

New Jersey Commissioner of Education

Decision

Board of Education of the Township of
North Bergen, Hudson County,

Petitioner,

v.

Maria Castellito,

Respondent.

Synopsis

The petitioning Board of Education sought and was granted an order for emergent relief to compel respondent, Maria Castellito, – a teacher employed by the Board – to undergo a mental and physical examination within 60 days. Respondent suffers from an inability or unwillingness to adapt to the technology that was necessary for remote instruction during the COVID-19 epidemic, citing a fear that she was being watched through her computer by unknown parties and that those she spoke with through the telephone and by way of video conference were imposters. Respondent was placed on medical leave from the District on November 18, 2021 and cannot be returned to a classroom until she submits to the appropriate mental and physical examinations.

The ALJ found that: the granting of emergent relief to compel a mental and physical examination within 60 days of the Commissioner’s Order, dated September 14, 2022, was the only issue for determination in this case. As there are no further issues to be addressed at this time, this matter should be closed.

Upon review, the Commissioner concurred with the ALJ that it is appropriate to close this matter. Accordingly, the Initial Decision of the OAL was affirmed, and the matter was closed.

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.

New Jersey Commissioner of Education

Final Decision

Board of Education of the Township of
North Bergen, Hudson County,

Petitioner,

v.

Maria Castellitto,

Respondent.

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

The Commissioner previously granted the Board's application for emergent relief and ordered respondent to appear for all necessary mental and physical examinations within 60 days. *Bd. of Educ. of North Bergen, Hudson Cty. v. Maria Castellitto*, Commissioner Decision No. 230-22E (September 14, 2022). The Initial Decision indicates that there are no further issues that need to be addressed. Upon review, the Commissioner concurs with the ALJ that it is appropriate to close this matter. Accordingly, the Initial Decision is affirmed.

IT IS SO ORDERED.¹


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 14, 2022

Date of Mailing: November 16, 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

GRANTING EMERGENT RELIEF

OAL DKT. NO. EDU 03414-22

AGENCY DKT. NO. 95-4/22

**BOARD OF EDUCATION OF THE
TOWNSHIP OF NORTH BERGEN,
HUDSON COUNTY,**

Petitioner,

v.

MARIA CASTELLITTO,

Respondent.

Jason M. Ryglicki, Esq., for petitioner (Ryglicki & Gillman, P.C., attorneys)

M.C., respondent, appearing pro se

Record Closed: September 2, 2022

Decided: September 29, 2022ⁱ

BEFORE **ELISSA MIZZONE TESTA**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

ⁱ The September 2, 2022 Order Granting Emergent Relief is now being submitted as an Initial Decision with the appropriate language at the conclusion of the decision for the purpose of closing the matter.

The Board of Education of the Township of North Bergen, Hudson County, (“Petitioner” or “District”) filed a Petition with the New Jersey Department of Education (“DOE”), seeking Emergent Relief to compel Maria Castellitto (“Respondent” or “M.C.”), an employee/teacher of the petitioner, to undergo a mental and physical examination. The contested matter was transferred to the Office of Administrative Law (OAL), pursuant to N.J.A.C. 1:6A-12.1, where it was filed on May 2, 2022, to be heard on an emergent basis.

The Emergent Hearing was scheduled for May 6, 2022, via Zoom. Respondent failed to appear for the Zoom hearing. Counsel for petitioner, Jason M. Ryglicki, did appear for said hearing. It became apparent at that time that respondent would not be appearing for the hearing because she suffers from an inability or unwillingness to adopt to technology, including a fear that she was being watched through her computer by unknown parties and that those she spoke with through the telephone and by way of video conference were imposters. Respondent also had been placed on medical leave since November 18, 2021 and cannot return to a classroom until the appropriate mental and physical examinations are performed. Attempts were made to reach respondent at her last known telephone number and by way of email to no avail. In light of same, it was agreed to by Mr. Ryglicki, Esq. that the matter should not be heard on May 6, 2022 date as an emergent and that the respondent be given an opportunity to appear for an in-person hearing.

The matter was re-scheduled for an in-person hearing on June 6, 2022. On said date, petitioner appeared by way of counsel, Mr. Ryglicki, however, notice was sent to the wrong address for respondent, and she did not appear. Once again attempts were made to reach respondent by phone and email to no avail. In consideration for the concerns of all involved in this matter, Mr. Ryglicki had a wellness check conducted to ensure the well-being and safety of respondent. On June 6, 2022, the Edgewater Police Department conducted the wellness check and determined that respondent seemed well. See, Certification of Jason M. Ryglicki, Esq. attached as Attachment A.

The matter was rescheduled for July 12, 2022 as a telephone hearing. Once again, respondent failed to appear for the telephone hearing.

The matter will be decided as an application for Emergent Relief, irrespective, of the above detailed timeline.

FACTUAL DISCUSSION AND FINDINGS OF FACT

At the June 6, 2022 hearing, counsel for respondent read into the record “The Facts Common to All Counts” which were set forth in the Petition for Emergent Relief. The Petition for Emergent Relief to Compel a Mental and Physical Examination is attached hereto as Attachment B. The facts are undisputed, and I therefore **FIND** them to be the **FACTS** of the case.

LEGAL ANALYSIS AND CONCLUSION

A Motion for Emergent Relief filed with the Commissioner of Education shall be subject to a review under Crowe v. DeGioia, 90 N.J. 126, 132-134 (1983), N.J.A.C. 6A:3-1.6. Specifically, there are four prongs the Commissioner must consider when emergent relief is sought: (1) it is necessary to prevent irreparable harm, (2) the legal right underlying the application is unsettled, (3) the applicant has made a preliminary showing of a reasonable probability of ultimate success on the merits, and (4) the relative hardship to the parties in granting or denying the application. Crowe v. DeGioia, 90 N.J. 126, 132-134 (1983).

In the case at hand, M.C. has been employed by the North Bergen Board of Education for nearly twenty years and she has been on medical leave since November 18, 2021, following an examination by the District’s psychiatrist, due to her on-going behaviors. According to the District, without consideration as to her prior efficiency and ability in her employment, the past two years have been especially challenging. As clearly set forth in the facts placed on the record and attached hereto as Attachment B,

the behavior ranges from an inability or unwillingness to adopt technology which was required to be utilized during the COVID-19 pandemic, including a fear that she was being watched through her computer by unknown parties, believing the people she spoke with telephonically and by way of video conference were imposters, etc... Her behaviors have necessitated medical intervention on at least two (2) prior occasions and have interfered with her ability to effectively educate her students. Respondent has gone as far as to deny the requirement to modify tests as required by an Individualized Educational Program (“IEP”) as required by Federal law. Meanwhile, since November 18, 2021, she has been employed by the District and has failed to comply with the District’s resolution mandating that she undergoes physical and mental testing to assess whether she would be capable of returning to the classroom. The District argues that failure to have these tests completed in a timely fashion will continue to impinge on the District’s constitutional duty to provide a thorough and efficient education. Further, over the past several months, the District has accrued significant costs associated with M.C.’s medical leave and will continue to accrue additional cost on a daily basis into the foreseeable future. Respondent’s on-going refusal to get evaluated has and will continue to cause irreparable harm.

N.J.S.A 18A:16-2 states that a Board of Education “may require individual psychiatric or physical examinations of any employee, whenever, in the judgment of the board, an employee shows evidence of deviation from normal, physical or mental health.” The burden to challenge any such judgment of the board lies with the challenger of said judgment. Bd. of Edu. of Lyndhurst v. Blevis, OAL Docket No. 01711-07 at 5. To satisfy any issues related to due process, the statute requires “that the teacher or employee be provided with a statement outlining the reasons the board . . . is ordering said teacher or employee to submit to the fitness for duty examination, . . . [and an] opportunity for a hearing, if such a hearing is requested. Further, a teacher or employee has a right to appeal from an adverse decision to the State Board of Education under N.J.S.A. 18A:6-27.” Id. (citing Curcio v. Collingswood Bd. of Educ., 2006 U.S. Dist. LEXIS 46648, 2 006 WL 1806455 at * 10 (slip op.) (D.N.J. 2006); Kochman v. Keansburg Board of Education, 124 N.J. Super. 203, 213-14, 305 A.2d 807

(Ch. Div. 1973). The right of a Board to order such evaluation has been found constitutional in both Federal and State Courts. See, Hoffman v. Jannarone, 401 F. Supp. 1095 (D.N.J. 1975) (rev'd in part); Gish v. Board of Ed. of Borough of Paramus, Bergen County, 145 N.J. Super., 96, 104-105, 366 A.2d 1337 (App. Div. 1976).

In this case, M.C. refused to be tested after being afforded her procedural right to be heard in a preliminary hearing. M.C. failed to appear at said meeting despite adequate notice. Furthermore, the District argue that M.C.'s refusal has never been supported by any rationale or other reasonable basis for such denial, and she has never appealed nor indicated her intent to appeal the determination of the Board. As shown above, the legal rights of petitioner to seek this evaluation is settled law and the District is likely to succeed based on that settled right, and the facts specific to this case. Therefore, the District clearly has satisfied the second and third prong of the Crow v. DeGioia test.

While the District acknowledges that ordering M.C. to undergo evaluations touches her constitutional rights. It is well settled that "the interest of the State of New Jersey to protect its youth outweighs the individual constitutional rights of the teacher or employee in question." See, Hoffman v. Jannarone, 401 F. Supp. 1095 (D.N.J. 1975) (rev'd in part); Gish v. Board of Ed. of Borough of Paramus, Bergen County, 145 N.J. Super., 96, 104-105, 366 A.2d 1337 (App. Div. 1976). While M.C. is subject to an undeniable hardship, the hardships faced by the Board relate to their constitutional obligation to provide a thorough and efficient education to their students, as well as the ongoing costs accrued by the District at the expense of the taxpayers of the Township and State. Therefore, in weighing the relative hardships, it is clear that the hardships faced by the Board of Education outweigh the hardships of the respondent, thereby satisfying the fourth prong under DeGioia.

For the reasons set forth above, I **CONCLUDE** that respondent's request for emergent relief is warranted, and that the petitioner be ordered to undergo physical and

mental evaluation, as set forth more fully on the record and in the petition. (Attachment B).

ORDER

It is hereby **ORDERED** that petitioner's request to compel respondent to appear for a mental and physical examination is hereby **GRANTED**. It is further **ORDERED** that the respondent is to appear for all necessary mental and physical examinations within sixty days.

There are no further issues that need to be addressed therefore, this matter is closed.

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.

September 29, 2022



DATE

ELISSA MIZZONE TESTA, ALJ

Date Received at Agency:

September 29, 2022

Date Mailed to Parties:

September 29, 2022

sej

APPENDIX

List of Moving Papers

For Petitioner:

Letter Brief

Petitioner for Emergent Relief (Attachment B)

Wellness Check Certification of Counsel (Attachment A)

For Respondent:

None