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OAL Dkt. No. EDU 21086-25
Agency Dkt. No. 416-12/25

New Jersey Commissioner of Education

Order on Emergent Relief

C.D., on behalf of minor children, A.V. and O.V.,

Petitioner,

v.

Board of Education of the Borough of South River, Middlesex County,

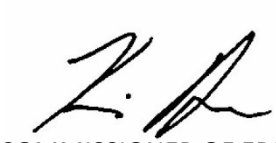
Respondent.

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: January 16, 2026
Date of Mailing: January 20, 2026

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER
DENYING EMERGENT RELIEF
OAL DKT. NO. EDU 21086-25
AGENCY DKT. NO. 416-12/25

C.D., ON BEHALF OF MINOR CHILDREN, A.V. AND O.V.,

Petitioner,

v.

BOARD OF EDUCATION OF THE BOROUGH OF SOUTH RIVER, MIDDLESEX COUNTY,

Respondent.

C.D., petitioner, pro se

Christopher B. Parton, Esq., for respondent (Kenney, Gross, Kovats & Parton, attorneys)

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE

Petitioner C.D. is the parent of A.V. and O.V. After a residency investigation it was determined by respondent Board of Education of the Borough of South River (Board) that the two minor children are not domiciled in South River. O.V. is three years old and attended the preschool program in the district. O.V. was removed from the program. A.V.

is a kindergarten student and he continues to attend school in the district. Petitioner challenges the Board of Education's residency determination.

Petitioner seeks emergent relief regarding the continued attendance of O.V. at the preschool program in the district.

PROCEDURAL HISTORY

On November 12, 2025, respondent conducted a hearing and found that A.V. and O.V. were not domiciled in South River. On November 13, 2025, petitioner was notified. O.V. was removed from the preschool program while A.V. continued in his kindergarten class. On December 10, 2025, the Department of Education, Office of Controversies and Disputes, transmitted this case to the Office of Administrative Law (OAL) for hearing as to the resolution of petitioner's motion for emergency relief. The merits of the underlying petition are to be addressed once the motion for emergent relief is heard and decided.

DISCUSSION AND FINDINGS OF FACT

The only issue to be determined in petitioner's application for emergent relief is the removal of O.V. from the preschool program. Petitioner argues that O.V.'s removal will result in immediate harm because he has built strong relationships with his teachers and peers and is thriving socially and academically. She argues that the legal right underlying the claim is settled because students are entitled to a stable and uninterrupted educational environment. Petitioner also stated that they will succeed on the merits because O.V. is already enrolled, attending, and successfully integrated into his preschool program. Petitioner further posits that, on balance, the hardship on O.V. far outweighs the hardship on the district.

The Board responds that petitioner cannot and does not meet the standard for emergent relief. The Board argues that it is its discretionary determination to have a preschool program for students between three and five years old. The Board further argues that preschool programs are not mandatory in New Jersey. New Jersey Constitution, Article VIII, Section 4, par. 1, expressly limits the right to a thorough, efficient,

and free education to all children in the state between five and eighteen years of age. Respondent further argues that O.V. is three years old. He was born May 28, 2022, and will be five years old "seventeen months from now," in May 2027. O.V. is not classified as being entitled to special education and related services. The Board further states:

> As a matter of constitutional law, he is not entitled to a free and public education in New Jersey. By state law, he is not entitled to admission into the South River School District. And under controlling NJDOE regulation, the residency appeal procedures are not available to him. See, respectively, N.J. Const. Art. VIII, §4,11; N.J.S.A. 18A:38-l; N.J.A.C. 6A:22-l.l(b).
>
> [Resp't's Br. in Opposition to Emergent Relief.]

Respondent further argues:

> There is no right to an education, in South River or elsewhere, in this matter. There is no settled legal support for this student, at three years old, to require a school district to admit or educate him. There is certainly no objective likelihood of success on the merits of the matter—in fact the highest legal authority in New Jersey specifically excludes a three-year-old from the entitlement, relief, and even the process which Petitioner seeks.
>
> [Ibid.]

On December 19, 2025, I heard oral argument on the motion for emergent relief.

DISCUSSION AND CONCLUSIONS OF LAW

Under N.J.S.A. 18A:6-9, the Commissioner's jurisdiction is defined, and is limited to "controversies and disputes arising under the school laws." In Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17, 23 (1973), the New Jersey Supreme Court concluded that "the Legislature enacted provisions entrusting school supervision and management to local school boards . . . subject to the supervisory control [of] . . . the State Commissioner of Education."

The regulations governing such 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 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). 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).

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

> 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.

Indeed, the moving party must demonstrate each element "clearly and convincingly." Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008). Emergent relief is designed "to 'prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case.'" Crowe, 90 N.J. at 132 (citation omitted).

Irreparable Harm

Harm is generally considered irreparable if monetary damages cannot adequately redress it. Id. at 132–33. In other words, irreparable harm is described as "'substantial injury to a material degree coupled with the inadequacy of money damages.'" Judice's Sunshine Pontiac, Inc. v. General Motors Corp., 418 F. Supp. 1212, 1218 (D.N.J. 1976) (citation omitted). A claimant must demonstrate more than a risk of irreparable harm. Continental Group, Inc. v. Amoco Chems. Corp., 614 F.2d 351, 359 (3d Cir. 1980). The requisite for injunctive relief requires a "'clear showing of immediate irreparable injury,'" or a "'presently existing actual threat; (an injunction) may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by the common law.'" Ibid. (citation omitted).

Petitioner submits that O.V. will suffer immediate and irreparable harm. Petitioner asserts that preschool children require stability and a consistent environment to succeed. Because O.V. has built strong relationships with his teachers and peers and is doing well, removing him mid-year will disrupt his routine, emotional well-being, and developmental progress.

In response, the Board argues that petitioner has not satisfied her burden of proof regarding irreparable harm by clear and convincing evidence. Specifically, the Board argues that monetary relief is available. South River's is not the only available preschool program in Middlesex County. The program is free for bonafide residents of South River. In addition, the program is not so unique that its absence would constitute irreparable harm, or so unique as to warrant ignorance of constitutional and statutory parameters.

I agree with the Board's argument, and I **CONCLUDE** that petitioner has not satisfied her burden as to irreparable harm. Emergent relief "should not be entered except when necessary to prevent substantial, immediate and irreparable harm." Subcarrier Commc'ns, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997).

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. v. Camden H. R. Co., 29 N.J. Eq. 299, 304–05 (E. & A .1878)).

Each school district is obligated to provide a thorough and efficient education system to all children residing in its school district. N.J. Const. art. VIII, § 4, ¶ 1. To carry out this policy, local boards of education have discretionary authority under N.J.S.A. 18A:11-1(c). The boards adopt rules for the management of the district's public schools and act in a manner to ensure the lawful and proper conduct of the district's public schools. This Board cites the applicable policy, which states that "[p]ublic school shall be free to the following persons over five and under 20 years of age . . . ." N.J.S.A. 18A:38-1. O.V. is only three years old, and thus is not at the age where the district is obligated to provide him with free public education.

I therefore **CONCLUDE** that petitioner has not met her burden of establishing that the legal right underlying her claim is settled.

Likelihood of Success on the Merits

Under the third emergent-relief standard, "a plaintiff 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)). This requirement is often implicitly tied to whether the right to the underlying claim is settled.

A presumption of lawfulness and good faith applies to a board of education's actions. 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. of 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 "means having no rational basis." Piccoli v. Bd. of Educ. of Ramapo Indian Hills Reg'l Sch. Dist., 1999 N.J. AGEN LEXIS 20, Initial Decision (January 22, 1999), adopted, 1999 N.J. AGEN LEXIS 1314 (March 10, 1999) (citing Bayshore Sewage Co. v. Dep't of Envtl. Protection, 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974)).

In support of her argument, petitioner states that O.V. is already enrolled in the preschool program. She asserts that his family resides in South River, which established the district as their rightful place of residence. Removing a child from an established placement without considering developmental harm is inconsistent with both educational best practices and administrative fairness.

The issue of residency is in dispute and will be determined at a plenary hearing. The petitioner has not cited any regulations to support her position or that the district's action was "arbitrary, capricious or unreasonable." Under the circumstances and prior to a full hearing, petitioner has not demonstrated a likelihood of prevailing on the merits of her claim.

Therefore, I **CONCLUDE** that petitioner does not meet the third prong of the emergent-relief standard.

Balancing of the Equities

Lastly, petitioner fails to meet the fourth emergent-relief standard, which 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)). To satisfy this standard, petitioner must demonstrate that she will suffer more significant harm than the Board if this tribunal does not grant the requested relief. Petitioner argues that O.V. will suffer emotional distress, developmental regression, social disruption, and loss of educational continuity. This is a speculative assertion, at best.

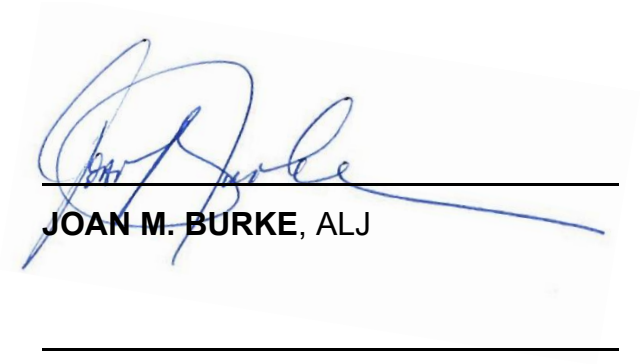
Respondent argues that the preschool program is popular in the district. To allow O.V., who has been found to not be domiciled in the district or whose residency is at issue, to attend preschool in the district while other South River residents' children are wait-listed for the program is patently unfair. I **CONCLUDE** that respondent would suffer greater harm if the requested relief were granted.

Therefore, for all of the foregoing reasons, I **CONCLUDE** that petitioner has not demonstrated entitlement to the emergent relief requested, since she has not satisfied any of the four prongs of the test.

ORDER

It is **ORDERED** that petitioner's application for emergent relief is **DENIED**. This matter will continue to a plenary hearing scheduled for January 15, 2025, to address the merits of the underlying petition.

This Order on application for emergency relief may be adopted, modified, or rejected by the Commissioner of Education, who by law is authorized to make a final decision in this matter. The final decision on the application for emergent relief shall be issued without undue delay, but no later than forty-five (45) days following the entry of this Order. If the Commissioner 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.



December 22, 2025
DATE

JOAN M. BURKE, ALJ

Date Received at Agency:

Date Mailed to Parties:

JMB/sb/jm
c: Clerk OAL-T

APPENDIX

Exhibits

For petitioner

P-1 Petitioner's submission accompanying the emergent appeal

P-2 Response letter addressing the emergent-relief factors pursuant to Crowe v. DeGioia, 90 N.J. 126 (1982)

For respondent

R-1 Respondent's December 17, 2025, Brief in Opposition to the Application for Emergent Relief