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OAL Dkt. No. EDU 11301-25
Agency Dkt. No. 214-6/25

New Jersey Commissioner of Education

Order on Emergent Relief

Diana Kaiser, S.M.V., F.R., and P.L.,

Petitioners,

v.

Board of Education of the Township of Monroe, 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 and considered.

Upon review, the Commissioner concurs with the ALJ that petitioners have 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.

Accordingly, the recommended Order denying petitioners' 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: July 25, 2025
Date of Mailing: July 28, 2025

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON
EMERGENT RELIEF
OAL DKT. NO. EDU 11301-25
AGENCY DKT. NO. 214-6/25

DIANA KAISER,
S.M.V., F.R., AND P.L.,
Petitioners,
v.
BOARD OF EDUCATION OF TOWNSHIP OF MONROE,
Respondent.

Diana Kaiser, **S.M.V.**, **F.R.**, and **P.L.**, petitioners, pro se

Rita F. Barone, Esq., and **Robert M. Tosti**,[1] Esq., for respondent (Flanagan, Barone & O'Brien, LLC, attorneys)

BEFORE **MARY ANN BOGAN**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners Diana Kaiser, a teacher at the Monroe Township School District, S.M.V., and the parents of S.M.V., F.R. and P.L. (petitioners), filed a Verified Petition of Appeal (Petition) and Motion for Emergent Relief with the Commissioner of Education.

[1] Conducted oral argument on July 1, 2025.

The Office of Controversies and Disputes of the Department of Education transmitted the contested case to the Office of Administrative Law, where it was filed on June 26, 2025.

Petitioner S.M.V., an eighteen-year-old senior at Monroe Township High School (District), was denied graduation because he received a failing grade in Algebra II after he did not pass the Dynamics of Algebra II Final Exam.

Diana Kaiser, F.R., and P.L. failed to appear at the emergent hearing. The District demands that any claims related to them be dismissed.

For the reasons cited below, S.M.V.'s request for emergent relief to graduate high school shall be denied. Furthermore, claims as to Diana Kaiser, F.R., and P.L. shall be dismissed.

FACTUAL DISCUSSION

Petitioner S.M.V. disputes the District's decision that disqualified him from graduating high school. Petitioner claims that he is an English Language Learner and should have been exempt from the Dynamics of Alegra II Final Exam (math final) or provided with more accommodations when he took the math final. S.M.V. also claims that he performed better in the class than the other students in his class, and these students passed the test and qualified for graduation. S.M.V. maintains that his attempts to discuss his concerns with the District administration were unsuccessful. Furthermore, the District's action to disqualify him from graduation has disrupted his plan to enter the United States Marine Corps.

The District states, by way of certifications of Dr. Kelly Roselle, the supervisor of Language Arts, World Language, ESL/Bilingual, and Media Literacy, and Dr. Kevin Higgins, the principal of Monroe Township High School, that even though S.M.V. was provided with the appropriate accommodations for testing, the student did not pass the examination. S.M.V. was given the opportunity to retake the examination on the date of

graduation and did not earn a passing grade. S.M.V. was then advised that he could make up the lost credits by taking an online course.

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 Board of Education v. Dunellen Education Association, 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).

As set forth in N.J.A.C. 1:6A-12.1(e), N.J.A.C. 6A:3-1.6(b), and N.J.A.C. 6A:14-2.7(s), an application for emergent relief will be granted only if it meets the following four requirements:

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 interests of the parties are balanced, the petitioner will suffer greater harm than the

> respondent will suffer if the requested relief is not granted.

The moving party must demonstrate each element "clearly and convincingly." Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 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 v. DeGioia, 90 N.J. 126, 132 (citation omitted) (1982); see also N.J.A.C. 1:1-12.6(b) (citing Crowe, 90 N.J. 126, which echoes the regulatory standard for this extraordinary relief). It is well established that a moving party has the burden of proving each of the four elements of emergent relief.

Turning to the first criterion, it is well settled that relief should not be granted except "when necessary to prevent irreparable harm." Crowe, 90 N.J. at 132. In this regard, harm is generally considered irreparable if it cannot be adequately redressed by monetary damages. Id. at 132–33. Moreover, the harm must be substantial and immediate. Judice's Sunshine Pontiac, Inc. v. Gen. Motors Corp., 418 F. Supp. 1212, 1218 (D.N.J. 1976) (citation omitted). More than the risk of irreparable harm must be demonstrated. Cont'l Grp., Inc. v. Amoco Chems. Corp., 614 F.2d 351, 359 (3d Cir. 1980). The requisite for injunctive relief is 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. (citation omitted).

This action was filed after the date for graduation had passed. The respondent correctly argues that there is no immediate or irreparable harm since S.M.V. may graduate in the near future if he completes an online course that permits him to proceed at his own pace and recover the credits he needs to graduate.

For the foregoing reasons, I **CONCLUDE** that petitioner S.M.V. has not demonstrated that he will suffer irreparable harm if the requested emergent relief is not granted.

Although all four standards for emergent relief must be met, the three remaining prongs of the standards for emergent relief will be addressed.

The second requirement is that emergent relief "should be withheld when the legal right underlying plaintiff's claim is unsettled." Crowe, 90 N.J. at 133 (Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 304–05 (E. & A. 1878)). Petitioner S.M.V. asserts that he should have graduated.

As to the requirement that the right underlying the claim of a requesting party must be settled, it is clear that each school district is obligated to provide a thorough and efficient system of education 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 been granted discretionary authority at N.J.S.A. 18A:11-1(c) and (d) to adopt rules for the management of the public schools of the district, and to perform all acts and do all things necessary for the lawful and proper conduct of the public schools of the district.

In general, a board of education's actions are entitled to a presumption of lawfulness and good faith. Where board actions are challenged, the challenger bears the burden of proving that such actions were unlawful, arbitrary, capricious, or unreasonable. Schuster v. Bd. of Educ. of Montgomery Twp., 96 N.J.A.R.2d (EDU) 670, 676 (citing Schinck v. Westwood Bd. of Educ., 60 N.J. Super. 448 (App. Div. 1960), and Quinlan v. Bd. of Educ. of N. 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. This standard has been defined by the New Jersey courts as having no rational basis. Piccoli v. Bd. of Educ. of Ramapo Indian Hills Reg'l Sch. Dist., EDU 01839-98, Initial Decision (January 22, 1999) (citing 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)), adopted, Comm'r (March 10, 1999), https://njlaw.rutgers.edu/collections/oal/.

In the absence of a clear showing of abuse of discretion, the Commissioner of Education will not substitute his or her own judgment for that of the board of education.

Massaro v. Bd. of Educ. of Bergenfield, 1965 S.L.D. 84, 85. In Kopera v. Board of Education, 60 N.J. Super. 288, 294 (App Div. 1960), the Appellate Division noted "the well-established rule that action of the local board [of education] which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives."

Here, there is no settled legal right to have the Commissioner decide that S.M.V. should have graduated.

Based upon the foregoing, I **CONCLUDE** there is a rational basis for the District's action and that the right underlying petitioner S.M.V.'s claim is settled against the petitioner's position.

Under the third 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)). Here, the likelihood of S.M.V.'s success on the merits is unclear.

As previously stated, "action of the local board [of education] which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives." See, Kopera 288, 294.

Here it has not been demonstrated that the actions of the school district to disqualify S.M.V. from graduation were arbitrary, or without a rational basis. I **CONCLUDE** that petitioner S.M.V. has not demonstrated a likelihood of success on the merits. Accordingly, I **CONCLUDE** that the District's decision not to graduate S.M.V. was not arbitrary, capricious, or unreasonable.

The final requirement relates to the equities and interests of the parties. Crowe, 90 N.J. at 134. Petitioner S.M.V. has not demonstrated that when the equities and interests are balanced, S.M.V. will suffer greater harm than the respondent if the relief is not granted. N.J.A.C. 6A:3-1.6(b)(4).

Petitioner S.M.V. may make up his lost credit by participating and completing a self-paced online course and qualifying for graduation.

I **CONCLUDE** that S.M.V. has failed to show that when the equities and interests of the parties are balanced, S.M.V. will suffer greater harm than the respondent will suffer if the requested relief is not granted. While S.M.V.'s post-graduation plan to enlist in the Marines is delayed, the school district has an obligation to ensure that all students are qualified to graduate.

Therefore, I **CONCLUDE** that petitioner S.M.V.'s request for emergent relief must be denied.[2]

I further **CONCLUDE** that any and all claims filed by Diana Kaiser, F.R., and P.L. shall be dismissed with prejudice.

ORDER

For the reasons set forth above, I hereby **ORDER** that petitioner S.M.V.'s request for emergent relief is **DENIED**.

I also **ORDER** that any and all claims filed by Diana Kaiser, F.R., and P.L. are **DISMISSED**.

This order on application for emergency relief shall remain in effect until the Commissioner makes a decision as to whether or not he will return the case for a decision on the merits in this matter.

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

[2] This order does not preclude a plenary hearing on the merits of the petition as to S.M.V.

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.

July 2, 2025
DATE

MARY ANN BOGAN, ALJ

MAB/nn
c: Clerk OAL-T