

EDU # 7381-00
C # 219-01
SB # 27-01

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. :
_____ :

STATE BOARD OF EDUCATION
DECISION ON MOTION

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

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

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

This matter is before us pursuant to an application for emergent relief filed on behalf of M.C., a sophomore who was permanently expelled by the Bergenfield Board without any provision for an alternative education program for slashing at another student with a box-cutter, causing a gash in the student's coat, and for being in possession of four box-cutters and a Swiss army knife. Petitioners challenged M.C.'s expulsion by filing a petition of appeal with the Commissioner. The matter was then transmitted to the Office of Administrative Law for hearing.

Prior to the hearing, petitioners sought emergent relief, which the Administrative Law Judge ("ALJ") granted on August 18, 2000. The ALJ's order directed the Bergenfield Board to immediately assess M.C.'s alternative education needs, to identify an appropriate alternate education program for him, and to place him in such program no later than the first day of the 2000-2001 school year. On September 15, 2000, the Commissioner issued his determination, modifying the relief which the ALJ had directed. Concluding that placement in an alternative educational setting was not an appropriate grant of interim relief, the Commissioner directed that M.C. be placed on home instruction until the underlying case was decided.

On October 12, 2000, petitioners appealed to the State Board from the Commissioner's determination denying M.C.'s placement in an alternative education program while the underlying case was being decided. However, they then requested that their appeal be placed in abeyance pending the Commissioner's decision on the merits of that case.

On May 25, 2001, the ALJ issued his initial decision on petitioners' challenge to M.C.'s expulsion. Stressing that New Jersey's statutory and regulatory scheme does not explicitly address the provision of an alternative education following expulsion, the ALJ declined to address petitioners' claims that the Board's policy of permanent expulsion without the provision of alternative education violated M.C.'s right under the education clause of the New Jersey State Constitution to a thorough and efficient free public education and the equal protection guarantees of the State Constitution. However, the ALJ concluded that the school district's failure to consult with appropriate sources before permanently expelling M.C. without an alternative education program

was arbitrary, capricious and unreasonable. He further concluded that the District should conduct evaluations pursuant to N.J.A.C. 6A:14-1.1 on an expedited basis to determine whether M.C. was a child with a disability and, if he was, that the District should follow the disciplinary procedures for classified students. The ALJ also concluded that M.C. should remain on home instruction as the Commissioner had directed in his September 15, 2000 determination pending the outcome of the evaluations. However, he found that if the evaluators concluded that M.C. was not a child with a disability, the Board's action in expelling M.C. was not arbitrary, capricious or unreasonable.

The Commissioner concurred with the ALJ that petitioners' challenge to the constitutionality of the Board's policy was more appropriately addressed by the courts. He also rejected petitioners' contention that the Board's failure to provide alternative education following M.C.'s permanent expulsion was arbitrary, capricious or unreasonable. However, he rejected the ALJ's determination that the District should conduct evaluations to ascertain whether M.C. is a child with disabilities, finding that he did not have the jurisdiction to reach such a conclusion. Therefore, concluding that he had no cause to substitute his judgment for that of the Board, the Commissioner "denied petitioners' appeal for a ruling that the District's expulsion of M.C. was arbitrary, capricious or unreasonable." Commissioner's Decision, slip op. at 59.

Petitioners appealed to the State Board from the Commissioner's decision, requesting that this appeal be consolidated with their earlier appeal, which is currently pending before the State Board.

In addition, petitioners filed the motion for emergent relief that we are now considering. By their motion, petitioners seek emergency relief pending determination by the State Board of their appeals in the underlying case. Specifically, they seek a directive that the Bergenfield Board assess M.C.'s alternative education needs and identify an appropriate alternative education program that meets his needs and satisfies New Jersey's Core Curriculum Content Standards. They also seek to have the Bergenfield Board bear the expense of such program, including any necessary transportation.

The Bergenfield Board opposes any grant of interim relief.

In order for us to grant emergent relief in this case, we must be satisfied that: 1) absent such relief, M.C. will suffer irreparable harm, 2) his claim is based on a settled legal right, 3) there are no material facts in dispute, and 4) M.C. will suffer greater hardship if relief is denied him than that which the Board will suffer if such relief is granted. Crowe v. De Gioia, 90 N.J. 126 (1982). In addition, the presence of an issue of public interest is a factor to be weighed. Samaritan Center, Inc. v. Borough of Englishtown, 294 N.J. Super. 437 (Law Div. 1996). See Yakus v. United States, 321 U.S. 414, 440 (1944).

After careful review of the papers submitted in the case, we conclude without hesitation that M.C. is entitled to emergency relief. Initially, 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.

Accordingly, we grant petitioners' motion. The Board is directed to immediately assess M.C.'s alternative education needs and to identify and effectuate M.C.'s placement in an appropriate alternative education program. It is axiomatic that such program must satisfy New Jersey's Core Curriculum Content Standards. The Board is responsible for the costs of such program, including transportation costs.

The relief we are directing is effective as of the first day of the 2001-02 school year. In the event that M.C.'s placement in an alternative education program cannot be effectuated by that date, the Board must provide M.C. with home or out-of-school instruction until an appropriate placement can be arranged. Any such instruction must conform to the requirements of N.J.A.C. 6A:16-9.1 et seq., including the requirement that it meet the Core Curriculum Content Standards. N.J.A.C. 6A:16-9.2(b). We

emphasize that our directive that M.C. be placed in an appropriate alternative education program must be implemented immediately and that M.C. may receive home or out-of-school instruction only until such placement can be arranged.

September 5, 2001

Date of mailing _____