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Office of Attorney General  
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Date: April 27, 2015

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RE: Alcantara v. Hesper

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MESSAGE:



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April 27, 2015

Via Overnight Service and Fax to (609) 689-4100

Hon. John S. Kennedy, A.L.J.  
Office of Administrative Law  
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Re: Leonor Alcantara, individually and as Guardian ad Litem for E.A.; Leslie Johnson, individually and as Guardian ad Litem for D.J.; Juana Perez, individually and as Guardian ad Litem for Y.P.; Tatiana Escobar; and Ira Schulman individually and as Guardian ad Litem for A.S. v. David Hespe, Comm'r of the N.J. Dep't of Educ.; the N.J. State Bd. of Educ.; and the N.J. Dep't of Educ.  
Agency Reference No.: 156-6/14  
Docket No.: EDU 11069-2014S

Dear Judge Kennedy:

Please accept this letter in lieu of a more formal reply brief on behalf of Respondent, Commissioner of Education ("Commissioner") responding to the April 14, 2015, submission by Mr. Paul Trachtenberg. The Commissioner will continue to rely on the facts as set forth in his original motion papers.



INTRODUCTION

Mr. Trachtenberg's letter-brief advances three arguments for why the Commissioner's motion to dismiss should be denied. First, he argues that the Lakewood School District ("Lakewood") is not a necessary party to develop a complete record and decide this matter. Second, he ignores the question of whether these individual students have standing, and instead merely asserts a systemic problem. Third, he fails to address the arguments made in the moving papers regarding the unavailability of some of the relief sought. For the reasons set forth in the Commissioner's motion, and further developed below, the petition should be dismissed.

I. THE AMENDED PETITION IN THIS CASE IS FUNDAMENTALLY DIFFERENT THAN THE ACTIONS BROUGHT IN THE ROBINSON V. CAHILL AND ABBOTT V. BURKE LINES OF CASES, AND REQUIRES THAT LAKEWOOD BE INCLUDED IN THE CASE.

Mr. Trachtenberg rests his arguments on a perceived similarity to the Robinson v. Cahill and Abbott v. Burke lines of cases and no such similarity exists. While Petitioners assert that Lakewood receives inadequate State funding, as did the Plaintiffs in Robinson and the Petitioners in Abbott, the similarities end there. The cases to which Mr. Trachtenberg refers were broad facial challenges to the constitutionality of the State's public education funding. In contrast, this matter

appears to involve a much narrower question: whether Lakewood, as a district, receives adequate resources through the State's funding methodology. The development of a record sufficient to allow the Commissioner to make an informed decision on that question inescapably requires Lakewood's participation.

Unlike the Robinson and Abbott cases this is not a broad facial challenge to the constitutionality of the State's funding statute. Here, Petitioners claim that Lakewood, due to its unique circumstances, has inadequate resources to provide students with a thorough and efficient education, an issue that necessarily requires Lakewood's participation. Petitioners make allegations related to business and policy decisions made by Lakewood in the conduct of its schools, which they claim result in hardship to the Lakewood students. See, e.g., (Amended Petition, ¶¶17 - 27). Lakewood must account for its management of those educational resources. As Mr. Trachtenberg pointed out, in Abbott v. Burke ("Abbott II"), 119 N.J. 287, 381 (1990), the Court "agree[d] with the ALJ that [financial mismanagement] has not been a significant factor in the general failure to achieve a thorough and efficient education in poorer urban districts." Ibid. (emphasis added). The Court did not reject the argument that such mismanagement could be a significant factor in the localized failure of one district, only that it

was not a significant factor statewide. Indeed, foreclosing the possibility that a district's mismanagement could deprive students of a thorough and efficient education amounts to a tacit approval of such mismanagement. Here, there is ample evidence of the District making questionable policy decisions with the potential to impact educational quality. Indeed, the Department has installed fiscal monitors in the district because of these concerns. When considering such an issue, the district whose alleged mismanagement was at issue must be a party to the litigation so as to provide the court with a full opportunity to develop a factual record, and to develop appropriate remedies such as redirecting expenditures, restructuring programs, or other actions that would necessarily impact the district.

Mr. Trachtenberg also argues that Petitioners' grievance is with the State, not the District, thereby rendering the District unnecessary. However, as Lakewood is both the recipient and expender of education funding from the State, the District is "inevitably involved in the subject matter before the court." Jennings v. M & M Trans. Co., 104 N.J. Super. 265, 272 (Ch. Div. 1969) (citing Allen B. Du Mont Labs, Inc. v. Marcalus Mfg. Co., 30 N.J. 290, 298 (1959)). Lakewood is therefore necessary precisely because "a judgment cannot justly be made between the litigants without either adjudging or

necessarily affecting [Lakewood's] interest." Ibid.

Finally, it must be noted that both Petitioners and Mr. Trachtenberg repeatedly refer to the "unique circumstances" present in Lakewood. The "unique circumstances" of Lakewood are not new to the Department, the Commissioner, or the State Board. They were discussed in the State Board's decision in Bacon, et. al v. New Jersey Department of Education, OAL Dkt. Nos. EDU 2637-00 through 2646, 2649-00 through 2652, 2654-00 through 2656-00 (State Board Final Decision, January 4, 2006), in which the Board noted that "the Lakewood Board cannot claim that it must support the cost of the courtesy busing it has chosen to provide while seeking additional funds to support educational programming for its public school students." Id. at 58. The "unique circumstances" present in Lakewood are precisely why the District is a necessary party. As it is the recipient of education funding from the state, and is the entity responsible for ensuring that the funding is used appropriately to address the educational needs of its students, Lakewood is clearly an indispensable party in this action. Therefore, Petitioners' failure to join Lakewood should therefore result in dismissal of the Amended Petition.

II. PETITIONERS HAVE FAILED TO ESTABLISH A  
SUFFICIENT FACTUAL BASIS TO DEMONSTRATE  
SUFFICIENT STANDING TO BRING THEIR CLAIM.

Petitioners have provided no indication of the "sufficient stake and real adverseness" necessary to establish standing to bring their claims. See Neu v. Planning Bd. of Twp. of Union, 352 N.J. Super. 544, 552 (App. Div. 2002). As explained in the Commissioner's Motion to Dismiss, the Amended Petition is virtually silent about the stake that these specific Petitioners have in the outcome of this litigation. It does not specify which public schools the students attend, or any harm that they have personally experienced as a result of the allegedly inadequate funding. There is no explanation as to how A.S. has any connection to the claims made in the Amended Petition, much less whether he or she receives any services paid for by the State.

Mr. Trachtenberg attempted to deflect Petitioners' inadequate petition by pointing the court's attention to a recent video, presented as factual evidence outside of any hearing and without any context or examination, in which the State's fiscal monitor answers a question at a Board of Education meeting. In presenting this video, Mr. Trachtenberg attempts to argue that Petitioners' are not required to allege any specifics because the problem "is systemic, that the

Lakewood School District, because of its unique circumstances, simply doesn't receive enough state funding." (Ltr. Br. of P. Trachtenberg at 5). This argument should be rejected, as it ignores the basic standing requirements. Even if there were a systemic violation as asserted, Mr. Trachtenberg has not set forth why this absolves Petitioners of the standing requirements. Petitioners have not properly established standing to bring their claim. Accordingly, the Amended Petition should be dismissed.

**III. DISMISSAL IS PROPER BECAUSE PETITIONERS SEEK  
REMEDIES NOT AVAILABLE IN THIS TYPE OF  
PROCEEDING**

Petitioners have sought numerous forms of relief, but have failed to meet the procedural requirements for such relief, or sought relief unavailable in this forum. To the extent that the relief requested is not available in this proceeding, those claims in the Amended Petition should be dismissed. Mr. Trachtenberg appears to be arguing that, while the Amended Petition does not conform to the requirements of the Administrative Code, it should not be dismissed because doing so would cause an undue delay. However, his argument, and the cases upon which he relies, assumes that matters before the OAL are properly presented and have followed the appropriate



procedures as set forth in applicable statutes and regulations.<sup>1</sup> See, e.g., Abbott v. Burke ("Abbott I"), 100 N.J. 269, 297 (1985) ("All litigants agree that the procedural desideratum in this case is the rapid, thorough, complete, and impartial determination of all the relevant issues that have been properly and fairly presented.") (emphasis added). No administrative proceeding is required when the issue presented to the OAL is improperly before it.

The Commissioner has set forth, in his Motion to Dismiss and above, three reasons why this matter is not "properly and fairly presented" before the OAL. Initially, Petitioners have failed to include the District, a necessary party, in the litigation. Second, Petitioners have failed to establish their standing to pursue their claims. Finally, Petitioners failed to follow the appropriate procedural guidelines in pursuing their claims.

While Mr. Trachtenberg argues that, based on Robinson and Abbott, Petitioners' claims should be heard at the OAL, he ignores the fact that many of the remedies sought by Petitioners

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<sup>1</sup> To the extent that Mr. Trachtenberg is arguing that the OAL is the proper venue for developing a comprehensive factual record, the Commissioner does not necessarily disagree. However, the claims presented must be properly before the OAL, and must conform to the basic requirements set forth in the Administrative Procedure Act, Title 18A, and all applicable administrative regulations.

cannot be appropriately awarded through the administrative process. First, Petitioners specifically ask the Commissioner to provide additional transportation funding to the District. The Commissioner cannot directly appropriate funds as that is reserved to the Legislature. Therefore, Petitioners cannot obtain this remedy through this course of action.

Further, Petitioners improperly seek declaratory rulings from the Commissioner and do so through inappropriate means. While Petitioners have filed an Amended Verified Petition of Appeal under N.J.A.C. 6A:3-1.3, they should have filed a Petition for Declaratory Ruling under N.J.A.C. 6A:3-2.1. Unlike a Petition of Appeal, which requires that a petitioner include "a statement of the specific allegation(s) and essential facts supporting them which have given rise to a dispute under the school laws," N.J.A.C. 6A:3-1.3(a), a Petition for Declaratory Ruling is much more limited in scope. See N.J.A.C. 6A:3-2.1(a). It does not deal broadly with all conflicts that arise under the school law, but narrowly involves a request for "a ruling with respect to rights, responsibilities and status arising from any statute or rule within the jurisdiction of the Commissioner." Ibid. (referencing N.J.S.A. 52:14B-8).

Finally, even if these sought-after declaratory rulings had been requested through an appropriate filing, they

are inappropriate for such a ruling, and the Commissioner could not grant them. Many of Petitioners' requests are overly vague, while others seek to circumvent the legislative process entirely. Further, they are based on disputed or incomplete facts. As set forth in the Commissioner's moving papers, to the extent that the relief requested is not available in this proceeding, those claims in the Amended Petition should be dismissed.

It is clear that Petitioners have failed to include an indispensable party, Lakewood, in this matter. They have also failed to establish their standing to pursue their claims. Further, Petitioners seek remedies that cannot be rendered by the OAL or the Commissioner. As such, Petitioners' Amended Petition must be dismissed.

CONCLUSION

For the reasons set forth in the Commissioner's Motion to Dismiss and above, the Amended Petition should be dismissed.

Respectfully submitted,

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ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 

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