336-17

D.I., ON BEHALF OF MINOR CHILD, I.I.,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE RIVER DELL REGIONAL SCHOOL DISTRICT, BERGEN COUNTY,	:	DECISION
RESPONDENT.	:	

SYNOPSIS

In September 2017, *pro se* petitioner D.I. filed an appeal seeking an order directing the respondent Board to allow her daughter, I.I. – an eighth grade student in the River Dell School District – to switch her assigned elective for the current year from "Music Studio 8" to "Art of the 20th Century 8." A motion for emergent relief in this matter was denied on October 6, 2017 following a hearing on October 4, 2017.

The ALJ found, *inter alia*, that: petitioners herein demonstrated that I.I. suffered temporary disappointment over the denial of the desired art elective assignment, but failed to demonstrate any irreparable harm; petitioners did not satisfy this first prong of the requirements for emergent relief set forth in *Crowe v. DeGioia*, 90 *N.J.* 126 (1982), and codified at *N.J.A.C.* 6A:3-1.6.; all four prongs of *Crowe* must be satisfied in order to qualify for emergent relief; accordingly, petitioners cannot and do not qualify for emergent relief; petitioners claim that the reasons offered by the District for denying I.I.'s choice of elective course were arbitrary and capricious is without merit; and the remedy sought by the petitioners would undermine the authority granted to the District to run its schools in an efficient manner, pursuant to *N.J.A.C.* 6A:8-3.1 and 6A:8-3.2. The ALJ concluded that the Board's denial of the request for a schedule change in this matter was appropriate, was not arbitrary or capricious, and must be affirmed. Further, as there are no additional underlying issues remaining to be resolved here, the ALJ concluded that the matter should be dismissed.

Upon comprehensive review of the record, the Commissioner concurred with the ALJ's findings and conclusions. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, for the reasons stated therein. The petition was dismissed.

November 17, 2017

OAL DKT. NO. EDU 14169-17
AGENCY DKT. NO. 221-9/17

D.I., ON BEHALF OF MINOR CHILD, I.I.,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE RIVER DELL REGIONAL SCHOOL DISTRICT, BERGEN COUNTY,	:	DECISION
RESPONDENT.	:	

The record of this emergent matter, the sound recording of proceedings at the Office of Administrative Law (OAL), and the Initial Decision of the OAL have been reviewed, as have the exceptions filed by petitioner pursuant to *N.J.A.C.* 1:1-18.4 and the Board's reply thereto.

Petitioner argues in her exceptions that she is aware of an instance where a student's schedule was changed when it was not related to mathematics or special education, and therefore I.I.'s schedule should be changed to Art of the 20th Century 8 rather than Music Studio 8. Petitioner also points out that when new students move into the district, they would be assigned an elective in the middle of the year, so it would not disrupt the class for I.I. to be transferred to her desired class. Further, petitioner maintains that she did not receive a letter from the Board regarding the decision that students could not select or change their elective courses, and contends that it is illogical to randomly select electives because only 2 of 20 students who are members of the National Junior Art Society were placed into art class. Finally, petitioner argues that it would not create a hardship for the school or affect the school's budget to switch I.I.'s elective class from music to art.

In reply, the Board argues that petitioner's exceptions present new facts and do not demonstrate that she is entitled to emergent relief. Specifically, the Board points out that whether another student's schedule was changed, or the fact that new students would need to be assigned an elective, do not demonstrate that petitioner has a likelihood of success on the merits. Further, whether petitioner

received a letter regarding the Board's policy for assigning electives does not mean that I.I. should be entitled to change classes. Finally, whether petitioner disagrees with the manner in which the Board assigned electives does not demonstrate that the method was arbitrary, capricious or unreasonable. Accordingly, the Board urges the Commissioner to adopt the Initial Decision.

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) – for the reasons set forth in the recommended Order – 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. Further, the Commissioner agrees with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner when it denied petitioner's request for a schedule change. The Commissioner notes that petitioner's exceptions do not establish entitlement to emergent relief, nor do they show that the Board acted arbitrarily; further, petitioner's arguments were fully considered by the ALJ in reaching his decision.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition is hereby dismissed.

IT IS SO ORDERED.[*]

COMMISSIONER OF EDUCATION

Date of Decision: November 17, 2017

Date of Mailing: November 20, 2017

[*] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A* 18A:6-9.1).

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION-
EMERGENT RELIEF
OAL DKT. NO. EDU 14169-17
AGENCY REF. NO. 221-9/17

D.I. ON BEHALF OF MINOR CHILD I.I.,
Petitioner,
v.
BOARD OF EDUCATION OF THE RIVER DELL REGIONAL SCHOOL DISTRICT, BERGEN COUNTY,
Respondent.

D.I., Parent of minor, I.I., Petitioner, pro se

Rodney T. Hara, Esq., for Respondent (Fogarty & Hara, attorneys)

Record Closed: October 4, 2017 Decided: October 6, 2017

BEFORE **JOHN P. SCOLLO**, ALJ:

STATEMENT OF THE CASE

D.I., on behalf of her Eighth Grade, Middle School daughter, I.I., is appealing the River Dell Board of Education's (the District's) denial of a request to change her daughter's schedule, i.e., changing I.I.'s elective course from "Music Studio 8" to "Art of the 20th Century 8".

The N.J. State Board of Education transmitted this matter to the Office of Administrative Law (OAL), where it was filed on September 27, 2017 as a contested case. N.J.S.A. 52:14B-1 to –15; N.J.S.A. 52:14F-1 to –13.

FINDINGS OF FACT

Based on the evidence presented at the hearing as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** the following:

(1) D.I. is the parent of I.I., an Eighth-Grade student at the River Dell Middle School.

(2) The Petitioners seek emergent relief in the form of an Initial Decision reversing the determination of the River Dell Board of Education ("District") which denied Petitioners' request for a schedule change whereby I.I. would change her enrollment in "Music Studio 8" to "Art of the 20th Century 8".

(3) The School District sent several notices to the parents of soon-to-be Eighth graders notifying them of the impending limitations on choice of electives and that schedule changes would be limited to matters dealing with mathematics and special education only.

(4) While the Respondent's position is that due to budgetary restrictions, the school was not able to fully accommodate the students' anticipated requests for elective course choices, the matter at bar can be decided without resolving the merits of that assertion.

(5) The Petitioners were not able to demonstrate 'irreparable harm" to I.I. due to the District's denial of the schedule change.

ISSUES PRESENTED

(1) Have the requirements under Crowe v. DeGioia, 90 N.J. 126 (1982) been met for the granting of emergent relief?

(2) Have the Petitioners presented a legal basis for their claim that a student's choice of elective course is a "right" that cannot be abrogated by the school district?

(3) Should the school district be compelled to grant the schedule change requested by I.I., namely changing her elective course registration from "Music Studio 8" to "Art of the 20th Century 8"?

LEGAL ANALYSIS AND DISCUSSION

Petitioners assert that the School District's denial of I.I.'s request for changing her schedule, i.e. changing her elective from Music to Art violated the "New Jersey Student Learning Standards for Visual and Performing Arts" and was therefore arbitrary and capricious. The legal basis for Petitioners' case is a certain text taken from the State Department of Education website which reads as follows:

> "In grades 6-8, students should gain greater depth of understanding in at least one of the arts disciplines. Students must continue to have opportunities to create and perform, as determined by student choice, with the expectation that they achieve competency in their chosen discipline. All four arts disciplines must be made available to middle-level students."

Petitioners argue that the nature of the language employed in the above-quoted text is mandatory, not permissive and that therefore a school district may not deprive a student of his or her choice of arts discipline elective. Specifically, Petitioners argue that the phrase "…students *must* continue to have opportunities to create and perform" and the phrase ""All four arts disciplines *must* be made available….", when amplified by the

phrase “as determined by student choice” mandates that a school district provide the elective courses which the individual student chooses for himself or herself. Furthermore, Petitioners argue that the inclusion of the phrase “as determined by student choice” establishes a “right” and thus trumps the notion that the School District has discretion over which elective courses the individual student will be assigned.

In the case at bar, Petitioners maintain that the reasons offered by the School District (which are contained in various correspondences in P-1, P-2, P-2A, P-3 and Exhibit ‘C’ of R-1) for denying I.I.’s choice of elective course are arbitrary and capricious because they are not grounded in any law or regulation and are contrary to the above-quoted mandatory language of the New Jersey Student Learning Standards (NJSLS).

D.I. brought several correspondences to the Tribunal’s attention which set forth the District’s notice to parents that schedule changes would not be permitted and setting forth the District’s reasons why schedule changes would not be permitted (with the exception of changes for Mathematics and Special Education courses). D.I. argued that she is aware of at least one instance where a student was granted a course change which was not related to Mathematics or Special Education. Upon questioning, she stated that the schedule (course) change did not involve the “Art of the 20th Century 8” course which I.I. seeks.

D.I. argued that she and her daughter met the requirements set forth in Crowe v. DeGioia, 90 N.J. 126 (1982) and were thus entitled to emergent relief. Specifically, she argued that the first prong of Crowe, requiring Petitioners to carry the burden of proving an irreparable harm, was satisfied by the fact that I.I. suffered disappointment at not being allowed to take the Art course that she looked forward to taking, that the after-school activities offered were not for-credit courses as was the sought-after Art course, and by the fact that she would have a lesser chance of gaining entry into an honors level high school art course without the Eighth Grade, course in “Art of the 20th Century 8” course.

As to the second prong of Crowe, Petitioners argued that the cited section of the New Jersey Student Learning Standards was published pursuant to the provisions of the New Jersey Administrative Code, and therefore had the force of law. Moreover, the mandatory nature of the language cited above established that it was I.I.'s settled right to take the elective of her choice.

As to the third prong of Crowe, the Petitioners re-iterated the points made regarding the first prong stated that they did not receive the Principal Richard Freedman's "July 2017" letter (R-1, Exhibit "C"), and added that the student made her elective course preference known and the school district denied her request.

As to the fourth prong of Crowe, the Petitioners argued that the student's request was a very simple one: to place her in the Art class of her choice, which, Petitioners maintained, would not seriously affect the School District's operations or budget. Petitioners noted that the School District recently and unwisely spent significant money on the transportation of the school's football players to travel to an out-of-state ball game, yet could not find the money to grant a simple course change for a single student.

The School District's response to the Petition focused on the assertion by Petitioners that they were entitled to emergent relief. The District argued that the assertions of "irreparable harm" to I.I. failed to establish any "harm" that could be considered serious enough to warrant the emergent relief sought. Moreover, there was certainly no sort of harm that could be considered in any way "irreparable", i.e. some harm that cannot possibly be undone. The District made the point that I.I.'s "disappointment" at not being able to enroll in the already-filled Art course did not rise to the level of the type of "severe personal inconvenience" contemplated in Crowe. (In Crowe the allegation of "severe personal inconvenience" was not a matter of disappointment, but rather had to do with Crowe's impending homelessness.)

In regard to Crowe's second prong, the District argued that there was no "settled right" of a student to enroll in a course that was already filled and that the notion of

"student choice" advocated by the Petitioners was inconsistent with the orderly running of the District's schools. The District noted that the "legal basis" cited by the Petitioners on page one of P-1 was not a law or a regulation, but merely information from the Department of Education's website. The district argued that the cited material did not have the force of law and did not establish a "right".

In regard to the third prong of Crowe, the District maintained that it sent appropriate notices concerning the impending limitations on elective courses and that it devised a system whereby openings were randomly and fairly apportioned.

In regard to the fourth prong of Crowe, the District maintained that it had limited resources in the budget, that it used a computer-generated, random process to ensure equal access to elective courses, that it offered two after-school enrichment alternatives to those eighteen students who did not get into the "Art of the 20th Century 8" Art class, one of which was a nationally-recognized Art honor society. The District argued that the hardship to I.I. was merely a matter of her "disappointment", while the hardship to the District, in the event of an adverse ruling, would be the complete overhaul of the workable, fair elective enrollment system that it had devised plus the re-budgeting that it would entail.

CONCLUSIONS

The Petitioners have demonstrated that I.I. suffered temporary disappointment over the denial of the desired Art course. In an attempt to explore the possibility of irreparable harm, the Tribunal questioned D.I.'s assertion that enrollment in a high school Art honors course would be denied to I.I. because she lacked the "Art of the 20th Century 8" course. D.I. admitted that this assertion was based on speculation, not facts. I **CONCLUDE** that the Petitioners have not demonstrated that they have suffered or will suffer irreparable harm. The Petitioners have not satisfied the first prong of Crowe. Since it is necessary to establish all four prongs of Crowe to qualify for emergent relief, I **CONCLUDE** that Petitioners cannot and do not qualify for emergent relief.

The Petitioners base I.I.'s asserted "right' to enroll in any elective she chooses on the language set forth on page one of P-1. The cited language was taken from a "Frequently Asked Questions" section of the Department of Education's website under the heading "Visual and Performing Arts Standard Document" pertaining to "New Jersey Student Learning Standards." I **CONCLUDE** that the cited language does not have the force of law. I **CONCLUDE** that the cited language does not deprive or lessen the School District's authority to schedule the type or number of classes in a given subject.

I **CONCLUDE** that the cited language does not confer any "right" on a student to enroll in an any elective course he or she chooses. I **CONCLUDE** that the Petitioners have not demonstrated that I.I. was denied any "right" afforded to her under law.

I also **CONCLUDE** that the remedy sought by the Petitioners would undermine that authority granted to the School District to run the school in an efficient manner, pursuant to N.J.A.C. 6A:8-3.1 and 6A:3.2 (b) (6) and (e) (3). I **CONCLUDE** that the language cited by the Petitioners does not compel the School District to grant the requested schedule change.

I **CONCLUDE** that the denial of Petitioner's request for a schedule change in this matter was appropriate, was not arbitrary nor capricious and that the action of the River Dell Board of Education should be **AFFIRMED.** I further **CONCLUDE** that there are no further underlying issues that remain to be resolved, therefore, the within matter should be **DISMISSED**.

ORDER

Based upon the foregoing, the decision of the District to deny Petitioners the elective course change from "Music Studio 8" to "Art of the 20th Century 8" is hereby **AFFIRMED.**

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION,** who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 6, 2017

DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency:

Date Mailed to Parties:

Db

APPENDIX

List of Witnesses

For Petitioner:

D.I., Petitioner, parent of I.I.

For respondent:

None

List of Exhibits

For Petitioner:

P-1 Petition (7 sheets)

P-2 Eight sheets of e-mailed correspondence (8 sheets)

P-2A September 12, 2017 letter from D.I. to NJDOE Commissioner Kimberly Harrington (1 sheet)

P-3 E-mails between D.I. and Dale Schmid (2 sheets)

For Respondent:

R-1 Fletcher Certification (9 sheets plus Exhibits ‘A’ through ‘G’)

R-2 Attorney Hara’s Letter Brief dated October 4, 2017 (19 sheets)