

J.L. and D.L. on behalf of minor child, J.L., :

PETITIONERS, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION
NORTHERN VALLEY REGIONAL

HIGH SCHOOL DISTRICT, :

BERGEN COUNTY, :

RESPONDENT. :

_____ :

SYNOPSIS

Petitioners initially sought an emergent relief order directing respondent Board to effectuate their son's placement in an appropriate alternative education program, including instruction in advanced placement courses, following his long-term suspension in his senior year of high school; petitioners also sought an order directing the Board to treat J.L.'s college applications and recommendations no differently than it would for any other student. The parties jointly agreed to have the matter decided based on their written submissions and off-the-record discussions prior to the hearing, and they waived the right to have the matter decided under the standards for emergent relief established in *Crowe v. DeGioia*, 90 N.J. 126 (1982); effectively, the parties agreed that the ALJ's determinations following the emergent relief hearing would constitute an Initial Decision rather than an interim order addressing the petitioner's request for emergent relief.

The ALJ dismissed the petition, ordering that: the Board provide an Alternative Education Program to J.L. consisting of home-based instruction in physical education and English, and petitioner's requests for transcripts and/or teacher recommendations for college applications be forwarded by the school district's Director of Guidance to the appropriate staff members without comment.

The Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, noting that the provisions of the order included in the Initial Decision are harmonious with pertinent regulations, and have not been the subject of exceptions by either party.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

February 25, 2006

OAL DKT. NO. EDU 12543-07
AGENCY DKT. NO. 385-12/07

J.L. and D.L. on behalf of minor child, J.L., :
PETITIONERS, :
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_____ :

The record of this matter – including the audio tape of the hearing which took place in the Office of Administrative Law (OAL) on December 31, 2007, the recommended “Order-Emergency Relief” dated January 2, 2008, and the “Initial Decision Dismissal” dated January 9, 2008 – have been reviewed. No exceptions have been filed.

Petitioners’ minor child, J.L. – a high school senior – was given a long-term suspension as a result of behavior which he does not substantially deny. The behavior also led to family court orders which, *inter alia*, directed that J.L. attend a Suspension Alternative Program (SAP) in Hackensack, New Jersey. It is undisputed that the respondent district is sending J.L. assignments in English and Physical Education – the only two remaining courses that he needs for graduation – and that a certified teacher at the SAP has been supervising J.L.’s execution of the assignments.

It is also undisputed that J.L. had been taking Advanced Placement (AP) courses at the time of his suspension from school on November 26, 2007. In their petition of appeal, petitioners requested that the district provide J.L. with an alternative educational program and

that instruction in the AP courses be included as part of that program. Further, petitioners requested that J.L.'s college applications be processed no differently than those of other twelfth graders, and that no information about the discipline imposed upon J.L. or the Family Court proceedings be included in J.L.'s transcripts.

In its answering papers, respondent advised that transcripts for J.L.'s college applications were being sent out on a timely basis, with no "disciplinary records." As to J.L.'s educational program, respondent stated that if the SAP program were terminated by the court, respondent would provide J.L. with home instruction – in English and physical education only – until graduation.

Respondent outlined its analysis concerning its obligations to J.L. as follows. Under *N.J.A.C. 6A:16-7.3(a)(9)*, each student given a long-term suspension must be provided with "educational services, either in school or out of school, that are comparable to those provided in the public schools for students of similar grades and attainments, pursuant to *N.J.S.A. 18A:38-25*, which may include a public education program provided in accordance with the provisions of *N.J.A.C. 6A:16-9* or 10." *N.J.A.C. 6A:16-9.1 et seq.* pertains to alternative education programs and *N.J.A.C. 6A:16-10.1 et seq.* pertains to home (or out of school) instruction.

Respondent reasoned that since J.L. was in a court ordered alternative program, *N.J.A.C. 6A:16-9.2* dictated the nature of the educational benefits that he was entitled to receive. More specifically, respondent relied on *N.J.A.C. 6A:16-9.2(a)(8)* for the proposition that J.L.'s entitlement was limited to "[a]cademic instruction sufficient to fulfill graduation requirements, pursuant to *N.J.A.C. 6A:8-5.1*" To fulfill respondent's graduation requirements, which – according to respondent – are in accordance with *N.J.A.C. 6A:8-5.1*, J.L. needs instruction in

English and physical education for the duration of this school year. Accordingly, respondent's position is that its obligation to J.L. goes no further than the provision of instruction in those two subjects. AP subjects are not required for graduation and, indeed, it would be a significant and unjustifiable burden on the district's resources to provide J.L. with tutors for the various advanced courses he had been taking.

Notwithstanding that petitioners initially applied for emergent relief, on the day of the hearing the parties mutually agreed as follows:

1. They would accept a decision by the Administrative Law Judge (ALJ) based upon the parties' written submissions, supplemented by off-the-record discussions prior to the hearing; and
2. They waived the right to have the matter decided under the standards for emergent relief articulated in *Crowe v. DeGioia*, 90 N.J. 126 (1982) and set forth in *N.J.A.C. 6A:3-1.6(b)*.

Thus, the parties effectively agreed that the ALJ's determinations concerning the information proffered at the December 31, 2007 hearing would constitute an Initial Decision on the underlying appeal, rather than an interim order addressing petitioner's request for emergent relief.¹

Without sharing his analysis of the facts and law, the ALJ dismissed the petition with the following conditions, to which no exceptions have been filed.² The ALJ ordered:

- 1) that respondent provide home instruction to J.L. in English and physical education – the

¹ It was for this reason that on January 9, 2008, the ALJ "re-identified" the action taken in his January 2 emergent relief order as an Initial Decision – Dismissal.

² The Commissioner notes that the the ALJ's reference on the audio tape of the hearing to off-the-record discussions, the lack of formal factual and legal analysis in the Initial Decision, and the absence of exceptions to the decision suggest a voluntary resolution by the parties.

physical education instruction to consist of written assignments in lieu of physical performance;³ 2) that respondent's guidance counselor process transcript requests and forward reference requests to the designated teachers, who are free to respond – or not – as their conscience dictates; 3) that “to the extent permitted by law, the terms of this Order shall remain confidential”;⁴ and 4) that the petition be dismissed.

Upon consideration of the record, the Initial Decision and the audio tape of the OAL hearing, the Commissioner adopts the Initial Decision as the final decision in this case. In light of the regulatory provisions set forth above, the commissioner cannot conclude that respondent's actions are arbitrary or capricious. Further, the provisions of the order included in the Initial Decision are harmonious with the pertinent regulations, and have not been the subject of exceptions by either party.

Accordingly, the petition is dismissed without prejudice, subject to conformance with the provisions of the order incorporated into the Initial Decision.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: February 25, 2008

Date of Mailing: February 26, 2008

³ The Commissioner lacks jurisdiction to void or override the Family Court's directive that J.L. attend the SAP, and reminds petitioners that it is their responsibility to revisit this order with the court.

⁴ The Commissioner reminds the parties that Initial Decisions of the OAL are government records accessible to the public, pursuant to *N.J.S.A. 47:1A et seq.*

⁵ This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*