#90-13E (OAL Decision: Not yet available online)

M.A. AND L.A., on behalf of minor child, M.A.,	:	
PETITIONERS,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP OF DELRAN, CAMDEN COUNTY,	:	DECISION
RESPONDENT.	:	

SYNOPSIS

Petitioners sought emergent relief challenging the January 2013 action of the respondent Board which excluded their son, M.A., from the forthcoming Senior Class Trip and suspended him for up to three athletic contests as disciplinary action for alleged off-campus conduct, specifically participation in an underage drinking party at a private home that resulted in various alcohol and drug-related charges against the thirty-six Delran students at the party, including M.A. The initial charges from the Delran police were forwarded to the Burlington County juvenile court. Petitioners contended, *inter alia*, that: the Board's "Senior Class Trip Agreement" permission form contains no safeguard against overbroad discipline as required under *N.J.A.C.* 6A:16-7.6; the permission form is an unapproved code of conduct; there is no evidence in the record which pertains to M.A.; and that there is no evidence of any material and substantial disruption to the school. After the emergent hearing, the parties stipulated to the facts and requested a summary decision in this matter.

The ALJ found, *inter alia*, that: the criteria for emergent relief as set forth in *Crowe v. DeGioia*, 90 *N.J.* 126 (1982) has not been met; the matter was ripe for summary decision as there was no genuine factual dispute between the parties; the Board's Policy 5600, "Pupil Discipline/Code of Conduct", imposes necessary limitations on discipline for off-campus conduct as dictated by the Appellate decision in the case entitled *G.D.M. v. Bd. Of Ed. Of the Ramapo Indian Hills Reg'l High School District*, 427 *N.J. Super*. 246, 258 (App. Div. 2012); as a student enrolled in the school district, M.A. is subject to the policies adopted by the Board, specifically Policy 5600; the Senior Class Trip Agreement (Agreement) sets forth that a "student who has been charged by the police with underage drinking…during his or her Senior Year will be excluded from the Senior Class Trip;" though not referenced in the Agreement, school administrators are bound by the Board's rules and regulations, including Policy 5600. The ALJ concluded that summary decision on behalf of the respondent Board is appropriate in this matter.

The Commissioner concurred with the ALJ that petitioners failed to demonstrate entitlement to emergent relief, but found that a final decision on the merits cannot be decided on summary decision based on the current record since it is evident from the parties' submissions that material facts remain in dispute. Accordingly, the Commissioner adopted the Order of the OAL denying emergent relief, but ordered the matter to continue at the OAL for development of a factual record and final determination on the merits.

March 7, 2013

OAL DKT. NO. EDU 967-13
AGENCY DKT. NO. 10-1/13

M.A. AND L.A., on behalf of minor child, M.A.,	:	
PETITIONERS,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP OF DELRAN, CAMDEN COUNTY,	:	DECISION
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioners and the Board of Education's reply thereto. The petitioners sought emergent relief in connection with their challenge of the Board's decision to suspend M.A. from participation in three athletic contests and prohibiting him from attending the senior class trip as a result of an off-campus party. After oral argument on emergent relief, the parties submitted a joint stipulation of facts and agreed that the matter could be decided on summary decision. The ALJ found that the petitioners were not entitled to emergent relief and she recommended that summary decision be granted in favor of the Board.

In their exceptions, the petitioners challenge several factual findings made by the ALJ, arguing that there are no facts in the record that pertain to M.A. The petitioners maintain that there is no evidence that M.A. attended the party; drank alcohol or intends to drink alcohol; "tweeted" anything about the party or caused a disruption at the school. Additionally, the petitioners argue that the administrators' statement that they had to spend time dealing with the

aftermath of the December 8, 2012 party should not be a factor in determining whether there was a disruption to the school necessitating discipline. The petitioners maintain that although the ALJ found that the Board established a nexus between the off-campus incident and the orderly administration of the school, she did not find a "material and substantial interference" that is required under *N.J.A.C.* 6A:16-7.6(a)(2).

The petitioners also contend that the ALJ erred when she determined that Board Policy 5600 appropriately limited the Board's authority and complies with the decision in *G.D.M. v. Bd. Of Ed. Of the Ramapo Indian Hills Reg'l High School District*, 427 *N.J. Super.* 246, 258 (App. Div. 2012). The petitioners stress that the permission slip for the senior class trip is invalid because it did not reference Policy 5600 or the limit on the Board's authority for off-campus conduct. Again the petitioners assert that there is no evidence that M.A. was at the party, had alcohol or was even charged.

In reply to the petitioners' factual exceptions, the Board maintains that the petitioners stipulated that "[t]he December 18, 2012 letter from the Delran Township Police Department confirms that all thirty-six (36) Delran High School students have been charged with an alcohol-related offense in connection with the December 8, 2012 incident." The Board further contends that there are no facts in the record to support the petitioners' assertion that M.A. did not attend the party; did not drink alcohol; did not disrupt the school or did not "tweet" about the party. The Board also asserts that it properly relied on many of the stipulated facts to argue that the December 8, 2012 incident materially and substantially interfered with the requirements of appropriate discipline in the operation of the educational environment. Additionally, the Board reiterated its claim that the discipline imposed for the December 8, 2012 incident is not solely governed by the class trip agreement but rather it was also derived from Board Policy 5600, which enables the Board to impose discipline for off-campus conduct under

certain circumstances. Moreover, the Board maintains that the ALJ properly found that Board Policy 5600 authorized the Board to impose discipline for the December 8, 2012 off-campus incident because it was compliant with the two-prong test set forth in *N.J.A.C.* 6A:16-7.6.

After consideration and review, the Commissioner is in accord with the ALJ's determination that the petitioners failed to demonstrate entitlement to emergent relief pursuant to *Crowe v. DeGioia*, 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6. In so doing, however, the Commissioner finds that the petitioners have met the threshold requirement of irreparable harm. Although participation in extracurricular activities such as the senior class trip is a privilege and not a right, since the opportunity to participate cannot be regained once it is lost, the Board's decision to prohibit M.A. from attending the class trip does amount to irreparable harm.[1] Applicants seeking emergent relief, however, must also demonstrate that the legal right

[1] The Commissioner is fully cognizant of the well-established principle that a prohibition from extracurricular activities does not, in and of itself, rise to the level of irreparable harm necessary to warrant extraordinary remedy. However, harm is "irreparable" when there can be no adequate after-the-fact remedy in law or in equity, and monetary damages cannot adequately redress the intangibles of a lost experience after the activity is over. In past cases denying similar applications for emergent relief, the irreparable nature of the harm and the degree or severity of the harm have frequently been addressed together; they are, however, two separate factors, and it is on the basis of the *severity* of the harm – which pertains to the weighing of interests – and not its irreparable nature that applications of this kind typically fail. *Martin A. Domacasse v. Board of Education of the North Warren Regional School District, Warren County*, decided by the State Board April 17, 1996; *L.J., on behalf of minor child, S.J. and David Wickham v. Board of Education of the Township of Manchester, Ocean County*, decided by the Commissioner May 2, 2003. The Commissioner has consistently recognized this distinction in more recent rulings on emergent applications seeking restoration of privilege; see, for example, *S.L., on behalf of minor child, D.L. v. Board of Education of the Township of Verona, Essex County*, decided by the Commissioner September 7, 2007; *D.M.S., on behalf of minor child, E.B. and Gregory Heck v. Board of Education of the Pinelands Regional School District, Ocean County, et al.*, decided by the Commissioner May 9, 2008; *M.R., on behalf of minor child, J.R. v. Board of Education of the Town of Kearny, Hudson County*, decided by the Commissioner May 30, 2008; *Samantha Walsh v. Board of Education of the Monmouth Regional High School District, Monmouth County*, decided by the Commissioner June 20, 2008; *M.L., on behalf of minor son v. Board of Education of the Township of Ewing, Mercer County*, decided by the Commissioner June 15, 2009; *M.N., on behalf of minor child, R.N., v. State-Operated School District of the City of Newark, Essex County*, decided by the Commissioner June 16, 2009; *Michael Buonasorte, Jr. v. Board of Education of the Mainland Regional High School District, Atlantic County*, decided by the Commissioner June 19, 2009; *David Doll v. Board of Education of the Borough of Pitman, Gloucester County*, decided by the Commissioner June 22, 2009; *Steven E. Tomlin, Jr. and Diane Hogan v. Board of Education of the Lower Cape May Regional School District, Cape May County*, decided by the Commissioner June 22, 2009; *Robert Nabel v. Board of Education of the Township of Hazlet*, decided by the Commissioner June 24, 2009; *William Nash v. Board of Education of the Town of Kearny, Hudson County*, decided by the Commissioner March 23, 2010.

underlying their claim is settled, that they have a likelihood of prevailing on the merits and that the equities rest in their favor. The Commissioner finds – for the reasons stated in the Emergent Relief Order – that the petitioners have not satisfied those prongs of the *Crowe* analysis.

With respect to the ALJ's determination that the Board is entitled to summary decision, the Commissioner finds that a final decision on the merits cannot be decided on summary decision based upon the current record. It is well settled that summary decision may only be granted when there are no genuine issues of material fact in dispute. *Brill v. Guardian Life Insurance Co. of America*, 142 *N.J.* 520 (1995). Although the ALJ determined that there were no genuine factual disputes remaining in this case, it is evident from the parties' submissions that there are material facts that remain in dispute. For instance, the petitioners argue that there are no facts in the record as to whether M.A. attended the party; drank alcohol or intends to drink alcohol while under the legal age; "tweeted" anything about the party; or caused a disruption at the school.[2] Based upon the discrepancies with respect to M.A.'s involvement or even attendance at the party, it cannot be determined whether the Board's decision to prohibit M.A. from attending the senior class trip was arbitrary, capricious or unreasonable.[3]

Accordingly, the recommended Order of the OAL denying petitioner's application for emergent relief is adopted. This matter shall continue at the OAL for the development of a factual record and a determination as to whether the Board's decision to impose discipline on

[2] Despite the fact that the parties agreed that this matter could be resolved by summary decision and a joint stipulation of fact was filed, the petitioners proceeded to make several factual arguments in their submission at the OAL and in their exceptions.

[3] It appears from the petitioners' submissions that – in addition to the challenges to the Board's Policy 5600 and the senior class trip permission slip – they are attempting to have the Board's decision overturned without presenting evidence concerning M.A.'s involvement in the December 8, 2012 incident, but by merely suggesting that the Board did not provide any evidence regarding M.A. The Commissioner notes that the petitioners have the burden of proving that the Board's action was arbitrary, capricious or unreasonable.

M.A. in connection with the December 8, 2012 off-campus incident was arbitrary capricious or unreasonable.

IT IS SO ORDERED.[4]

COMMISSIONER OF EDUCATION

Date of Decision: March 7, 2013
Date of Mailing: March 8, 2013

[4] This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36.