

BOARD OF EDUCATION OF THE CITY :  
OF ENGLEWOOD, BERGEN COUNTY, :  
 :  
 PETITIONER, : COMMISSIONER OF EDUCATION  
V. :  
 : DECISION  
MATTHEW SWARTZ, :  
 :  
 RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioning Board sought immediate return of pupil records in possession of former employee, who served as Athletic Director and Supervisor of Health and Physical Education, as well as identification of any persons/organizations to which the records may have been shown or provided. Respondent contended the records were not pupil records subject to confidentiality protections.

The ALJ concluded that the documents were pupil records and that respondent's retention and prior distribution of these records to NJSIAA technically constituted a violation of the regulations, which are intended to protect the confidentiality of pupil records. The ALJ determined that since the information was already provided the NJSIAA, it cannot be taken back. Further distribution or use of these records, however, would constitute a further violation of the regulations. Thus, the ALJ concluded that the Board's complaint for emergent relief met the requisite standards. (*Crowe v. DeGioia*) The ALJ granted the motion for emergent relief and ordered respondent to return all copies and originals of pupil records he has in his possession and further ordered him to identify all persons and organizations to which he has shown or provided any pupil records.

The Commissioner adopted the recommended order of the ALJ as his own. Moreover, since the parties agreed that there were no other issues remaining once the emergent application was determined, the Commissioner deemed this decision to be the final resolution of the matter.

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.

January 29, 2004

OAL DKT. NO. EDU 11338-03  
AGENCY DKT. NO. 427-11/03

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The recommended Order of the Administrative Law Judge (ALJ), which included a summary of the evidence presented at the emergent hearing conducted at the Office of Administrative Law on December 2, 2003, has been reviewed. Upon such review, the Commissioner concurs that the Board has satisfied the four-pronged standard set forth in *Crowe v. DeGioia*, 90 N.J. 126 (1982) necessary to warrant emergent relief.

Accordingly, the recommended Order of the ALJ is adopted for the reasons expressed therein. Inasmuch as the parties have agreed that there are no other issues remaining once the emergent application is determined (Initial Decision at 9), this decision shall be deemed the final resolution of this matter.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: January 29, 2004

Date of Mailing: January 30, 2004

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\* 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. 6:2-1.1 et seq.*