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August 3, 2018

Via Email and Regular Mail

Honorable Susan M. Scarola, A.L.J.  
Office of Administrative Law  
Quakerbridge Plaza, Bldg. 9  
P.O. Box 049  
Trenton, New Jersey 08625-0049

Re: Leonor Alcantara, et al, v. David Hespe,  
Commissioner of Education, et al.  
OAL Dkt. No. EDU 11069-14

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Dear Judge Scarola:

Please accept this letter-brief on behalf of Respondents in opposition to Petitioners' Motion to Reopen their case and Supplement the Record in the above-referenced matter. Having rested their case on March 27, 2018, Petitioners now seek to call an additional witness, Melvyn Wyns, to present testimony on the speculative impact of L. 2018, c. 67 ("S.2"), which modifies certain aspects of the school funding formula. Petitioners' motion should be denied because the impact of S.2 is purely speculative and not ripe for review, and thus there are no extraordinary circumstances that necessitate reopening Petitioners' case.

The crux of this case is whether or not Lakewood has been



receiving enough funding to provide a thorough and efficient ("T&E") education to its students. S.2 was signed into law on July 24, 2018, and will affect funding starting with the 2019-2020 school year. Its effect on Lakewood's funding, and more importantly on the constitutionality of the education Lakewood provides, is not ripe. There is a two-part test for ripeness: (1) the fitness of the issue for judicial review, and (2) the hardship on the parties if review is withheld at this time. See K. Hovnanian Cos. of N. Cent. Jersey, Inc. v. N.J. Dep't of Env't'l Prot., 379 N.J. Super. 1, 9-10 (App. Div. 2005). Under the first prong, an issue is fit for review if it requires no further factual development. Id. at 10. Under the second prong, the complaining party faces a sufficient hardship if it faces a "'real and immediate' threat of enforcement against the [petitioner]." Ibid. (quoting 966 Video v. Mayor & Twp. Comm. Of Hazlet Twp., 299 N.J. Super. 501, 516-17 (Law Div. 1995)).

Clearly the issue Petitioners raise fails this test. S.2 has no effect until the 2019-2020 school year. Any claims as to its potential impact on these Petitioners, or on the education Lakewood is able to provide its students, is purely speculative. It therefore fails the first prong of the test for ripeness because it not only requires factual development, but requires factual development that is not possible at this time. Lakewood's 2019-2020 school year funding is unknown, and will not be known until

the Legislature passes its Fiscal Year 2020 appropriations act.

Petitioners' request also fails the second prong of the ripeness test because there is no real and immediate threat of enforcement. As stated previously, S.2 has no effect until the 2019-2020 school year. Further, any funding for the next fiscal year is based on future appropriations. Thus the issue Petitioners raise is not ripe, and their case should not be reopened to allow them to present evidence and testimony regarding the speculative future impact of S.2.

Petitioners have rested their case, and the Court is currently considering Respondents' Motion to Dismiss. While the record is not closed, Petitioners' case-in-chief is. The standard for reopening the record prior to the filing of an Initial Decision is instructive. "[M]otions to reopen the record before an initial decision is filed must be addressed to the judge and may be granted only for extraordinary circumstances." N.J.A.C. 1:1-18.5(c). Because the issue Petitioners seek to bring to the Court's attention is not ripe for review, Petitioners have offered no extraordinary circumstances to justify reopening their case. Their proposed additional expert testimony on the hypothetical impact of a statute that has yet to take effect is not necessary for the Court to make a determination on the issue before it--whether Lakewood is able to provide T&E to its students.

In sum, the recent passage of a new statute modifying certain

aspects of how school funding will be calculated in future years is a speculative issue not ripe for review. It therefore is not a sufficient reason to reopen Petitioners' case-in-chief and Petitioners' request should be denied.

Respectfully submitted,

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