

New Jersey Commissioner of Education
Order on Emergent Relief

Divine Kidz Academy and Preschool and K.F., on
behalf of minor child, K.F.,

Petitioners,

v.

Trenton Board of Education, Mercer 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 petitioners have 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 petitioners' 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 14808-26

AGENCY REF. NO. 370-08-26

DIVINE KIDZ ACADEMY AND PRESCHOOL

AND K.F. ON BEHALF OF K.F.,

Petitioners,

v.

TRENTON BOARD OF EDUCATION,

Respondent.

Robert K. Devaney, Esq., for petitioners (Florio, Perrucci, Steinhardt, Cappelli & Tipton, LLC, attorneys)

Adam S. Herman, Esq., for respondent (Adams, Lattiboudere, Croot, Herman, attorneys)

BEFORE **JEFFREY N. RABIN**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners, Divine Kidz Academy & Preschool (“Divine”) and K.F. on behalf of K.F. (together, petitioners), seek emergent relief in the form of an Order requiring respondent, Trenton Board of Education, to perform and provide a “due diligence evaluation” of

whether Divine Kidz Academy may be eligible to contract to provide preschool services to the respondent school district.

The within motion for emergent relief was filed by petitioners on August 20, 2026, with the New Jersey Department of Education (DOE), Office of Controversies and Disputes. The motion for emergent relief was transmitted to the Office of Administrative Law (OAL), where it was filed on September 1, 2026. N.J.S.A. 52:14F-1 to -13.

A telephone conference was held on September 3, 2026. An emergent hearing in this matter took place on September 8, 2026, and the record closed on that date. Petitioner K.F. did not attend the emergent hearing.

FINDINGS OF FACT

Based on petitioners' petition for emergent relief, respondent's letter brief in opposition to petitioners' emergent petition, and the parties' oral arguments, and solely for the purpose of deciding this emergent appeal, I **FIND** the following to be the undisputed facts:

- 1, Petitioner Divine is a certified private preschool provider. Respondent is a New Jersey public school district that receives New Jersey Preschool Education Aid (PEA). The recently enacted New Jersey Universal Preschool and Kindergarten Act (NJPK Act) (P.L. 2025, c.100; S.3910/A.5717) requires that districts that receive PEA funding make every effort to identify and partner with local preschool and kindergarten providers. By directive to PEA districts dated January 21, 2026, Department of Education Assistant Commissioner of Education Katrina McCombs directed PEA districts to "demonstrate these due diligence efforts to establish partnerships with all eligible private providers."
2. Respondent has not provided evidence of due-diligence efforts to evaluate Divine.

LEGAL ANALYSIS

The issue is whether petitioners have proven by a preponderance of the credible evidence that they met the standard for emergent relief, and that they are entitled to relief.

N.J.S.A. 18A:6-9 authorizes the Commissioner to consider controversies between parents and a school board, and a school and a school board. The OAL is the appropriate venue for such appeals and the DOE properly forwarded this matter to the OAL for this emergent appeal to be heard.

Pursuant to N.J.A.C. 6A:3-1.6 and the case of Crowe v. DeGioia, 90 N.J. 126 (1982), a petitioner must show by a preponderance of the evidence that the four prongs/prerequisites set forth therein had been met in the petitioner's favor in order to be granted emergent relief. A petitioner bears the burden of proving the four prongs for emergent relief. B.W. ex rel. D.W. v. Lenape Reg'l High Sch. Dist., EDS 06933-05, Decision on Emergent Relief (October 5, 2005), <https://njlaw.rutgers.edu/OAL/index.php>; see also J.G. ex rel. Q.B. v. Bd. of Educ. of Lakewood, EDU 10073-03, Initial Decision (December 31, 2003), <https://njlaw.rutgers.edu/OAL/index.php>; R.D. ex rel. C.D. v. Willingboro Bd. of Educ., 95 N.J.A.R.2d (EDS) 190.

Per N.J.A.C. 6A:3-1.6 and Crowe, emergent relief may be granted if the judge determines from the proofs that the following four prongs have been met:

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).]

Respondent argued that petitioners did not meet all four prongs of the Crowe test.

1. The petitioners will suffer irreparable harm if the requested relief is not granted.

Petitioners claimed that there would be irreparable harm without evidencing any immediate, actual harm. Petitioners claim that students will be set back in their education, and will be on a lifelong course of inequity. I find these claims to be speculative. Even if Divine is not chosen to provide preschool services in Trenton, there are fifteen providers in thirty locations in the Trenton school district that already provide these services and are available to parents seeking a preschool for their child. Petitioners claimed that Trenton is an Abbott school district containing at-risk school children; respondent stated that Trenton is a former Abbott school district, which has already met its requirements by having thirty free preschools for its at-risk population. Additionally, this speculative future harm to unnamed future students does not prove any actual harm to Divine itself, the lead petitioner in this matter. Divine did not claim any harm to its business as a preschool provider.

“Injunctive relief ‘should not be entered except when necessary to prevent substantial, immediate and irreparable harm.’” Garden State Equality v. Dow, 433 N.J. Super. 347, 351 (Law Div. 2013) (quoting Subcarrier Commc’ns, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997)). Merely “[e]stablishing a risk of irreparable harm is not enough.” ECRI v. McGraw-Hill, Inc., 809 F.2d 223, 226 (3d Cir. 1987). The irreparable harm must also be non-speculative and must occur in the near and not distant future. Ibid.

Petitioner K.F. did not attend the emergent hearing, but even in her Certification she failed to demonstrate substantial, immediate, and irreparable harm. Minor-child K.F. is presently enrolled in Divine, but even if student K.F. were unable to remain enrolled in Divine and still wanted to attend preschool, K.F. could enroll her child free of charge in any of the respondent’s thirty approved preschool sites that are already under contract with respondent. Enrolling in one of the respondent’s preschools would allow K.F. to still take advantage of a State-funded preschool. Petitioners stated that there are 100 vacant seats spread across respondent’s thirty approved preschool sites; there is no claim that

K.F. has been denied a seat at any of those approved preschool sites. It is not evidence of harm that petitioner K.F. is satisfied with Divine and does not wish to move to a different school in order to continue receiving a free and appropriate preschool education. Finally, respondent raises a valid argument that K.F. is voluntarily paying high subsidy copays at Divine; going to another free school would save her that copay.

Finally, the relief sought pursuant to this emergent petition would not address any alleged harm; merely having respondent go through the exercise of evaluating a school would not guarantee that respondent would in fact choose to enter into a contract with Divine for preschool services. In that case, students would have to opt for one of the respondent's already approved preschools, the exact position parents are in at the present time.

I **FIND** that petitioners offered only speculation regarding harm, and failed to prove any substantial, immediate or irreparable harm. Accordingly, I **CONCLUDE** that petitioners failed to prove that there would be any irreparable harm and **CONCLUDE** that petitioners failed to prove that the first prong of the Crowe test for emergent relief had been met in favor of petitioners.

2. The legal right underlying the petitioner's claim is settled; and
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim.

Petitioners argued the second and third prong together, claiming that petitioners had a substantial likelihood of success based on well-settled legal rights. However, the statute they rely on, the New Jersey Universal Preschool and Kindergarten Act (P.L. 2025, c.100; S.3910/A.5717), has only recently been enacted, and petitioners have cited no regulations effectuating that law or caselaw interpreting that law, and therefore I cannot consider that statute to yet be "well-settled law." In fact, the basis for the within appeal is a letter to PEA districts dated January 21, 2026, from Department of Education Assistant Commissioner of Education Katrina McCombs, giving guidance on navigating the NJPK Act. *McCombs Memorandum*, Jan. 21, 2026. That letter directed PEA districts to demonstrate due-diligence efforts. Petitioners failed to establish that this letter from an assistant commissioner carried the weight of statutes, regulations, and caselaw. The

statute itself does not require or set forth protocols for a “due diligence evaluation.” Petitioners further argued that New Jersey law permitted parents to choose their own preschools, but failed to support that claim with a legal citation.

As stated under the first-prong analysis, it is also questionable whether there is any relief that can be granted in the within case. Even if respondent is directed to do a written due-diligence evaluation, there is nothing that absolutely requires respondent to contract with Divine to provide preschool services. The letter-directive merely requires the analysis. Accordingly, even if ordered to perform a due-diligence evaluation, there is nothing that guarantees that petitioners will receive the relief they seek: having Divine as a preschool provider funded in part by Trenton.

Respondent set forth that boards of education enjoy wide statutory discretion, and their decisions may not be overturned unless found to be arbitrary, capricious, or unreasonable. See Thomas v. Morris Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965); Kopera v. West Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). Respondent also correctly argued that the NJPK Act requires districts to “make every effort to collaborate with local ready, willing, and able private providers and Head Start programs within their district and neighboring communities that meet all requirements of N.J.A.C. 6A:13A.” *McCombs Memorandum*, Jan. 21, 2026, at 1–2. Nowhere did the NJPK Act require the respondent to continuously add unnecessary partnerships when its universal preschool capacity is full, and local demand is already met. Respondent was already assisting “at-risk” students in accordance with the NJPK Act through its numerous preexisting partnerships, the aforementioned fifteen different private providers and Head Start programs at thirty sites. This evidences that respondent has made diligent efforts to collaborate with private providers and Head Start programs. I must also agree with respondent’s argument based on legislative intent that the NJPK Act was intended for “expanding districts” that are currently struggling to meet the demands of their surrounding community. The NJPK Act was not meant to force arguably unnecessary partnerships, but rather to ensure that the early-childhood-education demand across New Jersey was met. Trenton is not an expanding school district at this time.

Petitioners have not shown by a preponderance of the credible evidence that their claims are settled or that there is a likelihood of prevailing on the merits of the underlying claim. Therefore, I **CONCLUDE** that petitioners failed to show that the second and third prongs of the Crowe test for emergent relief have been met in favor of petitioners.

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.

Neither party made a persuasive argument as to a balancing of the equities; as the first three prongs of the Crowe test have not been met in petitioners' favor, no further analysis is required.

Therefore, I **CONCLUDE** that petitioners failed to show by a preponderance of the credible evidence that any of the four prongs of the Crowe test for emergent relief have been met in their favor. I **CONCLUDE** that petitioners failed to prove that they are entitled to emergent relief in this matter.

ORDER

Accordingly, I **ORDER** that the petitioners' application for emergent relief be and hereby is **DENIED**.

This order on application for emergent 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 shall be issued without undue delay, but no later than forty-five 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.

September 9, 2026

DATE



JEFFREY N. RABIN, ALJ

Date Received at Agency:

Date Mailed to Parties:

JNR/oni

APPENDIX

Briefs/Exhibits

For petitioners:

- Petition Appeal and exhibits, dated August 20, 2026

For respondents:

- Letter-brief in Response to Petition for Emergent Relief, dated September 8, 2026