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May 7, 2018

Via Overnight Service

Samantha L. Price
Director, Bureau of Controversies and Disputes
New Jersey Department of Education
100 Riverview Plaza
P.O. Box 500
Trenton, NJ 08625-0500

Re: 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; and Ira Schulman individually and as Guardian ad Litem for A.S. v. David Hesse, Comm'r of the N.J. Dep't of Educ.; the N.J. State Bd. of Educ.; and the N.J. Dep't of Educ.
Agency Reference No.: 156-6/14
Docket No.: EDU 11069-2014S

Dear Director Price:

Please accept this letter brief, in lieu of a more formal brief, on behalf of State Respondents in opposition to Petitioners' April 27, 2018, Motion for Reconsideration in the above-referenced matter. The Motion should be denied because, in light of the Department of Education's offer of an emergency loan to the Lakewood School District ("Lakewood"), the Motion



for Emergent Relief is moot. Further, the motion does not satisfy the standard for reconsideration as set forth in N.J.A.C. 6A:3-1.15. Finally, even if it did satisfy the standard, Petitioners still have not proven that they are entitled to emergent relief, as they do not satisfy the factors set forth in Crowe v. DeGioia. For these reasons Petitioners' Motion for Reconsideration should be denied.

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PROCEDURAL HISTORY AND COUNTER-STATEMENT OF THE FACTS

The Amended Petition in this matter was filed in July 2014. After extensive pre-hearing practice the hearing commenced on February 5, 2018, before the Honorable Susan M. Scarola, A.L.J., with Petitioners concluding their case on February 22, 2018. (1T - 5T). Two weeks later, on March 9, 2018, Petitioners filed a Motion for Emergency Relief related

to Lakewood's 2018-2019 budget. They claimed that Lakewood was facing a shortfall of approximately \$28 million, and that emergent relief was necessary to avoid irreparable harm to Petitioners.

ALJ Scarola denied Petitioners' motion by written Order on March 27, 2018, without briefing by State Respondents. See generally (March 27, 2018, Order on Motion for Emergency Relief (hereinafter "OAL Emergent Order")). The ALJ analyzed Petitioners' Motion in light of the Crowe¹ factors and found that Petitioners did not satisfy their burden to prove they were entitled to emergent relief. (OAL Emergent Order at 6-7). Specifically, ALJ Scarola found that the question of next year's budget was not ripe for determination, as the amount of any shortfall, or the allocation of any additional State funding, had yet to be determined. (OAL Emergent Order at 5-6). The ALJ also found that the legal right underlying Petitioners' claims was not well-settled, as the funding formula was constitutional, and there had been no prior finding that it was unconstitutional as applied to Lakewood. (OAL Emergent Order at 6). Because much of Petitioners' sought-after relief is within the purview of the Legislature, not the Commissioner, and because there existed the possibility that the Commissioner would provide

¹ Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982).

additional assistance to the District, Petitioners had not demonstrated that they were likely to succeed on the merits. (OAL Emergent Order at 6). Finally, the ALJ also rejected the claim that Petitioners will suffer greater harm than State Respondents if the relief is not granted. (OAL Emergent Order at 6). Therefore, the ALJ determined that Petitioners failed to satisfy the Crowe factors, that the matter was not ripe for determination, and denied the motion. (OAL Emergent Order at 6-7). On April 5, 2018, the Commissioner adopted ALJ Scarola's decision for the reasons set forth in the ALJ's decision. (Commissioner's Order).

On April 24, 2018, Participant Lakewood Board of Education filed a "Request for Renewal and Reconsideration" with ALJ Scarola.² Petitioners also filed a request for reconsideration with the ALJ on April 24, 2018, which expressly relied upon Petitioners' prior briefs and on the brief filed by Lakewood's Board. The next day Petitioners filed a Motion for Leave to File an Interlocutory Appeal from the Commissioner's

² Pursuant to the Order granting Lakewood status as a Participant, it may take three actions related to this case: file briefs, file exceptions, and participate in oral argument. Neither ALJ Metzger's Order regarding participation, nor the Administrative Code permits a Participant to independently file Motions. Accordingly, Lakewood's Motion is not properly before the Commissioner. See N.J.A.C. 1:1-16.6(c). However, because Petitioners' Counsel filed no independent brief in support of their Motion and instead expressly relied upon Lakewood's brief, State Respondents will briefly address Lakewood's arguments.

April 5 decision. On April 26, 2018, Petitioners and Lakewood each filed motions for reconsideration with the Commissioner. Petitioners again declined to submit their own brief in support of their motion, but relied upon their prior filing and upon the Lakewood's submission.

On April 27, 2018, Petitioners filed an Application for permission to file an emergent motion with the Appellate Division, which was denied. Also on April 27 Petitioners filed with the Commissioner a Motion for a Stay³ pending Interlocutory Appeal, and a Motion for Leave to File an Interlocutory Appeal. Subsequently, Petitioners withdrew their Motion for Interlocutory Review on May 3, 2018, following the setting of a briefing schedule for the consideration of Petitioners' Motion for Reconsideration.

On May 7, 2018, the Department of Education notified Lakewood that it would be granting assistance to the District in the form of a loan in the amount of \$28,182,090 to close its alleged budget shortfall. See ("Exhibit A" to attached Certification of Geoffrey N. Stark, D.A.G.).

State Respondents now file this letter brief in opposition to Petitioners' Motion for Reconsideration.

³ The stay Petitioners seek would enjoin the Lakewood Board of Education or the State Monitors from issuing reduction-in-force ("RIF") notices to District employees until after the resolution of Petitioners' applications for emergent relief.

LEGAL ARGUMENT

Petitioners' Motion for Reconsideration should be denied. Initially, it should be noted that Petitioners' motion is untimely. Such motions must be filed "within 10 days of the filing of the Commissioner's decision." N.J.A.C. 6A:3-1.15(b). The Commissioner's decision was filed on April 5, 2018, but Petitioners' motion was not filed until April 27, 2018. Assuming that the Commissioner considers the merits of Petitioners' motion, it should still be denied as it is moot in light of the Department's offer of an emergency loan to Lakewood. Further, Petitioners have failed to satisfy the standard for reconsideration, and have failed to demonstrate that they are entitled to the emergent relief they seek.

I. PETITIONERS' MOTION FOR RECONSIDERATION
SHOULD BE DENIED AS IT IS MOOT.

Petitioners' Motion for Reconsideration should be denied because Petitioners' request for emergency relief is now moot. As a general matter, "courts should not decide cases where a judgment cannot grant relief" or when the court's decision can have no practical effect on the existing controversy. Plainfield v. Dep't of Health, 412 N.J. Super. 466, 483-84 (App. Div.), certif. denied, 203 N.J. 93 (2010). Here, a decision by the Commissioner on Petitioners' request for emergency relief can have no practical effect on the existing

controversy.

Among other things, Petitioners seek an order that "Respondents immediately take action to close the 2018-19 projected deficit." As noted by Lakewood, the receipt of an "official offer of a Loan and/or Grant for the 2018-2019 school year" would address Petitioners' and Lakewood's concerns. (Lakewood Brief of April 26, 2018, at 6). Further, the ALJ noted that the initial motion was premature because, in part, it was unknown whether the State would provide additional financial assistance. (OAL Emergent Order at 4). By letter dated May 7, 2018, despite the District's failure to provide relevant records requested, the Department has offered Lakewood an advance of state aid in the amount of \$28,182,090. See (Exhibit A to Stark Certification). Thus, State Respondents have taken action to close the alleged projected deficit in the District's 2018-2019 budget and there is no relief that need be granted in this regard.

As this claim is moot and all other relief sought by Petitioners cannot be appropriately granted on an emergent basis (if at all), Petitioners' Motion for Reconsideration of the Commissioner's April 5, 2018 order denying emergency relief should be denied.

II. PETITIONERS' MOTION FOR RECONSIDERATION SHOULD BE DENIED BECAUSE IT DOES NOT MEET THE STANDARD SET FORTH IN N.J.A.C. 6A:3-1.15.

Petitioners are seeking reconsideration of the Commissioner's April 5, 2018, decision, which adopted the ALJ's denial of their application for emergent relief. Motions for reconsideration of a Commissioner's decision are governed by N.J.A.C. 6A:3:1-15(b)(2), which provides that such a motion will be considered based upon mistake, provided that a disagreement with the outcome cannot constitute a mistake, newly discovered evidence, newly ascertained misrepresentation or other misconduct of an adverse party, or reversal of a prior judgment upon which the decision is based.

Petitioners' counsel expressly relies upon two documents to support his motion. The Commissioner should not rely upon either, as neither document sets forth sufficient grounds upon which Petitioners' motion could be granted. First, Petitioners rely upon the March 8, 2018, brief they filed in support of their initial Motion for Summary Decision and Emergent Relief. As a matter of law, the prior brief cannot contain any newly discovered material for the Commissioner to consider, nor can it set forth any change in the legal landscape that occurred between the Commissioner's decision and the motion date. See N.J.A.C. 6A:3:1-15(b)(2)(ii) to (iii). Further, the

March 8 brief does not set forth a mistake in the Commissioner's ruling, as "disagreement with the outcome of a decision, or with the analysis upon which it is based, shall not constitute 'mistake' for purposes" of reconsideration. See N.J.A.C. 6A:3-1.15(b)(2)(i).

Second, Petitioners rely upon the brief and exhibits filed by Participant Lakewood. Lakewood's submission notes that, on March 22, 2018, the Lakewood Board approved its 2018-2019 budget for submission to the Superintendent.⁴ However, both Petitioners and Lakewood premise their arguments on an assumption that the State has provided no assistance in closing the alleged budget gap. See (Lakewood Brief of April 26, 2018, at 6). However, as discussed above, the Department has offered Lakewood an emergency loan to close the alleged budget gap. See (Exhibit A to Stark Certification). As Lakewood would apparently concede, in light of the offer of an emergency loan by the Department, Petitioners are not entitled to the emergent relief they seek. See (Lakewood Brief of April 26, 2018, at 6). Cf. (OAL Emergent Order at 6) (implying that the offer of additional financial assistance to Lakewood by the State would render Petitioners unable to satisfy the Crowe factors).

⁴ The budget approval occurred five days prior to ALJ Scarola's written Order, but after the ALJ delivered an oral decision to the parties and participants during a telephone conference.

Petitioners' motion should be denied as they have not satisfied the requirements for reconsideration.

III. PETITIONERS ARE NOT ENTITLED TO EMERGENT RELIEF BECAUSE THEY HAVE FAILED TO SATISFY THE CROWE FACTORS.

Petitioners have failed to satisfy the conditions necessary for emergent relief. Pursuant to N.J.A.C. 6A:3-1.6(b), motion for emergent relief shall not be granted unless it satisfies the following four criteria:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

[See Crowe, supra, 90 N.J. at 132-34.]

Even assuming that Lakewood's approval of a budget for submission to the superintendent may have satisfied Petitioners' burden of regarding demonstrating irreparable harm and likelihood of success on the merits, which State Respondents do not concede, the offer of an emergency loan to the District forecloses the possibility that Petitioners could satisfy these

factors. Further, they cannot satisfy the second Crowe factor.

Petitioners' also cannot satisfy the second Crowe factor, as their legal rights are not well-settled. First, Petitioners' underlying case seeks a ruling that the SFRA is unconstitutional as applied to Lakewood. As noted by the ALJ, "The school funding formula has been found to be constitutional." There has never been a prior ruling that the SFRA is unconstitutional as applied to Lakewood--or any district--and so, as held by the ALJ and adopted by the Commissioner, Petitioners' legal rights to such a finding are certainly not well-settled. Petitioners have not alleged any mistake with that ruling.

Beyond that, it is not well-settled that Petitioners have a right to the relief sought through their Motion for Emergency Relief. As noted by the ALJ, Petitioners' Motion for Emergency Relief "essentially alleg[ed] the same causes for relief set forth in the original due-process petition." (OAL Emergent Order at 6). Petitioners cite to no legal principal that allows them to circumvent the hearing process and obtain the ultimate relief sought by way of a motion for emergency relief at the close of their case and prior to the presentation of any evidence by State Respondents. Such a right is not well-settled. Nor is it well-settled that Petitioners may obtain

relief for the 2018-2019 school budget when that budget has yet to be finalized.

CONCLUSION

For the reasons set forth above the Motion for Reconsideration should be denied.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: 

Geoffrey N. Stark
Deputy Attorney General
N.J. Attorney I.D. No.: 01811-2010

Enclosure

cc: Arthur H. Lang, Esq. (via overnight service & email)
Daniel L. Grossman, Esq. (via overnight service & email)
Michael I. Inzelbuch, Esq. (via overnight service & email)
Paul L. Tractenberg, Esq. (via overnight service & email)

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LEONOR ALCANTARA, individually:	:	STATE OF NEW JERSEY
and as Guardian ad Litem for	:	OFFICE OF ADMINISTRATIVE LAW
E.A.; LESLIE JOHNSON,	:	OAL DOCKET NO. EDE 11069-2014S
individually and as Guardian	:	
ad Litem for D.J.; JUANA	:	AGENCY REF. NO. 156-6/14
PEREZ, individually and as	:	
Guardian ad Litem for Y.P.;	:	
TATIANA ESCOBAR; and IRA	:	CIVIL ACTION
SCHULMAN individually and as	:	
Guardian ad Litem for A.S.,	:	
	:	
Petitioners,	:	
	:	
v.	:	
	:	
DAVID HESPE, COMMISSIONER OF	:	
THE NEW JERSEY DEPARTMENT OF	:	
EDUCATION; THE NEW JERSEY	:	CERTIFICATION OF
STATE BOARD OF EDUCATION; and	:	GEOFFREY N. STARK
THE NEW JERSEY DEPARTMENT OF	:	
EDUCATION,	:	
	:	
Respondents.	:	

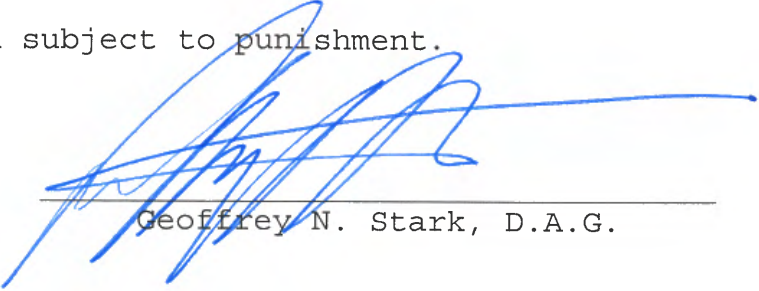
I, GEOFFREY N. STARK, Deputy Attorney General, hereby certifies

1. I am a Deputy Attorney General assigned to represent State Respondents, the Commissioner of the New Jersey Department of Education ("Commissioner"), the New Jersey State Board of Education ("State Board") and New Jersey Department of Education ("Department" or "NJDOE") in the above-mentioned matter. I make this certification in support of State Respondents' opposition to Petitioners' Motion for Reconsideration.

2. I am fully aware of the facts of this matter.

3. Exhibit A is a true and accurate copy of Correspondence sent from Glenn S. Forney, Deputy Assistant Commissioner, Division of Finance, New Jersey Department of Education, to Laura A. Winters, Superintendent of the Lakewood Township School District, dated May 7, 2018.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Geoffrey N. Stark, D.A.G.

Dated: May 7, 2018

Exhibit A



State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

LAMONT O. REPOLLET, ED.D.
Acting Commissioner

May 7, 2018

Mrs. Laura A. Winters, Superintendent
Lakewood Township School District
200 Ramsey Avenue
Lakewood, NJ 08701

Dear Mrs. Winters:

I have been asked to respond to the Lakewood Township School District's April 2, 2018, request for \$28,182,090 in the form of a grant of additional state aid. The Department is dedicated to ensuring that New Jersey students receive a thorough and efficient system of education as guaranteed by the New Jersey Constitution. The Department is also charged with ensuring the proper use of state educational funds. Thus, a district's request for additional state aid in excess of the amount in its state aid notice is evaluated by the Department to determine whether the additional amount requested is necessary for the provision of a thorough and efficient education to students. In this way, the Department is able to confirm that state funds will be used to meet the primary purpose of serving the students of New Jersey.

The district requested \$28,182,090 in addition to the state aid allocation set forth in its state aid notice for the 2018-2019 school year. This amount is more than three times the state aid advance provided to the district in the 2017-2018 school year. Over the past several months, the Department has engaged in significant outreach to the district in an attempt to verify and obtain documentation of the estimated budget shortfall and need for additional funds. In addition to the two State Monitors who worked in the district, the Department assigned a budget manager, Angelo DeSimone, to conduct in-person evaluations of the district's financial records and budget information in order to substantiate the district's request. The budget manager visited the district and requested the documentation on six separate occasions, April 10, 11, 17, 19, 23 and 24, 2018. The district failed to provide the relevant records requested by the Department's experts that would reveal detail about the district's troubles and inform the best way to resolve them.

On April 23, 2018, I personally attended a meeting in the office of the Ocean County Superintendent of Schools to pursue documentation that would justify the payment of an additional \$28,182,090. I met with the State Monitor, David Shafter; Superintendent of Schools, Laura Winters; Interim School Business Administrator, Kevin Campbell; Interim Assistant Business Administrator, Robert Finger; and Charles Muller, Ocean County Business Official, to discuss Lakewood's request for the more than \$28 million in additional state aid for the 2018-2019 school year. At that time, district staff was unable to provide sufficient explanation or documentary support for its request. During this meeting, the Department noted numerous errors in the submitted budget that needed to be remediated prior to approval for advertisement.

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Laura A. Winters
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May 7, 2018

In short, the district has rejected the Department's attempts to cooperate with and assist it in resolving its financial problems. It has refused to provide timely, complete and accurate back-up documentation that would support its request for an additional \$28,182,090 grant of state aid. Under these circumstances, the Department cannot justify approving this request as an outright grant of additional state aid.

However, based on the limited district budget information obtained by the State Monitors and provided to the Department, the Department recognizes that the district is facing a budget shortfall, even though the district has not fully documented or verified the exact nature and extent of the projected deficit. Under these circumstances, the Department will accept Lakewood's representation that it needs additional funds in the amount of \$28,182,090 in order to close its budget gap; but given the lack of documentation, the Department has no choice but to recommend granting the assistance in the form of a loan of \$28,182,090, repayable beginning in the 2019-2020 school year.

I look forward to receiving confirmation of the district's acceptance of the offer of advance state aid.

Sincerely,



Glenn Forney
Deputy Assistant Commissioner
Division of Finance

GF/gm

c: Lamont O. Repollet, Ed.D.
Kevin Dehmer
Donna Arons, D.A.G.
David Shafter