

EDU # 7381-00  
C # 304-00  
C # 219-01  
SB # 60-00 and 27-01 (consolidated)

P.H. and P.H., on behalf of minor child, M.C., :  
PETITIONERS-APPELLANTS, :  
V. : STATE BOARD OF EDUCATION  
BOARD OF EDUCATION OF THE BOROUGH : DECISION ON MOTIONS  
OF BERGENFIELD, BERGEN COUNTY, :  
DAVID C. HESPE, COMMISSIONER, AND :  
NEW JERSEY STATE BOARD OF :  
EDUCATION, :  
RESPONDENTS-RESPONDENTS, :  
AND :  
P.H. and P.H., on behalf of minor child, M.C., :  
PETITIONERS-APPELLANTS, :  
V. :  
BOARD OF EDUCATION OF THE BOROUGH :  
OF BERGENFIELD, BERGEN COUNTY, :  
RESPONDENT-RESPONDENT. :  
\_\_\_\_\_ :

Decided by the Commissioner of Education, September 15, 2000

Decision on motion by the Commissioner of Education, January 22, 2001

Decision on motion by the Commissioner of Education, January 26, 2001

Decided by the Commissioner of Education, July 16, 2001

Decision on motion by the State Board of Education, September 5, 2001

For the Petitioners-Appellants, Education Law Center (Elizabeth Athos, Esq., of Counsel)

For the Respondent-Respondent Board of Education of the Borough of Bergenfield, Schenck, Price, Smith & King, L.L.P. (Joanne Butler, Esq., of Counsel)

For the Respondent-Respondent David C. Hesse, Commissioner, and New Jersey State Board of Education, Todd Schwartz, Deputy Attorney General (John J. Farmer, Jr., Attorney General of New Jersey)

On September 5, 2001, we directed that emergent relief pending our decision on the merits of the underlying case be afforded to M.C., a sophomore at Bergenfield High School who had been permanently expelled by the Bergenfield Board without any provision for an alternate education program. Specifically, we directed the Bergenfield Board to immediately assess M.C.'s alternative education needs and to effectuate M.C.'s placement in an appropriate alternative education program. Although the relief we directed was to be effective as of the first day of the 2001-02 school year, we directed that in the event that M.C.'s placement in an alternative program could not be effectuated by that date, the Bergenfield Board was to provide M.C. with home or out-of-school instruction until an appropriate placement could be arranged.

On September 10, 2001, the Bergenfield Board sought a stay of our decision and also moved for "leave to file an interlocutory appeal." In support of its motion, the Board argued that petitioners had not demonstrated any entitlement to interim relief and had not shown that there was a likelihood that they would prevail on the merits of the underlying case. It further argued that M.C. would not suffer any irreparable harm because he would be able to obtain a high school diploma by applying to another school

district, enrolling in an adult high school program or by being home-schooled. It also contended that on balance, the equities favored denying the relief because the Board would be harmed by "having to expend funds upon a former student who had forfeited his right to an education by committing a violent act toward another student."

On September 13, 2001, petitioners moved for enforcement of the State Board's decision of September 5, 2001. In support of their motion, petitioners submitted a certification executed by their counsel which indicated that the Bergenfield Board had not yet contacted petitioners concerning implementation of the State Board's decision, that no attempt had been made to assess M.C.'s alternative education needs, and that M.C. had neither been offered nor afforded home instruction.

Upon the request of the Director of the State Board Appeals Office, the Bergenfield Board clarified on September 18, 2001 that it sought reconsideration of our decision by its motion of September 10, rather than leave to appeal.

On September 27, 2001, petitioners filed their answer to that portion of the Board's motion seeking reconsideration. In their answer, petitioners advised us that the Bergenfield Board had commenced providing home instruction to M.C. on September 25, 2001, and had scheduled a meeting for September 28 to assess M.C.'s alternative education needs.

In considering the motions filed by the parties, we cannot ignore the fact that despite the clear directive in our decision of September 5, the Bergenfield Board did not begin to provide M.C. with any educational services until September 25. We are appalled at the Board's recalcitrance in the face of our decision. We are also taken aback by the fact that the Bergenfield Board of Education does not appear to grasp the

fact that any child suffers irreparable harm when deprived of an education for any prolonged period. Such an attitude flies in the face of the responsibility entrusted to district boards of education by the Legislature and the critical role played by a district board in insuring that each child domiciled in its district is provided with an education that will equip him or her to function as a productive worker and citizen in our democratic society. E.g. Abbott by Abbott v. Burke, 119 N.J. 287 (1990). Moreover, from an educational policy perspective, such an attitude is shortsighted.

Again, our decision of September 5 was clear. As set forth therein, we had no hesitation in affording interim relief to M.C. As we expressed it in our decision:

...we recognize our broad responsibilities for insuring the effectuation of the constitutional mandate for a thorough and efficient system of free public education "for the instruction of all children in the State between the age of five and eighteen years." New Jersey Constitution, Article VIII, Sec. IV, para. 1. See, e.g., In re Upper Freehold Reg'l School Dist., 86 N.J. 265, 273 (1981); Robinson v. Cahill, 62 N.J. 473, 509 n.9 (1973); Jenkins v. Morris Tp. School Dist., 58 N.J. 483, 494 (1971). It would be an abrogation of our responsibility were we to fail to insure that such instruction is provided to a child who is the subject of litigation before the State Board during the pendency of the matter. Furthermore, we find it obvious that a child such as M.C. suffers irreparable harm when he is deprived of an education for even a brief period of time. In fact, given M.C.'s academic record as stipulated by the parties, it is a certainty that he will suffer such harm if his education is disrupted at this point. The nature of the harm that M.C. would suffer were we to deny him relief far outweighs that which the Board may experience as the result of being required to provide him with an education during the pendency of the appeal in this case. In addition, it is clear from an educational policy perspective that the public interest is best served by continuing M.C.'s education during that period.

State Board's Decision, slip op. at 4-5.

Reconsideration of our decision reinforces our conclusion that the Bergenfield Board must provide M.C. with an alternative education placement during the pendency of the underlying case. Furthermore, the Board's failure to even begin the process of effectuating M.C.'s placement in an appropriate alternative education program until September 28 makes it imperative that the decision now be fully implemented immediately. We therefore deny the Board's motion for a stay and direct that the Commissioner of Education take all measures necessary to ensure that the Board of Education of the Borough of Bergenfield does in fact comply immediately with our decision of September 5.

October 3, 2001

Date of mailing \_\_\_\_\_