

234-23

OAL Dkt. No. 11069-14

Agency Dkt. No. 156-6/14

## **New Jersey Commissioner of Education**

### **Order on Motion for Clarification**

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 clarification filed by petitioners has been reviewed and considered.

In a 2014 petition<sup>1</sup> 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 Funding Reform Act, *N.J.S.A. 18A:7F-43 to -70* (SFRA). Following proceedings at the Office of

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<sup>1</sup> Petitioners amended their petition on September 4, 2018.

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.

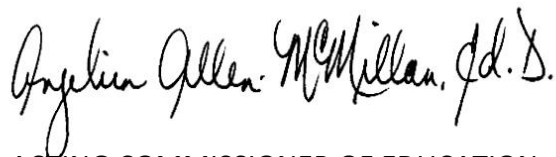
Also on May 12, 2023, the Commissioner denied petitioner's motion for emergent relief, finding that it was moot in light of the May 12, 2023 letter. *Alcantara v. Allen-McMillan*, Commissioner Decision No. 142-23 (May 12, 2023). Petitioners sought leave to appeal the Commissioner's May 12, 2023 decision; the motion was denied by the Appellate Division by Order dated June 9, 2023.

On July 7, 2023, petitioners filed a motion for clarification of the Commissioner's May 12, 2023 decision denying their motion for emergent relief.

Upon review, the Commissioner concludes that petitioners' motion for clarification must be denied, as it is untimely. Pursuant to *N.J.A.C. 6A:3-1.15*, a motion for clarification must be made within ten days of the filing of the Commissioner's decision. As the decision denying the motion for emergent relief was issued on May 12, 2023, that deadline expired on May 22, 2023. Petitioners' motion for clarification was not filed until July 7, 2023, fifty-five days after the Commissioner's decision was issued and forty-five days past the deadline. While petitioners argue that the deadline should be relaxed because they have effectively been attempting to pursue clarification of the May 12, 2023 decision through other means, including through a motion for leave to file an interlocutory appeal with the Appellate Division and various correspondence, the Commissioner does not find that the circumstances warrant relaxation of the deadline. Petitioners chose their course of action following the May 12, 2023 decision, and the fact that they were not satisfied with the result of those efforts does not excuse the significantly late filing of their motion for clarification.

Accordingly, petitioners' motion for clarification is denied.

IT IS SO ORDERED.



ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 4, 2023

Date of Mailing: August 4, 2023