189-26E
OAL Dkt. No. EDU 07194-26
Agency Dkt. No. 144-04-26

New Jersey Commissioner of Education

Final Decision

H.Y., on behalf of minor child, R.Y.,

Petitioner,

v.

Beverly City Board of Education, Burlington County,

Respondent.

The record of this emergent matter, the sound recording of the hearing held at the Office of Administrative Law (OAL), and the recommended decision of the Administrative Law Judge (ALJ) have been reviewed and considered.

Upon review, the Commissioner concurs with the ALJ that petitioner has failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia*, 90 *N.J.* 126, 132-34 (1982), and codified at *N.J.A.C.* 6A:3-1.6.

Accordingly, the decision denying petitioner's application for emergent relief is adopted. As the request for emergent relief is the only issue to be resolved in this matter, no further proceedings are necessary, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

COMMISSIONER OF EDUCATION

Date of Decision: June 2, 2026
Date of Mailing: June 2, 2026

[1] 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 ON
EMERGENT RELIEF

OAL DKT. NO. EDU 07194-26

AGENCY DKT. NO. 144-04-26

H.Y. o/b/o R.Y.,

Petitioner,

v.

BEVERLY CITY SCHOOL BOARD OF EDUCATION,

Respondent.

H.Y., petitioner, pro Se

Brett E.J. Gorman, Esq., for respondent (Gorman, D'Anella and Morlock, LLC, attorneys)

Record Closed: May 26, 2026 Decided: May 27, 2026

BEFORE **JOHN K. MALONEY**, ALJ:

STATEMENT OF THE CASE

Participation in graduation is a privilege, not a right. Moreover, unless a school's action is arbitrary, capricious, without a rational basis, or induced by improper motives, its decision to deny a student participation in a graduation ceremony because of a disciplinary infraction is deemed valid. Petitioner H.Y. seeks emergent relief to allow R.Y. to attend and participate in the eighth-grade graduation ceremony scheduled for June 16, 2026. R.Y. was barred from participation because of a disciplinary matter. The action of the school was not arbitrary or capricious and, thus, R.Y. was properly denied participation.

PROCEDURAL HISTORY

On April 14, 2026, in response to a finding of vandalism and misuse of school property against R.Y., an eighth-grade student at Beverly Elementary School, the Beverly City School District (Board) imposed a loss of eighth-grade privileges penalty. On April 16, 2026, H.Y., on behalf of her daughter R.Y., filed a pro se Petition of Appeal. This loss of eighth-grade privileges included the denial of R.Y.'s participation in the eighth-grade promotion/graduation ceremony scheduled for June 16, 2026. Pursuant to N.J.A.C. 6A:3-1.6(c)3, and in response to petitioner's application for emergency relief, the Department of Education, Office of Controversies and Disputes, transmitted the case to the Office of Administrative Law for hearing as a contested case on May 7, 2026.

On May 18, 2026, petitioner sought to amend her petition to include R.Y.'s participation in Field Day scheduled for May 29, 2026. Although opposed by respondent, petitioner correctly noted that the board's penalty was a loss of eighth-grade privileges, which encompasses more activities and school events than just the graduation ceremony. Under the Uniform Administrative Procedures Rule 1:1-6.2, "pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency… and would not create undue prejudice." As petitioner's addition of Field Day participation sat comfortably under the umbrella of eighth-grade privileges and the respondent would not suffer any undue prejudice, I granted petitioner's request to amend.

After oral argument on May 26, 2026, the record was closed. On May 27, 2026, an Order denying emergent relief was issued.

FINDINGS OF FACT

I **FIND** the following to be the **FACTS** of this matter.

R.Y. is a student at Beverly Elementary School in Beverly City. Although R.Y. has an Individualized Education Plan (IEP), her IEP does not exempt her from the school's code of conduct.

As required of all eighth-grade students of Beverly Elementary at the beginning of the school year, R.Y. was required to review and sign an "Eighth Grade Privileges" document, which informs that participation in commemorative events, like promotion/graduation and Field Day, are privileges and not rights, and that suspensions, both in-school and out of school, will result in exclusion from all eighth-grade privileges. The school publishes a code of conduct with a table delineating various levels of infractions, descriptions of infractions, and corresponding punishments. Additionally, the board promulgated Regulation 7610 that prohibits vandalism of school property.

R.Y. was reprimanded twice earlier in the 2025-26 school year for disciplinary infractions. As a result of the first, she received in-school suspension and lunch detention for obscene language in September 2025. In the second, a November 2025 incident, she threatened to hit another student in the face, was disrespectful to a teacher, and received after-school detention. Lastly, R.Y. was implicated in an incident of vandalism of school property, which occurred on April 6, 2026. After the school administration became aware of the incident on April 14, 2026, respondent imposed a penalty of forfeiture of eighth-grade privileges, which included participation in Field Day on May 29, 2026, and graduation on June 16, 2026.

CONCLUSIONS OF LAW

Petitioner did not meet the criteria for emergent relief. N.J.A.C. 6A:3-1.6(b) sets forth the standards governing motions for emergent relief. The petitioner must demonstrate that she will suffer irreparable harm, that the legal right underlying her claim is settled, that she has a likelihood of prevailing on the merits, and once the balancing of equities is made, she will suffer greater harm if the requested relief is not granted. Crowe v. DeGioia, 90 N.J. 126 (1982). The burden of establishing each of the Crowe factors is by clear and convincing evidence. Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012).

Irreparable Harm

Relief should not be granted except "when necessary to prevent irreparable harm." Crowe, 90 N.J. at 132. In this regard, harm may be considered irreparable if it cannot be adequately redressed by monetary damages, which "may be inadequate [due to] the nature of the injury or of the right affected." Id. at 132-33. The moving party bears the burden of proving irreparable harm. Brown, 424 N.J. Super. At 183. Additionally, more than the risk of irreparable harm must be demonstrated. Continental Group, Inc. v. Amoco Chemicals Corp., 614 F. 2d 351, 359 (D.N.J. 1980). The requisite for injunctive relief requires a "clear showing of immediate irreparable injury." Id. (citation omitted).

Numerous cases hold that participation in a graduation ceremony and other school activities is a privilege and not a right. See A.D. v. Town of West New York Bd. of Educ., Hudson County, 2016 N.J. AGEN LEXIS 522 (OAL Docket No. EDU 09030-16); see also D.S. o/b/o D.C. v. Board of Educ. of Parsippany Troy Hills, OAL Docket No. EDU-90055-06, 96 N.J.A.R. 2d (EDU) 697 (June 14, 1996). Of course, "there is no adequate after-the-fact remedy that can adequately redress the intangibles of a lost experience after the event is over." A.D., 2016 N.J. AGEN LEXIS, *4.

Although petitioner argues that R.Y. will suffer significant and lasting harm if R.Y. is denied participation in Field Day and her eighth-grade graduation, she has provided no examples to support her claim beyond her generalized claim that R.Y.'s nonparticipation

will impair her emotional and mental well-being. More significantly, petitioner has submitted no proofs to substantiate her claim. In addition, petitioner argues that the district has engaged in a series of punishments during the school year that has been detrimental to R.Y.'s self-esteem, has not been productive in improving her comfort at school or her academic performance, and has eroded her faith in the school's administration, which have resulted in injury to R.Y., with the denial of graduation and Field Day participation being the final wounds.

Regardless of whether R.Y. participates in Field Day or her eighth-grade graduation ceremony, she will receive credit for completing the eighth grade and will start the ninth grade in the 2026-27 school year. Based on precedent, the high evidentiary burden of clear and convincing evidence, and petitioner's failure to enumerate specific and irreparable harm, I **CONCLUDE** that petitioner has failed to establish irreparable harm by clear and convincing evidence and cannot satisfy this first prong.

Although petitioner must satisfy all requirements of Crowe and I need not address the remaining three prongs, I will nevertheless address those prongs.

The Legal Right Underlying Petitioner's Claim is Settled

As to the requirement that the right to the underlying claim be settled, each school district is obligated to provide a thorough and efficient system of education to all children residing in its school district. N.J. Const. (1947), Art. VIII, ¶ 1; N.J.S.A. 18A:33-1. To carry out this policy, local boards of education have been granted discretionary authority. N.J.S.A. 18A:11-1(c) and (d). School boards adopt rules for the management of the public schools of the district, and to perform all acts and do all things necessary for the lawful and proper conduct of the public schools of the district.

Local boards of education are responsible for protecting the health, safety and welfare of their students and ensuring the orderly conduct of the academic process. See Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975); see also Joye ex rel. Joye v. Hunterdon Cent. Regional High School Bd. of Educ., 353 N.J. Super. 600,

609 (App. Div. 2002). To accomplish this, such boards are empowered to establish rules of conduct and impose discipline to enforce such rules.

As previously noted, participation in a graduation ceremony and other school activities is a privilege, not a right. See A.D., 2016 N.J. AGEN LEXIS, *4. Although routinely called a "graduation," the eighth-grade ceremony is a promotion ceremony, unlike high school graduations which involve the completion of State-endorsed diploma requirements. See N.J.S.A 18A:35-4.9; see also N.J.S.A. 6A:8-5.1, 5.2.

Petitioner has failed to demonstrate that the legal right underlying her claim is well-settled. In fact, the law is well settled in favor of the board, which has broad discretion to take the actions needed to effectively operate its public schools. A determination by a local board may not be overturned in the absence of a finding that the action was arbitrary, capricious, or unreasonable. See T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07, Initial Decision (February 6, 2008) (*citing* Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), *aff'd*, 46 N.J. 581 (1966)); see also J.M. v. Hunterdon Cent. Reg'l High Sch. Dist., 96 N.J.A.R. 2d (EDU) 415, 419 (*citing* Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288 (App. Div. 1960)).

Indeed, a tribunal, like the Commissioner, may not substitute its judgment for that of the board of education, whose exercise of its discretion may not be disturbed unless shown to be "patently arbitrary, without rational basis or induced by improper motives." Kopera, 60 N.J. Super. at 294. Our courts have held that "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." Bayshore Sewage Co. v. Dep't of Envtl. Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), *aff'd*, 131 N.J. Super. 37 (App. Div. 1974). Thus, the actions of a board of education, which lie within the area of discretionary powers, especially as it relates to matters of student discipline, cannot be overturned unless there is a showing that the discipline imposed was arbitrary, capricious, without a rational basis, or induced by improper motives.

In this case, petitioner has failed to demonstrate that the legal right underlying the claim is well-settled and failed to demonstrate that the board acted in bad faith, with improper motives, arbitrarily, capriciously, or in utter disregard of the circumstances before it.

Therefore, I **CONCLUDE** that petitioner cannot satisfy the second prong.

Likelihood of Prevailing on the Merits

Beverly Elementary School promulgates a Student Code of Conduct and a "Eighth Grade Privileges" document. Students and parents are required to review and acknowledge receipt of these documents. The consequences for violations of the code, such as loss of privileges, are explained and puts students and parents on notice. As previously mentioned, R.Y.'s IEP does not exempt her from the code of conduct. The incident on April 6, 2026, which is the wellspring of this petition and which led to R.Y. being barred from participation in Field Day and graduation, was not R.Y.'s first disciplinary matter of the 2025-26 school year. As previously noted, she had two prior disciplinary incidents, in September and November of 2025.

Beyond the alleged circumstances of the "marker-picnic table" incident on April 6, 2026, there are other considerations that could impact the outcome of the merits of the case.

On October 9, 1973, under the authority of N.J.S.A. 18A:2-18 and by written agreement, Beverly City transferred partial control over a park commonly referred to as Launiger Field to the Beverly City School District. Launiger Field abuts the property of Beverly Elementary School. In return for providing insurance liability coverage and for maintaining the buildings and the general upkeep of the grounds, the Beverly City Board of Education was authorized to use Launiger Field for recreational and school use during regular school hours and regular school activities.

On April 14, 2026, R.Y. was cited for "vandalism" and "misuse of school property" for using a marker and marking up a picnic table located in Launiger Field. Per the

certification of Beverly City School District Superintendent Elizabeth C. Giacobbe, she reviewed security footage of an incident that occurred on April 6, 2024, while the Beverly City School District was on spring break. Dr. Giacobbe noted that the security tape showed R.Y., along with two other students, one male and one female, using a marker and drawing on a picnic table.

Per the documents submitted by H.Y., the graffiti on the table were drawings of penises. R.Y. admits that she used the marker on the table but asserts that it was only an attempt to cover up the other students' graffiti. R.Y.'s assertion is possibly supported by Dr. Giacobbe's certification. The superintendent noted that over one hour after the other two students had drawn on the table, "[a]t approximately 12:10… R.Y. draws over two of the drawings on the table." According to Dr. Giacobbe, this action by R.Y. is the only time that R.Y. used a marker on the table. R.Y. also asserts that she attempted to wipe away the graffiti but was unsuccessful. Lastly regarding the incident, H.Y. submitted screen shots of purported social media exchanges with the female student involved in the incident, in which the female student states that R.Y. "didn't do anything."

Vandalism and misuse of school property are, interestingly, not listed as violations in the code of conduct's table of offenses. One, however, need not be Clarence Darrow or the Amazing Kreskin to deduce that vandalism and/or misuse of school property is patently unacceptable conduct. Although not included in the code of conduct's table of offenses, the Beverly City School Board's Regulation 7610 provides that vandalism is "the willful and malicious acts of any person that result in the destruction, defacement, or damage of any property, real or personal, belonging to or *entrusted to the Board*." (emphasis added). Regulation 7610(c)(1) further provides that "[a] pupil who vandalized school property is subject to discipline, which may include suspension or expulsion."

The students of the Beverly City School District were on spring break on April 6, 2026. N.J.A.C. 6A:16-7.6 permits school authorities to punish students for conduct that occurs off school grounds. However, that authority is only granted when it "is reasonably necessary to protect the physical and emotional safety of a student; and [] the conduct… *materially and substantially* interferes with the orderly operation of the school." G.D.M. v.

Board of Educ. of the Ramapo Indian Hills Regional High School Dist., 427 N.J. Super. 246, 259-60 (App. Div. 2012) (emphasis in the original).

In R.R., a school district suspended a student based on an alleged assault that took place after school hours and away from school grounds. R.R. v. Board of Educ. of the Shore Regional High School District, 109 N.J. Super. 337, 339 (Ch. Div. 1970). The R.R. Court held that the district's authority to discipline students for such conduct could only be exercised "where the activity which is the subject of the proposed suspension… materially and substantially interfere[s] with the requirement of appropriate discipline in the operation of the school" and where the discipline "is reasonably necessary for the student's physical or emotional safety and well-being, or for reasons relating to the safety and well-being of other students, teachers or public school property." Id. at 343-44.

Here, we have a situation in which a student is being disciplined for allegedly vandalizing a picnic table while school was not in session on what is possibly school property.

Respondent argues that Launiger Field is "school property" because of the ninety-nine year lease the board concluded with Beverly City in 1973 in which the City entrusted and gave control over the field to the board. This "lease" requires the board to maintain the park, its buildings and grounds. However, it is a lease and not a transfer of property. In return for maintenance and securing adequate insurance, the board is "authorize[d]… [to] use said Launiger Field" "for recreational and school use… limited to regular school hours and regular school activities." The Agreement specifically states that "the City owns a piece of property commonly known as Launiger Field." Thus, actual ownership of Launiger Field remains with Beverly City.

On the other hand, Regulation 7610 prohibits vandalism of property *entrusted* to the Board. The 1973 Agreement, at a minimum, entrusted the upkeep and maintenance of Launiger Field to the board, which would include the table. Respondent further states that the Board's authority to discipline R.Y. has no temporal limitations because Regulation 7610 and N.J.S.A. 18A:37-2 provides that any student who vandalizes school property is subject to punishment and suspension regardless of when the act happened

or whether school was in session. Regulation 7610 requires a mens rea of willfully and maliciously, while N.J.S.A. 18A:37-2(f) requires that a student "willfully" cause "substantial damage to school property."

Is the picnic table school property? Possibly, no. Similarly, does the location of the incident or the "ownership" of the table impede the board's power to impose discipline? The lease compels a duty upon the board to maintenance the buildings and grounds of Launiger Field. Although it did not convey ownership of the property to the board, it certainly entrusted the buildings and structures of Launiger Field to the board.

Did R.Y. vandalize the table or was she, as she asserts, simply covering up the inappropriate figures drawn by the other two students? In its definition of vandalism, Regulation 7610 requires that act be "willful and malicious." N.J.S.A. 18A:37-2 also requires willful conduct and that the damage to school property be substantial. Only through a legal determination of her intent can "vandalism" be established.

Does the timing of the incident (during spring break) limit the Board's authority to discipline the alleged conduct? While "vandalism" may have no temporal limitations, as respondent argues, infractions outside of school hours and off school property require a finding that the activity materially and substantially impacts the safety and well-being of other students, teachers or public-school property. It is doubtful that the markings on the table impacted the safety and well-being of other students, teachers or school property.

The Court in Bayshore Sewage held that when "there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." Bayshore Sewage, 122 N.J. Super. at 199–200. Additionally, relief is required to be squarely based on sound judicial discretion, which may permit a court to place less emphasis on a particular Crowe factor if another greatly requires the issuance of the remedy. See Waste Mgmt. of New Jersey, Inc. v. Morris County Municipal Utilities Authority, 399 N.J. Super. 508, 520 (App. Div. 2013).

Here, petitioner and respondent hold two contrasting and strongly held views about what happened on April 6, 2026 in Launiger Field. At this time based on the information presented, it is unknown as to what exactly happened that day in that place. Maybe R.Y. *was* simply covering up the other students' graffiti, or maybe she was adding to it? If R.Y.'s lack of complicity was more definitively proven or known and, thereby, her triumph on the merits assured, I could potentially conclude that the favorable third Crowe factor determination supported a finding of irreparable harm. If such were the case, the entire calculus could change. Such, however, is not the case. Thus, because of that factual uncertainty, it would be difficult to hold that the board's actions were arbitrary or capricious.

In the end, deciding these factual questions is not required as petitioner's request for emergency relief cannot be granted because she failed the first two prongs of the Crowe analysis. As for the third prong – the likelihood of prevailing on the merits – the petitioner, while not assured of success, would have at a minimum, more than a puncher's chance.

Balancing of Equities and Interests of the Parties

When the equities are balanced, will the petitioner suffer greater harm than the board if the relief is not granted? Although petitioner did not meet the legal hurdle to demonstrate that R.Y. would suffer irreparable harm by not participating in Field Day or the graduation ceremony, that is not to say that R.Y. will not suffer. Conversely, the Board has a strong and valid interest in the effective and orderly operation of its schools. As the respondent has demonstrated, this is a policy uniformly applied to all eighth-grade students, and an exception here could undermine district policy.

There is no question that graduation and participation in other school-related activities is a privilege, and that under the clearly enumerated policies of the school district, failure to comply with the disciplinary requirements can result in a student's exclusion from those activities and the graduation ceremony. Although I entirely appreciate why she so strongly wishes to attend, R.Y. has no right to attend Field Day or

the graduation ceremony, and for this reason petitioner cannot demonstrate a harm weighty enough to tip the balance in favor of a grant of extraordinary relief.

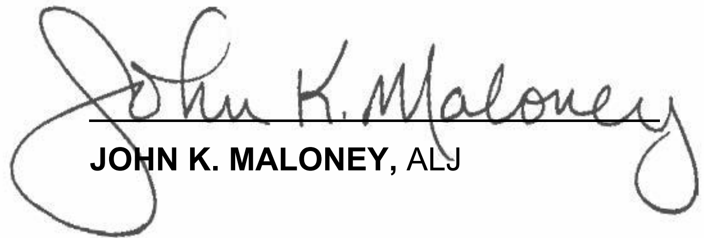
A balancing of the equities militates against granting the relief sought by the petitioner. The rights of this petitioner are slightly less weighty than those of the board because participating in Field Day or a graduation ceremony is a privilege. See M.A.A. v Edison Bd. of Educ., EDU 4134-98, Initial Decision (May 29, 1998), *aff'd*, Comm'r (June 12, 1998); see also N.B. v Gloucester Bd. of Educ., EDU 6740-11 Initial Decision (June 14, 2011). The harm to the district would be greater than to petitioner if the request is granted as "[t]he Board has an important interest in enforcing its policies in order to effectively operate its schools and ensure academic achievement." W.L.B. and K.B. v Board of Education of Woodbury School District, OAL Dkt. No. 90056-96 (May 17, 1996).

Thus, as for the final Crowe factor – the balancing of equities and interests – I **CONCLUDE** that the petitioner falls just short. I additionally **CONCLUDE** that there are no further issues to be resolved as the request for emergent relief pertained only to R.Y.'s participation in Field Day and the graduation ceremony.

ORDER

I **ORDER** that petitioner's application for such relief is **DENIED**, and that this case is **DISMISSED.**

This order on application for emergency relief 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 case. The final decision must be issued without undue delay, but no later than forty-five (45) days following the entry of this order. If the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not adopt, Modify, or reject this order within forty-five (45) days, this recommended order becomes a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.



May 27, 2026
DATE

JOHN K. MALONEY, ALJ

Date Received at Agency: ____________________

Date E-Mailed to Parties: ____________________

JKM/kl