

#426-08E

OAL DKT. NO. EDU 11588-08  
AGENCY DKT. NO. 291-10/08

E.M., ON BEHALF OF MINOR CHILD, J.B.,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	
	:	DECISION ON APPLICATION
BOARD OF EDUCATION OF THE CITY OF	:	FOR EMERGENT RELIEF
EAST ORANGE, STATE-OPERATED SCHOOL	:	
DISTRICT OF THE CITY OF NEWARK AND	:	
BOARD OF TRUSTEES OF THE GREATER	:	
NEWARK CHARTER SCHOOL, ESSEX COUNTY,	:	
	:	
RESPONDENTS.	:	

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The record of this emergent matter, which included an audiotape of the hearing conducted at the Office of Administrative Law on October 9, 2008, and the Order of the Administrative Law Judge (ALJ) have been reviewed.

Upon such review, the Commissioner determines to reject the order of the ALJ for the reasons which follow hereinafter, as she is persuaded that petitioner has satisfied the requisite standards for the granting of emergent relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982). The Commissioner notes that harm is “irreparable” when there can be no adequate after-the-fact remedy in law or in equity. Furthermore – as pointed out in *Crowe*, *supra* – in certain circumstances, severe personal inconvenience can constitute irreparable injury justifying issuance of injunctive relief to maintain the *status quo* during the pendency of the action. In the within matter, J.B. is threatened with loss of his placement at North Hudson Academy, a placement which Administrative Law Judge Leslie Celentano found “appropriate and in accordance with IDEA individualized education requirements” and where J.B. has been

attending since he was placed there in May 2007 by the Greater Newark Charter School. *E.M., on behalf of J.B. v. East Orange Board of Education*, EDS 12493-07, Agency Docket No. 2008-12948, decided June 26, 2008. The intangibles associated with the trauma of an unwarranted removal from an appropriate special education placement and consequent disruption to J.B.'s education program cannot be compensated adequately following the conclusion of the plenary hearing.

The charter school law which provides the underlying legal right for petitioner's claim in this matter is correctly summarized in Judge Celentano's opinion. It is clear that having attended the Greater Newark Charter School in the preceding year, J.B. was entitled to continue to attend. *N.J.S.A. 18A:36A-8b*. When petitioner moved from Newark to East Orange, she was required to first register J.B. in the East Orange district; however East Orange had no discretion to insist that J.B. attend the schools in the district but, rather, was required to process his registration in the charter school for the subsequent school year. *N.J.A.C. 6A:23-9.5(a)*. Pursuant to *N.J.S.A. 18A:36A-11*, it is the charter school's responsibility to develop an I.E.P., including program and placement. Accordingly, J.B.'s legal right to continue to attend North Hudson Academy is settled as matter of law. Furthermore, the facts in this matter are not in dispute; they are clearly summarized in Judge Celentano's opinion. When the law is applied to those facts, as implied in Judge Celentano's opinion and as succinctly summarized by counsel for the Newark public schools in his letter brief submitted in regard to the instant emergent relief hearing, the probable conclusion following a hearing on the merits is that East Orange is the district responsible for J.B.'s free and appropriate education and related services at North Hudson Academy.

In considering the final test for granting of a preliminary injunction, i.e. balancing the relative hardship to the parties in granting or denying relief, the Commissioner is persuaded

that J.B. would suffer greater harm from discontinuance of his legally selected placement than respondent East Orange would suffer from an order temporarily requiring it to pay for that placement pending a resolution of the issues in this case on the merits.

Finally, the Commissioner observes that although the present forum is the appropriate jurisdiction for challenging assignment of financial responsibility pursuant to the Charter School Program Act, it is the Commissioner's considered opinion that *N.J.S.A. 18A:36A-11b* required East Orange to commence an action with the Office of Special Education Programs if it wished to challenge the Greater Newark Charter School's determination that North Hudson Academy was an appropriate placement in the least restrictive environment. In this regard, the Commissioner disagrees with the conclusion reached by the ALJ in *Garfield Board of Education v. T.C. and D.C. and Bergen Arts and Science Charter School on behalf of J.C.* EDS 3508-08, final decision May 7, 2008 <http://lawlibrary.rutgers.edu/oal/search.html>, and relied upon by Judge Celentano. As previously explained on various occasions, neither the Commissioner nor the ALJ – in the context of a school law dispute heard pursuant to *N.J.S.A.18A:6-9* – has the authority to reach conclusions regarding the appropriateness of an individualized education program or the manner in which it is implemented. See *Golden Door Charter School v. State-Operated School District of the City of Jersey City, Hudson County*, decided by the Commissioner March 15, 2007 and cases cited therein at footnote 11.

For all of the foregoing reasons, petitioner's request for emergent relief is granted and the East Orange Board of Education is hereby ordered to pay the costs for J.B.'s special education placement and related services, including transportation, effective September 4, 2007 and continuing as long as petitioner is a resident of East Orange or until further order of the Commissioner. Should it later be determined – either in the context of the within matter or another action commenced by East Orange – that another entity is responsible for some or all of

the costs related to the period of time J.B. has attended North Hudson Academy, appropriate monetary adjustments can be made at that time. This matter shall be returned to OAL for a hearing on the merits.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: October 24, 2008

Date of Mailing: October 24, 2008

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