

#297-07 (OAL Decision: Not yet available on-line)

J.Z. on behalf of minor child C.Q., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
BUENA REGIONAL SCHOOL :  
DISTRICT, ATLANTIC COUNTY, :  
RESPONDENT. :

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SYNOPSIS

Petitioner challenged a decision of the respondent school district not to allow her daughter, C.Q., to participate in graduation exercises, which were held on the same day as the emergent relief hearing on the matter at the Office of Administrative Law (OAL). The Administrative Law Judge (ALJ) determined that petitioner had not provided evidence sufficient to meet the standards necessary for a grant of emergent relief, and that respondent's action was not arbitrary, capricious or unreasonable. The ALJ's order was received by the Commissioner just prior to the graduation ceremony on June 11, 2007, with insufficient time remaining to review the audiotape of the hearing or issue a final written decision.

As the graduation ceremony in question took place on June 11, 2007, the application for emergent relief has now been rendered moot. Nonetheless, the Commissioner noted that she found no fault with the ALJ's conclusion that petitioner's evidence fell short of meeting the emergent relief standards. Furthermore – upon review of the record – the Commissioner concurred with the ALJ that respondent's action was not arbitrary, capricious or unreasonable; the Board's determination was based on long-standing district policy prohibiting students who have not met all graduation requirements from participating in graduation exercises. Accordingly, the Commissioner dismissed the petitioner's appeal and application for emergent relief.

<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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July 23, 2007

OAL DKT. NO. EDU 4486-07  
AGENCY DKT. NO. 150-6/07

J.Z. on behalf of minor child C.Q., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
BUENA REGIONAL SCHOOL :  
DISTRICT, ATLANTIC COUNTY, :  
RESPONDENT. :

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This matter was transmitted to the Office of Administrative Law (OAL) as an application for emergent relief. Petitioner’s appeal challenged a decision of the respondent school district not to allow her daughter, C.Q., to participate in graduation exercises that were to take place on the same date as the hearing in the OAL – June 11, 2007. After hearing testimony from the parties and reviewing the exhibits presented, the Administrative Law Judge (ALJ) determined that petitioner had not provided evidence sufficient to meet the standards necessary for a grant of emergent relief. Further, the ALJ found that respondent’s action was not arbitrary, capricious or unreasonable. The ALJ’s Order was received by the Commissioner just prior to the graduation ceremony on June 11, 2007, with insufficient time remaining before the ceremony to review the audio tape of the hearing or to issue a final written decision.

As the graduation ceremony in question took place on June 11, 2007, the application for emergent relief has now been rendered moot. Nonetheless, the Commissioner notes that she finds no fault with the ALJ’s conclusion that petitioner’s evidence fell short of meeting the emergent relief standards. As to the merits of the respondent’s action, after reviewing the record, including the audio tape of the June 11, 2007 hearing, and the

Initial Decision, the Commissioner concurs with the ALJ that it was not arbitrary, capricious or unreasonable.

The testimony and exhibits presented by respondent demonstrated that C.Q. failed her fourth year of English, a course required by the State for graduation. Her average for the year was 67, three points short of a passing grade. The district's long-standing policy, set forth in respondent's exhibit R-1, prohibits students who have not met all graduation requirements from participating in graduation exercises. This policy was applied this year to fourteen students, including one whose average in English was 69. (Initial Decision, p. 5)

Evidence offered at the hearing established that C.Q.'s test scores throughout the year were erratic, ranging from 0 to 100. She failed to complete many assignments, including homework, essays and her term paper, which was a significant component of the grade for the course. (R-2) Her unexcused absences, about which letters were sent home, exceeded the allowed amount. (R-5)

In respondent's district students and parents have on-line access to students' scores for each assignment in each course, to allow a detailed picture of the students' academic progress and to flag problems. Petitioner acknowledged that she has internet service to her home. (Initial Decision, p. 3) Additionally, the principal of C.Q.'s school met with her on or about May 1, 2007, to discuss the fact that her graduation was in question. A follow-up letter was sent home to advise her parent(s) that C.Q. should meet with her teachers to "make arrangements to complete all work," and that attendance was "crucial." (R-4) Nonetheless, C.Q. accumulated five more absences, two being unexcused. (R-5)

Rules and regulations for participation in graduation ceremonies are clearly within the purview of management's discretion. *J.M. on behalf of minor child C.P. v. Hanover Park*

*Regional Board of Education*, OAL DKT. NO. EDS 5606-00, AGENCY DKT. NO. 00-4152E, Final Decision June 23, 2000, p.2 (matters concerning graduation are within the discretion of the District). Under the foregoing circumstances, it cannot be said that respondent's application to C.Q. of its policy about graduation requirements was arbitrary, capricious or unreasonable. Thus, petitioner's challenge to this action cannot succeed. As explained by the ALJ:

Board decisions will not be "usurped or assumed by the Commissioner of Education absent a definitive showing of bad faith or arbitrary actions taken in bad faith without a rational basis." [*G.M. v. Roselle Park Borough Board of Education*, 95 *N.J.A.R.* 2d. (EDU) 107, 109] Local boards of education have reasonable discretion for various managerial matters.

Initial Decision, p. 4-5.

Finally, the Commissioner acknowledges that petitioner and her daughter have struggled with more difficult family circumstances than many of C.Q.'s fellow students. C.Q. is to be commended for her progress, and the Commissioner hopes that she will soon complete the requirements for her high school diploma and attend college. However, the Commissioner concludes that respondent's action was reasonable.

Accordingly, petitioner's appeal and application for emergent relief are dismissed and, pursuant to *N.J.A.C.* 1:1-3.3, the Commissioner requests the return of the file from the OAL.

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

COMMISSIONER OF EDUCATION

Date of Decision: July 23, 2007

Date of Mailing: July 24, 2007

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<sup>1</sup> 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.* 6A:4-1.1 *et seq.*