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JOHN S. KENNEDY
ADMINISTRATIVE LAW JUDGE

July 23, 2015

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Re: **Alcantara, et al. v. Hespe, Commissioner of Education, et al.**
OAL Dkt No. EDU 11069-14
Agency Dkt No. 156-6/14

Dear Counsel:

Enclosed please find an Order denying respondents' Motion to Dismiss in the above-captioned matter. Please note, I have scheduled a telephone conference on August 13, 2015 at 3:30 p.m. My chambers will initiate the telephone conference.

Very truly yours,


John S. Kennedy
Administrative Law Judge

JSK/cmo
Enclosure
c: Clerk's Office – Trenton



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING

MOTION TO DISMISS

OAL DKT. NO. EDU 11069-14

AGENCY DKT. NO. 156-6/14

LEONOR ALCANTARA, ET AL,

Petitioners,

v.

**DAVID HESPE, COMMISSIONER OF
EDUCATION, ET AL.,**

Respondents.

Arthur Lang, Esq. and Frank L. Corrado, Esq., for petitioners (Barry, Corrado & Grassi, PC, attorneys)

Geoffrey N. Stark, Deputy Attorney General, for respondents (John J. Hoffman, Acting Attorney General of New Jersey, attorney)

Paul L. Tractenberg, Esq., Participant

Record Closed: June 9, 2015

Decided: July 24, 2015

BEFORE JOHN S. KENNEDY, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Respondents, David Hespe, Commissioner, New Jersey Department of Education and New Jersey Department of Education, have moved, in lieu of Answer, to dismiss petitioner's complaint challenging the allocation method and amount of state funding received by the Lakewood School District.

The original Petition of Appeal was filed with the Department of Education on June 24, 2014. The Department of Education transmitted the matter to the Office of Administrative Law (OAL), where it was filed on September 4, 2014. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The parties filed several briefs in support and in opposition to the motion and oral argument was presented on June 9, 2015. The record closed on June 9, 2015.

FACTUAL DISCUSSION

Petitioners, consisting of students and parents of students attending schools in Lakewood School District (Lakewood) as well as parents of nonpublic schools in Lakewood, filed this action challenging the allocation method and amount of State funding received by Lakewood. Petitioners generally allege that Lakewood shares certain characteristics with the districts identified as "Abbott Districts" in Abbott v. Burke, 119 N.J. 287 (1990), and that as a result, Lakewood students are deprived of a constitutionally mandated thorough and efficient education (T&E). Petitioners requested relief falls into several categories. First, they request that the Commissioner increase funding appropriations to Lakewood. Next, they seek orders requiring the Commissioner make certain policy recommendations to the State Legislature. They also seek various declaratory rulings and administrative remedies.

Respondents' motion asserts several reasons why petitioners' petitions should be dismissed. First, respondents allege that petitioners have failed to join the Lakewood School District, who is a necessary party to this litigation. As it is the recipient of education funding from the state and the entity responsible for ensuring that

the funding is used appropriately to address the educational needs of its students, respondents assert that Lakewood School District is an indispensable party in this litigation. Petitioners argue that Lakewood is not a necessary party to the litigation since the petition alleges, in part, that the Department of Education has been arbitrary and capricious in its methodology for determining the wealth of Lakewood and for removing Lakewood from the District Factor Groups. As the petition seeks a resolution of these funding issues, Lakewood is not a necessary party. Discovery, the petitioner claims, will be sufficient to provide all of the information necessary to determine whether respondents are improperly funding Lakewood. The discovery process will further be facilitated by the fact that the Department of Education has placed state monitors in the Lakewood School District. Since these monitors have access to all information available to the school district, Lakewood need not be joined.

Next, respondents allege that the petition fails to allege a sufficient basis to establish standing as the petition does not specify how each individual petitioner is being adversely affected by the manner in which respondents are funding the district. Respondents contend that the student petitioners are the harmed parties by nature of being residents of Lakewood and thus do not receive T&E.

Finally, respondents assert that the petition should be dismissed because the remedies sought are not available in this type of proceeding. Petitioner responded that the proceeding is necessary to provide a factual record for administrative and judicial remedies.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:12-5, governing motions for summary decision, permits early disposition of a case before the case is heard if, based on the papers and discovery which have been filed, it can be decided "that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:12-5(b). The provisions of N.J.A.C. 1:12-5 mirror the language of R. 4:46-2 of the New Jersey Court Rules governing motions for summary judgment. To

survive summary decision, the opposing party must show that "there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid. Failure to do so entitles the moving party to summary decision. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995).

Moreover, even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is "so one-sided that [the moving party] must prevail as a matter of law." Id. at 536. This tribunal is required to do "the same type of evaluation, analysis or sifting of evidential materials as required by Rule 4:37-2(b) in light of the burden of persuasion that applies if the matter goes to trial." Id. at 539-540. Like the New Jersey Supreme Court's standard for summary judgment, summary decision is designed to "liberalize the standards so as to permit summary [decision] in a larger number of cases" due to the perception that we live in "a time of great increase in litigation and one in which many meritless cases are filed." Id. at 539 (citation omitted).

Here, there is genuine issue as to material fact in this matter in relation to the extent which Lakewood School District should be involved. Respondents claim Lakewood is a necessary party while petitioners assert that all this information necessary to make a determination as to whether the district is improperly funded can be obtained through discovery.

A Petition of Appeal filed with the Commissioner must name as a party "any person or entity indispensable to the hearing of a contested case. N.J.A.C. 6a:3-3(B). Failure to do so is grounds for dismissal of the petition. Ibid. An indispensable party is one that "has an interest inevitably involved in the subject matter before the court and a judgement cannot justly be made between the litigants without either adjudging or necessarily affecting the absentee's interest." Jennings v. M & M trans. Co., 104 N.J. Super. 265, 272 (Ch. Div. 1969). As it is the recipient of education funding from the state and the entity responsible for ensuring that the funding is used appropriately to address the educational needs of its students, respondents assert Lakewood is an indispensable party. The underlying claim in the petition is not whether Lakewood is

appropriately using the funding. Rather, the petition asserts that the School District is not being funded properly. This is a fact specific determination, one which will require discovery to be conducted. Given that state monitors have already been placed in the district to assess how Lakewood is spending its educational funds, respondents should have adequate access to district documents during the discovery process.

In prior New Jersey finance litigation the only plaintiffs/petitioners have been students and their parents. See Robinson v. Cahill, 118 N.J. Super. 223 (1973); Abbott v. Burke, 119 N.J. 287 (1990). In one such case, the State moved to dismiss the petition for lack of standing when the district, and not students and their parents, were named in the petition. See Bacon v. N.J. State Dept. of Educ., 398 N.J. Super. 600 (App. Div. 2008). Therefore, I **CONCLUDE** that Lakewood School District is not a necessary party to this litigation.

I further **CONCLUDE** that petitioners, consisting of students and parents, have standing to challenge the school funding. It is clear as can be seen in Bacon, *supra*, that students have standing to challenge a claim that their constitutional right to T&E is being denied. Whether that is in fact the case will be determined through the discovery process.

Respondents lastly argue that dismissal is proper because petitioners seek remedies not available in this type of proceeding. Specifically, the petition failed to meet the procedural requirements for such relief. In this case, as in all prior school funding cases, the ultimate relief sought is of a constitutional dimension that can only be provided by the courts. In Abbott v. Burke, (Abbott I) 100 N.J. 269 (1985), the State moved to dismiss for plaintiffs' failure to exhaust administrative remedies. The Abbott I Court had to decide "whether the controversy, in the first instance, can and should be resolved in whole or in part before an administrative tribunal, or whether it must immediately be considered by the judiciary." *Id.* at 296. The Abbott I Court was "satisfied that the presence of constitutional issues and claims for ultimate constitutional relief does not, in the context of litigation, preclude resort in the first instance to administrative adjudication." *Id.* at 297.

The Bacon districts initially filed their complaint in Superior Court but the matter was transferred to the Commissioner. The Office of Administrative Law has been charged with producing a complete record in the previous school funding cases, and I **CONCLUDE** that the current matter is likewise appropriately placed before this tribunal to establish a complete record and exhaust all administrative remedies.

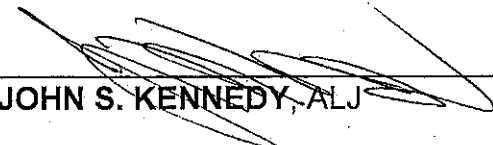
Based upon the above, I **CONCLUDE** that respondents' Motion to Dismiss is not ripe and must be **DENIED**

Accordingly, it is **ORDERED** that:

1. Respondents' motion to dismiss is **DENIED**;
2. I shall conduct a conference with the parties on August 13, 2015, at 3:30 p.m., to determine a date upon which an evidentiary hearing will be conducted for the purpose of resolving the factual dispute identified herein.
3. Any remaining questions of law will be resolved upon the conclusion of said hearing and the completion of the factual record.

This order may be reviewed by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.

July 23, 2015
DATE



JOHN S. KENNEDY, ALJ

cmo