

June 22, 2007

M.O.-B., pro se
1 Jefferson Ave.
Kearny, NJ 07032

Kenneth J. Lindenfelser, Esq.
570 Kearny Ave.
P.O. Box 452
Kearny, NJ 07032

Dear Ms. M.O.-B. and Mr. Lindenfelser:

M.O.-B, on behalf of minor child, C.O. V. BOARD OF EDUCATION OF THE TOWN OF KEARNY, HUDSON COUNTY, STATE BOARD DOCKET #15-07

On May 23, 2007, the petitioner, M.O.-B., filed a "Petition of Appeal and Motion for a stay or emergent relief" with the Commissioner of Education on behalf of her son, C.O., a senior at Kearny High School, challenging the decision by the Kearny Board of Education to bar C.O. from participating in graduation exercises and Project Graduation on the grounds that he had failed to earn sufficient credits due to excessive tardiness and unexcused absences. A hearing was held in the Office of Administrative Law on June 7, 2007, and, on June 11, 2007, an administrative law judge ("ALJ") recommended that the Commissioner deny the petitioner's application for emergent relief, concluding that the petitioner had failed to meet the standards that would entitle her to such relief under Crowe v. De Gioia, 90 N.J. 126 (1982). The ALJ explained:

[P]etitioner has failed to demonstrate that the attendance and graduation standards promulgated by the Kearny Board of Education are arbitrary, capricious, unreasonable, or otherwise not in accordance with law. I further CONCLUDE that petitioner has failed to establish equitable grounds for emergency relief, specifically, that he is likely to succeed on the merits. Accordingly, I CONCLUDE that the decision of the Kearny High School administration to bar him from participation in the June 2007 graduation exercises, including Project Graduation, is well grounded and in accordance with law.

Initial Decision, slip op. at 5-6.

The ALJ observed that when C.O. had been given the opportunity to make up course credits by doing a report, he had copied a report from the Internet and submitted it as his own. In addition, the ALJ pointed out that “should [C.O.] successfully meet the graduation requirements at the end of the summer session or the fall 2007 semester, there is no reason why he could not attend graduation ceremonies thereafter.” Id. at 5.

On June 20, 2007, the Commissioner adopted the ALJ’s recommendation and denied the petitioner’s application. On June 21, 2007, the petitioner filed an appeal to the State Board of Education from the Commissioner’s determination, and, on June 22, 2007, counsel for the Kearny Board filed a brief in opposition to the petitioner’s application.

After a thorough review of the record and the papers filed on appeal, we fully agree with the findings and conclusions of the ALJ as adopted by the Commissioner that the petitioner’s application fails to meet the standards that would entitle her to emergent relief under Crowe v. De Gioia. Consequently, we deny her application for emergent relief.¹

Sincerely,

Josephine E. Hernandez, Chairperson
Legal Committee of the State Board

c: Members of the State Board of Education
Robert Mooney
Robert Osak

¹ Pursuant to N.J.A.C. 6A:4-3.3, “[t]he President of the State Board or, in the President’s absence, the chairperson of the Legal Committee is authorized to decide on behalf of the State Board applications for emergency relief made pursuant to N.J.A.C. 6A:4-2.4 unless the determination would constitute the final decision with respect to the controversy.”