

New Jersey Commissioner of Education
Order on Emergent Relief

I.B., on behalf of minor child,

Petitioner,

v.

Bridgewater-Raritan Regional School District Board
of Education, Somerset 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: August 12, 2026
Date of Mailing: August 12, 2026



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING

EMERGENCY RELIEF

OAL DKT. NO. EDU 06029-26

AGENCY DKT. NO. 142-04-26

I.B. ON BEHALF OF MINOR CHILD,

Petitioner,

v.

BRIDGEWATER-RARITAN REGIONAL

BOARD OF EDUCATION,

Respondent.

I.B., petitioner, pro se

Douglas M. Silvestro, Esq., for respondent (Busch Law Group)

BEFORE **ANDREA SPEVAK**, ALJ:

STATEMENT OF THE CASE

Petitioner I.B. moves for emergent relief to stay the modification of the gifted and talented program at respondent, Bridgewater-Raritan Regional School District. No settled right, however, exists to maintain the program. Is petitioner entitled to emergent relief? No. Emergent relief may not be granted when the petitioner does not have a likelihood of success on the merits. See N.J.A.C. 6A:3-1.6(b).

PROCEDURAL HISTORY

On April 15, 2026, petitioner submitted a complaint to respondent alleging that the Bridgewater-Raritan Regional School District failed to comply with the Strengthening the Gifted and Talented Act (SGTEA) because the school district proposed eliminating the academically independent program, which is an accelerated learning program for gifted and talented elementary school students.

On that same day, petitioner filed a petition of appeal with the Commissioner of the Department of Education, together with a motion for a stay, to stay the elimination of the academically independent program on behalf of the Association of Parents for Education Excellence (APEX), not on behalf of his son.

On April 16, 2026, the Department of Education transmitted the case, together with the motion for a stay, to the Office of Administrative Law as a contested case 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 -13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On April 21, 2026, petitioner moved to stay the Bridgewater-Raritan Regional Board of Education's (Board) upcoming vote on April 28, 2026, on the Board's budget for the 2026–2027 school year on his belief that the budget reallocated funding and staff used for the academically independent program. During the prehearing conference the following day, I denied petitioner's motion to stay the budget vote. I did, however, give petitioner leave to amend his petition of appeal to reflect that he had filed his petition on behalf his minor child, not APEX, which he did that same day. Meanwhile, petitioner withdrew his initial request for a stay of the elimination of the academically independent program.

On May 15, 2026, petitioner requested an adjournment of the prehearing conference scheduled for May 19, 2026, so he could obtain counsel. I granted the request and rescheduled the prehearing conference for June 22, 2026. Meanwhile, on June 16, 2026, petitioner notified me that he would proceed pro se. At the same time, he refiled

his motion to stay the elimination of the academically independent program, and in the alternative, enjoin the school district from reassigning or reducing staff for the program, dispersing his child's cohort to home schools, and removing any students from the program.

On June 22, 2026, I held a prehearing conference, during which time respondent moved to dismiss the case because the Board had not issued a determination on petitioner's complaint.

On June 26, 2026, I held a prehearing conference, during which time I set a briefing schedule and scheduled oral argument for July 10, 2026.

On July 2, 2026, respondent filed a motion to dismiss.

On July 10, 2026, I held oral argument on both the motion for emergent relief and the motion to dismiss.

FINDINGS OF FACT

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

Bridgewater-Raritan has operated some form of the academically independent program for many years. In recent years, this meant that students in second grade through fourth grade who were eligible for the program and chose to participate in the program were separated from their peers and grouped together by grade level in classes at a particular elementary school. At the beginning of fifth grade, these students phased out of the program by attending their local intermediate schools with general education peers while still receiving some enhanced programming. By middle school and high school, students from the program were completely integrated with their general education peers with equal access to classes at varying instruction levels.

In April 2026 respondent announced the elimination of the academically independent program as part of a broader realignment of grade groupings at the school district's buildings and restructuring of gifted and talented programming. Respondent intends to return rising third-grade and fourth-grade students who were in the program to the general education classes at their neighborhood schools. In its place, respondent intends to provide the former program participants, along with other identified gifted and talented students, with a pull-out enrichment period once a week. Meanwhile, respondent will reallocate funding and staff as part of the restructuring for the 2026–2027 school year and further develop the gifted and talented curriculum.

Petitioner is the parent of a rising third-grade student who has been identified as gifted and talented by the school district and has been a participant in the academically independent program since second grade. At the end of second grade, he was the academic equivalent of a student at the end of third grade. Petitioner had intended for his child to participate in the academically independent program for this upcoming school year, his third-grade year.

CONCLUSIONS OF LAW

To prevail on a motion for emergent relief, petitioner must meet the following four standards under 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 also do so by clear and convincing evidence. Garden State Equality v. Dow, 216 N.J. 314, 320 (2013).

1. Irreparable harm

Emergent relief should not be granted except “when necessary to prevent irreparable harm.” Crowe, 90 N.J. at 132. More than the *risk* of irreparable harm must be demonstrated. Continental Group, Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980).

In this case, no evidence exists that petitioner’s child will suffer irreparable harm by the loss of the academically independent program. The child remains eligible for gifted and talented programming alongside other identified gifted and talented students. Petitioner’s disagreement with the anticipated manner of programming does not prove harm, irreparable or otherwise, particularly when the new curriculum remains under development.

Accordingly, I **CONCLUDE** that petitioner has not met his burden of proof for this standard.

2. 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 Horse R.R. Co., 29 N.J. Eq. 299, 304–05 (1878)).

In New Jersey, eligibility and programming for academically gifted and talented services are broadly governed by the Strengthening the Gifted and Talented Education Act (SGTEA). N.J.S.A. 18A:35-34 to -39. The SGTEA requires school districts to adopt and implement “appropriate instructional adaptations” for gifted and talented students in grades kindergarten through twelve related at their “instructional level.” N.J.S.A. 18A:35-36(a). The SGTEA further requires school districts to identify eligible students using “multiple measures in order to identify student strengths in intellectual ability, creativity, or

a specific academic area,” “ensure equal access to a continuum of gifted and talented education services,” and “develop and document appropriate curricular and instructional modifications used for gifted and talented students.” N.J.S.A. 18A:35-36(b).

Petitioner argues that the SGTEA entitles his child to the academically independent program, or alternatively, an identical individualized program for his child alone. In his view, the only way for respondent to comply with the law is to provide his child with accelerated learning in a class of other gifted and talented students.

Petitioner’s argument, however, is inconsistent with a plain reading of the SGTEA. The law gives districts wide discretion to develop and implement gifted and talented programs. As such, petitioner has no settled legal right to the academically independent program or any other particular gifted and talented program.

Conversely, it is long-settled law that a school board has broad discretion to operate its public schools and that such discretion may not be overturned in the absence of a finding that the action was arbitrary or capricious. Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288 (App. Div. 1960). No evidence exists that the school district’s proposed modification of the gifted and talented program is arbitrary, capricious, or unreasonable.

Accordingly, I **CONCLUDE** that petitioner has not met his burden of proof for this standard.

3. Likelihood of Success on the Merits

To meet this 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 typically “‘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)).

Since petitioner does not have a right to a particular gifted and talented program, he cannot show a reasonable probability of ultimate success on the merits.

Accordingly, I **CONCLUDE** that petitioner has not met his burden of proof for this standard.

4. Balancing the Equities

The fourth emergent relief standard is “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 equities, it is in the public interest that respondent maintain stewardship over its educational programing rather than an individual parent dictate specific programming, especially when that discretion is the province of respondent, unless arbitrary, capricious, or unreasonable.

Accordingly, I **CONCLUDE** that petitioner has not met his burden of proof for this standard.

ORDER

Accordingly, I **ORDER** that the petitioner’s request for emergent relief is **DENIED**.

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.

A handwritten signature in black ink, reading "Andrea Spevak", is positioned above a horizontal line.

July 14, 2026

DATE

ANDREA SPEVAK, ALJ

Date Received at Agency:

July 14, 2026

Date Mailed to Parties:

July 14, 2026

AS/gd

cc: OAL clerk