

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION ON
EMERGENT RELIEF

OAL DKT. NO. EDS 08816-18

AGENCY DKT. NO. 2018-28311

D.F. ON BEHALF OF J.R.,

Petitioners,

v.

MIDDLETOWN TOWNSHIP BOARD OF EDUCATION,

Respondent.

D.F., on behalf of **J.R.**, pro se

Joseph Castalucci, Esq. for respondent (Methfessel and Werbel, attorneys)

Record Closed: June 22, 2018

Decided: June 22, 2018

BEFORE **SARAH G. CROWLEY**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

By a request for emergent relief petitioner seeks to have her son, J.R. participate in a graduation ceremony scheduled for June 25, 2018. Respondent, Middletown Township Board of Education (Middletown) opposes this request. The petitioner has acknowledged that J.R. has two courses to make-up over the summer and does not seek a diploma, only to have J.R. walk with his classmates at graduation. This matter was transmitted to the Office of Administrative Law (OAL) on June 21, 2018, for an emergent relief hearing and a final determination in accordance with 20 U.S.C.A. §1415 and 34 C.F.R. §§300.500 to 300.587, and the Director of the Office of Administrative

Law assigned me to hear the case pursuant to N.J.S.A. 52:14F-5. The emergent relief hearing was scheduled for oral argument on June 22, 2018. A hearing was held and argument made by both, the petitioner and the respondent, and the record closed. Exhibits were submitted by both parties. No papers were submitted by the respondent.

FACTUAL DISCUSSION

For purposes of deciding this request for emergent relief, the following facts which form the basis for the determination herein, and are not in dispute. J.R. is a senior at Middletown High School. He receives special education and related services under the category of specific learning disability. No information or a copy of the IEP for J.R. was provided by either party. There is no dispute that although a senior, J.R. has not met the requirements for graduation, as he is ten credits short of the graduation requirements. In addition, he has not taken his final exams. The details of why he was not permitted to take his final exams were not clear, but he is scheduled to take them on Tuesday and Wednesday, following graduation.

It remains unclear from the argument from counsel for Middletown whether the basis for the refusal to allow J.R. to walk with his graduating class is predicated on absences, failing classes, or having classes to make-up this summer. A letter was provided in April which advised J.R. that in order to graduate he had to attend and pass his classes and go to summer school. There is no documentation of the final basis for the decision not to allow him to walk with his class. It is undisputed that the petitioner is ten credits shy of graduation requirements, and has to complete his final exams for this term. Thus, his final grades will not be determined until after he takes his remaining exams next Tuesday and Wednesday. However, the petitioner does not seek a diploma, only to allow her son to walk in graduation with his class.

There was an issue regarding J.R.'s attendance record, which included many infractions for "cutting class." It does not appear to be disputed that these infractions were a result of J.R. going to the bathroom and staying in there too long. He was disciplined on multiple occasions for being in the bathroom for too long, and these infraction ultimately lead to suspensions. However, there were documented medical

reasons for frequent use of the bathroom and missing classes. The records submitted by the petitioner, which had been provided to the school, demonstrate that J.R. had an abdominal issue which led to at least six visits to the pediatrician. Moreover, the records are consistent with a possible need to frequent the bathroom. It appears that notwithstanding the documented medical condition, disciplinary action was taken against J.R. for using the bathroom too frequently or for too long. There are no other disciplinary infractions against J.R.

With respect to the letter of April 9, 2018, the petitioner does not challenge the receipt of this document or the need to make-up certain course work, and summer work. Moreover, the petitioner does not allege that he is entitled to a diploma. He merely seeks to “walk” with his class at graduation. Middletown provided no policy which would prohibit a student from walking with the class. Moreover, they did not provide a copy of any policy which indicates how many absences would be permitted or if absences attributable to a valid medical reason would be excused. In fact, it is unclear what the specific reasons for precluding J.R. from walking with his class are. Accordingly, I **FIND** no legitimate legal or factual basis to refuse to allow J.R. to walk with his class at graduation.

LEGAL DISCUSSION

The standards to be met by the moving party in an application for emergent relief in a matter concerning a special needs child are set forth in N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A-14-2.7(m)1. See also Crowe v. DeGoia, 90 N.J. 126, 132-34 (1982). They provide that a 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 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 meet each prong of the test. Also, relevant to this matter is N.J.S.A. 18A:7C-5.2(a), otherwise known as "Alicia's law" which provides that a special education student, whose high school career will extend beyond graduation, shall be allowed to participate in commencement ceremonies Enacted in 2008, the legislative statement to the bill notes:

...this bill will ensure that young people in (similar situations) will be able to join the friends and classmates with who so many important childhood milestones have been shared in celebrating this poignant rite of passage.

Applying the above to the within matter, I **FIND** that J.R. will suffer irreparable harm if not allowed to attend his graduation ceremony. As evidenced by the public policy set forth in Alicia's law, the ceremony is a unique event in a student's lifetime, and one in which a special needs student, in particular, is entitled to share with his peers. Similarly, Alicia's law underlies the second and third prongs of the test for emergent relief. J.R. is entitled to the application of the statute as he is presumptively entitled to a continuation of special education services as he has not graduated. What those programs and services will be should be the subject of an IEP meeting, or a due process hearing if necessary. Due to the application of that statute, J.R. has prevailed on the likelihood of success and the underlying prongs of the emergent relief test. If the statute applies to a student, it provides that a school district "shall" permit the student "to participate in commencement ceremonies with his graduating class."

The final prong of the test requires a finding that the J.R. will suffer greater harm than the respondent. The irreparable harm to be suffered by J.R. is unique and personal to him and one which has been recognized by the legislature in its enactment of Alicia's law. Not allowing him to walk with his peers is a greater harm than a perceived negative impact on Middletown's policy, which remains unclear.

Under all of the foregoing, I **GRANT** the request for emergent relief to allow J.R. to participate in Monday's, June 25, 2018, graduation ceremony, albeit to receive a blank diploma.

DECISION AND ORDER

For the reasons stated above, I hereby **ORDER** that petitioners' application for emergent relief to permit J.R. to participate in the graduation ceremony on June 25, 2018, is hereby **GRANTED** and the Middletown Township Board of Education shall permit J.R. to participate in graduation ceremony.

This decision on application for emergency relief is final pursuant to 20 U.S.C. § 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. § 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, 2018

DATE

SARAH G. CROWLEY, ALJ

Date Received at Agency

June 22, 2018 (emailed)

Date Mailed to Parties:

June 22, 2018 (_____)

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APPENDIX

WITNESSES

For Petitioners:

D.F.

For Respondent:

None

EXHIBITS

For Petitioners:

- P-1 Screenshot of New Jersey Minimum Graduation Requirement
- P-2 Doctor's Note for May 24, 2018
- P-3 Doctor's Note for May 21, 2018
- P-4 Doctor's Note for May 10, 2018
- P-5 Doctor's Note for March 28, 2018 through April 9, 2018
- P-6 Doctor's Note for February 9, 2018 through February 19, 2018
- P-7 Doctor's Note for September 14, 2018
- P-8 Medical Records for J.R.
- P-9 Medical Records from May 10, 2018
- P-10 Medical Records from May 21, 2018 visit
- P-11 Medical Records from May 24, 2018 visit
- P-12 Patient Discharge records from May 17, 2018
- P-13 Letter from attorney regarding court ordered deposition
- P-14 Letter to Middletown from J.R.'s mother dated June 8, 2018

For Respondent:

- R-1 Letter to J.R. regarding credits dated April 9, 2018
- R-2 Letter from Middletown to J.R. regarding classes dated April 9, 2018
- R-3 Print-Out of Website