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April 29, 2021

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Re: Leonor Alcantara, et al. v. David Hespe, Commissioner of the New Jersey Department of Education, et al.
OAL Dkt. No. EDU 11069-2014S
Agency Reference No. 156-6/14

Dear Commissioner Allen-McMillan:

Please accept this letter brief in lieu of a more formal brief on behalf of Respondents, the Commissioner of the New Jersey Department of Education ("Commissioner"), the New Jersey State Board of Education ("BOE"), and the New Jersey Department of Education ("DOE") (collectively "Respondents"), as a reply to the exceptions filed by Petitioners with respect to the ALJ's initial decision. For the reasons that follow, the Honorable Susan M. Scarola, ALJ ("Judge Scarola" or the "ALJ"), appropriately found that the School Funding Reform Act of 2008 ("SFRA"), N.J.S.A.

18A:7F-43 to -70, was not unconstitutional as applied to Lakewood; and her initial decision must therefore be adopted as to her decisions regarding the constitutionality of the SFRA.[1]

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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS

Respondents rely upon and incorporate the detailed procedural history and statement of facts set forth in its summation, as well as its exceptions dated April 13, 2021, and its April 20, 2021 reply to Participants' exception, supplemented as follows.

After inadvertently failing to serve Respondents with their exceptions, on April 20, 2021, the Office of Controversies and Disputes ("C&D") granted Petitioners leave to serve Respondents with their exceptions to Judge Scarola's initial decision. (Petitioners' April 20, 2021 Letter); (C&D's April 20, 2021 Email).

[1] On April 13, 2021, Respondents filed exceptions as to the ALJ's decision that Lakewood's public students are not receiving a thorough and efficient education.

Respondents were subsequently granted leave to respond to Petitioners' exceptions.[2] This supplemental brief follows.

ARGUMENT

THE ALJ APPROPRIATELY FOUND THAT THE SFRA IS NOT UNCONSTITUTIONAL AS APPLIED TO LAKEWOOD, AND THAT THE SFRA IS NOT THE CAUSE OF LAKEWOOD'S FINANCIAL DURESS.

As previously articulated in Respondents' exceptions and reply brief, Judge Scarola's decision regarding the SFRA not being unconstitutional as applied to Lakewood was well-reasoned and thoroughly supported by the record and the law. For the reasons that follow, Petitioners' exceptions should be rejected and the ALJ's initial decision finding that the SFRA is not unconstitutional as applied to Lakewood must be adopted. The ALJ's finding that the SFRA is not the cause of Lakewood's ongoing financial duress must also be adopted.

Petitioners' exceptions essentially challenged four aspects of Judge Scarola's decision: (1) the application of a "heavy burden" upon Petitioners; (2) the ALJ's findings with respect to Lakewood's poor fiscal management, as well as the community choices that affect its economic realities; (3) the ALJ's finding that other legislation, such as the Appropriations Act, affects

[2] Respondents' reply exceptions, dated April 20, 2021, did not make reference to Petitioners' exceptions, as Respondents had not received Petitioners' exceptions until April 20, 2021.

Lakewood's funding; and (4) Judge Scarola's finding that Lakewood failed to rein in transportation and special education costs. (Petitioners' Exceptions at 4). Petitioners are incorrect across the board.

First, for all of the reasons set forth in Respondents' April 20, 2021 brief, the ALJ correctly applied a heavy burden upon Petitioners in this matter. (Respondent's Reply Brief at 6-8). Respondents have fully addressed this issue and need not repeat those arguments here. Suffice it to say that when challenging the constitutionality of a school funding statute, petitioners "carry a heavy burden to establish" that the SFRA is unconstitutional. Stubaus v. Whitman, 339 N.J. Super. 38, 52 (App. Div. 2001). Moreover, Judge Scarola properly set forth the appropriate standard when she held, "whether the SFRA is unconstitutional as applied to Lakewood 'turn[s] on proof that plaintiffs suffer educational inequities and these inequities derive, in significant part, from the funding provisions' of the SFRA." (Initial Decision at 90 (quoting Abbott v. Burke ("Abbott I"), 100 N.J. 269, 296 (1985))). Accordingly, the standard applied by the ALJ is correct and well-settled through controlling decisions of law. See (Respondents' Reply Exceptions at 6-8).

Second, despite Petitioners' arguments, the ALJ correctly found that Lakewood's fiscal management, general financial

conditions, and other locally made choices have significantly and negatively affected their district. See (Respondent's Reply Brief at 12-17). Any financial issues present are separate and apart from the SFRA. Ibid. Robert Finger, Lakewood's Interim Assistant Administrator, testified at length as to how the two percent levy cap was crippling Lakewood's ability to increase revenue, as well as the fact that Lakewood rejected the question to exceed the levy cap to cover courtesy busing. (2T192:10-22, 5T159-12-18). Petitioners argue that the ALJ faults "the District for not passing even higher taxes in 2011-14" and that Lakewood should not be expected to rely upon taxing in advance. (Petitioner's Exceptions at 8, 10). They also contend that "there is nothing the district or the state monitors, who have all the power of the district, could have done to keep up with the mandated expenses." Id. at 11. They have misstated the issue. In doing so, they completely ignore the overwhelming evidence in the record establishing significant fiscal mismanagement and self-defeating policy choices by Lakewood. See (Respondents' Reply Exceptions at 12-17).

Moreover, Petitioners fail to acknowledge that the SFRA is inherently structured to ensure adequate funding for the provision of a thorough and efficient education ("T&E"). Stated differently, the SFRA was "designed to exceed the requirements necessary" to provide T&E, and built in a series of safety mechanisms to

accomplish that goal. Abbott v. Burke (Abbott XX), 199 N.J. 140, 164 (2009); see also (Initial Decision at 70 (discussing SFRA funding formula)). The formula for calculating equalization aid under the SFRA carries with it certain critical characteristics to ensure the provision of T&E and the appropriate allocation of finite resources. In particular, the SFRA is unitary, in that it applies the same funding principles to all districts. See Abbott XX, 199 N.J. at 152, 173-74; N.J.S.A. 18A:7F-44(g). It is also weighted, to ensure that the Department's equalization aid for each district is calculated based on the district's demographics. Ibid.; N.J.S.A. 18A:7F-44(d) and -53. And it is wealth-equalized, so that funding under the formula is a shared responsibility of each district and the State based on districts' relative property and income wealth. Abbott v. Burke (Abbott XIX), 196 N.J. 544, 557 (2008); Abbott XX, 199 at 154-55. Thus, it simply cannot be said that the SFRA formula is constitutionally infirm. Leaving aside the question of parental choice to send children to private schools, as well as the myriad of poor local decisions and mismanagement that has left Lakewood in economic disarray, Petitioners ignore that the SFRA formula is structured to support any and all districts in New Jersey. The fact that Lakewood is operating under the adequacy budget is telling. (8T25). It cuts directly against any suggestion that the SFRA is unconstitutional

as applied, and speaks directly to the local choices that have in fact harmed Lakewood (e.g., keeping the tax levy stagnant for so many years and choosing to not pay more in taxes to support the public schools. Lakewood is in the financial position they are right now, and have been for years, because of their financial and community choices. The SFRA stands separate and apart from these financial issues.

Third, Petitioners argue that it is "perplexing" that the ALJ did not find the SFRA inadequate because of cuts coming from the Appropriations Act. Id. at 15. Petitioners further suggest that "[if] the Appropriations Act caused the lack of T&E then all the more reason that the legislature must act to appropriate adequate funding for T&E in the District." Ibid. Petitioners have misconstrued the ALJ's holding. In fact, the ALJ did acknowledge that the Appropriations Act cuts spending that the SFRA might have provided to the District, specifically that "Lakewood would have received roughly $13M in transportation aid if fully funded, but only received $3M through the Appropriations Act." (Initial Decision at 99). But the ALJ was not suggesting that the Appropriations Act is what caused any purported lack of T&E.[3] Importantly, the ALJ properly held that there are other factors,

[3] Respondents still reject the ALJ's ruling that Lakewood is not receiving T&E.

aside from the SFRA, that lead to less funding. (Initial Decision at 95-102). The Act is only relevant here because the SFRA is funded according to the annual Appropriations Act. (8T161:12-15).

Finally, Petitioners disagree with the ALJ's conclusion that Lakewood is unable to rein in their transportation and special education costs. Id. at 17-20. Petitioners argue that it is not the District's fault that it is under financial duress. However, as previously discussed, there is substantial proof that funds have been misappropriated and mishandled, leading to the District's financial struggles. (Respondents' Reply Exceptions at 12-17); (5T31:16-21; 5T73:20-25; 5T74:1-2; 9T39:25; 9T40:1-7; 9T45:11-21; 9T49-50; 9T61; 9T64:17-21 R-15; R-22; R-23). The ALJ correctly held that there was an absence of evidence "that Lakewood has done everything it can to rein in its transportation costs in order to free up more funds for T&E for its public-school students." (Initial Decision at 23).

Lakewood has also actively chosen not to take advantage of certain statutory remedies at their disposal. As explained by the ALJ, "N.J.S.A. 18A:22-40 provides that a district such as Lakewood can raise funds for the general fund deficit and is not limited to the cost of a thorough and efficient education. Other districts have used this statute to raise more revenue. Lakewood Township put out a referendum, but it did not pass. The monitor cannot

direct the township to raise taxes." (Initial Decision at 61). Additionally, Judge Scarola noted that "the only instance in which Lakewood availed itself of its powers and discretion under N.J.S.A. 18A:22-40 and N.J.S.A. 18A:7F-39 between school years 2014-2015 and 2018-2019 was in 2016, when Lakewood put a public vote to a referendum to increase the school tax levy to raise more than $6M to help pay for transportation costs." Ibid. Petitioners have failed to explain why Lakewood has not taken advantage of N.J.S.A. 18A:22-40 or N.J.S.A. 18A:7F-39.

Petitioners further argue that "Lakewood had to accept . . . loans from the State because no other options were presented[,]" and labelled the loans as "forced borrowing". (Petitioner's Exceptions at 22). But it is not solely up to the State to manage and provide funds for the District's public schools. State monitors were not placed in Lakewood for no reason.[4] As discussed throughout Respondents' briefs and at the hearings in this matter, Lakewood has shown time and time again that it is unable to consistently handle its finances — so the State had no choice but to intervene. Blaming the State for providing loans to the District is not a sufficient argument to carry the "heavy burden"

[4] The State monitors were brought in to correct Lakewood's spending and financial habits. The State monitors were successful when they were able to get the tax levy raised, once they were installed by the Commissioner in 2014. (8T45; 9T27:8-15; 11T32:20-25; 11T33:1-9; R-3).

of showing the SFRA is unconstitutional as applied to Lakewood.

Accordingly, Petitioners failed to meet the high burden of proving that the SFRA is unconstitutional as applied to Lakewood. In other words, as stated in Respondents' reply brief, Petitioners have failed to show that Lakewood "had done all it can do with statutorily available resources and improvement mechanisms, yet still cannot provide T&E because the statutory funding scheme generates insufficient monies for this purpose." (Initial Decision at 90); Bacon v. N.J. State Dep't of Educ., 2003 N.J. AGEN LEXIS 1195, at *15 (Feb. 10, 2003). Lakewood's current financial condition has very little to do with the SFRA. The ALJ thoroughly reviewed the law and the evidence in the record, and correctly concluded that the SFRA is not unconstitutional as applied to Lakewood. The ALJ's decision must be adopted, in part, as to Petitioners' as-applied challenge to the SFRA.

CONCLUSION

For these reasons, the ALJ's initial decision should be partially adopted because the SFRA is not unconstitutional as applied to Lakewood.

Respectfully submitted,

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