

91-25E
OAL Dkt. No. 03602-25
Agency Dkt. No. 49-2/25

New Jersey Commissioner of Education
Order on Emergent Relief

H.K., on behalf of minor child, E.K.,

Petitioner,

v.

Board of Education of the City of Bayonne,
Hudson County,

Respondent.

The record of this emergent matter and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed. Upon such 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 petitioner's application for emergent relief is denied. 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: March 17, 2025
Date of Mailing: March 17, 2025



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING

EMERGENT RELIEF

OAL DKT. NO. EDU 03602-24

AGENCY DKT. NO. 49-2/25

H.K. O/B/O MINOR CHILD, E.K.,

Petitioner,

v.

**BOARD OF EDUCATION, CITY OF
BAYONNE, HUDSON COUNTY**

Respondent.

H.K., petitioner, pro se

Christopher K. Harriot, Esq., for respondent (Florio, Kenney, Ravel, attorneys)

BEFORE **KIMBERLY K. HOLMES**, ALJ:

STATEMENT OF THE CASE

To be eligible for AP Calc at Bayonne High School, a student must score 765 on the AP Pre-Calc test, among other things. E.K., a student at Bayonne High School, scored 740 on the AP Pre-Calc test. Is E.K. eligible for AP Pre-Calc on an emergent basis? “No.” To succeed in application for emergency relief, an applicant must demonstrate, among other things, a likelihood of success on the merits of the case. See, generally, Crowe v. DeGioia, 90 N.J. 126 (1982).

PROCEDURAL HISTORY

On September 19, 2024, respondent advised E.K. that he could not enroll in advanced placement classes that school year because he did not meet the multiple measures the Board requires for enrollment. On February 20, 2025, E.K.'s father, H.K., filed a request for emergent relief with the Commissioner of the Department of Education (DOE), Office of Controversies and Disputes. On February 24, 2025, the DOE transmitted this case to the Office of Administrative Law (OAL) as a contested case under N.J.A.C. 6A:3-1.6(b). On February 27, 2025, I held the hearing and closed the record.

FINDINGS OF FACT

1. E.K. is a twelfth-grade student at Bayonne High School currently taking courses in Levels B and A. The academic levels from the lowest to the highest are B, A (honors), and AP which is the highest academic level. (R-1; R-2.)
2. E.K. attended ninth and tenth grade at Bayonne High School where he was placed in Level A courses based on his academic abilities. E.K. did not take courses at the AP level for either ninth or tenth grade. (R-1; R-2.)
3. E.K. completed the eleventh grade outside of the United States in Iran, which uses an "IB" standard of grading students. The IB standard is a standard that is used by neither the DOE nor the Board. (R-5; P-4.)
4. The IB standard is a holistic learning and grading system, but the AP standards examine a student's academic abilities.
5. The Board considered E.K.'s IB transcript for eleventh grade even though the standards were different from the NJ Standards. Even with those considerations, E.K. still did not pass the test nor meet the other criteria to take the AP course as a twelfth-grade student, which is detailed below.

6. E.K. did not meet the requirements for AP courses under the NJ Standards as a twelfth-grade student according to the Metropolitan Area Foreign Student Advisors (MAFSA) Guide, which is an instrument or measure the Board uses to make the determination whether students may enroll in AP courses when the students present a transcript under the IB standards. (R-4.)
7. The placement criteria for AP courses under the NJ Standards for twelfth grade students are also based on other measures, including teacher recommendations, standardized test scores, and academic performance. (R-2.)
8. On September 22, 2024, E.K. received the Board's graduation requirements as well as the criteria for AP courses for incoming twelfth grade students. (P-3.) The information about graduation requirements and the criteria for AP courses is maintained on the Board's website. H.K. was aware of the criteria since E.K. enrolled at Bayonne High School as a ninth grader in or around September 2020.
9. On February 24, 2025, Lieb Katz ("Katz"), the guidance counselor for E.K., told E.K. that he has "the potential to do whatever [he] want[s] in life. If [he] approached the AP process way earlier, it would have been a different story. This reality is that you are not in an AP course this year, but I do see a great future in your college learning and career." (P-6.) Katz did not recommend E.K. for the AP courses as a twelfth-grade student.
10. E.K.'s score, based on the multiple measure criteria of the Board for an AP twelfth grader, was 740. E.K. needed a 765 as well as teacher recommendations to move into AP courses. He did not meet the criteria. (R-1.)

11. The Board used the same placement criteria and process for evaluating E.K.'s academic abilities for AP courses that it uses for all students. (R-1, R-2.)

CONCLUSIONS OF LAW

The regulations governing controversies and 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 . . . [,] 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).

At a hearing for emergent relief, the petitioner must show that they satisfy the following four standards:

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) (citing Crowe v. DeGioia, 90 N.J. 126 (1982)).]

The petitioner must prove each of these standards by clear and convincing evidence. Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013) (citation omitted). I will address each separately.

1. Irreparable Harm

As the New Jersey Supreme Court explained in Crowe, “[o]ne principle is that a preliminary injunction should not issue except when necessary to prevent irreparable harm.” 90 N.J. at 132 [citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)]. Indeed, the purpose of emergent relief is to “prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case.” Ibid. [quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (Sup. Ct. 1854)]. The threshold standard for irreparable harm in education is showing that once something is lost, it cannot be regained. M.L. ex rel. S.L. v. Bd. of Educ. of Ewing, EDU 4949-09, Initial Decision (June 15, 2009), modified, Acting Comm’r (June 15, 2009), <http://njlaw.rutgers.edu/collections/oal/>.

In this case, E.K. is a high school senior seeking to enroll in AP courses as a twelfth-grade student. While there will be no other opportunity for E.K. to take the AP courses, he was placed in honors courses that were based on his academic abilities under the NJ standard of review. Accordingly, I **CONCLUDE** that the harm to E.K. is not irreparable.

2. Settled Legal Right

Next, 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., 29 N.J. Eq. at 304–05).

In this case, the sole issue is whether the Board should allow E.K. to take AP courses as a twelfth-grade student.

Based on the foregoing, I **CONCLUDE** that E.K. did not satisfy the multiple measures established by the Board to be enrolled in AP courses as he did not score high enough and did not obtain a teacher recommendation therefore has not shown a legal right underlying this claim.

3. Likelihood of Success on the Merits

Petitioner has not demonstrated that he is likely to succeed on the merits of the underlying claim. Under this 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)]. This typically “involves a prediction of the probable outcome of the case based on each party’s initial proofs, usually limited to documents.” Brown v. City of Paterson, 424 N.J. Super. 176, 182–83 (App. Div. 2012) [quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006)].

Here, the Board met with H.K. to discuss E.K.’s test scores and the criteria for being enrolled in AP courses. The exact same criteria used for other students were applied to E.K. in this process. Moreover, the Board considered E.K.’s IB transcript for the eleventh grade even though the criteria were different from the NJ Standards. Even with those considerations, E.K. did not score high enough nor meet the other criteria to take the AP course as a twelfth-grade student.

The ability to participate in AP courses is not a legal right but an academic privilege based on the placement criteria of the Board and the student’s academic capabilities. Accordingly, I **CONCLUDE** that H.K. has not shown a reasonable probability of ultimate success on the merits.

4. Balancing the Equities

The fourth and final 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). The equities here, however, favor the Board and its ability to carefully apply the established criteria for placement in AP courses, and to maintain the integrity of the academic process. The applicable law here is clear, and I **CONCLUDE**

that the Board will suffer greater harm should emergent relief be granted than the petitioner if the requested relief is not granted.

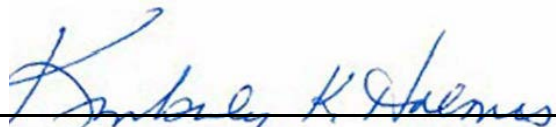
Based upon the foregoing, I **CONCLUDE** that the petitioner has failed to meet any of the requirements set forth under Crowe v. DeGioia and N.J.A.C. 6A:3-1.6(b) warranting an order for emergent relief in this case.

ORDER

Accordingly, I **ORDER** that the petitioner's application for emergent relief is **DENIED**.

This order on application for emergency relief may be adopted, modified or rejected by **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who/which 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 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.

March 3, 2025
DATE


KIMBERLEY K. HOLMES, ALJ

Date Mailed to Parties:

jb

APPENDIX

WITNESSES

For Petitioner:

E.K.

For Respondent:

Dawn Aiello, Director of Math Bayonne BOE

Renae Bush, Director of Student Personnel Services

EXHIBITS

For Petitioner:

- P-1 AI Overview of “high level” IB Courses
- P-2 National Society of High School Scholars IB Math AA Syllabus and Topics
- P-3 Bayonne BOE Requirement for district graduation and advanced placement (AP) criteria
- P-4 NJ DOE Graduation Proficiency Assessment
- P-5 Essay of E.K. for an English class
- P-6 February 21-24, 2025 - Email exchange between BOE Guidance Counsellor L.K. and E.K.
- P-7 May 24, 2022, Senate Citation of E.K. outstanding service
- P-8 Screenshot of BOE of students in the Early education Program

For Respondent:

- R-1 Placement Criteria for incoming 9th Grade Students
- R-2 Placement Criteria for incoming 10th – 12th Grade Students
- R-3 NJ DOE Graduation Proficiency Assessment
- R-4 Metropolitan Area Foreign Student Advisors (MAFSA) Guide for IRAN Reform
- R-5 11th Grade Transcript of E.K. form IRAN
- R-6 Academic Achievement Criteria of BOE Bayonne