

**State of New Jersey**

DEPARTMENT OF EDUCATION
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May 3, 2016

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Dear Parties:

J.L., on behalf of her minor child, T.D. V. BOARD OF TRUSTEES OF THE NORTH STAR ACADEMY CHARTER SCHOOL, ESSEX COUNTY, AGENCY DKT NO. 100-4/16, OAL DKT NO. EDU 05044-16, COMMISSIONER DECISION NO. 167-16E

We are enclosing a copy of the emergent relief decision of the Commissioner of Education dated May 3, 2016 in the above-captioned matter. Appeals of Commissioner decisions may be filed with the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* and applicable Appellate Division rules.

Additionally, please note that, pursuant to *N.J.A.C. 6A:3-1.14(c)*, the Commissioner's decision is mailed to the parties three days prior to the date it is deemed officially filed. This provides counsel and *pro se* litigants with the decision before it is made public by the Department. Parties and counsel are requested to refrain from making Commissioner decisions public prior to the filing date. Your cooperation is appreciated.

Very truly yours,

A handwritten signature in cursive script, appearing to read "M. Kathleen Duncan".

M. Kathleen Duncan, Director
Bureau of Controversies and Disputes

MKD/BON/pp:o/dec ltr-emergent/j.l.-167-16E

Enclosure

c: Thomas R. Betancourt, ALJ
OAL Clerk (North)
State Law Library

167-16E

OAL DKT. NO. EDU 05044-16
 AGENCY DKT. NO. 100-4/16

J.L., on behalf of minor child, T.D.,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION ON
	:	
BOARD OF TRUSTEES OF THE	:	APPLICATION FOR EMERGENT RELIEF
NORTH STAR ACADEMY CHARTER	:	
SCHOOL, ESSEX COUNTY,	:	
	:	
RESPONDENT.	:	

The record of this emergent matter, the sound recording of proceedings at the Office of Administrative Law (OAL), and the recommended Order of the Administrative Law Judge (ALJ) have been reviewed. In this case, the petitioner is appealing the decision of the North Star Academy Charter School Board of Trustees (Board) to continue the suspension of T.D. from school through May 20, 2016 for the assault of a staff member. The ALJ granted the petitioner's request for emergent relief.

By way of factual background, the record demonstrates that T.D. was initially suspended on December 14, 2015 for assaulting a staff member and was informed that a recommendation for an additional period of suspension or expulsion would be considered at the next Board meeting. (Board's Brief, Exhibit 1) At the Board's meeting on February 10, 2016, the Board "determined that the conduct warranted suspension from school for ten additional days" and that T.D. "may return to school on March 22, 2016." (Board's Brief, Exhibit 4) Thereafter, the Board again considered T.D.'s suspension at the March 21, 2016 Board meeting, including the administration's recommendation to "continue the long term suspension for an additional 38 school days in order to complete and consider the evaluation for eligibility for special education that [J.L.] requested", *i.e.*, through May 20, 2016. (Board's Brief, Exhibit 8)

Noting that completion of the special education evaluation process was pending only the psychiatric exam, the Board determined that the “incomplete IEP team evaluation warranted the continuation of [T.D.’s] suspension in order to gather all the necessary information to determine the appropriate course of action following [T.D.’s] suspension.” (*Ibid.*)

Upon review, the Commissioner concurs with the ALJ that petitioner is entitled to emergent relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6. Pursuant to N.J.A.C. 6A:3-1.6(b), a grant of emergent relief can only be issued upon a finding that petitioner has met the four-pronged standard set forth in *Crowe v. DeGioia*, 90 N.J. 126 (1982). Specifically, the party seeking such relief must demonstrate the existence of each of the following: 1) the movant will suffer irreparable harm if the requested relief is not granted; 2) the legal right underlying the movant’s claim is settled; 3) the movant 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 movant will suffer greater harm than the other party if the requested relief is not granted. N.J.A.C. 6A:3-1.6(b).

Under N.J.A.C. 6A:16-7.3(c), the “[s]uspension of a general education student shall not be continued beyond the district board of education’s second regularly scheduled meeting following the suspension, unless the district board of education so determines pursuant to N.J.S.A. 18A:37-5.” In accordance with N.J.A.C. 6A:16-7.3(c), this determination must be made based on the following criteria:

- i. The nature and severity of the offense;
- ii. The district board of education removal decision;
- iii. The results of any relevant testing, assessments or evaluations of the student; and
- iv. The recommendation of the chief school administrator, after considering input from the principal or director of the alternate education program or home or other in-school or out-of-school instruction program in which the student has been placed. [N.J.A.C. 6A:16-7.3(c)1.i.-iv.]

The Board's determination at its March 21, 2016 meeting to suspend T.D. through May 20, 2016 in order to complete the evaluation for eligibility for special education is not authorized by *N.J.A.C. 6A:16-7.3(c)*. The regulation does not permit a district to keep a child out of school while determining if a child is eligible for special education services, and a long-term suspension for such reasons is an improper use of *N.J.A.C. 6A:16-7.3(c)*. The determination regarding a long-term suspension and an evaluation for special education are in no way related; the Commissioner only has jurisdiction over the long-term suspension – a disciplinary matter – and not over special education matters. *See N.J.S.A. 18A:16-9*. Thus, a district may not conflate the issues as the Board has done here.

The Commissioner notes that “[t]he results of any relevant testing, assessments or evaluations of the student” is included in the criteria relevant to determining a long-term suspension. *N.J.A.C. 6A:16-7.3(c)*. As such, the Board would have been permitted to require a psychological or psychiatric examination prior to T.D.'s return to school for purposes of determining whether it was safe for her to return or whether she was a danger to herself or other students. However, in this circumstance, there is no evidence in the record that the Board required a psychiatric or psychological evaluation as a condition of T.D.'s return to school. Instead, the only mention of a psychiatric evaluation in the record is in the context of T.D.'s psychiatric evaluation for special education services – a process which was requested by J.L. Accordingly, the legal right regarding long-term suspensions is well settled and the petitioner has demonstrated a likelihood of success on the merits.

The Commissioner finds that T.D. will suffer irreparable harm if she is not immediately permitted to return to the general education setting. Keeping T.D. from school in violation of the *N.J.A.C. 6A:16-7.3* constitutes irreparable harm. *See Dolores Sanchez v. Board of Education of the City of Camden, Camden County, Commissioner Decision No. 107-03,*

decided March 6, 2003, *aff'd* State Board June 4, 2003 (finding irreparable harm stemming from a statutory violation when a Board illegally transferred a principal to the position of assistant principal); *see also Daniel Flynn v. Board of Education of the Freehold Regional School District, Monmouth County*, Commissioner Decision No. 243-09, decided August 9, 2009. Preventing T.D. from attending school while she is being evaluated for special education services deprives her from interaction with her peers, without any authority to do so.

Finally, when balancing the equities and interests of the parties, petitioner will suffer greater harm if emergent relief is not granted. T.D. has been deprived of involvement in school activities and events as well as interaction with other students, without any statutory or regulatory authority. Conversely, the Board will not suffer any harm if emergent relief is granted as it is acting in violation of state regulation.

Accordingly, the recommended Order of the OAL granting petitioner's application for emergent relief is adopted as modified. The continued suspension of T.D. from March 22, 2016 to May 20, 2016 is reversed and the Board is directed to permit T.D. to return to school. This matter shall continue at the OAL with such proceedings as the parties and ALJ deem necessary to bring it to closure.

IT IS SO ORDERED.



COMMISSIONER OF EDUCATION

Date of Decision: 5/03/16

Date of Mailing: 5/03/16