

New Jersey Commissioner of Education
Order on Emergent Relief

A.G., S.D., A.G.-H., M.G., S.H., R.H., B.I., J.I., E.L., J.L.,
D.M., D.P., R.P., N.R., E.S., R.S., S.S., and D.Z., on
behalf of minor children,

Petitioners,

v.

Board of Education of the Bordentown Regional
School District, Burlington County,

Respondent.

The record of this emergent matter and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed and considered.

Upon such review, the Commissioner concurs with the ALJ that petitioners have 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 petitioners' application for emergent relief is adopted for the reasons stated therein. This matter shall continue at the Office of Administrative Law with such proceedings as the parties and the ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.


COMMISSIONER OF EDUCATION

Date of Decision: April 28, 2025
Date of Mailing: April 28, 2025



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING

EMERGENCY RELIEF

OAL DKT. NO. EDU 06340-25

AGENCY DKT. NO. 98-4/25

**A.G., S.D., A.G.-H., M.G., S.H., R.H., B.I.,
J.I., E.L., J.L., D.M., D.P., R.P., N.R., E.S.,
R.S., S.S., AND D.Z. ON BEHALF OF
MINOR CHILDREN,**

Petitioners,

v.

**BORDENTOWN BOARD OF EDUCATION,
BORDENTOWN REGIONAL SCHOOL DISTRICT,**
Respondent.

A.G., pro se, for petitioners

Cameron R. Morgan, Esq., for respondent (Cleary, Giacobbe, Alfieri & Jacobs,
LLC, attorneys)

Record Closed: April 16, 2025

Decided: April 17, 2025

BEFORE **ADVIA KNIGHT FOSTER**, ALJ:

STATEMENT OF THE CASE

On March 19, 2025, respondent, Bordentown Board of Education, proposed a redistricting plan to balance the 2025–26 school budget. The proposal requires, among other things, for elementary school students to change schools every two years. No proof exists that schoolchildren will suffer any harm. Are petitioners, parents of schoolchildren, entitled to a stay? No. To be entitled to a stay, petitioners must demonstrate, among other things, that they will suffer irreparable harm if the requested relief is not granted. N.J.A.C. 6A:3-1.6(b).

PROCEDURAL HISTORY

On April 8, 2025, petitioners filed a Petition of Appeal with the Department of Education seeking a stay of implementation of the One Bordentown redistricting plan proposed by the Board of Education of the Bordentown Regional School District.

On April 10, 2025, the Department of Education transmitted the case to the Office of Administrative Law under the Administrative Procedure Act , N.J.S.A. 52:14B-1 to -15, and the Act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the rules of procedure established by the Department of Education to hear and decide controversies and disputes arising under school laws, N.J.A.C. 6A:3-1.1 to -1.17. Jurisdiction is conferred under N.J.S.A. 18A:6-9. On April 16, 2025, I held oral arguments and closed the record.

FINDINGS OF FACT

On March 19, 2025, the Bordentown Regional School District Board of Education (Board) held a public meeting to address the tentative budget for the 2025–26 school year for which proper advance forty-eight-hour notice was given to the public. Dr. Edward Forsthoffer III, interim superintendent, presented a PowerPoint presentation explaining the budget and the Board’s rationale and posted it on the Bordentown School District

website. (R-1.) The final budget must be submitted to the Department of Education (DOE) on or before May 14, 2025, according to N.J.S.A. 18A:22-32(b). ¹

For the upcoming 2025–26 school year, there is a substantial budget gap of over \$8.3 million due to declining enrollment, losses in State aid, increased costs in special education and healthcare premiums, and loss of grant money. To balance its budget for the upcoming school year, the Board proposed a tentative budget that contained several cuts and reductions, including reducing summer curriculum writing, eliminating middle school sports, postponing the purchase of two buses, eliminating summer pay, and eliminating 47.5 staff positions. (R-1.)

The proposed tentative budget also contained a redistricting plan, called One Bordentown. Currently, there are five schools in the district: Bordentown Regional High School, which houses grades 9–12; Bordentown Regional Middle School, which houses grades 6–8; MacFarland Intermediate School (MacFarland), which houses grades 3–5; Peter Muschal Elementary School (Peter Muschal), which houses grade pre-K–2; and Clara Barton Elementary School (Clara Barton), which houses grades pre-K–2. Under the One Bordentown plan, only the elementary schools' enrollment changes. For example, Peter Muschal school would house grades pre-K–1, Clara Barton would house grades 2–3, and MacFarland would house grades 4–5. ²

The redistricting plan will produce larger classes and require elementary students to change schools every two years.

If the Board were to fail to submit a balanced budget and hence fail to certify the tax levy by the deadline of May 19, 2025, the Commissioner would make the required cuts to balance the budget and determine the local tax levy. N.J.A.C. 6A:23A-9.8(b). The DOE could also appoint a fiscal monitor over the district according to N.J.S.A. 18A:7A-55.

¹ Petitioners argued at oral argument there was a vacant Board seat in Bordentown City which I considered but it did not alter my decision.

² Petitioners argued at oral argument but did not present any evidence that the incoming kindergarten class was born at or during the pandemic and were delayed and the redistricting plan would cause them even greater harm. This argument did not change my decision.

CONCLUSIONS OF LAW

It is well settled that “an action of the local board which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives.” Kopera v. West Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). The decision of a local board “is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable.” Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). With respect to school laws in particular, the commissioner has jurisdiction to hear and determine all controversies and disputes arising under the school laws, except higher education, or under the rules of the State board or of the commissioner. N.J.S.A. 18A:6-9. Where 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 include with the petition of appeal a separate motion 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). A motion for a stay or emergent relief must be accompanied by a letter memorandum or brief which must address the following standards to be met for granting such relief pursuant to Crowe v. DeGioia, 90 N.J. 126 (1982):

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

The petitioner must satisfy all four prongs of the Crowe test.

Irreparable Harm

Regarding the first prong, “irreparable harm” is defined as the type of harm that “cannot be redressed adequately by monetary damages.” Crowe, 90 N.J. at 132–33. Indeed, the purpose of emergent relief is to “prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case.” Id. at 132 (quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (E. & A. 1854)). In addition, the irreparable-harm standard contemplates that the harm be both substantial and immediate. Subcarrier Communications v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997).

In this case, petitioners argue that the One Bordentown redistricting plan will cause irreparable harm to elementary students since it requires larger classes and children to switch schools every two years. Petitioners further argue that this will negatively impact the students’ mental health, social stability, and academic development, and cite many studies as supporting evidence. However, they have not shown that the studies are scientific or reliable. Petitioners failed to show how the studies correlate with the children in this case. Further, most of the studies petitioners cite relate to adolescents, not elementary-aged children, and are inapplicable. Therefore, petitioners’ claim that the redistricting plan will cause irreparable harm is purely speculative.

Petitioners also fail to show imminent harm. They seek a “halting” to implementation of the One Bordentown redistricting plan, which is not scheduled to be implemented until September. Thus, petitioners fail to show imminency. Therefore, I **CONCLUDE** that petitioners failed to establish irreparable harm.

Legal Right is Settled and Likelihood of Prevailing on the Merits

Regarding petitioners’ first claim, lack of proper notice under the Open Public Meetings Act, N.J.S.A. 10:4-6 to -21, they fail to establish a legal right that requires the Board to advertise the entire contents of a budget prior to its meeting. Contrary to their assertion, the Board did provide proper and adequate notice under the Act because the

Board provided written notice forty-eight hours in advance by advertising the date, time, and location of the meeting, as well as the agenda. Moreover, petitioners concede in their petition that the Board provided adequate notice.

In their second claim, petitioners argue that the redistricting plan violates the Individuals with Disabilities Education Act (IDEA) by disproportionately affecting services for special education students and disrupting Basic Skills Instruction (BSI) programs. Under the IDEA, only a parent, guardian, or adult child may file a claim identifying an individual student, the nature of the problem as it relates to his or her educational rights, and a resolution of the problem. 20 U.S.C. § 1415(b)(7). For these reasons, I **CONCLUDE** that the petitioners have no standing to bring this IDEA claim.

In their third claim, petitioners argue that the redistricting plan will cause substantial financial consequences and that the Board has not been transparent about the transportation costs. Their premise that there will be substantial financial costs is purely speculative. Petitioners have not provided any evidence that there will be significant costs. The Board announced and detailed the tentative 2025–26 budget at its meeting, which included a PowerPoint presentation done after the meeting by the interim superintendent, which is on the district’s website. So, the Board has fulfilled its legal obligations.

Petitioners also argue that the redistricting plan will significantly increase traffic demands and cause “unintended consequences for traffic safety, air quality, and district operations,” and, therefore, the Board is required to do a traffic-congestion and road-safety study. Again, petitioners failed to identify any well-settled legal right or requirement that a school district conduct a traffic study or an environmental-impact study prior to implementation of a redistricting plan.

Petitioners must show that the Board’s redistricting plan is arbitrary, capricious, or unreasonable. Given the evidence before me, I **CONCLUDE** that the legal rights are well settled, but that petitioners failed to demonstrate a likelihood of prevailing on the merits.

Balance of Equities

Due to declining enrollment, losses in State aid and grants, and increased costs in healthcare premiums and special education, the Board had to close an \$8.3 million budget gap. The redistricting plan was devised out of that need to close the gap. The Board must have a balanced budget that has to be presented to the DOE by May 19, 2025, otherwise, the Commissioner would make whatever cuts to programs he deemed necessary to balance the budget, thereby taking control away from the community and risking cutting highly rated programs. The DOE could also appoint a fiscal monitor, taking control of district operations and removing all control from the Board and local elected representatives of the community. Weighing the interests of the Board, including the need for a balanced budget, against the petitioners' interests, whose harm is purely speculative, I **CONCLUDE** that the Board will suffer greater harm.

For the reasons set forth above, I **CONCLUDE** that petitioners have not met the standards for emergency relief.

ORDER

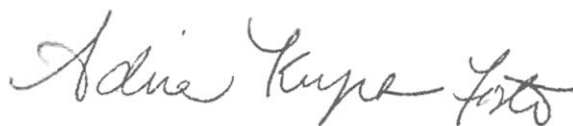
I **ORDER** that the petitioners' request for emergency relief seeking an order "halting" the redistricting plan is **DENIED**.

Petitioners' request for emergent relief to stay the implementation of the redistricting plan pending resolution of several investigatory requests, including but not limited to transportation costs, traffic studies, and environmental-impact studies, shows that further issues remain open upon resolution of this emergent case.

This order on application for emergency relief may be adopted, modified or rejected by **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 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.

April 17, 2025

DATE

A handwritten signature in cursive script, reading "Advia Knight Foster", written in black ink.

ADVIA KNIGHT FOSTER, ALJ

AKF/tc