

185-26E
OAL Dkt. No. EDU 06064-26
Agency Dkt. No. 128-04-26

New Jersey Commissioner of Education
Order on Emergent Relief

Dr. Gina Frasca,

Petitioner,

v.

Pinelands Regional School District Board of
Education, Ocean 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. 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: May 29, 2026
Date of Mailing: May 29, 2026



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING

EMERGENCY RELIEF

OAL DKT. NO. EDU 06064-26

AGENCY REF. NO. 128-04-26

DR. GINA FRASCA,

Petitioner,

v.

PINELANDS REGIONAL SCHOOL DISTRICT

BOARD OF EDUCATION,

Respondent.

Stephen J. Edelstein, Esq., for petitioner (Weiner Law Group, LLP, attorneys)

John C. Hegarty, Esq., for respondent (Jasinski, P.C., attorneys)

Record Closed: April 30, 2026

Decided: May 4, 2026

BEFORE **SUSAN MCCABE**, ALJ:

STATEMENT OF THE CASE

Respondent, the Pinelands Regional School District Board of Education (Pinelands), failed to appoint petitioner, Dr. Gina Frasca (Frasca), as acting superintendent, despite a job description requiring her to serve in the superintendent's absence. Must Frasca's motion for emergent relief be denied if she fails to show

irreparable harm or favorable equities? Yes. To qualify for emergent relief under N.J.A.C. 6A:3-1.6(b), a petitioner must satisfy all four legal standards.

PROCEDURAL HISTORY

On March 23, 2026, Pinelands placed the superintendent on administrative leave but failed to appoint Frasca as acting superintendent, disregarding her job description, which requires her to serve in that capacity during the superintendent's absence.

On April 6, 2026, Frasca filed a verified petition of appeal with the Commissioner of the Department of Education, Office of Controversies and Disputes (Commissioner). In her petition, Frasca alleges that Pinelands breached her employment contract by failing to name her acting superintendent. Consequently, Frasca seeks to void Dr. Kimberly Clark's (Clark) appointment as acting superintendent and requests an order instating her in that role.

On April 9, 2026, Frasca filed a motion for emergent relief with the Commissioner seeking to be appointed as acting superintendent.

On April 17, 2026, the Commissioner transmitted the verified petition of appeal to the Office of Administrative Law, together with the application for emergent relief, where it was filed as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

On April 30, 2026, I held oral argument on the motion for emergent relief and closed the record.

FINDINGS OF FACT

Based on the documents submitted in support of and in opposition to the motion for emergent relief, I **FIND** the following as **FACT** for purposes of this motion only:

On November 16, 2016, Pinelands issued a job description for the position of assistant superintendent. The job description details the assistant superintendent's duties. The first job duty listed is the requirement that the assistant superintendent serve as the acting superintendent in the absence of the superintendent.

On February 26, 2019, Pinelands hired Frasca for the position of assistant superintendent and entered into an employment agreement for the school year. Frasca and Pinelands entered into yearly employment agreements for each of the school years thereafter, with the most recent employment agreement executed on May 19, 2025, with an expiration date of June 30, 2026. The Ocean County Executive County Superintendent approved the agreement, which states that "the duties of the Assistant Superintendent shall be set by board policy. Said policy and job description may be modified from time to time, by mutual agreement, consistent with the intent set forth above."

On March 23, 2026, Pinelands placed the then-designated superintendent on administrative leave for an undetermined period. On that same date, Pinelands appointed Clark to serve as acting superintendent.

At no time during Frasca's employment as assistant superintendent did Pinelands confer with her to modify the assistant superintendent job description.

Clark's appointment as acting superintendent did not affect Frasca's current position as assistant superintendent. Frasca has not been demoted or reassigned to a lesser position, and she has not suffered a diminishment in salary or tenure rights.

CONCLUSIONS OF LAW

The regulations governing controversies and disputes before the Commissioner of Education provide that "[w]here the subject matter of the controversy is a particular course of action by a district board of education . . . [,] 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). The

regulations further provide that the Commissioner may “[t]ransmit the motion to the OAL for immediate hearing on the motion.” N.J.A.C. 6A:3-1.6(c)(3).

In a motion for emergent relief, petitioners must show that they satisfy each of the following four standards: (1) that the petitioner will suffer irreparable harm if emergent relief is not granted; (2) that the legal right underlying the petitioner’s claim is settled; (3) that the petitioner has a likelihood of prevailing on the merits of the underlying claim; and (4) that when the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the emergent relief is not granted. N.J.A.C. 6A:3-1.6(b)(1)–(4) (citing Crowe v. DeGioia, 90 N.J. 126 (1982)).

Irreparable Harm

Under Crowe, the New Jersey Supreme Court held that a preliminary injunction cannot be issued except when necessary to prevent irreparable harm. Crowe, 90 N.J. at 132 (citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)). A petitioner must demonstrate irreparable harm above and beyond a mere risk of that harm with a clear showing of immediate irreparable injury, not a remote future injury. Cont’l Grp., Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980). Harm is considered irreparable if it cannot be properly rectified with monetary damages. Crowe at 132–133.

Here, Frasca has failed to demonstrate by clear and convincing evidence that Pinelands’ refusal to appoint her as acting superintendent irreparably harms her. Frasca has not been demoted or reassigned to a lesser position and has not suffered a diminishment in salary or tenure rights. Further, any salary loss Frasca may or may not suffer can be rectified monetarily if Frasca prevails in her underlying appeal. Frasca’s assertion that her professional reputation and future career ambitions will be damaged with Clark’s appointment is speculative and is the very definition of a remote future injury. As such, I **CONCLUDE** that Frasca will not suffer irreparable harm if emergent relief is not granted.

Well-settled Legal Right

Emergent relief “should be withheld when the legal right underlying plaintiff’s claim is unsettled.” Crowe, 90 N.J. at 133 (citing Citizens Coach Co., 29 N.J. Eq. at 304–05).

While a breach of contract invokes a well-settled legal right, a board of education’s actions are entitled to a presumption of lawfulness and good faith, and when challenged, the movant bears the burden of proving that such actions were unlawful, arbitrary, capricious, or unreasonable. Schnick v. Westwood Bd. of Educ., 60 N.J. Super. 448 (App. Div. 1960). Actions of a board of education “which lie[] within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives.” Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960).

In this case, Frasca’s job description delineates her duties. Among them are that the assistant superintendent will serve as the acting superintendent in the absence of the superintendent. Pinelands, however, did not appoint Frasca as the acting superintendent in the superintendent’s absence. Pinelands appointed Clark instead. As such, there is at least a preliminary showing of a breach of contract, and Pinelands has failed to demonstrate that its breach was not patently arbitrary or that there was a rational basis for Pinelands to circumvent the terms of Frasca’s employment agreement.

Therefore, I **CONCLUDE** that Frasca has satisfied the well-settled legal right standard under N.J.A.C. 6A:3-1.6(b)(2).

Likelihood of Success on the Merits

Under this standard, petitioners must make a preliminary showing of a “reasonable probability of ultimate success on the merits.” Crowe, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)). Determining the likelihood of success “involves a prediction of the probable outcome of the case’ based on each party’s initial proofs, usually limited to documents.” Brown v. City of Paterson, 424 N.J.

Super. 176, 182–83 (App. Div. 2012) (quoting Rinaldo v. RLR Inv., LLC., 387 N.J. Super. 387, 397 (App. Div. 2006)).

Here, Frasca has preliminarily demonstrated that her job description designates her as the acting superintendent in the absence of the superintendent and that any changes to her job description can only occur with Frasca’s assent. Further, Pinelands has failed to demonstrate that its breach was not patently arbitrary or that there was a rational basis for Pinelands to circumvent the terms of Frasca’s employment agreement.

As such, I **CONCLUDE** that Frasca has demonstrated by clear and convincing evidence that there is a reasonable probability of success on the merits of her underlying claim under N.J.A.C. 6A:3-1.6(b)(3).

Balancing the Equities—Greater Harm

The fourth and final emergent relief standard involves “the relative hardship to the parties in granting or denying relief.” Crowe, 90 N.J. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)).

In balancing the harm, Pinelands’ hardship outweighs Frasca’s. Specifically, Frasca’s immediate harm is limited to a potential salary loss she may or may not suffer that can be rectified monetarily if Frasca prevails in her underlying appeal, while Pinelands’ harm could result in the appointment of an individual that it may have a rational basis for excluding.

As such, I **CONCLUDE** that Frasca has not satisfied the greater harm standard under N.J.A.C. 6A:3-1.6(b)(4).

Jurisdiction

Pinelands argues that Frasca’s motion for immediate relief involves a breach of contract, not a violation of school law, which deprives the Commissioner of jurisdiction.

Frasca, on the other hand, asserts that school laws are involved because the executive county superintendent must review and approve all assistant superintendent employment contracts.

Generally, contractual disputes are not within the Commissioner's jurisdiction because an interpretation of contractual language, rather than school law, is necessary to determine the outcome of a claim. Picogna v. Bd. of Educ. of Cherry Hill Twp., 249 N.J. Super. 332, 335 (App. Div. 1991).

Further, the executive county superintendent's review and approval of assistant superintendents' employment contracts does not necessarily involve school laws because there is no law in existence that demonstrates that the initial involvement of the executive county superintendent extends beyond a contract's initial approval and execution. N.J.S.A. 18A:7-8(j).

Here, Pinelands' contention that this case constitutes a pure breach of contract over which the Commissioner lacks jurisdiction is not yet ripe for adjudication. Under N.J.S.A. 18A:6-9, the Commissioner's jurisdiction extends to all "controversies and disputes arising under the school laws." While Pinelands asserts that this is a basic contractual dispute, legal standards properly invoke the Commissioner's jurisdiction when a board of education's action—even if involving a contract—amounts to arbitrary, capricious, or unreasonable conduct.

At this emergent stage, the record is devoid of evidence regarding Pinelands' justification, if any, for bypassing Frasca's job description. Without such evidence, it is impossible to determine whether Pinelands' action was a standard contractual breach or an exercise of its discretion subject to school law standards.

Because the jurisdictional "fitness" of the issue depends on factual developments that will occur in the underlying action, and because a premature ruling could prejudice Frasca's right to administrative review, I **CONCLUDE** the jurisdictional challenge to be unripe.

ORDER


Given my findings of fact and conclusions of law, I **ORDER** that Frasca's application for emergent relief is **DENIED**.

I **ORDER** that the petitioner's motion for emergent relief is **DENIED**, and the case will proceed with the underlying due process petition.

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.

May 4, 2026 _____

DATE



SUSAN MCCABE, ALJ

Date Received at Agency: _____

Date Emailed to Parties: _____

SM/dc