



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION ON
EMERGENT RELIEF

OAL DKT. NO. EDS 07528-18

AGENCY DKT. NO. 2018 27918

J.S. ON BEHALF OF R.M.,

Petitioners,

v.

**RAMAPO INDIAN HILLS REGIONAL HIGH
SCHOOL BOARD OF EDUCATION,**

Respondent.

J.S., for petitioners, pro se

Vittorio La Pira, Esq. for respondent Ramapo Indian Hills Regional High School
Board of Education (Fogarty & Hara, attorneys)

Record Closed: May 30, 2018

Decided: May 31, 2018

BEFORE **EVELYN J. MAROSE**, ALJ:

J.S., on behalf of R.M., filed a request for emergent relief with the Department of Education, Office of Special Education (OSE). J.S., who is the R.M.'s mother, asserted that R.M. was denied participation in an extracurricular activity by respondent, the Ramapo Indian Hills Board of Education (District). The OSE transmitted the matter to

the Office of Administrative Law (OAL), where it was filed on May 24, 2018, and scheduled for oral argument on June 1, 2018. In accordance with J.S.'s request, oral argument was moved to the earlier date of May 30, 2018. The parties submitted papers in support of, in opposition to, and in reply to opposition of the requested emergent relief. Oral argument was conducted on May 30, 2018. The record remained open until the end of the oral argument day, for submission by respondent of additional information requested by the undersigned, with provision of a copy of the information to J.S.

FACTUAL DISCUSSION

R.M. is a fifteen-year old freshman student, who is classified under the category of Special Learning Disability. R.M. filed an application to run for Sophomore Student Council President for the upcoming 2018-19 school term. The District determined that R.M. was ineligible to run for that position because during the second marking period of the 2017-18 school term, R.M. earned a "D+" in Math.

After being informed of his ineligibility, R.M. sought relief from the Student Council Appeal Committee (Appeal Committee). However, the Appeal Committee affirmed the District decision. The District and Appeal Committee cited the written "Election Procedures", which were provided to all students interested in running for office, as part of an "Election Package." [please add this footnote—The District acknowledged that it does not post the eligibility criteria for class council elections on its website. Instead one week before the date for petitions, the District notifies students and parents via Schoology, the District's online communication platform, that the instructions and qualifications packet with the eligibility criteria are available for download.) In particular, they relied upon the first provision concerning "Qualification to Run for Office," which detailed one of the qualifications to be the following:

A "C" or better average in each class in the preceding two marking periods and the current marking period of the election. This means each individual class must have an average of a "C" or better. This does not mean a cumulative average of all classes. A letter grade of a "D" or "F" appearing on the report card during the current marking period or the two previous marking periods is not allowed.

LEGAL DISCUSSION AND CONCLUSIONS

As argued by the District, an emergent relief application may be entertained if it concerns issues regarding a break in the delivery of services, disciplinary action, placement pending the outcome of due process proceedings, or graduation or participation in graduation ceremonies. N.J.A.C. 6A:14-2.7(r)(1)(i)-(iv). This matter concerns M.R.'s eligibility to run for Sophomore Class Council which, as noted by petitioner, is an extra-curricular activity. Accordingly, I **CONCLUDE** that petitioners' application for emergent relief cannot be entertained, and must be denied. The fact that the requested relief was sent to the OAL by the OSE for hearing does not support any determination to the contrary.

However, were emergent relief appropriate, I also **CONCLUDE** that petitioners cannot meet their burden in accordance with N.J.A.C. 1:1-12.6 and as set forth by the Supreme Court in Crowe v. DeGioia, 102 N.J. 50 (1986), as follows:

The judge may order emergency relief if the judge determines from the proofs 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 success 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 relief is not granted.

A moving party must, clearly and convincingly, satisfy all four prongs of the Crowe v. DeGioia standard to establish an entitlement to emergent relief. D.S & K.L. o/b/o M.S. v. Winslow Twp. Bd of Educ., OAL Dkt. No. EDS 15481-13 (Nov. 1, 2013), quoting Waste Mgmt. of N.J. Inc. v. Union Cnty. Utils. Auth., 399 N.J. Super

508, 520 (App.Div.) 2008) In this matter I CONCLUDE that petitioners have not satisfied any of the four prongs.

The Commissioner has repeatedly held that students do not suffer irreparable harm if they are prohibited from participating in an extracurricular activity. S.L. o/b/o A.L. v. Bd of Educ of the Twp. Of West Orange, OAL Docket No. Edu 1729-03 (March 11, 2003). In this matter, R.M. wants to run for a high school class officer position, which petitioners acknowledges is an extracurricular activity. In addition, harm is irreparable when there can be no adequate after-the-fact remedy in law or in equity. Nabel v. Bd. of Educ. of Hazlet, EDU 8026-09, Final Decision on Application for Emergent Relief, (June 24, 2009) <<http://njlaw.rutgers.edu/collections/oal/>>. At present R.M.'s second marking period math grade is only foreclosing his eligibility to run for sophomore class officer. He continues to have the opportunity to run for junior or senior class officer and/or homeroom representative. Accordingly, I **CONCLUDE** that petitioner has not met the burden of demonstrating that R.M. will suffer irreparable harm since he can run for class officer again during his high school career.

I also **CONCLUDE** that petitioner has failed to demonstrate that the law is well-settled in R.M.'s favor or that petitioner has a likelihood of success on the merits. In fact, the law is well-settled in favor of respondent, which has broad discretion to take the actions needed to effectively operate its public schools and to protect the health, safety and welfare of its students. Further, it has been consistently held that participation in an extracurricular event is a privilege and not a right. See R.C., supra; Nabel, supra; Buonasorte v. Bd. of Educ. of Mainland Regional High School District, EDU 8012-09, Order on Application for Emergent Relief, (June 19, 2009), adopted, Comm'r (June 19, 2009) <<http://njlaw.rutgers.edu/collections/oal/>>. It is equally settled that actions within a school board's authority are entitled to a presumption of validity and will not be overturned in the absence of an affirmative showing that the decision was arbitrary, capricious or unreasonable. Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581 (1966). The exercise of a school board's discretionary powers may not be disturbed unless shown to be "patently arbitrary, without rational basis or induced by improper motives." Kopera v. West

Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). In addition, 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 Env’tl. Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff’d, 131 N.J. Super. 37 (App Div. 1974). I have carefully reviewed the voluminous documents submitted by the parties and have considered the arguments made. Simply put, petitioners have failed to demonstrate that the District’s decision to include an academic requirement of a grade “C” or above as a qualification for running for class officer is arbitrary, capricious or unreasonable. Further, there has been no credible evidence presented that the decision lacks a rational basis or was induced by improper motives or that it is being applied in a discriminatory manner toward R.M.

Finally, in balancing the equities and interests of the parties, I **CONCLUDE** that the scales tip in favor of the District and militate against granting the relief sought. The interest of R.M. is less weighty than the responsibilities of the District because participating in a student council election is a privilege. While I appreciate the personal significance of what running for a class officer might have for R.M. and his family, R.M.’s inability to participate in such an event during his sophomore year does not rise to the severity of harm, when weighing the interests involved, to warrant the extraordinary relief requested. On the other hand, the District has a substantial and valid interest in ensuring the orderly operation of the activities of its schools, and of equally applying a qualification for eligibility to run for class officer to all students. The District has credibly argued that other students with a desire to run for class officer might not have applied if all their grades were not a “C” or above during the specified marking periods noted for eligibility. Further, the District represented that there was at least one other student that was deemed ineligible to run for student council this year based upon the “C” grade requirement at issue. The District could not equitably apply and/enforce an academic eligibility for other students, while excusing R.M. from such a qualification.

Based upon the foregoing, I **CONCLUDE** that petitioner is not entitled to the emergency relief sought and the request for emergent relief pursuant to N.J.A.C. 6A:14-2.7(s) must be denied.

ORDER

It is **ORDERED** that petitioner's request for emergent relief is hereby **DENIED**.

Please add correct boiler plate-- THIS ISSUE NOT GOING ON TO PLENARY HEARING.

DATE

EVELYN J. MAROSE, ALJ

Date Mailed to Parties:

sj