256-24E
OAL Dkt. No. EDU 07255-24
Agency Dkt. No. 158-5/24

New Jersey Commissioner of Education

Order on Emergent Relief

L.M., on behalf of minor child, J.M.,

Petitioner,

v.

Board of Education of the Town of Hackettstown, Warren 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. This matter shall continue at the OAL with such proceedings as the parties and the ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

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

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING
EMERGENCY RELIEF
OAL DKT. NO. EDU-07255-24
AGENCY DKT. NO. 158/5-24

L.M. ON BEHALF OF R.M.,
Petitioner,
v.
HACKETTSTOWN BOARD OF EDUCATION,
Respondent.

L.M., petitioner, pro se

Caitlin W. Lundquist, Esq., for respondent (Busch Law Group, LLC, attorneys)

BEFORE **ANDREW M. BARON**, ALJ:

STATEMENT OF THE CASE

Petitioning parent challenges a decision by school officials with Hackettstown High School that son J.M. should be assessed an out of school five-day suspension by the Hackettstown High School Assistant Principal as a result of an alleged bias incident which happened during JM's chemistry lab. The in class conversation that gave rise to the alleged incident had nothing to do with the subject matter of the class both students were in.

Not fully before me yet but still pending a hearing before the District Board of Education scheduled for June 12th is an appeal of a related determination that JM's conduct also gave rise to a harassment, bullying and intimidation (HIB) incident against the other student who complained of bias against her. Since both penalties are related, I am retaining jurisdiction.

PROCEDURAL HISTORY

On or about May 24, 2024, petitioner filed a Petition and Motion for emergent relief, seeking to overturn a decision by the Assistant Principal of Hackettstown High School, suspending JM from attending school for five days as a result of an alleged bias incident which occurred during a chemistry lab on May 13, 2024. She also seeks to overturn a determination by the school that as a result of his comment, JM also committed a HIB (harassment, intimidation and bullying) violation against AA, a fellow student who is African American.

Prior to the filing, J.M. served the five-day suspension which went into effect immediately following the alleged incident without giving J.M. or his parents the right to pursue an appeal before higher ranking school personnel. The District's position relying on the school Code of Conduct is that for any suspension less than ten days, there is no requirement or mechanism for an internal appeal prior to serving the penalty.

The Department of Education transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the rules of procedure established by the Department of Education to hear and decide controversies and disputes arising under school laws, N.J.A.C. 6A:3-1.1 to -1.17. Jurisdiction is conferred under N.J.S.A. 18A:6-9. The case was filed at the Office of Administrative Law (OAL) on May 24, 2024.

Following an informal conference on May 30th, oral argument was initially heard on June 3rd, 2024.

FACTUAL DISCUSSION

The Petition of Appeal alleges, inter alia, that an incident occurred in school on May 13, 2024, wherein, according to school officials, JM allegedly made an inappropriate remark to a fellow student during chemistry lab. The conversation between the two students had nothing to do with the subject matter of the class, and the teacher of the class did not hear the alleged remark and/or the entire conversation. Though the District deemed the term "chicken bone" a remark of a racist nature, little or nothing is referenced in the District's report issued against J.M. concerning on alleged ongoing pattern of disruptive and disrespectful in class conduct by the other student, A.A. who was offended by JM's remark.

The report issued by the school limits the remark to the use of the work "chicken bone" but says nothing about the entire conversation precipitated by the other student A.A. concerning her strong beliefs that the monetary system in this country was essentially useless and should be done away with which led J.M. to question what should be used in its place, suggesting a series of alternate non-monetary objects including "chicken bones." A critical part of what led L.M. to file this application is the fact that there is no mention of the context in which the words were used, nor is there any statement from the teacher in the classroom, who it is undisputed did not hear the conversation or the remarks. The District admits in imposing the discipline against J.M., it relied solely on A.A. and some of the other students in the class, at least one of whom apparently admitted he either did not hear the remark or did not recall it.

The word "chicken bone" which may have been heard out of context is what led A.A. to complain that she was the victim of a bias incident, and led the school to suspend J.M. and initiate a HIB (harassment, intimidation and bullying) charge against J.M. (LM on behalf of J.M. has an appeal of that finding before the District Board of Education of June 12th, although the HIB finding was also transmitted to the Office of Administrative Law as part of this emergent proceeding, so though I am not sure if the matter is ripe yet until the Board hears the case on June 12th, I am retaining jurisdiction of the Bias suspension and the HIB part of the case as well.).

My jurisdiction at this early stage of the case is limited to whether or not petitioner has met her burden on J.M.'s behalf that emergent relief under the four prong criteria of Crowe v. DeGioia, 90 N.J.126 (1982).

In support of her request for relief, essentially seeking to remove both the bias suspension and the HIB determination from J.M.'s record, L.M. has submitted a detailed eight-page Statement of Facts surrounding the entire incident, as well as several other items including screenshots of emails and other communications, including JM's statement and the police report.

Respondent denies most of the petitioner's factual statements and relies on the Certification of Kyle Sosnovik, the principal of Hackettstown High School. Also submitted was the school's Code of Conduct and HIB policy.

LEGAL STANDARD

Where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case, emergency relief pending a final decision on the whole contested case may be ordered upon the application of a party. N.J.A.C. 1:1-12.6(a). With respect to school laws in particular, the Commissioner has jurisdiction to hear and determine all controversies and disputes arising under school laws, except higher education, or under the rules of the State board or of the Commissioner. N.J.S.A. 18A:6-9. Where 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.S.A. 6A:3-1.6(a). A motion for a stay or emergent relief must be accompanied by a letter memorandum or brief which must 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.S.A. 6A:3-1.6(b)

DISCUSSION AND CONCLUSIONS OF LAW

In petitioner's initial emergent basis statement, petitioner contends that emergent relief is required because:

> J.M. will suffer irreparable harm if the requested relief is not granted based on the attached documents. He will have this suspension and HIB determination on his record as he continues through high school and applies for jobs, awards and ultimately college admission. He is also suffering from the fact that all trust and accountability in the school administration and teachers is now nonexistent, and the suspension and related actions have caused significant damage to his reputation with fellow students as well. In today's social media age, the alleged incident and related penalty has circulated throughout the Hackettstown school community.

> Respondent's opposition to the emergent application states essentially that petitioner has not met the criteria for emergent relief, including but not limited to the argument that at this stage there is no irreparable harm, and the equities do not balance in petitioner's favor at this stage of the proceedings. Respondent further states that even if there is some merit to petitioner's contentions, since there are so many facts in dispute, the matter cannot be decided without a full plenary hearing on the merits.

While having a bias complaint and a related HIB determination on a high school student's record is certainly understandable concern that conceivably gives rise to irreparable harm if upheld, I **CONCLUDE** that petitioners have failed to establish the immediate nature of said irreparable harm warranting emergent relief, since J.M. is not yet applying to another private high school or college, or for school awards or jobs that might be impacted by having this on his high school record, nor is it interfering with his graduation which is still some time away. There is ample time at a full plenary hearing to determine whether the actions of school officials were inappropriate and excessive under the circumstances.

In order to prevail on an application for emergent relief, a petitioner must meet all four conjunctive prongs set forth in Crowe. Since, petitioners have failed to establish irreparable harm, as well as the likelihood of success on the merits. I **FURTHER CONCLUDE** that while I have concerns about whether school officials may have "rushed to judgment" without completing a more thorough investigation, or considering lesser means of discipline if any discipline needed to be imposed, in addition to petitioner's stated concern there may be bias against her family due to a history between them and the district prior to this alleged incident, the application for emergent relief should be **DENIED**, since balancing the equities of the parties at this early juncture is at "equipoise" until a full plenary hearing is conducted and I am unable to determine at this stage which side would prevail on the merits without a full plenary hearing including sworn testimony.

ORDER

It is hereby **ORDERED** that the petitioners' application for emergent relief is **DENIED**, at this time, but **I RETAIN JURISDICTION** subject to a full plenary hearing over the entire matter, including the HIB determination, once that part of the case has been acted upon by either the District Board of Education, the Commissioner of Education or both entities.

This Order on application for emergency relief may be adopted, modified or rejected by the **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 the **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.

June 5, 2024 _____

DATE

ANDREW M. BARON, ALJ

Date Received at Agency June 5, 2024

Date E-Mailed to Parties: June 5, 2024

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