

New Jersey Commissioner of Education

Final Decision

D.F., on behalf of minor children, I.F. and D.F.,

Petitioner,

v.

Board of Education of the Borough of Roosevelt,
Monmouth County,

Respondent.

Synopsis

Pro se petitioner filed a petition of appeal and a motion for emergent relief seeking an out-of-district placement for her two minor children for alleged violations of the respondent Board's harassment, intimidation, and bullying (HIB) policy after the Board's anti-bullying specialists determined that the student conduct petitioner reported in her complaint did not constitute HIB under New Jersey's Anti-Bullying Bill of Rights Act, *N.J.S.A. 18A:37-14*. Petitioner contended that the Roosevelt public school was not a safe environment for I.F. and D.F. because of the HIB that petitioner asserts was inflicted upon them during their time at the school; she therefore sought an out-of-district placement for the children to have them educated in either the Millstone Township Elementary School or an East Windsor Regional School District elementary school.

The ALJ found, *inter alia*, that: in this case, petitioner failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia*, 90 *N.J.* 126 (1982), and codified at *N.J.A.C. 6A:3-1.6*; petitioner did not show a likelihood of obtaining the relief she sought, namely an out-of-district placement for I.F. and D.F., as neither the HIB statute nor case law authorizes an out-of-district placement as a form of relief for a HIB violation. The ALJ concluded that petitioner's request for emergent relief does not satisfy the applicable requirements; further, the parties agreed that there are no remaining issues to be determined. Accordingly, the ALJ denied petitioner's application for emergent relief.

Upon review, the Commissioner adopted the ALJ's recommended Order denying petitioner's application for emergent relief for the reasons stated therein. As the parties represented to the ALJ that there are no remaining issues to be resolved, the Commissioner dismissed the petition of appeal. In so doing, the Commissioner noted that if petitioner wishes to pursue an appeal of the Board's HIB determinations, she may file a separate petition of appeal as that issue is outside of the scope of the within petition.

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| <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> |
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Petitioner,

v.

Board of Education of the Borough of
Roosevelt, Monmouth County,

Respondent.

The record of this emergent matter, the sound recording of the hearing at the Office of Administrative Law (OAL), and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, the Commissioner concurs with the ALJ that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia*, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6.

Accordingly, the recommended Order denying petitioner's application for emergent relief is adopted for the reasons stated therein. As the parties represented to the ALJ that no issues remain to be resolved,¹ the petition of appeal is hereby dismissed.

¹ Petitioner indicated during oral argument that she is seeking reversal of the Roosevelt Board of Education's (Board) harassment, intimidation, and bullying (HIB) determinations. However, that issue is outside the scope of the petition filed in the matter, which is limited to petitioner's request for a transfer to an out-of-district placement for her children. To the extent that petitioner wishes to pursue an appeal of the Board's HIB determinations, she may file a separate petition of appeal. The Commissioner notes that any such petition will be subject to the filing timeline established by N.J.A.C. 6A:3-1.3(i), as well as any other applicable statutes or regulations.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 8, 2024
Date of Mailing: October 9, 2024

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON EMERGENT RELIEF

OAL DKT. NO. EDU 11981-24

AGENCY DKT. NO. 276-8/24

**D.F. ON BEHALF OF
MINOR CHILDREN D.F. AND I.F.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE
BOROUGH OF ROOSEVELT,
MONMOUTH COUNTY,**

Respondent.

D.F., on behalf of D.F. and I.F., petitioner, pro se

Bruce W. Padula, Esq. and **Janice Arellano**, Esq., for respondent (Cleary, Giacobbe, Alfieri, Jacobs, LLC, attorneys)

BEFORE **MAMTA PATEL**, ALJ:

STATEMENT OF THE CASE

Petitioner D.F. seeks an out-of-district placement for her two minor children for alleged violations of respondent Board of Education of the Borough of Roosevelt's harassment, intimidation, or bullying (HIB) policy. Even if there were HIB violations, are D.F.'s children entitled

to out-of-district placement? No. The Anti-Bullying Act does not authorize out-of-district placement for a HIB violation. See N.J.S.A. 18A:37-15(b)(7).

PROCEDURAL HISTORY

On August 22, 2024, the Board of Education of the Borough of Roosevelt (Board) denied D.F.'s request for out-of-district placement for D.F.'s two minor children, D.F. (her son) and I.F. (her daughter), based on her allegations that the school was not safe for her children to attend. On August 26, 2024, D.F. filed a pro se petition of appeal and a motion for emergent relief with the Office of Controversies and Disputes of the New Jersey Department of Education (DOE). On August 28, 2024, without a response from the Board the petition of appeal and motion for emergent relief were transmitted to the Office of Administrative Law (OAL) under N.J.A.C. 6A:3-1.6(c)(3), where it was filed as a contested case N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. On September 3, 2024, the DOE emailed its response to D.F.'s request for emergent relief. The appeal and motion for emergent relief were heard via Zoom Communications, Inc., on September 4, 2024, and I closed the record.

FINDINGS OF FACT

Based on the testimony the parties submitted and my assessment of its credibility, together with the documents the parties submitted and my assessment of their sufficiency, I **FIND** the following as **FACT**:

The Roosevelt Public School (the school) is a pre-kindergarten through fifth-grade school district. The class sizes are small, and the student-to-teacher ratio is approximately 12:1. D.F.'s son, D.F., and daughter, I.F., have attended the school since September 1, 2020. Both children identify as biracial, specifically African American and Caucasian. In the 2023–2024 school year, her son was in the third grade, and her daughter was in the second grade.

I.F. was the only African American student in her class during the 2023–2024 school year and has texturally different hair. In December 2022, D.F. sent several emails to Dr.

Karen Barry, superintendent of the Roosevelt Public School, who at the time was also the anti-bullying coordinator, complaining that students were inappropriately touching I.F.'s hair. In December 2023, with the assistance of Barry, D.F. filed six HIB complaints on behalf of her daughter, I.F., regarding incidents between November 2022 and December 2022. Five of the six HIB complaints involved students engaging in various forms of touching I.F.'s hair without her consent. The sixth complaint involved a student allegedly telling I.F. that "real people don't look like that" about an image of a person I.F. colored red.

The six HIB complaints were assigned to anti-bullying specialists Scot Gershman and Donna Gazzani for investigation. Gershman and Gazzani are also teachers at the school; Gazzani was I.F.'s second-grade teacher. All teachers at the school receive annual "anti-bullying" training. On January 27, 2023, the school sent D.F. six letters notifying her of the outcome of each HIB complaint. D.F. was advised that the investigations "did not find evidence of HIB." Although the allegations were unfounded, several students apologized to her daughter, and one student was required to sit in Barry's office for fifteen minutes at the end of the day. D.F. believes that touching her daughter's hair without her permission is a form of discrimination under the "Crown Act."¹

None of the complained-about conduct resulted in the filing of formal charges by law-enforcement officials for the commission of a violent crime, nor was any student sanctioned by the district board of education's code of student conduct, nor was there a pre-existence of a restraining order against any of the student(s).

D.F. also complained to Barry about other students' treatment of her son. Specifically, D.F. complained that other students mispronounced her son's name. In October 2023, one student allegedly told her son that he would "make him and his family disappear." On or about October 12, 2023, D.F. met with Gina Morrone, principal of the school, regarding the treatment of her children. Although D.F. believes that her son was mistreated because of his

¹ The act establishes that discrimination based on hair texture, type, or style constitutes unlawful race discrimination in New Jersey. The Crown Act amends the New Jersey Law Against Discrimination (NJLAD), which bars employers from discriminating against individuals based on race, among other protected categories. N.J. Stat. Ann. § 10:5-12(a).

race and disability, D.F. did not file any HIB complaints on his behalf. Following the meeting, on or about October 13, 2023, D.F. removed her children from school and homeschooled them for the remainder of the 2023–2024 school year.

On November 27, 2023, D.F. emailed Barry requesting an out-of-district placement for her children—either Millstone Township Elementary School or an East Windsor Regional School District elementary school. Barry advised that day that the school did not have the ability to transfer the children to either school.

On August 22, 2024, D.F. appeared before the Board Executive Committee and requested an out-of-district placement for her children. During the hearing, D.F. did not challenge the HIB findings but rather premised her request for out-of-district placement on the Unsafe School Choice Option. The Unsafe School Choice Option (section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001). See 20 U.S.C. § 7912. Specifically *Provision II, Victims of Violent Criminal Offenses*.

CONCLUSIONS OF LAW

When the subject matter of a controversy is action by a board of education, the petitioner may file “a separate motion for emergent relief . . . pending the Commissioner’s final decision in the contested case.” N.J.A.C. 6A:3-1.6(a). Here, D.F. has initiated due-process proceedings to challenge the Board’s denial of her request for out-of-district placement of her two children. Based on prior alleged HIB incidents, D.F. claims that the school is not safe for her children to attend. Although D.F. did not challenge the Board’s HIB findings, even if the HIB rulings are overturned and affirmed by the DOE, the relief she requests—both on an emergent and permanent basis—may not be available under the HIB statute.

The standards for granting emergent relief are outlined in Crowe v. DeGioia, 90 N.J. 126 (1982), and are codified at N.J.A.C. 6A:3-1.6(b). The petitioner bears the burden of proving all four prongs of the Crowe test stated below:

1. Petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the petitioner's claim is settled;
3. Petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and the interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

D.F.'s emergent claim fails because she has not shown a likelihood of obtaining the relief she seeks, an out-of-district placement for I.F. and D.F. The HIB statute requires the school to adopt a policy that includes "consequences and appropriate remedial action for a person who commits an act of [HIB]." N.J.S.A. 18A:37-15(b)(4). The law states that if a HIB violation is found, the school should implement support and remedial measures, including the following:

[T]he range of ways in which a school will respond once an incident of harassment, intimidation or bullying is identified, which shall be defined by the principal in conjunction with the school anti-bullying specialist, but shall include an appropriate combination of services that are available within the district such as counseling, support services, intervention services, and other programs, as defined by the commissioner. In the event that the necessary programs and services are not available within the district, the district may apply to the Department of Education for a grant from the "Bullying Prevention Fund" established pursuant to section 25 of

P.L.2010, c.122 (C.18A:37-28) to support the provision of out-of-district programs and services[.]

[N.J.S.A. 18A:37-15(b)(7).]

Neither the statute nor case law authorizes an out-of-district placement as a form of relief for a HIB violation.

Additionally, D.F.'s argument for out-of-district placement under the Unsafe School Choice Option provision (Title VIII, Part F, Subpart 2, SEC. 8532) under the federal Every Student Succeeds Act (ESSA) of 2015 is inapplicable because the ESSA does not authorize out-of-district placements either. It only authorizes placement in another school in the district when a student is a victim of a violent offense at school:

[A] student . . . who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.

[See 20 U.S.C. § 7912(a).]

The ESSA specifically indicates the following criteria to determine whether a student is a victim under the Act: A student is considered a victim of a violent criminal offense when:

- A referral has been made to law enforcement officials for suspicion that one of the violent criminal offenses enumerated below has occurred; and
- One or more of the following applies:
 - Law enforcement officials have filed formal charges against the offender(s) for commission of the violent crime; or
 - The offender(s) has received sanctions in accordance with the district board of education's code of student conduct; or

- The offender(s) either has not been identified or is not an enrolled student(s), but it is clear that the student (victim) has become a victim of a violent criminal offense based on objective indicators such as physical evidence, eyewitness testimony, and/or circumstantial evidence; or
- The pre-existence of a restraining order against the offender(s).

Parenthetically, there are no facts supporting the application of ESSA in this case. None of the alleged conduct was deemed violent or resulted in the filing of criminal charges by law enforcement. The alleged HIB conduct, i.e., inappropriate hair touching or comments by second and third-graders in this instance, does not meet the criteria stated above for D.F. and I.F. to be considered victims under ESSA.

The second consideration of the Crowe test is whether the legal right underlying D.F.'s claim is settled, N.J.A.C. 6A:3-1.6(b)(2). Here, as stated above, I **CONCLUDE** that D.F. does not meet the second prong of the emergent-relief standard.

Since D.F. cannot meet all four prongs of the Crowe standard, this Order will not address the other three prongs.

I **CONCLUDE** that D.F.'s request for emergent relief does not satisfy the applicable requirements.

I further **CONCLUDE** upon agreement by the parties that there are no remaining issues.

ORDER

For the reasons stated above, I hereby **ORDER** that petitioner D.F.'s application for emergent relief on behalf of D.F. and I.F. is hereby **DENIED**.

This Order on application for emergency relief may be adopted, modified or rejected by **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who/which by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

September 6, 2024

DATE



MAMTA PATEL, ALJ

Date Received at Agency:

Date Mailed to Parties:

MP/dw

APPENDIX

Witnesses

For petitioner

D.F., parent

For respondent

Dr. Karen Barry, Superintendent of the Roosevelt Board of Education

Exhibits

For petitioner

- P-1 Pro Se Petition of Appeal and supporting statement, dated August 23, 2024; and Certification of Service, dated August 26, 2024
- P-2 Emails between Dr. Karen Barry and D.F. regarding son, D.F., incidents, dated February 6, 2023; May 17, 2023; October 10, 2023
- P-3 HIB Finding letter to D.F., dated January 27, 2023

For respondent

- R-1 Opposition to Petition for Emergent Relief, and Certification of Dr. Karen Barry, Superintendent of the Borough of Roosevelt, dated September 3, 2024
- R-2 Student Safety Data System Report Form 2022–2023, Incident 1, dated January 5, 2024
- R-3 Student Safety Data System Report Form 2022–2023, Incident 2, dated January 5, 2024
- R-4 Student Safety Data System Report Form 2022–2023, Incident 3, dated January 5, 2024

- R-5 Student Safety Data System Report Form 2022–2023, Incident 4, dated January 5, 2024
- R-6 Student Safety Data System Report Form 2022–2023, Incident 5, dated January 5, 2024
- R-7 Student Safety Data System Report Form 2022–2023, Incident 6, dated January 5, 2024
- R-8 Emails between Dr. Karen Barry re I.F. incidents (touching hair and foul language), dated November 14, 2022; December 7, 9, 13, 22, 2022
- R-9 Letter from student to I.F.—apology
- R-10 Millstone Township BOE Checklist re Investigation of HIB Reports
- R-11 Investigation Notes re Hair Touching from Anti-Bullying Specialist

Joint Exhibits

- J-1 Roosevelt Anti-Bullying Specialist Report Form from petitioner
- J-2 Email from petitioner to Commissioner of Education regarding HIB, dated November 27, 2024
- J-3 Response to petitioner from Dr. Barry, dated November 27, 2024