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July 20, 2022

Via ELECTRONIC FILING

Joseph H. Orlando, Clerk
Superior Court of New Jersey – Appellate Division
Richard J. Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625-0006

Re: Leonor Alcantara, et. al. v. David Hespe, Commissioner
of the New Jersey Dep't of Educ., at al.

Appellate Division Docket No.: A-3693-20

On Appeal From a Final Decision of the Commissioner of
Education

Civil Action

Letter Brief of Respondents in Opposition to Motion For
Order of Accelerated Appeal

Dear Mr. Orlando:

Please accept this letter brief pursuant to Rule 2:6-2(b) on
behalf of Respondents – the Commissioner of the New Jersey
Department of Education, the State Board of Education, and the
Department of Education – in opposition to Appellants' motion to



accelerate this appeal.

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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

Respondents rely on, and incorporate by reference, the recitation of facts and procedural history set forth in their merits brief filed in the Appellate Division, supplemented as follows.

The sole matter before the Appellate Division is Appellants’ appeal of the Commissioner’s July 16, 2021 final agency decision. The Commissioner rejected the Administrative Law Judge’s (ALJ’s) initial decision in part, and adopted it in part, finding that Appellants failed to meet the threshold for establishing that the Lakewood Board of Education had failed to provide a thorough and efficient education (T&E); and concurring with the ALJ that the School Funding Reform Act of 2008 (SFRA), N.J.S.A. 18A:7F-43 to -71, is constitutional as applied to Lakewood.

¹ Because the procedural and factual histories are intertwined, they are combined for efficiency and the Court’s convenience.

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Appellants filed a notice of appeal on August 20, 2021. The matter is now fully briefed before the Appellate Division, and the parties await oral argument. On July 13, 2022, Appellants' filed a motion for order of accelerated appeal. This opposition follows.

ARGUMENT

**THIS COURT SHOULD DENY APPELLANTS' MOTION
BECAUSE THERE ARE NO URGENT CIRCUMSTANCES
REQUIRING IMMEDIATE RESOLUTION BY THIS COURT.**

The court may accelerate the timing schedule of any appeal on its own motion, or on the motion of a party. R. 2:9-2. Acceleration is warranted where "the litigation is of great public importance and urgently requires prompt final adjudication." DeSimone v. Greater Englewood Hous. Corp., 56 N.J. 428, 434 (1970) (granting motion to accelerate where the litigation concerned an issue of grave public importance – the approval of a housing project "to provide low- and moderate-income families with safe, sanitary and decent living accommodations" – and acceleration would streamline the "panoply of litigation" that had arisen collaterally to the matter before the Court). Such is not the case here.

Appellants' motion satisfies none of the necessary criteria. – it does not explain how the issues presented in this matter are of such particular importance to warrant acceleration of oral argument and disposition. Indeed, the motion does nothing more

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than reiterate the arguments set forth in Appellants' merits brief. Appellants' "hope[]" that this matter would "receive expedited treatment" only demonstrates their misunderstanding of the nature of this matter and the appellate process generally. (Amb5).²

This matter focuses specifically on issues faced by the Lakewood Public School District – one of nearly 700 districts in New Jersey. And as all parties' briefs before the Appellate Division make clear, those issues and the circumstances that have developed are quite unique to Lakewood. Thus, unlike in Robinson and Abbott, Appellants seek resolution for their own uniquely challenged school district, not a statewide resolution.

Moreover, Appellants have failed to show any reason for deviating from ordinary appellate procedures. While Appellants take issue with the passage of time in this matter, they overlook that this matter deals with very specific, unique, and complex circumstances that only apply to Lakewood. The case at hand involves an extensive record before the Commissioner, including substantial motion practice, and eleven hearing days with fifteen witnesses and 131 exhibits. The Commissioner reviewed and adopted the factual findings of the ALJ and applied her expertise in finding no constitutional violation but directing certain remedial measures. Hurrying the appellate process, and therefore

² "Amb" refers to Appellants' motion brief.

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shortening the Appellate Division's time to conduct a meaningful review of the record and the Commissioner's decision, is not appropriate and would not benefit this court or the parties.

"In matters involving the public interest and urgency, acceleration of the appellate schedule should be promptly sought by the parties." Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 2:9-2 (emphasis added). Appellants have not promptly sought to expedite this appeal. Instead, they waited almost a year to file this motion. And because Appellants have not proven there is significant "great public importance" requiring accelerated review, and because this matter is not extraordinarily urgent, there is no need for the Appellate Division to deviate from its regular course.

CONCLUSION

For these reasons, Appellants' motion to accelerate the appeal should be denied.

Respectfully submitted,

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cc: all counsel of record (via electronic filing)