

255-24E
OAL Dkt. No. EDU 06654-24
Agency Dkt. No. 146-5/24

New Jersey Commissioner of Education
Order on Emergent Relief

Regina Robinson,

Petitioner,

v.

Board of Education of the City of Jersey City,
Hudson County,

Respondent.

The record of this emergent matter, the sound recording of the hearing at the Office of Administrative Law (OAL), and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed. Upon such review, 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.

Accordingly, the recommended Order denying petitioner's application for emergent relief is adopted for the reasons stated therein. Furthermore, as the parties advised the Administrative Law Judge that no other issues remain once the emergent relief matter is resolved, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 1, 2024
Date of Mailing: July 3, 2024

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

ORDER ON MOTION
FOR EMERGENT RELIEF

OAL DKT. NO. EDU 06654-24

AGENCY DKT. 146-5/24

REGINA ROBINSON,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY
OF JERSEY CITY, HUDSON COUNTY,**

Respondent.

Stephen J. Edelstein, Esq., for petitioner (Weiner Law Group, LLP, attorneys)

Adam S. Herman, Esq., for respondent (Adams, Lattiboudere, Croot, & Herman,
LLC, attorneys)

Record Closed: May 29, 2024

Decided: May 30, 2024

BEFORE **DANIEL J. BROWN**, ALJ:

FACTUAL DISCUSSION AND PROCEDURAL HISTORY

Petitioner has been the tenured Business Administrator of the Jersey City Public School District. On June 30, 2022, petitioner filed a civil complaint in the New Jersey Superior Court against respondent (the Board). That complaint alleges discrimination

based upon petitioner's race and sex, hostile work environment and retaliation for the exercise of protected rights and whistle-blower activity under docket number HUD-L-2155-22. On April 25, 2024, written tenure charges and a written statement under oath in support of those charges were filed with the secretary of the Board and served upon petitioner. The tenure charges include forty-two counts and are based upon two independent audits for the fiscal year ending June 30, 2022. The tenure charges allege that petitioner is guilty of unbecoming conduct, misconduct, neglect, and other just cause. On May 10, 2024, petitioner filed a statement of position with supporting evidence to the Board Secretary. On May 14, 2024, the Board certified the tenure charges to the New Jersey Commissioner of Education and suspended petitioner without pay for 120 days in accordance with the New Jersey Tenure Employees Hearing Law ("TEHL").

On May 16, 2024, petitioner filed a petition of appeal and motion for emergent relief against the Board with the Commissioner of Education. Specifically, petitioner maintains that the tenure charges and suspension without pay for 120 days should be held in abeyance pending the resolution of the Superior Court case pending in Hudson County and the appeal of the tenure charges pending against petitioner.

On May 17, 2024, the Department of Education, Office of Controversies and Disputes, transmitted this case to the Office of Administrative Law (OAL) for hearing as to the resolution of petitioner's motion for emergency relief. On May 20, 2024, the matter was assigned to me.

On May 21, 2024, I conducted a telephone status conference. Petitioner moved for an adjournment of the hearing date scheduled for May 25, 2024, with respondent's consent. That adjournment request was granted. The hearing date was rescheduled to May 28, 2024. On May 21, 2024, I received the Board's submission.

In the Board's response, the Board highlights that petitioner cannot meet the standard for emergent relief and that the Board acted with statutory authority under TEHL in the filing of tenure charges against petitioner.

On May 28, 2024, oral argument was conducted. Petitioner requested that the record remain open to allow for further written submissions until May 29, 2024. That request was granted. Petitioner submitted a supplemental response on May 28, 2024. On May 29, 2024, the record was closed.

LEGAL ANALYSIS AND CONCLUSION

Under N.J.S.A. 18A:6-9, the Commissioner’s jurisdiction is defined, and is limited to “controversies and disputes arising under the school laws.” In Dunellen Bd. of Educ. v. Dunellen Ed. Assoc., 64 N.J. 17, 23 (1973), the New Jersey Supreme Court concluded that “the Legislature enacted provisions entrusting school supervision and management to local school boards . . . subject to the supervisory control [of] . . . the State Commissioner of Education.”

The regulations governing such disputes before the Commissioner of Education provide that “[w]here the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner’s final decision in the contested case.” N.J.A.C. 6A:3-1.6(a). The regulations further provide that the Commissioner may “[t]ransmit the motion to the OAL for immediate hearing on the motion.” N.J.A.C. 6A:3-1.6(c)(3).

N.J.A.C. 6A:3-1.6(b) sets forth the standards governing motions for emergent relief and instructs that:

A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards to 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 a 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).]

Indeed, the moving party must demonstrate each element “clearly and convincingly.” Waste Management of N.J. v. Union County Utilities Authority, 399 N.J. Super. 508, 520 (App. Div. 2008). Emergent relief is designed “to ‘prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case.’” Crowe, 90 N.J. at 132 (citation omitted).

Irreparable harm

Harm is generally considered irreparable if monetary damages cannot adequately redress it. Id. at 132-33. In other words, irreparable harm is 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). A claimant must demonstrate more than a risk of irreparable harm. Continental Group, Inc. v. Amoco Chemicals Corp., 614 F. 2d 351, 359 (D.N.J. 1980). The requisite for injunctive relief requires 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).

Petitioner submits that irreparable harm is clear. Specifically, petitioner maintains that the Board’s action of suspending her without pay for 120 days will prevent her from being able to properly prosecute her pending civil case or defend herself against the tenure charges brought against her by the Board.

In response, the Board argues that N.J.S.A.18A:6-14, part of the Tenure Employees Hearing Laws, N.J.S.A.18A:6-10 – 18.1, allows for a suspension with or

without pay after the Board has issued tenure charges. As the Board suspended petitioner for 120 days without pay after it deliberated in executive session and determined there was probable cause to certify the tenure charges to the New Jersey Department of Education, it complied with the TEHL.

In this case, the pending tenure charges, and petitioner's suspension without pay will not cause irreparable harm to petitioner. Pursuant to N.J.S.A. 18A:6-14, the time-period that petitioner will be without pay is limited to 120 days unless the tenure charges are sustained by the arbitrator. If the tenure charges are dismissed, at any stage of the process, petitioner shall be reinstated immediately with full pay from the first day of her suspension, thereby making petitioner financially whole. Additionally, as petitioner is claiming harm only in the form of the loss of her salary, the harm is not irreparable as it can be redressed adequately by monetary damages. Crowe, 90 N.J. at 132-133). Moreover, the harm that is complained of by petitioner is neither substantial nor immediate. Petitioner can only speculate that the loss of her salary for 120 days will prevent her from prosecuting her civil case and disputing the tenure charges.

Settled Legal Right

Emergent relief "should be withheld when the legal right underlying plaintiff's claim is unsettled." Crowe, 90 N.J. at 133 (citing Citizens Coach Co. v. Camden H. R. Co., 29 N.J.Eq. 299, 304-305 (E & A 1878)).

Each school district is obligated to provide a thorough and efficient education system to all children residing in its school district. N.J. Const. art. VIII, § 4, ¶ 1; N.J.S.A. 18A:33-1. To carry out this policy, local boards of education have discretionary authority under N.J.S.A. 18A:11-1C. The boards adopt rules for the management of the district's public schools and act in a manner to ensure the lawful and proper conduct of the district's public schools. Yet, statutory requirements also apply to actions by a school district or a board of education.

Under N.J.S.A. 18A:6-11, if a tenure charge is filed with the school board, the board reviews it and the accompanying statement of supporting evidence, and any written

statement submitted by the employee. The board then determines whether probable cause exists for the charge, and that the charge, if credited, sufficiently warrants a dismissal or reduction in pay. After the board certifies its probable cause determination, the Board forwards its determination to the Commissioner of Education. Once tenure charges are filed, the employee is entitled to a copy of the charges and supporting statement of evidence and a copy of the board's determination of probable cause. Ibid. After certification of the charge, the board may suspend the employee with or without pay under N.J.S.A. 18A:6-14.

Here, the question of whether petitioner is entitled to a stay of the pending tenure charges and the suspension without pay is unsettled. However, the question of petitioner has been afforded procedural protections under the TEHL is settled. The Board has complied with and acted under the authority of the TEHL in the filing of the tenure charges and suspending petitioner without pay for 120 days. At this point, a stay of tenure charges and the suspension without pay is neither necessary, appropriate, nor reasonable. The next appropriate step is for the Commissioner to determine whether the charges are sufficient to warrant petitioner's termination, after providing petitioner an opportunity to file a written response to the charges. N.J.S.A. 18A:6-16. If the Commissioner disagrees with the Board's determination, he should dismiss the charges. However, if the Commissioner determines that the charges are sufficient to warrant petitioner's dismissal, the matter should be transmitted immediately to an arbitrator for further proceedings. Ibid.

Likelihood of Success on the Merits

Under the third emergent relief standard, "a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Crowe, supra, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115-16 (E. & A. 1930)). This requirement is often implicitly tied to whether the right to the underlying claim is settled.

A presumption of lawfulness and good faith applies to a board of education's actions. 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).

The "arbitrary, capricious and unreasonable" standard of review imposes a heavy burden on challengers of board actions, and "means having no rational basis." Piccoli v. Ed. of Educ. of Ramapo Indian Hills Regional School District, OAL DKT. EDU 1839-98 (January 22, 1999) (citing Bayshore Sewage Co. v. Dent. of Envir. Protection, 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), aff'd 131 N.J. Super. 37 (App. Div. 1974).

Here, petitioner fails to meet this burden. Petitioner has not shown the procedural safeguards of the Tenured Employee Hearing Law have not been followed. Petitioner has not demonstrated that the Board did not have the authority to file tenure charges or suspend petitioner without pay for 120 days. Petitioner has not shown that the Board's actions had no rational basis. In fact, it is demonstrably clear that the Board's actions had a rational basis. The Board's filing of tenure charges came after the competition of two independent audits. Petitioner's tenure charges and her continued suspension without pay were based upon facts of which petitioner is aware. Petitioner has been served with the charges by the Board and has filed a written response with the Board. Petitioner has been provided with a certification from the superintendent of the Jersey City School district which summarizes the events that led to the filing of tenure charges by the Board. Petitioner alleges that the charges filed by the Board were not based on the results of two independent audits but were retaliatory in nature. Petitioner has provided no evidence to support this allegation. This allegation does not warrant a stay of the tenure charges or the suspension in pay. Petitioner is free to present evidence to an arbitrator, if the matter is transmitted to an arbitrator, that the tenure charges are retaliatory or otherwise insufficient.

Balancing of the Equities

Lastly, petitioner fails to meet the fourth emergent relief standard, which involves "the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 134 (citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J.Eq. 506, 515

(Ch.1941), mod. on other grounds, 132 N.J.Eq. 613 (E. & A. 1942)). To satisfy this standard, petitioner must demonstrate that she will suffer more significant harm than the Board if this tribunal does not grant the requested relief. If emergent relief is denied, petitioner will continue to serve a suspension without pay that is limited to a maximum of 120 days. Petitioner will be free to raise relevant defenses to the merits of the tenure charges before an arbitrator if the matter is transferred to an arbitrator. Any suspension may carry the risk of rumors or speculation concerning the suspended employee, but a suspension without pay is permitted by the Tenured Employee Hearing Law and is limited by that statute to a maximum of 120 days.

However, if emergent relief is granted, the Board will be forced to stay tenure charges that allege that petitioner failed to perform her duties as the District's School Business Administrator and that are based on the findings of 2 independent financial audits. Similarly, it would immediately restore petitioner to paid status pending the resolution of two separate and unrelated cases. Thus, the equities favor the Board.

Based on the above discussion, I **CONCLUDE** that petitioner's request is neither reasonable nor appropriate. I **CONCLUDE** that petitioner has failed to establish the existence of irreparable harm, that petitioner's request for emergent relief does not rely upon settled law, that petitioner is not likely to prevail on the merits, and that the equities do not favor petitioner. Thus, I **CONCLUDE** that petitioner's request for emergent relief does not meet requirements under N.J.A.C. 6A:3-1.6 and must be **DENIED**.

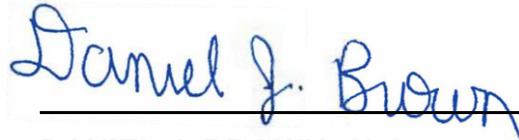
ORDER

Therefore, I **ORDER** that petitioner's request for emergency relief be and is hereby **DENIED**. The parties have advised me that no other issues remain once the emergent relief matter is resolved.

This order on application for emergency relief may be adopted, modified or rejected by **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who/which by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

May 30, 2024

DATE



DANIEL J. BROWN, ALJ

Date Mailed to Parties:

May 30, 2024

dr