

DESTINY JACKSON, :  
 :  
 PETITIONER, : COMMISSIONER OF EDUCATION  
 :  
 V. : DECISION  
 :  
 BOARD OF EDUCATION OF THE :  
 MORRIS SCHOOL DISTRICT, MORRIS :  
 COUNTY, AND THOMAS FICARRA, :  
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 RESPONDENTS. :

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### SYNOPSIS

Petitioner filed an emergent relief petition in May 2014, challenging the discipline imposed upon her by the respondent Board as a result of an altercation that she was involved in on school grounds. Specifically, petitioner sought an order reversing the discipline and allowing her to participate in her senior prom and graduation activities in June 2014. Emergent relief was denied following a hearing at the Office of Administrative Law (OAL). Petitioner subsequently filed an amended petition which included, *inter alia*, a request to have her disciplinary record cleared. The Board filed a motion to dismiss, contending that the relief sought by petitioner could not be granted and that the discipline that had been imposed was appropriate because petitioner was involved in a fight at school in January 2014, which behavior was contrary to the school's code of conduct.

The ALJ found, *inter alia*, that: petitioner has graduated from respondent's high school, having completed all graduation requirements; the prom and graduation ceremonies occurred in the past, and the relief requested by petitioner is therefore moot. The ALJ concluded that the matter must be dismissed because the relief petitioner sought is unavailable, the issues are moot, and she is barred by collateral estoppel and res judicata. Accordingly, the ALJ granted the Board's motion to dismiss.

Upon review of the record and the Initial Decision of the OAL, the Commissioner found, *inter alia*, that: the ALJ erroneously granted the Board's motion to dismiss, as petitioner's request to have her disciplinary record cleared is not moot; petitioner is entitled to a hearing to determine whether the Board's decision to give her a long-term suspension was arbitrary, capricious or unreasonable, and whether her disciplinary record should be modified; and petitioner's claims are not barred by the principles of collateral estoppel and res judicata, as petitioner's failure to establish a likelihood of success during an emergent relief application does not deprive her of the opportunity for a full hearing on the merits where she may attempt to prove entitlement to the relief sought. Accordingly, the Commissioner rejected the Initial Decision in its entirety, and remanded the matter to the OAL for a hearing and decision on the merits.

<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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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The petitioner, Destiny Jackson, is appealing the Board of Education’s decision to give her a long-term suspension, and to prevent her from participating in the 2014 prom and graduation activities, as a result of an altercation that she was involved in on school grounds. The petitioner also filed a motion for emergent relief along with her petition of appeal seeking an Order enabling her to participate in the 2014 prom and graduation events. On June 23, 2014, the Commissioner denied the request for emergent relief and directed the matter to continue at the OAL with such proceedings as necessary to bring the case to closure.

Thereafter, the Administrative Law Judge (ALJ) granted the Board’s motion to dismiss the petition of appeal. The ALJ determined 1) that the relief sought by the petitioner was moot since the prom and graduation activities had already occurred, and 2) that the petitioner’s claim was barred by the principles of res judicata and collateral estoppel because the matter was already decided by the Commissioner.

After consideration and review of the record in this matter, the Commissioner finds that the ALJ erroneously granted the Board’s motion to dismiss the petition of appeal. First, the relief sought by the petitioner is not moot. Although the ability to participate in the 2014 prom and graduation activities has passed, there are still outstanding requests for relief that have not yet been fully adjudicated. In the amended petition, the petitioner specifically stated, “I am requesting to have my disciplinary record cleared, amended, or adjusted to reflect the fact that I am NOT a bully and did not deserve the long-term suspension that was

given to me.” The request to have her disciplinary record cleared is not moot at this juncture. As a result, the petitioner is entitled to a hearing to determine whether the Board’s decision to give her a long-term suspension was arbitrary, capricious or unreasonable, and if her disciplinary record should be modified.

Second, the petitioner’s claims are not barred by the principles of collateral estoppel and res judicata simply by virtue of the fact that she did not establish a likelihood of success on the merits during the emergent relief proceedings. The Commissioner’s June 2014 decision on the application for emergent relief was not a final decision on the merits. Instead the decision was limited to a finding that the petitioner did not satisfy the four pronged criteria for emergent relief under *Crowe v. DeGioia*, 90 N.J. 126 (1982), and therefore that she was not afforded an opportunity to attend the 2014 prom and graduation activities while the case was pending at the OAL. It is important to recognize that simply because a petitioner does not establish a likelihood of success during an emergent relief application, it does not deprive a petitioner of the opportunity for a full plenary hearing on the merits where he or she may attempt to prove entitlement for the relief sought. Therefore, the ALJ erroneously determined that petitioner’s claims in this case were barred by collateral estoppel and res judicata based on the denial of her application for emergent relief.

Accordingly, the recommended decision of the ALJ is rejected in its entirety. The Commissioner hereby remands this matter to the OAL for a hearing and a decision on the merits.

IT IS SO ORDERED.<sup>1</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 20, 2014

Date of Mailing: November 21, 2014

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<sup>1</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).