

186-26E  
OAL Dkt. No. EDU 06220-26  
Agency Dkt. No. 155-04-26

**New Jersey Commissioner of Education**  
**Order on Emergent Relief**

Nicholas Hernandez,

Petitioner,

v.

Highland Park Board of Education, Middlesex  
County,

Respondents.

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 EMERGENT RELIEF**

OAL DKT. NO. EDU 06220-26

AGENCY DKT. NO. 155-04/26

**NICHOLAS HERNANDEZ**

Petitioner,

v.

**HIGHLAND PARK BOARD OF EDUCATION,  
MIDDLESEX COUNTY,**

Respondent.

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**Nicholas Hernandez**, petitioner, pro se

**Jordan Lambdin**, Esq., for respondent (Busch Law Group, LLC, attorneys)

Record Closed: April 27, 2026

Decided: April 28, 2026

BEFORE **BINDI MERCHANT**, ALJ:

**STATEMENT OF THE CASE**

Petitioner seeks an emergency order compelling respondent to produce surveillance footage and an investigation file from an incident where an employee of respondent distributed rubber gloves to petitioner's child but has not demonstrated

irreparable harm. Is petitioner entitled to emergency relief? No. Emergency relief may only be ordered when irreparable harm will otherwise result. N.J.A.C. 1:1-12.6(a).

### **PROCEDURAL HISTORY**

On April 10, 2026, petitioner filed a petition of appeal and request for emergency relief with the New Jersey Department of Education, Office of Controversies and Disputes.

On April 20, 2026, the New Jersey Department of Education, Office of Controversies and Disputes, transmitted the case as a contested case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23.

On April 27, 2026, I heard oral argument on petitioner's request for emergency relief and closed the record.

### **FINDINGS OF FACT**

Based on the oral arguments and documents presented by the parties, I **FIND** the following as **FACT** for purposes of this application only:

On March 19, 2026, a custodian employed by respondent distributed rubber gloves to petitioner's child.

On March 22, 2026, petitioner e-mailed the principal of Irving Primary School, Ms. Megan McNally and Highland Park Superintendent, Dr. Kristina Susca a request to access all educational records and to meet regarding the March 19, 2026, incident.

On March 23, 2026, Ms. McNally met with petitioner.

On March 26, 2026, Ms. McNally followed up on her meeting with petitioner and indicated that the March 19, 2026, incident involved a custodian, during the course of

his duties, in the cafeteria, providing several students with rubber gloves, from a box he brought in, after the students asked if they could have them. Petitioner's daughter was among those students, and no harm was experienced by any student who received the rubber gloves. Shortly thereafter, Ms. McNally asked the custodian to refrain from providing rubber gloves to students in the future. Ms. McNally also updated petitioner with an e-mail stating that the matter was resolved with the custodian. Petitioner responded to Ms. McNally and Dr. Susca with several follow-up questions.

On March 27, 2026, Dr. Susca responded to petitioner stating that a thorough review of the situation was completed, and that the matter was fully addressed and there was no further information to provide.

On April 6, 2026, petitioner requested a litigation hold on all records, data, and communications related to this matter.

On April 7, 2026, petitioner sent another email regarding preservation steps.

On April 8, 2026, petitioner requested the respondent access to inspect the March 19, 2026, video surveillance of the Irving Primary School cafeteria under the statutory 10-day window. Additionally, petitioner confirmed his arrival at the office at 9am on April 9, 2026. The school secretary coordinated with the main office to facilitate his review of the video recordings. While, the Irving Primary School did not have video cameras located within the cafeteria, petitioner was invited to observe a recording of video surveillance capturing the "ingress and egress areas" of the cafeteria.

On April 9, 2026, petitioner met with Angelo Odatto, Highland Park IT Technician to review the video recordings. Petitioner agreed not to record the meeting. As Mr. Odatto showed petitioner the best view of the hallway outside of the cafeteria, petitioner became upset. The petitioner requested to view the physical cameras outside of the cafeteria. While petitioner attempted to walk through the school, he was stopped and informed he was not permitted to walk through the school. The parties returned back to the conference room to resume watching the video recordings. Petitioner requested the whereabouts of the principal and was advised that she would not be able to meet with

him. Petitioner became upset again after he was told that he had viewed all the available video surveillance. The meeting ended and petitioner was asked to leave the school voluntarily, otherwise he would be escorted out by police. The meeting lasted approximately twenty-five (25) to thirty (30) minutes.

At some point, within the ordinary course of the district's video retention system, the video recording of the ingress and egress areas of the school cafeteria at Irving Primary School were erased. The data retention program installed can retain only a certain amount of data, therefore, when an appropriate data threshold is met, the previous data is erased to preserve more recent video surveillance.

At oral argument, petitioner stated that he requested to view video recording of the cafeteria area from 11am to 1pm and that he was not shown that surveillance. Respondent argued that the video surveillance observed on April 9, 2026, is what was available for March 19, 2026, and through no adverse action on the part of the respondent, it was automatically deleted. Respondent reiterated that there was never any video surveillance of the cafeteria where the petitioner's daughter was given rubber gloves by the custodian. Therefore, there is no video recording available to produce to petitioner. Furthermore, petitioner seeks investigative documents, however, none exist. The principal had an informal discussion with the custodial staff and the custodian who provided the rubber gloves to the students. The principal asked the custodian to refrain from providing rubber gloves to any students in the future and the matter was closed.

### **CONCLUSIONS OF LAW**

Under N.J.A.C. 1:1-12.6, an Administrative Law Judge may order emergency relief pending a final decision on the whole contested case where authorized by law and where irreparable harm will result without an expedited decision. The harm must be substantial and immediate, Judice's Sunshine Pontiac, Inc. v. Gen. Motors Corp., 418 F. Supp. 1212, 1218 (D.N.J. 1976), and more than a risk of irreparable harm must be demonstrated, Cont'l Grp., Inc. v. Amoco Chems. Corp., 614 F.2d 351, 359 (D.N.J. 1980).

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.’” Crowe v. DeGioia, 90 N.J. 126,132 (1982) (quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (E. & A. 1854)). It is well settled that injunctive relief should not be granted except “when necessary to prevent irreparable harm.” Crowe, 90 N.J. at 132.

In this case, petitioner has not demonstrated that he will suffer irreparable harm. Indeed, the only harm petitioner has specifically identified is that there will be spoliation of evidence. However, respondents do not have any documents or video footage requested in their possession for there to be a spoliation of evidence. Petitioner has already been given access to review the video footage that existed prior to the automatic deletion. Petitioner requests all documents pertaining to the March 19, 2026, investigation, however, respondent states that they do not have any investigative materials. There was an informal discussion with the custodian to refrain from providing students with rubber gloves and that concluded the investigation. Therefore, I **CONCLUDE** that petitioner is not entitled to an expedited decision for emergency relief and, instead, this case will proceed to a final decision on the whole contested case in due course.

### **ORDER**

Given my Findings of Fact and Conclusions of Law, I **ORDER** that petitioner’s request for emergency relief is **DENIED**.

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

April 28, 2026

DATE

*Bindi Merchant*

**BINDI MERCHANT, ALJ**

Date Received at Agency:

Date Mailed to Parties:

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**APPENDIX**

**EXHIBITS**

**For Petitioner**

Petition and Motion for Emergent Relief dated April 10, 2026, with exhibits  
Reply dated April 24, 2026, to Respondent's Opposition with exhibits

**For Respondent**

Opposition dated April 24, 2026, to petitioner's application with exhibits.