



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box
TRENTON, NJ 08625-0

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

MATTHEW J. PLATKIN
Attorney General

MICHAEL T.G. LONG
Director

May 8, 2023

VIA E-MAIL

Controversies and Disputes
New Jersey Department of Education
100 Riverview Plaza
P.O. Box 500
Trenton, New Jersey 08625

Re: Alcantara, et al., v. Allen-McMillan
Agency Ref. No. 156-6/14
On Remand
Appellate Docket No. A-003693-20T

Dear Acting Commissioner Allen-McMillan:

Please accept this letter brief on behalf of the Department of Education in response to Petitioners’ motion for emergent relief, filed on May 1, 2023.

TABLE OF CONTENTS

PROCEDURAL HISTORY AND COUNTER-STATEMENT OF FACTS2

ARGUMENT

PETITIONERS HAVE FAILED TO SATISFY THE CROWE FACTORS, AND AS A RESULT, THEIR MOTION SHOULD BE DENIED.....3



CONCLUSION.....5

PROCEDURAL HISTORY AND COUNTER-STATEMENT OF FACTS

This matter is on remand to the Acting Commissioner of Education from the New Jersey Superior Court, Appellate Division. Alcantara v. Allen-McMillan, 475 N.J. Super. 58 (App. Div. 2023). On March 6, 2023, the Appellate Division issued an opinion reversing the Commissioner’s decision finding the Lakewood School District provides a thorough and efficient education (T&E) as required by our State Constitution, N.J. Const. art. VIII, §4, ¶1. Id. at 68-71. Because the Commissioner found the District provides a T&E to its students, she did not address whether the School Funding Reform Act (SFRA), N.J.S.A. 18A:7F-43 to -70, is constitutional as applied to the District. Id. at 62. Accordingly, in reversing the Commissioner’s decision regarding T&E, the Appellate Division remanded the issue of whether the SFRA is unconstitutional as applied to the District to the Commissioner. Id. at 71. The Commissioner has not yet issued her decision and Petitioners have filed a motion to expedite the Commissioner’s review. This opposition follows.

ARGUMENT

PETITIONERS HAVE FAILED TO SATISFY THE CROWE FACTORS, AND AS A RESULT, THEIR MOTION FOR SHOULD BE DENIED.

Petitioners have moved for emergent relief under N.J.A.C. 6A:3-1.6 asking the Commissioner to expedite a decision on remand. They have failed to demonstrate they are entitled to such relief under the Crowe standard. Thus, their motion for emergent relief should be denied.

When deciding whether to grant a motion for emergent relief, N.J.A.C. 6A:3-1.6 directs that the factors set forth in Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982) should be applied. An iteration of those factors has been codified at N.J.A.C. 6A:3-1.6(b):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

Each of the four factors must be clearly and convincingly demonstrated in order for equitable relief to issue. Waste Mgmt. of N.J., Inc. v. Union Cty. Utilities Auth., 399 N.J. Super. 508, 520 (App. Div. 2008); see also Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013) (applying the Crowe factors to a stay of court order).

Here, Petitioners cannot demonstrate that they will prevail on all four of the Crowe factors; and their motion for emergent relief must therefore be denied. Petitioners have not demonstrated a likelihood of success nor irreparable harm. It is not clear they will prevail on the issue of whether the SFRA is unconstitutional as applied to the District. Indeed, the Appellate Division acknowledged as much when it remanded the matter to the Commissioner. Moreover, even if the Commissioner finds the SFRA is unconstitutional as applied to the District, the remedy to the District would be an adjustment of funding, which is not irreparable as it is monetary relief. See Crowe, 90 N.J. at 133.

Also, Petitioners have not shown they will suffer any greater harm if their motion is denied. The Appellate Division neither retained jurisdiction nor expedited the remand. Instead, the Commissioner is entitled to and should issue a well-reasoned, supported decision, considering the cause of the deprivation of T&E to the District's students in due course. Petitioners' request to rush the Commissioner does not further anyone's interest. Accordingly, Petitioners' motion should be denied.

CONCLUSION

Based on the foregoing, Petitioners' motion for emergency relief should be denied.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/Carolyn G. Labin
Carolyn G. Labin
Deputy Attorney General

Cc: All counsel (via e-mail)