

New Jersey Commissioner of Education

Decision

Township of Wantage, Sussex County, Borough of Sussex, Sussex County, Borough of Branchville, Sussex County, Township of Lafayette, Sussex County, Ronald Bassani, Edward Meyer, Anthony Frato, Sr., and Richard Hughes,

Petitioners,

v.

New Jersey Department of Education, Board of of the High Point Regional School District, Sussex County, and Board of Education of the Township of Montague, Sussex County,

Respondents.

Synopsis

The petitioning municipalities and taxpayers sought relief in regard to the 2020-2021 budget of the High Point Regional School District (HPRSD), arguing, *inter alia*, that the meaning of the pertinent statute – *N.J.S.A. 18A:7F-39(e)* – is uncertain, and that the tax rate for petitioners and all other taxpayers in the district for the 2020-2021 budget year was improperly inflated as a result. The respondents contended that the language of *N.J.S.A. 18A:7F-39(e)* is clear and unambiguous, and that the development of HPRSD’s budget for the 2020-2021 year comported with the statute.

The ALJ found, *inter alia*, that: the operative statute is *N.J.S.A. 18A:7F-39(e)*, which allows HPRSD to add to its adjusted tax levy, in any one of the next three succeeding budget years, the amount of the difference between the maximum allowable amount to be raised by taxation for the current school budget year and the actual amount to be raised by taxation for the current school budget year; the First Amended Petition in this matter reflects that HPRSD added to one of the next three succeeding budget years (2020-2021) the amount of the difference between the maximum allowable amount and the actual amount to be raised; while HPRSD’s actions resulted in an increase for 2020-2021 that was higher than 2%, its actions resulted in lower percentages in the preceding years; the language of *N.J.S.A. 18A:7F-39(e)* is clear and unambiguous; and the respondents did not act in an arbitrary, capricious or unreasonable manner in developing HPRSD’s 2020-2021 budget. As such, the ALJ concluded that petitioners’ remedy in this matter is political, not legal, and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ that the petition must be dismissed. Accordingly, the Initial Decision of the Office of Administrative Law was adopted as the final decision in this matter. The petition was dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

April 13, 2021

OAL Dkt. No. EDU 05439-20
Agency Dkt. No. 129-6/20

New Jersey Commissioner of Education
Final Decision

Township of Wantage, Sussex County,
Borough of Sussex, Sussex County,
Borough of Branchville, Sussex County,
Township of Lafayette, Sussex County,
Ronald Bassani, Edward Meyer,
Anthony Frato, Sr., and Richard Hughes,

Petitioners,

v.

New Jersey Department of Education,
Board of Education of the High Point
Regional School District, Sussex County,
and Board of Education of the Township
of Montague, Sussex County,

Respondents.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.¹

¹ However, following the issuance of the Initial Decision, petitioners submitted correspondence to the Commissioner attempting to withdraw the petition of appeal. There is no provision in the applicable statutes or regulations permitting the withdrawal of a petition of appeal following the issuance of an Initial Decision.

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that the petition of appeal should be dismissed. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 13, 2021
Date of Mailing: April 13, 2021

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 05439-20

AGENCY DKT. NO. 129-6/20

**TOWNSHIP OF WANTAGE, SUSSEX COUNTY,
BOROUGH OF SUSSEX, SUSSEX COUNTY,
BOROUGH OF BRANCHVILLE, SUSSEX
COUNTY, TOWNSHIP OF LAFAYETTE, SUSSEX
COUNTY, RONALD BASSANI, EDWARD
MEYER, ANTHONY FRATO, SR., AND RICHARD
HUGHES,**

Petitioners,

v.

**NEW JERSEY DEPARTMENT OF EDUCATION,
BOARD OF EDUCATION OF THE HIGH POINT
REGIONAL HIGH SCHOOL DISTRICT, SUSSEX
COUNTY, AND BOARD OF EDUCATION OF THE
TOWNSHIP OF MONTAGUE, SUSSEX COUNTY,**

Respondents.

Stephen J. Edelstein, Esq., for petitioners (Weiner Law Group, attorneys)

David Kalisky, Deputy Attorney General, for respondent New Jersey Department
of Education (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Marc G. Mucciolo, Esq., for respondent High Point Regional High School District
Board of Education (Methfessel & Werbel, attorneys)

Sean M. McBratnie, Esq., for respondent Montague Township Board of Education
(Comegno Law Group, attorneys)

Record Closed: November 9, 2020

Decided: March 1, 2021

BEFORE **KELLY J. KIRK, ALJ**:

STATEMENT OF THE CASE

Petitioning municipalities and taxpayers seek relief regarding the 2020–2021 budget of High Point Regional High School District (HPRHSD).

PROCEDURAL HISTORY

On June 10, 2020, petitioners Township of Wantage, Sussex County (Wantage Township), Borough of Sussex, Sussex County (Sussex Borough), Borough of Branchville, Sussex County (Branchville Borough), Township of Lafayette, Sussex County (Lafayette Township), Ronald Bassani, Edward Meyer, Anthony Frato, Sr., and Richard Hughes filed with the New Jersey Department of Education a Verified Petition of Appeal (Verified Petition) and a motion for emergent relief, accompanied by a letter brief.

The Department of Education (Department) transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the rules of procedure established by the Department of Education to hear and decide controversies and disputes arising under school laws, N.J.A.C. 6A:3-1.1 to -1.17. Jurisdiction is

conferred under N.J.S.A. 18A:6-9. The case was filed at the Office of Administrative Law (OAL) on June 11, 2020.

On June 23, 2020, HPRHSD filed a letter brief and the Department filed a letter brief and Certification of Neil Cramer in opposition to petitioners' motion for emergent relief. Montague Township did not submit opposition. On June 23, 2020, petitioners filed a reply letter brief, accompanied by the Certification of Stephen Edelstein with four exhibits, and Certification of Dieter Lerch with two exhibits.

On June 23, 2020, petitioners also filed a motion for leave to take the deposition of HPRHSD superintendent Scott Ripley and the deposition of any expert who might issue a report on behalf of HPRHSD, accompanied by the Certification of Stephen Edelstein.

Oral argument was held on the motion for emergent relief on June 24, 2020. By order dated June 26, 2020, the motion for emergent relief was denied.¹

On July 2, 2020, the Department filed a motion to dismiss, accompanied by a letter brief.

On July 3, 2020, HPRHSD filed its Answer to the Verified Petition.

During a July 8, 2020, telephone conference petitioners requested to file a motion to amend the petition, so it was determined that the Department's motion to dismiss would be held in abeyance until the petitioners' motion to amend was decided.

On July 13, 2020, petitioners filed a motion to amend the petition, accompanied by the proposed First Amended Verified Petition of Appeal, and Certification of Stephen Edelstein, Esq. On July 30, 2020, the Department filed a letter brief in opposition to the motion to amend, and HPRHSD filed a letter brief in opposition to the motion to amend

¹ The Order denying emergent relief was adopted by the Department on August 7, 2020.

and in opposition to the motion for leave to take the deposition of superintendent Scott Ripley. On August 6, 2020, petitioners filed a letter brief in reply to the Department's and HPRHSD's opposition.

On August 19, 2020, petitioners filed a motion to compel discovery from HPRHSD and the Commissioner of Education relative to demands served on July 6, 2020, accompanied by a letter brief and Certification of Stephen Edelstein, Esq.

By Order dated September 1, 2020, petitioners' motion to amend was granted, the Department's July 2, 2020, motion to dismiss was denied as moot, petitioners' motion for leave to take depositions was denied, and petitioners' motion to compel discovery was denied. Petitioners were directed to file the proposed First Amended Verified Petition of Appeal² and respondents were directed file answers to the First Amended Verified Petition of Appeal, unless a motion to dismiss was re-filed/filed by respondent(s) prior thereto.

Petitioners filed the First Amended Verified Petition of Appeal on September 3, 2020. The First Amended Verified Petition of Appeal (First Amended Petition) states, in part, the following:

Petitioners, municipalities located in Sussex County, New Jersey, and taxpayers located in Sussex County, New Jersey, state for their First Amended Petition of Appeal as follows:

JURISDICTION

1. Pursuant to N.J.S.A. 18:6-9, the Commissioner of Education, as the chief officer of the New Jersey Department of Education, has jurisdiction to hear this matter and all ancillary issues. In addition, and as a separate cause of action, the Petitioners seek a declaratory ruling pursuant to N.J.A.C. 6A:3-2.1 that N.J.S.A. 18A:7F-39 shall be construed so as to permit school districts to use, as banked cap, the unused portion of permissible increases for three succeeding

² Exhibit A to petitioners' motion to amend.

years, and not to include as banked cap any tax decreases during the same time period.

BACKGROUND

2. The High Point Regional High School District ("HPRHSD") is located in Sussex County, New Jersey and is comprised of five Sussex County communities: Wantage Township ("Wantage"), Sussex Borough, Branchville Borough ("Branchville"), Lafayette Township ("Lafayette"), and Frankford Township ("Frankford"). Four of the five constituent communities, as well as a Mayor, former Mayor, or committee member from each of the four, are Petitioners in this action.

3. This action is brought to obtain declaratory and other relief from the extraordinary and economically crushing burden on the Petitioners and their citizens of a 14% (\$2,000,000) increase in local taxes imposed by the HPRHSD at the same time as an extreme financial crisis and unprecedented unemployment. This budget was approved by the HPRHSD on April 28, 2020, well after the impact of the COVID-19 crisis was well known and after Governor Murphy's first twenty-five (25) COVID-19-related Executive Orders (Nos. 104-129).

4. The Petitioner Ronald Bassani is a resident of, taxpayer in, and elected committee member of Wantage. He brings this action as an individual.

5. The Petitioner Edward Meyer is a resident of, taxpayer in, and Mayor of Sussex Borough. He brings this action as an individual.

6. The Petitioner Anthony Frato, Sr., is a resident of, taxpayer in, and Mayor of Branchville. He brings this action as an individual.

7. The Petitioner Richard Hughes is a resident of, taxpayer in, and former Mayor of Lafayette. He brings this action as an individual.

8. Respondent Dr. Lamont Repollet ("Dr. Repollet" or "Commissioner") is the Commissioner of Education for the State of New Jersey ("DOE"). In his capacity as Commissioner of Education, Dr. Repollet serves as the head of the New Jersey Department of Education, which reviews and approves all school district annual budgets.

9. Montague Township School District ("Montague") is a K-8 school district located in Montague, New Jersey. Montague has a send-receive relationship with HPRHSD and pays tuition on a per student basis. Although no relief is sought against Montague, it is named because it may be impacted by the outcome of this Verified Petition and, therefore, may wish to be heard.

10. Sussex County has suffered from COVID-19 disproportionately to the State of New Jersey. According to the Sussex County Division of Health, the death rate from coronavirus in the County as of the beginning of May was 12%, based on known infections, compared to a Statewide average of 6.25%.

11. Aid to Sussex County has been less than that to other New Jersey counties. As of April, of \$82,202,575 in federal grants to New Jersey from the federal government for COVID-19 relief, only 17 counties will receive funds. Four counties—Sussex, Warren, Hunterdon, and Salem—received nothing.

12. The school budget approval process in New Jersey is well established for Type II school districts. For those Type II Districts which hold school elections in April, the budget is submitted to the voters for approval at the same time as the election of board members. For those Type II districts which hold elections in November, the budget is not submitted to the voters for approval.

13. HPRHSD is a Type II school district with November elections.

14. Instead of placing the proposed budget on a public ballot, Type II school districts with November elections follow a budget approval process provided for by statute, as follows:

a. First, the District must develop and adopt a Tentative Budget, which is submitted to the Executive County Superintendent for Review. N.J.S.A. 18A:7F-5 and 7F-6. This year, the due date for that action was March 20, 2020.

b. Next, the Executive County Superintendent must review and approve the budget in time for it to be publicly advertised. See N.J.A.C. 6A:23A-9.1; N.J.S.A.

19A:22-10, 11, and 12. This year, the due date for that action was April 20, 2020.

c. Following administrative approval and advertising, there must be a public hearing on the budget. N.J.S.A. 18A:22-10. This year, the earliest date for such a public hearing was April 24, 2020 and the latest date was May 7, 2020.

d. The deadline for Board of Education adoption of the budget this year was May 14, 2020. N.J.S.A. 18A:22-32.

15. The HPRHSD approved its Tentative Budget on March 17, 2020.

16. The HPRHSD advertised its budget on April 24, 2020, which was a Friday.

17. On Tuesday, April 28, 2020—only four days after it advertised the budget and more than two weeks before it was required to act—the HPRHSD conducted the public hearing and approved the budget. The meeting was virtual, and that fact, exacerbated by the unnecessary acceleration by the HPRHSD of the budget approval process by sixteen (16) days, essentially eliminated public scrutiny and participation.

18. At the April 28 public hearing, HPRHSD Superintendent Ripley reviewed the budget, with the aid of a power point presentation.

19. During his presentation, Superintendent Ripley repeatedly stressed that the Board of Education had been "fiscally responsible" over the past three years and that the 14% tax increase was needed to offset three years of State aid decreases.

20. In fact, neither of those statements is accurate. Instead, the HPRHSD has, as indicated in the chart below at Paragraph 24, refused year after year to confront losses in State aid for the 2016–2017, 2017–2018, 2018–2019, and 2019–2020 school years in the amount of \$1,039,880; has ignored the need for fiscal planning; has inexplicably lowered the local tax levy by more than \$1,100,000 over that same period of time, effectively doubling its loss of revenue during those years to more than \$2.1 million instead of trying to reduce it; and has alternately increased and decreased its

operating budget by more than \$1,000,000 every single year—going up more than \$1,000,000 for the 2020–2021 budget—despite a declining enrollment. Since 2005, it has not sought public approval for a referendum for capital improvements.

21. If there is a now a [sic] fiscal problem at the HPRHSD at all, it is entirely self-created by the HPRHSD and self-inflicted by the HPRHSD, which is now looking to solve a problem that took four years for it to create in a single year, during the worst economic conditions in generations, and at a time when the Governor and the Legislature are focused on providing relief, rather than inflicting more pain. The history is as follows:

YEAR	LOCAL SHARE	STATE AID	OPER. BUDGET	ENR	LOCAL LEVY +/-	OPER. BUDGET +/-	TAX% +/-
2016–2017	15,401,826	(-70,324)	24,024,950	994			
2017–2018	14,356,619	(-128,000)	22,745,620	903	(-1.045M)	(-1.4M)	(-6.7)
2018–2019	14,256,964	(-362,989)	24,084,190	909	(-99K)	+1.3M	(-.005)
2019–2020	14,537,446	(-478,657)	22,244,421	866	+280K	(-\$1.8M)	+1.9
2020–2021	16,572,880	(-753,678)	23,512,019	854	+2.03M	+1.26M	+14

22. Although local tax levy increases are statutorily capped at 2%, the proposed HPRHSD budget, which has been approved by the Executive County Superintendent, provided for an increase in the local tax levy of 14%, which is 12% higher than the presumptive 2% capped increase.

23. The BOE asserts that it is entitled to impose a 14% increase, rather than a 2% increase, because it is using "banked cap" in the amount of \$1,744,688.

On October 2, 2020, the Department filed a motion to dismiss the First Amended Petition, consisting of a letter brief. On October 26, 2020, petitioners filed opposition to the motion, consisting of a letter brief and Certification of Stephen Edelstein, Esq. On November 9, 2020, the Department filed a reply letter brief in further support of its motion.

MOTION TO DISMISS

The Department's motion to dismiss argues that the First Amended Petition must be dismissed because: it fails to state a claim upon which relief can be granted; petitioners improperly sought a declaratory ruling; petitioners' claims are predicated on a facially incorrect interpretation of N.J.S.A. 18A:7F-39(e); and petitioners do not point to any "potential inefficiencies" in the "administrative operations" of HPRHSD.

It is evident from the "Jurisdiction" paragraph of the First Amended Petition, which states, "In addition, and as a separate cause of action, the Petitioners seek a declaratory ruling pursuant to N.J.A.C. 6A:3-2.1 that N.J.S.A. 18A:7F-39 shall be construed as to permit school districts to use, as banked cap, the unused portion of permissible increases for three succeeding years, and not to include as banked cap any tax increases during the same time period," and from "Background" paragraph 3, which states, "This action is brought to obtain declaratory and other relief," that petitioners seek not only a declaratory ruling, but also seek other relief. More specifically, the First Count of the First Amended Petition is as follows:

FIRST COUNT **(Declaratory Ruling)**

24. The Petitioners repeat the allegations of Paragraphs 1–23 as if set forth a [sic] length.

25. The statute which permits the use of banked cap by a Board of Education is N.J.S.A. 18A:7F-39(e), which states in relevant part:

A school district that has not been granted approval to exceed the cap pursuant to

subsection c. of this section, may add to its adjusted tax levy in any one of the next three succeeding budget years, the amount of the difference between the maximum allowable amount to be raised by taxation for the current school budget year and the actual amount to be raised by taxation for the current school budget year.

This is the same standard contained in N.J.S.A. 40A:4-45.45.

26. On June 23, 2010, the Senate Budget and Appropriations Committee issued a Statement regarding the proposed "levy cap banking" provision which was being considered as Senate Bill No. 29 (now N.J.S.A. 18A:7F-39(e)).

27. The Committee stated, in part:

The bill would also permit levy cap "banking" of any portion of the permitted 2.9% increase³ under the property tax cap levy that is not used by a county or municipality in any budget year. **In the case of a school district it would allow cap banking of any portion of the permitted 2.9% increase plus applicable adjustments not used by the school district in a budget year**

Under the bill, the cap is being reduced, but any unused permissible increase amount under the reduced levy cap limit could be used in any one of the next three succeeding budget years. This concept is similar to cap banking under the municipal and county appropriations cap law (N.J.S.A. 40A:4-45.1 et seq.). (emphasis added)

28. On July 14, 2010, which was the day after the amendment took effect, the Office of Legislative Services ("OLS") issued a Legislative Fiscal Estimate regarding Senate Bill No. 29 which evaluated the possible fiscal impact of the amendment. The OLS report summarized the amendment as follows: "Reduces school district, county, and municipal property tax levy cap from 4 percent to 2.0 percent and

³ What was 2.9% is now 2%.

permits unused school district, county, and municipal increases to be banked for three succeeding years.” The OLS report also contained some of the same language from the Senate and Budget Appropriations Committee Statement, which described the amendment as allowing for the “banking” of the “permitted increase[s]” of the property tax levy.

29. The last page of the bill (Senate Bill No. 29) contained a one-sentence summary of the legislation: “Reduces school district, county, and municipal property tax levy cap from 4% to 2.0% and permits unused school district, county, and municipal increases to be banked for three succeeding years.” (emphasis added) There is no reference to tax reductions coming into play in the formula.

30. The positions of the parties with regard to the proper construction of N.J.S.A. 18A:7F-39(e) are adverse.

31. It is the position of the Petitioners that banked cap may include only the unused portion of increases, which construction would limit banked cap to a maximum of 2% per year.

32. It is the position of the Respondents that banked cap may include both the unused portion of increases plus the amount of any decreases, which construction would not limit banked cap to a maximum of 2% per year but. [sic]

WHEREFORE, the Petitioners seek a Declaratory Judgment, on this First Count, that the banked cap provision of N.J.S.A. 18A:7F-39(e) be construed as permitting the inclusion as banked cap of only the unused portion of permissible increases, limited to a maximum of 2% per year, and awarding the Petitioners attorneys' fees, costs of this action, and such other relief as may be just and proper.

As set forth above, the First Count seeks “a Declaratory Judgment . . . that the banked cap provision of N.J.S.A. 18A:7F-39(e) be construed as permitting the inclusion as banked cap of only the unused portion of permissible increases, limited to a maximum of 2% per year,” and “attorney’s fees, costs of this action, and such other relief as may be just and proper.” Further, there are three additional counts in the First Amended Petition. The Second Count (Breach of N.J.S.A. 18A:7F-39(e)), Third Count (Breach of N.J.A.C. 6A:23A-10.1), and Fourth Count (Breach of Fiduciary Duty) each demand the following:

- (a) That the HPRHSD budget for the 2020–2021 school year be revised and reduced in accordance with the maximum limitations of N.J.S.A. 18A:7F-39(e); and
- (b) That the tax rate for Petitioners and all other property tax payers in the Petitioning municipalities be adjusted to eliminate that portion of the property taxes which result from the improperly inflated HPRHSD budget for the 2020–2021 school year and that the Commissioner fashion a remedy to compensate those taxpayers for the overpayment which has taken place prior to this ruling; and
- (c) That the Commissioner retain jurisdiction and oversee over this matter to ensure that these Orders and declarations are carried out; and
- (d) Counsel fees and costs of this action;
- (e) Such other relief as may be just and proper.

The Department argues that the First Amended Petition should be dismissed because petitioners have improperly sought a declaratory ruling. N.J.A.C. 6A:3-2.1 governs petitions for declaratory ruling as follows:

(a) Pursuant to N.J.S.A. 52:14B-8, any interested person(s) may petition the Commissioner for a declaratory ruling with respect to rights, responsibilities, and status arising from any statute or rule within the jurisdiction of the Commissioner. The determination to entertain such petitions for declaratory ruling shall be within the sole discretion of the Commissioner. If such request is granted, the matter shall proceed in accordance with this chapter as they pertain to petitions. A declaratory ruling shall be binding upon the Commissioner and all parties to the proceedings on the specific statement of facts set forth therein.

1. A request for a declaratory ruling shall reflect adverse positions on the statute or rule in question by the parties in interest, may not seek consequential relief beyond a declaration as to the meaning of the statute or rule, and may not be based on underlying facts that are future, contingent, uncertain, or disputed.

(b) Except that the format of the petition shall be as set forth in this subchapter, the rules pertaining to filing, service and answer of petitions as set forth in this chapter shall apply to petitions for declaratory ruling.

Additionally, N.J.A.C. 6A:3-2.2 specifies the format of a petition for declaratory ruling, which format includes, inter alia, a caption that specifies that the petition is a "PETITION FOR DECLARATORY RULING"; language that "requests the Commissioner to render a declaratory ruling concerning the application of (N.J.S.A. 18A:_____, N.J.A.C. 6:_____, N.J.A.C. 6A:_____) to the controversy which has arisen between petitioner and respondent"; and language that "WHEREFORE, petitioner respectfully prays that the Commissioner shall construe the provisions of _____ and determine and declare _____."

The Verified Petition did not "reflect adverse positions on the statute or rule in question by the parties in interest," and it sought "consequential relief beyond a declaration as to the meaning of the statute or rule." Although the First Amended Petition, filed after the Department's first motion to dismiss, now reflects that the positions of the parties are adverse and states that it is "the position of the Petitioners that banked cap may include only the unused portion of increases, which construction would limit banked cap to a maximum of 2% per year," and "the position of the Respondents that banked cap may include both the unused portion of increases plus the amount of any decrease, which construction would not limit banked cap to a maximum of 2% per year," it nevertheless contains three other counts and requests for relief in contravention of N.J.A.C. 6A:3-2.1 and still does not comport with the format of N.J.A.C. 6A:3-2.2.

Additionally, the Verified Petition demanded, inter alia, a "declaration that the HPRHSD is not permitted to use banked cap for its 2020–2021 budget in a dollar amount which is greater than that which is equal to the difference between zero and the amount of tax increase actually imposed for each of the past three years, not to exceed two-percent for any one year, and that the budget shall be revised consistent with this declaration prior not later than June 30, 2020." In support of their position, the petitioners

cited to N.J.S.A. 40A:4-45.45, but the First Amended Petition instead seeks a declaratory judgment "that the banked cap provision of N.J.S.A. 18A:7F-39(e) be construed." While the underlying position of the petitioners—that the banked cap cannot be utilized in the manner in which it was utilized—remains the same, certainly no request for a declaratory ruling specific to N.J.S.A. 18A:7F-39(e) was ever filed with the Commissioner prior to the transmittal of the matter to the OAL, and therefore the Commissioner would not have been on notice.

Pursuant to N.J.A.C. 6A:3-1.10, at any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute, or other good reason. The Department's motion was filed after transmittal of the pleadings, but pursuant to N.J.A.C. 1:1-12.1(a), where a party seeks an order of a judge, the party shall apply by motion and state the grounds upon which the motion is made and the relief or order being sought. The judge may render any ruling or order necessary to decide any matter presented to him or her which is within the jurisdiction of the transmitting agency or the agency conducting the hearing. N.J.A.C. 1:1-14.6(h).

I **CONCLUDE** that the Verified Petition was not properly filed as a request for a declaratory ruling pursuant to N.J.A.C. 6A:3-2.1 and N.J.A.C. 6A:3-2.2, as it did not reflect adverse positions on the statute or rule in question by the parties in interest, it did not request that the Commissioner render a declaratory ruling concerning the specific statute or regulation, and it improperly sought consequential relief beyond a declaration as to the meaning of the statute or rule. If petitioners intended to have the Commissioner construe the provisions of the applicable statute – which statute was changed in the First Amended Petition - and determine and declare that the respondents cannot utilize banked cap in the manner in which it was utilized, their petition should have been filed as a petition for declaratory ruling and it should have complied with the applicable requirements. Since it was not properly filed as a petition for a declaratory ruling and did not comply with the

applicable requirements, the Commissioner was not provided appropriate notice of a petition for a declaratory ruling and it was transmitted to the OAL instead as a contested case. Merely separating the request for a declaratory ruling into its own count in the First Amended Petition does not remedy the defects. Accordingly, I **CONCLUDE** that the First Count of the First Amended Petition should be dismissed.

Although petitioners argue that there are three total counts, the First Amended Petition contains four counts. The Second Count, Third Count, and Fourth Count are as follows:

SECOND COUNT
(Breach of N.J.S.A. 18A:7F-39(e))

33. Petitioners repeat the allegations of Paragraphs 1–32 as if set forth at length.

34. The use of banked cap by the HPRHSD so as to include the amount of property tax decreases, and the approval of that use by the Commissioner of Education, violated the provisions of N.J.S.A. 18A:7F-39(e).

35. The 2020–2021 HPRHSD school budget, which included increases in violation of 18A:7F-39(e), went into effect on July 1, 2020.

36. As a result of these statutory violations, the Petitioners, as well as all of the property tax owners in the Petitioning municipalities have been damaged by the requirement that they pay a property tax rate based, in part, on an improperly inflated HPRHSD school budget.

WHEREFORE, the Petitioners demand:

(a) That the HPRHSD budget for the 2020–2021 school year be revised and reduced in accordance with the maximum limitations of N.J.S.A. 18A:7F-39(e); and

(b) That the tax rate for Petitioners and all other property tax payers in the Petitioning municipalities be adjusted to eliminate that portion of the property taxes which result from the improperly inflated HPRHSD budget for the 2020–2021

school year and that the Commissioner fashion a remedy to compensate those taxpayers for the overpayment which has taken place prior to this ruling; and

- (c) That the Commissioner retain jurisdiction and oversight over this matter to ensure that these Orders and declarations are carried out; and
- (d) Counsel fees and costs of this action; and
- (e) Such other relief as may be just and proper.

THIRD COUNT
(Breach of N.J.A.C. 6A:23A-10.1)

37. The Petitioners repeat the allegations of Paragraphs 1–36 as if set forth at length.

38. The Executive County Superintendent of Schools supervises and administers the day-to-day functions of the County Office of Education as a representative of the State Commissioner of Education. The County Superintendent provides educational leadership to and general over-sight of the public school districts in the County pursuant to law and code. N.J.S.A. 18A:7-1 et seq.

39. N.J.A.C. 6A:23A-10.1 is titled “Unused tax authority (banked cap).” Subsection 3(e) of that Code provision states:

The executive county superintendent may disapprove use of banked cap, pursuant to N.J.S.A. 18A:F-5, if he or she determines the district board of education has not implemented all potential efficiencies in the administrative operations of the school district.

40. Even if otherwise permissible, which it is not, the use of banked cap in the amount permitted in the HPRHSD 2020–2021 school budget should have been disallowed by the Executive County Superintendent pursuant to N.J.A.C. 6A:23A-10.1 because the HPRHSD did not implement all potential efficiencies in the administrative operations of the school district.

41. The failure by the Commissioner of Education, acting through the Executive County Superintendent, to disallow the questioned use of banked cap pursuant to N.J.A.C. 6A:23A-10.1 constituted a breach of that Code provision, an arbitrary action, and a violation of the Commissioner's duty.

WHEREFORE,⁴

FOURTH COUNT
(Breach of Fiduciary Duty)

42. The Petitioners repeat the allegations of Paragraphs 1–41 as if at length.

43. "The members of the board of education . . . are public officers holding positions of public trust. They stand in a fiduciary relationship to the people whom they have been appointed or elected to serve." Lawrence/Cranbury v. Bd. of Educ., 27 N.J. Super. 243, 248 (App. Div. 1953).

44. According to its own budget presentation, the HPRHSD is seeking, in one year, to offset the loss of \$1.723 million in State aid by using \$1.744 million in allegedly banked cap, thereby imposing a local tax levy increased by 14% rather than by 2%.

45. To use of banked cap in the fashion and in the amount that the HPRHSD has used it in its 2020–2021 budget flies in the face of recent actions by Governor Murphy.

46. The Governor's policy is not to permit exceptions to the cap law to avoid the impact of the loss of State aid. That is why, in January of 2020, on the last day of the Legislative Session, he returned unsigned a bill, S4289, which would have allowed school districts to exceed cap to offset losses in State aid.

47. The HPRHSD has, since the 2016–2017 school year, breached its fiduciary responsibilities over the past three years by permitting the short-term gratification of tax-cuts to outweigh the need for fiscal planning and, currently, by imposing a 14% tax increase.

⁴ The WHEREFORE clause is identical to that of Count 2.

48. In so doing, the HPRHSD engaged in a manipulation of the local tax share.

49. By their actions, the HPRHSD and its members breached their fiduciary obligations pursuant to law.

50. As a consequence, the Petitioners and every property tax payer in the Petitioning municipalities has been harmed.

WHEREFORE,⁵

The allegations in the Second Count and Third Count were not included in the Verified Petition and appear for the first time in the First Amended Petition. However, the allegations in the Fourth Count, with the exception of the allegations that “the HPRHSD engaged in a manipulation of the local tax share”; “[b]y their actions, the HPRHSD and its members breached their fiduciary obligations pursuant to law”; and “the Petitioners and every property tax payer in the Petitioning municipalities has been harmed,” were included in the Verified Petition. Additionally, excepting the demands that “the Commissioner retain jurisdiction and oversight over this matter to ensure that these Orders and declarations are carried out” and for counsel fees and costs and such other relief as may be just and proper, the relief in the Second Count, Third Count, and Fourth Count of the First Amended Petition differs from that sought in the Verified Petition.

“It is within the Commissioner's authority to treat a motion to dismiss on the ground that ‘no sufficient cause for determination has been advanced’ as encompassing not only a claim that the petition on its face fails to set forth a basis for relief, but also that petitioners have failed to provide any factual support for the general allegations of their petition.” Sloan v. Klagholtz, 342 N.J. Super. 385, 394 (App. Div. 2001). The entirety of the within controversy, including the requests for consequential relief, stems from a dispute over how the banked cap was utilized. Certainly, if HPRHSD's utilization of the banked cap was permissible, the various allegations in the Second Count (Breach of N.J.S.A. 18A:7F-39(e)), Third Count (Breach of N.J.A.C. 6A:23A-10.1), and Fourth Count (Breach of Fiduciary Duty) fail.

⁵ The WHEREFORE clause is identical to that of Counts 2 and 3.

Accepting for purposes of this motion the “Background” facts set forth in petitioners’ First Amended Petition, the HPRHSD approved its tentative budget on March 17, 2020 (before the March 20, 2020, deadline) and it was submitted to the executive county superintendent for review and approval; the executive county superintendent approved the tentative budget in time (before the April 20, 2020, deadline) for it to be publicly advertised; it was publicly advertised on April 24, 2020; there was a public hearing on the budget on April 28, 2020—which was after the earliest date for a public hearing (April 24, 2020) and before the latest date (May 7, 2020); and the Board of Education ultimately approved the budget. Although the public hearing was a virtual hearing, and the budget was approved days before the deadline by which the Board was required to act, there is no assertion of any procedural violation of N.J.S.A. 18A:22-10 to -13 and no assertion that the budget was not submitted to the executive county superintendent for review and approval in accordance with N.J.A.C. 6A:23A-9.1. Accordingly, the First Amended Petition reflects that the 2020–2021 budget was approved by way of the statutory process.

Notwithstanding the provisions of any other law to the contrary, a school district may not adopt a budget pursuant to N.J.S.A. 18A:7F-5 and N.J.S.A. 18A:7F-6 with an increase in its adjusted tax levy that exceeds, except as provided in N.J.S.A. 18A:7F-39, the tax levy growth limitation calculated as follows: the sum of the prebudget year adjusted tax levy and the adjustment for increases in enrollment multiplied by 2.0 percent, and adjustments for an increase in health care costs, increases in amounts for certain normal and accrued liability pension contributions. N.J.S.A. 18A:7F-38(a).

Petitioners argue—and there is no dispute—that the maximum allowable increase is 2 percent. The statute in question is N.J.S.A. 18A:7F-39(e), which states as follows:

A school district that has not been granted approval to exceed the cap pursuant to subsection c.^[6] of this section, may add to

⁶ A school district may submit to the voters at the annual school election, or on such other date as is set by regulation of the commissioner, a proposal or proposals to increase the adjusted tax

its adjusted tax levy in any one of the next three succeeding budget years, the amount of the difference between the maximum allowable amount to be raised by taxation for the current school budget year and the actual amount to be raised by taxation for the current school budget year.

Petitioners further argue that “[w]hat is uncertain is the meaning of the statute.” Conversely, the Department argues that the statute is clear and unambiguous.

Within the First Count, petitioners cite to a June 23, 2010, Senate Budget and Appropriations Committee statement “regarding the proposed ‘levy cap banking’ provision which was being considered as Senate Bill No. 29 (now N.J.S.A. 18A:7F-39(e))” and to a July 14, 2010, OLS Legislative Fiscal Estimate regarding Senate Bill No. 29 “which evaluated the possible fiscal impact of the amendment.” However, with respect to legislative intent, the Supreme Court of New Jersey stated as follows:

The best evidence of that legislative intent is the statutory language, which is, accordingly, “the first place we look.” Richardson v. Bd. of Trs., PFRS, 192 N.J. 189, 195, 927 A.2d 543 (2007). If the statute’s plain language leads to a clearly understood result, the judicial inquiry is complete. Ibid.; Felix v. Richards, 241 N.J. 169, 179, 226 A.3d 937 (2020) (noting that when “language admits of only one clear interpretation,” the interpretive task ends and the court enforces that meaning).

“[I]t is not our function to rewrite a plainly written statute or to presume that the Legislature meant something other than what it conveyed in its clearly expressed language.” Shipyard Assocs., LP v. City of Hoboken, 242 N.J. 23, 45, 230 A.3d 278 (2020) (quoting Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592, 46 A.3d 1262 (2012)). It is only when the statute’s language is ambiguous that we consider legislative history and other extrinsic materials. Sanchez v. Fitness Factory Edgewater, LLC, 242 N.J. 252, 261, 231 A.3d 606 (2020);

levy by more than the allowable amount authorized pursuant to section 3 of P.L.2007, c.62 (C.18A:7F-38). The proposal or proposals to increase the adjusted tax levy shall be approved if a majority of people voting shall vote in the affirmative. In the case of a school district with a board of school estimate, the additional adjusted tax levy shall be authorized only if a quorum is present for the vote and a majority of those board members who are present vote in the affirmative to authorize the additional adjusted tax levy. N.J.S.A. 18A:7F-39(c).

Kean Fed'n of Tchrs. v. Morell, 233 N.J. 566, 583, 187 A.3d 153 (2018).

[Branch v. Cream-O-Land Dairy, 2021 N.J. LEXIS 3, *31–32.]

The operative statute, N.J.S.A. 18A:7F-39(e), allows HPRHSD to add to its adjusted tax levy in any one of the next three succeeding budget years, the amount of the difference between the maximum allowable amount to be raised by taxation for the current school budget year and the actual amount to be raised by taxation for the current school budget year. The ramifications of such action aside, the First Amended Petition reflects that HPRHSD added to one of the next three succeeding budget years (2020–2021) the amount of the difference between the maximum allowable amount and the actual amount to be raised.

Specifically, petitioners' history chart reflects that the local share was \$15,401,826 in 2016–2017. With a 2 percent increase, the local share in 2017–2018 could increase to a maximum of \$15,709,862.52 (\$15,401,826 plus a 2 percent increase of \$308,036.52). However, the local share was lowered to \$14,356,619 in 2017–2018—leaving a difference of \$1,353,243.52 as “banked cap.” Petitioners' history chart reflects that the local share was \$14,356,619 in 2017–2018. With a 2 percent increase, the local share in 2018–2019 could increase to a maximum of \$14,643,751.38 (\$14,356,619 plus a 2 percent increase of \$287,132.38). However, the local share was again lowered, to \$14,256,964, in 2018–2019—leaving a difference of \$386,787.38 as “banked cap.” Petitioners' history chart reflects that the local share was \$14,256,964 in 2018–2019. With a 2 percent increase, the local share in 2019–2020 could increase to a maximum of \$14,542,103.28 (which is \$14,256,964 plus a 2 percent increase of \$285,139.28). However, the local share was again lowered, to \$14,537,446, in 2019–2020—leaving a difference of \$4,657.28 as “banked cap.” Accordingly, the total “banked cap” for 2017–2018, 2018–2019, and 2019–2020 was \$1,744,688.18 (\$1,353,243.52 plus \$386,787.38 plus \$4,657.28).

Petitioners' history chart reflects that the local share was \$14,537,446 in 2019–2020. With a 2 percent increase, the local share in 2020–2021 could increase to a maximum of \$14,828,194.92 (\$14,537,446 plus a 2 percent increase of \$290,748.92). In fact, the local share was increased by 2 percent to \$14,828,194.92, but HPRHSD opted, as is allowed by statute, to add to its adjusted tax levy (\$14,828,194.92) the three years' banked cap (\$1,744,688.18), which resulted in a local share of \$16,572,880. While HPRHSD's actions resulted in a higher percentage for 2020–2021 than 2 percent, its actions resulted in lower percentages in the preceding years. To the extent that petitioners are dissatisfied with HPRHSD's budget, I concur with the Department that the remedy is political and not legal.

In sum, the statute's plain language is clear and unambiguous, and the First Amended Petition reflects that HPRHSD acted in accordance with the statute. It is not the function of the undersigned to rewrite the statute or to presume that its plain language does not comport with the legislative intent. As such, I **CONCLUDE** that no sufficient cause for determination has been advanced and the First Amended Petition should be dismissed.

In view of the foregoing, it is hereby **ORDERED** that the First Amended Petition is **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended 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. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become 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.

March 1, 2021

DATE



KELLY J. KIRK, ALJ

Date Received at Agency:

Date Mailed to Parties:
