



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

OAL DKT. NO. EDU 11069-14

AGENCY DKT. NO. 156-6/14

**LEONOR ALCANTARA, individually
and as guardian ad litem for E.A.,
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.

**DAVID HESPE, COMMISSIONER OF
EDUCATION, NEW JERSEY STATE
BOARD OF EDUCATION AND NEW
JERSEY DEPARTMENT OF EDUCATION,**

Respondents.

Arthur Lang, Esq., for petitioners

Geoffrey N. Stark, and Jennifer Hoff, Deputies Attorney General, for
respondents (Christopher S. Porrino, Acting Attorney General of New
Jersey, attorney)

Paul L. Tractenberg, Esq., Professor of Law, Rutgers University School of Law,
participant

BEFORE **SOLOMON A. METZGER**, ALJ t/a:

This matter arises out of a complaint filed before the Commissioner of Education alleging that the School Funding Reform Act (SFRA), N.J.S.A. 18A:7F-43 to- 63, as applied to the Lakewood School District violates the “thorough & efficient” clause of the New Jersey Constitution. The matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 to -15. Petitioners have now filed a motion for summary decision, pursuant to N.J.A.C. 1:1-12.5; Brill v Guardian Life Ins. Co. of Amer., 142 N.J. 520 (1995)

Certain basic facts are undisputed. Lakewood is home to some 31,000 students, only 6,000 of which are enrolled in the public schools. The large majority of public school students are from low income households. Some 25,000 students attend private school and the District provides their bussing. The funding formula does not adjust for this circumstance. Lakewood also has considerable special education costs. Together a substantial portion of the budget is dedicated to these purposes leaving a shortfall for in-district programming. Test scores, class size, enrollments in post-secondary education, teacher salaries and other metrics all reflect this condition. To make matters worse the private school population continues to expand in relation to public school enrollments, intensifying the anomaly with each passing year.

The Department argues that the motion is premature in the midst of discovery, citing, Velentzas v. Colgate-Palmolive Co., 109 N.J. 189 (1988); Jackson v. Muhlenberg Hospital, 53 N.J. 138 (1969). Judge Kennedy, who most recently presided in the matter, established September 2016 as the end date for discovery and this motion, filed in February 2016, has interrupted the process. Petitioners counter that deficits mount, inequities grow and the data presented to date self-evidently entitles them to relief. Moreover, the Department has installed monitors in Lakewood and generates much of the information that petitioners have collected. Surely, it has enough insight into the facts to join issue on the motion. I do not agree. The record is produced here and must serve as the foundation for all that follows. It cannot account for what the Department knows in the ether. Further, petitioners’ initial motion papers posit that bussing for private school students in Lakewood is required; the Department responds by

presenting a prior history in which it has concluded otherwise. The Department also suspects that Lakewood overuses out-of-district placement for children with disabilities. These points require explication. There is no question that Lakewood's demographics pose singular problems for the public school budget, but petitioners assert a constitutional level of deprivation and this must be sorted carefully.

Petitioners' reply brief filed on April 26, 2016, offers a letter from the Lakewood business administrator dated April 8, 2016, informing parents that non-mandatory public and private school bussing will cease beginning in the 2016-17 school year owing to fiscal constraints. That is a meaningful development and together with other exhibits attached to this brief reflect evolving facts that may narrow the dispute. Petitioners argue that funding remains woefully inadequate even with elimination of courtesy bussing, as mandatory bussing and special education burdens continue to overwhelm the budget. That may be so, but a shifting factual landscape does not argue for summary resolution.

Based on the foregoing, petitioners' motion for summary decision is **DENIED**.

This order may be reviewed by the **COMMISSIONER 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 19, 2016

DATE

SOLOMON A. METZGER, ALJ t/a

mph