



THE PRIOR APPELLATE DECISION DIRECTING THE COLLECTION OF MORE EVIDENCE IS THE LAW OF THE CASE; THE DIRECTION WAS NOT COMPLIED WITH BY SUPREME COURT UPON REMITTAL (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the decision in the prior appeal was the law of the case and Supreme Court did not follow the instruction to collect additional evidence:

In our prior decision and order, we noted that the issue of the burden that would be imposed upon the DOE [Department of Education] to comply with the petitioner’s FOIL request and whether the DOE is able to engage an outside professional service to cull the records sought was not addressed by the Supreme Court and could not be resolved on the record before us We noted that “[a]mong other things, it is unclear as to how much time would be involved for an employee at each school to review the relevant files. Further, although the petitioner has expressed its willingness to reimburse the [DOE] for reasonable costs involved in having the [DOE’s] employees, or an appropriate third party, review and copy the [DOE’s] records, there is no information in the record as to what that cost would be or whether the petitioner would in fact be willing to reimburse the [DOE] for the full amount of those costs, once those costs are determined” Accordingly, we remitted the matter to the Supreme Court for further proceedings, including additional submissions by the parties

Our prior decision and order was law of the case and binding on the Supreme Court However, the court failed to conduct further proceedings, including the taking of additional submissions on the issues of burden, cost and reimbursement, in accordance with our decision and order. Accordingly, we reverse the judgment and remit the matter for further proceedings in accordance with our decision and order in [Matter of Jewish Press, Inc. v New York City Dept. of Educ. \(183 AD3d 731\)](#). [Matter of Jewish Press, Inc. v New York City Dept. of Educ., 2021 NY Slip Op 00173, Second Dept 1-13-21](#)