

**New Jersey Commissioner of Education**  
**Order on Emergent Relief**

Board of Education of the Township of Lakewood,  
Ocean County,

Petitioner,

v.

New Jersey Department of Education,

Respondent.

The record of this emergent matter, the sound recording of the hearing held at the Office of Administrative Law (OAL), and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia*, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6.

Accordingly, the Board's application for emergent relief is denied. As the ALJ indicated, the petitioner was only seeking emergent relief; therefore, there is no longer a pending dispute that requires additional adjudication. The OAL is directed to return the file to the agency in accordance with N.J.A.C. 1:1-3.3.

IT IS SO ORDERED. <sup>1</sup>



COMMISSIONER OF EDUCATION

Date of Decision: February 28, 2025  
Date of Mailing: February 28, 2025

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<sup>1</sup> 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

**ORDER ON EMERGENT**

**RELIEF**

OAL DKT. NO. EDU 01046-25

AGENCY DKT. NO. 14-1/25

**BOARD OF EDUCATION OF  
THE TOWNSHIP OF LAKEWOOD,**

Petitioner,

v.

**NEW JERSEY DEPARTMENT  
OF EDUCATION,**

Respondent.

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**Michael I. Inzelbuch**, Esq., for petitioner

**Kevin Milton**, Deputy Attorney General, for respondent, (Matthew J. Platkin,  
Attorney General of New Jersey, attorney)

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, the Board of Education of the Township of Lakewood (Board), seeks an order for emergent relief in the form of written authorization by respondent New Jersey Department of Education (NJDOE) to use Special Revenue/Restricted Funds to pay

existing bills and to immediately respond to the Board's request for a loan, including, if approved, the amount of such loan.

### **PROCEDURAL HISTORY**

On January 14, 2025, petitioner filed an emergent petition with the Office of Controversies and Disputes of the NJDOE. The Commissioner did not act upon the motion and pursuant to N.J.A.C. 6A:3-1.6(c)(3), on January 15, 2025, the emergent matter was transmitted to the Office of Administrative Law (OAL).<sup>1</sup>

On January 17, 2025, petitioner filed a supplemental brief and respondent filed its opposition to the motion for emergent relief. The emergent relief request was scheduled for oral argument, on January 21, 2025. Shortly before the hearing, petitioner submitted a letter from its auditor.<sup>2</sup>

Due to scheduling difficulties, the parties agreed to appear via Zoom Audio Communications, Inc., and on January 21, 2025, the parties appeared for oral argument. On January 22, 2025, both parties filed supplemental briefs and certifications, and the request for emergent relief is now ripe for consideration.

### **FACTUAL DISCUSSION**

Most of the pertinent facts in this case are not in dispute. Accordingly, I **FIND** as **FACTS**:

The Board administers the Lakewood Public School District (LPSD), a public school district serving students in grades kindergarten through twelfth grade. The LPSD is comprised of approximately 4,500 students; costs are also incurred by the LPSD to

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<sup>1</sup> To date, Lakewood has not filed a due process petition. In a similar case involving the same parties, the reviewing agency found that "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 . . . supplemental pleadings. Bd. of Educ. of Lakewood Tsp. v. NJ Dept. of Educ., 2019 N.J. AGEN. LEXIS 818, \*7 (July 3, 2019).

<sup>2</sup> Respondent was afforded opportunity to submit a written response to this letter.

provide services, primarily transportation, to approximately 50,000 private school students. Certification of Laura A. Winters, Ed.D., Board Superintendent (January 12, 2025), ¶ 9.

The LPSD receives funding from the State based on the enrollment of public-school students (under the State funding formula) and, for at least the past ten years,<sup>3</sup> from the NJDOE in the form of loans “when necessary for [LPSD] to continue to operate and deliver a thorough and efficient education to its students.” Certification of Stephanie Kuntz, NJDOE Director of State Monitors (January 17, 2025) (Kuntz Cert.), ¶ 12; see also Certification of Kevin Campbell, Board Business Administrator (January 12, 2025) (Campbell Cert.), ¶ 9.

In or about March of each year, the Board adopts the annual budget for the upcoming school year. Each school year from approximately 2015, through and including the 2023–2024 school year, the LPSD has received an NJDOE State Aid Advance Loan because during those years, projected revenue including “the regular state aid allocation,”<sup>4</sup> has been lower than budgeted expenses. Winters Cert., ¶¶ 7, 8.

As explained by counsel at oral argument, from approximately 2015, through and including 2024, after the Board approved the annual budget for the upcoming school year, the LPSD submitted a “budget deficit presentation” (or loan application) to the NJDOE using a designated portal on the NJDOE website. In March 2024, the Board projected a budget deficit — and therefore requested a State Aid Advance Loan for the 2024–2025 school year — of approximately 140 million dollars.

Counsel stated that each year prior to 2024, the NJDOE notified the LPSD of the approval of its loan application and the amount of the approved loan between July and November, or four to seven months following the application.<sup>5</sup> To date, the NJDOE has

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<sup>3</sup> See Campbell Cert., ¶ 14.

<sup>4</sup> Based on the New Jersey State Funding Formula, as codified in the School Funding Reform Act of 2008, N.J.S.A. 18A:7F-43 et seq.

<sup>5</sup> See Joint Supplemental Certification of Winters and Campbell (January 22, 2022) (Joint Supp. Cert.), Ex. D (Ltr. of Angelica Allen-McMillan, NJDOE Acting Commissioner, to Laura Winters (November 17, 2023).).

not informed the LPSD whether its loan application has been approved and/or the amount of any such loan for the 2024-2025 school year. Winters Cert., ¶ 12.

Pursuant to N.J.S.A. 18A:7A-55, the NJDOE appointed a State monitor, Louise Davis, to “oversee the fiscal management and expenditures of [LPSD] funds,” including “budget reallocations and reductions, approvals of purchase orders, budget transfers, and payment of bills and claims.” Kuntz Cert., ¶¶ 5, 6. The State Monitor is authorized to override a vote by the Board on such matters. Id., ¶ 6.

In the LPSD budget, funds are designated for specific use, including general funds, which are used for payroll, health insurance premiums, and utilities (among other expenses), and special revenue funds, which “are earmarked for specific nonpublic programs.” Cambell Cert., ¶¶ 11, 12. LPSD funds are “organized in one bank account which is accessible by [Cambell]” and available to meet LPSD’s financial obligations. Kuntz Cert., ¶ 11.

Some portion of the special revenue funds is comprised of “State and Federal Grant Funds [which] are legally restricted to their designated purposes.” Ltr. of Matthew Holman, LPSD Auditor, to LPSD Board of Education (January 21, 2025). According to Mr. Holman:

[Using Grant] funds for other operations would constitute a violation of the grant agreements and could result in audits, penalties, and potential repayment of misused funds especially when no repayment schedule can be established due to the lack of specifics provided with regard to a [State Aid Advance] Loan.

[Ibid.]

Grant funds are not segregated in separate bank accounts, whether by individual grant, or by category of grants generally, but are maintained in the same bank account as general revenues.

On January 8, 2025, the Board approved Resolution #18, which prohibits the use of special revenue funds for general fund expenses without the written authorization of the NJDOE and/or the State Monitor. Winters Cert., ¶ 10; Kuntz Cert., ¶ 7. As of January 15,<sup>6</sup> and 30, 2025, the LPSD had bills come due for general fund expenses which the LPSD could not pay because insufficient monies were available in the designated general fund.

On January 10, 2025, the State Monitor instructed the Board to pay approved payroll bills, but did not designate whether to use general fund or special revenue funds. Winters Cert., ¶¶ 5, 17; Campbell Cert., ¶¶ 5, 15. On January 15, 2025, the Board filed this emergent action, claiming that its faces a deficit of more than four million dollars in the general fund and is unable to use special revenue funds to cover general fund expenses due to the (1) action of the Board prohibiting such action; and (2) the refusal of the State Monitor and/or the NJDOE to issue written authorization to take such action.

By letter dated January 17, 2025, the State Monitor notified Winters of her decision to deny Resolution #18, thereby removing the prohibition on use of special revenue funds for general fund expenditures. Kuntz Cert., ¶¶ 8, 9, and Ex. A.

As of January 10, 2025, the LPSD had more than thirty-four million dollars in special revenue funds. Campbell Cert., ¶ 14, Ex. B.

The Board has asked the NJDOE to confirm that it will issue a loan to the LPSD for the current school year, and to inform the LPSD of the amount of the loan, but such assurances have not been documented. Winters Cert., ¶ 10; Campbell Cert., ¶ 9. The NJDOE has yet to decide on a loan because the amount depends on whether the LPSD has available cash and, if it does not, then the amount of money needed by the LPSD to “sustain the district through the current school year.” Kuntz Cert., ¶ 13.

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<sup>6</sup> After the initial filing in this matter, some bills due January 15, 2025, were paid.

### **LEGAL ANALYSIS**

When the subject matter of a controversy is action by a board of education, the petitioner may file “a separate motion for emergent relief . . . pending the Commissioner’s final decision in the contested case.” N.J.A.C. 6A:3-1.6(a). Here, the Board has not initiated due process proceedings, seeking only emergent relief.

The standards for granting emergent relief are set forth in Crowe v. DeGioia, 90 N.J. 126 (1982), and are codified at N.J.A.C. 6A:3-1.6(b). The petitioner bears the burden of proving that:

1. Petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the petitioner’s claim is settled;
3. Petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and the interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

[N.J.A.C. 6A:3-1.6(b).]

#### **Irreparable Harm**

To obtain emergent relief, the Board must demonstrate more than a risk of irreparable harm, but a “clear showing of immediate irreparable injury,” or a “presently existing actual threat; (an injunction) may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by common law.” Cont’l Group, Inc. v. Amoco Chems. Corp., 614 F. 2d 351, 359 (D.N.J. 1980).

The Board contends that if it uses special revenue funds to meet general fund expenses, irreparable harm will result as it will be “unable to provide mandated services

for non-public students for transportation, security [and special education services].” Supplemental Br. of Pet’r in Support of Emergent Relief (January 17, 2025) at 3. Further, the Board contends that State guidelines define “special revenue funds” as those which are “legally restricted to expenditures for specified purposes.” *Id.* at 3–4. The Board does not, however, provide citations or specific support for its argument that it is legally restricted from using the proceeds of the special reserve account. Holman’s letter alone is not competent evidence of grant agreements which allegedly restrict the grantee in its use of grant funds. Further, the Board offered no evidence to counter the NJDOE’s argument that the funds are not actually segregated by account but are commingled in a single account accessible to the Business Administrator.<sup>7</sup>

In response, the NJDOE first notes that the Board has sufficient funds until either January 30, 2025, or February 22, 2025, leaving sufficient time “for the Monitor to ascertain the amount of restricted unspent state or federal grant money, calculate the impact of that amount on the timing and amount of a state aid loan advance, and communicate that information to the [NJDOE] so that a potential state aid loan advance may issue.” Supplemental Certification of Stephanie Kuntz (January 22, 2025) (Kuntz Supp. Cert.), ¶ 14.

Second, NJDOE contends that the Board is permitted to pay its bills using the special revenue funds and also notes that the Board has not “cited any law supporting the proposition that the [NJDOE] or the State Monitor must provide written authorization to [the LPSD to] pay its bills using funds from the special revenue fund.” Ltr. Br. of Resp’t Opposing Emergent Relief (January 17, 2025) at 7.

With respect to the action of the Board restricting the Business Administrator from using funds for expenses other than those specifically designated, the NJDOE argues that this action created the emergency and therefore, the Board cannot avail itself of emergent relief. *Ibid.*, citing McKenzie v. Corzine, 396 N.J. Super. 405, 414–15 (App. Div. 2007) (fear of imminent irreparable injury not merited because plaintiff’s delay in bringing action to challenge ballot measure created the emergency); J.H. Renarde, Inc.

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<sup>7</sup> The Board states that while it has one account for all funds, its accounting system differentiates receipts and expenditures by directed use of the funds. Joint Supp. Cert., ¶ 2.



v. Sims, 312 N.J. Super. 195, 205 (Chancery Div. 1998) (“self-inflicted hardship should not be considered or, at best, should be given very little weight in determining whether the injunction should issue.”). Significant here is that on January 17, 2025, the State Monitor denied Resolution #18, thereby removing any obstacle from payment of general expenses using special revenue funds.<sup>8</sup>

It is not clear whether the State Monitor would treat funds from a segregated account (limited only to specific grants or grants generally) as unavailable for general expenses. The Board argues that prior to January 2025, it had no need to segregate funds; an accurate accounting of expenditures was enough to ensure that grant funds were available to cover grant-related expenses because prior to 2025, the LPSD was assured of State Aid Advance Loans. Noting that there was no support for Holman’s statements regarding the grant agreements, respondent contends that the restrictions Holman describes were not brought to the attention of the State Monitor prior to January 21, 2025, but with this information, the State Monitor will now investigate. Second Supplemental Ltr. Br. of Resp’t (January 21, 2025) (Second Supp. Ltr. Br. of Resp’t) at 2 citing ¶¶ 10, 11. Should the State Monitor determine that “an adjustment to the timing of a state aid advance loan” is required, the NJDOE “will act accordingly,” and will make a decision on the loan application “in three to five days.” Second Supp. Ltr. Br. of Resp’t at 2; Kuntz Supp. Cert., ¶ 7.

I **CONCLUDE** that petitioner has not met the burden of establishing that irreparable harm will result if the State Monitor and/or the NJDOE are not ordered to immediately provide the Board with written authorization to pay its pending bills using special revenue funds. Further, Kuntz certifies that the NJDOE is currently reviewing LPSD loan application to determine whether a loan is required to assist the LPSD in meeting its financial obligations for the remainder of the 2024–2025 school year. Accordingly, I **CONCLUDE** that petitioner has not met the burden of establishing that irreparable harm will result unless the NJDOE is ordered to immediately respond to the Board’s request for a loan.

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<sup>8</sup> The NJDOE also notes that the Board met its January 15, 2025, payroll. Resp’t’s Br. at 6, citing Supplemental Certification of Campbell, Ex. B.

Whether the Legal Right is Settled and the Likelihood of Prevailing on the Merits

The second consideration is whether the legal right underlying the Board's claim is settled, N.J.A.C. 6A:3-1.6(b)(2), and then third, the Board must make a preliminary showing of a reasonable probability of success on the merits. Crowe, 90 N.J. at 133.

Neither party disputes the application of N.J.S.A. 18A:7A-55(b)(1), which describes the duties of the State Monitor as follows:

The State monitor shall:

- (1)** oversee the fiscal management and expenditures of school district funds, including, but not limited to, budget reallocations and reductions, approvals of purchase orders, budget transfers, and payment of bills and claims;
- (2)** oversee the operation and fiscal management of school district facilities, including the development and implementation of recommendations for redistricting and restructuring of schools;
- (3)** ensure development and implementation of an acceptable plan to address the circumstances set forth in subsection a. of this section which resulted in the appointment of the State monitor. The plan shall include measurable benchmarks and specific activities to address the deficiencies of the school district;
- (4)** oversee all district staffing, including the ability to hire, promote, and terminate employees;
- (5)** have authority to override a chief school administrator's action and a vote by the board of education on any of the matters set forth in this subsection, except that all actions of the State monitor shall be subject to the education, labor, and employment laws and regulations, including the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.), and collective bargaining agreements entered into by the school district;
- (6)** attend all meetings of the board of education, including closed sessions; and

- (7) meet with the board of education on at least a quarterly basis to discuss with the members of the board the past actions of the board which led to the appointment of the State monitor and to provide board members with education and training that address the deficiencies identified in board actions.

The Board argues that the statute gives it the “right to clear guidance from the State Monitor where funds are supposed to come from and which account it must use to pay bills.” Supp. Br. of Pet’r at 5. The Board goes on to state that the action of prior State monitors supports this conclusion but does not specify by whom or in what form such “clear guidance” was given. Further, the Board is currently reluctant to act without written authorization because it has yet to receive a loan commitment from the NJDOE. Id., n.5.

The applicable statute, N.J.S.A. 18A:7A-55(b)(1), gives the State Monitor the authority to oversee the payment of bills but does not require her to authorize such payments. “The meaning of a statute first must be sought in the language in which it is framed, and, if it is plain, the court’s sole function is to enforce it according to its terms. When a statute is clear and unambiguous on its face, it is not open to construction or interpretation.” McQueen v. Brown, 342 N.J. Super. 120, 131 (2001) (citations omitted), aff’d per curium, 175 N.J. 200 (2002).

The Board implies that prior State monitors routinely approved the payment of bills in advance, thereby creating the expectation that such approval was required, see Supp. Br. of Resp’t at 5, 7–8, but does not provide a certification from those monitors—or even from Board staff—to that effect. The Business Administrator states instead that he was previously directed by the State monitors “that, as long as the District had available cash, it should be utilized to fund operations, regardless of the source.” Id. at 5, quoting Ex. B. The Board goes on to argue that the practice of the NJDOE and prior monitors to give such directions, though without clarity as to whether such directions were issued in writing, is the status quo, and a reviewing court should seek to maintain the status quo on an emergent basis.

In response, the NJDOE argues that the practice of prior monitors of giving such advice, even if given routinely,<sup>9</sup> does not create a legal obligation on the part of the current monitor to direct payment from specific funds, rather than available funds, and to do so in writing. The more persuasive argument is the one made by respondent: that but for the action of the Board via Resolution #18, there was no requirement for the State Monitor and/or the NJDOE to direct the use of specific funds to pay specific expenses. Now that Resolution #18 has been denied, the Business Administrator is again free to pay bills using any available funds.

The Board argues that Resolution #18 was adopted because for the first time in a decade, the NJDOE has not processed its application for a State Aid Advance Loan in a timely manner, leaving it in the unenviable position of being forced to spend restricted funds for general expenses without advance notice that such funds will be replaced, and thereby risking both audits and the potential future loss of grant funding. Although petitioner did not cite any authority for the loan program, it is presumed that prior loans were obtained pursuant to N.J.S.A. 18A:7A-56, which provides:

**a.** The Commissioner of Education shall recommend to the State Treasurer whether an advance State aid payment should be made to a school district for which a State monitor has been appointed. The commissioner's recommendation shall be based on whether the payment is necessary to ensure the provision of a thorough and efficient education. An advance State aid payment shall be recorded by the school district as revenue for budget purposes in the school year in which the advance State aid payment is provided.

**b.** The advance State aid payment shall be repaid by the school district through automatic reductions in the State aid provided to the school district in subsequent years. The term of the repayment shall not exceed 10 years, but may be for a shorter term as determined by the State Treasurer. At any time during the term of the repayment the State Treasurer, in consultation with the Commissioner of Education, may determine to impose interest on the unpaid balance; except that interest shall not be imposed in the case of a school district for which a State monitor is appointed within 90 days

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<sup>9</sup> Again, there is no evidence, including certifications, that standard practice under prior State monitors was to delay payment of bills until the State monitor gave specific authorization that any available cash could be used.

of the effective date of this act [April 17, 2006]. The commissioner shall transfer the amount of the reduction in State aid to the account established pursuant to section 5 [C.18A:7A-58] of this act.

c. In any year in which the school district's undesignated general fund balance is greater than 1.5% of general fund expenditures, the amount which exceeds 1.5% shall be an additional amount applied to the following year's repayment of the advance State aid payment and the school district's State aid shall be reduced by this additional amount in that following year.

The entire statutory provision is quoted to make clear that it imposes no obligation on the part of the Commissioner to process applications for State aid loan advances within a specific time. Based on respondent's statements here, the NJDOE will act on the loan application (1) at the completion of their current investigation into the LPSD's finances; or (2) if the NJDOE determines the LPSD is out of money; and (3) the NJDOE determines how much money is needed by the LPSD to complete the current school year. The Board does not cite to any authority requiring the NJDOE to make a loan commitment before those alternate circumstances arise.

I **CONCLUDE** that the Board has not shown that the legal right underlying its claim for emergent relief is settled.

With respect to the third prong, there is no underlying due process petition, but if the Board had filed a due process petition for similar relief, for the above reasons, I would not be able to conclude that the Board has a likelihood of succeeding on the merits.

#### Balance of Equities and Interests

The final prong of the above test is whether the equities and interests of the parties weigh in favor of granting the requested relief. The Board argues that without specific authorization by the State Monitor and/or the NJDOE, and without confirmation that a NJDOE loan will be provided, the Board risks using special revenue funds for general expenses and then being unable to pay expenses for which such special revenue funds are earmarked. Supp. Br. of Pet'r at 8. As explained above, the only reason that the

Business Administrator could not pay pending bills using any available cash, including the special reserved fund, was because the Board adopted Resolution #18. There is no other statutory or regulatory requirement for authorization from the State Monitor and/or the NJDOE to use special revenue funds for expenses other than those for which those funds were earmarked. Resolution #18 is no longer a bar to payment by the Business Administrator of all pending bills.

Respondent argues that the Board's request for emergent relief is not supported by law and, with the denial of Resolution #18, "the exigent circumstances alleged in their petition" are moot. I agree and for these reasons, **CONCLUDE** that the equities do not favor petitioner's request.

I **CONCLUDE** that the Board has not proved by a preponderance of credible evidence that its request for emergent relief satisfies the applicable requirements.

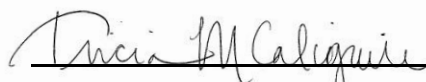
### **ORDER**

For the reasons stated above, I hereby **ORDER** that the application for emergent relief of petitioner, the Board of Education of the Township of Lakewood, is hereby **DENIED**.

This order on application for emergency relief may be adopted, modified or rejected by the **ACTING 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 **ACTING 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.

January 22, 2025

DATE



**TRICIA M. CALIGUIRE, ALJ**

Date Received at Agency:

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Date Mailed to Parties:

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TMC/cb