



State of New Jersey
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JOHN S. KENNEDY
ADMINISTRATIVE LAW JUDGE

March 11, 2015

Arthur H. Lang, Esq.
918 East Kennedy Boulevard
Lakewood, NJ 08701

Geoffrey N. Stark, DAG
Division of Law
P.O. Box 112
Trenton, NJ 08625-0112

Paul L. Tractenberg, Esq.
123 Washington Street
Newark, NJ 07102

Re: **Alcantara, et al. v. Hespe, Commissioner of Education, et al.**
OAL Dkt No. EDU 11068-14
Agency Dkt No. 156-6/14

Dear Counsel:

Enclosed please find an Order granting Mr. Tractenberg's Motion for Leave to Participate in the above-captioned matter. Please note, I have scheduled a telephone conference on April 2, 2015 at 3:00 p.m. to discuss this matter going forward. My chambers will initiate the telephone conference.

Very truly yours,



John S. Kennedy
Administrative Law Judge

JSK/cmo
Enclosure
c: Clerk's Office – Trenton



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER GRANTING MOTION
FOR LEAVE TO PARTICIPATE
PURSUANT TO N.J.A.C. 1:1-16.6

OAL DKT. NO. EDU 11069-14

AGENCY DKT. NO. 156-6/14

LEONOR ALCANTARA, ET AL.,

Petitioners,

v.

**DAVID HESPE, COMMISSIONER OF
EDUCATION, ET AL.,**

Respondents.

Arthur H. Lang, Esq., for petitioners

Geoffrey N. Stark, Deputy Attorney General, for respondents (John J. Hoffman,
Acting Attorney General of New Jersey, attorney)

Paul L. Tractenberg, Esq., Participant

Motion Submitted: January 14, 2015

Decided: March 11, 2015

BEFORE **JOHN S. KENNEDY, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners, consisting of students and parents of students attending schools in the Lakewood School District, as well as parents of a nonpublic school student in Lakewood, bring this action challenging the allocation method and amount of State funding received by the Lakewood School District. In lieu of an Answer, State respondents filed a Motion to Dismiss. Oral Argument on that motion was scheduled for January 15, 2015. On January 14, 2015, a Motion was filed by Paul L. Tractenberg, Esquire, seeking leave to participate pursuant to N.J.A.C. 1:1-16.6. Briefs both in support and in opposition to the motion to participate were filed and the record closed on February 9, 2015. At issue is whether Mr. Tractenberg should be permitted leave to participate in this matter.

FACTUAL DISCUSSION

Paul Tractenberg has been a faculty member of Rutgers Law School-Newark since 1970 and is the founder of the Institute on Education Law and Policy at Rutgers-Newark. He has been involved in New Jersey's school funding and education reform litigation via Robinson v. Cahill, 118 N.J. Super. 223 (1972), and Abbott v. Burke, 100 N.J. 269 (1985). In these two cases, Tractenberg was involved in the OAL, trial court appellate division and Supreme Court proceedings having argued before the New Jersey Supreme Court fourteen times. His professional and academic focus is on advancing the educational interests of New Jersey's public school students. Tractenberg seeks to participate in this case as amicus curiae due to the very complex nature of the case which raises important questions about the operation of New Jersey's school funding system. It is his belief that his experience and expertise in education law and policy can assist in the administrative adjudication of this matter.

State respondents oppose the motion and assert that non-parties may move to participate only if they have a "significant interest in the outcome of the case" pursuant to N.J.A.C. 1:1-16.6(a). Respondents contend that Tractenberg has failed to

demonstrate that he has the requisite stake in petitioners' claims to demonstrate the type of significant interest contemplated by N.J.A.C. 1:1-16.6.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:1-16.6(a) permits any person or entity with a significant interest in the outcome of a case to move for permission to participate. In deciding whether to permit participation, the judge shall consider whether the participant's interest is likely to add constructively to the case without causing undue delay or confusion. N.J.A.C. 1:1-16.6(b). "Participation" is defined in N.J.A.C. 1:1-2.1 to mean "the process by which a non-party may, by motion, be permitted to take a limited part in a proceeding. "Significant interest" has not yet been defined by an appellate court. "Interest" as used in the rule requires that the movant have some cognizable stake in the claim. See Canal Street Pub v. City of Paterson, 6 N.J.A.R. 221 (1982).

Here, Tractenberg has demonstrated a significant interest in the outcome of this case as his professional and academic focus is on advancing the educational interests of New Jersey's public school students. As a law professor with a focus on education law, his interest in furthering the appropriateness of the allocation method and amount of State funding received by the Lakewood School District is cognizable. Tractenberg's participation is likely to add constructively to the case and assist the parties better understand the complexities of this litigation. He has been directly involved in the two leading cases challenging school funding and that experience and historical perspective can only benefit this tribunal. Based on the foregoing, I **CONCLUDE** that Tractenberg shall be permitted to participate in this case.

N.J.A.C. 1:1-16.6(c) requires the judge to determine the nature and extent of participation in the individual case. Participation shall be limited to:

1. The right to argue orally; or
2. The right to file a statement or brief; or

3. The right to file exceptions to the initial decision with the agency head; or
4. All of the above. Id.

There are strong public interest aspects in this case. Tractenberg's participation can assist this tribunal and the parties to navigate the complex and important issues presented. Therefore, I **CONCLUDE** that Tractenberg shall be permitted to participate in all levels of this case including oral argument, filing statements or briefs and the right to file exceptions to the initial decision with the agency head.

ORDER

Based on the foregoing, the Motion to Participate pursuant to N.J.A.C. 1:1-16.6 is hereby **GRANTED**, and I will **ORDER** a conference call to take place on April 2, 2015 at 3:00 p.m., to consider a briefing schedule and oral argument on respondents' motion to dismiss. The call will be placed by my chambers.

So **ORDERED**.

This order may be reviewed by **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.

March 11, 2015
DATE



JOHN S. KENNEDY, ALJ

cmo



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
P.O. Box 049
Trenton, NJ 08625-0049

OAL Docket. No.: EDU11069-2014 S

Agency Ref. No.: 156-6/14

Transmitting Agency: Department of Education

Judge: Kennedy, John S
Judge Phone No. (609) 689-4057

Alcantara, Leonor, Individually and as Guardian ad Litem for E.A., et. al. v. Hespe, Notice of
David Comm. of Ed., NJ State Bd. of Ed. & NJ Dept. of Ed. Status Conference

Nature of proceeding:
Petitioners challenge the allocation method and amount of State funding received by the Lakewood School District.

A status conference in this case will be held on:

Date: 04/02/2015
Time: 3:00PM
Location: Telephone

March 11, 2015
Date Deputy Clerk, OAL



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SERVICE LIST
OAL DOCKET NO. EDU 11069-2014 S

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