

New Jersey Commissioner of Education
Final Decision

P.V., on behalf of minor child, T.S.,

Petitioner,

v.

Board of Education of the Township of Verona,
Essex County,

Respondent.

Synopsis

Pro se petitioner challenged the respondent Board’s decision to deny her minor child, T.S., admission into the Verona High School National Honor Society (NHS). Following an emergent hearing via Zoom on May 20, 2022, the record closed. The parties agreed during the proceedings that no underlying issues remain in this matter.

The ALJ found, *inter alia*, that: T.S. – a junior at Verona High School – applied for admission to the school’s NHS in 2022; membership in the NHS is conferred upon students in recognition of outstanding accomplishments in scholarship, leadership, character, and service; in April 2022, T.S. was denied admission because his “student conduct record is inconsistent with the character requirements of the NHS.”; this determination stemmed from a one day, in-school suspension during T.S.’s freshman year, issued following an in-class remark directed at his Spanish teacher; petitioner’s assertion that her child’s chances of admission to selective colleges will be impacted by the fact that he is not a member of NHS is speculative and not supported by the record; *N.J.A.C. 6A:3-1.6(b)* sets forth the standards governing motions for emergent relief, and instructs that parties seeking such relief must meet all of the four standards enunciated in *Crowe v. DeGioia*, 90 *N.J.* 126 (1982); petitioner here has failed to meet all four of the required standards for emergent relief. Accordingly, the ALJ denied petitioner’s request for emergent relief.

Upon review, the Commissioner concurred with the ALJ’s conclusion that petitioner has not met the standards for emergent relief. Further, as the parties agreed during the proceedings that no underlying issues remain, no further proceedings are necessary to bring this matter to a close. Accordingly, the petition of appeal was dismissed.

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.

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OAL Dkt. No. EDU 03920-22

Agency Dkt. No. 87-4/22

New Jersey Commissioner of Education

Final Decision

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Petitioner,

v.

Board of Education of the Township of Verona,
Essex County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon such review, and for the reasons detailed in the Initial Decision, the Commissioner concurs with the ALJ 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. Furthermore, as the parties agreed during the proceedings at the OAL that there are no underlying issues that remain, no further proceedings are necessary to bring this matter to a close.

Accordingly, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 8, 2022

Date of Mailing: July 8, 2022

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to N.J.S.A. 18A:6-9.1. Under N.J.Ct.R. 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 03920-22

AGENCY DKT. NO. 087-04-22

P.V. ON BEHALF OF MINOR CHILD, T.S.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF VERONA, ESSEX COUNTY,**

Respondent.

P.V., petitioner, pro se

Daniel Roberts, Esq., for respondent (Kenney, Gross Kovats & Parton, attorneys)

Record Closed: May 20, 2022

Decided: May 23, 2022

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Petitioner, P.V. on behalf of T.S. (student), seeks an order by way of emergent relief, to reverse the decision of respondent, Board of Education of the Township of Verona (the District or the Board), denying the student admission into the Verona High School, National Honor Society.

PROCEDURAL HISTORY

On April 22, 2022, petitioner, filed a petition of appeal (petition) with the Commissioner of the New Jersey Department of Education, Office of Controversies and Disputes (Department of Education). Thereafter, on May 16, 2022, petitioner converted the petition to an emergent petition, seeking emergent relief pursuant to N.J.A.C. 6A-31.6. The Department of Education then transferred this matter to the Office of Administrative Law (OAL) and the same was filed at the OAL on May 16, 2022, as an emergent and contested matter. The parties agree that there are no other underlying issues that remain.

A telephonic status conference was held on May 18, 2022, and the parties agreed to conduct oral argument on May 20, 2022, to allow time for the submission of respective legal briefs.

Oral argument was scheduled remotely via zoom on May 20, 2022. Petitioner and the student appeared at oral argument and were placed under oath and presented oral statements concerning petitioner's application herein. The Board did not present any witness and relied on its opposition brief filed herein. The record closed on May 20, 2022.

FACTUAL SUMMARY

The following essential facts in this matter are not in dispute. The student is a junior in the eleventh grade at Verona High School. When the student was a freshman in the ninth grade, Verona High School issued a one-day in school suspension of the student related to his conduct in class. Specifically, the student made an in-class remark directed at his Spanish class teacher, which resulted in his suspension. The student stated that he and the teacher presented their respective versions of the incident to the vice principal, who then issued the one-day in school suspension. Petitioner stated that the student has not been issued any other disciplinary suspension.

Petitioner confirmed that Verona High School notified her of the suspension, and she had several discussions with the vice principal regarding her objection to the student's suspension. Petitioner stated that she was not aware at the time that a suspension could

lead to the student being denied admission into the Verona High School National Honor Society (NHS). Petitioner argues further that the school should not have issued a “Level III” suspension against the student, as his conduct was more in line with a “Level II” suspension. The Petitioner did not appeal the suspension to the State Department of Education under N.J.A.C. 6A:3-1.3(i), as she claims she “was not made aware” of the same by the vice principal.

The Verona High School NHS guidelines for student induction and participation membership in the NHS follows the same criteria as the National NHS chapter. Membership is limited to juniors and seniors and is conferred upon students in recognition of outstanding accomplishments in scholarship, leadership, character, and service. Induction and continued participation in the NHS are based upon the criteria in the Verona High School NHS by-laws, and Student Handbook.

In 2022, the student applied for admission into the NHS, as well as subject NHS membership, which Verona High School also maintains. Petitioner also presented an email from Paula Ramos Santiago addressed to the student informing him that his application to the Science National Honor Society was denied because of his past school offense. (P-2). (No other documents regarding the subject NHS chapters were presented.)

By letter dated April 29, 2022, (April 29 letter) the student was informed that he was denied admission into the NHS because his “student conduct record is inconsistent with the character requirements of the NHS.” (P-1). The April 29 letter also provided the student an opportunity to meet with the NHS advisors to “understand the reason for denial”, and “advocate for themselves (Id.). Petitioner and the student did not meet with the NHS advisors, and petitioner filed the within petition on April ¹

¹ It is noted that although not addressed in the papers filed herein, or at oral argument, petitioner filed the within petition dated April 13, 2022, on April 22, 2022, and Verona High School notified the student on April 29, 2022, that he was denied admission into the NHS (P-1).

Petitioner argues that the student's denial in the NHS and the subject NHS chapters are unfair and will have a "detrimental effect" on the student's admission into an elite college or university. Petitioner bases her argument on the competitive college application process as any college that the student applies to will "question" why the student is not on the NHS despite his academic record. Petitioner argues that Verona High School does not report the student's disciplinary record on his school transcript and the colleges are therefore, not made aware of the same.

The District argues that petitioner's written submission does not address any of the applicable factors for emergent relief set forth in Crowe v. DeGioia, 90 N.J. 126 (1982), and instead appears to contest whether the student's prior suspension was warranted. The District argues further that emergent relief cannot be granted in this matter as petitioner has not alleged irreparable harm with any specificity, except a purely "speculative belief" that Verona High School's denial of the student in the NHS will detrimentally effect the student's ability to apply to college. The District argues further that lacking any demonstrable factual support, this belief is not sufficient to demonstrate irreparable harm, and further the student is a junior student, and is eligible to apply for admission to the National Honor Society his senior year.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 6A:3-1.6(b) sets forth the standards governing motions for emergent relief. The regulation instructs in salient part:

A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards be met for granting such relief pursuant to Crowe v. DeGioia, 90 N.J. 126 (1982):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying petitioner's claim is settled;
3. The petitioner has the likelihood of prevailing on the merits of the underlying claim; and

4. When the equities and interests of the parties are balanced the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

[N.J.A.C. 6A:3-1.6(b).]

Petitioner has the burden of establishing each of the above requirements in order to warrant relief in her favor.

Irreparable harm

Turning to the first criteria, it is well settled that relief should not be granted except “when necessary to prevent irreparable harm.” Crowe, 90 N.J. at 132. In this regard, harm is generally considered irreparable if it cannot be adequately redressed by monetary damages. Id. at 132-33. In other words, it has been described as “substantial injury to a material degree coupled with the inadequacy of money damages.” Judice’s Sunshine Pontiac, Inc. v. General Motors Corp., 418 F. Supp. 1212, 1218 (D.N.J. 1976) (citation omitted). See New Jersey Dep’t of Environmental Protection v. Circle Carting, Inc., 2004 N.J. AGEN LEXIS 968 (April 2, 2004) (finding no irreparable harm in connection with the revocation of respondent’s solid waste license in that financial loss is generally insufficient to demonstrate this requirement). The moving party bears the burden of proving irreparable harm. More than a risk of irreparable harm must be demonstrated. Continental Group, Inc. v. Amoco Chemicals Corp., 614 F. 2d 351, 359 (D.N.J. 1980). The requisite for injunctive relief is a “clear showing of immediate irreparable injury,” or a “presently existing actual threat; (an injunction) may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by common law.” Ibid. (citation omitted.)

In the instant matter, I **CONCLUDE** there has not been a showing of “immediate irreparable injury” or a “presently existing actual threat”. Petitioner’s argument that the student’s opportunities to attend college will be harmed because he has been denied admission to the NHS is unsubstantiated by the record presented before me. I **CONCLUDE** that no proofs were presented by petitioner that would satisfy the first prong

in Crowe, and I therefore **CONCLUDE** that petitioner has not demonstrated that the student will suffer irreparable harm if the requested relief is not granted.

Right to the underlying claim must be settled

A board of education's actions are entitled to a presumption of lawfulness and good faith. In challenges to board actions, the challenger bears the burden of proving that such acts were unlawful, arbitrary, capricious, or unreasonable. Schuster v. Bd. of Educ. Montgomery Twp., 96 N.J.A.R.2d (EDU) 670, 676 (citing Schnick v. Westwood Ed. of Educ., 60 N.J. Super. 448 (App. Div. 1960), and Quinlan v. Bd. of Educ. of North Bergen Twp., 73 N.J. Super. 40 (App. Div. 1962)).

In the absence of a clear showing of abuse of discretion, the Commissioner of Education will not substitute his or her own judgment for that of the board of education. Massaro v. Bd. of Educ. of the Boro. of Bergenfield, 1 965 S.L.D. 84, 85. In Kopera v. Bd. of Educ. of West Orange, 60 N.J. Super. 288, 294 (App. Div. 1960), the Appellate Division stated, "the well-established rule that action of the local board [of education] which lies within the area of its discretionary powers may not be upset unless patently without rational basis or induced by improper motives."

Given this standard in Crowe, that the legal right underlying petitioner's claim is settled, it is particularly notable that petitioner fails to cite any precedent whatsoever for holding that petitioner has an underlying legal right to admission to the National Honor Society. To the contrary, the Commissioner of Education has recognized, admissions criteria to the National Honor Society are matters of local determination for each school district, and the Commissioner will not substitute his judgment for that of the school district except where the District's actions are arbitrary, capricious, or unreasonable. J.B.A. and A.M.A. v. Bernardsville Board of Education, 4 N.J.A.R. at 152. An applicant must meet the applicable standards for entry into the National Honor Society, and that admission is not so "automatic" as to be considered a "right." Id. See also Roberts Cert, Ex. A, National Honor Society Handbook, 2020 P. 41 Terminology (noting that admission is "not a right"), P49 (again noting admission is not a right), P99 (legal memorandum addressing "legal right" to entry into NHS). Clearly, therefore, in light of NHS own procedures, petitioner

cannot demonstrate an underlying legal right to the requested admission, mandating that emergent relief be denied.

I **CONCLUDE** that petitioner has failed to establish a right to the underlying claim has been settled.

Likelihood of prevailing on the merits

Emergent relief requires petitioner to demonstrate a likelihood of prevailing on the merits of the underlying claim, and when significant factual issues exist, petitioner cannot prevail. Petitioner has not set forth exactly how she is likely to prevail on the merits of this matter. At best, her underlying legal argument is that the student should not have received what she terms an “indoor suspension,” and if he did not, he would have been accepted into National Honor Society. The issue of suspension of the student is moot as petitioner admits that she did not file a timely appeal with the Department of Education under N.J.A.C. 6a:3-1.3(i).

I **CONCLUDE** that petitioner has failed to establish that she has a likelihood of prevailing on the merits.

Balancing of the Equities

The student admitted that he was suspended his freshman year related to his conduct and petitioner has admitted that she did not appeal the suspension at the time because she was not aware she could. The time to appeal the student suspension has passed and petitioner has failed to present any proofs that they were denied due process to challenge the suspension. The petition filed herein seeks emergent relief to reverse the decision of Verona High School to admit the student in the NHS, not litigate the prior suspension.

Petitioner must demonstrate that the student will suffer more significant harm than the Board if this tribunal does not grant petitioner the requested relief. However, no proofs have been presented that admission into the NHS alone will guarantee or enhance the

student's prospects of admission into a college of his choosing. The Board has set forth the standards for admission into the Verona High School NHS, which are set forth in the National NHS chapter, which are: academic eligibility, service, leadership, and character. (Exhibit A, Certification of Counsel). In applying these criteria the Board has determined that the student's prior "student conduct record is inconsistent with the character requirements of the NHS". Under the circumstances of this matter, I **CONCLUDE** that the Board's interests outweigh the student's interest in seeking admission into the NHS.

For the reasons set forth herein, I **CONCLUDE** that petitioner is not entitled to emergent relief because the proofs submitted fail to establish all of the necessary elements to grant emergency relief under N.J.A.C. 6A:3-1.6(b), and as set forth in Crowe v. DeGioia, 90 N.J. 126.

ORDER

It is hereby **ORDERED** that petitioner's request for emergent relief is **DENIED**.

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.

May 23, 2022
DATE

Julio Morejon
JULIO C. MOREJON, ALJ

Date Received at Agency:

May 23, 2022

Date Mailed to Parties:
lr

May 23, 2022