

New Jersey Commissioner of Education

Final Decision

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

Petitioner,

v.

New Jersey Department of Education,

Respondent.

Synopsis

In June 2019, the Board of Education of the Township of Lakewood (Lakewood) filed an application for emergent relief and a petition seeking, *inter alia*, state aid of approximately \$30,000,000 to enable the Lakewood school district to provide its students with a thorough and efficient education. Such funding had been included in the Governor's proposed budget for 2019-2020, but was eliminated from the final budget as approved by the Legislature and signed by the Governor. Lakewood argued that the promised funding was required to meet its anticipated shortfall for the 2019-2020 school year. The Department contended that Lakewood's petition was procedurally deficient and failed to state a claim upon which relief can be granted, thereby requiring dismissal of the petition. Following a June 26, 2019 hearing on the matter, Lakewood announced it was shutting down the school district effective July 1, 2019, despite the fact that its underlying petition indicated that the school district had sufficient funds to cover operations through March 2020. The Department subsequently argued that the within matter is now moot, because on July 1, 2019, the Commissioner certified to the State Treasurer that Lakewood required \$36,033,862 to enable it to meet its constitutional obligations, and the State Treasurer subsequently approved a loan in that amount to the district.

The ALJ found, *inter alia*, that: although Lakewood failed to file the required formal motion for emergent relief, and instead combined a request for an emergent hearing with a petition seeking final relief, an accommodation for the procedurally deficient filing was allowed because of the importance of the issue herein; however, such accommodation must not be construed as precedent for accepting other procedurally deficient filings; Lakewood has failed to demonstrate entitlement to emergent relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6; further, on July 1, 2019, the Commissioner certified to the State Treasurer that Lakewood required \$36,033,862 to enable it to meet its constitutional obligations; and the State Treasurer subsequently approved a loan in that amount to the district, which has rendered the matter moot. Accordingly, the ALJ granted the Department's motion to dismiss the petition.

Upon a comprehensive review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision of the OAL 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.

August 6, 2019

OAL Dkt. No. EDU 8386-19
Agency Dkt. No. 142-6/19

New Jersey Commissioner of Education
Final Decision

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

Petitioner,

v.

New Jersey Department of Education,

Respondent.

The record of this matter and the Initial Decision of the OAL have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioner, the Lakewood Township Board of Education (Lakewood), and the New Jersey Department of Education's (Department) reply thereto.¹ In this matter, Lakewood filed a petition of appeal and a motion for emergent relief² seeking the state aid (approximately \$30,000,000) that was promised during budget proceedings which will enable it to provide its students with a thorough and efficient education.³

Following a hearing at the OAL on the emergent application, the ALJ found that Lakewood failed to demonstrate entitlement to emergent relief pursuant to *Crowe v. DeGioia*, 90

¹ Lakewood filed a sur-reply to the Department's reply exceptions that was not considered because *N.J.A.C.* 1:1-18.4 makes no provision for sur-replies to reply exceptions.

² As noted in the Initial Decision, Lakewood did not file a formal motion for emergent relief, which is required; however, given the importance of the issue, the ALJ treated the application as both a petition of appeal seeking final relief and as a motion for emergent relief.

³ Lakewood sought additional relief connected to the budget, which is outlined in the Initial Decision.

N.J. 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6. The ALJ also found that the underlying petition of appeal should be dismissed as moot because on July 1, 2019, the Commissioner certified to the State Treasurer that Lakewood required \$36,033,862 to enable it to meet its constitutional obligations, and the State Treasurer subsequently approved a loan in that amount to the district. Therefore, the ALJ granted the Department’s motion to dismiss the petition of appeal as moot.

In its exceptions, Lakewood maintains that the Initial Decision should be modified or rejected in a manner sufficient to rectify purported factual and legal deficiencies set forth in the Initial Decision. Lakewood first contends that the ALJ mischaracterized the relief sought, as the Initial Decision indicates that Lakewood sought \$30,000,000 in advance aid, when in fact Lakewood was seeking the \$30,000,000 in direct State aid that was originally promised by the Governor during the budget process.⁴

Lakewood also reiterated its arguments from the proceedings below, taking exception to the ALJ’s analysis of the *Crowe* factors that must be established for emergent relief to be granted. Lakewood emphasizes that its students will suffer irreparable harm without the additional State aid promised in the Governor’s budget because Lakewood lacks the financial resources to adopt a budget, as required by *N.J.S.A.* 18A:7F-5(c)⁵, sufficient to provide a thorough and efficient education for its students. Moreover, the failure to supply the monetary relief that was sought actually resulted in a break in services to students – a judicially recognized form of irreparable harm – when Lakewood ceased operations on July 1, 2019.

⁴ Direct aid and advance aid for school districts are discussed more fully by the ALJ on pages 3-4 of the Initial Decision.

⁵ *N.J.S.A.* 18A:7F-5(c), provides “[a]nnually, on or before March 4 ... each district board of education shall adopt, and submit to the Commissioner for approval, ... a budget that provides for a thorough and efficient education.”

Next, Lakewood contends that the ALJ erroneously concluded that Lakewood failed to demonstrate a well-settled right to the relief sought. New Jersey's Constitution and the case law clearly provide that it is the duty of the Commissioner to ensure that every school district provides a thorough and efficient school system. Lakewood argues that the Commissioner conceded Lakewood's well-settled right to the relief sought in his letter dated July 1, 2019. Likewise, with respect to a likelihood of success on the merits, based on the concessions in the July 1, 2019 letter, Lakewood contends that there is no dispute that Lakewood requires the funds at issue, and thus it has already prevailed on the merits.

Finally, Lakewood maintains that the children of Lakewood would suffer greater harm if they are not able to attend school than any potential harm that could come to the Department, including the potential chaos to the budget process that the ALJ wrongfully found in the Initial Decision. For the foregoing reasons, the ALJ's legal conclusions as to all four of the *Crowe* factors should be rejected and replaced with conclusions in Lakewood's favor considering the Department's written concessions and the ample legal support for Lakewood's position.

In its exceptions, Lakewood also argues that the ALJ improperly determined that the underlying claims are now moot. The removal of \$30,000,000 in State aid from the Governor's budget has not been resolved, but rather the Department now attempts to paper over the issue with a gargantuan loan. Since it is undisputed that Lakewood requires an additional \$36,000,000 in order to vindicate its students' constitutional rights, these monies must be in the form of direct State aid as originally proposed by the Governor, rather than a loan. Therefore, the Initial Decision's conclusion that this matter is moot should be rejected.⁶

⁶ All of the arguments advanced by Lakewood in its exceptions were fully considered by the Commissioner; however, not every argument merited discussion herein.

In reply, the Department asserts that the Initial Decision denying Lakewood's request for emergent relief and granting the Department's motion to dismiss should be adopted as the final decision in this matter. First, the Department contends that the ALJ properly found that Lakewood failed to establish any of the *Crowe* factors required for entry of emergent relief. Specifically, the Department stresses that Lakewood failed to timely approve its budget and ceased operations, which was a self-created emergency that does not constitute irreparable harm, particularly in light of Lakewood's admission that it had funds available to meet its obligations through March 2020. As the ALJ stated, "[t]he failure of the district to produce a budget by the statutory date does not create an emergency warranting immediate relief when it represents that it has funds to operate." (Initial Decision at 8). Additionally, Lakewood cannot choose to cease district operations over the State's political budget process, and then claim that any hypothetical harm to the students it serves is irreparable. The Department also addressed and replied to Lakewood's exceptions in connection with the remaining *Crowe* factors.

Regarding the viability of Lakewood's underlying claim, the Department agrees with the ALJ that, to the extent Lakewood is seeking consequential relief in the form of revenue to cover any alleged shortfalls in its FY2020 operating budget, the matter is moot. Despite Lakewood's contention that the matter is not moot because the original issue presented [is] the removal of \$30,000,000 in State aid from the Governor's budget, the ALJ correctly rejected Lakewood's efforts to have the OAL "interject itself into the political process of state budget approval." (Initial Decision at 11). The Department further argues that the Commissioner lacks the authority to provide Lakewood with aid that the Legislature did not appropriate. Lakewood has received aid in the amount that it requested in its petition, which are sufficient funds to provide its students with a thorough and efficient education. Therefore, the Commissioner

should adopt the ALJ's determination that Lakewood's claims are now moot and adopt the Initial Decision as the final decision in this matter.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons thoroughly set forth in the Initial Decision – that Lakewood has failed to demonstrate an entitlement to emergent relief pursuant to *Crowe, supra*. Notably, the essence of Lakewood's irreparable harm argument is that without the State aid promised in the Governor's budget, Lakewood was unable to comply with *N.J.S.A.* 18A:7F-5(c) as it lacked the financial resources to submit a budget sufficient to provide a thorough and efficient education. Lakewood further alleges that its inability to comply with *N.J.S.A.* 18A:7F-5(c), forced it to shut down services on July 1, 2019. Yet, Lakewood admittedly had the funds necessary to meet its obligations to provide a thorough and efficient education through March 2020, so clearly no financial shortfall was imminent. Moreover, on July 1, 2019, the Commissioner, consistent with his practice of prior years, certified to the State Treasurer that Lakewood required \$36,033,862 to enable it to meet its constitutional obligations. The Commissioner likewise agrees with the ALJ's determination that Lakewood did not establish any of the remaining *Crowe* factors.

The Commissioner is also in accord with the ALJ's determination that the underlying petition should be dismissed as moot. As discussed above, on July 1, 2019, the Commissioner certified to the State Treasurer that Lakewood required \$36,033,862 to meet its constitutional obligations. As the ALJ succinctly stated, “[t]he Commissioner has acted within the limits of his statutory authority to ensure that the district will have sufficient funding to provide its students [with] a thorough and efficient education. The State Treasurer has complied and has approved the loan to the district.” (Initial Decision at 11). Further, to the extent

Lakewood is seeking a political remedy – i.e. recourse for the disparity between the Governor’s recommended budget and the budget passed by the Legislature – this forum does not have any authority to rule on that request. Finally, the Commissioner is not persuaded that the exceptions filed by Lakewood dictate a different result, because the objections outlined therein were previously raised before the ALJ and were clearly taken into account by her in denying emergent relief and determining that Lakewood’s underlying claim is now moot. Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.⁷

IT IS SO ORDERED. ⁸

COMMISSIONER OF EDUCATION

Date of Decision: August 6, 2019

Date of Mailing: August 6, 2019

⁷ The Commissioner concurs with the ALJ’s determination that Lakewood’s request for records is too vague and that the request for costs is not available in this forum.

⁸ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
(INCORPORATING MOTION
FOR EMERGENT RELIEF)

OAL DKT. NO. EDU 08386-19

AGENCY DKT. NO. 142-6/19

**BOARD OF EDUCATION OF
LAKEWOOD TOWNSHIP,
(OCEAN COUNTY),**

Petitioner,

v.

**NEW JERSEY DEPARTMENT
OF EDUCATION,**

Respondent.

Michael I. Inzelbuch, Esq., appearing for petitioner

Lauren Jensen, Deputy Attorney General, appearing for respondent (Gurbir S. Grewal, Attorney General of New Jersey, attorney)

Record Closed: July 3, 2019

Decided: July 3, 2019

BEFORE **SUSAN M. SCAROLA**, ALJ (Ret., on recall):

STATEMENT OF THE CASE

Petitioner, the Board of Education of Lakewood Township (Board or district), filed this action against respondent, the New Jersey Department of Education (DOE), as an emergent-relief request and petition, including a request that the petition also be accepted as an application for emergent relief in lieu of a more formal petition. Lakewood seeks that the DOE provide any and all requested records/documents previously requested as to the [DOE] budget and the budget proceedings; that the DOE take any and all steps to provide necessary and definitive and secure funding to the Board; that the DOE take whatever action is required to allow the district to complete its budget; that the DOE immediately advise the Board that public-school children will be provided with a thorough and efficient education and the source of funding; that the DOE forego collecting any and all previous loans/State-aid advances as it knew or should have known that the monies were required to provide a thorough and efficient education and were not able to be paid back; that the DOE reimburse the Board for any and all costs and fees associated with the application; and any and all other relief deemed appropriate and just.

The DOE contends that the petition is procedurally deficient and also fails to state a claim on which relief can be granted, thereby requiring dismissal of the petition. Further as of July 1, 2019, when the Commissioner provided the state aid advance sought by the petitioner, the DOE contends the case is moot.

BACKGROUND AND PROCEDURAL HISTORY

On or about June 19, 2019, the petitioner filed an “Emergent Relief Request and Petition” with the DOE. The Commissioner of Education transmitted the matter as “emergent” to the Office of Administrative Law (OAL), where it was filed on June 20, 2019. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The petitioner supplemented its filing on June 26, 2019.

On June 26, 2019, the DOE filed a motion to dismiss. Oral argument was held on June 26, 2019.⁹ The respondent was given until July 1, 2019, to respond to the petitioner's supplemental exhibits, and the district was given until July 3, 2019, to respond, if necessary. On July 1, 2019, before the DOE could respond, the district filed two supplementary briefs and exhibits. The DOE was given additional time to respond to these new filings, and replied on July 1 and 2, 2019. The district filed additional supplementary letters and exhibits on July 1, 2, and 3, 2019.¹⁰ The record closed on July 3, 2019.¹¹

FACTS

Lakewood is a unique school district within New Jersey: it is comprised of approximately 6,000 enrolled public-school students, as well as approximately 31,000 non-public-school students. State aid to the district is based on the number of public-school students. This calculation impacts the amount of funds that remain available for the district to provide its enrolled students with a constitutionally-mandated thorough and efficient education, because Lakewood also has a statutory mandate to pay for the transportation and special-education costs for the non-public-school students.

Lakewood has been under the supervision of a State monitor since 2014. In addition to School Funding Reform Act funding, the district has received nearly \$47 million in advance State-aid payments since the 2015–2016 school year. Under the School District Fiscal Accountability Act (SDFAA), N.J.S.A. 18A:7A-54 to -60, the Commissioner of Education can recommend to the State Treasurer that an advance State-aid payment should be made to a school district for which a State monitor has been appointed. The Commissioner's recommendation is based upon whether the payment is necessary to ensure the provision of a thorough and efficient education. N.J.S.A. 18A:7A-56(a).

⁹ The district bused approximately 100 students, including young special-education students, to the hearing in Trenton. While hearings at the OAL are generally open to the public, and while the interest of the children is understandable, the presence of children is not necessary to impress upon this tribunal the seriousness of this matter.

¹⁰ These pleadings contained additional requests for relief not contained in the original application.

¹¹ See list of exhibits.

In 2015–2016, the Commissioner recommended, and the district received, \$4,500,000; in 2016–2017, the Commissioner recommended, and the district received, \$5,640,183; and in 2017–2018, the Commissioner recommended, and the district received, \$8,522,678.¹² Most recently, the Commissioner recommended, and the district received, approximately \$28,000,000 in advance aid for the 2018–2019 school year. Under the SDFAA, such aid is to be repaid by the school district through automatic reductions in the State aid provided to the school district in subsequent years. N.J.S.A. 18A:7A-56(b).

As the Governor prepared his proposed State budget for fiscal year 2019–2020, an additional \$30,000,000 (approximately) was earmarked for the district. However, by June 20, 2019, the Legislature had approved and submitted a budget to the Governor that eliminated this provision. Notwithstanding that these funds had already been removed from the legislatively approved budget (appropriations act), the Board approved its budget for 2019–2020 on June 24, 2019, but made it contingent upon the receipt of the “promised” funds.

The Board states that it requires the \$30,000,000 to meet its anticipated shortfall for school year 2019–2020 to meet its constitutional obligations to the public-school students to provide a thorough and efficient education, and to the non-public-school students for whom it is statutorily mandated to provide services.¹³ At oral argument, Lakewood represented that the relief it was seeking was an order compelling the Commissioner to write a letter to the State Treasurer to obtain the \$30,000,000 in advance aid the district claims is necessary to complete its budget for the upcoming school year, and for that amount to be forthcoming from the State.¹⁴

¹² For fiscal year ending June 30, 2018, the letter was not sent from the Commissioner to the Treasurer until November 11, 2017.

¹³ The basis for the \$30,000,000 in aid has not been disclosed as part of these proceedings other than that the state fiscal monitors employed by the district have certified that this amount is necessary to provide Lakewood students a thorough and efficient education.

¹⁴ Transcript at 67:

The Court: So what you’re saying is what you’re really looking for is another letter, like the four previous letters that have been sent from the Commissioner to the Treasurer saying “Lakewood needs X dollars because it needs it to get a T&E”?

Following oral argument on June 26, 2019, the Board advised that because the budget signed by the Governor on June 30, 2019, did not include the \$30,000,000, the budget the Board had approved earlier that week was null and void, the district had no operating budget in place, and it was shutting down services effective July 1, 2019.¹⁵ On July 1, 2019, the Board shut down the school district.

On July 2, 2019, the DOE advised that on July 1, 2019, the Commissioner had written a letter to the State Treasurer requesting that \$36,033,862 be provided to the district in the form of advance aid for school year 2019–2020, and that the State Treasurer had approved the request. The DOE urges that this matter is now moot and must be dismissed. The Board has not consented to the dismissal because the removal of the funds from the governor’s budget was “political” and the loan of approximately \$36,000,000 recommended by the Commissioner and approved by the State Treasurer is not the same as receiving \$30,000,000 in direct aid.

As of July 3, 2019, the district represents that it is the only one in the state without a certified budget and that it requires an additional \$16.9 million in aid for the coming school year.

LEGAL ANALYSIS AND CONCLUSION

I. Procedural Issues

The DOE has initially raised a procedural issue, namely, that the application that was filed is not in conformity with N.J.A.C. 6A:3-1.6(a), which provides:

Where the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the

Mr. Inzelbuch: Exactly.

¹⁵ The underlying “petition” indicated that Lakewood had sufficient funds to cover the school district through March 2020.

petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case.

Here, the petitioner filed an "Emergent Relief Request and Petition." If this application is considered as a "petition," then no motion seeking emergent relief accompanied it. If the application is considered as a "motion for emergent relief," then no underlying petition seeking final relief accompanied it.

The DOE is correct that procedurally the filing is deficient. However, 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 a formal motion for emergent relief, or filing supplemental pleadings.¹⁶

II. Emergent Issues

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:

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 Cty. Reg'l High Sch. Dist. & USA Elec. Contractors, Inc., 96 N.J.A.R.2d (EDU) 789, 790 (citing DEC Electric, Inc. v.

¹⁶ This accommodation, however, is not to be construed as precedent for accepting any other procedurally deficient filings.

S. Gloucester Cty. Reg'l High Sch. Dist. Bd. of Educ. & USA Elec. Contractors, Inc., OAL Dkt. No. EDU 10833-95, Order Denying Emergent Relief (December 6, 1995), adopted, Comm'r (December 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 has the burden to prove each of the Crowe factors by clear and convincing evidence. Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012); Waste Mgmt. of N.J. v. Union Cty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

Accordingly, each prong of the test must be analyzed:

1. Whether petitioner will suffer irreparable harm if the application is not granted.

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

The district alleges that its students will suffer irreparable harm if the relief sought is not granted, namely that the Commissioner be compelled to certify to the State Treasurer that it requires \$30,000,000 to meet its funding obligations.

Under N.J.S.A. 18A:7F-5(c), “[a]nnually, on or before March 4, or on or before March 20 in the case of a school district with an annual school election in November,

each district board of education shall adopt, and submit to the commissioner for approval, together with such supporting documentation as the commissioner may prescribe, a budget that provides for a thorough and efficient education.”¹⁷ Neither the statutes nor the regulations governing school budgets specifically address the consequences of a school district’s failure to adopt, or submit for approval, a budget within the prescribed time limits. In particular, and important to this matter, there is an absence of statutory or regulatory authority addressing whether a school district that fails to adopt a budget for an upcoming school year may, or must, shut down and cease all operations upon the start of the school year.

The Board did not approve its budget until the eleventh hour—and a contingent budget at that. By not having a budget, the Board is asserting that irreparable harm will occur because it cannot pay for services to its students. However, the petition alleged that the district has funds available to meet its obligations through March 2020, so no financial shortfall has yet occurred. While without a budget, the district may continue to operate if it so chooses. The district is seeking a remedy that is in the form of monetary relief. The failure of the district to produce a budget by the statutory date does not create an emergency warranting immediate relief when it represents that it has funds to operate.

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

The Board claims that the legal right underlying its claim is well settled, but it is not. The school funding formula has been found to be constitutional.¹⁸ The Board contends that the district cannot spend money if it does not have an approved budget in place for the 2019–2020 school year, but it has provided no law in support of that position except to note that as State law requires the State to shut down non-essential services if it does not have an approved budget, so must the district.

¹⁷ The date was adjusted by the Commissioner to March 12, 2019.

¹⁸ *Abbott ex rel. Abbott v. Burke*, 199 N.J. 140 (2009). In a separate action pending in the OAL, other petitioners allege that the school funding formula is unconstitutional as applied to Lakewood.

The regulations concerning the budget process were designed to give districts more than adequate time to arrange for budget review and approval with the DOE. Were the district's position correct, then districts acting with a monitor across the state could decline to adopt budgets in accordance with the regulations and then claim an emergency to compel the DOE to fund its services.

The district also claims that because the State monitors certified the amount necessary for the district to provide a thorough and efficient education, that the Commissioner should accept that amount without further review or analysis. But the Commissioner can review any requests for additional aid to cover budget deficiencies in order to determine whether a district is entitled to grants or loans. The Board has certainly availed itself of this procedure in the years preceding this application. Indeed, for fiscal year 2017-2018, the Board passed its budget but the requested letter from the Commissioner was not issued until November 2017.

Accordingly, this prong of Crowe has not been met.

3. Whether petitioner is likely to be successful on the merits of its claim.

The Board did not demonstrate at the emergent hearing that it is likely to prevail on the merits as the Commissioner had not yet determined whether to provide financial assistance to the district for the 2019–2020 school year. The district has not shown that relief is mandated in these circumstances. Moreover, no law or regulation requires the Commissioner to be ordered to grant additional aid to the district, although as the record closed, the DOE advised that the Commissioner did in fact send a letter to the State Treasurer to request that the advance State aid be sent to the district in the amount of \$36,033,862, and further, that the treasurer has approved the request.

4. Whether the petitioner will suffer greater harm than respondent if the requested relief is not granted.

No doubt the issues raised by the district are substantial, but the harm is not necessarily greater to the district than to the DOE. Indeed, if relief were granted here, it could act as precedent for other monitored districts facing a budgetary shortfall to withhold complying with the budget regulations and to file for orders to compel the Commissioner to provide funds to them. Such a result could cause chaos in the school funding and budget procedures. Moreover, the district has not demonstrated that it would suffer greater harm if the relief requested were not granted, although undoubtedly, children would suffer greater harm if they could not attend school.

Conclusion

After weighing the Crowe criteria, the district has not proven clearly and convincingly that it has satisfied Crowe's four prongs or that the district is entitled to emergent relief. Accordingly, the request for emergent relief must be denied because it is moot. The district received the relief it requested.

III. The Underlying "Petition"

The "petition" filed in this matter, while essentially seeking emergent relief, is also being treated as an original petition. (See Section I.) Here, the district seeks the following:

1. Compel the DOE to provide any and all requested records/documents previously requested as to the budget and the budget proceedings;
2. that the DOE take any and all steps to provide necessary and definitive and secure funding to the Board;

3. that the DOE take whatever action is required to allow the district to complete its budget;
4. that the DOE immediately advise the Board that public-school children will be provided with a thorough and efficient education and the source of funding;
5. that the DOE forego collecting any and all previous loans/State-aid advances as it knew or should have known that the monies were required to provide a thorough and efficient education and were not able to be paid back; and
6. that the DOE reimburse the Board for any and all costs and fees associated with the application; and any and all other relief deemed appropriate and just.

The DOE moves to dismiss the petition for failure to state a claim on which relief can be granted and, further, because the matter is moot. Indeed, this matter is now moot. On July 1, 2019, the Commissioner, consistent with his practice of prior years, certified to the State Treasurer that the Board required \$36,033,862 to meet its constitutional obligation. The Commissioner has acted within the limits of his statutory authority to ensure that the district will have sufficient funding to provide its students a thorough and efficient education. The State Treasurer has complied and has approved the loan to the district.¹⁹

The request for records is too vague for relief to be granted. The request for costs is not available in this forum. The remaining prayers for relief were resolved, as counsel for the Board represented at the hearing that the letter from the Commissioner that has now been provided would resolve this matter. The district would like this forum to interject itself into the political process of state budget approval and the disparity between the Governor's recommended budget and that passed by the Legislature (but later signed by the Governor). As the district seeks a political remedy, this forum is

¹⁹ The district argues that this advance should be an outright grant and not a loan.

without authority to rule on those issues. Accordingly, the matter is now moot. “Courts should not decide cases where judgment cannot grant relief,” or when the court’s decision can have no practical effect on the existing controversy. Plainfield v. Dep’t of Health & Senior Servs., 412 N.J. Super. 466, 483–84 (App. Div. 2010).

The petition shall be dismissed.

ORDER

The Board having failed to meet the four-pronged test of Crowe, the application for emergent relief is **DENIED**.

As to any underlying claims not disposed of in the emergent application, they are moot. Accordingly, the respondent’s motion to dismiss the petition is hereby **GRANTED**. The petition is **DISMISSED**.

I hereby **FILE** this order on application for emergent relief and this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This order on application for emergency relief and this initial 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. 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 and 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.

July 3, 2019

DATE



SUSAN M. SCAROLA, ALJ

(Ret., on recall)

Date Received at Agency:

Date Mailed to Parties:

SMS/cb

APPENDIX

WITNESSES

For petitioner:

None

For respondent:

None

EXHIBITS

For petitioner:

June 20, 2019	Petition with Exhibits A – E
June 25, 2019	Supplemented Petition with Exhibits A – L
June 26, 2019	Opposition to Motion to Dismiss
June 26, 2019	Email with Exhibits
June 27, 2019	Correspondence
June 27, 2019	Correspondence with Exhibits A – D
June 27, 2019	Correspondence with Flash Drive
June 28, 2019	Correspondence with Exhibits A – E
July 1, 2019	Correspondence with Exhibits
July 1, 2019	Correspondence with Exhibits and Flash Drive
July 1, 2019	Emails (3:28 p.m., 3:34 p.m. and 3:43 p.m.)
July 2, 2019	Correspondence with Certifications
July 2, 2019	Emails (1:24 p.m., 4:14 p.m. and 4:20 p.m.)
July 2, 2019	Correspondence with Exhibits
July 3, 2019	Correspondence with Exhibits A – I

For respondent:

June 25, 2019	Motion to Dismiss – Brief and Certification
July 1, 2019	Correspondence
July 2, 2019	Emails (11:57 a.m. and 1:22 p.m.)