

Decision No. 344-26E
OAL Dkt. No. EDU 13662-26
Agency Dkt. No. 356-08-26

New Jersey Commissioner of Education
Final Decision on Emergent Relief

A.H., on behalf of minor child, N.Z.,

Petitioner,

v.

Edison Board of Education, Middlesex County,

Respondent.

The record of this emergent matter and the Order Granting Emergent Relief of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that petitioner has demonstrated entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia*, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6.

Accordingly, the petitioner's application for emergent relief is granted. 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: September 2, 2026
Date of Mailing: September 2, 2026



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER GRANTING

EMERGENT RELIEF

OAL DKT. NO. EDU 13662-2026

AGENCY DKT. NO. 356-08-26

A.H. ON BEHALF OF N.Z.

Petitioner,

v.

**EDISON BOARD OF EDUCATION,
MIDDLESEX COUNTY,**

Respondent.

A.H., petitioner, pro se

Lucas Smith, Esq., for respondent, Edison Board of Education (Lenox, Law Firm, attorneys)

BEFORE **SARAH G. CROWLEY**, ALJ:

Petitioner seeks an Order requiring respondent Edison Board of Education (Board or District) to provide subscription transportation for a non-remote student attending its school who had previously been provided courtesy busing under the hazardous-route designation. In addition, petitioner seeks a waiver of fees based on

financial hardship for subscription busing.¹ Respondent opposes this action on the grounds that the District has no legal obligation to provide transportation to remote students. Moreover, although courtesy busing had been provided to remote students designated in hazardous areas, all courtesy busing was eliminated in the 2026–2027 budget. However, the issue before me is not the obligation to provide courtesy busing but rather the obligation to provide subscription busing. The petitioner filed an application for subscription busing on June 22, 2026. The District advised in the opposition that no decision has been made with respect to subscription busing. The child begins kindergarten on Friday, August 28, 2026.

PROCEDURAL HISTORY

A petition was filed by petitioner on August 12, 2026, requesting that the Edison Board of Education provide subscription busing to A.H.'s child who is starting kindergarten. The matter was transmitted to the Office of Administrative Law on August 18, 2026. N.J.S.A. 52:14B-1 to B-15; N.J.S.A. 52:14F-1 to F-3. Respondent filed opposition to the petition, and oral argument was heard on August 26, 2026, and the record closed on that date. The underlying due process case will proceed on a non-emergent track with the undersigned.

FINDINGS OF FACT

Having reviewed the papers in support of and in opposition to the request for emergent relief, I **FIND** the following **FACTS**:

1. Petitioner is a resident of Edison, New Jersey, and has filed an emergent application seeking to have the Edison Board of Education provide subscription busing to N.Z.

¹ The petitioner has submitted a brief and certification in opposition to this motion but fails to address the key legal issue raised in the petitioner's application which is the availability of subscription busing and the financial hardship waiver of fees for such busing.

2. N.Z. lives 1.3 miles from the school and is not covered by the statutory busing provisions.
3. Courtesy busing had been provided to N.Z. under N.J.A.C. 6A:27-1.4(a) and N.J.S.A. 18A:39-1.8 but was eliminated for the 2026-2027 school year.
4. Petitioner's child is registered in the District and is scheduled to commence kindergarten at Benjamin Franklin Elementary School, with school starting on August 28, 2026.
5. Petitioner filed an application for subscription busing on June 22, 2026, as well as a documented request for a waiver of fees for such service.
6. The District has conceded that petitioner qualifies for a waiver of fees for subscription busing.
7. The certification from the District Business Administrator, Jonathan Toth, submitted in opposition to the application on August 21, 2026, confirms that the petitioner did in fact submit an application for subscription busing and that determinations have not been made yet.
8. The District filed a certification and brief addressing the issue of courtesy busing but failed to address the main issue in this case regarding subscription busing, and why no determination was made regarding subscription busing.
9. Following an inquiry from the undersigned regarding the status of the subscription busing application of the petitioner, counsel for the District, Patrick Carrigg, Esq. responded as follows:

It's resolved. She's entitled to free bussing due to economic status. It was wrong for this parent to burden the court and counsel with a premature filing. This application should be denied as moot and the parent should be counseled to not file when an application remains pending before it's denied. If parents can do that, then there could be hundreds of emergent applications from parents that want a decision before it is time.

10. It is unclear to the undersigned why it was “wrong for this parent” to file this application, one week before the start of school regarding an application for subscription busing that was submitted on June 22, 2026, which by their business administrator’s own admission has not been determined.
11. Notwithstanding the Certification filed by Mr. Toth on August 21, 2026, and the email from Mr. Carrigg, the District sought to submit a certification at 1:26 pm, for the argument scheduled at 1:30 pm, which contradicts his initial certification and the email from Mr. Carrigg. Moreover, it fails to address what, if any process was followed for determinations with respect to subscription busing.²

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).

² The amended certification advises that the petitioner qualifies for a financial waiver but for the first time states that subscription busing is not being provided to this student. Not only is this untimely but it fails to address when and why this decision was reached, when the petitioner was advised of this, and how such decision on subscription busing was reached. Moreover, it is entirely inconsistent with the email from counsel for the District one hour earlier which advises the undersigned the matter “was resolved and petitioner is entitle to free busing.”

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.

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 has a child starting kindergarten and does not have a car. Moreover, it is undisputed that she qualifies for free busing. Petitioner filed an application for subscription busing on June 22, 2026, and has received no response. The District initially advised that the decision on subscription busing had not been determined yet, and they advised that the matter was resolved and petitioner was entitled to free busing. Then, four minutes prior to oral argument in this matter, the District submitted an amended certification which states that subscription busing was not being provided to this route. There is no explanation as to how this decision was reached, when it was reached, the process the District went through or why so many contrary positions have been provided to the undersigned. Finally, there is no discussion of the law with respect to subscription busing determinations. The lengthy discussion of courtesy busing is not relevant to the within matter. I **FIND** and **CONCLUDE** that these inconsistent positions are unacceptable and the harm to the petitioner two days before school starts is indeed irreparable.

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)). As stated by the district, the of “courtesy busing” on those routes that were previously designated as “hazardous routes,” is well settled. Districts have an obligation to provide transportation to public-school students who reside remote from their assigned school of attendance. Consistent with the foregoing statute and regulations, Edison provided courtesy busing for a number of years. However, due to budget constraints, all courtesy busing was eliminated in the 2026–2027 school budget, and there is no continuing obligation to provide such busing and the 2026-2027 budget eliminated this courtesy busing.

However, the issue in this matter is not courtesy busing it is subscription busing, and the District has failed to adequately address this issue which is by no means moot. Petitioner has raised an issue regarding subscription busing, and the District has advised that they have accepted the petitioner's application, but no determinations have been made regarding such busing or the fees for same. Then at the eleventh hour the District advise for the first time "that the issue is resolved and petitioner is entitled to free busing," and fifteen minutes later an amended certification that states there is no subscription busing to the petitioner. No explanation as to when this decision was reached, how it was reached or any legal authority for potentially arbitrary subscription busing routes which were rewarded were provided.

I therefore **CONCLUDE** that petitioner has met the burden of establishing that she has a legal right to a decision on subscription busing and the basis for such denial, none of which have been provided by the District.

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 Env'tl. Protection, 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974)).

The fact that the District has taken three different positions in this matter in a short period of time and provided no rational for any determinations with respect to providing subscription busing to the petitioner renders it clearly arbitrary and capricious.

Therefore, I **CONCLUDE** that petitioner has 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)).

Petitioner argues that N.Z. should prevail on the balancing of the equities, as the District has failed to advise regarding the availability of subscription busing in a timely manner, nor have they articulated the reason for any decisions on subscription busing. Working families and families without means to transport children to school have a right to know what the status of subscription busing in the district is and the District has an obligation to address such issues in a timely fashion. I **CONCLUDE** that in balancing the equity favors the petitioner in this matter.

ORDER

It is **ORDERED** that petitioner’s application for emergent relief is **GRANTED**. The District shall provide transportation to this child until the underly merits of this matter are addressed and the District provides the court with documentation to support any determinations with respect to subscription busing. This case will continue to a

plenary hearing, the schedule to be determined at a later date, 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 THE DEPARTMENT 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 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.

August 27, 2026

DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency:

Date Mailed to Parties:

SC/oni/lam

c: Clerk OAL-T

DOCUMENTS RELIED UPON

- Petitioner's and Respondent's petition, opposition, and reply papers