

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, Office of
Fiscal Accountability and Compliance and Louise
Davis,

Respondents.

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 and considered.

Upon 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, 132-34 (1982), and codified at N.J.A.C. 6A:3-1.6.

Accordingly, the recommended Order denying petitioner's application for emergent relief is adopted for the reasons stated therein. This matter shall continue at the OAL with such proceedings as the parties and the ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.


ASSISTANT COMMISSIONER OF EDUCATION¹

Date of Decision: July 7, 2025
Date of Mailing: July 7, 2025

¹ Pursuant to N.J.S.A. 18A:4-34, this matter has been delegated to Assistant Commissioner Kathleen Ehling.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON MOTION
FOR EMERGENT RELIEF

OAL DKT. NO. EDU 09776-25
AGENCY DKT. 67-3/25

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

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF EDUCATION,
OFFICE OF FISCAL ACCOUNTABILITY AND
COMPLIANCE, AND LOUISE DAVIS,
STATE MONITOR,**

Respondents.

Michael Freeman, Esq. (Genova Burns, LLC, attorneys); **Edward J. Dauber, Esq.** (CSG Law); **Matthew Boxer, Esq.** (Lowenstein Sandler, LLP), for petitioner Board of Education for the Township of Lakewood¹

Ryan Silver and Amna Toor, Deputy Attorneys General (Matthew J. Platkin, Attorney General of New Jersey, attorney), for respondent New Jersey

¹ At the conclusion of oral argument, respondent OFAC, joined by the State monitor, objected to the appearance of counsel for the petitioner, particularly the firm of Lowenstein Sandler, arguing that the State Monitor had not approved the contract for legal services related to this matter. As this issue had not been raised prior to the consideration of the briefs submitted and the arguments presented, Lowenstein Sandler will not be barred from participating in this matter at this time.

Department of Education, Office of Fiscal Accountability and Compliance

Kerri A. Wright, Esq. and **David L. Disler, Esq.** (Porzio, Bromberg & Newman, PC), for respondent Louise Davis, State Monitor

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

STATEMENT OF THE CASE

Petitioner Board of Education of the Township of Lakewood (Lakewood) challenges (1) respondent New Jersey Department of Education, Office of Fiscal Accountability and Compliance's (OFAC) determination that Lakewood's legal services contract with Michael I. Inzelbuch, Esq. (Inzelbuch) violates N.J.A.C. 6A:23A-5.2, which requires school boards to minimize the costs of legal services, and (2) the decision by respondent Louise Davis (State monitor), the State Monitor who oversees Lakewood's business operations and personnel matters, to override Lakewood's approval of Inzelbuch's contract for the 2025-2026 school year under N.J.S.A. 18A:7A-55.

Lakewood has moved for emergent relief in the form of an order entitling Lakewood to retain Inzelbuch as its counsel after his contract for the 2024-2025 school year expires on June 30, 2025, pending the outcome of the underlying petition. OFAC and the State Monitor filed briefs opposing the application.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Each year since 2017, Lakewood has contracted with Inzelbuch for his legal services. February 25, 2025, OFAC Report, Petition of Appeal, Ex. A. Under the contract terms, which have remained consistent over the years, Inzelbuch has received an annual retainer of \$600,000, payable in monthly installments of \$50,000, for general counsel services, plus \$475 per hour for litigation services. Id. On January 8, 2025, Lakewood approved Inzelbuch's legal services contract for the 2025-2026 school year. Petition of Appeal, ¶ 49.

On February 25, 2025, OFAC determined that, with respect to the Inzelbuch contracts:

- [Lakewood] violated **N.J.A.C. 6A:23A-5.2(a)(4)** by failing to ensure that payments are based on services rendered and supported by detailed documentation.
- [Lakewood] violated **N.J.A.C. 6A:23A-5.2(a)(3)** by failing to establish cost-control measures.
- [Lakewood] violated **N.J.A.C. 6A:23A-5.2(a)(5)** and **N.J.A.C. 6A:23A-9.3(c)(11)** by failing to provide evidence that it used a deliberative and efficient manner for procuring legal services, either using an RFP [Request for Proposal] or other comparable process.

[Petition of Appeal], Ex. A.]

OFAC ordered Lakewood to take corrective action to address the contractual issues raised in the report. Id.

Also, on February 25, 2025, the State Monitor overrode Lakewood's approval of Inzelbuch's contract. February 25, 2025, Davis Letter to Lakewood, Petition of Appeal, Ex. B. In doing so, the State monitor explained:

While the stated recommendation to renew the contract was based on 'comparable' contract renewals, no comparable contract rates were presented for review. In fact, the only information considered for the renewal were letters received from local education attorneys advising that the contract award could proceed without a competitive process. As the minutes of the December 11, 2024 board meeting will reflect, there was much discussion of the necessity for an RFP for all contracted district processions considering the continuing financial constraints Lakewood suffers.

[Id.]

According to the State Monitor, she rejected Inzelbuch's contract due to "continuing funding concerns in the district exacerbated by the terms of the contract and [because] the proper paperwork for the renewal was never provided," and Lakewood's "fail[ure] to consider comparable contract rates." Id. She "recommend[ed] that a competitive process

be used to award the legal services” contract for the 2025-2026 school year. Id. The State Monitor also considered OFAC’s conclusions that the Inzelbuch contract did not comply with N.J.A.C. 6A:23A-5.2. Id.

On March 13, 2025, Lakewood filed a petition of appeal with the Commissioner of Education challenging, in part, the decisions of OFAC and the State Monitor. First, Lakewood submits that, contrary to OFAC’s report, the school board complied with N.J.A.C. 6A:23A-5.2 in procuring Inzelbuch’s legal services. Second, Lakewood alleges that Davis’s decision is not supported “with sufficient, competent, and credible evidence,” and her “rejection of the legal services contract, therefore, is arbitrary, capricious and without basis” and “should be rescinded.” Petition of Appeal, ¶¶ 63-64, 73-74.

Lakewood alleges that the school board “followed state regulations and concluded that the contract with [Inzelbuch] was fiscally prudent and in the best interests” of the school district, such that Lakewood:

(i) utilized a detailed nine step plan to enter into the legal services contract, (ii) obtained and exchanged multiple third party legal opinions supporting its process and actions [including opinions that “the regulations do not require districts to use an annual (or any) RFP for legal services”]; (iii) showed that the average legal cost, per pupil, is well below the state average if all District students [public and private schoolchildren] are included in the calculation, and (iv) demonstrated that prior, nearly identical contracts have been approved by the NJDOE without incident.

[Petition of Appeal, ¶¶ 43, 51, 72.]

The school board further alleges that “Lakewood’s total costs actually decreased beginning in 2017 when it retained Mr. Inzelbuch, as compared to the timeframe immediately preceding his retention as Lakewood’s attorney”; that Lakewood “consistently receives high quality legal services, at whatever hours needed including late nights and weekends, except the Jewish Sabbath”; that “[t]he cost for such services is fair and reasonable”; and that “the rates for legal services charged by Mr. Inzelbuch have remained constant” over the years. Id. at ¶¶ 28, 52.

In response, the State Monitor moved to dismiss the petition in lieu of answer. On June 18, 2025, after the Commissioner of Education transmitted Lakewood's petition and the State Monitor's motion to the Office of Administrative Law (OAL) for resolution under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, the State Monitor's motion was denied and she was ordered to file an answer to the petition.

On June 20, 2025, Lakewood moved for emergent relief permitting the school board to retain Inzelbuch after his current legal services contract expires on June 30, 2025, and pending the outcome of the school board's challenge to the State Monitor's rejection of Inzelbuch's contract for the 2025-2026 school year. On June 25, 2025, the State Monitor filed a brief opposing the application, while OFAC did so on June 26, 2025. On June 26, 2025, Lakewood responded. Oral argument was heard on June 30, 2025.²

LEGAL DISCUSSION

I. Lakewood's motion for emergent relief

Pursuant to N.J.A.C. 6A:3-1.6, "[w]here 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 petitioner may [move] for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case." N.J.A.C. 6A:3-1.6(a). That rule further provides that, "[o]nce a matter has been transmitted, any subsequent motion for emergent relief shall be filed with the Commissioner who shall forward the motion for determination by the OAL in accordance with applicable rules of the OAL." N.J.A.C. 6A:3-1.6(d).

A motion for emergent relief is decided under the standards similar to those set forth in Crowe v. DeGioia, 90 N.J. 126 (1982):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;

² The parties were given the opportunity to attempt to resolve the matter but were not successful.

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.
- [N.J.A.C. 6A:3-1.6(b); N.J.A.C. 1:1-12.6.]

The petitioner must prove each of these standards by clear and convincing evidence. Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013) (citation omitted).

The Parties' Arguments

Lakewood argues that the school board is entitled to a stay of Inzelbuch's current contract pending the outcome of the underlying petition for the following reasons:

(1) Lakewood will suffer irreparable harm if the school board is "left without counsel during the crucial summer months" and because Inzelbuch has been the school board's counsel for many years and he is intimately familiar with Lakewood's legal affairs;

(2) Lakewood's legal right to challenge the State Monitor's decision to reject the Inzelbuch contract under N.J.S.A. 18A:7A-55 as unreasonable is settled, as is the school board's legal right to contract with Inzelbuch without a request for proposal to solicit bids for legal services under N.J.A.C. 6A:23A-5.2;

(3) Lakewood is likely to succeed on the merits of its underlying petition challenging the State Monitor's February 25, 2025, decision as unreasonable because, prior to contracting with Inzelbuch for the upcoming school year, and pursuant to N.J.A.C. 6A:23A-5.2, the school board "use[d] a deliberative and efficient process to ensure the district receives the highest quality services at a fair and competitive price"; and

(4) a balancing of equities favors Lakewood's retention of its longtime counsel because Lakewood will suffer more harm than the State Monitor if Inzelbuch cannot remain in his position pending the resolution of Lakewood's challenge to the State Monitor's February 25, 2025, decision.

The State Monitor³ and OFAC argue that Lakewood fails to satisfy any of the Crowe standards for emergent relief:

- (1) Lakewood will not suffer irreparable harm if Inzelbuch cannot continue as the school board's counsel after June 30, 2025, because Lakewood "already has approved several other attorneys – each of whom has experience representing boards of education and whom have a history of representing" Lakewood; thus, Lakewood's argument that the school board "would be 'without legal representation,'" is "demonstrably false." As an example in opposition to Lakewood's contention, the State Monitor has presented the minutes from Lakewood's March 12, 2025, meeting in which the school board "approved the law firm of Methfessel & Werbel, at the hourly rates of \$200 for partners and counsel, \$180 for associates, and \$65 for law clerks and paralegals for all currently handled matters to be assigned by the firm as well as any new matters";
- (2) Lakewood's legal right to challenge the State Monitor's decision under N.J.S.A. 18A:7A-55 as arbitrary, capricious, or unreasonable is not settled, and Lakewood "has not cited a single case in which a State Monitor's decision was overturned on arbitrary and capricious grounds";
- (3) Lakewood is not likely to prevail in the underlying case because, "[u]nder N.J.S.A. 18A:7A-55, the State Monitor is vested with broad, affirmative authority to oversee – and where necessary, to override – the fiscal decisions of boards of education in districts subject to State monitoring," and, here, "the rationale for the Monitor's decision is straightforward and compelling: it is not fiscally prudent for a district to renew the same legal services contract for nearly a decade without competitive benchmarking."
- (4) The State Monitor did not address "the balancing of the equities" standard.

³ At oral argument, the State Monitor indicated that she took no position regarding the application for emergent relief, contrary to the arguments set forth in her brief.

OFAC essentially echoes the State Monitor's arguments against Lakewood's request for emergent relief. OFAC also argues that "both the balance of harms and the public interest overwhelmingly militate against emergent relief" in Lakewood's favor because "the Department [of Education] and public have significant interest in ensuring [Lakewood] does not continue to expend public funds in a manner that has already been deemed excessive, inefficient, and violative of applicable State regulations."

II. Lakewood's motion must be denied because the school board has failed to prove any of the emergent relief standards by clear and convincing evidence.

(1) Irreparable Harm

First, Lakewood has failed to show irreparable harm will befall the school board if it cannot retain Inzelbuch after his contract expires on June 30, 2025. As the Supreme Court explained in Crowe, 90 N.J. 126, "[o]ne principle is that a preliminary injunction should not issue except when necessary to prevent irreparable harm," examples of which may include harm that "cannot be redressed adequately by monetary damages" and "severe personal inconvenience." Id. at 132-33 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878); Hodge v. Giese, 43 N.J. Eq. 342, 350 (Ch. 1887)).

Lakewood will not suffer irreparable harm if, pending the outcome of the underlying action, the school board cannot continue to retain Inzelbuch's services under the terms of his 2024-2025 school year contract after that contract expires on June 30, 2025. As the State Monitor indicates, Lakewood has other counsel at its disposal to provide the school board with legal services until Lakewood's petition is resolved. Contrary to Lakewood's argument, the school board will not be "without legal representation" after the contract expires on June 30, 2025, such that an emergent relief order is not "necessary to prevent irreparable harm."

(2) Settled Legal Right

The application of this factor is not straightforward in this case. Under this factor, emergent relief “should be withheld when the legal right underlying plaintiff’s claim is unsettled.” Crowe, 90 N.J. at 133 (citing Citizens Coach Co., 29 N.J. Eq. at 304–05).

Lakewood claims that the school board does not have to issue an RFP for legal services under N.J.A.C. 6A:23A-5.2, and that Lakewood complied with the law by engaging in “a deliberative and efficient” process prior to contracting with Inzelbuch for the 2025-2026 school year. According to Lakewood, the State Monitor’s decision under N.J.S.A. 18A:7A-55 to reject Inzelbuch’s contract and to recommend that Lakewood instead issue an RFP for legal services was arbitrary, capricious, or unreasonable.

Generally, school boards have the legal right under N.J.A.C. 6A:23A-5.2(a)(5) to enter a legal services contract that is “issued in a deliberative and efficient manner that ensures the school district receives the highest quality services at a fair and competitive price.” A “deliberative and efficient manner . . . may include, but is not limited to, issuance of such contracts through a request for proposals (RFP) based on cost and other specified factors or other comparable process.” Here, however, Lakewood’s legal right under N.J.A.C. 6A:23A-5.2(a)(5) is checked by the State Monitor’s settled legal right under N.J.S.A. 18A:7A-55, to override, for financial reasons, Lakewood’s approval of a legal services contract. Given the State Monitor’s authority under N.J.S.A. 18A:7A-55, Lakewood has failed to show by clear and convincing evidence that the legal right underlying its petition is settled in its favor.

(3) Likelihood of Success on the Merits

Third, Lakewood is not likely to succeed on the merits of its claim that the State Monitor exceeded her authority under N.J.S.A. 18A:7A-55 by rejecting Inzelbuch’s contract due to “funding concerns” in the school district and “recommend[ing] that a competitive process be used to award the legal services” contract for the 2025-2026 school year. Under the third emergent relief standard, “a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits.” Crowe, 90 N.J.

at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)). In this respect, “a preliminary injunction should not issue where all material facts are controverted.” Ibid (citing Citizens Coach Co. 29 N.J. Eq. at 305-06).

Here, the briefs and certifications submitted by the parties to date indicate that several material facts remain in dispute: first, OFAC and Lakewood materially disagree about whether the terms and circumstances of Inzelbuch’s contracts over the years complied with N.J.A.C. 6A:23A-5.2; and secondly, Lakewood and the State Monitor controvert over the material facts underlying the State Monitor’s decision to reject Inzelbuch’s contract under N.J.S.A. 18A:7A-55. These controverted material facts weigh against finding that Lakewood has a likelihood of success on the merits of its petition of appeal.

In addition, in the few cases involving challenges to a state monitor’s authority under N.J.S.A. 18A:7A-55, the Commissioner of Education and the Appellate Division have affirmed the State Monitor’s authority to reject a school board’s action that may adversely affect a school district’s finances. See Rankins v. Pleasantville Bd. of Educ., 2010 N.J. AGEN LEXIS 776 (Oct. 26, 2010), aff’d, 2012 N.J. Super. Unpub. LEXIS 2369 (App. Div. Oct. 22, 2012); Pleasantville Bd. of Educ. v. Riehman, 2011 N.J. AGEN LEXIS 590 (Jul. 13, 2011), aff’d, 2013 N.J. Super. Unpub. LEXIS 312 (App. Div. Feb. 11, 2013). While the underlying facts of these cases are different from this case, the conclusion is that the State Monitor’s powers under N.J.S.A. 18A:7A-55, while not absolute, are certainly and necessarily broad to “[o]versee the fiscal management and expenditures of school district funds.” N.J.S.A. 18A:7A-55(b)(1).

As the Commissioner stated in Rankins,

[T]he Commissioner is authorized to appoint a state monitor to oversee the fiscal management and expenditures of school district funds when an independent audit reveals the existence of certain financial shortfalls that are delineated in the Act. N.J.S.A. 18A:7A-55(a) and (b). Additionally, there is no doubt that the state monitors have the power to make . . . decisions [that] are necessary to solve the district’s fiscal or audit deficiencies. N.J.S.A. 18A:7A-55. Further, in order to achieve fiscal stability, state monitors have the authority to

override a vote of the board of education. N.J.S.A. 18A:7A-55(b)(5) . . .

It is important to recognize that the Commissioner's decision in this case does not afford the state monitors more power than is statutorily provided by the Fiscal Accountability Act [N.J.S.A. 18A:7A-54 to -59]. State monitors do not have unfettered power to make decisions for the district that are not grounded in fiscal accountability; rather, the state monitors must continue to have fiscal or financial concerns or motivations in order to appropriately overturn a Board's decision.

[2012 N.J. AGEN LEXIS 776, **4-6.]

Here, in overriding Lakewood's approval of Inzelbuch's contract – under which he receives an annual retainer of \$600,000, payable in monthly installments of \$50,000, for general counsel services, plus \$475 per hour for litigation services – the State Monitor noted “the continuing financial constraints Lakewood suffers.” She rejected the contract due to “continuing funding concerns in the district exacerbated by the terms of the contract; [because] the proper paperwork for the renewal was never provided”; and [because of] Lakewood's “fail[ure] to consider comparable contract rates.” She “recommend[ed] that a competitive process be used to award the legal services” contract for the 2025-2026 school year.

Lakewood disagrees with the determinations of both OFAC and the State Monitor, arguing that Inzelbuch is an extremely competent attorney who earns his retainer and fees, and that his contract conforms with the requirements for legal services contracts under N.J.A.C. 6A:23A-5.2.

Given the controverted material facts about the propriety and fiscal soundness of the contract, the emergent relief Lakewood seeks is not warranted, as Lakewood has failed to provide clear and convincing evidence that the school board is likely to succeed on the merits of its underlying petition.

(4) Balancing the Equities

Finally, it must be determined whether Lakewood has demonstrated that when the equities and interests of the parties are balanced, it will suffer greater harm than the State Monitor if the requested relief is not granted. This fourth and final emergent relief standard involves “the relative hardship to the parties in granting or denying relief.” Crowe, 90 N.J. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)).

If the relief is not granted, Lakewood has other counsel to provide legal services after June 30, 2025, and until this case is resolved. On the other hand, the State Monitor is statutorily tasked with ensuring that Lakewood makes sound financial decisions. If the relief is granted, Lakewood would be able to indeterminately continue with a legal services contract the State Monitor determined “exacerbated” Lakewood’s ongoing “funding concerns.” It is also a contract that OFAC determined does not comply with the school district fiscal accountability regulations. The equities and interests thus weigh in favor of the State Monitor and OFAC.

In conclusion, Lakewood has failed to satisfy the four prongs of the standard for emergent relief to be granted. Lakewood’s application for emergent relief is therefore denied.

ORDER

For the reasons set forth above, it is hereby **ORDERED** that Lakewood’s application for emergent relief entitling Lakewood to continue to retain Inzelbuch as its counsel after his legal services contract for the 2024-2025 school year expired on June 30, 2025, pending the outcome of the petition, is **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.

July 1, 2025

DATE



SUSAN M. SCAROLA, ALJ (Ret., on recall)

Date Received at Agency:

Date Mailed to Parties:

SMS/kl

c: Clerk OAL-T