

142-23
OAL Dkt. No. 11069-14
Agency Dkt. No. 156-6/14

New Jersey Commissioner of Education
Order on Emergent Relief

Leonor Alcantara, individually and as Guardian ad Litem for E.A.; Leslie Johnson, individually and as Guardian ad Litem for D.J.; Juana Perez, individually and as Guardian ad Litem for Y.P.; Tatiana Escobar; Henry Moro and Ira Schulman, individually and as Guardian ad Litem for A.S.,

Petitioners,

v.

Angelica Allen Mc-Millan, Acting Commissioner of the New Jersey Department of Education; New Jersey State Board of Education; and New Jersey Department of Education,

Respondents.

The motion for emergent relief filed by petitioners and the opposition thereto filed by respondents have been reviewed and considered.

In a 2014 petition¹ filed against the New Jersey Commissioner of Education, the New Jersey Department of Education (Department), and the New Jersey State Board of Education (collectively, “respondents”), petitioners alleged that the Lakewood Township Board of Education (Lakewood) is unable to provide its public school students with a thorough and efficient education (T&E) because it does not receive sufficient funding under the School

¹ Petitioners amended their petition on September 4, 2018.

Funding Reform Act, N.J.S.A. 18A:7F-43 to -70 (SFRA). Following proceedings at the Office of Administrative Law (OAL), the Commissioner issued a decision concluding that petitioners failed to meet the threshold inquiry of establishing Lakewood's failure to provide T&E; accordingly, the Commissioner did not reach the issue of the constitutionality of the SFRA. *Alcantara v. Hespe*, Commissioner Decision No. 149-21 (July 16, 2021). Petitioners appealed, and the Appellate Division reversed and remanded the matter with instructions for the Commissioner to consider petitioners' substantive arguments pertaining to the SFRA. *Alcantara v. Allen-McMillan*, 475 N.J. Super. 58 (App. Div. Mar. 6, 2023). On May 1, 2023, petitioners filed a motion for emergent relief, seeking an Order that the Commissioner would issue a final decision on the remand from the Appellate Division no later than May 15, 2023.

On May 12, 2023, the Commissioner issued a letter directing the Department to expedite the comprehensive review of the Lakewood school district referenced in *Alcantara v. Hespe, supra*. The Commissioner indicated that the information that comprised the record before the OAL, the Commissioner, and the Appellate Division is now outdated and found that an updated record is required in order to make an appropriately informed decision about the SFRA and its application to Lakewood. The comprehensive review, as well as an opportunity for petitioners and Lakewood to respond to the resulting report and recommendations, will occur prior to the issuance of a final agency decision on the as-applied constitutionality of the SFRA.

Upon review of petitioner's motion for emergent relief, and in light of the May 12, 2023 letter, the Commissioner concludes that the motion must be denied, as it is now moot. "A case is technically moot when the original issue presented has been resolved . . .". *DeVesa v. Dorsey*, 134 N.J. 420, 428 (1993). With the Commissioner's determination of a schedule for the

proceedings in this matter, as outlined in the May 12, 2023, letter, there is no longer any question pertaining to the timing of her decision that requires resolution.

Accordingly, petitioners' motion for emergent relief is denied.

IT IS SO ORDERED.


ANGELINA ALLEN McMILLAN, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 12, 2023

Date of Mailing: May 12, 2023