272-25E
OAL Dkt. No. 06953-25
Agency Dkt. No. 119-4/25

New Jersey Commissioner of Education

Order on Emergent Relief

S.M., on behalf of minor child, E.V.,

Petitioner,

v.

Board of Education of the Borough of Sayreville, Middlesex County,

Respondent.

The record of this emergent matter, the sound recording of the hearing held 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.

The Commissioner reminds the Board that it must review E.V.'s case at each subsequent district board of education meeting, to determine whether E.V. should return to the general education program. *N.J.A.C.* 6A:16-7.3(c)1.i.-iv; *N.J.A.C.* 6A:16-7.3(d).

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.

COMMISSIONER OF EDUCATION

Date of Decision: May 23, 2025
Date of Mailing: May 27, 2025

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING
EMERGENT RELIEF
OAL DKT. NO. EDU 06953-25
AGENCY DKT. NO. 119-4/25

S.M. ON BEHALF OF E.V.,
Petitioner,
v.
BOARD OF EDUCATION OF
THE BOROUGH OF SAYREVILLE,
Respondent.

S.M., petitioner, pro se

Danielle N. Pantaleo, Esq., for respondent (The Busch Law Group, L.L.C., attorneys)

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF THE CASE

Petitioner S.M., on behalf of E.V., filed a petition for due process to challenge, on factual and procedural grounds, the decision of respondent, the Board of Education of the Borough of Sayreville (Board), to issue a long-term suspension of E.V. from school, and to challenge the Board's failure to find that E.V. was a victim of harassment, intimidation and bullying (HIB), as defined in the New Jersey Anti-Bullying Bill of Rights, N.J.S.A.

18A:37-13 et seq. (Anti-Bullying Law). In this emergent proceeding, petitioner seeks an order returning E.V. to in-person instruction at Sayreville Middle School (SMS).

PROCEDURAL HISTORY

On April 22, 2025, petitioner filed a petition of appeal and a request for emergent relief with the New Jersey Department of Education, Office of Controversies and Disputes. On April 24, 2025, the motion for emergent relief and the due-process petition were transmitted to the Office of Administrative Law, pursuant to N.J.S.A. 52:14B-1 to -15, and N.J.S.A. 52:14F-1 to -23.

On April 28, 2025, the parties appeared for oral argument on the motion for emergent relief, and the motion is now ripe for review.

FACTUAL DISCUSSION

Based on the arguments of petitioner and of counsel and on the documents filed by the parties, the following statements are undisputed, and therefore, I **FIND** as **FACTS**:

E.V. is a thirteen-year-old female who is enrolled in the eighth grade at SMS.

S.M. alleges that during the 2024–2025 school year, E.V. was repeatedly targeted by L., a female enrolled in the seventh grade at SMS, and that on at least two occasions, S.M. and E.V. reported these incidents to the SMS administration and asked that they be investigated as HIB.

On or about February 7, 2025, E.V. and L. were called to participate in peer mediation before Principal Scott Nurnberger. As no resolution to their dispute was reached, the students were issued a “no contact” order, meaning that they were prohibited from having verbal and/or physical contact with each other on school grounds.

On February 24, 2025, E.V. was involved in a physical altercation with L. on school grounds. As a result of this altercation, E.V. was charged with assault, the attempt to

cause bodily injury to another, in violation of N.J.S.A. 2C:12-1(a)(1). See Ltr. Br. of Resp't Opposing Emergent Relief (April 27, 2025) (Resp't's Br.) at 2 (citing Middlesex County Juvenile Complaint No. 1219-JC-2025-7 (February 24, 2025)).

By letter dated February 25, 2025, Megan Romero, SMS vice principal, notified petitioner that E.V. was suspended from school for ten days pending a disciplinary hearing before the Board. Resp't's Br., Ex. 2. E.V. was asked to appear before the Board on February 27, 2025, to answer charges of alleged violations of Board policy: assault, failure to follow administrative direction (the "no contact" order), and severe violation of the technology agreement.[1] Ibid.

Romero also sent to petitioner E.V.'s "student comprehensive report," which would be reviewed by the Board for E.V.'s disciplinary hearing. This report includes summaries of four occasions, between October 2022 and February 25, 2025, on which E.V. was disciplined for some form of physical altercation in school. Resp't's Br., Ex. 3.

By letter dated February 28, 2025, Romero notified petitioner that at petitioner's request, E.V.'s disciplinary hearing was rescheduled to March 3, 2025, and that respondent would provide E.V. with home instruction. Id., Ex. 4. Home instruction has been provided to E.V. since March 3, 2025. Id., Ex. 7.

On March 20, 2025, S.M. and E.V. appeared before the Board Committee on Student Discipline (Committee). By letter dated March 21, 2025, Romero notified S.M. of the decision of the Committee to recommend that the Board suspend E.V. for more than ten days and place her in the Monmouth Ocean Educational Services Commission (MOESC) interim alternative education program for the remainder of the 2024–2025 school year. Id., Ex. 6.

On April 1, 2025, S.M. appeared at a regular meeting of the Board to advocate on her daughter's behalf. In executive session, the Board voted to adopt the Committee's

[1] There is conflicting testimony on this topic, but it is undisputed that the altercation between E.V. and L. was videotaped by another person or persons using a cellphone camera and the resulting video was distributed.

recommendation that E.V. be suspended from SMS and be enrolled in the MOESC program for the duration of the 2024–2025 school year.

The April 1, 2025, meeting of the Board included the involvement of fifth-grade students from the Somerville School District in the "Let Children Lead" program. S.M. alleges that the decision on E.V.'s suspension was made by these students, not the Board members, and that as a result, E.V. was deprived of due process. Respondent counters that the students merely voiced the decisions of Board members to approve or disapprove the entire agenda and had no involvement with, and were not present for, executive session when the Board discussed and voted on E.V.'s suspension.

S.M. has refused to enroll E.V. in the MOESC program, and she remains on home instruction.

LEGAL ANALYSIS AND CONCLUSIONS

When the subject matter of a controversy is an action by a board of education, the petitioner may file "a separate motion for emergent relief . . . pending the Commissioner's final decision in the contested case." N.J.A.C. 6A:3-1.6(a). Here, S.M. has initiated due-process proceedings challenging E.V.'s long-term suspension on factual and procedural grounds and challenging the Board's action in failing to find that E.V. was a victim of HIB, pursuant to the Anti-Bullying Law. She requests emergent relief in the form of an order returning E.V. to school pending the due process hearing.

The standards for granting emergent relief are outlined in Crowe v. DeGioia, 90 N.J. 126 (1982), and are codified at N.J.A.C. 6A:3-1.6(b). The petitioner bears the burden of proving that:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;

2. The legal right underlying the 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 the 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).]

Irreparable harm

To obtain emergent relief, S.M. must demonstrate more than a risk of irreparable harm should E.V. remain on long-term suspension and/or placement in the MOESC program. In an educational setting, "irreparable harm may be shown . . . when there is a significant interruption or termination of educational services." Ocean Twp. Bd. of Educ. v. J.E. and T.B. ex rel. J.E., 2004 N.J. AGEN LEXIS 115, at *8 (February 23, 2004).

"Irreparable harm is shown when money damages cannot adequately compensate plaintiff's injuries." Hornstine v. Twp. of Moorestown, 263 F. Supp. 2d 887, 911 (D.N.J. 2003) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). "More than a risk of irreparable harm must be demonstrated." Cont'l Grp., Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980). "The requisite for injunctive relief has been characterized as 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 the common law.'" Ibid. (citations omitted).

Here, petitioner argues that E.V. "has already missed significant instructional time" and the "[c]ontinued exclusion [of E.V.] from her regular school environment is causing emotional distress and academic regression." Pet'r's Motion at 1. E.V. is subject to social and emotional harm as a result from "missing her final months of 8th grade, including significant milestones such as formal ceremonies, graduation preparation, and peer relationships[.]" Pet'r's Post-Hearing Br. (April 28, 2025) (Pet'r's Br.).

E.V. has missed, and continues to miss, instructional time in the SMS building, but respondent has provided home instruction and an alternate educational placement through the end of the school year or pending a decision of the Commissioner to return

E.V. to school, whichever comes first. S.M. claims that the alternate placement is not "comparable to E.V.'s current academic program," Pet'r's Br. at 2, but no evidence has been submitted by which such a comparison may be made. While it is arguable that E.V. could miss out on end-of-year events that cannot be recovered (e.g., ceremonies, graduation) if this matter does not conclude before those events take place, that possibility does not warrant the remedy requested. As counsel argued, failure of a student to comply with the disciplinary requirements of the school can result in the loss of the privilege -- not the right -- to participate in various non-academic events. Finally, petitioner has yet to introduce evidence (or a certification from a treating professional) of the emotional distress and academic regression that E.V. has allegedly experienced.

Accordingly, I **CONCLUDE** that the petitioner has not met the burden of proving irreparable harm will result if E.V. is not immediately returned to SMS.

Settled Legal Right and the Likelihood of Success on the Merits

The second consideration is whether the legal right underlying petitioner's claim is settled, N.J.A.C. 6A:3-1.6(b)(2), and then third, petitioner must make a preliminary showing of a reasonable probability of success on the merits. Crowe, 90 N.J. at 133.

Petitioner contends first that E.V. was denied her right to due process when the decision on her long-term suspension was made by a panel of fifth-grade students rather than the members of the Board and because the Board failed to properly investigate the incident prior to making a decision on discipline. Second, petitioner argues that the punishment given to E.V. is inconsistent with the SMS Discipline Policy; respondent issued E.V. a ten-day suspension, which was increased to a long-term suspension after consideration by the Board. But, under the discipline matrix from the SMS 2024–2025 Handbook, that punishment is consistent with a third incident of assault, Pro Se Petition of Appeal (April 23, 2025), Attachment, and petitioner contendsthat E.V. had not previously been accused or found guilty of physical violence. According to S.M., all prior incidents resulting in discipline for E.V. were related to cell-phone usage.

In response, respondent states that the decision on E.V.'s long-term suspension was made by the Board after consideration of the Committee's recommendation and S.M.'s testimony in support of her daughter. It would be incredible for Board members to permit anyone, much less fifth-grade students, to stand in for them on such a critical decision. There is, however, no proof that they did so.

Contrary to petitioner's claim that E.V. had no prior incidents of physical violence meriting discipline, E.V.'s disciplinary record shows that from the time she entered SMS, E.V. has been disciplined following four separate incidents involving physical violence. Respondent contends that the incident of February 24, 2025, was "so egregious" that the Board was compelled to issue the long-term suspension.

While I agree that E.V. has the right to due process, including a full and fair investigation of the February 24, 2025 incident, and E.V. has the right to be disciplined in a manner consistent with the SMS Handbook, I **CONCLUDE** that petitioner has not demonstrated the likelihood of success on the merits of those claims. Under this emergent relief prong, "a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits." Crowe, 90 N.J. at 133 (citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)). This typically "'involves a prediction of the probable outcome of the case' based on each party's initial proofs, usually limited to documents." Brown v. City of Paterson, 424 N.J. Super. 176, 182–83 (App. Div. 2012) (quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006)). At best, the evidence so far presented is inconclusive, and the parties must be afforded the opportunity to present witnesses and other evidence, including surveillance videos, to support their positions in this matter.

It is well settled that the decisions of local boards of education are to stand undisturbed unless shown to be patently "arbitrary, without rational basis or induced by improper motives." J.M. By His Guardian, D.M. v. Hunterdon Cent. Reg'l High Sch. Dist., Hunterdon Cnty., 96 N.J.A.R.2d (EDU) 415, 419; R.A.M. and C.A.M. ex rel. B.M. v. Bd. of Educ. of Tabernacle, 94 N.J.A.R.2d (EDU) 573, 576 (citing Kopera v. West Orange Bd. of Educ., 60 N.J. Super. 288 (App. Div. 1960)). Our courts have held that "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and

upon due consideration, even though it may be believed that an erroneous conclusion has been reached." Bayshore Sewage Co. v. Dep't of Envtl. Prot., 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App Div. 1974). To satisfy the arbitrary and capricious standard, petitioner must prove that respondent acted in either bad faith or in disregard to the circumstances. I **CONCLUDE** that petitioner has not shown the likelihood of prevailing on the claims in her due process petition.

Balancing the Equities

The fourth and final emergent relief standard 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)).

Here, S.M. argues that E.V. will be harmed if she cannot return to school, academically, reputationally, and most significantly, emotionally. Pet'r's Motion at 2. In making this claim, S.M. states that E.V. has been bullied and the bully has not been disciplined, two issues that are in dispute. The Board argues that granting emergent relief here would "render meaningless the Board's legal right to fully present the facts and arguments supporting the decision to impose a long-term suspension of E.V." Resp't's Br. at 13. I **CONCLUDE** that the Board has the stronger claim; the Board would suffer the greater harm if I were to reverse its decision without the benefit of a hearing at which both parties will present witnesses and additional evidence to support their positions.

Based upon the above, I **CONCLUDE** that the petitioner has not met the requirements outlined in N.J.A.C. 6A:3-1.6(b), and therefore, an order for emergent relief is not appropriate.

ORDER

For the reasons stated above, I hereby **ORDER** that the petitioner's application for emergent relief is hereby **DENIED** and this matter shall proceed to hearing on all issues raised in the due process petitioner.

This order on application for emergency relief may be adopted, modified or rejected by the **ACTING 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 the **ACTING 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 29, 2025
DATE

TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

TMC/kl/sg