

EDU #4627-99
C # 206-99
SB # 32-99

G.J.C. AND L.C., on behalf of minor child, :
N.C., :
PETITIONERS-APPELLANTS, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF : DECISION
SOMERVILLE, SOMERSET COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, June 25, 1999

For the Petitioners-Appellants, G.J.C. and L.C., pro se

For the Respondent-Respondent, Michael J. Rogers, Esq.

This is an appeal from the denial of emergent relief by the Commissioner of Education in the case of N.C., a high school senior who, by the district board's calculation, had one more absence than was permitted under the district's student absenteeism policy. As a consequence, the Board denied him credit for his first-period physics course, which resulted in an "incomplete" grade for that class. This action, in turn, precluded N.C. from graduating.

In addition to precluding his graduation, the "incomplete" grade was to be included as a "0" in calculating N.C.'s grade-point average even though he had received an A-minus on the final exam. Accordingly, in seeking emergent relief, N.C.'s parents, G.J.C. and L.C. (hereinafter "petitioners"), indicated that the denial of credit would cause irreparable harm to their son because, in addition to the trauma that would result from not participating in the

graduation ceremony, such denial would jeopardize his prospects for college acceptance. The petitioners also contended that attending summer school to retake the physics class would interfere with N.C.'s ability to train for the selection trials in tae kwon do for the 2000 Olympics.

The Administrative Law Judge ("ALJ") heard petitioners' motion on an emergent basis on June 25, 1999, the date of the graduation ceremony. He also issued his initial decision on that date and, applying the standards set forth in Crowe v Di Goia, 90 N.J. 126 (1982), as well as N.J.A.C. 1:1-12.6, the ALJ determined that the relief requested by the petitioners should be granted.

The Commissioner, however, rejected the ALJ's recommended decision and, without analysis, denied the relief on the grounds that petitioners had not made a preliminary showing that they were likely to succeed on the merits of their claim.

We have reviewed the record, including the tape recording of the June 25 hearing before the ALJ, and on the basis of that record, we reverse the Commissioner's determination. In doing so, we recognize that the graduation ceremony in which N.C. would have participated has already occurred. Therefore the petition for emergent relief is moot to the extent that it sought a directive permitting N.C. to participate in those exercises. This does not dispose of the matter, however, in that the "incomplete" grade N.C. received was included in his cumulative average as a "0." As N.C.'s parents recognized in seeking emergent relief, this jeopardized his prospects for college admission and would impact other decisions based on N.C.'s cumulative average.

N.C. had 16 unexcused absences from the physics course at issue, one more absence than permitted under the Board's policy. The Board does not dispute that the reasons for N.C.'s absences were as represented by the petitioners at the hearing before the ALJ.

However, the record indicates that the Board did not actually consider the factual circumstances of N.C.'s absences at the hearing it conducted. As found by the ALJ, the school administration refused to provide the petitioners with the dates of the absences which they had requested prior to the Board hearing because the school wanted to prevent the submission of falsified notes. For the same reason, the Board did not consider the documentation of the reasons underlying some of the absences which petitioners offered at that hearing.

As established at the hearing, four of N.C.'s absences were due to lateness and two occurred when N.C. took his driving test without following the prescribed procedures, which required that he either report to school and sign in before the driving test or return to school after the test. One absence was due to a head injury, three because of a national tae kwon do competition, two were for major dental surgery, and four were the result of mononucleosis. Because the Board's policy permitted 15 absences, N.C. would not have been denied credit for his physics class if the Board had determined that any one of his absences was excusable.

The ALJ's decision reflects his careful examination of the factual circumstances surrounding the absences at issue. Based on the testimony at hearing, the ALJ found that N.C.'s mother had in fact notified the school by phone of N.C.'s oral surgery, which required two days' recovery. This finding alone reduces N.C.'s absences to less than the maximum number of permissible absences. However, the ALJ also found that notice of an emergency room CAT scan supported the claim that N.C. had in fact suffered a head injury resulting in an absence and that medical certification presented at the hearing supported several days' absence for mononucleosis. In addition, the ALJ concluded that at least two of N.C.'s absences were in fact due to competing in a national tae kwon do championship.

We agree with the ALJ that these circumstances indicate that it is likely that petitioners will prevail on the merits of their claim. Therefore, for the reasons expressed in the ALJ's initial decision as amplified herein, we conclude that emergent relief was warranted in this instance, and we reverse the Commissioner's determination.¹

October 6, 1999

Date of mailing _____

¹ In arriving at our determination, we have rejected the Board's argument that we should not review this matter because petitioners did not expressly request leave to appeal as required in interlocutory matters by our rules. In doing so, we were cognizant of the fact that petitioners are not attorneys and that they are appearing pro se.