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March 23, 2026

Dr. Lily Laux, Commissioner
New Jersey Department of Education
100 Riverview Plaza
Trenton, NJ 08625

RE: Kristin Rooney et al. vs. Middletown Township Board of Education
OAL Dkt No. TBD
Agency Ref. No. 079-03-26.

MIDDLETOWN TOWNSHIP BOARD OF EDUCATION'S
MOTION TO DISMISS

Dear Commissioner Laux:

This office represents Respondent, Middletown Township Board of Education (“Middletown” or the “Board”), with respect to the above Petition of Appeal (“Petition”) filed by Petitioners, Kristin Rooney, Scott McPherson, Emilie Donohue, Jessica Donohue, Melissa Daus, Megan Daus and Kathleen Young (“Petitioners”). Please accept this letter brief, in lieu of a more formal submission, in support of Middletown’s Motion to Dismiss the Petition.

First, neither the Commissioner of Education nor, by extension, the Office of Administrative Law (“OAL”), have subject matter jurisdiction over claims alleging violations of the New Jersey Constitution, the New Jersey Law Against Discrimination (“NJLAD”) or the Open Public Meetings Act (“OPMA”). Indeed, N.J.S.A. 18A:6-9 confers jurisdiction to the Commissioner of Education over controversies and disputes arising **under the school laws** of New Jersey. Id. As such, Counts I, IV and V of the Petition must be dismissed with prejudice against

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Middletown as a matter of law. In addition, Petitioners' appeal under the school laws is not ripe for review because the statutory procedures outlined in the applicable Administrative Code and corresponding Board policy have not been completed, and same are a predicate to Commissioner or judicial review. Thus, Counts II and III of the Petition must be dismissed against Middletown as a matter of law. Finally, Petitioners seek a referral to the Office of Fiscal Accountability and Compliance, which is merely another request for relief, and which does not state any claim against Middletown under any law, regulation or policy. Count VI of the Petition therefore must be dismissed with prejudice against Middletown as a matter of law.

Accordingly, and for the reasons set forth in detail below, Middletown respectfully requests the dismissal of the Petition in its entirety.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

On March 4, 2026, Petitioners filed the Petition against Middletown. The Petition arises out of Middletown's February 26, 2026 Board vote "to begin the process of closing three district schools...based on purported fiscal concerns." (Please see **Exhibit A**, Petition of Appeal, Preliminary Statement, par. 1, attached to the Certification of Regina M. Philipps, Esquire ("Philipps Cert.")). The Petition contains 363 paragraphs of allegations, the entirety of which are incorporated by reference herein, in the interest of brevity.¹ The Petition specifies the following "Claims for Relief:"

- Count I – Violation of Article I, ¶5 Of The New Jersey Constitution And Law Against Discrimination, N.J.S.A. § 10:5-1, et seq.
- Count II - Violation Of N.J.A.C. § 6A:26-7.5

¹ Because the factual allegations of the Petition must be construed as true for purposes of evaluating a motion to dismiss, Middletown's reliance upon same in connection with this motion should not be taken as an admission or acknowledgment by Middletown that said facts are true or accurate.

- Count III: Violation Of MTPS Policy 7113.1
- Count IV: Violation Of The Open Public Meetings Act, N.J.S.A. § 10:4-12 (Exceeding The Scope Of Executive Session)
- Count V: Violation Of The Open Public Meetings Act, N.J.S.A. § 10:4-12 (Inadequate Notice)
- Count VI: Referral To The Office Of Fiscal Accountability And Compliance

In lieu of an answer to the Petition, Middletown files the present motion to dismiss.

LEGAL ARGUMENT

I. Legal Standards.

A motion to dismiss in lieu of answer to a petition may be filed within the time allotted for the filing of an answer on the grounds that the Petitioners has advanced no cause of action, even if the Petitioners' factual allegations are accepted as true, or for other good reason shown. See N.J.A.C. 6A:3-1.5(g); N.J.A.C. 6A:3-1.10. In the absence of a rule under the Uniform Administrative Procedure Rules ("UAPR"), the New Jersey Court Rules apply, provided they are compatible with the Administrative Code's purposes to achieve "just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay." N.J.A.C. 1:1-1.(a).

The UAPR do not address the standards for a motion to dismiss. However, the OAL has held that New Jersey Court Rule 4:6-2 "serves the interest of time and expense and may help achieve just results, thus it is compatible with the UAPR's purposes," and that it is appropriate to assess a motion to dismiss pursuant to the standards of R. 4:6-2. See Seidler v. Board of Education of the Township of East Brunswick, Middlesex County, OAL Dkt. No. EDU 07171-25, p. 10.

(Please see **Exhibit B**, July 23, 2025 OAL decision adopted by the Commissioner on October 20, 2025, attached to Philipps Cert.).

In considering a motion to dismiss for failure to state a claim pursuant to R. 4:6-2(e), a court must search the petition “in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim.” Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989). The motion must be granted if “a generous reading of the allegations does not reveal a legal basis for recovery.” Edwards v. Prudential Prop. & Cas. Co., 357 N.J. Super. 196, 202 (App. Div.), cert. denied, 176 N.J. 278 (2003). A “dismissal is mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted.” Rieder v. N.J. Dep’t of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987).

A party also may move for the dismissal of a petition for lack of subject matter jurisdiction, which shall be heard and determined before trial on an application by any party. N.J.A.C. 1:1-1.3(a); R. 4:6-2(a); R. 4:6-3. Additionally, a petition may be dismissed on procedural grounds when the dispute is not ripe for judicial review and determination. See M.M. v. Board of Education of the Township of Lafayette, OAL Dkt. No. EDU 05225-20, p. 3. (Please see **Exhibit C**, August 7, 2020 OAL decision adopted by the Commissioner on November 5, 2020, attached to the Philipps Cert.).

II. Counts I, IV and V Must Be Dismissed For Lack of Subject Matter Jurisdiction.

A matter is justiciable before this tribunal only if jurisdiction exists. Gordon v. Board of Education of the Township of Sparta, Sussex County, OAL Dkt. No. EDU 09328-21, p. 9. (Please see **Exhibit D**, November 3, 2022 OAL decision adopted by the Commissioner on December 14, 2022, attached to the Philipps Cert.). N.J.S.A. 18A:6-9 confers jurisdiction to the Commissioner

of Education over controversies and disputes arising under the school laws of New Jersey. Id. It is well-established that this tribunal lacks jurisdiction to hear and determine causes of action alleging violations of the New Jersey Constitution, the NJLAD, and OPMA². Middletown therefore respectfully submits that Counts I, IV and V should be dismissed with prejudice.

A. This tribunal lacks jurisdiction to hear and determine causes of action alleging violations of the New Jersey Constitution and the NJLAD (Count I).

Count I of the Petition alleges, *inter alia*, that Middletown’s “school closure plan...is unconstitutional [in violation of the New Jersey Constitution] and violates the [NJ]LAD.” (**Exh. A**, Petition, ¶249). In the Gordon matter, Administrative Law Judge Irene Jones dismissed the petitioner’s NJLAD claims, holding that they did not fall under the school laws and that the Commissioner lacked jurisdiction over such matters. OAL Dkt. No. EDU 09328-21, p. 9. Upon review, the Commissioner agreed with ALJ Jones “that she [did] not have jurisdiction over [the] petitioner’s discrimination claims, as her authority is limited to controversies and disputes arising under New Jersey school laws.” Id. at p. 2. Moreover, our Supreme Court has held that the Commissioner is without jurisdiction to fashion any form of relief under the NJLAD, including attorney’s fees and costs, which are sought by Petitioners in this matter. (**Exh. A**, Petition, ¶363(i)); Balsley v. N. Hunterdon Reg’l Sch. Dist. Bd. of Educ., 117 N.J. 434, 446-47 (1990). In so holding, the Court held that the remedy of counsel fees “is not one within the statutory authority of the Commissioner.” Id. at 447.

Similarly, with respect to Petitioners’ claim that Middletown’s school closure plan is unconstitutional in violation of Article I, ¶5 of The New Jersey Constitution, the Commissioner

² To the extent Petitioners will attempt to argue that these claims are sufficiently intertwined with the school laws to be considered by this tribunal, same still does not save these claims because Petitioners’ claims under the school laws also must be dismissed, as discussed below.

does not have jurisdiction to decide constitutional claims. See In The Matter of the Inclusion of Certain Questions on the Ballot for the April 2005 Camden School Election, Camden County, Agency Dkt. No. 303-9/05, p. 3 (“While the Commissioner is bound to uphold the federal and State constitutions, [the Commissioner] is not empowered to adjudicate constitutional issues”) (internal quotations omitted, emphasis in original). (Please see **Exhibit E**, December 21, 2025 Commissioner decision, attached to the Philipps Cert.); see also Reed v. Attorney General, 195 N.J. Super. 172, 176 (App. Div. 1984) (holding that “administrative agencies do lack jurisdiction to decide constitutional claims...and the Commissioner of Education has uniformly held this to be so.”) (internal citations omitted).

As such, this tribunal lacks jurisdiction over the alleged violations of the New Jersey Constitution and the NJLAD and Count I must be dismissed with prejudice.

B. This tribunal lacks jurisdiction to hear and determine causes of action alleging violations of OPMA (Counts IV and V).

In Counts IV and V of the Petition, Petitioners claim that Middletown “violated OPMA” during its meetings on both February 19, 2026 and February 26, 2026 “by exceeding the scope of its basis for retiring to Executive Session” (**Exh. A**, Petition, ¶329) and “by misleading the public about its intent to vote on school closures at the February 26, 2026 meeting” (Id. at ¶340).

Petitioners specifically allege that “the Commissioner’s jurisdiction extends to ‘determin[ing] issues arising under [OPMA]’ when they relate, as they do here, to ‘controversies under the school laws.’ Sukin v. Northfield Bd. of Ed., 171 N.J. Super. 184, 187 (App. Div. 1979).” (Id. at ¶13). In Sukin, the Appellate Division reversed the Superior Court’s dismissal of the plaintiff’s OPMA claims, finding that it was “satisfied that the Commissioner has additional incidental jurisdiction to determine issues arising under [OPMA] as they relate to controversies

under the school laws.” Id. The Sukin opinion contains no details regarding the substance of the plaintiff’s OPMA claims; however, our Supreme Court held that in the Sukin matter and other cases upon which the Sukin Court relied, the courts had referred to the various administrative agencies “issues that fell squarely within the subject matter delegated to the agency by the enabling statute.” Alexander’s Dep’t Stores v. Paramus, 125 N.J. 100, 114 (1991).

To the contrary here, Petitioners’ claims regarding Middletown’s purported OPMA violations are based upon allegedly improper discussions regarding school closures during the Board’s executive session (**Exh. A**, Petition, ¶¶331-336) and failing to provide advance notice of the school closure topic on the Board meeting agenda (Id. at ¶¶338-348). Neither of these claims constitute educational issues that require the expertise of the Commissioner to adjudicate; rather, they are simple procedural violations of OPMA’s statutory requirements pertaining to Board meeting proceedings. Alexander’s Dep’t Stores, 125 N.J. at 114. Middletown therefore submits that Petitioners’ OPMA claims do not relate to controversies under the school laws such that the Commissioner has incidental jurisdiction over same. Contrast Sukin 171 N.J. Super. at 187. As such, this tribunal lacks jurisdiction over the alleged violations of OPMA and Counts IV and V must be dismissed with prejudice.

Accordingly, Counts I, IV and V of the Petition against Middletown must be dismissed for lack of subject matter jurisdiction with prejudice as a matter of law.

III. Counts II and III Must Be Dismissed Because They Are Not Ripe For Review.

Counts II and III of the Petition are the only counts of the Petition arising under the school laws. In Count II, Petitioners claim that Middletown has violated N.J.A.C. § 6A:26-7.5, which “sets forth the basic regulatory requirements that a district must undertake before closing schools,” (**Exh. A**, Petition, ¶252), and in Count III, Petitioners claim that Middletown has violated its

corresponding policy, MTPS Policy 7113.1, which “also governs school closures and incorporates the requirements set forth in N.J.A.C. § 6A:26–7.5(a),” but additionally “sets forth a data-gathering and deliberation requirement.” (Id. at ¶292).

To receive approval for the closing of a school, a school board must provide the Department of Education’s Division of Administration and Finance (the “Division”) and the executive county superintendent with the following assurances:

1. The proposed closing is consistent with the school district’s approved LRFPP because:
 - i. The school district has demonstrated that sufficient school-building capacity exists to house students for the five years following the closing; or
 - ii. The school district has demonstrated through a feasibility study that the benefits of undertaking new construction outweigh those of rehabilitating the school proposed for closure.
2. The use of temporary facilities in the remaining schools does not result or increase from an overall facilities shortage caused by the school closing; and
3. The re-assignment of students to other schools in the school district does not produce, sustain, or contribute to unlawful segregation, separation, or isolation of student populations on the basis of race or national origin.

N.J.A.C. 6A:26–7.5(a). Of significance, a school board’s request for approval from the Division for the school closing “shall include the recommendation of the executive county superintendent[,] and a letter of approval from the Division based on [the above assurances] shall be required before the school’s closing.” N.J.A.C. 6A:26–7.5(b-c). The Division then must notify the school district in writing of its determination with respect to the requested school closing, with a copy provided to the executive county superintendent. N.J.A.C. 6A:26–7.5(d).

In M.M. v. Board of Education of the Township of Lafayette, the petitioner bypassed a Board hearing and filed a petition of appeal with respect to a harassment, intimidation and bullying

(“HIB”) finding pursuant to the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13 et seq. (the “HIB Act”) (**Exh. C**, p. 1). Administrative Law Judge Judge-Anthony Tiscornia concluded that the petitioner’s appeal before the Commissioner was not ripe for review, and the Commissioner concurred **“because the statutory procedures outlined in the [HIB Act] ha[d] not been completed.”** (Id. at p. 3) (emphasis added). The Commissioner further held that

[a]lthough the Commissioner has jurisdiction to hear all controversies arising under the school laws, the criteria for determining the ripeness of a controversy for judicial determination are “the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.” Abbott Labs v. Gardner, 387 U.S. 136, 149 (1967). In assessing fitness, the court must determine if a legal question suitable for judicial resolution has crystallized **and whether the ruling or action that is the subject of the complaint is final.** Ibid. Here, the action complained of – the HIB finding – is not final, and therefore the matter is not ripe for review...

The jurisdictional issue is ...properly characterized as one of ripeness, as the Board’s decision regarding the HIB allegations is...a necessary predicate to a decision by the Commissioner.

(Id. at p. 6-7) (emphasis added).

Here, Petitioners prematurely argue that Middletown “cannot demonstrate that its school closure plan meets the[] requirements” set forth in N.J.A.C. 6A:26–7.5(a). Petitioners therefore argue that Middletown has violated N.J.A.C. 6A:26–7.5(a), as well as corresponding policy 7113.1 and its additional data-gathering and deliberation requirement, for the same reasons. (**Exh. A**, Petition, ¶¶256, 287, 290, 293). It must be emphasized that the very first paragraph of the Petition recognizes that the Board’s February 26, 2026 vote was merely to “begin the process of closing three district schools” (Id. at Preliminary Statement, par. 1) and the Petition further acknowledges the required processes to close schools as set forth in N.J.A.C. 6A:26–7.5(a). (Id. at ¶253.)

The statutory procedures outlined in N.J.A.C. 6A:26–7.5(a) have not yet been completed in this matter. Compare M.M. OAL Dkt. No. EDU 05225-20, p. 3. Petitioners do not allege that

Middletown has received any response from the executive county superintendent, including but not limited to the recommendation required to be submitted to the Division to obtain approval for the school closing, let alone applied to the Division for said approval, which are statutory requirements mandated by N.J.A.C. 6A:26–7.5(b-c). Likewise, Petitioners do not allege that the Division has made any determination regarding whether Middletown has satisfied the assurances set forth in N.J.A.C. 6A:26–7.5(a) as required for school closings. Petitioners cannot ask this tribunal to review Middletown’s purported violations of the administrative code and corresponding District policy when the requisite processes have not yet been completed and the decisions of the executive county superintendent and the Division have not yet been made. Indeed, the school closure process has just begun and the Division has not issued any decision regarding the proposed closures that Petitioner challenges in this matter. The Division’s final decision is a necessary predicate to the Commissioner’s review and decision here. Compare M.M. OAL Dkt. No. EDU 05225-20, p. 3. As such, this matter is not ripe for this tribunal’s review and determination. Id.

Accordingly, Counts II and III of the Petition against Middletown must be dismissed because they are not ripe for review as a matter of law.

IV. Count VI Must Be Dismissed For Failure to State A Claim As A Matter Of Law.

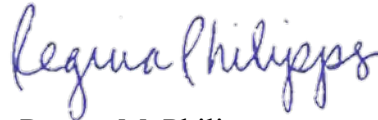
Count VI of the Petition requests that Middletown’s payment to an outside consultant related to the school closures in question be referred to the Office Of Fiscal Accountability And Compliance for investigation. (**Exh. A**, Petition, ¶¶349-362). This is merely a request for a remedy; there is no cause of action or substantive legal claim asserted by Petitioners. Because even a generous reading of the allegations does not reveal the fundament of a cause of action or a legal basis for recovery, Count VI must be dismissed with prejudice as a matter of law. Printing Mart-Morristown, 116 N.J. at 746; Edwards, 357 N.J. Super. at 202.

CONCLUSION

For all the foregoing reasons, Respondent, Middletown Township Board of Education, respectfully submits that the Petition be dismissed for lack of subject matter jurisdiction, because the matter is not ripe for review, and for failure to state a claim as a matter of law.

Respectfully submitted,

MADDEN & MADDEN, P.A.



Regina M. Philipps

cc: Roshan D. Shah, Esquire
William Burns, Esquire, Solicitor
Dr. Jessica Alfone, Superintendent
Amy Doherty, Business Administrator/Board Secretary
Middletown Board of Education
John Shumway, CRIS, Sr. Claims Adjuster, Claim No. 2026393443

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KRISTIN ROONEY, SCOTT
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JESSICA DONOHUE,
MELISSA DAUS, MEGAN DAUS AND
KATHLEEN YOUNG,

Petitioners,

v.

MIDDLETOWN TOWNSHIP BOARD OF
EDUCATION

Respondent.

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

OAL Docket No. TBD
Agency Ref. No. 079-03-26

CERTIFICATION OF COUNSEL

I, Regina M. Philipps, Esquire, do hereby certify as follows:

1. I am a Partner with the law firm of Madden & Madden, P.A., counsel for Respondent, Middletown Township Board of Education (“Respondent”), in the above-captioned matter. As such, I am familiar with the facts of this matter and I offer this Certification in support of Respondent’s motion to dismiss.

2. Attached hereto as Exhibit “A” is a true and accurate copy of the March 4, 2026 Petition of Appeal.

3. Attached hereto as Exhibit “B” is a true and accurate copy of the July 23, 2025 OAL decision of Seidler v. Board of Education of the Township of East Brunswick, Middlesex County, OAL Dkt. No. EDU 07171-25, adopted by the Commissioner of Education on October 20, 2025.

4. Attached hereto as Exhibit “C” is a true and accurate copy of the August 7, 2020

OAL decision of M.M. v. Board of Education of the Township of Lafayette, OAL Dkt. No. EDU 05225-20, adopted by the Commissioner of Education on November 5, 2020.

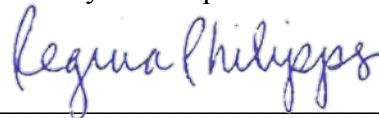
5. Attached hereto as Exhibit “D” is a true and accurate copy of the November 3, 2022 OAL decision of Gordon v. Board of Education of the Township of Sparta, Sussex County, OAL Dkt. No. EDU 09328-21, adopted by the Commissioner of Education on December 14, 2022.

6. Attached hereto as Exhibit “E” is a true and accurate copy of the December 21, 2025 Commissioner of Education decision of In The Matter of the Inclusion of Certain Questions on the Ballot for the April 2005 Camden School Election, Camden County, Agency Dkt. No. 303-9/05.

I hereby 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.

Date: March 23, 2026

MADDEN & MADDEN, P.A.
Attorney for Respondent



Regina M. Philipps, Esquire