

New Jersey Commissioner of Education
Order on Emergent Relief

K.S., on behalf of minor child, Z.S.,

Petitioner,

v.

Perth Amboy 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, 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: October 13, 2026
Date of Mailing: October 13, 2026



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING

EMERGENT RELIEF

OAL DKT. NO. EDU 00449-25

AGENCY DKT. NO. 006-01-26

K.S., ON BEHALF OF MINOR CHILD, Z.S.,

Petitioner,

v.

PERTH AMBOY BOARD OF

EDUCATION, MIDDLESEX COUNTY,

Respondent.

George Christopoulos, Esq., for petitioner (Law Offices of George Christopolous,
P.C.)

Danielle A. Panizzi, Esq., for respondent (Machado Law Group, attorneys)

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

STATEMENT OF THE CASE AND

Petitioner K.S., on behalf of minor child Z.S., challenges the suspension imposed on her minor child by respondent Perth Amboy Board of Education (Board). On September 1, 2026, the petitioner filed an Emergent Relief Request. In the request for relief, petitioner seeks the following:

1. Directing Respondent to immediately place Z.S. in an out-of-district public school placement, at Respondent's sole cost and expense, including transportation;
2. Staying the December 19, 2025, removal and any continuation thereof pending final decision in this matter, and directing that no reference to the December 19, 2025, removal be relied upon in connection with Z.S.'s enrollment, placement, or participation in school activities pending final decision;
3. Directing Respondent to update Z.S.'s disciplinary, attendance and academic record with accurate information;
4. Directing Respondent to delete the fraudulent records regarding Z.S.'s attendance, academics and disciplinary files;
5. Directing Respondent to serve responses to Petitioner's First Request for Admissions, First Request for Production of Documents, and First Request for Answers to Interrogatories, served August 4, 2026, within five (5) days;
6. Directing Respondent to preserve all documents, communications, recordings, and video surveillance identified in Petitioner's document demands;
7. Directing Respondent to cease taking any further retaliatory action against Z.S.; and
8. Granting such other and further relief as the Court deems just and equitable.

[Petitioner's Submission for Emergent Relief.]

Respondent argues that there is no threat to Z.S.'s continued education.

PROCEDURAL HISTORY

On December 19, 2025, the Board issued a code of conduct violation for "repeated disruptions to the educational process" and a ten-day suspension. The suspension began on December 19, 2025. (Petitioner's Emergent Brief at Exhibit D.) In December 2025, K.S. disenrolled Z.S. from the District School.

By way of background, this is the second emergent relief sought by the petitioner. On January 9, 2026, the Department of Education, Office of Controversies and Disputes, transmitted the first 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 were to be addressed once the motion for emergent relief was heard and decided.

A pre-hearing status conference was held on February 10, 2026, with the parties after which the petitioner withdrew the request for emergent relief. A plenary hearing on the merits of the underlying petition was scheduled for a hearing on April 13, 2026. This hearing date was adjourned to allow petitioner to retain new counsel. On September 1, 2026, the petitioner filed an emergent relief request. The emergent relief request was scheduled and heard on September 4, 2026.

FACTUAL DISCUSSION

Z.S. is twelve years old and is a student in the Perth Amboy District. On December 19, 2025, Z.S. was suspended for repeated disruptions at school. Petitioner argues that Z.S. has not been in a classroom since December 19, 2025. No formal hearing was held within thirty calendar days of the suspension. Petitioner argues that Z.S. does not want to return to the same school and request to be transferred out of district.

Respondent argues that there was no immediate threat or harm to petitioner. In December 2025, K.S. disenrolled Z.S. from the Perth Amboy School District. Petitioner reenrolled Z.S. sometime in February 2026. (Respondent Brief in Opposition to Emergent Relief.) Petitioner requested the Board provide home instructions to Z.S. Ibid. The Board offered ten (10) hours per week of home instruction pursuant to N.J.A.C. 6A:16-10.2. Ibid. Petitioner declined and has opted to homeschool Z.S. Respondent further argues that petitioner failed to allege facts sufficient to warrant the requested relief.

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 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 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 argues:

The harm here is neither speculative nor prospective. It has been occurring continuously more than eight (8) months and will continue into the 2026–2027 school year unless this court intervenes. Z.S. receives no instruction from any District teacher between December 19, 2025, and the present. N.J.A.C. 6A:16-10.2(b) required the District to provide services no later than five (5) school days after he left the general education program.”

[Petitioner’s Brief in Support of Emergent Relief.]

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. Petitioner seeks “that the District place Z.S. at an out-of-district school, and immediately revise his discipline records.” (Respondent’s Brief in opposition to Emergent Relief.) Furthermore, petitioner unilaterally opted to keep Z.S. out of school, refuse to accept the “District’s lawful home-instruction offer, which affords home instruction to Z.S. virtually after-school for two (2) hours per week pending a discipline hearing, K.S. has elected to keep Z.S. out of school and provide homeschooling herself . . . a parent should not be permitted to manufacture an emergency by declining an educational program lawfully offered by the District.”

Emergent relief “should not be entered except when necessary to prevent substantial, immediate and irreparable harm.” Subcarrier Commc’n Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997). I therefore **CONCLUDE** that petitioner has not satisfied her burden as to irreparable harm.

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; 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:11-1(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. Petitioner argues that Z.S. was entitled to notice of the charges and have an opportunity to respond before removal. Respondent argues that it is within the District’s discretion to discipline Z.S. pursuant to the District’s code of conduct.

Here, petitioner unilaterally removed Z.S. from the District after the suspension in December. Petitioner then reenrolled him but opted to keep him at home and home

school him while rejecting the District's offer of home instruction. I therefore **CONCLUDE** that 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. of Montgomery Twp., 96 N.J.A.R.2d (EDU) 670, 676 (citing Schnick v. Westwood Bd. of Educ., 60 N.J. Super. 448 (App. Div. 1960), 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. No. EDU 1839-98 (January 22, 1999) (citing Bayshore Sewage Co. v. Dep't of Env't Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974)).

In order for petitioner to demonstrate that she is likely to prevail on her underlying claim, I must find that the suspension was arbitrary, capricious or unreasonable". This required a full hearing, which cannot be replicated in the context of an emergent hearing. 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

The fourth emergent relief standard, 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 Z.S. is “[a] twelve-year-old who has lost two-thirds of a school year and stands to lose more The District bears no cognizable burden from an order directing in-person enrollment. (Petitioner’s Brief for Emergent Relief.)

The Board argues that petitioner has no right to the out-of-district placement she seeks and the Board has a strong and valid interest in its orderly operation of its school and disciplining its student pursuant to the Code of Conduct.

Under the circumstances prior to a full hearing to grant an out-of-district transfer would visit a flood of litigation on the District. I therefore **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.

September 8, 2026

DATE



JOAN M. BURKE, ALJ

Date Mailed to Agency:

Date Mailed to Parties:

JMB/nn

APPENDIX

Exhibits

For petitioner:

P-1 Petitioner's Brief for Emergent Relief with attachment, September 1, 2026

For respondent:

R-1 Respondent's Letter Brief in Opposition to Emergent Relief, September 4, 2026