

New Jersey Commissioner of Education
Order on Emergent Relief

T.B., on behalf of minor child, M.N.,

Petitioner,

v.

New Brunswick Board of Education, 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 (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: September 16, 2026
Date of Mailing: September 17, 2026



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING
EMERGENT RELIEF

OAL DKT. NO. EDU 12625-26

AGENCY DKT. NO. 333-07-26

T.B., ON BEHALF OF MINOR CHILD, M.N.,

Petitioner,

v.

**NEW BRUNSWICK BOARD OF
EDUCATION, MIDDLESEX COUNTY,**

Respondent.

T.B., petitioner, pro se

George F. Hendricks, Esq., for respondent (Hendricks & Hendricks, Counselors
at Law, attorneys)

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

STATEMENT OF THE CASE

Petitioner T.B., on behalf of minor child M.N., challenges the denial of her student safety grievance by respondent New Brunswick Board of Education (Board). In the current proceeding, petitioner seeks an order for emergent relief as follows:

1. Legally commanding the district to immediately encode permanent, digital profile flags into M.N.'s Genesis student portal to guarantee absolute classroom separation from the staff involved.
2. Requiring the district to place M.N. in a safe first-grade learning environment with a neutral veteran teacher who has no social or professional ties to the non-compliant staff members.
3. Requiring the New Jersey Department of Education to initiate a formal state compliance audit of the New Brunswick Board of Education's local handling of Policy 5710 grievance procedures, HIB evidence registries, and security camera video preservation logs.

PROCEDURAL HISTORY

On or about May 26, 2026, an alleged seating incident occurred in the cafeteria with M.N. The parent requested a HIB investigation. The school consulted the anti-bullying specialist and determined that the matter did not meet the threshold for a HIB investigation. On June 5, 2026, Michael Chiodo, the Principal of Robert J. Boiler Elementary School, notified petitioner that “the reported incident does not meet the statutory criteria for Harassment, Intimidation, or Bullying under N.J.S.A. 18a:37-14.” (P-2 at 19.) On June 9, 2026, petitioner appealed the preliminary determination by Principal Chiodo. This decision was affirmed by Superintendent Aubrey A. Johnson on June 10, 2026. Petitioner appealed the June 10, 2026 decision. On July 21, 2026, the Board conducted a hearing at its closed/executive session regarding petitioner’s appeal and upheld the superintendent’s determination. The petitioner was notified on July 28, 2026. On July 31, 2026, the Department of Education, Office of Controversies and Disputes, transmitted the emergent matter along with the due process petition to the Office of Administrative Law (OAL) for a hearing 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.

Oral argument for emergent relief request was scheduled and heard on August 17, 2026.

DISCUSSION AND FINDINGS OF FACT

M.N. is five years old and attends Robert J. Boiler Elementary School. On or about May 26, 2026, an alleged seating incident occurred in the cafeteria with M.N. The parent requested a HIB investigation. Petitioner argues that her daughter did not want to go back to school because one of the teachers called her a “liar.” She argues that the child was intimidated by the actions of the teacher(s). Petitioner stated that the last day of school was on or about June 22, 2026, or June 23, 2026. T.B. argues that the possibility exists that when M.N. returns to school, she will encounter one of the teachers who was involved in the incident. Petitioner could not articulate how the child would be irreparably harmed if emergent relief was not granted nor could she demonstrate that she met the standard for granting emergent relief pursuant to Crowe v. DeGioia, 90 N.J. at 126 (1982).

Respondent argues that there was no immediate harm. There was no documentation to support that any of the teachers called M.N. a liar. Respondent further argues in its submission that it considered the remedies requested as part of the petitioner’s appeal and denied petitioner’s request to permanently separate M.N. from specified staff members. The respondent granted the petitioner’s request to preserve a copy of the relevant video footage but denied formal written reprimands to identify staff members and to place same in their personnel file.

DISCUSSION AND CONCLUSION 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 Bd. of Educ. v. Dunellen Ed. Assoc., 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 that:

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. at 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).]

Indeed, the moving party must demonstrate each element “clearly and convincingly.” Waste Mgmt. of N.J. v. Union County 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 an 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. Gen. 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 Grp., Inc. v. Amoco Chems. Corp., 614 F. 2d 351, 359 (D.N.J. 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 common law.” Ibid. (citation omitted).

In the petitioner’s submission, she stated, “[M]y five-year-old child will suffer immediate, irreparable harm if she is forced to enter a hostile environment without permanent digital classroom separation flags and a safe placement with a vetted, neutral teacher.” (P-1.) In response, the Board argues that petitioner has not satisfied her burden of proof regarding irreparable harm by clear and convincing evidence. The Board argues there is no immediate or irreparable harm.

I agree with the Board’s argument 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, 304–305 (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; N.J.S.A.

18A:33-1. To carry out this policy, local boards of education have discretionary authority under N.J.S.A. 18A:11-1C. 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. The Board argues that investigations were conducted in this manner, and no HIB violation was found.

I therefore **CONCLUDE** that the petitioner has not met her burden of establishing that her underlying claim was 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. 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. Ed. of Educ. of Ramapo Indian Hills Reg'l Sch. Dist., OAL DKT. EDU 1839-98 (January 22, 1999) (citing Bayshore Sewage Co. v. Dept. of Env't Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974)).

Petitioner argues that there are safety and HIB concerns in the case. The petitioner has referenced New Brunswick Board Policy 5710 (Student Grievance) and 5512 (Harassment, Intimidation, and Bullying). The issue of HIB 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** 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, in her submission, states that "[T]he equities heavily favor my child's safety. . . ." Without anything further, this tribunal is left to make an assumption. However, if one were to assume that T.B. believes that when M.N. returns to school, she may encounter one of the teachers that she alleged called M.N. a liar and that this would be unsafe, this is a speculative assertion, at best.

I **CONCLUDE** that the respondent would suffer greater harm if the requested relief was 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 the petitioner's application for emergent relief is **DENIED**. This matter will be scheduled for a status conference and continue to a plenary hearing 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.



August 19, 2026

DATE

JOAN M. BURKE, ALJ

Date Mailed to Parties:

Date Mailed to Parties:

JMB/gd

APPENDIX

Exhibits

For petitioner:

- P-1 Petitioner's submission accompanying the emergent appeal
- P-2 Petitioner's Master Packet

For respondent:

- R-1 Respondent's Letter Response, July 31, 2026, with attachment