

New Jersey Commissioner of Education
Order on Emergent Relief

N.S.-G., on behalf of minor child, G.G.,

Petitioner,

v.

Board of Trustees of the Benjamin Banneker
Preparatory Charter School, Burlington County,

Respondent.

The record of this emergent matter and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed and considered.

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, 132-34 (1982), and codified at N.J.A.C. 6A:3-1.6.

The Commissioner further concurs with the ALJ that petitioner's challenge to the five-day suspension imposed on her child is moot, as the suspension was rescinded by the Board. However, regarding the 504 plan requested by petitioner, although the record indicates that the parties met to discuss the plan, it does not reflect whether the parties reached an agreement regarding the plan. Accordingly, the Commissioner cannot conclude at this time that this issue is moot.

The ALJ's Order further concludes that the portion of the petition requesting the cessation of the Board's harassment, intimidation, and bullying (HIB) investigation should be dismissed for lack of jurisdiction, and that the portion of the petition requesting that the code of conduct be removed

from G.G.'s record should be dismissed because it is not ripe. As such, the ALJ dismissed the petition. However, such an action is not appropriate as part of an Order on emergent relief, as *N.J.A.C. 1:1-18.1(b)* provides that decisions that are fully dispositive of all issues in the case are initial decisions. When an initial decision is issued, the parties have the opportunity to file exceptions pursuant to *N.J.A.C. 1:1-18.4*, but there is no such opportunity for the parties to take exception to an Order on emergent relief. Without affording the parties that opportunity, the Commissioner finds that dismissal at this stage of the proceedings is inappropriate.

Accordingly, the recommended Order denying petitioner's application for emergent relief is adopted for the reasons stated therein. To the extent that the Order dismisses petitioner's claims regarding the 504 plan, the discipline imposed on her child, and the HIB investigation, the Order is rejected. This matter shall continue at the Office of Administrative Law (OAL) with such proceedings as the parties and the ALJ deem necessary to bring it to closure.¹

IT IS SO ORDERED.


COMMISSIONER OF EDUCATION

Date of Decision: May 8, 2025
Date of Mailing: May 9, 2025

¹ The Commissioner acknowledges that confusion may have arisen in this matter due to the petitioner's use of the Office of Special Education's (OSE) emergent relief request forms, as matters transmitted to the OAL by the OSE follow different procedures and may be fully resolved in an emergent proceeding. The Office of Controversies and Disputes attempted to clarify the procedures to be used in this matter by specifying in its transmittal that this matter is not a special education matter and indicating that the merits of the underlying petition should be addressed following resolution of the request for emergent relief. However, to the extent that further clarity may be useful, the Commissioner leaves it to the ALJ to determine whether to issue an Initial Decision at this stage or to undertake further proceedings with regard to petitioner's claims regarding the 504 plan, the discipline imposed on her child, and the HIB investigation, provided that whichever choice the ALJ makes, the proceedings result in an Initial Decision to which the parties can file exceptions (unless the matter is resolved by other means, such as a settlement agreement or withdrawal by petitioner).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING

EMERGENT RELIEF

OAL DKT. NO. EDU 06914-25

AGENCY DKT. NO. 110-4/25

N.S-G., ON BEHALF OF MINOR CHILD

G.G.,

Petitioner,

v.

BOARD OF TRUSTEES OF THE BENJAMIN

BANNEKER PREPARATORY CHARTER

SCHOOL, BURLINGTON COUNTY,

Respondent.

N.S-G., on behalf of G.G., petitioner, pro se

Stefani C. Schwartz, Esq., for respondent (Hatfield Schwartz Law Group LLC,
attorneys)

BEFORE **DEIRDRE HARTMAN-ZOHLMAN, ALJ:**

STATEMENT OF THE CASE

Petitioner, N.S-G., on behalf of minor child G.G., moves for emergent relief seeking a 504 plan and appeals a five-day suspension. Additionally, G.G. was charged with a code of conduct violation for inappropriate behavior that she wants removed from her

record. Lastly, petitioner wants a related harassment, intimidation and bullying (HIB) investigation to cease.

Respondent, the Board of Trustees of the Benjamin Banneker Preparatory Charter School (School), agreed to meet regarding setting up a 504 plan and has rescinded the five-day suspension. Moreover, it asserts the code of conduct violation is not ripe, as petitioner has failed to follow the process to appeal the code of conduct violation. Lastly, respondent asserts that there is no jurisdiction to stop the HIB investigation.

PROCEDURAL HISTORY

Petitioner filed a verified petition and request for emergent relief with the Commissioner of the Department of Education, Office of Controversies and Disputes (DOE). On April 22, 2025, the DOE transmitted this matter to the Office of Administrative Law (OAL), where it was filed as a contested case seeking emergent relief. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The argument was heard on April 29, 2025, and the record closed that day.

The request for emergent relief is now ripe for adjudication.

FACTUAL FINDINGS

1. G.G. is currently an eighth-grade student at respondent school.
2. On April 11, 2025, petitioner requested assistance with a 504 plan. Respondent did not respond.
3. On April 17, 2025, G.G. was involved in an incident at the school. As a result of the same, G.G. received a code of conduct violation for inappropriate behavior;¹ she was notified of a five-day out-of-school

¹ G.G. was initially charged with a violation of dangerous behavior; however, the school later amended it to inappropriate behavior. (R-1.)

suspension upon return from spring break, effective April 28, 2025, through May 2, 2025, and a HIB investigation was initiated as to that and other incidents.

4. There is a code of conduct for the school and a process for appealing findings of violations.
5. By letter dated April 24, 2025, the school advised petitioner that it would schedule a 504 meeting upon return from spring break and that it rescinded the suspension.² (R-1.)
6. The parties met to set up a 504 plan on April 29, 2025.

LEGAL ANALYSIS AND CONCLUSIONS

A. The 504 meeting and five-day suspension

G.G. seeks a 504 plan and a rescission of the suspension. However, the parties have already met to discuss a 504 plan, and the school has already rescinded the suspension.

Respondent seeks dismissal of these claims as moot, as there is no relief available to her in this forum.

An action is moot when the decision sought “can have no practical effect on the existing controversy.” Redd v. Bowman, 223 N.J. 87, 104 (2015). For reasons of judicial economy and restraint, it is appropriate to refrain from decision-making when an issue presented is hypothetical, judgment cannot grant effective relief, or the parties do not have a concrete adversity of interest. Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976); Fox v. Twp. of E. Brunswick Bd. of Educ., EDU 10067-98, Initial Decision

² Initially the school indicated it rescinded the out-of-school suspension but subsequently clarified this included any in-school suspension as well. (R-2.)

(March 19, 1999), aff'd, Comm'r (May 3, 1999), <https://njlaw.rutgers.edu/collections/oal/>, J.L. and K.D. ex rel. J.L. v. Harrison Twp. Bd. of Educ., OAL Dkt. No. EDS 13858-13, Final Decision (January 28, 2014).

Here, a 504 plan meeting was held, and the five-day suspension was rescinded. A review of the facts here leads to the conclusion that no issue remains as to which judgment can grant effective relief, as the petitioner has already received the relief she seeks on these issues.

Based on the foregoing, I **CONCLUDE** that the petition should be dismissed with prejudice as moot because the requested relief has already been provided.

B. The HIB investigation

G.G. seeks to have the HIB investigation cease. The respondent seeks dismissal of these claims for a lack of jurisdiction.

It was the intent of the Legislature in enacting the “Anti-Bullying Bill of Rights Act” to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises. N.J.S.A. 18A:37-13.1, -13.2. Moreover, each school shall adopt a policy for HIB and have local control over its content. N.J.S.A 18A:37-15.

The facts of the HIB investigation were not within the papers submitted by the parties. It is the school’s duty to investigate HIB and to create procedures for doing such. The HIB investigation is ongoing, and there was no information presented that would suggest that interference or cessation of the investigation would be appropriate, lawful or within the jurisdiction of this tribunal to do so.

Based on the foregoing, I **CONCLUDE** that the petition, as it requests that the HIB investigation cease, should be dismissed with prejudice for lack of jurisdiction.

C. The code-of-conduct violation

G.G. seeks to have the violation for inappropriate behavior removed from her school record. The respondent seeks dismissal of these claims as it is not ripe.

In applying the ripeness doctrine, the relevant factors are whether the legal issues are “suitable for resolution [and] the hardship to the parties of withholding court consideration.” Skurbe v. Bd. of Educ. of Monroe, EDU 05352-19, Initial Decision (June 27, 2019) (citations omitted), https://njlaw.rutgers.edu/collections/oal/html/initial/edu05352-19_1.html, Final Decision (July 22, 2019), https://njlaw.rutgers.edu/collections/oal/final/edu05352-19_2.pdf. Respondent has a code of conduct and procedures and processes for violations thereof. Petitioner has not availed herself of those processes, and, therefore, petitioner’s claim is not ripe.

Lastly, assuming, arguendo, that petitioner’s claim to remove the violation for inappropriate behavior was ripe, it would fail to meet the standards 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).]

Petitioner will not suffer irreparable harm because she may appeal the decision to the Board of Directors of the school and subsequently to the Department of Education. The legal right for her to appeal is well settled, but it cannot be stated that there is a likelihood of success in her prevailing on the merits in the underlying claim. The claim

would require a fact-specific review in a due process hearing. Lastly, in balancing the interests of the parties, I find that petitioner will not suffer greater harm than respondent if the requested relief is not granted.

Based on the foregoing, I **CONCLUDE** that the petition, as it requests that the code of conduct violation be removed from her record, should be dismissed with prejudice as unripe and for failing to meet the standard for interim relief.

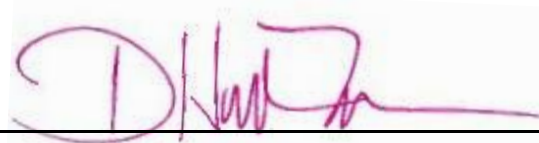
ORDER

Accordingly, I **ORDER** that the petitioner's application for emergent relief be and hereby is **DENIED**. From my review of the record, I understand that there are no other issues to be decided on the underlying petition, and accordingly, the petition is **DISMISSED**.

This order on application for emergency relief may be adopted, modified or rejected by **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who 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.

April 30, 2025

DATE



DEIRDRE HARTMAN-ZOHLMAN, ALJ

cc: OAL Clerk, Tr.

DHZ/kd/jm

APPENDIX

Witnesses

For petitioner:

None

For respondent:

None

Exhibits

For petitioner:

P-1 Request for emergent relief, dated April 21, 2025, and attachments

For respondent:

R-1 Letter, dated April 24, 2025

R-2 Letter, dated April 28, 2025