

IN THE MATTER OF THE APPLICATION :  
OF THE BOARD OF EDUCATION OF THE :  
BOROUGH OF FREEHOLD, : COMMISSIONER OF EDUCATION  
MONMOUTH COUNTY, FOR AN ORDER : DECISION  
DIRECTING ISSUANCE OF BONDS :  
PURSUANT TO *N.J.S.A.* 18A:7G-12. :

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SYNOPSIS

Petitioning Board of Education of the Borough of Freehold sought to compel the Commissioner to direct the issuance of school bonds for a capital improvement project in order to fulfill the Borough's constitutional mandate to provide a thorough and efficient public education to its students. The action was taken pursuant to the Educational Facilities Construction and Financing Act (EFCFA), *N.J.S.A.* 18A:7G-1 to 48, which directs that a school district that has unsuccessfully sought to obtain voter approval for school facilities construction twice in a three-year period may apply to the Commissioner for approval to issue school bonds for the local share of the project. In the instant case, the Board seeks to have the Commissioner direct the issuance of bonds after two referenda failed to obtain voter approval. The Department's Office of School Facilities (OSF) reviewed the petition, and determined that it contained the information necessary for the Board to seek an Order from the Commissioner directing the issuance of bonds.

The ALJ found, *inter alia*, that: compelling evidence has established that the Board's Park Avenue Elementary/Middle School and the Learning Center are severely overcrowded; this overcrowding seriously impedes the ability of both general education and special education students to access their education and to achieve core curriculum objectives; despite the concern and resentment of some residents over the anticipated expense of the planned facility improvements, most of the residents acknowledge the serious overcrowding problem in the borough schools, and the negative effect this has had on the children of the district; New Jersey's courts have long upheld the State's responsibility to ensure that children receive a thorough and efficient education as guaranteed under the State constitution; and *N.J.S.A.* 18A:7G-12 provides for the Commissioner's review and approval of school facilities projects preliminary to his authorization of the issuance of bonds. Accordingly, the ALJ concluded that capital improvements to Freehold schools are necessary, and that the Commissioner should permit the Borough to issue bonds in the amount of \$32,902,400.

Upon review, the Commissioner concurred with the ALJ's findings, and adopted her comprehensive Report and Recommendation as the final decision in this matter.

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 4, 2016

OAL DKT. NO. EDU 8980-15  
AGENCY DKT. NO. 42-3/15

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The record of this matter, and the Report and Recommendation of the Administrative Law Judge (ALJ) issued by the Office of Administrative Law following hearing<sup>1</sup> pursuant to *N.J.S.A.* 52:14F-5(o), have been reviewed. No comments were filed by the Board of Education (Board) pursuant to *N.J.A.C.* 6A:26-3.7(h)3i.

Upon review, the Commissioner concurs with the ALJ that the Board has demonstrated the necessity of its proposed project for the provision of a thorough and efficient system of education in the district. Additionally, the Commissioner finds that the proposed project's scope and costs are sufficiently narrowly tailored to protect the interests of taxpayers while ensuring that the Borough's students will receive the thorough and efficient education to which they are constitutionally entitled. For these reasons, the ALJ's comprehensive Report and Recommendation is adopted as the final decision in this matter.

The Commissioner emphasizes that this decision to authorize the issuance of bonds outside of a referendum represents an extraordinary remedy that has been exercised only

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<sup>1</sup> The record contains transcripts of the public hearings held September 24 and September 25, 2015 at Park Avenue School in Freehold Borough.

after the development of a full and complete record clearly demonstrating that the failure to act will deprive children in this community of the educational opportunity that they will need to succeed in life. All such petitions for relief must be subjected to a high level of scrutiny and, for this reason, the Commissioner cautions that the facts and application of law are highly specific to this situation and not broadly applicable to other districts.

Additionally, in order to alleviate the impact of this decision on taxpayers of the district, I will treat the district's Petition as a timely application for a Section 15 school facilities grant pursuant to *N.J.A.C.* 6A:26-18.1 through 18.4 for the proposed new construction. Judge Scarola's findings make clear that the proposed new construction would qualify for funding pursuant to *N.J.A.C.* 6A:26-18.1, and thus, the district is awarded a grant in the amount equal to all costs associated with the proposed new construction. With respect to the proposed rehabilitation, the district is authorized to issue bonds, pursuant to *N.J.S.A.* 18A:7G-9, for the local share of the total cost of the rehabilitation.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: August 4, 2016

Date of Mailing: August 4, 2016

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<sup>2</sup> Final determinations of the Commissioner 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), and in accordance with applicable court rules.