



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING

EMERGENT RELIEF

OAL DKT. NO. EDS 04914-21

AGENCY DKT. NO. 2021-32934

T.L. O/B/O R.B.,

Petitioner,

v.

WEST DEPTFORD TOWNSHIP

BOARD OF EDUCATION,

Respondent.

T.L., parent, pro se, on behalf of R.B.

Caitlin E. Pletcher, Esq., for respondent (Florio, Perrucci, Steinhardt, Cappelli,
Tipton & Taylor, LLC, attorneys)

BEFORE **SUSAN L. OLGATI**, ALJ

STATEMENT OF THE CASE

The petitioner, T.L. on behalf of her now adult son R.B.¹, filed a petition with the Office of Special Education Policy and Dispute Resolution, New Jersey Department of

¹ R.B. was seventeen years old when the petition was filed. He turned eighteen years old on June 11, 2021, the date on which oral argument was heard in this emergent matter. During oral argument, petitioner produced a June 9, 2021, email from R.B. stating, "I give my mom [T.L.] permission to work on my behalf for the due process procedure and any interactions involving West Defort [sic] high school." [R.B.] Ex. P-2. On June 14, 2021, petitioner provided a screen-shot of a signed version of this email. Ex. P-4.

Education, seeking an order for emergent relief allowing R.B. to participate in the graduation ceremonies of West Deptford High School (WDHS).

PROCEDURAL HISTORY

On or about June 9, 2021, petitioner L.T. filed a request for emergent relief allowing R.B. to participate in graduation ceremonies. She also filed a due process action seeking for the school district to accept all assignments along with allowing R.B. to participate in graduation ceremonies. On or about June 9, 2019, the request for emergent relief and the due process were transmitted to the Office of Administrative Law (OAL). On June 10, 2021, the respondent, West Deptford Township Board of Education (the Board or District) filed a letter brief in opposition to the request for emergent relief and supporting certification of Dr. Brian C. Gismondi, principal of WDHS. Oral argument was held on June 11, 2021, and the record was closed on June 14, 2021, upon receipt of signed email authorization from R.B..

FACTUAL DISCUSSION

Many of the essential facts in this matter are not in dispute.

R.B. is in the twelfth grade at WDHS. He has attended WDHS since ninth grade.

R.B. has an Accommodation Plan for the 2020-2021 school year under 504 of the Rehabilitation Act of 1973 (504 Plan) based on his physical/mental impairment of Attention Deficit Disorder/Hyperactivity. Ex. R-N.

The 504 Plan provides for the following accommodations:

- Extended time for tests, assignments and projects, if requested by student;
- Teacher will contact parent if two or more assignments are missing in a given week;
- Counselor will suggest and support organizational strategies;
- Long term assignments (lasting three days or more) will be chunked with identifying individual due dates for each section;
- Any correction will be conducted in a one-to-one private setting, if possible;

- Check for understanding of directions and re-state directions, if requested by the student.
Id.

Board Policy 5460 regarding High School Graduation requires graduating student to have earned no fewer than one hundred twenty credits in courses designed to meet all of the New Jersey Student Learning Standards. Ex. R-B.

R.B. has not earned the 120 minimum credits required of graduating students.²

On September 29, 2020, R.B.'s math teacher emailed T.L. to advise that R.B. was failing math and had multiple opportunities to "make up the zeros." Ex. R-D.

On October 14, 2020, Dr. Gismondi, sent T.L. an email confirming their meeting and advising that R.B. would need to pass all of his classes and that if he failed one, he would not have enough credits to graduate. Ex. R-E.

For the second quarter marking period, R.B. received failing grades of "59" in four classes. Ex. R- H.

By letter dated February 5, 2021, T.L. was advised the R.B. lost credit for his Photography classes due to absences and of credit completion. Ex. R-I.

By email dated March 4, 2021, T.L. was advised that R.B. was in academic danger as his "academic progress to date causes some concern as to whether he will meet all the requirements needed to graduate in June 2021." Ex. R-J

For the third quarter marking period, R.B. failed his math class (Concepts of Math) but passed his other classes. Ex. R-K.

² The June 10, 2021, certification of Dr. Gismondi indicates that to date, R.B. had earned 100 credits. However, at oral argument, counsel for the Board clarified that R.B. was 7.5 credits short of the graduation requirement.

By emails dated April 14, 2021, May 11, 2021, and May 18, 2021, T.L. was advised that R.B. was in “graduation danger” as his “academic progress to date continues to cause concern as to whether he will meet all the requirements needed to graduate in June 2021.” T.L. was also advised to encourage R.B. to log into all ZOOM classes, complete homework and class assignments, and study hard for tests and quizzes and to contact teachers if extra help was needed. Ex. R-L and R-M.

For the final grade, R.B. received failing grades in math (64) and forensics (61).

Board Policy 5200 regarding attendance provides that consequences for unexcused absences from school may include the denial of a student’s participation in co-curricular activities. Ex. R-P.

Board Policy 5461 regarding commencement activities provides that criteria for exclusion from graduation year activities concern consistent behavioral patterns. The policy further provides that no pupil shall be barred from participation in graduation ceremonies for arbitrary or discriminatory reasons. Ex. R-Q.

Arguments of the Parties

T.L. argued that R.B. had health issues this year including Covid and mono and that he also experienced mental health issues and is receiving therapy. She contends she knew he was failing, but not because of missing assignments. WDHS was not providing him with the supports outlined in his 504 Plan. He failed his math class by one point. If T.L. had been notified of the missing assignments on a weekly basis, R.B. would have been successful. He would have passed if he had been able to make up missed work. Additionally, R.B.’s therapist left phone messages with the guidance counselor on or about June 4 and June 8, 2021, to explain R.B.’s absences from school.³

³ Based on T.L.’s arguments/testimony it appears that the supporting documentation from R.B.’s therapist has not yet been provided to the Board.

The Board argued that petitioner has no legal right to the emergent relief she seeks. R.B. does not meet the credits required for graduation. He failed both his math and forensics classes. He must make up 5 credits in math and 2.5 credits in another course.⁴ The Board argues that in addition to failing to meet the graduation requirements relating to credits/grades R.B. is also ineligible to graduate because he must participate in “credit recovery” due to his absences. The Board contends credit recovery is required when a student has more than twenty-three absences in a particular class. R.B. has over forty-four days of full absences and additional absences in certain individual classes. The Board disputes that all of R.B.’s absences are explained by his medical/mental health issues. The Board further argues that there are other students at WDHS who are prohibited from participating in the graduation ceremony due to failure to meet the graduation requirements for grades and credit. The Board contends it has never permitted a student to “walk” in graduation if he/she had not met the graduation requirements relating to grades and credits.

LEGAL ANALYSIS AND CONCLUSIONS

In accordance with N.J.A.C. 1:1-12.6, emergency relief may be granted “where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case...” A determination in this matter is further governed by the standard for emergent relief set forth by our Supreme Court in Crowe v. DeGioia, 102 N.J. 50 (1986), as follows:

The judge may order emergency reliefif the judge determines 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 success 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 relief is not granted.

⁴ The Board contends that it further accommodated R.B. by allowing him to take a forensics class, an on-line course, as an opportunity to earn additional credits.

The moving party must satisfy all four prongs of this standard to establish an entitlement to emergent relief. Id. at 132-35.

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. Bd. of Educ. of Hazlet, EDU 8026-09, Initial Decision on Application for Emergent Relief, (June 24, 2009) <<http://njlaw.rutgers.edu/collections/oal/>>. A student's attendance at his high school graduation, along with his peers is a once-in-a-lifetime opportunity. There is no method for recreating this at a later time. See C.E o/b/o N.E. v. Lawrence Twp. Bd. of Educ., EDS 6067-10, Decision on Emergent Relief, (June 17, 2010) <<http://njlaw.rutgers.edu/collections/oal/>> and C.D. o/b/o S.C. v. Mainland Regional Bd. of Educ., EDS 08459-17, Decision on Emergent Relief, (June 16, 2017) <<http://njlaw.rutgers.edu/collections/oal/>>. See also, C.F. o/b/o A.H. v. Neptune Twp. Bd. of Educ., EDS 08134-19, Final Decision on Emergent Relief, (June 21, 2019) <<http://njlaw.rutgers.edu/collections/oal/>>. Accordingly, I **CONCLUDE** that petitioner has demonstrated that R.B. will suffer irreparable harm if the request for relief is not granted.

However, petitioner must also demonstrate that R.B.'s right to participate in the graduation ceremony, despite failing to meet the graduation requirements, is settled. In fact, the law is settled that a board of education has broad discretion to take action needed to effectively operate its public schools. The Commissioner 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 the 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).

Accordingly, I **CONCLUDE** that petitioner is unable to demonstrate that the law is settled in R.B.’s favor. Similarly, the applicable arbitrary and capricious legal standard make petitioner’s likelihood of success on the merits doubtful.

The Board policy requiring graduating students to earn no fewer than 120 credits is consistent with State standards and is therefore reasonable. Further, while the Board does not expressly address in its policies the issue of *participation* in the graduation ceremony based on failure to meet necessary grade/credit requirements, its stated practice of prohibiting same is similarly reasonable. Thus, upon careful review of the documents submitted and the arguments made, petitioner is not likely able to demonstrate that the decision of the Board lacks a rational basis or that the Board’s actions were induced by improper motives, or were taken in utter disregard of the circumstances before it.

Moreover, the record reveals that respondent communicated with petitioner on multiple occasions throughout the 2020-2021 school year to advise her of the concerns regarding R.B.’s academic progress or lack thereof and the potential danger it posed to his ability to meet the requirements necessary for graduation in June 2021.

Accordingly, I **CONCLUDE** that petitioner has failed to demonstrate a likelihood of success on the merits.

Finally, in balancing the equities and interests of the parties, I **CONCLUDE** that the scales tip in favor of the Board and against the relief sought by petitioner. While I am not unsympathetic to petitioner’s arguments and fully appreciate the disappointment that R.B. may experience in not being able to participate in the graduation ceremonies

along-side his classmates, and further appreciate the difficulties faced by certain students during the 2020-2021 school year, the “right” of petitioner is less weighty than those of the respondent as participating in the ceremony is a privilege.⁵ Thus, R.B.’s inability to participate in such an event does not, on balance, rise to the severity of harm warranting the extraordinary relief requested. Respondent, however, has a substantial and valid interest in ensuring the orderly operation of the activities of its schools. See, C.E o/b/o N.E.. v. Lawrence Twp. Bd. of Educ., EDS 6067-10, Decision on Emergent Relief, (June 17, 2010) and C.D. o/b/o S.C. v. Mainland Regional Bd. of Educ., EDS 08459-17, Decision on Emergent Relief, (June 16, 2017).

Accordingly, I am constrained to **CONCLUDE** that the request for emergent relief must be denied.

ORDER

Having concluded that the petitioner has failed to meet all four prongs of the Crowe v. DeGioia standard, the request for emergent relief is **DENIED**.

⁵ I note that emails produced by petitioner demonstrate that while prohibited from participating in the graduation ceremony, R.B. was allowed to participate in other “senior” activities such as the yearbook dedication and senior picnic. Ex. P-1 at 3. These emails further suggest that if R.B. takes his two courses, math and an on-line course, for credit over the summer he could potentially “graduate” (i.e. meet the graduation credit requirements) in August.

This Order on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter. A telephone prehearing conference is scheduled for **June 21, 2021, at 4:00 PM**. A formal hearing notice advising of the dial-in information for this telephone prehearing will be emailed to the parties under separate cover.



June 14, 2021 _____

DATE

SUSAN L. OLGIATI, ALJ

Date Received at Agency: _____

Date Sent to Parties: _____

/lam

LIST OF EXHIBITS

Joint

J-1 June 10, 2021, email from E. Quidlen to T.L. re: R.B.'s final grade in forensics

For petitioner

P-1 June 11, 2021, email between K. Clark and T.L. re: R.B.'s ineligibility for graduation

P-2 June 9, 2021, email authorization from R.B. to T.L. at pg. 2

P-3 Screen shots from POWERSCHOOL of R.B.'s grades

P-4 Screen shot of signed version of the June 9, 2021 email authorization

For respondent

R-A Transcript

R-B Board Policy 5460 (High School Graduation)

R-C Email chain dated July 2, 2020, between Gismondi and T.L.

R-D Email dated September 29, 2020, from C. LoPresti to T.L.

R-E Email dated October 14, 2020, from Gismondi to T.L.

R-F Report Card November 16, 2020

R-G Email November 17, 2020, from T.L.

R-H Report Card February 1, 2021

R-I February 5, 2021, attendance/credit completion letter

R-J Email March 4, 2021, re: Academic Danger

R-K Report Card April 13, 2021

R-L Email April 14, 2021, re: Graduation Danger

R-M Emails May 11 & 18, 2021, Graduation Danger

R-N 504 Plan

R-O Dates of Attendance for Concepts of Math

R-P Board Policy 5200 (Attendance)

R-Q Board Policy 5461 (Commencement Activities)