

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION ON

EMERGENT RELIEF

OAL DKT. NO. EDS 08561-17

AGENCY DKT. NO. 2017 26449

L.B. ON BEHALF OF S.C.,

Petitioner,

v.

HAMILTON TOWNSHIP BOARD OF EDUCATION,

Respondent.

L.B., petitioner, pro se

Michael Pattanite, Jr., Esq., for respondent (Leneck, Socey, Formidoni, Giordano,
Cooley, Lang, & Casey, Counselors at Law)

Record Closed: June 21, 2017

Decided: June 22, 2017

BEFORE **TAMA B. HUGHES**, ALJ:

STATEMENT OF THE CASE

On June 12, 2017, a Committee (“Committee”) of the Hamilton Township Board of Education (“BOE”) held a disciplinary hearing against S.C. (“S.C.”) based upon a charge that S.C. engaged in harassment, intimidation and bullying. On June 13, 2017, the BOE voted to accept the Committee’s findings and recommended discipline which included suspension of school privileges, including participation in graduation from Nottingham

High School (“NHS”). L.B. (“L.B.” or “petitioner”), S.C.’s mother, seeks emergent relief to allow S.C. to participate in the NHS graduation ceremony on June 23, 2017.

PROCEDURAL HISTORY

Petitioner filed this Emergent Petition with the Office of Special Education Programs (OSEP) on June 19, 2017. OSEP transmitted the matter to the Office of Administrative Law (OAL), where it was filed on June 19, 2017, and scheduled for oral argument on June 21, 2017. On June 21, 2017, the matter was heard at the OAL offices located in Quakerbridge, New Jersey after which the record was closed.

FACTUAL DISCUSSION AND FINDINGS

S.C. is an eighteen-year-old senior at NHS who is classified with a Specific Learning Disability (“SLD”). On April 3, 2017, S.C. wrote an article which was subsequently posted online entitled “Nottingham Student(s) Breaks Mercer County Body Count Record” (“R-1, Exhibit A”) The article was penned under the name “Jerry Zahn” however, written by S.C. The article contained several derogatory remarks regarding female students at NHS that were sexual in nature. S.C. received a three-day in-school suspension for authoring the article.

A couple of weeks later, a second article was posted online entitled, “The Transition” which targeted a NHS transgender student. (“R-1, Exhibit B”). The article was penned under the name “Ben Frost” however, written by S.C. Due to S.C.’s conduct violating the “Student Discipline/Code of conduct (M)” (“Disciplinary Policy”) – specifically Harassment, Intimidation and Bullying (“HIB”), S.C. was suspended for five days. The suspension was subsequently changed to an indefinite suspension and S.C. was placed on home instruction. Additionally, given the seriousness of the infraction, the matter was referred to the Board of Education (“BOE”) for a disciplinary hearing.

Prior to the disciplinary hearing, on May 30, 2017, a Manifestation Determination was performed to determine whether S.C.’s behavior was a result of or caused by his

disability. Based upon this evaluation, it was determined that S.C.'s behavior was not a manifestation of his disability. ("R-1, Exhibit E").

On June 12, 2017, a Committee of the BOE ("Committee") conducted a hearing based upon the charge that S.C. engaged in harassment, intimidation and bullying with the posting of "The Transition". On the hearing date, the Committee heard testimony from NHS principal Frank Ragazzo and the Director of Student Services Program, Marta Audino ("Audino"). The Committee also received an information packet which included among other things, the two articles authored by S.C. and letters from S.C.'s psychiatrist. ("P-4). S.C. also spoke to the Committee at which time he expressed his remorse and apologized for his behavior. ("P-8", "R-1 Exhibit E").

The following day, June 13, 2017, the BOE as a whole, considered the transcript of the Committee hearing, the documents and the Committee recommendations. ("R-1, Exhibit E"). The BOE voted to accept the Committee's findings and recommended discipline. The Board did not credit the contention that S.C.'s conduct was related to his disability and/or medication. The BOE continued S.C.'s suspension for the remainder of the school year with suspension of school privileges which included attending graduation and graduation functions. S.C. was to arrange the pick up of his diploma at another time and date. ("R-1, Exhibit D").

The preceding statements are not in dispute and are hereby found as **FACT**.

B.B. ("B.B."), a pastor, testified that she is S.C.'s grandmother and helped to raise him. B.B. stated that S.C. was a friendly and gifted child who loves music and writing. B.B. further stated L.B. worked a lot and at one point, L.B. and S.C. moved in with her. B.B. testified that they struggled to make S.C. feel normal. Given his talents, S.C. was encouraged to write. B.B. felt that it was the influence of others that caused S.C. to write the articles in question.

S.C. ("S.C.") testified that he was prescribed Concerta in mid-April 2017, after the first incident, however stopped the medication in May because he was experiencing

restlessness, depression, anxiety and aggression. S.C. admitted to writing both articles however, stated that he was encouraged to write the second article by his friend J.S. as it was “ground breaking” and something to talk about. S.C. stated, “I was encouraged to write it – in a wrong way.” When he wrote the second article, his mind was on “trips”. S.C. stated that he was having emotional trips, depression and aggression and anger (not violent) towards other individuals during that period of time.

On cross-examination, S.C. admitted that the first article was insulting towards females and that the second article was harassing. S.C. further admitted that the subjects in both of his articles never did anything to him, he just wrote the articles. S.C. stated that he understood that the school has rules and that if they are violated, then a student could get denied participation in school activities.

S.C. testified that he is going to Rider College in the fall and that graduation symbolizes a culmination of the hard work over the past years. He does not want to look back when he is older and have that missing – it is “pretty important”. S.C. stated that he has never had any trouble in school before and wanted to apologize to the person who he wrote the second article about, however, has not been allowed to do so.

R.B. (“R.B.”) testified that he is S.C.’s uncle. R.B. has over forty-three years in the educational field, holding various positions over the years which included teaching, vice principal, principal and super-intendent of a large school district. R.B. stated that S.C.’s actions were an anomaly given his religious background, upbringing, and community service. R.B. stated that it was S.C.’s birthright to walk with his class as it signifies his achievements and moving on.

Marta Audino (“Audino”), testified that she is the Director of Student Services and Programs for Hamilton Township School District for the past two and a half years and in the education field for over nineteen years. As part of her duties and responsibilities, she is involved in student disciplinary matters and sits in on all BOE hearings. Audino testified that when a student disciplinary matter goes before the BOE, the Board is

provided documents as it relates to the offense, the student's grades, a report from the principal or staff outlining what happened.

Audino stated that in S.C.'s case, the articles were violative of the Disciplinary Policy, specifically - harassment, intimidation and bullying ("HIB"). Audino testified that she was present at the S.C.'s disciplinary hearing. She stated that S.C. seemed remorseful for his actions and understood that what he had done was wrong. While documents were presented regarding S.C.'s disability and medical treatment, neither S.C.'s disability or medications were the cause of his conduct. Audino discussed the Manifestation Determination explaining that that when a student is classified and suspended for ten days or more, a determination is made to see if the behavior is due to the student's disability. In S.C.'s case, the BOE looked at everything and determined that S.C.'s disability was not the cause of the conduct in question.

Audino testified that under the disciplinary policy, when a student falls "Out of Good Standing" as in S.C.'s case, they lose privileges which include participation in graduation ceremonies.

After hearing the testimony presented and the documentary evidence submitted, and having had an opportunity to observe the witnesses and to assess their credibility, in addition to the findings of **FACT** above, I **FIND** that respondent has a Disciplinary Policy which has been adopted by NHS. I **FIND** that under the Disciplinary Policy, HIB is specifically prohibited; subject to suspension; and the matter may be referred to the BOE for disciplinary action. I **FIND** that the disciplinary policy states that students may fall "Out of Good Standing" based upon a single incident. I **FIND** that under the disciplinary policy, when a student is out of good standing, school privileges are denied which include participation in a graduation ceremony. I **FIND** that S.C. was suspended and placed on home instruction based upon the second article published by S.C., and the matter was referred to the BOE for a hearing.

LEGAL DISCUSSION AND CONCLUSIONS

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). N.J.A.C. 6A:14-2.7(s) sets forth the standards governing motions for emergent relief and instructs in pertinent part:

Emergent relief may be granted if the administrative law judge determines from the proofs that:

- i. The petitioner will suffer irreparable harm if the requested relief is not granted;
- ii. The legal right underlying the petitioner's claim is settled;
- iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
- iv. 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.

See also Crowe v. DeGioia, 90 N.J. 126 (1982). Petitioner must satisfy all four prongs in order to establish entitlement to emergent relief.

Harm is irreparable when there can be no adequate after-the-fact remedy in law or in equity; or where monetary damages cannot adequately restore a lost experience. 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/>>. In short, the opportunity to participate in the graduation ceremony is an event that, once missed, cannot be regained since it is a once in a lifetime event. See K.H. o/b/o M.G. v. Kingsway Regional Bd. of Educ., EDS 6903-11, Decision on Emergent Relief, (June 17, 2011) <http://njlaw.rutgers.edu/collections/oal/html/initial/eds06903-20_1.html>. R.C. o/b/o M.C. v. Pemberton Twp. Bd. of Educ., EDS 4212-02, Decision on Emergent Relief, (June 17, 2002) <<http://njlaw.rutgers.edu/collections/oal/>>. I **CONCLUDE** that petitioner has met the burden of demonstrating that S.C will suffer irreparable harm.

However, the real issue in a case such as this is whether the petitioner is entitled to participate in the graduation ceremony. 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 school and to protect the health, safety and welfare of its students. Local school boards have been expressly charged with developing, adopting, and implementing policies prohibiting harassment, intimidation, or bullying on school grounds which include the consequences for failure to comply with that policy. N.J.A.C. 6A:16-7.7. It has been consistently held that participation in a graduation ceremony 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, including establishing policies for student discipline, 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). Further, 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). 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 documents submitted by the parties and have considered the testimony offered and the arguments made. Simply put, petitioner has failed to demonstrate that S.C. possesses a right to attend the graduation ceremony and that the decision disallowing his participation was arbitrary, capricious or unreasonable. Further, there has been no demonstration that the decision lacks a rational basis or was induced by improper motives.

In this matter, S.C. authored and published two highly derogatory and harassing articles that specifically singled out students at NHS. Given the content of the second article, S.C. was indefinitely suspended and the matter was referred to the BOE for a disciplinary hearing. After considering all the evidence and testimony provided, the BOE determined that S.C.'s conduct was not due to his disability or medications. The BOE further determined that the goals of punishment, deterrence and rehabilitation would be effectuated by S.C.'s removal from the general education program through the school year and suspension of school privileges.

Based on the foregoing, I **CONCLUDE** that petitioner has failed to demonstrate that S.C. has a settled right to participate in graduation and therefore failed to demonstrate a likelihood of success on the merits.

Finally, in balancing the equities and interests of the parties, the scales tip in favor of the District and militate against granting the relief sought. The right of petitioner is less weighty than those of the respondent because participating in the graduation ceremony is a privilege. I appreciate the personal significance of the ceremony in terms of its acknowledgment of academic achievement, S.C.'s struggle to obtain his high school diploma, and the opportunity for family members to express their pride. However, S.C.'s inability to participate in such an event does not rise to the severity of harm, when weighing the interests involved, to warrant the extraordinary relief requested. On the other hand, the respondent has a substantial and valid interest in ensuring the orderly operation of the activities of its schools. The balance weighs in favor of the respondent over the graduating student because such a ruling would amount to an "undermining of authority" that "would have a far reaching effect on the school district in its dealings with its student." T.J. o/b/o R.D. v. Pennsauken Township Board of Education, OAL DKT. No. EDU 8838-15. On balance, this interest significantly outweighs the harm SC. will suffer from not participating in the event.

Based on the foregoing, petitioner has failed to satisfy three of the four prongs required to be entitled to the emergent relief sought. Therefore, 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

Having concluded that the petitioner has not satisfied three of the four requirements for emergent relief, the petitioner's request for emergent relief is **DENIED**.

This decision on application for emergency relief resolves all the issues raised in the due process complaint; therefore, no further proceedings in this matter are necessary. This decision on application for emergency relief is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

June 22, 2017
DATE

TAMA B. HUGHES, ALJ

Date Received at Agency: _____

Date Sent to Parties: _____

/vj

APPENDIX

WITNESSES

For petitioner:

B.B.

S.C.

R.B.

For respondent:

Audino

LIST OF EXHIBITS

For petitioner:

- P-1 Medical document (1 page)
- P-2 Prescription (1 page)
- P-3 Letter, dated May 30, 2017 – St. Francis Medical Center (1 page)
- P-4 Letter, dated June 1, 2017 – St. Francis Medical Center (1 page)
- P-5 Patient information Leaflet – (3 pages)
- P-6 Letter from St. Francis Medical Center (2 pages)
- P-7 Accommodations/certificates (9 pages)
- P-8 Letter from S.C. (1 page)

For respondent:

- R-1 (9 pages)
 - Exhibit A Article “Student Breaks Mercer County Body Records” (2 pages)
 - Exhibit B Article “The Transition” (2 pages)
 - Exhibit C Student Discipline/Code of Conduct (21 pages)
 - Exhibit D BOE Letter, dated June 14, 2017 (2 pages)
 - Exhibit E BOE Committee transcript (12 pages)