119-23

New Jersey Commissioner of Education

Final Decision

V.P., on behalf of minor child, M.P.,

Petitioner,

v.

Board of Education of the Borough of Midland Park, Bergen County,

Respondent.

Synopsis

Pro se petitioner challenged the respondent Board's alleged failure to provide information regarding his child's health on December 5, 2022, its alleged failure to provide him with a protocol for addressing access to his son during future emergency situations, and the Board's December 8, 2022, decision to bar V.P. from the campus of Midland Park High School (MPHS). In this case, M.P.'s parents, V.P. and A.Z., entered into a Marriage Settlement Agreement (MSA) upon the dissolution of their marriage; the MSA designates alternate "parenting days" when V.P. or A.Z. are responsible for M.P.'s care, including drop-off and pick-up of M.P. at the high school. The Board asserted that December 5, 2022, was a parenting day for A.Z., and that petitioner's inappropriate and threatening behavior at the school while attempting to pick up his child justified the actions taken by the Board to restrict petitioner's access to the school. The petitioner filed a motion for emergent relief, and a hearing was held via Zoom on December 21, 2022.

The ALJ found, *inter alia*, that: *N.J.A.C.* 6A:3-1.6(b) sets forth the standards governing motions for emergent relief and instructs that parties seeking such relief must meet all of the four standards enunciated in *Crowe v. DeGioia,* 90 *N.J.* 126 (1982); petitioner has failed to meet all four of the required standards for emergent relief; further, the relief sought by petitioner in his appeal has already been addressed through the Board's actions; specifically, petitioner's request for a protocol regarding access to his son during future emergencies, as well as assurances that petitioner will receive information regarding his son, have been addressed through letters from the superintendent; and the superintendent's decision to bar petitioner from the school was consistent with District Policy 9150 regarding school visitors, as the weight of the evidence demonstrated that petitioner behaved inappropriately on December 5, 2022. The ALJ concluded that petitioner's requested relief has been satisfied.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion in this matter. Further, the Commissioner found that the decision to bar petitioner from the district's schools was not arbitrary, capricious, or unreasonable. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this case, and the petition was dismissed.

119-23
OAL Dkt. No. 11278-22
Agency Dkt. No. 362-12/22

New Jersey Commissioner of Education

Final Decision

V.P., on behalf of minor child, M.P.,

Petitioner,

v.

Board of Education of the Borough of Midland Park, Bergen County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

This matter stems from an incident that occurred on December 5, 2022. Petitioner's child reported a headache to the school nurse and petitioner attempted to pick his child up from school, even though a Marriage Settlement Agreement (MSA) between petitioner and his ex-wife designated December 5th as the mother's parenting day, rather than petitioner's. School staff reported that petitioner behaved inappropriately at the school, using vulgar language and acting aggressively. Thereafter, the district's superintendent informed petitioner that he could not visit any of the district's schools for any reason without her express written permission, pursuant to Midland Park Board of Education (Board) Policy 9150. A subsequent letter from the superintendent clarified that petitioner could seek the superintendent's permission to visit school in case of emergency, and that for routine drop-offs and pick-ups,

petitioner should use the end of the driveway or a nearby municipal parking lot. Petitioner appealed and sought emergent relief, which was denied.

The Administrative Law Judge (ALJ) concluded that petitioner's request for protocols had already been addressed through the superintendent's letters, which also provided the requested assurances that petitioner would receive information regarding his son. The ALJ further concluded that the superintendent's decision to bar petitioner from the district's schools was consistent with district policy, noting that petitioner's testimony was not credible, and that the weight of the evidence demonstrated that petitioner had behaved inappropriately.

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that the Board, through its superintendent, has provided the protocols and assurances sought by petitioner in his petition of appeal.[1] The Commissioner also finds that the decision to bar petitioner from the district was not arbitrary, capricious, or unreasonable.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[2]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 20, 2023
Date of Mailing: April 21, 2023

[1] The Commissioner also agrees with the ALJ that, to the extent that more specificity regarding the definition of an emergency in the MSA is at issue, that is a matter for petitioner and the child's mother to resolve between themselves or through proceedings in the Superior Court.

[2] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. EDU 11278-22
AGENCY DKT. NO. 362-12/22

V.P., ON BEHALF OF MINOR CHILD, M.P.,
Petitioner,
v.
BOARD OF EDUCATION OF THE BOROUGH OF MIDLAND PARK, BERGEN COUNTY,
Respondent.

V.P., petitioner, pro se

Stephen R. Fogarty, Esq., for Respondent (Fogarty & Hara, attorneys)

Record Closed: January 26, 2023 Decided: February 8, 2023

BEFORE: **JOHN P. SCOLLO,** ALJ:

STATEMENT OF THE CASE

Petitioner, V.P. challenges the Board of Education's alleged failure to give him information about his child's health on December 5, 2022, its alleged failure to provide him with a protocol for addressing access to his son during future emergency situations, and the Board of Education's December 8, 2022 decision to bar V.P. from the campus of Midland Park High School.

PROCEDURAL HISTORY

On or about December 15, 2022, the Petitioner, V.P., filed with the New Jersey Department of Education a Petition of Appeal and a Motion for Emergent Relief. Subsequently, V.P. supplied exhibits. On December 15, 2022, the Office of Controversies and Disputes of the Department of Education (Department) transmitted the case to the Office of Administrative Law (OAL) where it was filed on December 16, 2022 as a contested case.

On December 20, 2022, the law firm of Fogarty and Hara filed a Letter Brief in Opposition to Petitioner's Pro Se Petitioner's Petition of Appeal with Emergent Relief and a number of exhibits. The hearing was held via Zoom on Wednesday, December 21, 2022 before the undersigned.

UNDISPUTED FACTUAL INFORMATION

Per the documents submitted by the parties and the testimony of V.P. I **FIND** that the parties agree on the following facts.

V.P. is the father of M.P., a minor enrolled in Midland Park High School ("MPHS"). A.Z. is the ex-wife of V.P. and is the mother of M.P. Upon the dissolution of their marriage, V.P. and A.Z. entered into a Marriage Settlement Agreement (P-5), referred to herein as the "MSA". The MSA, among other provisions, designates alternating "parenting days" when V.P. or A.Z., respectively, are responsible for M.P.'s care, including the drop-off and the pick-up of M.P. at MPHS. Monday, December 5, 2022 was a parenting day for A.Z. and was not a parenting day for V.P.

Section 4.7 of the MSA provides, "The parties agree to consult with each other and make mutual decisions with respect to … the child's well-being … , which shall at all times be the paramount concern of the parties. The parties further agree that routine and day-to-day decisions regarding the child's welfare shall be made by the party who has physical custody of the child at the time."

On Monday, December 5, 2022, M.P. reported to the school nurse, Karen Corcoran, R.N., that he had a headache. M.P. told Corcoran that Mondays were his mother's parenting days. Corcoran telephoned A.Z. about M.P.'s headache and A.Z. decided to wait and see how M.P. felt in an hour. An hour later, M.P. reported to Corcoran that he still had a headache and stated that he wanted to go home. Corcoran again called A.Z. and updated her about M.P.'s condition. A.Z. told Corcoran that her parents (M.P.'s grandparents) would go to the school to pick up M.P. In the meantime, M.P. had texted his father, V.P. telling him that he was not feeling well and wanted him to pick him up from school. V.P. knew that under Section 4.4 of the MSA all Mondays were A.Z.'s parenting days. V.P. also knew that Section 4.12 of the MSA provided, "Absent an emergency, neither party shall come to school … during the other parent's parenting time." Believing that his son's condition constituted an "emergency", V.P. went to Midland Park High School to pick up M.P. It is noteworthy that Section 4.2 of the MSA provided for the appointment of David Torchin, Esq. as a "parenting coordinator". According to the MSA, "The parenting coordinator's role … [is to provide] … intervention between parties on outstanding issues relating to the child. The parties agree to utilize the services of the parenting coordinator to help the parties come to appropriate decisions which are in the best interest of the child." There was no evidence adduced that either V.P. or A.Z. contacted the parenting coordinator on December 5, 2022 regarding the picking-up of M.P. from the school.

There is disagreement between the Petitioner and the Respondent about what took place on December 5, 2022 during the conversations and interactions between and among V.P., Nurse Corcoran, High School Principal Nicholas Capuano; about what various staff members and or students of the school observed during V.P.'s visit to the school; about the conversations or interactions between V.P. and M.P.'s grandparents (the grandfather's being referenced herein as R.Z. and grandparent's referenced herein as the Z.'s); about the emotional state and behavior of V.P.; and, about whether V.P.'s accounts of the events of December 5, 2022 are accurate or whether the reports of five witnesses (R-1) and the Certification of Nicholas Capuano are accurate.

There is agreement on the fact that on December 5, 2022, after V.P., Nurse Corcoran and Principal Capuano had the opportunity to speak with each other in the Principal's Office, that Principal Capuano asked V.P. to leave the school's campus; and that Capuano escorted V.P. to the exit; and that V.P. left the campus.

ANALYSIS OF THE DOCUMENTS AND TESTIMONY

The following is not intended to be a verbatim recitation of the content of documents or of the testimony. Rather it is a summary of the contents of documents and of testimony which I found significant and helpful to my understanding of the matter.

Respondent's Exhibits

The BOE submitted a Letter Brief in Opposition and attached Documents (Exhibits R-1 through R-6), plus the Certification of Nicholas J. Capuano, which was marked by the Tribunal as R-7.

R-1

R-1 consisted of six "Faculty/Staff Incident Reports", written and signed by Carol Weaver, Irene Keller, Karen Corcoran, R.N. (the school nurse), Jason Whelpley, Craig Rush, and Barbara Rasmussen.

Ms. Carol Weaver wrote that she was in the main office when V.P. arrived to pick up his son, M.P. Ms. Weaver reports that when she walked into the Principal's Office, Principal Capuano and Nurse Corcoran were having a telephone conversation with A.Z., the mother of M.P. Ms. Weaver reports that Capuano signaled her that V.P. should not take M.P. with him. Ms. Weaver reports that when the phone call was finished, Capuano asked V.P. to come into his office. Then, without much detail, Ms. Weaver reports that V.P. appeared agitated, and Capuano asked V.P. to leave. Ms. Weaver, who was close enough to hear at least part of the conversation between V.P. and Capuano, quotes V.P. as saying to Capuano, "If anything happens to my son, it's on you." Ms. Weaver further reports that she observed V.P. interact with M.P.'s grandparents in the entrance foyer

and heard V.P. make unspecified "nasty comments" to them which left the grandmother "visibly shaken". Ms. Weaver's testimony is significant because she was an eyewitness who was close enough to both see and hear what transpired on December 5, 2022 at MPHS. Specifically, she described V.P. as "agitated", recalled that Capuano asked V.P. to leave, that as he was leaving V.P. made "nasty comments" to M.P.'s grandparents and observed that as a result of V.P.'s behavior the grandmother was "visibly shaken". Ms. Weaver's observations support the proposition that V.P.'s behavior was not in keeping with good taste and propriety.

Irene Keller wrote that she was in the main office, that V.P. had arrived at the school and was signing his son out of school when he was called into Principal Capuano's office. It is Ms. Keller's recollection that Nurse Corcoran was in Capuano's office at the time. Ms. Keller reports that after a few minutes V.P. left Capuano's office and that V.P. was "very angry". Ms. Keller quoted V.P. as telling Capuano "If anything happens to my son, it's on you." Ms. Keller observed that as V.P. was leaving, M.P.'s grandparents were entering the office. Ms. Keller confirms that words were exchanged between V.P. and the grandparents, but it was unclear to her what was said. She reiterated that after encountering the grandparents, V.P. was "very angry" when he left. Ms. Keller's report is significant because she was an eyewitness to V.P.'s demeanor and behavior. Ms. Keller reported what V.P. said to Principal Corcoran, using the exact same words as Ms. Weaver. It is significant that two witnesses remembered V.P.'s exact warning to Capuano, "If anything happens to my son, it's on you." It is also significant that Ms. Keller, characterized V.P.'s emotional state as "very angry" when he left Capuano's office and then again as "very angry" after encountering the grandparents. Ms. Keller's observations support the proposition that V.P.'s behavior was not in keeping with good taste and propriety.

Karen Corcoran, R.N. wrote that M.P. came twice to her office complaining of a headache. M.P. explained to Corcoran that it was his mother's parenting day. Corcoran spoke to A.Z. both times that M.P. came to her office. During M.P.'s second visit to Corcoran he still had a headache and so A.Z. told Corcoran that she would send M.P.'s grandparents to pick him up. Corcoran wrote that at that point in time, M.P. told her that he had contacted his father and that his father was coming to pick him up. Corcoran

wrote that she had Dr. Prinsel stay with M.P. while she went to tell Principal Capuano about the situation. Corcoran wrote that V.P. arrived while she was speaking with Capuano in his office. Corcoran wrote that Capuano calmly invited V.P. to sit down and informed him that M.P.'s grandparents were on their way to pick up M.P. V.P. insisted that he was already at the school and would take M.P. home. Capuano then told V.P. that they should all wait for A.Z. to come to the school. Corcoran wrote that after Capuano said this, V.P. became angry, raised his voice and raised his finger at her. Capuano calmly asked V.P. to sit down and wait for A.Z. to arrive. Corcoran then wrote that V.P. became "more angry" and described his demeanor as "aggressive" noting that V.P. started screaming and pointing his finger at Principal Capuano and repeating that he was going to take M.P. home. Corcoran wrote that Capuano asked V.P. to leave the school and was escorting V.P. to the school's exit, but that several times during the trip to the exit door V.P. stopped and turned towards Capuano. Corcoran wrote that in the school's lobby V.P. met M.P.'s grandparents and that some words were exchanged, but she was unable to hear what was said. Following that, V.P. was escorted to the exit and left the school.

It is significant that Corcoran, who was present in Capuano's office with both Capuano and V.P. noted that Capuano was calm throughout V.P.'s visit; that she described V.P.'s demeanor throughout his visit to Capuano's office as "angry", "more angry", "aggressive" and "more hostile"; that V.P. raised his voice and pointed his finger at both Corcoran and Capuano; that Capuano's suggestion that they wait for A.Z.'s arrival was not heeded; that there was an exchange of words in the lobby between V.P. and the grandparents; and that V.P. was escorted out of the school. Notably, Corcoran noted that V.P., while walking through the hallway, stopped and turned towards Capuano several times during his exit.

Jason Whelpley wrote that he was in his office finishing a meeting with Craig Rush when he heard Principal Capuano's door open and heard Capuano telling V.P. that he must leave the premises. Whelpley then saw Capuano and V.P. near Capuano's office door when V.P., in a loud voice, told Capuano, "If anything happens to my son, it's on you." Whelpley wrote that V.P. walked out of the office into the vestibule with Capuano following him. Capuano told the secretaries to "clear the office" and to call for security

personnel to come to the scene. Whelpley wrote that he saw V.P. and M.P.'s grandparents in the vestibule. Whelpley concluded by writing that he went back into his office. It is significant that Whelpley confirmed that V.P. spoke in a loud voice to Capuano saying, "If anything happens to my son, it's on you." This is the exact same statement attributed to V.P. by Ms. Weaver and Ms. Keller, both of whom characterized V.P. as speaking these words while "agitated" or "angry". Whelpley's written account also confirms the accounts of others that Capuano asked V.P. to leave the premises and confirms that Capuano found it necessary to call security personnel to the scene.

Craig Rush wrote that after finishing his meeting with Mr. Whelpley he saw and heard Principal Capuano telling V.P., "You need to leave now" and walking behind V.P. escorting him out of the office and into the hallway. He saw V.P. stop and heard him tell Capuano, "I am going to hold you responsible for my son's well-being", or words to that effect. Rush also wrote that he heard V.P. say the words, "Fuck you" and assumed that that V.P. addressed these words to Capuano. Rush wrote that his observations lasted 15 to 20 seconds. He wrote that his observations were that V.P. was "upset and agitated" and that Capuano "remained professional and focused on removing V.P. from the building". It is significant that Rush confirmed that Capuano remained "professional" while V.P. was "upset and agitated". Rush wrote that he clearly heard V.P. use a vulgarity. Rush confirmed that V.P. told Capuano that he was going to hold him responsible for M.P.'s welfare, but not necessarily with the same words used by others.

Barbara Rasmussen wrote what she observed in the main office. She noted that V.P. arrived to pick up his son. Ms. Keller was going to call for M.P. to come to the main office. Nurse Corcoran took a call in the main office from A.Z. Ms. Rasmussen then went to the ladies' room and upon her return therefrom V.P. had already left the building.

It is significant to note that, according to Ms. Rasmussen, Nurse Corcoran took a telephone call from A.Z. in the main office.

R-2

R-2 is the December 5, 2022 handwritten statement of R.Z., the father of A.Z. and the grandfather of M.P. In his statement, R.Z. wrote that V.P. came out of an office and caught sight of him. Mr. Z. wrote that V.P. called him "a piece of shit" and that V.P. passed him, turned to him and then said, "Fuck you" to him. Mr. Z. wrote that V.P. looked "threatening" and appeared to be "getting ready to fight me". Mr. Z. wrote that a "school official" stepped between them to defuse the situation. It is significant that R.Z.'s writing confirmed that V.P. used vulgarities immediately after leaving Capuano' office, which indicates that he was indeed in an angry or agitated or hostile mood. What Mr. Z. wrote comports with Principal Capuano's account of V.P.'s threatening encounter with the grandparents. Mr. Z.'s writing also comports with Ms. Weaver's account of V.P. making "nasty comments" to the grandparents, causing the grandmother to be "visibly shaken".

R-3

R-3 is the Midland Park Police Department Operations Report dated December 7, 2022 (consisting of two pages) taken by Police Officer Jason R. Tillson, who was the School Resource Officer at MPHS on December 5, 2022, plus the Midland Park Police Department Supplementary Investigation Report taken by Lieutenant John Gibbons. Tillson wrote that he was contacted by Ms. Keller and told to respond to a disturbance. His report does not indicate that he had any in-person contact with V.P. and his report does not contain any information obtained from V.P. His report contains information obtained from Principal Nicholas Capuano.

The significant highlights of the Operations Report are: that M.P. complained to Nurse Corcoran that he had a headache, which Corcoran reported to M.P.'s mother, A.Z.; that A.Z. told Corcoran that her parents would go to the school to pick up M.P.; that at approximately 12:02 p.m. V.P. arrived at MPHS to pick up M.P.; that Capuano had a telephone conversation with A.Z. during which she stated that Mondays were her parenting day and that she was sending her parents to pick up M.P.; that the school would not release M.P. to V.P. per the court order referred to by A.Z.; that V.P. then became angry and insisted that he should take M.P. home; that Capuano told V.P. that he must leave the premises; that while leaving the premises V.P. stared at and approached Capuano in an aggressive manner and that V.P. directed vulgar language at the

grandparents upon their arrival at the school and stared at and stepped towards R.Z. in an aggressive manner, with Capuano deciding to step between the two men to de-escalate the situation; and, that V.P. then left the premises. Capuano also reported that Pinsky had a telephone conversation with School Administrator Stacey Garvey.

R-4 and R-5

R-4 is a letter dated December 8, 2022 from Superintendent of Schools Marie C. Cirasella, Ed.D. to V.P. In this letter, Cirasella informed V.P. that as a result of his conduct at MPHS on December 5, 2022, he is now prohibited from visiting any of the Midland Park School District schools for any reason without her express written permission. With the letter, Cirasella enclosed a copy of "Midland Park Board of Education Policy 9150" (Exhibit R-5), which declares that the Superintendent and school Principals have the authority to prohibit the entry of any person into a school building or to expel any person from a school building when there is reason to believe that the presence of said person would be inimical to the good order of the school.

R-6

R-6 is a letter dated December 12, 2022 from Superintendent Cirasella to V.P. in response to his request that the Superintendent confirm the School District's interpretation of multiple court orders and the School District's December 8, 2022 which imposed restraints on his presence on the School District's campuses. In the 12/12/22 letter Cirasella

> (1) assured V.P. that MPHS will respond to him with information about his son, M.P.;
> (2) that on days when V.P. has parenting time (under the MSA) he would not be permitted on the school's campus and that he should pick-up and drop-off M.P. at the end of the driveway or by parking behind the school in the municipal parking lot;

(3) that in the event of an emergency occurring on a day when V.P. had parenting time, he is to contact Cirasella, who would determine whether to authorize his presence on campus; and

(4) assured V.P. that the school's personnel would continue to provide him with all notifications, reports, and assessments that are provided to all parents and guardians of students of the District's schools.

R-7

The Tribunal decided to mark the Certification of Nicholas J. Capuano as R-7. In R-7, Capuano wrote:

(1) That he is the Principal of MPHS;

(2) That he is familiar with the matter at hand, i.e. the facts arising out of a December 5, 2022 incident involving student M.P., his father, V.P., school personnel and M.P.'s grandparents.

(3) That on December 5, 2022, M.P. visited the school nurse, Karen Corcoran, R.N. complaining of a headache and that Corcoran telephoned A.Z., M.P.'s mother, about his complaint.

(4) That after lunch, M.P. continued to complain about having a headache and that Corcoran again telephoned A.Z., who responded that she was sending her parents (Mr. and Mrs. Z) to pick-up M.P.

(5) That in the interim, M.P. contacted his father, V.P., about his headache.

(6) That V.P. contacted Nurse Corcoran inquiring about who would pick up M.P. from the school and she told him that A.Z. had made arrangements for the pick-up. Some time later, A.P. appeared at the school to pick-up M.P.

(7) Capuano met V.P. and told him that A.Z. had made arrangements for M.P. to be picked-up.

(8) Capuano stated that V.P. became angry and in a raised voice stated that he would take his son home.

(9) Capuano stated that he asked V.P. to calm down, but V.P. continued to shout and, in Capuano's judgment, became hostile. Capuano warned V.P. that if he did not calm down, he would be asked to leave the building. Capuano stated that V.P. continued his hostile behavior and was told to leave the building.

(10) Capuano stated that as he escorted V.P. out of the building V.P. turned toward him, put his face close to his and stared aggressively at him.

(11) Capuano stated that as he escorted V.P. out of the building, V.P. encountered M.P.'s grandparents, spoke to them in a vulgar manner, and stepped toward the grandfather in a threatening manner with clenched fists.

(12) Capuano stated that he stepped between V.P. and the grandfather to defuse the situation; that V.P. exited the building; and that the encounter between V.P. and the grandparents took place in front of school staff and school children.

(13) Capuano stated that he later spoke with School Business Administrator, Stacey Garvey, who told him that she had spoken to V.P. after he left the building, who told her that "Mr. Capuano better apologize or I'll get him." (This statement was later modified by Mr. Capuano on the last page of the Midland Park Police Department' Operations Report (R-3), where Capuano stated that Garvey's statement was actually that V.P. had stated, "Mr. Capuano better apologize or he will be sorry."

(14) Capuano noted that after the December 5, 2022 incident, he contacted the Midland Park Police Department to make a Police Report.

(15) Capuano stated that he contacted Schools Superintendent Marie Cirasella about the incident of December 5, 2022 because he believed that V.P. had violated Board of Education Policy 9150.

Petitioner's Exhibits

The Petitioner, V.P., submitted his Petition of Appeal and Motion for Emergent Relief and later submitted Exhibits P-1 through P-6.

P-1 is the December 8, 2022 letter sent by Superintendent Cirasella to V.P. It is the same document as R-4.

P-2 is the December 12, 2022 letter sent by Superintendent Cirasella to V.P. It is the same document as R-6.

P-3 is an "extract" taken from the December 7, 2022 Midland Park Police Department Operations Report. It is the same document as the bottom half of page 2 of 2 of the Operations Report, which has been marked as R-3.

P-4 consists of several emails concerning V.P.'s attempts to speak with either School District officials or with the School District's Attorney.

P-5 is a copy of the Marriage Settlement Agreement (MSA) between V.P. and A.Z., which arose out of their divorce proceedings. This document is significant for setting forth the parenting days of A.Z. and the parenting days for V.P. and it is significant for setting forth that routine and day-to-day decisions regarding the child's welfare shall be made by the party who has physical custody of the child at the time.

P-6 is a May 10, 2022 email from school principal Peter Galasso to A.Z. and V.P. regarding certain communications made on that date among V.P., A.Z. and the school regarding the pick-up of M.P. by one or the other of his parents. It is significant only for Galasso's statement that with regard to the picking-up of M.P. by either one of his parents on a given day, the school does not monitor it unless there is a court order.

Testimony of V.P.

When the Tribunal inquired of V.P. what relief he was seeking from the Tribunal, V.P. responded that he is seeking what he has been asking the School District for: a Protocol outlining what he may do or may not do with regard to dropping-off and picking-up his son on his parenting days and, in the event of an emergency, what he may or may not do, regardless of whether it is his parenting day or A.Z.'s parenting day. V.P. stated he also seeks assurance that he will receive any and all information regarding his son

from the School District. In his written Appeal and Motion for Emergent Relief, V.P. wrote that he is seeking the following :

(Note: V.P. listed his demand for relief in seven numbered paragraphs, which are somewhat repetitious and unartfully drafted. The Tribunal has condensed them into a more readable format.)

(1) To find out (i.e., clarify) "if the school can decide and enforce the MSA" insofar as determining which parent (V.P. or A.Z.) can pick-up M.P. on any given day;

(2) To find out (i.e., "clarify") if the school "is allowed to decide and enforce the MSA", (i.e., to deny V.P. the right to pick-up M.P. in an emergency whether the emergency occurs on V.P.'s parenting day or A.Z.'s parenting day) ;

In essence, in #1 and #2, V.P. seeks to find out what the protocol is for routine pick-ups and emergency pick-ups;

(3) V.P. seeks demands that the Tribunal launch an investigation to be conducted by a neutral party.

(4) (6) and (7) To overturn the School Superintendent's December 8, 2022 decision (P-1 a/k/a R-4) barring V.P. from the School District's campuses, particularly MPHS; to restore V.P.'s privilege of dropping-off and picking-up M.P. on the MPHS campus by overturning the restrictions imposed in the School Superintendent's letter dated December 12, 2022, which limits V.P.'s authority to drop-off and pick-up M.P. to the area at the end of the school's driveway or, alternatively, in the municipal parking lot located at the rear of the school;

In support of his position, V.P. testified that on Monday, December 5, 2022 his son, M.P., contacted him to say that he was at school, but was not feeling well and wanted to go home. V.P. stated that he had recently undergone surgery and was in pain, but decided, even though he was only wearing gym clothes, to go to MPHS to pick-up his son

and bring him home. V.P. was aware that according to the MSA, Mondays were not his parenting days. However, he knew that the MSA allowed either parent to pick-up M.P. in the event of an emergency. V.P. claimed that he did not know the nature or severity of his son's illness, but he deemed this occasion to be an "emergency" and so decided that it was his right to go to the school to pick-up M.P. V.P. testified that Nurse Corcoran refused to explain the nature of M.P.'s illness and gave him "one-word answers" to his inquiries. While V.P. testified that he never became angry with anyone at the school, it was clear that he was, at the very least, expressing his displeasure when he recounted his conversation with Corcoran and he admitted that he was "frustrated" and that he was "hyper-alarmed" about his son's complaints of "not feeling well".

V.P. testified that when he arrived at MPHS, he was invited into Principal Capuano's office. Nurse Corcoran was also present with Capuano. Although Capuano invited V.P. to sit down, V.P. refused to sit because his recent surgery made sitting painful. V.P. testified that he told Capuano that he wanted to take his son home. Capuano advised V.P. that M.P.'s grandparents were on their way to the school and that they would pick-up M.P. at A.Z.'s behest. V.P. testified that Nurse Corcoran had refused to give him information about his son and he complained that he was not told when the grandparents were expected to arrive. V.P. testified that he responded by saying that the grandparents were "not on the list" to pick-up M.P. and that since he was already there, he would take M.P. home. V.P. admitted that he was "alarmist" and stated that his concern was to get M.P. home so he could rest.

Upon questioning, V.P. admitted that he knew that Monday, December 5, 2022 was not his parenting day and that it was A.Z.'s parenting day. He admitted that he knew that under the MSA, the routine day-to-day decisions about M.P.'s welfare were to be made by the parent then having physical custody of M.P., which on Mondays would be A.Z. However, V.P. pointed out that the MSA also provided that either parent could pick-up M.P. when there was an emergency and he construed his son's illness to be an emergency. Upon continued questioning, V.P. re-iterated that he told Capuano that he would take his son home and was told that he should wait until A.Z. could arrive and help resolve the situation. When asked if he raised his voice or became angry when he was told that the school could not release M.P. to him, V.P. denied that he ever became angry

or even raised his voice. V.P. was questioned about the statements of the witnesses listed in R-1 and R-7, all of whom stated that V.P. had become loud, angry, and hostile towards Capuano and Corcoran. In response, V.P. was hesitant to say they were all lying. Instead, he stated that they all "misperceived" his emotions and were all mistaken about the volume of his voice. V.P. denied that any of his behavior was "hostile". V.P. never denied that Capuano asked him to leave the premises.

V.P. admitted that he saw his ex-wife's parents in the school's hallway, but he denied that he ever used profanity against them. He specifically denied ever calling his ex-father-in-law, R.Z., a "piece of shit" and denied ever saying "Fuck you" to him.

When confronted with the statements of the R-1 and R-7 witnesses, V.P. claimed that they were either not telling the truth or had been too far away to hear any conversation between himself and R.Z. or that they were not present at all. Indeed, V.P. testified that he did not say anything at all to R.Z. When asked to characterize his relationship with his ex-in-laws, V.P. admitted that it was "contentious". When questioned about Capuano's statement that V.P. walked towards R.Z. with clenched fists, V.P. stated that he always walks with his fists clenched, but that on this occasion his hands were facing downwards, not upwards in a fighting position. When questioned about being escorted out of the building by Capuano and about encountering the ex-in-laws, V.P. denied that Capuano had to step between himself and R.Z. V.P. also testified that Capuano was a big man and that as Capuano escorted him out of the building, Capuano was walking so close behind him that his belly touched the small of his back. V.P. denied ever stopping or turning around to stare at or intimidate Capuano. V.P. also denied that any children were present in the hallway when he encountered his ex-in-laws.

Upon further questioning, V.P., responded to the 13th numbered paragraph of Capuano's Certification wherein Capuano referred to a conversation he had with Stacey Garvey, the school's Business Administrator. Capuano's Certification states that Garvey recounted a telephone conversation she had with V.P. during which V.P. allegedly stated, "Mr. Capuano better apologize, or I'll get him." V.P. admitted that he had a telephone conversation with Garvey shortly after he left the school building which lasted about

twenty minutes. V.P. admitted that Garvey asked if his statement was a threat against Capuano, but he denied that he was making a threat.

On Re-Direct, V.P. clarified that his focus throughout all his dealings with the Midland Park School District has been to understand the protocols regarding drop-offs and pick-ups of his son and to obtain assurance that he would be receiving any and all information about his son from the school district.

Summations

Respondent's Summation

The School District emphasized that its responsibility is to keep the schools safe for students and staff. Respondent's counsel, Mr. Fogarty argued that the weight of the credible evidence, both form the documentary evidence and from V.P. himself confirmed that V.P.'s language and behavior on December 5, 2022 was not in keeping with District Policy 9150 or with the good taste and propriety expected of persons who enter school grounds. He argued that the coherence and agreement of the School District's several witnesses, all of whom had no personal interest at stake in the matter, demonstrated that their accounts of V.P.'s conduct on December 5, 2022 were truthful. On the other hand, V.P.'s claim was that he remained calm throughout this episode, never raised his voice, never pointed his fingers at anyone, never use vulgar language, never stared at anyone, never made any aggressive overtures, and never made any threats is against the weight of all the other evidence in the matter. Mr. Fogarty pointed-out that the District's witnesses all agree that V.P. raised his voice; claimed he was denied information about his son; was accusatory; pointed his fingers at both Capuano and Corcoran; stared at and moved in an aggressive manner toward R.Z.; stopped walking, turned and stared at Capuano; and used vulgarities against his ex-in-laws causing his ex-mother-in-law to be "visible shaken". Most importantly, V.P. never denied that Capuano, after appealing to V.P. to calm down, reached the decision that he had to ask V.P. to leave the premises, to notify security personnel, and to personally escort V.P. out of the building. Although V.P. claimed to have remained calm throughout his time at the school, he never denied that he was ejected from the premises. Attorney Fogarty argued that V.P. had not borne his

burden of proving even one of the four Crowe factors needed to justify emergent relief. Attorney Fogarty asked the Tribunal to agree that School Superintendent Cirasella's action barring V.P. was in keeping with School District Policy 9150; was backed-up with abundant proof of V.P.'s misconduct; and was fully justified. He asked the Tribunal to affirm Cirasella's decision.

Petitioner's Summation

V.P. re-emphasized that he is simply looking for the School District to provide him with the protocols for dropping-off and picking-up his son in non-emergency and in emergency situations. He believed that his son's reported illness constituted an emergency which justified his presence on the campus of MPHS on December 5, 2022. He re-iterated that the school nurse refused to give him information about his son's health when he spoke with her, which made him frustrated, but not angry or hostile. Since he was not told when the grandparents would arrive to pick-up M.P., he could not understand why he could not take M.P. home. He admitted that he is "alarmist" and was indeed alarmed that the delay in getting his son home would be detrimental to him.

Addressing the obvious question of why the statements of the witnesses, all of which attest to V.P.'s inappropriate conduct, should not be believed, V.P. simply stated that they "misperceived" his emotions and did not actually hear the statements of which he is accused of saying.

Finally, V.P. argued that the Superintendent's decision to bar him should be overturned because it would not only be unfair to deny him access to school activities, but it would be dangerous to bar him from the campus in the event of an emergency, such as another health emergency or even in the event of a school shooting. V.P. pointed out the implausibility of getting through to the superintendent in an emergency situation to seek her permission to come to the campus to see to his son's safety.

At the end of his summation, the Tribunal posed a question to V.P. In answer to the Tribunal's question regarding the need for emergent relief, the Tribunal asked V.P. what the imminent threat (post-December 5th) was to M.P. that justified emergent relief.

V.P. could only say that in the event of a possible future emergency (admitting there was no imminent or present emergency) he would need immediate access to the campus.

DISCUSSION AND FINDINGS OF FACT

Having reviewed the documents, testimony, and arguments presented, I make the following findings of **FACT**.

I **FIND** that V.P.'s demand that the School District provide him with information about his son, M.P., has already been completely addressed by the December 12, 2022 letter to V.P. written by Superintendent Marie Cirasella. (R-4) In that letter, Cirasella gives V.P. the School District's assurance that the School District's administrators, teachers and school nurse will respond to his appropriate requests for any information about his son.

I **FIND** that the "protocols" demanded by the Petitioner, V.P., regarding the dropping-off and picking-up of his son, M.P. have been provided in Superintendent Marie Cirasella's letter to him dated December 12, 2022 (R-4).

I **FIND** that V.P.'s demand that he be supplied with information about his son, M.P., has been provided in R-4.

I **FIND** that the response to V.P.'s demand for the "protocols" for dropping-off and picking-up his son, Cirasella's Letter dated December 12, 2022 (R-4) has provided V.P. with a clear statement that he is not to come upon the premises of MPHS and it has provided a clear procedure for where he, on his parenting days, is to drop-off and pick-up his son, M.P.

I **FIND** that the response to V.P.'s demand for "protocols" for emergency visits by him to MPHS has already been addressed in R-4, wherein Superintendent Cirasella sets forth a clear procedure for V.P. to contact her by telephone to seek admission to the MPHS campus, reserving to herself the sole discretion and authority to grant or deny admission to the campus to V.P.

I **FIND** that in response to V.P.'s demand that he be apprised by the School District of all information concerning his son, M.P., Superintendent Cirasella has already stated clearly to V.P. in R-4 that he will continue to receive all notifications, reports, and assessments concerning M.P., which are provided by the school District to all parents and guardians of its students.

I **FIND** that on December 5, 2022 at MPHS, after his arrival at MPHS, V.P. pointed his finger at and accused Nurse Corcoran of not providing him with information about his son, M.P. I **FIND** that V.P.'s accusation against Corcoran is lacking in support. I **FIND** that Corcoran did indeed supply V.P. with adequate information about M.P. and that information was that M.P. was complaining of having a headache, that it being the lad's mother's (A.Z.'s) parenting day she had been informed of M.P.'s complaint and stated that M.P.'s grandparents (the Z.'s) were going to the school to pick-up M.P. I **FIND** that, contrary to V.P.'s testimony, the preponderance of the credible evidence indicates that V.P. was not calm when he was at MPHS; that V.P. raised his voice while speaking with Principal Capuano and Nurse Corcoran and continued to speak in a loud voice even after Capuano asked him to calm down.

I **FIND** that V.P. was not as credible as Principal Capuano and that V.P. was not as credible as the Respondent's other witnesses because Capuano and the Respondent's other witnesses had no personal stake in the outcome of the matter, while V.P. had lost his privilege of entering the MPHS campus and was seeking to gain it back. I have also found V.P. to be less credible than Capuano and Respondent's other witnesses due to the consistency of the Respondent's witnesses combined statements, which agree that V.P. was not calm, that he was angry, that his behavior caused Capuano to decide to eject V.P. from the campus; that as he was being escorted to the exit, V.P. confronted both R.Z. and Principal Capuano; that V.P.'s claims that he remained calm throughout the episode and did not use vulgarities is belied by the sheer number of witnesses who contradicted him; by the fact that V.P. claimed that numerous witnesses all "misperceived" what really happened on December 5, 2022; by the fact that V.P. tacitly admits that he was ejected from the campus; by the fact that V.P. admitted that he was "alarmist", "hyper-alarmed" and "frustrated"; by the fact that V.P. while admitting that his

fists were indeed clenched as he walked by R.Z., he nonetheless claimed that he "always" walks with his hands clenched and that he recalled on this occasion that his hands were facing downwards; and by the overall implausibility of V.P.'s account.

The preponderance of the credible evidence indicates that the following statements should be, and hereby are, found to be true statements of fact.

I **FIND** that even though V.P. knew that Monday, December 5, 2022 was not his parenting day and that his ex-wife, A.Z., had dispatched her parents (the Z.'s) to go to MPHS to pick-up M.P., V.P. insisted that he should bring M.P. home.

I **FIND** that V.P. ignored Principal Capuano's recommendation to wait for A.Z. to arrive to sort out the question of who should pick-up M.P.

I **FIND** that because Principal Capuano found V.P.'s behavior not to be appropriate under the circumstances, Capuano warned him that he would be asked to leave the campus; and then, because V.P. did not calm down, Capuano decided to eject V.P. from the campus due to V.P.'s continuing inappropriate behavior.

I **FIND** that Capuano ordered his staff to summon security personnel to the scene and I **FIND** that in the meantime Capuano personally escorted V.P. to the exit of the school building.

I **FIND** that V.P.'s testimony about Capuano walking so close behind him that his belly touched V.P.'s lower back to be untrue in light of the account given by Capuano that during the walk to the exit, V.P. stopped and turned to face Capuano.

I **FIND** that it would not be likely that Capuano could walk so closely behind V.P. that his belly could touch V.P.'s lower back because their legs would have become entangled if they had been walking in such close proximity, as suggested by V.P.

I **FIND** that V.P. used vulgar language when speaking to M.P.'s grandparents, the Z.'s, in the hallway of MPHS where staff and students were present. Particularly, I **FIND** that V.P. called R.Z. a "piece of shit" and said "Fuck you!" to R.Z.

I **FIND** that V.P. walked towards R.Z. with his fists clenched and in an aggressive manner, causing Principal Capuano to take action to prevent an altercation by placing his own body between the two other men.

I **FIND** that V.P.'s display of vulgar language and aggressive behavior frightened Mrs. Z. I **FIND** that V.P. exited MPHS shortly after directing vulgarities at R.Z.

I **FIND** that shortly after exiting MPHS, V.P. placed a telephone call to School Administrator Stacey Garvey and stated to her either, "Capuano better apologize, or I'll get him" or "Capuano better apologize, or he'll be sorry".

I **FIND** that the statements and actions of V.P. on December 5, 2022 while on the campus of MPHS were grievous enough to violate School Policy 9150.

I **FIND** that V.P. has not set forth proof of any imminent harm or threat to either himself or to M.P. that justifies any sort of emergent relief. I **FIND** that V.P. has not presented sufficient facts or sufficient arguments that would satisfy any of the four Crowe factors.

APPLICABLE LAW

N.J.A.C. 6A:3-1.6(a) provides:

> Where the subject matter of the controversy is a particular course of action by a district board of education … the petitioner may include with the petition of appeal, a separate motion for emergent relief … pending the Commissioner's final decision in the contested case."

N.J.A.C. 6A:3-1.6(b) provides:

> A motion for stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards to be met for granting such relief pursuant to Crowe v. DeGioia , 90 N.J. 126 (1982):
>
> 1. The petitioner will suffer irreparable harm if the requested relief is not granted;
>
> 2. The legal right underlying 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.

Crowe v. DeGioia, 90 N.J. 126 (1982) arose out of a set of circumstances regarding support and palimony matters. Nonetheless, the case has been the polestar decision in New Jersey for cases wherein injunctive relief is sought. The case stands for the proposition that an injunction cannot be granted unless and until the party seeking relief presents clear and convincing evidence that: (1) the injunction is "necessary to prevent irreparable harm"; (2) that "the legal right underlying the claim is settled"; (3) that the party seeking relief has made "a preliminary showing of a reasonable probability of ultimate success on the merits"; and (4) that "the relative hardship to the parties in granting or denying [injunctive] relief", on a balancing of the equities, weighs in his favor. Crowe, 90 N.J. at 132-34. In order to prevail, the party seeking injunctive relief must demonstrate by clear and convincing evidence that he meets all four Crowe factors. Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012).

"[A] party who seeks mandatory preliminary injunctive relief must satisfy a 'particularly heavy' burden." Guaman v. Velez, 421 N.J. Super. 239, 247 (App. Div. 2011), Rinaldo v. RLB Inv., LLC, 387 N.J. Super. 387, 396 (App. Div. 2006).

Also, "[w]hen a case presents an issue of 'significant public importance', a court must [also] consider the public interest in addition to the traditional Crowe factors." Garden State Equal. v. Dow, 216 N.J. 314, 321 (2013).

Appellate courts are bound by the trial court's factual findings if they are supported by "substantial, credible evidence" in the record. Triffin v. Automatic Data Processing, Inc., 411 N.J. Super. 292,315 (App. Div. 2010).

Under the first Crowe factor, a party who seeks injunctive relief must establish that injunctive relief is necessary to prevent irreparable harm and to preserve the status quo. Citizens Coach Co. v. Camden Horse R.R. Co. , 29 N.J. Eq. 299, 303 (E.&A. 1878). Irreparable harm is an "injury to be suffered in the absence of injunctive relief [that] is *substantial* and *imminent*." Waste Mgmt. of N.J., Inc. v. Union City Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

Under the second Crowe factor, injunctive relief will be withheld when the legal right underlying the claim is unsettled. Citizens Coach, at ps. 304-05.

Under the third Crowe factor, the party seeking relief is obligated to present clear and convincing evidence that he / she has a reasonable probability of ultimate success on the merits. Therefore, injunctive relief will not be granted where there are material facts in controversy. Citizens Coach at ps. 305-06. The party who seeks injunctive relief must be prepared to demonstrate facts which support his case and "must make a preliminary showing of reasonable probability of success on the merits." Crowe, at p. 133.

The second and third Crowe factors involve fact-sensitive analysis that "requires a determination of whether the material facts are in dispute, and whether the applicable law is settled." Waste Mgmt., at p. 528.

Under the fourth Crowe factor, the party who seeks injunctive relief must address the issue of relative hardship to the parties and he must establish that, on balance, the equities favor the grant of temporary relief to maintain the *status quo* pending the outcome of a final hearing." Crowe at p. 134. The party seeking injunctive relief must prove his

case by clear and convincing evidence. Brown at p. 183 and thus his burden is 'particularly heavy'. Guaman at p. 247.

Midland Park Board of Education, District Policy 9150 – School Visitors

The above-captioned Policy is set forth as follows:

> The Board of Education welcomes and encourages visits to schools by parent(s) or legal guardian(s), or other adult resident of the community, and interested educators. In order for the educational program to continue undisturbed when visitors are present and to prevent the intrusion of disruptive persons into the schools, the Board directs the enforcement of rules governing school visits.
>
> The Superintendent and building principal each possess the authority To prohibit the entry of any person into a school of this district or to Expel any person from the school when there is reason to believe the Presence of such person would be inimical to the good order of the school. If such person refuses to leave the school grounds or creates a disturbance, the Principal is authorized to request from the local law enforcement agency whatever assistance is required to remove the individual.
>
> Visitors shall be required to register their presence in the school. No staff Member shall transact business with or permit the continuing presence in the school of a visitor who has not been duly registered. Pupils may not bring visitors to school.
>
> No visitor may confer with a student in school without the approval of the Principal; any such conference may take place only in the presence of a teaching staff member and / or administrator.
>
> The Superintendent shall develop regulations that will protect pupils and employees of the district from disruption to the educational program and the efficient conduct of their assigned tasks.

N.J.S.A. 2C:18-3; N.J.S.A. 18A:17-42; 18A:20-1; 18A:20-34.

ANALYSIS OF THE ARGUMENTS ON THE PENDING MOTION

Petitioner's Argument

Petitioner V.P. did not demonstrate that he met any of the requirements necessary for demonstrating his need for emergent relief pursuant to the four factors governing the granting of injunctive relief set forth in Crowe v. DiGioia, 90 N.J. 126 (1982). His argument was based on speculation that in the event of a future emergency, he would need immediate access to the high school campus in order to safeguard his son's welfare. He completely ignored the reasons set forth in the School Superintendent's letter for barring him from the campus pursuant to Policy 9150 due to his conduct on December 5. 2022. V.P. therefore failed to demonstrate any good reason for overturning the Superintendent's decision to bar him.

Respondent's Argument

The First Crowe Factor:

Regarding the first Crowe factor, the Respondent convincingly argued that the Petitioner did not demonstrate that he would suffer irreparable harm if emergent relief were not granted

The Second Crowe Factor:

Regarding the second Crowe factor, Respondent's Counsel points out that Policy 9150 was enacted in accordance with the laws of New Jersey and that its purpose is the promotion of the safety of school staff and students. The BOE's convincingly argued that the law is settled, and it is settled in favor of the BOE, not V.P.

The Third Crowe Factor:

Regarding the third Crowe factor, Respondent's counsel points out that the weight of the credible evidence favors the respondent. Moreover the failure of V.P. to reconcile his assertion that he did not cause a disturbance on December 5, 2022 with the tacit admission that he was indeed ejected from the MPHS campus without any protest on his part, strongly indicates that V.P. will not be able to prevail on the merits.

The Fourth Crowe Factor:

Regarding the fourth Crowe factor, respondent's counsel points out that V.P. has not demonstrated any harm to his interests that was not self-inflicted. The weight of the evidence is that he caused a disturbance on the campus of MPHS which resulted in his ejection and eventual barring from said campus. The BOE's position is that allowing V.P. onto the campus could, in view of his previous egregious conduct and the likelihood of a repetition of such conduct, pose a continuing danger to the good order of the school. Therefore, the relative harm to the parties falls heavier on the school (the BOE) than it does V.P.

LEGAL ANALYSIS AND CONCLUSIONS

Legal Analysis of the Evidence Concerning School Policy 9150

School Policy 9150 is attached as an exhibit. Its provisions are clearly stated.

Petitioner, V.P.'s position is that he conducted himself with good taste and propriety on December 5, 2022 at MPHS. He stated that he was calm and remained calm. He denies becoming angry or loud, denies that he made accusations; denies that he used vulgar language; denies that he made threats; and denies that he engaged in any hostile actions. He did not deny that he was asked to leave the school building and that he was escorted out of the building. V.P. characterized himself as "alarmist". In regard to the statements of various witnesses who stated that V.P. became angry, loud, accusatory, used vulgar language, that he made threats, and that he acted in a hostile

manner, V.P. responded that the witnesses "misperceived" his words and demeanor and that some of them were too far away to hear what he actually said.

The Respondent's multiple witnesses reported that V.P. was not calm, but rather was visibly agitated and angry and that he raised his voice and was asked to lower his voice. V.P. accused Nurse Corcoran of not giving him information about his son's illness. Multiple witnesses reported that V.P. spoke to his ex-father-in-law using vulgarity and expletives. V.P. did not deny saying to Principal Capuano, "If anything happens to my son, it's on you." This statement and the statement quoted by Capuano (from his conversation with Administrator Stacey Garvey), "If Capuano doesn't apologize, I'll get him", suggest untoward consequences against Capuano. Capuano stated that he surmised the need to place himself between V.P. and R.Z. in order to prevent a physical altercation being initiated by V.P.'s use of vulgar language and his approach towards R.Z. with clenched fists.

I have made findings concerning the above-listed conduct and I **CONCLUDE** that on December 5, 2022 at MPHS V.P. violated School Policy 9150.

Legal Analysis Of The Arguments Concerning The Crowe Factors

Analysis of the First Crowe Factor: The Claim of Irreparable Harm

A party seeking injunctive relief must demonstrate the need for relief by clear and convincing evidence. Brown, *supra*. The party seeking injunctive relief must demonstrate that the claim of irreparable harm is substantial and imminent. Waste Mgmt., *supra*. V.P. has not carried his burden of producing clear and convincing evidence that his being barred from the School District's campuses will cause him or M.P. irreparable harm. There has been no showing that the drop-off and pick-up places to which V.P. is limited imposes any undue hardship to V.P. or to M.P. The Board was not inflicting harm when the Superintendent of Schools barred V.P. from the School Districts campuses. Rather the Superintendent was attempting to promote the safety of the students and staff of the District from a repetition of the type of conduct that V.P. exhibited on December 5, 2022.

I **CONCLUDE** that V.P. has not demonstrated irreparable harm to himself or to his son, M.P., and cannot prevail on the first Crowe factor.

Analysis of the Second Crowe Factor: Whether the Law is Settled or Not

Policy 9150 was enacted in accordance with the laws of New Jersey and its purpose is the promotion of the safety of school staff and students. I **CONCLUDE** that the BOE has demonstrated that the law is settled and that it is settled in its favor.

Analysis of the Third Crowe Factor: That the Movant has Shown a Reasonable Likelihood of Success on the Merits

On the issue of whether V.P. can show a reasonable probability of success on the merits, V.P. has not set forth an argument demonstrating that the merits weigh in his favor. On the other hand, the respondent has marshalled evidence favoring the Respondent's case from witnesses who have no personal interest in the outcome of the matter and whose credibility has not been seriously challenged. I **CONCLUDE** that V.P. has not demonstrated that he has a reasonable probability of success on the merits. Therefore, I **CONCLUDE** that V.P. cannot prevail on the third Crowe factor.

Analysis of the Fourth Crowe Factor : Relative Harm to the Parties

V.P. bears the burden of demonstrating by clear and convincing evidence that the harm he claims to suffer is both substantial and imminent. As noted above, V.P. has not demonstrated that denial of injunctive relief will cause him or his son to suffer any imminent harm or even any foreseeable harm. V.P. has not demonstrated how he or his son, M.P., will be harmed and has not demonstrated that he or his son, M.P., will be harmed to any greater extent than the Board. Therefore, I **CONCLUDE** that V.P. cannot prevail on the fourth Crowe factor.

From my analysis of the facts and the arguments presented pursuant to Crowe, I **CONCLUDE** that V.P. has not demonstrated that he has prevailed on any of the Crowe factors and therefore, he is not entitled to emergent relief.

Having reviewed the documents and testimony presented in this matter, together with the arguments presented, I **CONCLUDE** that the School District does not "enforce" the MSA; rather, it has followed the requirements of the MSA. I also **CONCLUDE** that the definition of an "emergency", as used in the MSA, is not a matter for the OAL to decide. V.P. and A.Z., through their respective counsel have agreed to the terms and content of their MSA. If either of them now or in the future raises a question or conflict about the meaning of the word "emergency" as used in their MSA, then they must seek to resolve it. Ultimately, the definition of "emergency" under the MSA is for the parties themselves to agree upon, or, if they cannot agree upon the definition of "emergency" they must resolve their dispute before the Superior Court of New Jersey, Chancery Division, Family Part.

Having reviewed Exhibit R-4 and Exhibit R-6, I **CONCLUDE** that Superintendent Marie Cirasella has given the School District's assurance to V.P. that the School District's administrators, teachers and school nurse will respond to his appropriate requests for any information about his son. I **CONCLUDE** that Cirasella provided V.P. with a clear statement that he is not to come upon the premises of MPHS and has provided a clear procedure for where he is to pick-up M.P. on his parenting days. I **CONCLUDE** that Cirasella provided V.P. with a clear procedure in which he is to telephone her regarding an emergency that may involve M.P., reserving to herself the authority to grant or deny admittance for V.P. to enter upon the MPHS campus. I **CONCLUDE** that Cirasella has stated clearly to V.P. that he will continue to receive all notifications, reports, and assessments concerning M.P., which are provided by the school District to all parents and guardians of its students. I **CONCLUDE** that Cirasella's December 12, 2022 letter has already provided all of the relief that V.P. is entitled to in this matter, including , but not limited to, his demand for a set of "protocols".

Having made findings of fact concerning V.P.'s conduct on December 5, 2022 at MPHS, and having reviewed School Policy 9150, I **CONCLUDE** that Superintendent Marie Cirasella was authorized to bar V.P. from the premises of the Midland Park School District and I **CONCLUDE** that nothing has come before this Tribunal that indicates that the barring of V.P. should be lifted. I hereby **AFFIRM** Superintendent Cirasella's action

of barring V.P. from the School District's premises, subject to her further consideration of circumstances that may arise, and subject to her sole discretion.

ORDER

It is hereby **ORDERED** that V.P.'s Motion for emergent relief in the form of an Order vacating the December 8, 2022 decision of Superintendent of Schools Marie Cirasella to bar V.P. from the campuses of the Midland Park School District is **DENIED**; and it is further **ORDERED** that V.P.'s demand for a set of protocols (i.e., procedures) for the dropping-off and picking-up of M.P. is **DENIED** because the procedures have already been set forth in R-4, Cirasella's letter dated December 12, 2022; and it is further **ORDERED** that V.P.'s demand for information about his son, M.P., is **DENIED** because the promises and assurances have already been set forth in R-4, Cirasella's letter dated December 12, 2022, and it is further **ORDERED** that a copy of this **ORDER** shall be transmitted by email from the OAL to V.P. and to Attorney Stephen R. Fogarty, and that receipt of same shall be acknowledged immediately by the recipients.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION,** who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

February 8, 2023
DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Exhibits

Petitioner's Exhibits

P-1 Superintendent Cirasella's December 8, 2022 Letter

P-2 Superintendent Cirasella's December 12, 2022 Letter

P-3 "Extract" of Police Operations Report

P-4 Several emails from V.P. in which he states his desire to communicate with School District Officials or the District's Attorney

P-5 The Marriage Settlement Agreement between V.P. and A.Z.

P-6 A May 10, 2022 email to A.Z. and V.P. from Peter Galasso, a School Principal

Respondent's Exhibits

R-1 Six Faculty / Staff Incident Reports

R-2 December 5, 2022 Handwritten Statement of R.Z.

R-3 Midland Park Police Operations Report dated December 7, 2022

R-4 December 8, 2022 Letter from Superintendent Cirasella to V.P.

R-5 School Policy 9150

R-6 December 12, 2022 Letter from Superintendent Cirasella to V.P.

R-7 Capuano Certification