



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION DENYING**

**EMERGENT RELIEF**

OAL DKT. NO. EDS 07869-21

AGENCY DKT. NO. 2022-33408

**K.H. ON BEHALF OF D.P.,**

Petitioner,

v.

**SALEM CITY BOARD OF**

**EDUCATION,**

Respondent.

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**K.H.**, petitioner, pro se

**Michael Pattanite, Jr.**, Esq., for respondent (Lenox, Socey, Formidoni,  
Giordano, Lang, Carrigg & Casey, attorneys)

Record Closed: September 24, 2021

Decided: September 27, 2021

BEFORE **DAVID M. FRITCH**, ALJ:

**STATEMENT OF THE CASE**

The petitioner, K.H., challenges the respondent, the Salem City Board of Education's (SCBOE), provision of transportation with appropriate accommodations for her son, D.P. and seeks compensatory education and reimbursement for parental transportation to transport her son to and from school.

## **PROCEDURAL HISTORY**

On September 21, 2021, the New Jersey Department of Education, Office of Special Education (OSE) received the petitioner's request for a due process hearing and emergency relief. The emergency relief petition was transmitted to the Office of Administrative Law, where it was filed on September 21, 2021. N.J.S.A. 52:14F-5(e), (f), and (g) and N.J.A.C. 1:6A-1 through -18.5. The respondent submitted a brief in opposition to the petition, which was received on September 23, 2021. Oral argument on the petition was held on September 24, 2021, and the record was closed.

## **FACTUAL DISCUSSION**

A summary of the pertinent evidence presented is as follows, and I **FIND** the following **FACTS**:

1. D.P. is currently a seventh-grade student who attends an out-of-district placement through SCBOE at the Salem County Special Services School District (SCSSD) at their Cumberland Campus for the 2021/22 school year. D.P. has attended SCSSD since the 2018/19 school year.
2. D.P. also receives speech and occupational therapy services at SCSSD. K.H. is pleased with the services being provided to her son at SCSSD; however, D.P. has problems accessing the transportation currently provided by SCBOE to get him to SCSSD to take advantage of the education and other services they offer him.
3. D.P.'s current IEP calls for SCBOE to provide specialized transportation for D.P. to his out-of-district placement including a transportation aide and a harness. (Resp. Br. at Ex. A at 6.)
4. During the 2019/20 school year, K.H. received a contract for transportation from SCBOE to transport D.P. to and from SCSSD due to SCBOE's inability to obtain a bus to transport D.P. That contract provided compensation of approximately \$20,000 to K.H. for providing transportation services for D.P. for the school year.

5. During the 2020/21 school year, due to the COVID pandemic, D.P. was on remote learning and was not transported to or from SCSSD.

6. For the 2021/22 school year, D.P. has been provided with bus transportation from SCBOE to transport him to and from SCSSD from September 3, 2021, until the present.

7. When the bus arrived at D.P.'s home on September 7, 2021, to begin the transportation process, D.P. did not exit the home as the petitioner asserted that she was unaware that the bus transportation was starting at that time. The bus was unable to transport D.P. to school that day.

8. When the bus arrived at D.P.'s home on subsequent dates to transport D.P. to school, they were unsuccessful in getting D.P. on the bus to transport to school.

a. K.H. noted at the hearing on this petition that she was able to get D.P. on the school bus but was unable to get D.P. to take his seat, even with assistance from the driver and behavioral staff on the bus.

9. Due to D.P.'s recent problems, as well as his documented history of difficulties riding the bus, SCBOE contracted with Interactive Kids to perform an observation and create a Behavioral Intervention Plan to address problems of D.P. refusing to get on the bus.

10. K.H. was working with the child study team at that time to address D.P.'s issues of getting on the school bus. (See, e.g., Resp. Br. at Ex. F.)

11. On September 21, 2021, a Behavior Intervention Plan was forwarded to K.H., as well as instructions to help D.P. be prepared for the bus pickup. (Id. at Ex. G.)

12. On September 22, 2021, the school bus arrived at D.P.'s house at 7:44 a.m. (Id. at Ex. I.) K.H. and the accompanying behavioral consultant were unable to get D.P. to board the bus, and the bus had to proceed without D.P. (Id.)

13. Due to problems getting D.P. on the bus, D.P. has missed every day of school so far at SCSSD for the 2021/22 school year.

14. K.H., in her due process petition, asserts that SCBOE is unable to transport D.P. on the school bus and seeks for D.P.'s IEP to be amended "to include parental reimbursement for transportation." (Due Process Pet.)

15. K.H. asserted, at the hearing on this petition, that she remains able and willing to transport her son to and from SCSSD but is seeking "reimbursement from the District" for doing so.

### **LEGAL DISCUSSION**

N.J.A.C. 6A:3-1.6(b) sets forth the standards governing motions for emergent relief:

A motion for 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. De Gioia, 90 N.J. 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 the 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.

The petitioner has the burden of establishing all of the above requirements in order to warrant relief in her favor. D.I. and S.I. on behalf of T.I. v. Monroe Township Board of Education, 2017 N.J.Agen LEXIS 814, 7 (OAL Dkt. No. EDS 10816-17,

October 25, 2017). While the petitioner has failed to address the above standards specifically in her submission, it shall be reviewed and decided based upon the Crowe standard. The moving party bears the burden of proving each of the Crowe elements “clearly and convincingly.” Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

Beginning with the first requirement, it is well-settled that relief should not be granted except “when necessary to prevent irreparable harm.” Crowe, 90 N.J. at 132-33. In this regard, harm is generally considered irreparable if it cannot be adequately redressed by monetary damages. Id. at 132-33. In other words, it has been described as “substantial injury to a material degree coupled with the inadequacy of money damages.” Judice’s Sunshine Pontiac v. General Motors Corp., 418 F.Supp. 1212, 1218 (D.N.J. 1976) (citation omitted).

The moving party bears the burden of proving irreparable harm. More than a risk of irreparable harm must be demonstrated. Continental Group v. Amoco Chemicals 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 the possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by common law.’” Id. (citations omitted).

D.P. has a documented history of problems riding the school bus. (See Resp. Br. at Ex. B.) SCBOE has taken steps to assist D.P. overcome his issues in boarding the bus in the morning. SCBOE asserts that “[a]voiding [t]his issue riding the bus harms the student, it does not help his education.” (Resp. Br. at 12.) The respondent has continuously provided transportation services to the petitioner; however, the petitioner asserts that the behavioral program detailed by the respondent to assist D.P. in utilizing the transportation being provided to him is ineffective and D.P. is unwilling to ride a bus to school and missing school as a result. To address this, the petitioner proposes that she can transport D.P. to and from school and is confident that she will be able to do so successfully as she has in the past. The issue on this petition, however, is that K.H. is

seeking financial reimbursement from SCBOE for her services in transporting D.P. to and from school.

The harm alleged, namely that SCBOE's transportation arrangements, will not work for D.P. and require K.H. to transport D.P., is both speculative in the sense that D.P.'s behavioral program to assist him in overcoming his issues in boarding the school bus is still in the early implementation stage and it may be too early to determine whether or not the plan proposed by SCBOE is unworkable this early in the school year. More importantly, however, the damages being asserted here are expressed in purely monetary terms which, on their face, are insufficient to meet the irreparable harm requirement under the provisions of De Gioia. Should the petitioner not be granted the emergent relief sought, namely that K.H. be given a continuing transportation contract with SCBOE to give her financial reimbursement for her work transporting D.P. as she had in the 2019/20 school year, there is nothing in this record to indicate that K.H. cannot provide the necessary transportation to D.P. and continue his education uninterrupted. To the contrary, K.H. expressed her confidence at the hearing on this petition that she can successfully transport her son, as she did during the 2019/20 school year, to allow D.P. to continue his educational program at SCSSD. The only identified barrier to D.P.'s transportation in this manner is that K.H. seeks to be financially reimbursed for her services as she was in a previous school year.

The irreparable harm requirement cannot be satisfied where monetary relief is capable of adequately addressing the alleged harm. Crowe, 90 N.J. at 132-33 (finding "reduction to poverty can be compensated adequately by monetary damages awarded after a distant plenary hearing" and not justification for emergent relief). The loss of potential compensation to K.H. for providing transportation services to assist in her son's education is something that can clearly be compensated adequately by monetary damages awarded after a plenary hearing, making the harm pled in this matter not considered irreparable to justify the emergent relief sought. Therefore, I **CONCLUDE** that the petitioner has failed to meet her burden of establishing a clear showing that she will suffer immediate irreparable harm unless the requested relief is granted.

Because all four of the Crowe v. De Gioia standards as codified in N.J.A.C. 6A:3-1.6 must be met in order for emergent relief to be granted and, for the reasons set forth above, the petitioner has failed to meet the requirements of the first of the four required standards, I need not address the motion on the merits with respect to the remaining three requisite prongs. For the reasons detailed above, I **CONCLUDE** that the petitioner has failed to meet the requirements set forth in N.J.A.C. 6A:3-1.6(b) warranting a stay or emergent relief in this matter.

**ORDER**

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

This decision on application for emergency relief shall remain in effect until the issuance of a decision on the merits of the matter. The hearing having been requested by the parents, the matter is hereby returned to the Department of Education for a local resolution session, pursuant to 20 U.S.C. 1415(f)(1)(B)(i). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

September 27, 2021  
DATE

  
DAVID M. FRITCH, ALJ

Date Received at Agency:

September 27, 2021

Date Mailed to Parties:

September 27, 2021

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