaining of its hugely decreasing state education aid, largely because of a 2018 amendment to SFRA which has had the effect of shifting state education aid from urban districts to suburban districts, ostensibly in the name of “fairness.” In two other cases, a statewide school desegregation suit and an administrative complaint about the racial and socioeconomic impact of permitting a district to leave a regional district, the front-and-center issue is racial and social class, but the

subtext is the same as in the school funding cases—the quality and equality of educational opportunities provided to New Jersey students.

That brings us to the Lakewood case—*Alcantara, et al. v. Hespe, et al.*, which is on appeal to the New Jersey Appellate Division, the intermediate appeals court, from a shockingly brief (nine pages of which only three addressed the core constitutional issues) and conclusory final decision by the Acting Commissioner of Education. In that decision, she overturned the main finding of a long (111 pages) and elaborately detailed initial decision of an administrative law judge (ALJ) that Lakewood public school students are being denied T&E, a fundamental constitutional right, largely because of inadequate funding. Since the Acting Commissioner did not refer to a single flawed finding of the ALJ, or a single misstatement of NJ law or policy, the only basis for her reversal was her embrace of a far lower T&E standard, incompatible with NJ’s longstanding jurisprudence.

Although the ALJ decisively found the T&E denial, she inexplicably concluded that SFRA, the state’s school funding law, was not even a “significant” cause of Lakewood’s inadequate funding, and the Acting Commissioner chose not even to discuss the issue. They agreed on a limited remedy for Lakewood’s acknowledged educational and fiscal problems—that the State should conduct a “needs assessment.”

It is hard to imagine that another needs assessment, building on one done in 2009, will help Lakewood. After all, since 2014 the State has assigned as many as three State fiscal monitors to Lakewood at a time with broad powers to not only monitor, but also to control, the district’s budgetary and financial decisions. And the monitors have stated on the record repeatedly that Lakewood has a revenue problem, not a spending problem. By statutory mandate, the monitors are also required to submit weekly reports to the Commissioner. So, the Commissioner can hardly claim lack of knowledge about Lakewood’s educational problems and needs.

Alcantara should be an important test case of SFRA’s constitutionality as applied to the Lakewood district, but its implications may extend beyond that unique district. Why is Lakewood a unique district? Let me count the ways.

- Only about 15% of its school-age residents attend the public schools, as compared to the state average of almost 90%;
- Although Lakewood is one of 599 operating school districts in NJ (not even counting the 87 charter school districts) and enrolls less than ½ of 1% of NJ public school students, it has more than 25% of the entire state’s private school students;
- Lakewood’s nine-member public school board has seven Orthodox Jewish men, one Latino man and one Latin woman serving on it, and its school board attorney, also an Orthodox Jewish man, was paid \$1.2 million last year;
- 100% of Lakewood’s public school students come from families with low enough income to qualify them for free or reduced price meals, almost 95% are Latino or black, and many are Limited English Proficient;
- Transportation costs and special education costs consume about 52% of the entire public school budget, as compared to 4-7% in neighboring districts;
- Lakewood is the fastest growing, and already fifth largest, municipality in New Jersey, with most of the growth in the Orthodox Jewish population, which is increasing the nonpublic school population by 2,500-3,000 every year and exacerbating the drain on the public school budget;
- Based on per capita and household income, Lakewood is virtually the poorest municipality in NJ;
- The Lakewood school district’s spending on classroom instruction and teacher salaries is also virtually the lowest in NJ among districts of similar size;
- Not surprisingly, based on all the usual outcome measures (standardized test scores, attendance rates, graduation rates and college attendance rates) the performance of Lakewood public school students is far below state averages; and
- In order to keep the Lakewood district even slightly afloat over the past 5-6 years, the State has extended more than \$137 million in loans repayable out of future state education aid; the outstanding amount would have exceeded \$200 million except \$70+ million of projected loans included in the budget for this school year has just been replaced by \$70 million in federal COVID aid, a questionable use of COVID funds; to obtain these loans, Lakewood must have a fiscal monitor in

place until the loans are repaid in ten years, and the Commissioner must certify that without the loans Lakewood lacks the funding for T&E; the ALJ referred to this loan arrangement, in her decision and on the record, as “unsustainable” and a “Ponzi Scheme.”

By the way, the administrative processing of the Lakewood students’ legal claim took more than seven years, during which, if the ALJ was right, the students were being denied T&E. So, if justice delayed is justice denied, the State is already in deep debt to those students. The remedies we are seeking in the appeal of this case are:

- Forgiveness of Lakewood’s outstanding loan balance since the “loans” were really provided because of SFRA’s acknowledged failure to adequately fund the district’s public schools; and
- Legislative action to amend SFRA or otherwise provide for the unique Lakewood district and perhaps other districts with a substantially larger nonpublic school population than the norm.