

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
(INCORPORATING MOTION
FOR EMERGENT RELIEF)

OAL DKT. NO. EDU 08386-19

AGENCY DKT. NO. 142-6/19

**BOARD OF EDUCATION OF
LAKEWOOD TOWNSHIP,
(OCEAN COUNTY),**

Petitioner,

v.

**NEW JERSEY DEPARTMENT
OF EDUCATION,**

Respondent.

Michael I. Inzelbuch, Esq., appearing for petitioner

Lauren Jensen, Deputy Attorney General, appearing for respondent (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Record Closed: July 3, 2019

Decided: July 3, 2019

BEFORE **SUSAN M. SCAROLA**, ALJ (Ret., on recall):

STATEMENT OF THE CASE

Petitioner, the Board of Education of Lakewood Township (Board or district), filed this action against respondent, the New Jersey Department of Education (DOE), as an emergent-relief request and petition, including a request that the petition also be

accepted as an application for emergent relief in lieu of a more formal petition. Lakewood seeks that the DOE provide any and all requested records/documents previously requested as to the [DOE] budget and the budget proceedings; that the DOE take any and all steps to provide necessary and definitive and secure funding to the Board; that the DOE take whatever action is required to allow the district to complete its budget; that the DOE immediately advise the Board that public-school children will be provided with a thorough and efficient education and the source of funding; that the DOE forego collecting any and all previous loans/State-aid advances as it knew or should have known that the monies were required to provide a thorough and efficient education and were not able to be paid back; that the DOE reimburse the Board for any and all costs and fees associated with the application; and any and all other relief deemed appropriate and just.

The DOE contends that the petition is procedurally deficient and also fails to state a claim on which relief can be granted, thereby requiring dismissal of the petition. Further as of July 1, 2019, when the Commissioner provided the state aid advance sought by the petitioner, the DOE contends the case is moot.

BACKGROUND AND PROCEDURAL HISTORY

On or about June 19, 2019, the petitioner filed an “Emergent Relief Request and Petition” with the DOE. The Commissioner of Education transmitted the matter as “emergent” to the Office of Administrative Law (OAL), where it was filed on June 20, 2019. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The petitioner supplemented its filing on June 26, 2019.

On June 26, 2019, the DOE filed a motion to dismiss. Oral argument was held on June 26, 2019.¹ The respondent was given until July 1, 2019, to respond to the petitioner’s supplemental exhibits, and the district was given until July 3, 2019, to respond, if necessary. On July 1, 2019, before the DOE could respond, the district filed

¹ The district bused approximately 100 students, including young special-education students, to the hearing in Trenton. While hearings at the OAL are generally open to the public, and while the interest of the children is understandable, the presence of children is not necessary to impress upon this tribunal the seriousness of this matter.

two supplementary briefs and exhibits. The DOE was given additional time to respond to these new filings, and replied on July 1 and 2, 2019. The district filed additional supplementary letters and exhibits on July 1, 2, and 3, 2019.² The record closed on July 3, 2019.³

FACTS

Lakewood is a unique school district within New Jersey: it is comprised of approximately 6,000 enrolled public-school students, as well as approximately 31,000 non-public-school students. State aid to the district is based on the number of public-school students. This calculation impacts the amount of funds that remain available for the district to provide its enrolled students with a constitutionally-mandated thorough and efficient education, because Lakewood also has a statutory mandate to pay for the transportation and special-education costs for the non-public-school students.

Lakewood has been under the supervision of a State monitor since 2014. In addition to School Funding Reform Act funding, the district has received nearly \$47 million in advance State-aid payments since the 2015–2016 school year. Under the School District Fiscal Accountability Act (SDFAA), N.J.S.A. 18A:7A-54 to -60, the Commissioner of Education can recommend to the State Treasurer that an advance State-aid payment should be made to a school district for which a State monitor has been appointed. The Commissioner’s recommendation is based upon whether the payment is necessary to ensure the provision of a thorough and efficient education. N.J.S.A. 18A:7A-56(a).

In 2015–2016, the Commissioner recommended, and the district received, \$4,500,000; in 2016–2017, the Commissioner recommended, and the district received, \$5,640,183; and in 2017–2018, the Commissioner recommended, and the district received, \$8,522,678.⁴ Most recently, the Commissioner recommended, and the district received, approximately \$28,000,000 in advance aid for the 2018–2019 school year.

² These pleadings contained additional requests for relief not contained in the original application.

³ See list of exhibits.

⁴ For fiscal year ending June 30, 2018, the letter was not sent from the Commissioner to the Treasurer until November 11, 2017.

Under the SDFAA, such aid is to be repaid by the school district through automatic reductions in the State aid provided to the school district in subsequent years. N.J.S.A. 18A:7A-56(b).

As the Governor prepared his proposed State budget for fiscal year 2019–2020, an additional \$30,000,000 (approximately) was earmarked for the district. However, by June 20, 2019, the Legislature had approved and submitted a budget to the Governor that eliminated this provision. Notwithstanding that these funds had already been removed from the legislatively approved budget (appropriations act), the Board approved its budget for 2019–2020 on June 24, 2019, but made it contingent upon the receipt of the “promised” funds.

The Board states that it requires the \$30,000,000 to meet its anticipated shortfall for school year 2019–2020 to meet its constitutional obligations to the public-school students to provide a thorough and efficient education, and to the non-public-school students for whom it is statutorily mandated to provide services.⁵ At oral argument, Lakewood represented that the relief it was seeking was an order compelling the Commissioner to write a letter to the State Treasurer to obtain the \$30,000,000 in advance aid the district claims is necessary to complete its budget for the upcoming school year, and for that amount to be forthcoming from the State.⁶

Following oral argument on June 26, 2019, the Board advised that because the budget signed by the Governor on June 30, 2019, did not include the \$30,000,000, the budget the Board had approved earlier that week was null and void, the district had no operating budget in place, and it was shutting down services effective July 1, 2019.⁷ On July 1, 2019, the Board shut down the school district.

⁵ The basis for the \$30,000,000 in aid has not been disclosed as part of these proceedings other than that the state fiscal monitors employed by the district have certified that this amount is necessary to provide Lakewood students a thorough and efficient education.

⁶ Transcript at 67:

The Court: So what you’re saying is what you’re really looking for is another letter, like the four previous letters that have been sent from the Commissioner to the Treasurer saying “Lakewood needs X dollars because it needs it to get a T&E”?

Mr. Inzelbuch: Exactly.

⁷ The underlying “petition” indicated that Lakewood had sufficient funds to cover the school district

On July 2, 2019, the DOE advised that on July 1, 2019, the Commissioner had written a letter to the State Treasurer requesting that \$36,033,862 be provided to the district in the form of advance aid for school year 2019–2020, and that the State Treasurer had approved the request. The DOE urges that this matter is now moot and must be dismissed. The Board has not consented to the dismissal because the removal of the funds from the governor’s budget was “political” and the loan of approximately \$36,000,000 recommended by the Commissioner and approved by the State Treasurer is not the same as receiving \$30,000,000 in direct aid.

As of July 3, 2019, the district represents that it is the only one in the state without a certified budget and that it requires an additional \$16.9 million in aid for the coming school year.

LEGAL ANALYSIS AND CONCLUSION

I. Procedural Issues

The DOE has initially raised a procedural issue, namely, that the application that was filed is not in conformity with N.J.A.C. 6A:3-1.6(a), which provides:

Where the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner’s final decision in the contested case.

Here, the petitioner filed an “Emergent Relief Request and Petition.” If this application is considered as a “petition,” then no motion seeking emergent relief accompanied it. If the application is considered as a “motion for emergent relief,” then no underlying petition seeking final relief accompanied it.

The DOE is correct that procedurally the filing is deficient. However, given the importance of the issue, the application will be treated as both a petition seeking final relief and as a motion for emergent relief without the necessity of the petitioner filing a formal motion for emergent relief, or filing supplemental pleadings.⁸

II. Emergent Issues

Pursuant to N.J.A.C. 6A:3-1.6(b), an application for emergent relief shall not be granted unless it satisfies the following four standards:

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.

[See Crowe v. DeGioia, 90 N.J. 126, 132–34 (1982).]

The petitioner must meet all four criteria to prevail on its motion. See Crowe, 90 N.J. 126; DEC Electric, Inc. v. Bd. of Educ. of the S. Gloucester Cty. Reg'l High Sch. Dist. & USA Elec. Contractors, Inc., 96 N.J.A.R.2d (EDU) 789, 790 (citing DEC Electric, Inc. v. S. Gloucester Cty. Reg'l High Sch. Dist. Bd. of Educ. & USA Elec. Contractors, Inc., OAL Dkt. No. EDU 10833-95, Order Denying Emergent Relief (December 6, 1995), adopted, Comm'r (December 26, 1995) (denied unsuccessful bidder's request for emergent relief because it was unable to establish that it would suffer immediate and irreparable harm, although it was able to establish a reasonable likelihood of success on the merits and that the parties opposing the motion would not suffer undue harm)).

⁸ This accommodation, however, is not to be construed as precedent for accepting any other procedurally deficient filings.

The moving party has the burden to prove each of the Crowe factors by clear and convincing evidence. Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012); Waste Mgmt. of N.J. v. Union Cty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

Accordingly, each prong of the test must be analyzed:

1. Whether petitioner will suffer irreparable harm if the application is not granted.

One of the principles for emergent relief is that relief should only be ordered to prevent irreparable harm to the petitioner. Crowe, 90 N.J. at 132–33. Harm is irreparable when it cannot be addressed with monetary damages. Ibid. This standard contemplates that the harm also be both substantial and immediate. Subcarrier Commc'ns, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). “In certain circumstances, severe personal inconvenience can constitute irreparable injury justifying issuance of injunctive relief.” Crowe, 90 N.J. at 133. “Pecuniary damages may be inadequate because of the nature of the injury or of the right affected.” Ibid.

The district alleges that its students will suffer irreparable harm if the relief sought is not granted, namely that the Commissioner be compelled to certify to the State Treasurer that it requires \$30,000,000 to meet its funding obligations.

Under N.J.S.A. 18A:7F-5(c), “[a]nnually, on or before March 4, or on or before March 20 in the case of a school district with an annual school election in November, each district board of education shall adopt, and submit to the commissioner for approval, together with such supporting documentation as the commissioner may prescribe, a budget that provides for a thorough and efficient education.”⁹ Neither the statutes nor the regulations governing school budgets specifically address the consequences of a school district’s failure to adopt, or submit for approval, a budget within the prescribed time limits. In particular, and important to this matter, there is an

⁹ The date was adjusted by the Commissioner to March 12, 2019.

absence of statutory or regulatory authority addressing whether a school district that fails to adopt a budget for an upcoming school year may, or must, shut down and cease all operations upon the start of the school year.

The Board did not approve its budget until the eleventh hour—and a contingent budget at that. By not having a budget, the Board is asserting that irreparable harm will occur because it cannot pay for services to its students. However, the petition alleged that the district has funds available to meet its obligations through March 2020, so no financial shortfall has yet occurred. While without a budget, the district may continue to operate if it so chooses. The district is seeking a remedy that is in the form of monetary relief. The failure of the district to produce a budget by the statutory date does not create an emergency warranting immediate relief when it represents that it has funds to operate.

2. Whether the legal right underlying petitioner’s claim is well settled.

The Board claims that the legal right underlying its claim is well settled, but it is not. The school funding formula has been found to be constitutional.¹⁰ The Board contends that the district cannot spend money if it does not have an approved budget in place for the 2019–2020 school year, but it has provided no law in support of that position except to note that as State law requires the State to shut down non-essential services if it does not have an approved budget, so must the district.

The regulations concerning the budget process were designed to give districts more than adequate time to arrange for budget review and approval with the DOE. Were the district’s position correct, then districts acting with a monitor across the state could decline to adopt budgets in accordance with the regulations and then claim an emergency to compel the DOE to fund its services.

The district also claims that because the State monitors certified the amount necessary for the district to provide a thorough and efficient education, that the

¹⁰ *Abbott ex rel. Abbott v. Burke*, 199 N.J. 140 (2009). In a separate action pending in the OAL, other petitioners allege that the school funding formula is unconstitutional as applied to Lakewood.

Commissioner should accept that amount without further review or analysis. But the Commissioner can review any requests for additional aid to cover budget deficiencies in order to determine whether a district is entitled to grants or loans. The Board has certainly availed itself of this procedure in the years preceding this application. Indeed, for fiscal year 2017-2018, the Board passed its budget but the requested letter from the Commissioner was not issued until November 2017.

Accordingly, this prong of Crowe has not been met.

3. Whether petitioner is likely to be successful on the merits of its claim.

The Board did not demonstrate at the emergent hearing that it is likely to prevail on the merits as the Commissioner had not yet determined whether to provide financial assistance to the district for the 2019–2020 school year. The district has not shown that relief is mandated in these circumstances. Moreover, no law or regulation requires the Commissioner to be ordered to grant additional aid to the district, although as the record closed, the DOE advised that the Commissioner did in fact send a letter to the State Treasurer to request that the advance State aid be sent to the district in the amount of \$36,033,862, and further, that the treasurer has approved the request.

4. Whether the petitioner will suffer greater harm than respondent if the requested relief is not granted.

No doubt the issues raised by the district are substantial, but the harm is not necessarily greater to the district than to the DOE. Indeed, if relief were granted here, it could act as precedent for other monitored districts facing a budgetary shortfall to withhold complying with the budget regulations and to file for orders to compel the Commissioner to provide funds to them. Such a result could cause chaos in the school funding and budget procedures. Moreover, the district has not demonstrated that it would suffer greater harm if the relief requested were not granted, although undoubtedly, children would suffer greater harm if they could not attend school.

Conclusion

After weighing the Crowe criteria, the district has not proven clearly and convincingly that it has satisfied Crowe's four prongs or that the district is entitled to emergent relief. Accordingly, the request for emergent relief must be denied because it is moot. The district received the relief it requested.

III. The Underlying "Petition"

The "petition" filed in this matter, while essentially seeking emergent relief, is also being treated as an original petition. (See Section I.) Here, the district seeks the following:

1. Compel the DOE to provide any and all requested records/documents previously requested as to the budget and the budget proceedings;
2. that the DOE take any and all steps to provide necessary and definitive and secure funding to the Board;
3. that the DOE take whatever action is required to allow the district to complete its budget;
4. that the DOE immediately advise the Board that public-school children will be provided with a thorough and efficient education and the source of funding;
5. that the DOE forego collecting any and all previous loans/State-aid advances as it knew or should have known that the monies were required to provide a thorough and efficient education and were not able to be paid back; and
6. that the DOE reimburse the Board for any and all costs and fees associated with the application; and any and all other relief deemed appropriate and just.

The DOE moves to dismiss the petition for failure to state a claim on which relief can be granted and, further, because the matter is moot. Indeed, this matter is now moot. On July 1, 2019, the Commissioner, consistent with his practice of prior years, certified to the State Treasurer that the Board required \$36,033,862 to meet its constitutional obligation. The Commissioner has acted within the limits of his statutory authority to ensure that the district will have sufficient funding to provide its students a thorough and efficient education. The State Treasurer has complied and has approved the loan to the district.¹¹

The request for records is too vague for relief to be granted. The request for costs is not available in this forum. The remaining prayers for relief were resolved, as counsel for the Board represented at the hearing that the letter from the Commissioner that has now been provided would resolve this matter. The district would like this forum to interject itself into the political process of state budget approval and the disparity between the Governor's recommended budget and that passed by the Legislature (but later signed by the Governor). As the district seeks a political remedy, this forum is without authority to rule on those issues. Accordingly, the matter is now moot. "Courts should not decide cases where judgment cannot grant relief," or when the court's decision can have no practical effect on the existing controversy. Plainfield v. Dep't of Health & Senior Servs., 412 N.J. Super. 466, 483–84 (App. Div. 2010).

The petition shall be dismissed.

ORDER

The Board having failed to meet the four-pronged test of Crowe, the application for emergent relief is **DENIED**.

¹¹ The district argues that this advance should be an outright grant and not a loan.

As to any underlying claims not disposed of in the emergent application, they are moot. Accordingly, the respondent's motion to dismiss the petition is hereby **GRANTED**. The petition is **DISMISSED**.

I hereby **FILE** this order on application for emergent relief and this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This order on application for emergency relief and this initial decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief and a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 3, 2019

DATE

SUSAN M. SCAROLA, ALJ

(Ret., on recall)

Date Received at Agency:

July 3, 2019

Date Mailed to Parties:

July 3, 2019

SMS/cb

APPENDIX

WITNESSES

For petitioner:

None

For respondent:

None

EXHIBITS

For petitioner:

June 20, 2019	Petition with Exhibits A – E
June 25, 2019	Supplemented Petition with Exhibits A – L
June 26, 2019	Opposition to Motion to Dismiss
June 26, 2019	Email with Exhibits
June 27, 2019	Correspondence
June 27, 2019	Correspondence with Exhibits A – D
June 27, 2019	Correspondence with Flash Drive
June 28, 2019	Correspondence with Exhibits A – E
July 1, 2019	Correspondence with Exhibits
July 1, 2019	Correspondence with Exhibits and Flash Drive
July 1, 2019	Emails (3:28 p.m., 3:34 p.m. and 3:43 p.m.)
July 2, 2019	Correspondence with Certifications
July 2, 2019	Emails (1:24 p.m., 4:14 p.m. and 4:20 p.m.)
July 2, 2019	Correspondence with Exhibits
July 3, 2019	Correspondence with Exhibits A – I

For respondent:

June 25, 2019	Motion to Dismiss – Brief and Certification
July 1, 2019	Correspondence
July 2, 2019	Emails (11:57 a.m. and 1:22 p.m.)