



CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

*State of New Jersey*  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
25 MARKET STREET  
PO Box 106  
TRENTON, NJ 08625-0106

CHRISTOPHER S. PORRINO  
*Attorney General*

MICHELLE L. MILLER  
*Acting Director*

January 10, 2018

VIA FACSIMILE AND REGULAR MAIL

Hon. Susan M. Scarola, ALJ  
Office of Administrative Law  
9 Quakerbridge Plaza  
Mercerville, New Jersey 08619

Re: **Leonor Alcantara, et al. v. David Hespe, et al.**  
OAL Docket No. EDU 11069-14

Dear Judge Scarola:

Please accept this reply brief on behalf of State Respondents, David Hespe, Commissioner of Education, New Jersey State Board of Education, and New Jersey Department of Education ("Department" or "DOE"), in response to Petitioners' January 3, 2018 opposition to our Motion to Bar the Report of Danielle C. Farrie, Ph.D., as a net opinion.

Dr. Farrie's Report should be barred because she fails to explain the causal connection between the facts she cites, and the conclusions she asserts. Her two conclusions--that the School Funding Reform Act ("SFRA") as applied to Lakewood is the cause of alleged declining student performance between 2006 and 2014, and that students are not receiving a thorough and efficient

education--are unsupported and unexplained. Thus, the court should not permit her to offer an opinion on the ultimate questions of law in this case.

Petitioners' two arguments in opposition to State Respondents' Motion should both be rejected. First, Petitioners assert that the State Respondents mischaracterize Dr. Farrie's finding as to the cause of Lakewood School District's ("Lakewood") allegedly declining academic performance. (Pet. Opposition, pg. 2). This misconstrues the State Respondents' argument. Dr. Farrie's Report is inadmissible net opinion because the report is bereft of any methodology or analysis. There is no explanation how the present funding of the School Funding Reform Act ("SFRA") as applied to Lakewood's 2016-2017 demographics caused the allegedly declining test scores between 2006 and 2014. Taking notice of the incongruent dates from which Dr. Farrie has sourced her data merely serves to highlight the absence of any methodology or analysis, which is the fundamental flaw of her Report. Dr. Farrie's Report should be barred because she has failed to explain the causal connection between the "act or incident complained of and the injury or damage allegedly resulting therefrom." Jimenez v. GNOC, Corp., 286 N.J. Super. 533, 540 (App. Div. 1996).

In Jimenez, a case about an escalator-related injury, the plaintiff offered an expert who testified that escalator handrails do not stop unless they have been improperly maintained. Ibid. The testimony was struck as net opinion because the expert failed to explain why other theories were not the root problem. Id. at 540-41. The court found it was net opinion because the expert failed to eliminate the possibility of other reasons for the malfunction. Id. at 542-43. Similarly here, Dr. Farrie has not provided any factual foundation for her conclusion that alleged State underfunding is the cause of any educational deficit, nor has she ruled out any of the other possible factors contributing to the various harms Plaintiffs identify. No other theories have been explored, and she has not spelled out how she reached her conclusions.

Second, Petitioners argue that Dr. Farrie's "conclusions are based on facts in the public record or obtained in discovery." (Pet. Opposition, pp. 1-2). The fact that data is in the public record or obtained in discovery does not mean that they are "perceived by or made known to the witness at or before the hearing." N.J.A.C. 1:1-15.9(b). Neither State Respondents nor the Court can determine what facts Dr. Farrie based her report upon, or

whether Dr. Farrie's opinion is based on any facts at all unless she cites such facts in her Report. That they are publicly available, or that State Respondents may have a set of documents possibly containing such facts in our possession, does not defeat the evidentiary requirement that Dr. Farrie expressly state what facts her conclusions rest upon. See Jimenez, supra, at 540. Because Dr. Farrie's opinion does not thoroughly describe the factual basis for her conclusions, it should not be admitted. See Johnson v. Salem Corp., 97 N.J. 78, 91 (1984).

For the reasons above, and for the reasons set forth in the original Motion brief, State Respondents' Motion to Bar Dr. Farrie's Report as net opinion should be granted.

Respectfully Submitted,

CHRISTOPHER S. PORRINO  
ATTORNEY GENERAL OF NEW JERSEY

By:

  
\_\_\_\_\_  
Lori Prapas  
Deputy Attorney General

c: Arthur H. Lang, Esq.  
Daniel Grossman, Esq.  
Paul Tractenberg, Esq.  
Michael Inzelbuch, Esq.