

New Jersey Commissioner of Education
Order on Emergent Relief

G.P., on behalf of minor child, J.R.,

Petitioner,

v.

Board of Education of the Township of Rockaway,
Morris County,

Respondent.

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.


COMMISSIONER OF EDUCATION

Date of Decision: October 10, 2025
Date of Mailing: October 10, 2025



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

**ORDER DENYING MOTION FOR
EMERGENT RELIEF**

OAL DKT. NO. EDU 14431-25

AGENCY DKT. NO. 277-8/25

G.P. o/b/o MINOR CHILD J.R.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF ROCKAWAY, MORRIS COUNTY,**

Respondent.

G.P. petitioner, on behalf of J.R., pro se

Jaclyn M. Morgese Esq., for respondent (Chasen, Lamparello, Mallon and
Cappuzzo, attorneys)

BEFORE **ERNEST M. BONGIOVANNI**, ALJ:

FACTUAL DISCUSSION

On August 19, 2025, a petition by G.P., on behalf of minor child J.R. (G.P./Petitioner) was filed with a request for Emergent Relief. On September 5, 2025 at 1:30 PM a hearing on the Emergent request only, was held. Because of the length of the petition, and the documents and in support of the emergent appeal, and the lack of organization in the filings, requests were made by the undersigned for clarification of the

argument and to cite specific parts of the law that are relevant to the application. The parties were given until Sept 11, 2025 to clarify.

Petitioner filed voluminous additional arguments and citations sent via email September 8 and Sept 10, 2025. Respondent, which filed its initial opposition to the motion on September 3, 2025, filed supplemental opposition on September 8 and September 11, 2025. In considering the submissions, I determined I would not accept legal briefs filed in other cases concerning those cases, and I requested that the full text of certain decisions or legal precedent be supplied with which petitioner and respondent complied. I also advised petitioner I would now accept into evidence a “Hibster User Guide” as it lacked proper authority and foundation.

The petition solely involves two findings of instances of HIB against J.R. by respondent Board of Education of the Township of Rockaway (Board/respondent). The Emergent appeal asks that during the pendency of the proceedings, this Court enter an Order vacating the Board’s findings and its “mistaken records” about its investigation, reasoning that every day these two HIB findings remain on J.R.’s school records results in injury to his scholastic record, chances for scholastic and extracurricular involvement and injures his reputation. G.P. also argues the school’s findings during the pendency of the hearing increase the likelihood of incremental disciplinary punishment (although neither side focused on the punishment, and it is fair to say, it was “buried” in the avalanche of arguments and excessive documentary submissions. I believe the discipline was on the order of two days when J.R. was not allowed to have lunch in the school cafeteria).

Before analyzing the elements of Crowe and its application to the decision to follow, I **FIND** that the overwhelming content of petitioner’s complaint is not against how the Board weighed the evidence in its ultimate determination of HIB but rather a plethora of alleged failures of the Board to follow procedural requirements of the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13 et seq. (the ACT). Thus, in analyzing some of the elements of Crowe, I will simply state there is a presumption of correctness in the Board’s determination in its findings in HIB investigations, and the Emergent relief application fails to overcome that presumption by not significantly challenging the evidence that a) J.R.

actually committed the actions, here basically verbalizing insults about another student's weight or shape, or that b) such actions cannot under the ACT constitute a HIB.

Rather the Emergent relief focuses on alleged procedural defects in how the Board failed to carry out alleged procedural mandates of the ACT. For example, G.P. complains that neither she nor J.R.'s father were notified properly were not given "Same day notice" she was allegedly entitled to under N.J.A.C. 6A:16-7.8(a)2i, but was instead informed two days after the commencement of the HIB investigation. G.P. also argues that the notification to her on June 11, 2025 of the Board's findings of the two HIBS was untimely under the act.

For all the procedural defects alleged by G.P., she seeks a "Temporary Order" for

1. Nonreliance on HIB findings #292933 and #293608
2. Annotation of local SSDS entries 'disputed stayed" (with a local records fallback)
3. In camera submission of Board Executive Summary, HIBster autologs. Metadata and any SSDS stamps with a privilege log,
4. A 7.7 correction or written denial of the 5/21/2025 entry on the Short front page. (the last item relating to alleged erroneous statements concerning procedural steps)¹

The Board adamantly denies there was not proper Notice under the Act, Even if there were any defects in the HIB investigation of Notices of same to the parents, it argues petitioner fails to satisfy the elements of Crowe and N.J.A.C. 63:3-1.6 requirements for emergent relief. Among other reasons, the Board cites J.L. ex rel A.L. v Bd. Of Educ of the Bridgewater-Raritan Reg's School Dist., OAL Dkt. 11464-14 Agency Dkt No, 77 3/14 Comm'r Dec. 2018

¹ Petitioner's "Crowe Letter-Brief, 9/3/25, second page (no pagination on original document)

In that case Administrative Law Judge Kerins stated the proper remedy for procedural defects, their being that the parents were not appropriately notified of the results of the investigation. The Judge noted the ACT required “prompt response to an alleged HIB incident and determined the principal was required to initiate an investigation within one school day of a HIB being reported. Judge Kerins also found that the results of an investigation be reported to the Board of Education no later than “the next Board of education meeting following the completion of the investigation...[.]”

Significantly Judge Kerins did not find any specific timeline for an initial notice to the parents of an investigation while the investigation is ongoing. In any event, in reversing the Board’s decision, Judge Kerins ordered a remand and failed to provide any remedy for changing the Board’s decision by vacating or expunging the Board’s action pending the result of the remand. Ultimately the Appellate Division affirmed the Judge’s remand as proper. J.L. ex rel A.L. v Bd. Of Educ. Of the Bridgewater-Raritan Reg’l School Dist. Docket A-2022-16TI (App. Div. 2018).

LEGAL ANALYSIS AND CONCLUSION

To be successful in an application for emergent relief the moving party prove and demonstrate each element clearly and convincingly. Waste Management of N.J. v. Union. Cnty, Utilities Authority, 399 N.J. Super 508, 520 (App. Div. 2008).

The “Crowe” standards

N.J.A.C. 6A:3-1.6(b) sets forth the standards governing motions for emergent relief and instructs that:

A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief which shall 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).]

Indeed, the moving party must demonstrate each element of Crowe “clearly and convincingly.” Waste Management of N.J. v. Union County Utilities Authority, 399 N.J. Super. 508, 520 (App. Div. 2008).

Irreparable harm or injury

Irreparable harm is a “substantial injury to a material degree coupled with the inadequacy of money damages.” Judice's Sunshine Pontiac v. General Motors corp., 418 F. Supp. 1212, 1218 (D.N.J. 1976). An injunctive relief award requires a “clear showing of irreparable injury” or a “presently existing actual threat.” Cont'l Grp. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (D.N.J. 1980). More than a risk of irreparable harm must be demonstrated. Id.

Here, J.R., who has been determined by the District to have committed the two HIBs is not entitled to have in effect all the school records concerning the investigation and its determination of HIB vacated or expunged pending the outcome of the underlying appeal. The idea that J.R. will be subject to incremental discipline and injury to his scholastic reputation and educational opportunities pending the hearing is to begin with fanciful. Further I agree with respondent that HIB determinations under the ACT are properly subject to appeals, and possible modifications, remands or reversals by the OAL or by the Commissioner of Education. If petitioner ultimately prevails, the ACT provides adequate relief at that time. In any event, It’s evident that the time of harm described by G.P. is not only not serious but is certainly subject to adequate remedial action in the event she prevails. There exist adequate remedy or remedies “after the fact.” L.J. o/b/o minor child S.J. et al. v. Bd. of Educ. Of the Twp of Manchester, Ocean Cty, OAL Docket

No. EDU 2437-03 (2003) (Respondent's Exhibit L). As indicated infra,, I gave additional time to both parties to clarify by citing specifically to cases or other law that supports reversing a Board's decision on a finding of HIB for procedural defects. I agree with respondent that the cases cited by petitioner in her supplemental briefs, to the extent they are relevant actually support the Board's position that if procedural defects are found the most a court would order ultimately is a remand to the Board. Hence it is less likely to support the extraordinary remedy of emergent relief especially as to what petitioner seeks here.

Right to the underlying claim must be settled

A board of education's actions are entitled to a presumption of lawfulness and good faith. In challenges to board actions, the challenger bears the burden of proving that such acts were unlawful, arbitrary, capricious, or unreasonable. Schuster v. Bd. of Educ. Montgomery Twp., 96 N.J.A.R.2d (EDU) 670, 676 (citing Schnick v. Westwood Ed. of Educ., 60 N.J. Super. 448 (App. Div. 1960), and Quinlan v. Bd. of Educ. of North Bergen Twp., 73 N.J. Super. 40 (App. Div. 1962)). The "arbitrary, capricious and unreasonable" standard of review imposes a heavy burden on challengers of board actions, and is defined as follows:

In the law, "arbitrary" and "capricious" means having no rational basis. Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is no room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached . . . Moreover, the court should not substitute its judgment for that of an administrative or legislative body if there is substantial evidence to support the ruling.

[Piccoli v. Ed. of Educ. of Ramapo Indian Hills Regional School District, EDU 1839-98, Initial Decision, (January 22, 1999) <http://lawlibrary.rutgers.edu/oal/search.html> (citing Bayshore Sewage Co. v. Dent. of Envir. Protection, 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), aff'd 131 N.J. Super. 37 (App. Div. 1974).]

In the absence of a clear showing of abuse of discretion, the Commissioner of Education will not substitute his or her own judgment for that of the board of education. Massaro v. Bd. of Educ. of the Boro. of Bergenfield, 1 965 S.L.D. 84, 85. In Kopera v. Bd. of Educ. of West Orange, 60 N.J. Super. 288, 294 (App. Div. 1960), the Appellate Division stated, "the well-established rule that action of the local board [of education] which lies within the area of its discretionary powers may not be upset unless patently without rational basis or induced by improper motives."

I specifically directed the parties to cite the law that specifically ordered the prophylactic ones sought here, where certain procedural defects are alleged. I am unconvinced by any authority cited that the emergent relief is based in a well settled legal right. I also agree with Respondent that the Act involved here could have but does not provide for a right to have HIB findings stayed or vacated on an emergent basis

Likelihood of prevailing on the merits

In an appeal of a HIB or disciplinary finding, the burden of proof rests with the petitioner. Emergent relief requires petitioner to demonstrate a likelihood of prevailing on the merits of the underlying claim, and when significant factual issues exist, petitioner cannot.

Underlying the prediction of success of the merits lies the well settled principle that decisions of local boards of education must stand unless shown to be arbitrary, capricious or unreasonable. I understand that the parents here are upset with their reading of the law, which appears incorrect in stating as petitioner repeated in oral argument that they were entitled to same day notice regarding the HIB investigation. I agree with respondent that it appears the Act only requires that the "principal inform the parents or guardians of all students involved in the alleged incident." N.J.S.A. 18A:37-15(b)(5). Further no other timeline is established by any other cited and definitely not by Board Policy. The notification of the parents of the HIB# 29233 investigation report by the principal on May 12, 2025, and on HIB # 293608 on May 21, 2025, appears to satisfy the only requirements of the ACT and other applicable law.

Petitioner's here also argue a procedural violation regarding the Board's affirmance of the substantiation of HIB prior to their HIB appeal. However, it appears, a HIB hearing prior to the Board's action is not required. To the contrary, the Act provides for a procedure whereby the results of the investigation get reported to the Board at their next meeting after the investigation is completed. Only after that report to the Board is it required that the parents be notified within five days. N.J.S.A.18A:37-15 (b)(6)(c). As described succinctly by the Board in its Initial September 3, 2025, page 8, the Board appears from the proofs submitted so far, to have done more to notify the parents than is required by the Act and by any applicable school policy, at least in regard to any serious possible violation regarding any timeline. I therefore cannot agree that petitioner has demonstrated a likelihood of prevailing on the merits.

Balancing of the Equities

As the undersigned indicated during argument, granting pre-hearing relief to petitioner would tend to reverse the process that is intended by the Act and would mean Boards which make findings of HIB should never record their findings officially, much less take disciplinary action until an appeal to the OAL or the Commissioner is concluded. I am sure that is not what the Act intends. I agree with respondent, that if the kind of relief sought here was to be granted "local boards of education would be required to pause all HIB reports and votes...until a parent requests and attends a hearing before the Board. This would create a nonsensical outcome as the [Act] establishes clear and district timelines so delays in resolutions do not occur."

Further, as stated before, the alleged harm to the J.R. is fanciful, or better put speculative. Therefore, the balance of the equities rests with the Board.

Based on the above discussion and analysis, I **CONCLUDE** that petitioner has failed to establish the existence of irreparable harm, that petitioner is likely to prevail on the merits, that petitioner's claim is based on a well settled right or that the equities favor petitioner. Accordingly, under N.J.A.C. 6A:3-1.6 the application for Emergent Relief must be and is **DENIED**.

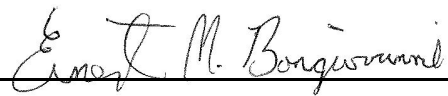
ORDER

Based on the discussion and analysis as hereinabove stated, I **ORDER** that petitioner's request for emergent relief be and is hereby **DENIED**.

This order on application for emergency relief may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who is authorized by law to make the final decision in this case. The final decision shall be issued without delay but no later than forty-five days from the entry of this order. If the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not adopt, modify, or reject this order within those forty-five days, this recommended order shall become the final decision on the issue of emergency relief under N.J.S.A. 52:14B-10.

September 12, 2025

DATE



ERNEST M. BONGIOVANNI, ALJ

Emb/id