

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

MOTION FOR EMERGENT RELIEF

OAL DKT. NO. EDS 08702-17

AGENCY DKT. NO. 2017 26463

G.G. ON BEHALF OF C.J.,

Petitioner,

v.

JERSEY CITY BOARD OF EDUCATION,

Respondent.

G.G., pro se, for petitioner

Cherie Adams, Esq., for respondent (Adams, Gutierrez and Lattiboudere, attorneys)

Record Closed: June 21, 2017

Decided: June 21, 2017

BEFORE **ELLEN S. BASS**, ALJ:

This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415 et seq. On June 20, 2017, petitioner filed an emergent relief petition on behalf of her daughter, C.J., an eighteen-year-old student who is classified as eligible for special education services under the category “specific learning disability.” The petition was transmitted to the Office of Administrative Law (OAL) also on June 20, 2017.

Petitioner challenges the actions of the school district in denying her daughter the right to participate in graduation ceremonies scheduled for June 21, 2017.

The underlying facts are generally uncontroverted. On June 6, 2017, C.J. was involved in a physical altercation in school. Her mother alleges that another student started the fight by assaulting C.J. C.J. told the other student that she would not leave the classroom to engage in a fight, so her classmate struck her, knocking off C.J.'s glasses. Her mother then admits that rather than diffuse the situation, or seek the assistance of an adult, C.J. "fought the other student. During the scuffle [C.J.] flung a chair at the student whom was in front of her..." C.J. received a five-day suspension, and was told that she could not participate in graduation activities. Her mother urges that this was the only time C.J. has been in trouble, and that she has strived to succeed in school.

I **CONCLUDE** that this petition for emergent relief must be dismissed for lack of jurisdiction, as it raises no claims that arise under the IDEA. Rather, it raises claims under the school laws, N.J.S.A. 18A:1-1 et. seq., and as such, was improperly filed with the Office of Special Education. It is noted that petitioner has known for several weeks that her daughter would not be permitted to walk at graduation, and she should have sought relief sooner, as this would have afforded her ample time to refile in the proper forum. Instead, she chose to file the day before the graduation ceremony.

In view of petitioner's pro se status, however, I will review her claims under the standard used in emergent applications. I **CONCLUDE** that petitioner has not set forth a viable claim for emergent relief.

My determination is controlled by N.J.A.C. 1:6A-12.1, which provides that a judge may order emergency relief pending issuance of the final decision in a special education matter if it appears from the proofs that:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the 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.

See also: N.J.A.C. 1:1-12.6, and Crowe v. DeGioia, 90 N.J. 126 (1982), which echoes the regulatory standard for this extraordinary relief. It is well established that a moving party must satisfy all four prongs of the regulatory standard to establish an entitlement to emergent relief.

Harm is irreparable when there can be no adequate after-the-fact remedy in law or in equity; or where monetary damages cannot adequately restore a lost experience. Nabel v. Board of Education of the Township of Hazlet, EDU 8026-09 (June 24, 2009); Tomlin v Lower Cape May Regional Board of Education, EDU 4952-09. Since graduation is a once in a lifetime irreplaceable experience that cannot be restored after the fact, I **CONCLUDE** that petitioner has met her burden of demonstrating irreparable harm.

But petitioner cannot demonstrate that the law is settled in her favor, or that she has a likelihood of succeeding on the merits of their claims. In fact, the law is well settled in favor of the Board, which has broad discretion to take the actions needed to effectively operate its public schools. The Commissioner of Education will not overturn the decision of a local board in the absence of a finding that the action below was arbitrary, capricious or unreasonable. T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07, Initial Decision (February 6, 2008) <<http://lawlibrary.rutgers.edu/oal/search.html>>, citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581(1966). The Commissioner will not substitute his judgment for that of a local board of education, whose exercise of its discretion may not be disturbed unless shown to be “patently arbitrary, without rational basis or induced by improper motives.” Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960).

Our courts have held that “[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.” Bayshore Sewage Co. v. Dep’t of Env’tl. Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff’d, 131 N.J. Super. 37 (App. Div. 1974). I **CONCLUDE** that the action of the Board here was reasonable under the circumstances, and that there is no basis under the applicable law for me to overturn its decision.

Finally, a balancing of the equities militates against granting the relief sought by the petitioner. Petitioner’s rights are less weighty than those of the Board because participating in graduation ceremonies is a privilege, and not a right. See: A.D. v. West New York Bd. of Educ., 2016 NJ Agen Lexis 522 (June 21, 2016); E.R. o/bo O.R. v Ocean Tp. Bd. of Educ., 2014 NJ Agen Lexis 162 (April 2014). Conversely, the Board has a strong interest in maintaining discipline and order in its schools. I **CONCLUDE** that petitioner thus cannot satisfy this final prong of the emergent relief standard.

Based on the foregoing it is **ORDERED** that the request for emergent relief be **DISMISSED**.

This decision on application for emergency relief resolves all of the issues raised in the due process complaint; therefore, no further proceedings in this matter are necessary. This decision on application for emergency relief is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2). 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.

June 21, 2017

DATE

ELLEN S. BASS, ALJ

Date Received at Agency

Date Mailed to Parties:
