37-25E
OAL Dkt. No. 16312-24
Agency Dkt. No. 355-11/24

New Jersey Commissioner of Education

Final Decision

F.L., on behalf of D.L.,

Petitioner,

v.

Board of Education of the Ramapo Indian Hills Regional High School District, Bergen County,

Respondent.

The record of this emergent matter 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 further concurs with the ALJ's conclusion that it is in the interest of justice to defer a decision on respondent's motion to dismiss.

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.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 30, 2025
Date of Mailing: January 31, 2025

[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 DENYING
EMERGENT RELIEF
OAL DKT. NO. EDU 16312-24
AGENCY DKT. NO. 355-11/24

F.L. O/B/O D.L.,
Petitioner,
v.
BOARD OF EDUCATION OF THE RAMAPO INDIAN HILLS REGIONAL HIGH SCHOOL DISTRICT, BERGEN COUNTY
Respondent.

F.L., petitioner, pro se

Rachel E. Farley, Esq., for respondent (Porzio, Bromberg & Newman, attorneys)

Record Closed: December 18, 2024 Decided: December 20, 2024

BEFORE **ERNEST M. BONGIOVANNI, ALJ**

STATEMENT OF THE CASE

The petitioner, F.L., the mother of the adult student, D.L. petitioned the Director of the Office of Controversies and Disputes, of the New Jersey Department of Education, pursuant to N.J.A.C. 6A:3-1.6 et. seq., for an order for emergent relief which seeks to "alter" D.L.'s Official High School Transcript. Prior to filing the appeal, F.L.

engaged a New Jersey attorney to advocate and negotiate a settlement agreement with the Respondent (District/BOE), and, as a part of her petition attached an itemized bill from her attorney in the amount of $4330.00 for about two months' work. As part of her appeal she seeks reimbursement for the fees she paid for her attorney's bill. She also sought the appointment of a "mediator who is an expert in special education who can facilitate a mutually favorable outcome and issue an Official School transcript that dos [sic] not discriminate against" her son D.L. (whom she refers to as DFL). She seeks emergent relief saying the issue is "time sensitive." The underlying appeal was transmitted to the Office of Administrative Law (OAL) on November 20, 2024 with instructions that the merits of the appeal be addressed once the request for emergent relief has been decided.

PROCEDURAL HISTORY

The underlying appeal with the request for emergent relief was transmitted to the Office of Administrative Law on November 20, 2024 with instructions that the merits of the appeal be addressed once the request for emergent relief has been decided. On November 27, 2024, the BOE filed a letter-brief in opposition to the request for emergent relief and also sought to dismiss the petition altogether. The respondent makes three preliminary procedural objections to going forward with the underlying petition, before addressing the Request for Emergent Relief.

First the BOE argues that D.L. is a 21-year-old and only he or his legal guardian may file appeals on his behalf. F.L. attached no proof of guardianship nor argues that she is his legal guardian. Therefore F.L. lacks standing to bring this appeal. Second, it argues petitioner's purported representation of D.L. constitutes the unauthorized and illegal practice of law by non-attorneys. Thus to prevent any further violation of the NJAC 1:15-1. and Court Rule 1:21-1.(e), the petition must be dismissed. Finally, the BOE argues the petition of appeal is barred in that it seeks to appeal the July 1, 2024 final transcript for D.L. issued by the Director of Social Services that day. A complaining party has ninety days from the date she is aware of the claims and F.L. did not file her appeal until some 140 days of receipt of the transcripts.

These are serious and on their face meritorious defenses to the underlying appeal. Further F.L's absence from the State of New Jersey made it impossible to have an in person proceeding on the emergent Appeal, as initially scheduled on December 2, 2024. Further, F.L. would not agree to return to NJ for argument on the motion due to her wanting to remain out of state to help her son settle into a new home, and her request to hold argument via ZOOM was denied. However, petitioner has had an extra two weeks to reply to respondent's opposition to her motion for emergent appeal and its motion to dismiss, and/or in the alternative, to seek apparently much needed legal counsel for her son D.L. and/or herself.

In any event, I have reviewed her various lengthy replies to the District/BOE's opposition in writings of various forms, dated December 4, December 11, December 12, and the last reply is dated December 13 but received on December 18. It is noted with concern that despite numerous opportunities for F.L. to demonstrate it, I do not perceive any understanding on F.L.'s part of the arguments that she lacks standing, and/or that she is possibly engaging in the unauthorized practice of law, and/or that her entire complaint is time barred. Therefore, the motion to dismiss is basically unopposed. However, a final ruling on the motion to dismiss will not be made at this time. Instead, F.L. will have an additional twenty-one days to engage a lawful representative to enter his or her appearance in this court on this case. He or she will then be given appropriate time to defend against the motion to dismiss, provided the efforts are made in good faith. However, if there is no appearance by such lawful representative by that time, this Order will be amended to dismiss the complaint with prejudice for the reasons cited by the respondent, and as identified herein, which currently remain essentially not effectively opposed.

Motion for Emergent Relief

The motion was not accompanied by the required letter memorandum or brief addressing the standards for granting such relief which are governed by Crowe v. DeGioia, 90 N.J. 126 (1990).

As correctly cited by respondent in its November 27, 2024 letter brief, the failure of a pro se litigant to information a tribunal so that it may competently consider the request for emergent relief in light of the Crowe standards is itself grounds for dismissing the request.

> A motion for 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):
>
> [N.J.S.A. 6A:3-1.6(b)]

The petitioner has the burden of establishing all of the above requirements in order to warrant relief in their favor. D.I. and S.I. on behalf of T.I. v. Monroe Township Board of Education, 2017 N.J. Agen LEXIS 814, 7 (OAL Docket No. EDS 10816-17, October 25, 2017). The moving party bears the burden of proving each of the Crowe elements "clearly and convincingly." Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

Although here petitioner failed to address the Crowe standards as required in her initial pleading and arguably should have the motion dismissed that failure alone, I will instead address the standards as best I can noting that respondent is also unfairly disadvantaged by the petitioner's failure to provide information that clearly relates to the Crowe standards.

1. Did petitioner demonstrate substantial immediate and irreparable harm?

Here the answer is a resounding no. There is a lack of concrete creditable evidence that could lead the tribunal to do more than speculate any harm will befall D.L. if his transcripts are not "immediately changed". Instead , petitioner notes she signed a "monetary amount" in October 2024, as part of predecessor litigation where she claims the court found, her son was denied FAPE in 2021-2022. It appears the pursuit of that award took over two years. She also attaches her partially paid attorney's fees for

working on the transcript issues for two months and demands reimbursement. F.L. should be aware money awards are not granted when only injunctive immediate relief is the appropriate effective remedy. She also seeks that a mediator be appointed. It would appear that petitioner should know mediators, "experts in special education who can facilitate a mutually favorable outcome" as she puts it, are not a service realistically performed or which can be achieved on an emergent relief basis. Obviously, such a process is not appropriate for preventing immediate harm. Finally, I find the entire issue of immediate and irreparable harm to be mere speculation at this point.

2. Is Petitioner likely to prevail on the Merits of the Claim?

No. At this stage I must agree with respondent that there is a complete failure to show that D.L.'s records were inaccurate, irrelevant, impermissibly disclosed, or were improperly denied access to. See NJAC 6A:32-7.7(a). She simply complains they are generally unfair to D.L. Since a student's grades are known to the parent throughout the school year and years, a transcript cannot become an issue of irreparable harm. Thus, I certainly cannot find that petitioner is likely to prevail on the merits.

3. Does the petitioner's request for relief rest on a well-settled right to pursue the asserted claims?

No. It is almost axiomatic that if diplomas, grades and honors were granted by parents' wishes and thus giving parents the right to alter transcripts based on their desires, those things would hardly be worth anything. No case has been cited that a school has to rewrite a transcript out of "fairness" or the parents sense of fairness. In fact, no case law remotely on the subject has been cited. In fact, if such a case existed, it would be well known by practitioners and tribunals. Thus, the relief is certainly not based on a well settled right.

4. Does the Balance of Equities Weigh in favor of the Respondent?

No. The harm claimed is not based on strong concrete creditable evidence and as to it being irreparable. The harm is based on speculation and conjecture.

Meanwhile the respondent has an unquestionable interest in maintaining the integrity of its transcripts. Therefore, the equities weigh completely in the BOE's favor.

ORDER DENYING EMERGENCY RELIEF

The petitioner has the burden of establishing all of the above requirements in order to warrant relief in their favor. D.I. and S.I. on behalf of T.I. v. Monroe Township Board of Education, 2017 N.J. Agen LEXIS 814, 7 (OAL Docket No. EDS 10816-17, October 25, 2017). The moving party bears the burden of proving each of the Crowe elements "clearly and convincingly." Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

Beginning with the first requirement, it is well-settled that relief should not be granted except "when necessary to prevent irreparable harm." Crowe, 90 N.J. at 132-33. In this regard, harm is generally considered irreparable if it cannot be adequately redressed by monetary damages. Id. at 132-33. In other words, it has been described as "substantial injury to a material degree coupled with the inadequacy of money damages." Judice's Sunshine Pontiac v. General Motors Corp., 418 F.Supp. 1212, 1218 (D.N.J. 1976) (citation omitted).

Under the circumstances, I **CONCLUDE** that the petitioner has not met the burden of establishing a right to emergent relief as she failed to prevail on any of the four "prongs" of Crowe where she is required to prevail on all of them to be entitled to relief. a clear showing of immediate irreparable injury unless the requested relief is granted. Therefor, all emergent relief sought is **DENIED.**

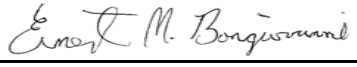
RESPONDENT'S MOTION TO DISMISS THE PETITION OF APPEAL

Further, I **CONCLUDE** that it is in the interest of justice to defer a decision on the motion to dismiss the petition in its entirety until she has been given this advisory warning to proceed no further without effective representation. Further, F.L.'s representative should be prepared to address the standing issue and the timeliness of the petitioner. If no lawful representative enters an appearance within twenty-one days

from the date of this Order, I will sign an Order dismissing the petition with prejudice for the reasons stated hereinabove. I shall not consider further substantive arguments, motions or pleadings filed by F.L. on behalf of D.L.

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.

December 20, 2024



DATE **ERNEST M. BONGIOVANNI**, ALJ

Date Received at Agency 12/20/24

Date Mailed to Parties: 12/20/24

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