

OXFELD COHEN, P.O.
Sanford R. Oxfeld (005091973)
60 Park Place, Suite 600
Newark, NJ 07102
T: 973-642-0161
F: 973-802-1055
Email: sro@oxfeldcohen.com
Attorneys for Plaintiffs-Petitioners

<p>EAST ORANGE EDUCATIONAL SUPPORT PROFESSIONALS' ASSOCIATION AND EAST ORANGE MAINTENANCE ASSOCIATIONS, Plaintiffs-Petitioners, v. EAST ORANGE BOARD OF EDUCATION, Defendant-Respondent.</p>	<p>SUPREME COURT OF NEW JERSEY DOCKET NO.: 090489 CIVIL ACTION ON APPEAL FROM FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO.: A-3657-21 SAT BELOW: Hon. Robert Gilson, P.J.A.D. Hon. Patrick DeAlmeida, J.A.D.</p>
--	---

**BRIEF IN RESPONSE TO AMICUS CURIAE OF MATTHEW J.
PLATKIN, ATTORNEY GENERAL OF THE STATE OF NEW
JERSEY**

Sanford R. Oxfeld, Esq.
Of Counsel and on the Brief

TABLE OF CONTENTS

PRELIMINARY STATEMENT..... 1

POINT I..... 1

**ATTORNEY GENERAL’S LITERAL INTERPRETATION OF
N.J.S.A. 18A:7F-9(E)(1) WOULD PRODUCE AN ABSURD
RESULT**..... 1

POINT II..... 6

**ATTORNEY GENERAL’S STATUTORY INTERPRETATION IS
NOT SUBJECT TO DEFERENCE BY THIS COURT**..... 6

CONCLUSION..... 9

TABLE OF AUTHORITIES

CASES:

Bd. of Educ. of West Windsor-Plainsboro Regional School Dist. v. Bd. of Educ. of Tp. of Delran,
361 N.J.Super. 488 (App. Div. 2003)6

Bedford v. Riello,
195 N.J. 210, 224, (2008)8

Burnett v. Cnty. of Bergen,
198 N.J. 408, 421, (2009)8

East Bay Drywall, LLC v. Dept. of Labor and Workforce Development,
251 N.J. 477, 493-94 (2022)6

Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities,
207 N.J. 489, 502 (2011) 8

In re Ridgefield Park Bd. of Educ.,
244 N.J. 1, 17 (2020) 7

Jenkins v. Morris Twp. School District,
58 N.J. 483, 494 (1971) 8

Laba v. Bd. of Educ. of Newark,
23 N.J. 364, 382 (1957)8

New Jersey Builders, Owners & Managers Ass'n v. Blair,
60 N.J. 330, 340 (1972) 2

New Jersey State Bar Ass'n v. State,
387 N.J.Super. 24, 45 (App. Div. 2006). 5

Paterson Board of Educ. v. Pritchard Industries,
2025 WL 337796, *7-8 (App. Div. 2025) 8

Rivera v. New Jersey State Police

(2016 WL 3626542, *13) (Law. Div. 2016) 6

San-Lan Builders, Inc. v. Baxendale,
28 N.J. 148, 155 (1958) 2, 5

Schwartz v. Dover Public Schools,
180 N.J.Super. 222, 226 (App Div. 1981) 2, 5

Shaw v. Shand,
460 N.J.Super. 592, 617 (App. Div 2019) 6

Wright v. Vogt,
7 N.J. 1, 80 A.2d 108 (1951). 2

Young v. Schering Corp.,
141 N.J. 16, 25 (1995) 2

STATUTES:

N.J.S.A. 18A:7F-9. et passim

PRELIMINARY STATEMENT

Pursuant to the Court’s Order dated October 30, 2025, Plaintiffs-Petitioners make this application in response to Attorney General Amicus Curiae brief. The Attorney General’s interpretation of 18A:7F-9(E)(1) is patently unreasonable and contrary to the intent of the Legislature. Plaintiffs-Petitioners urges the Court not to grant his arguments any special deference given that public sector collective bargaining falls outside his ambit of oversight and enforcement.

POINT I

ATTORNEY GENERAL’S LITERAL INTERPRETATION OF N.J.S.A. 18A:7F-9(E)(1) WOULD PRODUCE AN ABSURD RESULT

If the Court were to accept the Attorney General’s literal interpretation of N.J.S.A. 18A:7F-9(E)(1) it would lead to an absurd and unreasonable result. This approach is at odds with the commonsense manner courts have utilized to give weight and meaning to statutes. While many maxims exist to aid in statutory interpretation, there is one principal that acts as a lodestar, that reason is “the soul of the law:”

. . .and in this quest for the true intention of the law, the letter gives way to the obvious reason and spirit of the expression, and to this end the evident policy and purpose of the act constitute an implied limitation on the sense of general terms and a touchstone for the

expansion of narrower terms. The will of the lawgiver is to be gathered from the object and nature of the subject matter, the contextual setting, and the mischief felt and the remedy in view. *Scholastic strictness is to be avoided in the search for the legislative intention. The particular terms are to be made responsive to the essential principle of the law. It is not the words but the internal sense of the act that controls. reason is the soul of law.* San-Lan Builders, Inc. v. Baxendale, 28 N.J. 148, 155 (1958). Citing Wright v. Vogt, 7 N.J. 1, 80 A.2d 108 (1951). (emphasis added).

Relying on *San-Lan Builders*, Justice Mountain later observed:

It is frequently difficult for a draftsman of legislation to anticipate all situations and to measure his words against them. Hence cases inevitably arise in which a literal application of the language used would lead to results incompatible with the legislative design. It is the proper function, indeed the obligation, of the judiciary to give effect to the obvious purpose of the Legislature, and to that end ‘words used may be expanded or limited according to the manifest reason and obvious purpose of the law. The spirit of the legislative direction prevails over the literal sense of the terms. New Jersey Builders, Owners & Managers Ass'n v. Blair, 60 N.J. 330, 340 (1972) (citations omitted).

See also Young v. Schering Corp., 141 N.J. 16, 25 (1995) (courts should avoid a literal interpretation of individual statutory terms or provisions that would be inconsistent with the overall purpose of the statute).

In Schwartz v. Dover Public Schools, 180 N.J.Super. 222, 226 (App Div. 1981), the Court noted that “Reason is said to be the ‘soul of law,’ and the sense of a statute should control over its literal terms. . .” Further, the Court in rejecting a literal interpretation of a statute that would produce an absurd result posed the

rhetorical question, Why would the Legislature want that extraordinary result? *Id.* (citations omitted).

Plaintiffs-Petitioner pose this same question before this Court, why would the Legislature want the extraordinary results that the Attorney General has argued has offered as the intent of the Legislature in N.J.S.A. 18A:7F-9(e)(1). In particular, the Attorney General argued that this provision contains a “clear cap” on the amount of compensation public employees can receive during a state of emergency:

In the same sentence that the statute declares a default rule (pay what the collective bargaining agreement says for days when school is open), the statute has an explicit exception that allows for “additional compensation, benefits, and emoluments [to] be negotiated for additional work performed.” N.J.S.A. 18A:7F-9(e)(1). This provision would be entirely superfluous if the statute merely set a pay floor, since there would have been no need to create an exception permitting additional pay for additional work. The fact that the Legislature instead included this exception permitting extra compensation demonstrates that the Legislature believed it was also setting a pay cap that could not be exceeded unless the exception was satisfied.

(Attorney General Br. at 11).

The Attorney General’s interpretation is not only patently unreasonable, but would produce an absurd result. A careful dissection of the statute reveals the ridiculous effect this would have. Instead of reading the statute to preserve the

collectively bargained rights of employees during a public health emergency, it would severely undercut them by imposing an arbitrary pay cap.

A careful dissection of the statute bears this out. The first sentence of the provision prohibits limitations of any compensation due to public school employees under a collective bargaining agreement. This sentence alone demonstrates the plain meaning of the statute, that public employees should receive the benefit of their bargain regardless of whether a public health emergency exists.

Contrary to what the Attorney General has argued, the second sentence reinforces the first: “public school employees covered by a collective negotiations agreement shall be entitled to compensation, benefits, and emoluments as provided in the collective negotiations agreement as if the school facilities remained open for any purpose and for any time lost as a result of school closures or use of virtual or remote instruction, except that additional compensation, benefits, and emoluments may be negotiated for additional work performed.” N.J.S.A. 18A:7F-9(e)(1).

This is not a pay ceiling, but the Legislature reinforcing a cornerstone of collective bargaining, that public employees are entitled to negotiate additional compensation for additional work performed. To the extent any “cap” exists is a question of contract interpretation best left for a labor arbitrator (and that is

precisely what occurred in this matter). To follow the Attorney General's logic to its ultimate conclusion would create an absolute limit on negotiated compensation; despite what language may have been negotiated, public employees would never be entitled to receive additional compensation for additional work performed simply because a public health emergency had been declared. This is precisely the type of "extraordinary result" that the Court in Schwartz was warning against.

Instead, consistent with San-Lan Builders this Court must look first to the legislative purpose of N.J.S.A. 18A:7F-9(e)(1), rather than focus on "scholastic strictness" as the Attorney General would make it seem. The clear goal of this provision was to ensure that public employees continue to receive their collectively bargained compensation as if they were still performing their regular job function as if the schools had remained open. However, to infer a "pay cap" not only finds no textual support in the statute itself, but would render the purpose of the entire provision meaningless; that public employees who negotiated additional compensation for additional work performed should be entitled to the benefit of their bargain. To interpret N.J.S.A. 8A:7F-9(e)(1) in any other way would invite the Court to substitute its own judgement for that of the legislature. New Jersey State Bar Ass'n v. State, 387 N.J.Super. 24, 45 (App. Div. 2006).

POINT II

**ATTORNEY GENERAL'S STATUTORY INTERPRETATION IS NOT
SUBJECT TO DEFERENCE BY THIS COURT**

It is now axiomatic that a court will defer to an agency's interpretation of a statute unless it is plainly unreasonable. East Bay Drywall, LLC v. Dept. of Labor and Workforce Development, 251 N.J. 477, 493-94 (2022) (citations omitted).

Like other agencies, the Court has from time to time extended this deference to the Attorney General in those areas that the Legislature has granted the Attorney General the authority to enforce the laws. *See* Shaw v. Shand, 460 N.J.Super. 592, 617 (App. Div 2019) (Attorney General's interpretation of The Consumer Fraud Act is entitled to special deference given its role as a legal advisor to the Division of Consumer Affairs); Rivera v. New Jersey State Police (2016 WL 3626542, *13) (Law. Div. 2016) (Attorney General's authority over the State's law enforcement entitles deference to policing standards).

There are pertinent exceptions to such deference by the courts. In Bd. of Educ. of West Windsor-Plainsboro Regional School Dist. v. Bd. of Educ. of Tp. of Delran, 361 N.J.Super. 488 (App. Div. 2003), the Appellate Division grappled with the question as to which school district must pay for the transportation costs of an autistic child who lives in one district but attends school in another district. In 1984, the Attorney General issued advice regarding the transportation of pupils and

which school district bears the cost. *Id.* at 492. However, in the runup to the appeal, the State Board of Education felt compelled to follow that advice even though it expressly disagreed with it. *Id.* at 493. The Court noted that:

We preface our analysis by noting that the Attorney General's 1984 AAA sent to the agency in this matter was not a binding opinion, nor was it an administrative determination, but advice by the Attorney General to a client, which the client could accept or reject. *In the school law context, the State Board of Education is the ultimate administrative interpreter, subject to the courts, of the requirements of pertinent statutes and regulations.*

Id. at 494 (citations omitted)(emphasis added).

Despite the Attorney General's pronouncements to the contrary, he is not "responsible for ensuring the lawful administration of New Jersey's education and public sector labor statutes . . ." (Attorney General Cert., ¶18). The lack of *any* Attorney General opinions on the collective bargaining process undercuts the foundations for such assertions.

It is the Public Employment Relations Commission and *not* the Attorney General that has been tasked by the legislature in regulating public sector collective bargaining and labor relations. In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 17 (2020) (In the absence of constitutional concerns or countervailing expressions of legislative intent, the Supreme Court applies a deferential standard of review to determinations made by the PERC) (citations omitted). Similarly, it is the Commissioner of Education who has been vested as the chief authority to

enforce education statutes. Jenkins v. Morris Twp. School District, 58 N.J. 483, 494 (1971), citing Laba v. Bd. of Educ. of Newark, 23 N.J. 364, 382 (1957) (Commissioner's primary responsibility is to make certain that the terms and policies of the School Laws are being faithfully effectuated). *See also* Paterson Board of Educ. v. Pritchard Industries, 2025 WL 337796, *7-8 (App. Div. , 2025) (The Court has "institutional respect" for the Commissioner's jurisdiction over school-related matters).

In the present matter, arising in the context of the "school laws," the plain meaning of N.J.S.A. 18A:7F-9 makes clear that if there is any deference to be paid in interpreting the statute, it is to the Commissioner of Education, *not* the Attorney General. Section (a) permits the Commissioner to withhold all or part of a school district's school aid for failure to comply with applicable statute listed therein. Section (b) empowers the Commissioner to apply the 180-day standard for virtual instruction days. Finally, section (d) empowers the Commissioner to define virtual and remote instruction and develop guidelines for its use.

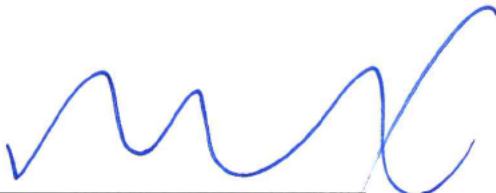
When courts interpret statutes they do so in a manner to ensure that they are "construed in harmony with one another so that a proper meaning can be given to the whole of an enactment." Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities, 207 N.J. 489, 502 (2011), citing Burnett v. Cnty. of Bergen, 198 N.J. 408, 421, (2009) (quoting Bedford v. Riello, 195 N.J. 210, 224,

(2008)). Here, since three different sections of N.J.S.A. 18A:7F-9 provides authority to the Commissioner of Education to interpret and enforce the statute then it must follow that the Commission is the only agency (and not the Attorney General) which the court should provide deference to interpret this statute.

CONCLUSION

Notably absent from the Attorney General's brief is any analysis, or frankly even acknowledgment, of one of the fundamental questions before this court: What deference must a court pay to an arbitrator's application of a statute? Is the statute preemptive? Is the arbitrator's interpretation of the statute reasonably debatable when applying the doctrine of probable intent? Moreover the Attorney General's interpretation of the statute would create out of whole cloth a pay ceiling which lacks any support in the text of the statute itself. His interpretation is not only patently unreasonable, but would contradict the Legislature's intent.

For all of the aforementioned reasons, his application must not be given any weight nor consideration.



Sanford R. Oxfeld, Esq.
Attorneys for Plaintiffs-Petitioners

Dated: 11-14-25