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March 26, 2021

File No.: 30339-1

VIA EMAIL AND FIRST CLASS MAIL
filings-clmand@treas.state.nj.us

State of New Jersey
Council on Local Mandates
140 East Front Street, 8th floor
Trenton, NJ 08625-0627

Re: In Re: Lower Township Elementary Board of Education

Dear Counsel:

I represent Lower Township Elementary Board of Education. Enclosed for filing is an original and two copies of the Complaint Form with additional information, and the Certification of Service in this regard.

Thank you for your attention in this matter.

Very truly yours,

/s/ William C. Morlok

WILLIAM C. MORLOK

WCM:eb
Enclosure

cc: Richard A. Friedman, Esquire (w/enclosure)(via email)
Jaclyn Frey, Deputy Attorney General (w/enclosure)(via email)

4813-7350-7810, v. 1

COUNSEL WHEN IT MATTERS.SM

Mount Laurel, New Jersey | Hamilton, New Jersey | Atlantic City, New Jersey | Camden, New Jersey



State of New Jersey Council on Local Mandates Complaint

The form is to be completed and signed by the Claimant's attorney or other authorized representative, identified under Part I (B).

I (A). Information regarding the Claimant (include title if a County Executive or Mayor):

Name of Claimant (and title if applicable): Lower Township Elementary Board of Education

Claimant contact information:

Mailing Address: 905 Seashore Road

City: Cape May State: New Jersey Zip Code: 08204

Phone: 609-884-9400 Fax:

E-mail address:

I (B). Name of person preparing this document, and title or relationship to Claimant (e.g., legal counsel, business administrator, superintendent):

Name: William C. Morlok, Esquire

Title/Relationship: Legal Counsel

Contact information for person identified in Part I (B):

Mailing Address: 9000 Midlantic Drive
Suite 300, P.O. Box 5054

City: Mount Laurel State: New Jersey Zip Code: 08054

Phone: 856-985-4023 Fax: 856-810-5852

E-mail Address: wmorlok@parkermccay.com

II. The Complaint:

1. Claimant alleges that the following statute, rule, or regulation is an unfunded mandate in violation of the New Jersey Constitution, article VIII, § 2, ¶ 5 and N.J.S.A. 52:13H- 2, because it does not authorize resources, other than the property tax, to offset the additional direct expenditures required for its implementation:

P.L. 2020, Chapter 44 (S2273/A20)

2. The above-cited statute, rule, or regulation became effective on:

July 1, 2020

3. The following is the basis for the claim made herein that the statute, rule, or regulation identified in paragraph II (1) is an unfunded mandate:

Please See Attached "Section 3 - Basis for the Claim".

Note: The text provided in paragraph II (3) is to be used for the Pleading Summary published on the Council's web site. If more space is needed, please attach additional sheet(s).

4. State Claimant's estimate of the additional direct expenditures required to implement the statute, rule or regulation identified in paragraph II (1), together with:
(a) a description of the frequency of the estimated expenses (i.e. annual, monthly), and
(b) a specification of the basis for the estimate.

Please See Attached "Section 4 – Additional Direct Expenditures"

Note: If more space is needed, please attach additional sheet(s).


5. Does Claimant seek injunctive relief? No Yes

If yes, on attached sheet(s), provide a description of the nature and extent of imminent irreparable injury that will result to Claimant in the absence of injunctive relief.

6. Claimant attaches:

- Resolution (of county/municipal governing body or of board of education), which is incorporated herein by reference, *or*
- Copy of notice of intention to file a complaint provided to governing body.

WHEREFORE, Claimant demands judgment by the Council that the statute, rule, or regulation identified in paragraph II (1) above is an unfunded mandate pursuant to the New Jersey Constitution, Art. VIII, § 2, ¶ 5 and N.J.S.A. 52:13 H-2, and that it shall cease to be mandatory in effect and expire.



[Signature of person preparing this document].

Date:

Name (typed or printed) of person signing

Title (typed or printed) of person signing

Total number of attached pages:

Print Form

File No. 30339-1

Law Offices

PARKER McCAY P.A.

Frank P. Cavallo, Jr., Esq. (01795-1986)

William C. Morlok, Esq. (01834-2009)

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Mount Laurel, New Jersey 08054

(856) 596-8900

Attorneys for Lower Township Elementary Board of Education

**In re Complaint Filed by the
Lower Township Elementary Board of
Education Regarding P.L. 2020, Chapter
44.**

**STATE OF NEW JERSEY
COUNCIL ON LOCAL MANDATES**

**ADDITIONAL INFORMATION
SUBMITTED WITH FORM
COMPLAINT**

Section 3 – Basis for the Claim

This Complaint addresses P.L. 2020, Chapter 44, legislation that required school districts in New Jersey to offer a new health care plan. Unfortunately, the legislation is already costing Lower Township Elementary Board of Education to incur costs of approximately \$44,000 for 20-21, in overall increased health care costs. As discussed below, that number will only go up on July 1, 2021. P.L. 2020, Chapter 44, dictates all financial aspects of the plan, to include contribution percentages, contribution caps, and co-pays, resulting in nothing left for the parties to negotiate to mitigate the financial impact. As a result, the mandate is unfunded.

1. Prior to the passage of P.L. 2020, Chapter 44, school district employee contribution rates toward health care benefits were based on a percentage of premium model.

2. With the passage of P.L. 2020, Chapter 44, school district employee contribution rates toward health care benefits are now based on a percentage of salary model (with caps), and employees are placed in a plan known as the New Jersey Educators Health Plan (“NJEHP”) or equivalent plan (herein collectively: “NJEHP”). The NJEHP has raised the overall costs of health care for the Lower Township Elementary Public School District and their employees.

3. Notably, this change in the basis for contribution rates reduces the percentage of the employee contribution from a range of 3% to 35% to a range of 1.7% to 7.2%. Accordingly, school district employers are now forced to absorb this differential in the percentage of employee contribution rates, often increasing the net cost of health care benefits to the school district employer (or school district as a whole), under the NJEHP.

4. Despite this increase in the net cost of health care benefits to the school district employer under the NJEHP, P.L. 2020, Chapter 44, does not allow for any practical means to offset the additional expenditures required for the school district employer to implement the NJEHP, and is therefore an unfunded mandate.

5. P.L. 2020, Chapter 44 states that "the employer and the majority representative shall engage in collective negotiations over the financial impact of the [cost] difference" when the net cost to the employer under the NJEHP is higher than the net cost of health care benefits coverage available to employees through an existing collective negotiation agreement. However, the school district employer still remains bound by the contribution percentages, contribution caps, and the coverage or co-payment amounts set forth in P.L. 2020, Chapter 44. Accordingly, such collective negotiations "over the financial impact of the difference" in implementing the NJEHP are not truly possible, as there are no health care related financial aspects remaining to negotiate.

6. Pursuant to P.L. 2020, Chapter 44, all school district employees hired on or after July 1, 2020 were to be automatically enrolled in the NJEHP, unless they elected to waive coverage. The Lower Township Elementary Board of Education commenced with that automatic enrollment as of January 1, 2021.

7. Pursuant to P.L. 2020, Chapter 44, all school district employees hired prior to July 1, 2020, were to be provided the option to enroll in the NJEHP, unless they affirmatively elected to waive coverage, or affirmatively elected to remain enrolled in their prior coverage. The Lower Township Elementary Board of Education commenced with that open enrollment as of January 1, 2021.

8. As detailed below, the NJEHP was created to provide cost savings, though the Lower Township Elementary Board of Education has seen an annualized loss of \$43,628.00. The Lower Township Elementary Board of Education was previously self-insured and has recently entered into the Coastal HIF (“HIF”) program due to the uncertainty surrounding healthcare and the COVID-19 Pandemic. The switch to HIF caused rates to raise slightly, and the Lower Township Elementary Board of Education determined that they would not pass any of that cost on to their employees until July 1, 2021. Even without that, the District is forced to pay more money than they would have had P.L. 2020, Chapter 44 not existed. Further, because of the aforementioned, it is anticipated that more employees will switch to the NJEHP plan during the next open enrollment period.

9. P.L. 2020, Chapter 44 has caused the overall cost of healthcare in the District to go down by approximately \$27,000.00, yearly. P.L. 2020, Chapter 44, has not allowed the Lower Township Elementary Board of Education to realize any of those savings, instead requiring them to pay \$43,628.00 more, for the balance of the 20-21 school year.

Section 4 – Additional Direct Expenditures

Exhibit "A" is attached and shows the complete financial implications of P.L. 2020, Chapter 44 has had on the Lower Township Elementary Board of Education. To date, 58 of 209 employees have switched to the NJEHP plan, allowed for by P.L. 2020, Chapter 44. The existence of P.L. 2020, Chapter 44 has caused the Lower Township Elementary Board of Education to pay \$43,628.00 for the 20-21 school year.

The impacts of P.L. 2020, Chapter 44 are also being felt across the state of New Jersey. A recent survey conducted by the New Jersey Association of School Business Officials “requested information on the 1/1/2021-6/30/2021 impact of [P.L. 2020, Chapter 44 and found] of the 158 responses, 85% indicated the implementation will cost their district more money.” (See Exhibit “B”). As addressed below, without injunctive relief, the unfunded cost could be forced upon the Lower Township Elementary Board of Education and an untold number of other school districts.

Section 5 – Request for Injunctive Relief

The Lower Township Elementary Board of Education seeks injunctive relief because its compliance with P.L. 2020, Chapter 44, constitutes a significant financial hardship, and the statute provides no alternative funding to offset the additional expenditures that the Lower Township Elementary Board of Education continues to incur.

“Through its enabling statute, the Council on Local Mandates (‘Council’) is specifically authorized to issue a preliminary ruling enjoining the enforcement of a statute, rule, or regulation, pending consideration of whether any of the foregoing constitutes an unfunded mandate, whenever a complaint demonstrates to the Council’s satisfaction that (1) significant financial

hardship to the claimant would result from compliance and (2) there is a substantial likelihood that the statute or the rule or regulation is, in fact, an impermissible, unfunded State mandate.” N.J.S.A. 52:13H-16; In re a Complaint filed by the Board of Education for the City of Clifton, Council on Local Mandates Decision (May 13, 1998).

As outlined in the Complaint, the Lower Township Elementary Board of Education has seen an annualized increase in the 20-21 school year of approximately \$44,000.00 because of the impacts of P.L. 2020, Chapter 44. It is evident that there is both a significant financial hardship and that there is a substantial likelihood that P.L. 2020, Chapter 44 is an unfunded State mandate.

For the foregoing reasons, the Lower Township Elementary Board of Education requests that the Council enjoin the enforcement of P.L. 2020, Chapter 44, while the instant matter is pending before it.

Section 6 – Resolution

Attached as Exhibit “C” please find a Certified Resolution of the Lower Township Elementary Board of Education, authorizing suit.

Respectfully submitted,

PARKER MCCAY, P.A.
Attorneys for Claimant,
Lower Township Elementary Board of Education

BY: /s/William C. Morlok
WILLIAM C. MORLOK

Dated: March 26, 2021

4817-6860-1314, v. 1

File No. 30339-1

Law Offices

PARKER McCAY P.A.

Frank P. Cavallo, Jr., Esq. (01795-1986)

William C. Morlok Esq. (01834-2009)

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Mount Laurel, New Jersey 08054

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Attorneys for Lower Township Elementary Board of Education

**In re Complaint Filed by the
Lower Township Elementary Board of
Education Regarding P.L. 2020, Chapter
44.**

**STATE OF NEW JERSEY
COUNCIL ON LOCAL MANDATES**

CERTIFICATION OF SERVICE

I, Elizabeth A. Bennett of full age, hereby certify as follows:

I am employed by the law firm of Parker McCay P.A., attorneys for Lower Township Elementary Board of Education, and on March 26, 2021, the original and two copies of Complaint in the above captioned matter was sent via email and First Class Mail to:

State of New Jersey
Council on Local Mandates
140 East Front Street, 8th Floor
Trenton, NJ 08625
filings-clmand@treas.state.nj.us

A copy of the within was also sent to the following via Email:

Richard A. Friedman, Esquire
rfriedman@zazzali-law.com

Jaclyn Frey
Deputy Attorney General
Jaclyn.Frey@law.njoag.gov

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Elizabeth A. Bennett
Elizabeth A. Bennett

Date: March 26, 2021

4844-1718-4738, v. 1

Exhibit A

”

ALL STAFF HEALTH COVERAGE COMPARISON

	Members	Annualized
<u>Yearly Cost Without Chapter 44 and NJEHP Plan</u>	209	
All Plans		\$5,225,560
Employee Share		907,606
Net Board Share		4,317,954
<u>Yearly Costs with Chapter 44 and NJEHP Plan</u>		
All Plans (including NJEHP)	209	\$5,198,523
Employee Share		836,941
Net Board Share		4,361,582
Net Change in All Plans Cost to District + (-)		\$43,628
Net Change in All Plans Cost		-\$27,037

Exhibit D'

From: noreply@njasbo.com <noreply@njasbo.com>
Sent: Tuesday, January 26, 2021 1:30 PM
To: Davenport, Vanessa J. <Vanessa.Davenport@doe.nj.gov>
Subject: [EXTERNAL] NJASBO - Trustee Meeting Briefs

***** CAUTION *****

This message came from an **EXTERNAL** address (010001773ff53624-1db7b703-d6e8-40b7-8475-a7a58b874a64-000000@amazonses.com). **DO NOT** click on links or attachments unless you know the sender and the content is safe. **Suspicious?** Forward the message to spamreport@cyber.nj.gov.



Dear Vanessa

NJASBO

State Meeting Briefs

January 22, 2021

1. **Special Guests-** DOE Commissioner Angelica Allen-McMillan and Assistant Commissioner Kevin Dehmer joined the meeting and discussed a number of topics such as state aid (no update), C. 44 data collection, ESSER II, Security Aid grants (subject to legislative approval and timeline) and CRF audits.
2. **Action Items-** The Trustees approved all agenda items as presented.
3. **Discussion Items:**
 - **Technology Survey regarding Professional Development-** The detailed results were shared however in general 90+% indicated they attend PD for credits and relevant topics with 68% indicating they would attend both in person and virtually, post pandemic. The detailed results of the survey can be found under the Members Only section (Documents) of the website.
 - **Health Benefit Survey-** NJASBO shared consolidated results of the survey which requested information on the 1/1/2021-6/30/2021 impact of C. 44. Of the 158 responses, 85% indicated the implementation will cost their district more money
 - **Equity, Diversity and Inclusion Initiative-** NJASBO commenced an initial meeting with NJASBO members regarding this topic.
 - **NJASBO 2nd VP Candidates-** Katie Atwood (Hamilton Township) and Steve Brennan (Barnegat Township) have submitted their names for consideration as the Central Region 2nd VP for 2021-2022. The Central Region Presidents will vote on February 19th.
 - **Distinguished Service Awards** – Nominee packets for each region were distributed to County Presidents. Voting will take place on February 19th.
 - **Conferences-** ASBO International has cancelled their February 2021 Leadership conference. NJASBO has cancelled its in person June conference and will hold a virtual conference.

- **Committees & Appointments-** Conference, Technology, Purchasing and Legislative committee minutes and the NJSIAA report are posted on the website.

Feel free to [contact us](#) if you have any questions or concerns.

Sue

Sue Young, Executive Director
4 AAA Drive, Suite 101
Robbinsville, NJ 08691
sue@njasbo.com
609-689-3870 - phone

<http://www.njasbo.com/members/EmailOptPreferences.aspx?id=54949254&e=vanessa.davenport@doe.nj.gov&h=7278faa4ddf191230ab2ac407d7095c3ba05129d>



NJASBO is a professional association that promotes the highest standards of ethics and efficiency, provides its membership with professional development and support, and collaborates with entities that affect public education.

Exhibit C

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**LOWER TOWNSHIP ELEMENTARY SCHOOL DISTRICT
MINUTES-WORK SESSION AND REGULAR MEETING
MARCH 16, 2021**

Regular Meeting:

Roll Call:

Board Members Present:

Monica DiVito
Nichole Koch
Steve Lewis
Michael Mader
Joseph Thomas
Sally Yerk
Patricia Smith
Gary Douglass

Also in Attendance:

Jeff Samaniego, Superintendent
John Hansen, Board Secretary
Brett Gorman, Board Attorney

- 5.** On the recommendation of the School Business Administrator, that the Lower Township Board of Education authorizes counsel, Chief School Administrator, Board President, Board Secretary and/or their designees, consistent with the requirements of P.L. 1996, Chapter 24, Section 12, to take any and all steps necessary to file a Complaint with the Council on Local Mandates, to challenge the unfunded mandate created by P.L. 2020, Chapter 44.

MOTION ON CONSENT AGENDA:

Routine Matters: R-1 to R-7

Personnel: P-1 to P-4

Harassment, Intimidation & Bullying: H-1

Legislative and Internal Policies: L-1

Education: None

Financial: F-1 to F-7

Motion: Douglass Second: Yerk Discussion: None

Vote:

Monica DiVito	Joseph Thomas
Sally Yerk	Nichole Koch
Steve Lewis	Patricia Smith
Michael Mader	Gary Douglass

Respectfully submitted,

John J. Hansen

John J. Hansen

School Business Administrator/Board secretary

This is a true excerpt of the minutes of the Lower Township Board of Education meeting of March 16, 2021.


John J. Hansen Date 3/15/21