



State of New Jersey

DEPARTMENT OF EDUCATION

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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ANGELICA ALLEN-McMILLAN, Ed.D.
Acting Commissioner

May 12, 2023

VIA EMAIL ONLY

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Re: **Leonor Alcantara, et al. v. Angelica Allen-McMillan, Commissioner of the Department of Education, et al., -- Agency Dkt. No. 156-6/14; Commissioner Decision No. 149-21 -- Appellate Dkt. No. A-3693-20**

Dear Mr. Tractenberg and Mr. Lang:

This matter arose through an administrative Petition of Appeal alleging that the students of the Lakewood School District (Lakewood) were not receiving a constitutionally mandated thorough and efficient education (T&E). It also alleged that the root cause of that failure was that the School Funding Reform Act of 2008 (SFRA), N.J.S.A. 18A:7F-43 to -70, was unconstitutional as applied to Lakewood. On July 16, 2021, I issued a final agency decision concluding that the record developed below failed to establish that Lakewood public students were not receiving T&E. Final Decision at 9. Thus, I declined to consider the issue of the as-applied constitutionality of the SFRA. Though I felt that the record fell short of establishing a T&E violation, it did reveal educational deficiencies that warranted further attention. As such, I directed the Department of Education "to conduct a comprehensive review of the District's organization, structure and policies to assess its compliance with the quality performance indicators in accordance with [N.J.S.A.] 18A:7A-11 to determine how the District can improve its educational program." Final Decision at 7.

On March 6, 2023, the Appellate Division issued an opinion reversing my decision, finding that Lakewood's public school students are not receiving T&E. Alcantara v. Allen-McMillan, 475 N.J. Super. 58 (App. Div. 2023). The Appellate Division thus remanded the matter to me for a determination as to whether the SFRA is unconstitutional as applied to Lakewood.

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In light of the Appellate Division's finding, and in order to execute my obligations under the remand and provide a well-informed opinion as to whether the SFRA is constitutional as applied to Lakewood, I am now directing the Department to expedite the comprehensive review referenced in my final decision. The facts and data that comprised the record before the Office of Administrative Law, the Commissioner, and the Appellate Division, relate primarily to the 2014-15, 2015-16, 2016-17, 2017-18, and 2018-19 school years. Because this information is now outdated and the subsequent intervening years will have revealed additional relevant and informative data, coupled with the fact that there have been unprecedented changes in the field of education as a byproduct of the COVID-19 pandemic, an updated record is required in order to make an appropriately informed decision about the SFRA and its application to Lakewood. The review will require the engagement of experts to examine Lakewood's operations and performance in several key areas, including educational policy, special education, administration and governance, and accounting. In addition to these areas, the review will include, but will not be limited to, an examination of the particular areas of concern raised by petitioners in these proceedings, such as transportation costs for Lakewood's students, and special education funding. Upon completion of this expedited comprehensive review, Lakewood and the petitioners will have an opportunity to respond to the resulting report and recommendations prior to the issuance of a final agency decision on the as-applied constitutionality of the SFRA.

In addition to assisting in that determination, the comprehensive review will also allow the Department to better identify the root causes that led to the educational deprivations identified by the court and determine the appropriate responses. In the interim, the Department is exploring what assistance, relief, or aid may be available to more immediately remedy the noted educational deficiencies, including, but not limited to, the Department's July 8, 2022 and May 10, 2023 approval of the District's application for a waiver to proceed with contracting for student transportation services for the 2022-2023 and 2023-2024 school years. In addition, the Department has provided Lakewood monetary assistance, relief and aid through the provisions of loans against State aid beginning in June 2015 and through March 2021 totaling \$137,420,524.00. Most recently, and following the influx of Federal funding beginning with the Coronavirus Aid, Relief, and Economic Security Act beginning in 2020, on May 1, 2023 Lakewood received an additional approval of a loan against State aid for the 2022-2023 school year in the amount of \$27,704,046.00. Once the expedited comprehensive review is complete, the Department will be better equipped on how best to ensure that Lakewood's public school students receive the necessary education required by our State's Constitution.

Sincerely,



Angelica Allen-McMillan, Ed.D.
Acting Commissioner

AAM/JB/JS