



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

EMERGENT RELIEF

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., and Daniel Grossman, Esq., appearing for petitioners

Jennifer Hoff, Lori Prapas, Lauren Jensen, and Geoffrey N. Stark, Deputy Attorneys General, appearing for respondents (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Michael I. Inzelbuch, Esq., appearing for participant Lakewood Board of Education

Paul L. Tractenberg, Esq., participant

BEFORE **SUSAN M. SCAROLA, ALJ:**

STATEMENT OF THE CASE

Petitioners, consisting of students and parents of students attending schools in Lakewood School District (Lakewood), as well as parents of students attending nonpublic schools in Lakewood, filed this action challenging the allocation method and amount of State funding received by Lakewood. Petitioners generally allege that Lakewood shares certain characteristics with the districts identified as “Abbott Districts” in Abbott v. Burke, 119 N.J. 287 (1990), and that as a result, Lakewood students are deprived of a constitutionally mandated thorough and efficient education (T&E). Petitioners’ requested relief falls into several categories. First, they request that the Commissioner increase funding appropriations to Lakewood. Next, they seek orders requiring that the Commissioner make certain policy recommendations to the State Legislature. They also seek various declaratory rulings and administrative remedies.

This matter is now the subject of an application for emergent relief, essentially alleging the same causes for relief set forth in the original due-process petition, and for funding for the anticipated budgetary shortfall for the 2018–2019 school year.

BACKGROUND AND PROCEDURAL HISTORY

The original Petition of Appeal was filed with the Department of Education on June 24, 2014, and amended on July 7, 2014. The Department of Education transmitted the matter to the Office of Administrative Law (OAL), where it was filed on September 4, 2014. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On September 2, 2014, the respondent filed a motion to dismiss in lieu of an answer. Following the submission of briefs and oral argument, the Hon. John Kennedy, ALJ, denied the motion on July 23, 2015.

On January 14, 2015, Paul L. Tractenberg, Esq., filed a motion for leave to participate pursuant to N.J.A.C. 1:1-16.6.¹ On March 11, an order was entered permitting Mr. Tractenberg to participate in the litigation.

On February 19, 2016, the petitioners moved for summary decision, which application was denied on July 19, 2016.

On November 21, 2016, Lakewood was permitted to participate.²

The Township of Lakewood Board of Education (BOE) moved to intervene prior to the commencement of the hearing, which motion was denied.³ Lakewood renewed its application at the commencement of the hearing, and it was again denied.

The hearing was commenced and testimony was taken on February 5, 7, 12, 13, and 22, 2018. At the conclusion of the petitioner's case on February 22, 2018, the respondents moved for dismissal of the case. A telephone conference was scheduled for March 22, 2018, to set a briefing schedule, as both parties wished to order the transcripts.

On March 14, 2018, the petitioners filed an application for emergent relief, essentially alleging the same causes for relief set forth in the original due-process petition, which was in the process of being heard and which was the subject of the dismissal motion.

On March 22, 2018, a telephone conference was held, at which time counsel for the petitioners advised that his emergent application was filed in anticipation of a

¹ Mr. Tractenberg is a participant pursuant to N.J.A.C. 1:1-16.1.

² The matter was re-assigned from ALJ Kennedy to ALJ John Schuster and then was transferred to the undersigned in June 2017.

³ Lakewood's counsel had changed since the commencement of these proceedings.

shortfall in excess of \$20,000,000 in the proposed Lakewood school budget for 2018–2019.⁴ An expeditious briefing schedule on the motion to dismiss was also set.

FACTUAL DISCUSSION

The petitioner’s previous motion for summary decision based on the same factual allegations of a financial shortfall to the Lakewood school system based on fault in the State funding formula was denied. Thereafter, a hearing was scheduled on the merits, which is ongoing. At the conclusion of the petitioners’ case, the respondents indicated that they would be filing a motion to dismiss for failure to state a case on which relief can be granted. The petitioners alleged that the respondents could not file such a motion, but indeed they can. Accordingly, an expeditious briefing schedule was to be set so that the issues could be addressed and a decision rendered.

Notwithstanding this effort to bring this matter to closure, the petitioners filed a motion for emergent relief under the same docket number, alleging the same facts, namely, inadequate funding and the unfairness of the law as it applies to Lakewood. However, nothing has changed in the legal arguments since the original petition was filed and which was in the midst of a hearing on the merits.

In this emergent application, the petitioners also allege that prompt intervention is required to address an anticipated shortfall in school year 2018–2019. But here, the application is premature, as it is not known whether this budget will be adopted by Lakewood, nor addressed by the county superintendent. It is not known whether the State will provide additional financial assistance in any form to Lakewood. The application is clearly premature.

LEGAL ANALYSIS AND CONCLUSION

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:

⁴ The budget had not yet been adopted by the Board, nor had it yet been reviewed by the County superintendent.

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 Cnty. 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 Cnty. Reg'l High Sch. Dist. Bd. of Educ. and USA Elec. Contractors, Inc., EDU 10833-95, Order Denying Emergent Relief (Dec. 6, 1995), adopted, Comm'r (Dec. 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)). The moving party bears the burden of proving each of the Crowe elements "clearly and convincingly." Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

Accordingly, each prong of the test must be analyzed:

1. Whether petitioners will suffer irreparable harm if Lakewood has a shortfall in its budget for the 2018–2019 school year.

One of the principles for emergent relief is that relief should only be ordered to prevent irreparable harm to the petitioners. 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.

Here, the issue of next year’s school budget is not ripe for determination. The adoption of the budget; the shortfall, if any; the need for additional State funding, have yet to be determined. It is premature to assume that the petitioners will suffer irreparable harm.

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

Petitioners claim that the legal right underlying their claim is well settled, but it is not. The school funding formula has been found to be constitutional; the petitioners allege that it is unconstitutional as applied to Lakewood. The legal right to such relief is not settled.

3. Whether petitioners are likely to be successful on the merits of its claim.

The petitioners have not demonstrated that he is likely to prevail on the merits. Much of that relief that the petitioners seek is subject to the determination of the Legislature. Moreover, the Commissioner may yet determine to provide financial assistance to Lakewood for the 2018–2019 school year.

4. Whether petitioners will suffer greater harm than respondents if the requested relief is not granted.

No doubt the issues raised by the petitioners are substantial, but the harm is not necessarily greater to the petitioners than to the respondents.

CONCLUSION

Here, the petitioners are seeking relief for the 2018–2019 school budget, which has not yet been finalized. This matter is not ripe for determination.

Moreover, the hearing on the merits of the petitioners' application was continuing, pending a motion appropriately filed by the respondents for dismissal of the claim. The petitioners have not satisfied the four prongs required to obtain emergent relief. They have not shown that they will suffer irreparable harm, that the legal right underlying their claim is well settled, that they are likely to be successful on the merits, or that they will suffer greater harm than respondents if the requested relief is not granted. Accordingly, the application for emergent relief must be denied.

ORDER

The matter having not been ripe for determination and the petitioners having failed to meet the four-pronged test, the application for emergent relief is **DENIED**.

This order on application for emergency relief 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 in accordance with N.J.S.A. 52:14B-10.

March 27, 2018

DATE



SUSAN M. SCAROLA, ALJ

SMS/cb