

Board of Education of the Township of Ocean, Monmouth County,	:	
	:	
Petitioner,	:	Commissioner of Education
V.	:	
	:	Decision
Board of Education of the Village of Loch Arbour, Monmouth County, Dr. Lester Richens, and David Joye,	:	
	:	
Respondents.	:	
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Synopsis

This matter arose following the establishment in 2017 of the Loch Arbour School District (Loch Arbour), a non-operating district. The Commissioner approved the application of the Loch Arbour Township Board of Education to withdraw from the Ocean Township School District (OTSD) in December 2016. After the new school district was formed, OTSD challenged, *inter alia*, the methods by which Loch Arbour adopted its annual budget and performed required criminal background checks of board members, as well as its alleged failure to adopt bylaws. The within action was filed during the pendency of Ocean Township’s appeal of the dismissal of its challenge in Superior Court to the Commissioner’s approval of the new Loch Arbour district. The matter was transmitted to the Office of Administrative Law (OAL) for a hearing. OTSD filed a motion to amend its petition, which was opposed by the respondent; Loch Arbour filed a motion for summary decision.

The ALJ found, *inter alia*, that: given the circumstances of this matter, Loch Arbour timely adopted its school budget following the April 2017 referendum vote to establish the new district; the actions taken by the new board of education were valid despite the Board members’ failure to complete their criminal history background checks prior to the Board’s initial meeting; there was no violation of *N.J.S.A.* 18A:12-1.2 because Loch Arbour requested background checks for the newly appointed Board members within the required 30-day timeframe; further, the new appointees submitted affidavits, per guidance from the Department, stating that they had not been convicted of a disqualifying crime; and Loch Arbour properly acted as a school board without first adopting bylaws because *N.J.S.A.* 18A:11-1 does not require a board to adopt its own rules and bylaws, especially not prior to making decisions as a board. Accordingly, the ALJ denied OTSD’s motion to amend its petition, and granted Loch Arbour’s motion for summary decision. The petition was dismissed.

The Commissioner found, *inter alia*, that summary decision was properly granted to Loch Arbour, and he adopted the Initial Decision of the OAL with modification regarding the ALJ’s finding that school boards do not need to adopt their own rules, bylaws, and policies. The Commissioner noted that *N.J.S.A.* 18A:11-1 is abundantly clear that a board of education must make, amend and repeal rules for its governance; however, nothing in the statute requires that such rule making must be a board’s first order of business, nor that board actions taken prior to the adoption of such rules are invalid. Accordingly, the Commissioner granted summary decision to Loch Arbour, and dismissed the petition with prejudice.

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.

Board of Education of the Township of Ocean, Monmouth County,	:	
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Commissioner has also considered petitioner’s exceptions, and respondent Loch Arbour Board of Education’s (Loch Arbour) reply thereto, filed pursuant to *N.J.A.C.* 1:1-18.4.¹ In this matter, petitioner filed a petition of appeal alleging various violations of the school laws of the State, including statutes governing board of education budgets, actions, and operations.² Specifically, in Count I, petitioner argues that respondent Loch Arbour violated *N.J.S.A.* 18A:7F-5, 7F-6, and *N.J.S.A.* 18A:22-32, by failing to timely adopt its preliminary and final budgets. Petitioner further argues that the New Jersey Department of Education (Department) violated said statutes by approving Loch Arbour’s budget. In Count II, petitioner alleges that prior to assuming their roles and taking board action, Loch Arbour board members failed to complete their criminal history background checks in violation of *N.J.S.A.* 18A:12-1 et

¹ The Commissioner will not reiterate the procedural and factual history of the case, as the relevant facts and procedural history is set forth in the Initial Decision and supported by the ample record in this matter.

² The Commissioner notes that the petition of appeal also included allegations implicating the Open Public Meetings Act (OPMA), which is indisputably beyond the Commissioner’s purview.

seq. In Count III, petitioner alleges that the Loch Arbour board members failed to adopt bylaws, policies and regulations before taking action as a board, and therefore violated *N.J.S.A.* 18A:11-1. In Count IV, petitioner argues that the Department approved budgets for petitioner and Loch Arbour with conflicting tax levies, and therefore Loch Arbour is required to pay its share of school taxes to petitioner for the 2017-2018 school year.

The ALJ found that Loch Arbour timely adopted its school budget in compliance with Title 18A. The ALJ reasoned that Loch Arbour would not have been able to meet the March 20, 2017 deadline –pursuant to *N.J.S.A.* 18A:7F-5– for adopting and submitting its budget to the Commissioner for approval since it did not become an independent, non-operating school district until after the April 4, 2017 referendum vote. The ALJ explained that Loch Arbour adopted its preliminary budget on May 1, 2017, and submitted it to the Department for approval on May 2, 2017, which was approved on May 4, 2017; subsequently, Loch Arbour adopted its final budget at a board meeting on May 8, 2017, prior to the May 14 deadline set forth in *N.J.S.A.* 18A:22-32.³

The ALJ further found that Loch Arbour validly operated as a board despite the new Board members’ failure to complete their criminal history background checks prior to its initial meeting. The ALJ reasoned that Loch Arbour did not violate *N.J.S.A.* 18A:12-1.2 because it requested background checks for its newly appointed Board members within the 30-day time frame and, based upon guidance from the Department, the newly appointed Board members submitted affidavits stating that they had not been convicted of a disqualifying crime. The ALJ held that board members are not required to complete a background check prior to assuming

³ The ALJ noted that the budget submission deadline is “tentative” as evidenced by petitioner’s untimely submission and adoption of its own budget.

office because *N.J.S.A.* 18A:12-2.1 only requires that board members – before entering upon the duties of their office – take an oath that they are not disqualified from serving in the role.

Lastly, the ALJ found that Loch Arbour properly acted as a school board without first adopting bylaws because *N.J.S.A.* 18A:11-1 does not require a board to adopt its own rules and bylaws, especially not prior to making decisions as a board.

In its exceptions, petitioner sets forth the following as errors of fact: 1) The ALJ's finding that the Commissioner "changed the budgetary due date" for Loch Arbour; 2) The ALJ's note that even though the May 2017 board meetings were in violation of OPMA, the Superior Court determined that Loch Arbour corrected its mistake at its June 19, 2017 public meeting when it retroactively ratified both the initial and final budgets; 3) The ALJ's reliance on an undated New Jersey School Boards Association press release and an unauthenticated statement of a Department employee that board members were permitted to submit affidavits and take oath of office pending the background checks; and 4) the ALJ's failure to making findings of fact pertaining to Count IV. Petitioner set forth the following as errors of law: 1) The ALJ's interpretation of *N.J.S.A.* 18A:11-1; and 2) The ALJ's granting of summary decision in favor of respondents when there are material facts in dispute and fact-finding has not been completed.

As a preliminary matter, the Commissioner finds that although the ALJ did not address Count IV in the Initial Decision, further fact-finding is unnecessary as the Commissioner is without jurisdiction to grant the relief sought by petitioner in Count IV. The Commissioner further finds that summary decision was properly granted because the material facts relating to Counts I through III are not in dispute, and the issues raised can be decided as a matter of law.

The ALJ's remaining factual "errors" have no impact on the outcome of this matter. First, the Commissioner clarifies that implicit in the Department's acceptance and

approval of Loch Arbour’s submission of its budget is the fact that the Commissioner extended the deadline for Loch Arbour under the circumstances of the case. Therefore, the ALJ’s characterization of the Department allowing Loch Arbour to submit its budget outside of the deadline as “chang[ing] the budgetary due date for [Loch Arbour],” is not an error of fact. Notably, *N.J.S.A.* 18A:7F-5 allows the Commissioner to adjust the date for the submission of district budgets. In this case – where the district’s budget would not have been available by the March 20, 2017 deadline – the Department’s acceptance and approval of the budget in May 2017, was proper pursuant to *N.J.S.A.* 18A:7F-5.

Second, the ALJ’s finding that the Superior Court determined that Loch Arbour corrected its mistake at its June 19, 2017, public meeting when it retroactively ratified both the initial and final budget, is not an “error”. The Commissioner clarifies that the Superior Court found that the June 19, 2017 meeting could satisfy the curative provision of OPMA, but opined that the Commissioner has the ultimate authority to accept the June 19, 2017 action or hold Loch Arbour to the “May 20th” [*sic*] deadline. In other words, the Superior Court’s determination is that the June 19, 2017 meeting cures the OPMA violations if the Commissioner waived the May 14, 2017 deadline and accepted Loch Arbour’s board action on June 19, 2017. Based on the facts and circumstances of this case and Loch Arbour’s curative action, the Commissioner accepts the June 19, 2017 board action.

Third, the ALJ’s reliance on alleged unauthenticated documents and statements has no impact on the outcome of this case because the plain language of *N.J.S.A.* 18A:12-1.2 and 2.1, read in conjunction with *N.J.S.A.* 18A:10-3, demonstrates that petitioner’s narrow reading of *N.J.S.A.* 18A:12-1 –that board members must *complete* a criminal history background check before taking the oath of office and conducting board business– is incorrect. *N.J.S.A.* 18A:12-

1.2(a) provides in relevant part that *within* 30 days of election or appointment, each board member “shall undergo a criminal history background investigation for the purpose of ensuring that the member is not disqualified. . .” Nothing in the statute requires that the board members *complete* the criminal history background check prior to being sworn in; the statute merely requires that the board member submit to a criminal history background check within 30 days of election or appointment. Significantly, *N.J.S.A.* 18A:10-3 – which sets forth the requirements for annual reorganization of the boards – requires that the reorganization meeting take place “on any day of the first or second week following the April school election.” Therefore, it is not feasible for board members elected or appointed in April to complete background checks within 30 days of being sworn in and conducting the organization meeting. In this matter, the board members submitted background checks within 30 days of appointment and prior to the first Board meeting, and further submitted affidavits to the Department – consistent with the Department’s policy and past practice – certifying that they were not convicted of any of the disqualifying crimes enumerated in *N.J.S.A.* 18A:12-1.⁴

Petitioner’s remaining “error” of law pertains to *N.J.S.A.* 18A:11-1. Petitioner argues that a board of education must adopt bylaws before it can validly act as a board. *N.J.S.A.* 18A:11-1(c) provides in pertinent part that a board of education shall “make, amend and repeal rules, not inconsistent with this title or with the rules of the state board, for its own government and the transaction of its business and for the government and management of

⁴ Submission of affidavits pending the criminal history background check for board members is Department practice and policy for April elections or appointments. This policy was temporarily extended to apply to officials elected in November 2016 for the January 2017 reorganization meeting due to reports of vendor delays in processing the background checks. The temporary application of the policy to the November 2016 election was then rescinded in March 2017 since the delay and the timeframe no longer applied. The Department did not rescind the policy allowing submission of affidavits for April elections/appointments. Petitioner improperly relies on the March 2017 rescission of the temporary application of the policy to the November 2016 elections to argue that the rescission included April, when there is no evidence that the Department changed its policy regarding the April elections.

the public schools . . .” The ALJ has interpreted this to mean that a school board is not required to adopt its own rules, and certainly not prior to making decisions as a board. The Commissioner disagrees with the ALJ to the extent that the ALJ held that school boards do not need to adopt their own rules, bylaws and policies. The statute is abundantly clear that the board of education needs to make, amend and repeal rules for governance; however, nothing in the statute requires that making and adopting rules, bylaws and/or policies is the first order of business and that the board cannot act validly without first having done so. It is also simply not logical or reasonable to expect a board of education to refrain from taking any action during its first or second meeting because it has not adopted rules. This does not mean that a board of education should indefinitely operate without rules. In this case, it was necessary for Loch Arbour to take certain actions, *i.e.*, adopt its budget, which could not be delayed. Therefore, while the board of education does not need to adopt rules as its first act of business, as a matter of practice, the board should adopt rules early in its organization and must not operate indefinitely without adopting rules, policies and bylaws.

Accordingly, the Commissioner adopts the Initial Decision – as modified herein – and the petition of appeal is hereby dismissed with prejudice.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: January 25, 2019

Date of Mailing: January 25, 2019

⁵ Pursuant to P.L. 2008, c 36 (*N.J.S.A.* 18A:6-9.1), Commissioner decisions are appealable to the Superior Court, Appellate Division.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION GRANTING
RESPONDENT'S MOTION
FOR SUMMARY DECISION
AND DENYING PETITIONER'S
MOTION TO AMEND ITS
PETITION**

OAL DKT. NO.: EDU 16799-17

AGENCY NO.: 213-9/17

BOARD OF EDUCATION OF THE TOWNSHIP OF OCEAN,

Petitioner,

v.

**BOARD OF EDUCATION OF THE VILLAGE OF LOCH
ARBOUR, DR. LESTER RICHENS, ECS, AND DAVID
JOYE, ECBA,**

Respondent.

Michael Gross, Esq., for petitioner Ocean Township Board of Education (Kenny,
Gross, Kovats and Parton, attorneys)

James M. Hirshorn, Esq., for respondent Loch Arbour Board of Education (Sills
Cummis & Gross, P.C., attorneys)

Record Closed: August 16, 2018

Decision: October 29, 2018

BEFORE **SARAH G. CROWLEY**, ALJ:

PROCEDURAL HISTORY

The Commissioner of Education approved the application of Loch Arbour Township Board of Education (LABOE) to withdrawal from the Ocean Township School District OTSD in December 2016. After the new school district was set up, OTSD filed the instant petition with the Department of Education challenging LABOE's budgetary re-adoption, non-completion of criminal background checks, and failure to adopt bylaws.⁶ The Department transmitted the matter to the Office of Administrative Law (OAL) as a contested case. OTSD filed a motion to amend its petition, and LABOE filed a cross motion for summary decision and opposition to the motion to amend the petition. Oral Argument was heard by the parties on August 16, 2018, and the record closed at that time.

FACTUAL BACKGROUND AND SUMMARY OF CASE

This case arises out of the LABOE's petition to the Commissioner of Education to withdraw from Ocean Township School District, and its subsequent withdrawal from OTSD. On June 1, 2016, LABOE petitioned the Commissioner to submit to the voters of Loch Arbour the issue of withdrawing from Ocean Township School District. The Commissioner granted the petition on December 22, 2016. OTSD requested a stay in Superior Court, but the request was denied. On March 8, 2017, OTSD filed an emergent motion with the Appellate Division to stay the Commissioner's December 2016 decision, citing irreparable harm concerning the OTSD 2017-2018, budget and students being placed in send/receive relationships with other districts. This motion was also denied.

On April 4, 2017, Loch Arbour residents voted to approve the withdrawal from OTSD. April 10, 2017, a new LABOE was appointed by the Mayor of Loch Arbour. Loch Arbour board members submitted background check applications on April 26, 2017. The New Jersey Department of Education permitted school board members appointed in April to take office on May 1, prior to completing criminal history checks.

⁶ The Commissioner approval was challenged in the Superior Court and the dismissal of that action is currently on appeal.

Investigator James Scarangelli of the Department's Criminal History Review Unit informed Loch Arbour Mayor, Paul Fernicola, that members could be sworn into office if each submitted an affidavit stating he/she had not been convicted of any crime enumerated in N.J.S.A. 18A:12-1. Paul Fernicola Cert., ¶ 6. All five members submitted an affidavit, and were sworn in as board members Simons Cert., ¶ 6.

On May 1, 2018, LABOE had its first organizational meeting, during which official positions were appointed, send/receive relationships with West Long Branch and Shore Regional school districts were discussed, and a tentative budget was approved. LABOE did not adopt bylaws, rules, or regulations at this initial meeting. On May 8, 2018, LABOE held a special meeting to finalize the budget. Notice for both meetings was provided to Coaster and Asbury Park Press via e-mail from the board's clerk, Marilyn Simons, stating notice was sent only for informational purposes and was not to be published.

On May 30, 2017, OTSD filed a complaint in Superior Court challenging LABOE's budgetary actions at the two May meetings on the basis that these meetings violated the Open Public Meetings Act (OPMA) because adequate notice was not provided. On June 19, 2017, while the Superior Court case was pending, the LABOE held another meeting to readopt its tentative and final budgets. Notice for this meeting was provided to and published by Asbury Park Press and the Coaster, in compliance with the OPMA. On August 7, 2017, Superior Court Judge Lisa Thorton dismissed OTSD's complaint ruling that LABOE corrected its OPMA violations at the June 19, 2017, meeting when the board retroactively adopted its budgets. Judge Thorton dismissed the remaining counts two-five of the complaint, those dealing with various violations of Title 18A and demanding judgment against the Department of Education, due to lack of jurisdiction.

The above **FACTS** are undisputed and are **FOUND** as **FACTS**.

LEGAL ANALYSIS

Summary decision is the administrative counterpart to summary judgment in the judicial arena. N.J.A.C. 1:1-12.5 provides that summary decision should be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. To defeat a summary decision motion, the adverse party must respond by affidavits setting forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary hearing. Use of the summary procedure is aimed at the swift uncovering of the merits and either their effective disposition or their advancement toward a prompt resolution by trial. Judson v. Peoples Bank and Trust Co. of Wesfield, 17 N.J. 67, 74 (1954).

The New Jersey Supreme Court encouraged trial-level courts not to refrain from granting summary judgment when the proper circumstances present themselves. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 541 (1995). While cautioning that a judge should not weigh the truth of the evidence or resolve factual disputes at this early stage of the proceedings, the Court clarified that when the evidence is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment. Id. at 540. Appellate courts recognize that “[a]n evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts.” Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 120 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996).

OTSD alleges that LABOE failed to comply with the Department of Education’s budget submission deadline pursuant to N.J.S.A. 18A:7F-5(c), which states that each district board of education shall adopt a tentative budget on or before March 4 or March 20, depending on when school elections take place, to submit to the Commissioner for approval. However, the statute further states, “the commissioner may adjust the date for the submission of district budgets if the commissioner determines that the availability of preliminary aid numbers for the subsequent school year warrants such adjustment.” Thus, if school aid data is unavailable before tentative budgets are due, the commissioner may change the date of submission to conform with the specific situation.

Ibid.; See, e.g. Abbott v. Burke, 206 N.J. 332, 418 (the Comm’r of Education adjusted budgetary due dates because of the governor’s late budget press conference release).

The submission of a tentative budget is the first step in the school budgetary process. The proposed budget is reviewed by the Executive County Superintendent and, if approved, is sent back to the board for final adoption. Abbott, 206 N.J. at 417. Furthermore, N.J.S.A. 18A:22-32(b) permits a type II district that has “no board of school estimate” to determine its school budget by May 14 by a majority vote of its full board membership.⁷

LABOE timely adopted its 2017-2018 school budget by readopting its actions at the June 19, 2017, meeting. As stated above, N.J.S.A. 18A:7F-5(c) allows the Commissioner to adjust budget deadlines when preliminary aid numbers are unavailable. In this instance, LABOE formed its board of education after the March 20 tentative deadline. The vote regarding whether Loch Arbour should form an independent district was not even decided until April 4, 2017, well after the March budgets were due. Therefore, LABOE could not have submitted a tentative budget in compliance with the N.J.S.A. 18A:7F-5 deadlines. Moreover, the tentative budget submission date is not a firm date, as evidenced by the fact that OTSD failed to submit its budget on time and adopted its budget one day after the statutory due date. Here, the Commissioner utilized her power under N.J.S.A. 18A:7F-5(c) and changed the budgetary due date for LABOE, and ultimately approved the board’s budget on May 4, 2017.

In accordance with N.J.S.A. 18A:22-32(b), LABOE submitted its initial budget to the Executive County Superintendent on May 2, 2017, and he approved the budget on May 4, 2017. LABOE then held a special meeting on May 8, 2017 to adopt its final

⁷ Type II districts are classified as a school district “in a municipality other than a city, every consolidated local school district, and every regional school district, pursuant to N.J.S.A. 18A: 9-3, where board member are elected or appointed by the municipality, as applicable, and where in a school district without a board of school estimate the district board of education issues school bonds for school district capital projects, pursuant to N.J.S.A. 18A:24-12. N.J.A.C. 6A: 26-1.2. Loch Arbour qualifies as a type II district because it is considered a village, rather than a city, and its school board was appointed by the municipality. LABOE was without a board of school estimate until its first meeting on May 1, 2017, after the April tentative budgets were due.

budget before the May 14 deadline. The Loch Arbour school board retroactively ratified both the initial and final budget on June 19, 2017. Thus, LABOE fully complied with the statutory deadline of May 14, 2017.

OTSD also argues that LABOE improperly adopted its school budgets because the May 1 and 8, 2017 meetings violated the OPMA, and therefore any actions taken at the meetings are void. Although the May meetings violated the OPMA because adequate notice was not provided to the public, the Superior Court determined that LABOE properly corrected its mistakes at a June 19, 2017 meeting by reviewing at ratifying its prior actions de novo. Thus, the Court determined that the May 1 and May 8, 2017 dates stand as when the initial and final budgets were adopted. As noted above, it was the decision of the Department to approve or reject LABOE's initial budget and the Department approved it. OTSD argues that LABOE did not properly establish its school board because members failed to have completed background checks prior to holding its first meeting on May 1, 2017. N.J.S.A. 18A:12-1 disqualifies from membership on school boards individuals who have committed any crime enumerated in the statute. N.J.S.A. 18A:12-1.2(a) specifically requires newly appointed members to undergo a criminal history background check within thirty days of their election or appointment. However, the statute does not require completion of a background check prior to acting as a school board. Rather, the statute simply requires that new members submit to a background check within thirty days of appointment. The legislature's comment to N.J.S.A. 18A:12-1.2 supports this view. The comment states that a school board member's only requirement *prior* to assuming office is to take an oath swearing he/she is not disqualified due to a conviction of a disqualifying crime. N.J. Senate Education Comm. Statement to S. 295 (Oct. 14, 2010), emphasis added. The comment further explains that each member must "within 30 days of election or appointment. . . undergo a criminal background check *for the purpose of ensuring that member is not disqualified* from membership due to a conviction of one of the specified crimes or offenses." Ibid., emphasis added. The legislature clearly differentiated between what is required prior to taking office and what must be completed within a particular time frame after assuming office. Nowhere in the statute nor in the Senate's commentary does it

specify that completion of a criminal background check is required prior to taking action as a board member.

The Loch Arbour board was appointed on April 10, 2017. LABOE requested background checks on April 26, 2017 for its newly appointed members. This request was made within thirty days of the Board's appointment and satisfies N.J.S.A. 18A:12-1.2(a). Additionally, each of the five board members submitted affidavits before the initial meeting, certifying that they had not been convicted of any of the crimes enumerated in N.J.S.A. 18A:12-1. Background checks were completed on May 10, 2017 and confirmed the members' affidavits stating that none had been convicted of a disqualifying crime. Each LABOE member substantially complied with both N.J.S.A. 18A:12-1.2(a) and the legislature's purpose for requesting criminal background checks.

In addition to complying with the statute, LABOE acted in accordance with the Department of Education's instructions. On April 28, 2017, James Scarangelli of the Department's Criminal History Review Unit advised the board that certifications affirming members had not been convicted of a disqualifying crime were sufficient for members to hold a meeting on May 1, 2017, prior to background checks being completed. Paul Fernicola Cert. ¶ 6. The New Jersey School Board Association also reported the Department's position, releasing a statement which said,

School board members elected to office for the first time on April 25 will have thirty days from the certification of election results (May 1) to complete criminal background checks. However, they may be sworn into office at the board's organization meeting, even if their criminal background checks are not completed, according to the New Jersey Department of Education's Criminal History Review Unit. Paul Fernicola Cert., Exh. 4.

LABOE properly followed the Department's instructions regarding criminal history checks.

The requirement for a properly constituted Board of Education are set forth in N.J.S.A. 18A:11-1, which provides as follows:

The board shall—

- a. Adopt an official seal;
- b. Enforce the rules of the state board;
- c. Make, amend and repeal rules, not inconsistent with this title or with the rules of the state board, for its own government and the transaction of its business and for the government and management of the public schools and public school property of the district and for the employment, regulation of conduct and discharge of its employees, subject, where applicable, to the provisions of Title 11, Civil Service, of the Revised Statutes; and
- d. Perform all acts and do all things, consistent with law and the rules of the state board, necessary for the lawful and proper conduct, equipment and maintenance of the public schools of the district.

OTSD argues that N.J.S.A. 18A:11-1(c) requires school boards to adopt bylaws, and a board cannot validly act until it has done so. LABOE argues that N.J.S.A. 18A:11-1(c) does not require a board to adopt bylaws, but rather, permits a board to adopt its own rules not inconsistent with the rules of the state board. The plain language of the statute does not provide sufficient information to determine its exact meaning, rather its ambiguous wording allows N.J.S.A. 18A:11-1(c) to be susceptible to dual meanings – either that a board must adopt its own rules that do not conflict with state regulations or if a board chooses to adopt rules, those rules must not conflict with state regulations. Despite this ambiguity, nowhere in the statutory language of N.J.S.A. 18A:11-1 does it say nor imply that the first thing a school board must do is adopt bylaws.

Both the agency and the legislature have been silent on this particular issue and therefore, provide little guidance as to which interpretation correctly corresponds with the law. Nor has a court specifically addressed whether N.J.S.A. 18A:11-1(c) requires boards to adopt rules or bylaws prior to taking any official action, however, the decisions that are available support local school boards' broad authority to carry out their responsibilities so long as their actions are not inconsistent with statute or state regulations. See e.g. Board of Education v. Union City, 112 N.J. Super. 493 (Law Div. 1970), *aff'd*, 118 N.J. Super. 435 (App. Div. 1972) (“Board of education is an independent corporate entity which manages the operation of the school system substantially free of control by the local governing body pursuant to N.J. Stat. Ann. §§

18A:10-1 and 18A:11-1 et seq.”); Porcelli v. Titus, 108 N.J. Super. 301 (App. Div. 1969), certif. denied, 55 N.J. 310 (1970) (“the broad discretionary powers vested in such boards with respect to the day-to-day functioning of the schools within their jurisdiction as provided for at N.J. Stat. Ann. § 18A:11-1”).

Though the goal of interpreting statutes is to identify the intent of the legislature, rules of statutory construction are subordinate to the proposition that interpretation of a statute should not lead to absurd results. State v. Provenzano, 34 N.J. 318, 322 (1961). The interpretation argued by OTSD would lead to an absurd result. If a school board cannot take any action without first creating bylaws, then it cannot act in accordance with the other provisions of N.J.S.A. 18A: 11-1. Importantly, a board would not be able to “Perform all acts and do all things, consistent with law and the rules of the state board, necessary for the lawful and proper conduct, equipment and maintenance of the public schools of the district”, including adopt a budget within statutory deadlines. N.J.S.A. 18A: 11-1(d). There are such situations, as here, where a school board may need to act in a short amount of time due to late elections and instituting its own bylaws prior to taking any other official action does not allow a board to do that. Taken as a whole, the statute supports the view that school boards must comply with the existing state board rules.

LABOE’s interpretation of N.J.S.A. 18A:11-1 is consistent with the language in the statute. As Union City and Porcelli convey, boards have broad discretion to manage school affairs consistent with other state law.⁸ Union City, 112 N.J. Super. 493; Porcelli, 108 N.J. Super. 301. These cases show that the most important aspect of bylaws is creating regulations consistent with existing laws. While it may be common practice among school boards to adopt its own bylaws, as OTSD asserts, LABOE is correct in stating that adoption of its own rules is not required and is certainly not required prior to making decisions as a board. LABOE’s interpretation allows for school boards to obey all sections of N.J.S.A. 18A:11-1 and does not lead to an absurd result.

⁸ Other case law addressing issues with N.J.S.A. 18A:11-1 state that once a school board has adopted bylaws, it must adhere to said rules until a quorum has voted to change the bylaws. See e.g., Matawan Regional Teachers Ass’n v. Matawan-Aberdeen Regional School Dist. Bd. of Educ., 223 N.J. Super. 504 (App. Div. 1988). However, that is not the issue in this case, as LABOE has not adopted any bylaws, rules or regulations.

CONCLUSION

Accordingly, I **CONCLUDE** that the that LABOE timely adopted its school budget in compliance with Title 18A, validly operated as a board despite incomplete criminal background checks prior to its initial meeting, and properly acted as a school board without first adopting bylaws. Therefore, I hereby deny OTSD's motion to amend its petition and grant LABOE's motion for summary decision.

ORDER

I hereby **ORDER** that LABOE's Motion for Summary Decision is hereby **GRANTED** and the Petition is hereby **DISMISSED**. I further **ORDER** that the motion to amend the petition is **DENIED**.

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.



October 29, 2018 _____

DATE

SARAH G. CROWLEY, ALJ

Date Received at Agency:

October 29, 2018 (emailed) _____

Date Mailed to Parties:

SGC/mel