

January 28, 2004

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Dear Counsel:

I have reviewed the Application for Emergent Relief and underlying papers filed on January 21, 2004 in the matter entitled *Board of Education of the Borough of Lincoln Park, Morris County, v. Borough of Lincoln Park, Morris County*, Agency Dkt. No. 20-1/04, wherein the Board seeks an Order voiding the March 6, 1998 Lease Agreement between it and the Borough, so that Lanes Field will be returned to the Board to be used as the site for construction of a new school. In its papers, the Board argues that the lease must be found void *ab initio* because it was not properly approved pursuant to N.J.S.A. 18A:20-8.2(b), and that relief must be immediate because a new school will be needed to educate the children of Lincoln Park upon the impending severance of the district's current sending-receiving relationship with Boonton. I have further reviewed the responsive papers submitted by the Borough, wherein it is argued that I do not have jurisdiction over this matter, that the lease in question did not require approval pursuant to N.J.S.A. 18A:20-8.2(b), and that emergent relief is not warranted in any event.

Upon such review, I have first determined to deny the Board's request for emergent relief. Even assuming, *arguendo*, that I have jurisdiction to hear the underlying appeal, the Board's application clearly fails to meet the standard established pursuant to N.J.A.C. 6A:3-1.6 and *Crowe v. DeGioia*, 90 N.J. 126 (1982), wherein an applicant for such relief must demonstrate irreparable harm, settled legal rights, a likelihood of prevailing on the merits, and a balancing of equities and interests in its favor. In this matter, the Board's application is premised in its entirety on the assumption that I will

grant Boonton's request for severance, now pending before me as *Board of Education of the Town of Boonton, Morris County, v. Board of Education of the Borough of Lincoln Park, Morris County*, Agency Dkt. No. 251-8/02, and, further, that such grant will be conditioned on immediate construction of a new school. Neither of these assertions can be viewed as anything but speculative in light of the present posture of the severance request, which is still open for public comment pursuant to N.J.A.C. 6A:3-6.1 and must yet be reviewed by me under the standards of N.J.S.A. 18A:38-13. Additionally, as the Borough's submission makes clear, threshold legal issues arising from the Board's claim are far from settled.

As to the underlying appeal, I have determined that the Borough's Cross-Motion to Dismiss Petition and Application for Emergent Relief shall be deemed a motion to dismiss in lieu of answer, filed in accordance with N.J.A.C. 6A:3-1.5(g), and that this matter shall forthwith be transmitted to the Office of Administrative Law (OAL) for hearing and disposition of the Borough's motion and such further proceedings as may be appropriate thereafter.

Accordingly, the Board's request for emergent relief is DENIED and the petition on the merits shall proceed at the OAL as set forth above.

Sincerely,

William L. Librera, Ed.D.

c:      County Superintendent