

OAL DKT. NO. EDU 898-08
AGENCY DKT. NO. 63-2/08

WENDY SAXTON, BOARD SECRETARY :
BOARD OF EDUCATION OF THE :
TOMS RIVER REGIONAL SCHOOL : COMMISSIONER OF EDUCATION
DISTRICT, OCEAN COUNTY, :
 :
 : DECISION ON APPLICATION
 : FOR EMERGENT RELIEF
 :
PETITIONER, :
 :
V. :
 :
NELS W. LUTHMAN, JR. :
 :
RESPONDENT. :

The record of this emergent matter, including the audiotape of proceedings at the Office of Administrative Law (OAL), and the Order of the Administrative Law Judge (ALJ) have been reviewed.

Upon review, the Commissioner finds that the petitioner has satisfied the requisite standards for the granting of emergent relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982). Initially, the Commissioner finds it self-evident that the parties and the public alike would suffer harm if the respondent could not qualify for office if elected, yet was permitted to appear on the ballot as a candidate for membership on the Board of Education. The Commissioner further finds – for the reasons fully set forth in the OAL’s recommended Order – that the petitioner has demonstrated a compelling likelihood of success on the merits, based on the undisputed facts of this matter and a substantial body of settled law. As found by the ALJ, the respondent has – and until July 2009, absent voluntary relinquishment of contractual rights which he has clearly indicated his unwillingness to abandon, will continue to have – a direct interest in a contract with

the Board in violation of *N.J.S.A.* 18A:12-2; he is thus disqualified from Board membership as well as Board candidacy – the latter because, if respondent were to be elected, the disqualifying interest is incapable of being cured prior to assumption of office.

Accordingly, for the reasons expressed therein, the Order of the ALJ – GRANTING the petitioner’s requested relief and precluding the respondent from running for a seat on the Toms River Regional Board of Education – is adopted as the final decision in this emergent matter. The parties being in agreement that no other issues remain once the emergent application is decided, further proceedings at the OAL are unnecessary and the Clerk of the OAL is requested to return the file to the agency pursuant to *N.J.A.C.* 1:1-3.3.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: March 14, 2008
Date of Mailing: March 17, 2008 (faxed)

* This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*