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OAL Dkt. No. EDU 15064-26
Agency Dkt. No. 410-09-26

New Jersey Commissioner of Education

Order on Emergent Relief

D.D., on behalf of minor child, L.D.,

Petitioner,

v.

Pemberton Township Board of Education, Burlington County, and Jeff Havers, Superintendent,

Respondents.

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: October 22, 2026
Date of Mailing: October 23, 2026

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON
EMERGENT RELIEF
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AGENCY DKT. NO. 410-09-26

D.D. ON BEHALF OF L.D.,
Petitioner,
v.
PEMBERTON TOWNSHIP BOARD OF EDUCATION AND JEFF HAVERS, SUPERINTENDENT,
Respondents.

D.D., petitioner, pro se

Emily E. Strawbridge, Esq., for respondents (Parker McCay, P.A., attorneys)

BEFORE **MARY ANN BOGAN**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner D.D. on behalf of her daughter L.D., a general education student, filed an emergent-relief Petition of Appeal (Petition) with the Commissioner of Education disputing the requirement that L.D. be required to adhere to respondent Pemberton Township School District's (District's) Policy 5516, Student Use of Internet-Enabled Devices, in accordance with N.J.S.A. 18A:36-40B. The Office of Controversies and

Disputes of the Department of Education transmitted the contested case to the Office of Administrative Law, where it was filed on September 9, 2026.

L.D. is enrolled in Helen Fort Middle School in the District. D.D. disagrees with the District's use of the Doorman program, a District-wide cell-phone policy, Policy 5516. The policy establishes the limitations on the use of personal internet-enabled devices during regular school hours in accordance with N.J.S.A. 18A:36-40b and the guidelines issued by the New Jersey Commissioner of Education.

For the reasons cited below, D.D.'s request for emergent relief to be relieved from adhering to Policy 5516 shall be denied.

FACTUAL DISCUSSION

Petitioner D.D. disputes the District's policy and its alternative forms of storage options. Petitioner claims that L.D. will need to keep her mobile phone on airplane mode and securely stored inside her backpack at all times while on campus. Petitioner relies on a special education regulation, N.J.A.C. 6A:32-7.1, citing parental rights regarding private property and data-privacy guidelines. Specifically, petitioner withholds consent for the installation or utilization of any third-party tracking software, including the Doorman program or the Fort Focus Mode application. Petitioner submits, "keeping communication records entirely clear and predictable across all buildings" is important because her family is currently working through a case with the Department of Education. Petitioner further cites to the protections against government intrusion and unauthorized electronic surveillance or data seizures on private devices and a student's rights under special education. Petitioner also points to the "overreach" that creates an "unacceptable safety deficit under the New Jersey School Security Protocol (NJ title 18A:41-1)," as a lockdown or active threat event would place L.D. in "immediate, dangerous communicative isolation" where she "could not receive vital parental safety directions or provide real-time updates to emergency dispatchers when quick family contact is a protective necessity." Petitioner also claims that L.D.'s continuous on-person possession of her personal cell phone is essential for immediate contact with her parents in the event of an emergency. Petitioner specified that immediate contact

needs include L.D.'s "manage[ment] of private, time-sensitive biological personal care needs, and to maintain a continuous un-delayed communication lifeline due to our highly specific household parameters" due to a home condition that "change swiftly and unpredictably" due to petitioner being a "disabled mother navigating active medical vulnerabilities while her husband serves on active-duty military orders." Petitioner states that her need for real-time communications is essential because the family "manage[s] fluid, shifting family schedules that require rapid, direct coordination regarding real-time logistical changes—such as short notice adjustments to after-school pickup arrangements, bus alternatives, or changing adult supervision schedules at our home," and the family should not need to experience "bureaucratic delays."

Petitioner also argues that the District failed to properly respond to her exemption request when it failed to formally make a decision and issue it in written form.

In oral argument, petitioner argued that the interim agreement for her daughter's cell-phone use while this matter is pending is causing her to miss morning classes, which include Honors Language Arts and the Gifted and Talented class, and could continue to cause disruption to her classes.

The District, in its oral argument and submissions, informed petitioner that L.D.'s cell phone could be left home during the school day, in response to petitioner's initial notice disagreeing with the Doorman program. After petitioner responded with new concerns regarding L.D.'s health and personal care, the District provided petitioner with instruction to submit any request for medical disability-related accommodation in writing, with supporting documentation, to the school. Petitioner did not provide supporting documentation and stated that the family did not request a medical accommodation. Instead, petitioner submitted a parental "opt-out" notice based on "personal property rather than a student disability accommodation." This request included the family's need to communicate regarding menstrual-hygiene needs and dismissal and pick-up coordination. The response also cited a new claim regarding a bullying incident during the 2024–2025 school year, and a due process petition raised on behalf of another student. The District also provided petitioner with alternatives to the installation of the Doorman program, to address parental concerns. These alternatives include

communication through the main office or other school offices such as the school nurse; checking the phone into the main office each morning for secure storage and retrieval at dismissal; and the regular school procedure that includes the parent placing a telephone call to the main office to contact the student during the school day, or the student requesting a pass to the main office to use the office telephone during the school day.

By way of certification, principal Aaron Eyler, who is responsible for overseeing the implementation of the application of District policies at Helen Fort Middle School, states that once the school year started, the District administration conducted a review of the students who enrolled in the Doorman program or submitted the required form selecting an alternative device storage method. On the second and third days of school, those students who had not enrolled in the Doorman program or completed the required form selecting an alternative method of device storage were called down to the District auditorium and reminded of the options. After the third day of school no students were called down to the auditorium or removed from class. L.D. was called down to the auditorium on the first and second day of school due to her noncompliance with the District policy. While this emergent matter is pending, L.D. has been temporarily permitted to maintain her personal cell phone, turned off, in her book bag.

LEGAL ANALYSIS AND CONCLUSIONS

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."

Petitioner seeks emergent relief based on a dispute with the District as to whether L.D., a general education student, can be required to adhere to the District's Policy 5516, Student Use of Internet-Enabled Devices, in accordance with N.J.S.A. 18A:36-40b. Petitioner filed the emergent petition under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400–1482, an Act designed to assure that

disabled children may access a free appropriate public education that is tailored to their specific needs. 20 U.S.C. § 1400(c); N.J.A.C. 6A:32-7.1.

Emergent relief shall only be requested for the following issues, pursuant to N.J.A.C. 6A:14-2.7(r):

i. Issues involving a break in the delivery of services;

ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings;

iii. Issues concerning placement pending the outcome of due process proceedings; and

iv. Issues involving graduation or participation in graduation ceremonies.

In this case, L.D. is not a student receiving special education services. L.D. has not qualified for or been recommended to be evaluated to determine eligibility for special education or related services. In accordance with B.C. and J.S. ex rel. C.S. v. West Orange Board of Education, 2018 N.J. AGEN. LEXIS 354 at *8 (June 11, 2028), "a special education dispute cannot be asserted by a general education student." L.D. is not a special education student whose existing IDEA services or placement have been interrupted. I **CONCLUDE** that this case involves a dispute over the application of the District's policy regarding the use of personal internet-enabled devices, and emergent relief does not apply.

If it is later determined that petitioner's claim does fall within the specifically enumerated categories for emergent relief, the standards for emergent relief are set forth in Crowe v. DeGioia, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6. These standards for emergent relief require irreparable harm if the requested relief is not granted; a settled legal right underlying the petitioner's claim; a likelihood that the petitioner will prevail on the merits of the underlying claim; and a determination that 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. A

petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132–34.

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); see also N.J.A.C. 1:1-12.6.

Turning to the first criterion, it is well settled that relief should not be granted except "when necessary to prevent irreparable harm." Crowe, 90 N.J. at 132. In this regard, harm is generally considered irreparable if it cannot be adequately redressed by monetary damages. Id. at 132–33. Moreover, the harm must be substantial and immediate. Judice's Sunshine Pontiac, Inc. v. Gen. Motors Corp., 418 F. Supp. 1212, 1218 (D.N.J. 1976). More than the risk of irreparable harm must be demonstrated. Cont'l Grp., Inc., 614 F.2d at 359. The requisite for injunctive relief is 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 claims that she has provided adequate reasons why their family requires an exemption from the District policy. Respondent counters that "in the special education context, irreparable harm is generally substantiated when there is a substantial risk of physical injury to the child or others, or when there will be significant interruption or termination of the child's educational services." C.B. ex rel. C.B. v. Jackson Twp. Bd. of Educ., 2009 NJ AGEN LEXIS 592 (Sept. 9, 2009).

Despite petitioner's claims that L.D. requires continuous on-person possession of her personal cell phone, there is inadequate proof that she is at substantial risk of physical injury, and the short interruption of her classes on the first two mornings of the school year to address the District's policy for non-compliant students and to create an

alternative carrying method while the emergent petition is pending was not sufficient to cause harm. Petitioner has not demonstrated that the student will be unable to address an actual emergency or legitimate health or safety concern while complying with the policy. Importantly, the student benefits from a supervised school environment with established procedures for addressing student communication and emergencies, and students' needs.

I **CONCLUDE** that petitioner has not met the burden of establishing that L.D. will experience irreparable harm if the requested relief is not granted.

Although petitioner has failed to meet the burden of proof for the first prong of the standards for emergent relief, and all four of the prongs must be satisfied, the three remaining prongs of the standards for emergent relief will be addressed.

The second requirement is that 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 (E. & A. 1878)).

In general, a board of education's actions are entitled to a presumption of lawfulness and good faith. Where board actions are challenged, the challenger bears the burden of proving that such actions were unlawful, arbitrary, capricious, or unreasonable. Schuster v. Bd. of Educ. of Montgomery Twp., 96 N.J.A.R.2d (EDU) 670, 676 (citing Schinck v. Westwood Bd. of Educ., 60 N.J. Super. 448 (App. Div. 1960); Quinlan v. Bd. of Educ. of N. 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. This standard has been defined by the New Jersey courts as having no rational basis. Piccoli v. Bd. of Educ. of Ramapo Indian Hills Reg'l Sch. Dist., EDU 01839-98, Initial Decision (January 22, 1999) (citing Bayshore Sewage Co. v. Dep't of Envtl. Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974)), adopted, Comm'r (March 10, 1999), https://njlaw.rutgers.edu/collections/oal/.

In the absence of a clear showing of abuse of discretion, the Commissioner of Education will not substitute his or her own judgment for that of the board of education. Massaro v. Bd. of Educ. of Bergenfield, 1965 S.L.D. 84, 85. In Kopera v. Board of Education, 60 N.J. Super. 288, 294 (App Div. 1960), the Appellate Division noted "the well-established rule that action of the local board [of education] which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives."

Here, there is no settled legal right to have the Commissioner decide that L.D. should be exempted from its District policy addressing the control of personal internet-enabled devices during school hours.

Based upon the foregoing, I **CONCLUDE** there is a rational basis for the District's action and that the right underlying petitioner's claim is settled against petitioner's position.

Under the third emergent-relief prong, "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)).

As previously stated, "action of the local board [of education] which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives." Kopera, 60 N.J. Super. at 294.

Petitioner seeks to compel the District to particularize the policy to her student so that she can access her cell phone throughout the school day based on circumstances related to possible privacy claims, the household schedule related to the mother's disability, the father's military status, and the student's menstrual-hygiene needs. Petitioner has not demonstrated a legal basis or other binding legal authority to grant this request.

It has not been demonstrated that the actions of the school district to enforce the District's bell-to-bell personal-device policy are arbitrary or without a rational basis. I **CONCLUDE** that petitioner has not demonstrated a likelihood of success on the merits. Accordingly, I **CONCLUDE** that the District's decision to enforce the District's personal-device policy was not arbitrary, capricious, or unreasonable.

The final requirement relates to the equities and interests of the parties. Crowe, 90 N.J. at 134.

Petitioner has not demonstrated any harm that would require the requested relief. If the relief were granted, the District would be compelled to suspend its enforcement of its bell-to-bell policy for personal devices and required to create unattainable individualized exceptions for families.

I **CONCLUDE** that petitioner has failed to show that when the equities and interests of the parties are balanced, petitioner will suffer greater harm than respondents will suffer if the requested relief is not granted.

Therefore, I **CONCLUDE** that petitioner's request for emergent relief must be denied.

ORDER

For the reasons set forth above, I hereby **ORDER** that petitioner's request for emergent relief is **DENIED**.

This order on application for emergency relief shall remain in effect until the Commissioner makes a decision as to whether or not he will return the case for a decision on the merits in this matter.

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 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 21, 2026
DATE

MARY ANN BOGAN, ALJ

MAB/nn
c: Clerk OAL-T