

**New Jersey Commissioner of Education**  
**Final Decision**

J.S., on behalf of minor child, J.S.,

Petitioner,

v.

Board of Education of the Township of  
Cherry Hill, Burlington County,

Respondent.

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

Upon such review, the Commissioner concurs with the ALJ that petitioner failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia*, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6.

Additionally, the Commissioner notes the ALJ's finding that, based upon representations made by counsel for both parties during prehearing conferences, there are no other issues to be decided and the petition should be dismissed.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons stated therein. Having received no objections, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>1</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 22, 2024

Date of Mailing: January 24, 2024

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<sup>1</sup> 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 DENYING**  
**EMERGENT RELIEF**

OAL DKT. NO. EDU 13843-23  
AGENCY DKT. NO. 335-12/23

**J.S. ON BEHALF OF J.S., A MINOR  
CHILD,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE  
TOWNSHIP OF CHERRY HILL, CAMDEN  
COUNTY,**

Respondent.

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**Lloyd D. Henderson, Esq.**, appearing for petitioner (Law Office of Lloyd D.  
Henderson and Associates, attorneys)

**Patrick F. Carrigg, Esq.**, appearing for respondent (Lenox, Socey, Formidoni,  
Giordano, Carrigg, Lang & Casey, LLC, attorneys)

Record Closed: December 21, 2023

Decided: December 22, 2023

BEFORE **KIMBERLEY M. WILSON, ALJ**:

### **STATEMENT OF THE CASE**

Petitioner, J.S. (J.S. parent) on behalf of J.S., a minor child (J.S. child or J.S. student), moves for emergent relief, seeking permission to return to Carusi Middle School (CMS), a school within respondent Board of Education of the Township of Cherry Hill, Camden County (the Board or the District) with safety protections in place to allow her to continue her education. The Board denies that it has prevented J.S. child from attending school and that CMS is not safe for J.S. child to attend school.

### **PROCEDURAL HISTORY**

On or around December 11, 2023, J.S. parent filed a verified petition and request for emergent relief with the Commissioner of the Department of Education, Office of Controversies and Disputes (DOE). On December 13, 2023, DOE transmitted this matter to the Office of Administrative Law (OAL) as a contested case seeking emergent relief. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. On December 19, 2023, the Board provided the Administrative Law Judge (ALJ) a brief and certification in response to J.S. parent's request for emergent relief. The ALJ attempted to resolve the matter with the parties during status conferences on December 19, 2023, and December 20, 2023. The hearing was held on December 21, 2023, and the record closed that day.

The request for emergent relief is now ripe for adjudication.

### **FACTUAL DISCUSSION AND FINDINGS**

The following **FACTS** are not in dispute, and so I **FIND**:

1. J.S. student is a student at CMS. (Pet. ¶ 1.)
2. J.S. student has an Individualized Education Program (IEP), which provides speech therapy only. (IEP at 1.)

3. On or around September 27, 2023, J.S. student's parents emailed J.S. student's teachers, indicating that J.S. student has an autism spectrum disorder. (Certification of Neil Burti, Principal (Burti Cert.) ¶ 3.) J.S. student is not classified for autism spectrum disorder. (Ibid.)
4. On or around October 23, 2023, J.S. student's parents emailed Steve Delaney (Delaney), CMS guidance counselor, that another CMS student (Student X<sup>1</sup>) told J.S. student multiple times that Student X likes J.S. student romantically, but J.S. student rejected Student X. J.S. parent advised J.S. student not to speak to Student X anymore. (Id. ¶ 4.) According to J.S. student's parents, Student X has said "she would starve herself just to be with [J.S. student]." (Ibid.) Student X "is harassing our daughter and it may seem like a simple crush for anyone on the outside looking in, however, we have to consider that [J.S. student] is autistic. "We realized that pulling [Student X] to the office and notifying her parents may be all you can do & at this point in time we feel it is a must. . . . It is disruptive to [J.S. student's] time there at [CMS]." (Ibid.)
5. On or around October 23, 2023, Delaney interviewed J.S. student based on her parents' email. (Id. ¶ 5.) With Constance Spencer (Spencer)<sup>2</sup>, Delaney interviewed Student X, who was told not to approach J.S. student. (Ibid.)
6. On or around October 23, 2023, Delaney emailed J.S. student's parents, indicating that the situation had been addressed. (Id. ¶ 6.)
7. On or around October 26, 2023, J.S. parent emailed Delaney expressing concerns about J.S. student's safety at CMS and Student X's potential for retaliating against J.S. student. (Id. ¶ 7.) J.S. parent requested that the District change Student X's schedule, as J.S. and Student X had four core classes together. (Ibid.) J.S. parent reiterated that they advised J.S. student to distance herself from Student X. (Ibid.)

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<sup>1</sup> The other student is referred to as Student X to maintain her confidentiality, as she is not a party to this matter.

<sup>2</sup> Spencer is CMS's anti-bullying specialist.

8. Delaney emailed J.S. student's parents to arrange a telephone call. (Ibid.)
9. On or around October 30, 2023, Delaney called J.S. student's parents. (Id. ¶ 8.) During that telephone call, J.S. student's parents again requested that the District change Student X's schedule. (Ibid.) Delaney offered to change J.S. student's schedule instead. (Ibid.) J.S. student's parents refused this offer, indicating that in their mind, J.S. student was a victim. (Ibid.)
10. On or around November 28, 2023, J.S. student reported to Delaney that Student X kissed her twice at CMS on November 20, 2023, and November 27, 2023. (Id. ¶ 9.)
11. Student X denied kissing J.S. student. (Id. ¶ 10.) Both students provided written statements, and the District notified parents for both students. (Ibid.)
12. On or around November 29, 2023, J.S. student's parents met with the CMS campus police officer to complete a police report. (Id. ¶ 11.) J.S. student's parents also scheduled a meeting with Delaney and Dr. Julia Benavides (Benavides) for November 30, 2023. (Ibid.)
13. On or around November 30, 2023, J.S. student's parents sent an email to the District, cancelling the meeting with Delaney and Benavides. (Id. ¶ 12.)
14. On or around November 30, 2023, J.S. student's parents completed a HIB<sup>3</sup> 338 form and delivered it to CMS. (Id. ¶ 13.) Burti emailed the District's anti-bullying specialist<sup>4</sup> to advise of the HIB form. (Ibid.) The HIB investigation is pending because of the police complaint and investigation. (Ibid.)
15. On or around December 8, 2023, the District changed Student X's schedule based on a request from Student X. (Id. ¶ 17.)

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<sup>3</sup> "HIB," is an acronym for harassment, intimidation and bullying under the Anti-Bullying Bill of Rights Act. See N.J.S.A. 18A:37-14.

<sup>4</sup> It is not clear from the record whether Spencer is also the District's anti-bullying specialist.

16. On or around December 11, 2023, Benavides left a voicemail message for J.S. student's parent to inquire about J.S. student's well-being and when she would be returning to school. (Id. ¶ 18.) Benavides also attempted to reschedule the November 30, 2023 meeting. (Ibid.)
17. J.S. student has not attended school since November 29, 2023, when J.S. parent removed J.S. child from CMS for her safety and protection. (Pet. ¶ 2.)
18. In the petition, J.S. parent seeks the following relief: (i) J.S. student is permitted to return to CMS with safety protections in place to continue her free and appropriate public education; (ii) legal fees awarded to J.S. parent's counsel; and (iii) any other relief deemed equitable and just. (Pet. 2.)

### **Testimony**

The following is not a summary of all testimony but an encapsulation of the testimony relevant to whether emergent relief is appropriate here.

#### **For petitioner**

**J.S. parent** is J.S. student's father. J.S. student is twelve years old and in the sixth grade. J.S. student last attended an elementary school in the District, where she had one teacher and one class. In middle school, J.S. student has to change classes. J.S. parent said that J.S. student is adjusting fairly well to middle school, even though she has missed her school bus home because she was in the wrong area of the school and sat in the wrong class once.

Around October 2023, J.S. parent learned that Student X was sending J.S. student love letters, wanting to have a relationship with J.S. student. According to J.S. parent, Student X told J.S. student and J.S. student's friends that Student X dreamed that she and J.S. student were having sex. According to J.S. parent, J.S. student rejected Student

X fourteen times. Student X also told J.S. student that she wanted to die or kill anyone so that J.S. student would be with her. J.S. parent found these statements concerning, because J.S. student should not have had to tell Student X fourteen times that J.S. student did not want a relationship with her.

J.S. parent noted that J.S. student's autism is such that J.S. student has difficulty expressing her emotions. J.S. student is always happy and almost child-like. J.S. parent indicated that he did not know Student X or Student X's parents, but he was concerned that Student X would not leave J.S. student alone.

On or around November 28, 2023, J.S. student's mother received a call from Constance Spencer, the anti-bullying specialist at CMS, who relayed that Student X pulled J.S. student into the bathroom and kissed her. J.S. student did not tell her parents about this conduct; J.S. student's friends advised her to report the conduct to CMS. J.S. student's parents were scared, because in their mind, Student X's behavior was a sexual assault<sup>5</sup> and her behavior towards J.S. student seemed to be progressing. Spencer told J.S. student's parents that they could come to CMS the following day and file a complaint and that Spencer would assist them with filing that complaint. J.S. parent later testified that the District did not give them information about the HIB process and that J.S. student's parents had to research this process.

J.S. student's parents completed a HIB form and submitted it to the District, and they also called the local police to initiate an investigation. They filed a report with CMS campus police and were told the report would be filed with the Cherry Hill Police Department.

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<sup>5</sup> From the evidence presented in the record, the conduct at issue does not appear to rise to the definition of sexual assault pursuant to N.J.S.A. 2C:14-2, as there is no evidence of sexual penetration or sexual contact with a victim less than thirteen years old and the actor is four years older than the victim. In addition, sexual contact is defined as the intentional touching of a victim's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor. N.J.S.A. 2C:14-1(d). A person's intimate parts are sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person. N.J.S.A. 2C:14-1(e). There was no evidence presented that Student X touched J.S. student's intimate parts when she allegedly kissed J.S. student.



The police report has been submitted to the County prosecutor's office, and J.S. student's parents are waiting to learn whether Student X will be charged with any criminal offenses. J.S. student's parents did not reschedule the November 30, 2023 meeting with the District, because they were seeking legal representation at that time.

The District has never told J.S. student's parents that J.S. student could not attend CMS. J.S. parent did not know that Student X denied kissing J.S. student, and he also did not know that Student X's schedule had been changed at her request. J.S. parent has never met Student X and does not know her or her mindset.

J.S. parent described an unprofessional interaction that he had with Spencer. According to J.S. parent, Spencer refused to talk to him or his wife about the incident, and J.S. parent said that Spencer was dismissive. J.S. student's parents asked Spencer questions about Student X, and Spencer would not answer those questions. Spencer asked J.S. parent how many times J.S. student went to the bathroom each day, and she offered to allow J.S. student to use the nurse's bathroom. J.S. student has not been interviewed by Spencer as part of the HIB investigation, as J.S. student's parents do not believe that she is qualified to conduct such an interview.

J.S. student's parents pulled J.S. student from CMS because they were concerned for J.S. student's safety. They are concerned about what other things Student X has planned for J.S. student. J.S. student's parents want J.S. student to return to school and want CMS to keep J.S. student and Student X separated. J.S. student has been keeping up with her schoolwork through Google classroom; she has not been receiving the speech supports set forth in her IEP.

The relief that J.S. parent seeks is to have J.S. student free from Student X's predatory behavior and separate the students, because CMS will not do so.

#### **For respondent**

**Benavides** is an assistant principal at CMS, in charge of the sixth and eighth grades. There are 900 students at CMS, about 300 in the sixth grade. She has over twenty

years of educational experience, including over seven years as an assistant principal. Benavides is familiar with J.S. student and the incident giving rise to the motion for emergent relief.

Benavides testified that CMS students are not trained on HIB but are told to consult their guidance counsellor if they are experiencing problems. She described students in the sixth grade as a curious age, where students are unsure about changing classes and meeting new friends. Teachers typically have to guide students with making better choices when they have made mistakes.

Benavides described J.S. student's allegations as a disputed event, because local police are investigating, which puts the HIB investigation on hold until a decision is made about any criminal charges. The decision to pause the HIB investigation came from the Cherry Hill campus police.

Benavides believes that CMS has offered a safe environment for J.S. student since November 30, 2023.

### **Additional Factual Findings**

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. "A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or

with common experience, or because it is overborne by other testimony.” Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

Having had the opportunity to hear and view both of the witnesses during their testimony, I accept the testimony of J.S. parent and Benavides as credible. They both testified consistently and forthrightly about J.S. student and the incident involving Student X. Accordingly, I **FIND** the following additional **FACTS**:

1. J.S. student did not tell her parents about the instances where Student X allegedly kissed her; J.S. student’s friends advised her to report the conduct to CMS.
2. J.S. student’s parents completed a HIB form and submitted it to the District, and they also called the local police to initiate an investigation. They filed a report with CMS campus police and were told the report would be filed with the Cherry Hill Police Department.
3. The police report has been submitted to the County prosecutor’s office, and J.S. student’s parents are waiting to learn whether Student X will be charged with any criminal offenses.
4. J.S. student’s parents did not reschedule the November 30, 2023 meeting with the District, because they were seeking legal representation at that time.
5. The District has never told J.S. student’s parents that J.S. student could not attend CMS.
6. J.S. parent did not know that Student X denied kissing J.S. student, and he also did not know that Student X’s schedule had been changed at her request.
7. J.S. parent has never met Student X and does not know her or her mindset.

8. Spencer asked J.S. parent how many times J.S. student went to the bathroom each day, and she offered to allow J.S. student to use the nurse's bathroom.
9. Because local police are investigating the incident between J.S. student and Student X, the HIB investigation is on hold until a decision is made about any criminal charges. The decision to pause the HIB investigation came from the Cherry Hill campus police.
10. J.S. student's parents pulled J.S. student from CMS because they were concerned for J.S. student's safety.
11. J.S. student's parents want J.S. student to return to school and want CMS to keep J.S. student and Student X separated.
12. J.S. student has been keeping up with her schoolwork through Google classroom; she has not been receiving the speech supports set forth in her IEP.

### **LEGAL ANALYSIS AND CONCLUSIONS**

The regulations governing controversies and disputes before the Commissioner of Education provide that “[w]here 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 or a stay of that action pending the Commissioner's final decision in the contested case.” N.J.A.C. 6A:3-1.6(a). The regulations further provide that the Commissioner may “[t]ransmit the motion to the OAL for immediate hearing on the motion.” N.J.A.C. 6A:3-1.6(c)(3).

At a hearing for emergent relief, the petitioner must show that they satisfy the following four standards:

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.

[N.J.A.C. 6A:3-1.6(b) (citing Crowe v. DeGioia, 90 N.J. 126 (1982)).]

The petitioner must prove each of these standards by clear and convincing evidence. Garden State Equality v. Dow, 216 N.J. 314, 320 (2013). Arguably, the standard is a high threshold to meet, and I will address each prong separately.

#### **1. Irreparable harm**

As the New Jersey Supreme Court explained in Crowe, “[o]ne principle is that a preliminary injunction should not issue except when necessary to prevent irreparable harm.” Crowe, 90 N.J. at 132 [citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299, 303 (E. & A. 1878)]. Indeed, the purpose of emergent relief is to “prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case.” Ibid. [quoting Thompson ex rel. Bd. of Chosen Freeholders v. Paterson, 9 N.J. Eq. 624, 625 (Sup. Ct. 1854)].

“Irreparable harm is shown when money damages cannot adequately compensate plaintiff's injuries.” Hornstine v. Twp. of Moorestown, 263 F. Supp. 2d 887, 911 (D.N.J. 2003) (citing Sampson v. Murray, 415 U.S. 61, 90 (1974)). “More than a risk of irreparable harm must be demonstrated.” Cont’l Grp., Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 359 (3d Cir. 1980). “The requisite for injunctive relief has been characterized as a clear showing of immediate irreparable injury . . . or a presently existing actual threat; [an injunction] may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights, be those rights protected by statute or by the common law.” Ibid.

J.S. parent has not provided clear and convincing evidence of any immediate irreparable injury to J.S. student. Whether Student X will approach and potentially harass J.S. student in the future is speculative, and while, as a parent, I understand J.S. parent's concern that J.S. student may be harassed again, there is no tangible evidence in the record indicating the same. J.S. parent admitted that he does not know Student X and has never met her. There is no evidence in this record of any communication between J.S. student and Student X since J.S. student reported to CMS that Student X allegedly kissed her. Student X's schedule has been changed, potentially minimizing her opportunity to harass J.S. student. There is no present, actual threat here, just J.S. parent's fear of a future incident between J.S. student and Student X.

Counsel for J.S. parent argues that J.S. student's missed educational time constitutes immediate irreparable injury. "There can be no reasonable argument that a person classified in special education needs daily supervision and instruction. Each day is important as the student progresses during the limited school year. Every day [J.S. student] misses sets her back in her progress towards successfully completing and fulfilling her IEP." Pl. Br. 2. First, it is important to note that considerations under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401, are not at play here. The issue at hand, as J.S. parent raised them, do not pertain to J.S. student's IEP; it is simply whether the District has addressed the safety concerns that J.S. student's parents have raised.<sup>6</sup>

Second, and more importantly, the District has not barred or prevented J.S. student from attending CMS. J.S. student's parents have unilaterally decided to keep J.S. student from attending CMS, and even when the District attempted to contact J.S. student's parents on December 11, 2023, to discuss issues, J.S. student's parents were already seeking legal counsel, rather than responding to the District. Counsel for J.S. parent argues J.S. student is constructively being prevented from attending CMS; I note there is no legal authority, whether statute, case law or regulation, supporting this argument. Pl.

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<sup>6</sup> J.S. parent has sought legal fees and other equitable relief in the petition. Because this is not an IDEA matter, those requests for relief are denied.

Br. 2. The lack of legal authority underpinning this argument merely underscores its specious nature.

Finally, J.S. parent testified that J.S. student is keeping up with her schoolwork through Google classroom. While Google classroom is not a complete substitute for an in-person classroom experience, J.S. student has not missed out on her education in its entirety.

J.S. parent has not sustained his burden to show by clear and convincing evidence that J.S. student has suffered irreparable harm. Accordingly, I **CONCLUDE** that J.S. parent has not shown that J.S. student suffered irreparable harm.

## **2. Settled Legal Right.**

Next, emergent relief “should be withheld when the legal right underlying plaintiff’s claim is unsettled.” Crowe, 90 N.J. at 133 (citing Citizens Coach Co., 29 N.J. Eq. at 304–05). As noted previously, J.S. parent wants for J.S. student to return to CMS and wants CMS to keep J.S. student and Student X separated.

Here, what exactly happened between J.S. student and Student X in November 2023 is not settled. The parties are awaiting a decision from the County prosecutor’s office on whether criminal charges will be brought against Student X based upon a police investigation. The HIB investigation to determine whether J.S. student was subjected to harassment, intimidation and bullying has been placed on hold until any charging decisions have been made. Any decisions on whether J.S. student and Student X should be separated while attending CMS will have to wait until decisions on whether Student X will be charged with any criminal charges and the outcome of the HIB investigation. Counsel for J.S. student has cited to no legal authority indicating that the District could or should have handled this situation differently and provided no proof, let alone clear and convincing evidence, that it has a right to the relief it seeks. Therefore, I **CONCLUDE** that J.S. parent has not shown a legal right underlying his claim.

## **3. Likelihood of Success on the Merits**

J.S. parent has not demonstrated that he is likely to succeed on the merits of the underlying claim. Under this emergent relief prong, “a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits.” Crowe, 90 N.J. at 133 [citing Ideal Laundry Co. v. Gugliemone, 107 N.J. Eq. 108, 115–16 (E. & A. 1930)]. This typically “involves a prediction of the probable outcome of the case based on each party’s initial proofs, usually limited to documents.” Brown v. City of Paterson, 424 N.J. Super. 176, 182–83 (App. Div. 2012) [quoting Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 397 (App. Div. 2006)].

Because I have found that J.S. parent has not shown a legal right underlying his claim, it logically follows that there is not a likelihood of success on the merits. J.S. parent has not provided any clear and convincing evidence or legal argument showing that he is likely to prevail against the District.

Counsel for J.S. parent argues, “[J.S. parent] has the likelihood of prevailing on the merits as [CMS] has demonstrated little if any interest addressing the needs of non-white students and students with disabilities.” Pl. Br. 2. The facts in the record show otherwise. The District responded to concerns J.S. student’s parents raised in October 2023, and the parties believed that those concerns had been resolved. Once J.S. student reported the alleged incident with Student X in November 2023, the District attempted to work with J.S. student’s parents, which included an anticipated meeting with Benavides on November 30, 2023. J.S. student’s parents canceled that meeting and never rescheduled, even after Benavides contacted J.S. student’s parents on December 11, 2023. There is no evidence in this record supporting this argument that the District treated J.S. student differently because she is non-white or disabled.

Counsel for J.S. parent has not provided any clear and convincing evidence or legal authority showing that J.S. parent has a reasonable probability of ultimate success on the merits, and I **CONCLUDE** that J.S. parent has not shown a reasonable probability of ultimate success on the merits.



#### 4. **Balancing the Equities**

The fourth and final emergent relief standard involves “the relative hardship to the parties in granting or denying relief.” Crowe, 90 N.J. at 134 [citing Isolantite Inc. v. United Elect. Radio & Mach. Workers, 130 N.J. Eq. 506, 515 (Ch. 1941), mod. on other grounds, 132 N.J. Eq. 613 (E. & A. 1942)].

The only evidence presented here regarding relative hardship to the parties pertains to J.S. student, who has missed school solely based on her parents’ decision to keep her from attending CMS since November 29, 2023. Despite the argument that she has been constructively suspended from CMS, an argument that lacks a legal foundation, there is no hardship to J.S. student in denying emergent relief. J.S. student may return to CMS at any time to continue her education.

Requiring the District to grant the emergent relief that J.S. parent seeks, namely ensuring that J.S. student and Student X remain separate, imposes greater harm on the District than it does J.S. student. Again, it is important to note that there is a pending charging decision regarding Student X’s conduct, along with a HIB investigation. These decisions should be made and investigations completed before the District determines what, if any, remedial steps should be taken. Requiring a District to ensure that students remain separate when charging decisions have not been made and an HIB investigation is not completed is burdensome on the District.

I **CONCLUDE** that the Board will suffer greater harm should emergent relief be granted than J.S. student if the requested relief is not granted.

J.S. parent’s dissatisfaction with the status of this process is not a basis for emergent relief. J.S. student’s parents began this process, seeking criminal charges against Student X, and they will have to wait until the process is completed before the District can determine whether Student X’s alleged conduct constituted harassment, intimidation and bullying. Once that HIB investigation is completed, then the District can determine whether separating J.S student and Student X is appropriate and to what

degree they will be separated, among any other remedial measures the District deems appropriate.

Based upon the foregoing, I **CONCLUDE** that the petitioner has failed to meet all of the requirements set forth in N.J.A.C. 6A:3-1.6(b) warranting an order for emergent relief in this matter.

### **ORDER**

Accordingly, I **ORDER** that the petitioner's application for emergent relief be and hereby is **DENIED**. From representations made by counsel for the parties during prehearing conferences, I understand that there are no other issues to be decided on the underlying petition, and accordingly, the petition is **DISMISSED**.

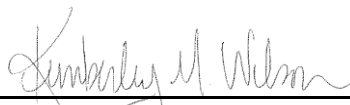
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.

December 22, 2023

DATE



**KIMBERLEY M. WILSON, ALJ**

Date Received at Agency:

Date Mailed to Parties:

KMW/am

## **APPENDIX**

### **WITNESSES**

#### **For petitioner**

J.S. parent

#### **For respondent**

Dr. Julia Benavides

### **EXHIBITS**

#### **For petitioner**

Motion papers including Petition, Letter Brief, dated December 11, 2023; and Certification of Service

#### **For respondent**

Response papers, including: (i) Letter Brief, dated December 19, 2023; (ii) Certification of Neil Burti, Principal, dated December 18, 2023; and (iii) J.S. student's IEP.