



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION DENYING

EMERGENT RELIEF

OAL DKT. NO. EDS 08134-19

AGENCY DKT. NO. 2019-30133

C.F. ON BEHALF OF A.H.

Petitioner,

v.

**NEPTUNE TOWNSHIP¹ BOARD
OF EDUCATION,**

Respondent.

C.F., petitioner, pro se

Diana L. Anderson, Esq., for respondent (Diana L. Anderson, Esquire, LLC,
attorney)

Record Closed: June 21, 2019

Decided: June 24, 2019

BEFORE DAVID M. FRITCH, ALJ:

¹ The matter, as transmitted to the Office of Administrative Law, was improperly captioned with Neptune City Board of Education as the respondent. The respondent in this matter is the Neptune Township Board of Education.

STATEMENT OF THE CASE

The petitioner, C.F., on behalf of A.H., petitioned the Office of Special Education Policy and Dispute Resolution in the New Jersey Department of Education, pursuant to N.J.A.C. 6A:3-1.6 et. seq., for an order for emergent relief seeking that A.H. be allowed to participate in the graduation ceremony of Neptune High School (NHS).

PROCEDURAL HISTORY

On June 16, 2019, the petitioner filed a Parental Request for Mediation/Due Process Hearing/Expedited Due Process Hearing with the Office of Special Education Policy and Dispute Resolution pursuant to N.J.A.C. 6A:3-1.6 et seq. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on June 17, 2019. N.J.S.A. 52:14F-5(e), (f), and (g) and N.J.A.C. 1:6A-1 through 18.5. Oral argument was held on June 21, 2019, and the record was closed on that date.

FACTUAL DISCUSSION

A summary of the pertinent evidence presented is as follows, and I **FIND** the following **FACTS**:

1. A.H. is a twelfth grade student who is currently on home instruction through the Neptune Township Board of Education (Board).
2. A.H. attended NHS until January 2018, when she was sent to Coastal Learning Center in Howell, New Jersey (Coastal) following an incident where it is alleged she hit a staff member at NHS.
3. A.H. was working on completing her credits at Coastal to enable her to receive her diploma and graduate from NHS.
4. A.H. has an Individualized Education Plan (IEP) which diagnoses her with Oppositional Defiance Disorder.

5. On May 22, 2019, A.H. and her guardian met with the administration at Coastal and signed a motivational contract. A.H.'s mother testified that this agreement provided for her daughter to attend District activities, including NHS' graduation, even though she would not have sufficient credits to graduate, if she attended class and did not cause any disciplinary problems. The Board contends that the agreement did not contemplate A.H. walking in NHS' graduation this year, but rather next year, after A.H. completes the required credits to graduate.
6. A.H. attended the NHS prom on May 23, 2019. At hearing, the parties disagreed as to whether A.H. had permission to attend the prom or if she merely showed up unchallenged to the prom, however, it is undisputed that there were no incidents from A.H.'s attendance at the NHS prom.
7. On June 11, 2019, staff members at Coastal reported that A.H. engaged in disruptive behavior at the school:
 - a. Reports from the school alleged that A.H. tried to cause disruptions in the hallway during changes between classes, encouraged other students to "act up and riot against the school," and utilized "gang slang" and signs while making threats to create chaos at the end of the school year. (See Resp. Br. at 2-4 (Problem Behavior Reports from Coastal).)
 - b. As a result of these disruptions, A.H. was placed on an out-of-school suspension for four days, starting June 12, 2019, through June 17, 2019.
 - c. On June 12, 2019, A.H. was terminated from Coastal and is about to begin a program of home instruction to allow her to complete the credits needed for her to graduate high school. The parties disputed whether A.H. was terminated from Coastal by the District, or by A.H.'s mother's request, but it is undisputed that A.H. is currently on home instruction and will continue working to complete the credits for her to obtain her high school diploma.
8. The Board last conducted a manifestation determination on A.H. in April 2019, following a disciplinary complaint from the bus company that was transporting A.H. to school at that time.

- a. The bus driver who transported A.H. alleged that A.H. was passing out drinks containing liquor on the bus and had threatened the driver using gang signs to intimidate the bus driver.
 - b. The Board's manifestation determination concluded that the type of conduct displayed in this incident was not a manifestation of A.H.'s disabilities.
9. As of the date of the hearing, A.H. still requires an additional ten credits to qualify for her high school diploma.
 - a. The Board agreed that, should A.H. complete the required credits on home instruction and not have any additional disciplinary issues, she would be permitted to graduate from NHS next year and to participate in NHS' graduation ceremony at that time.
10. While A.H.'s family recognizes that she does not have adequate credits to graduate high school at this time, they are seeking to have her walk in the upcoming graduation ceremony for NHS, even if she does not receive a diploma, to recognize the hard work she has put into her studies and getting this far towards her goal of a high school diploma and to continue to motivate her to complete her studies and obtain her high school diploma.
 - a. The Board has, in the past, allowed some students who are close to having the requisite number of credits to graduate walk in their graduation ceremony as a courtesy while they complete their required credits.
11. The graduation ceremony for NHS is scheduled for June 25, 2019.

LEGAL DISCUSSION

N.J.A.C. 1:6A-12.1 provides that the affected parent(s), guardian, board or public agency may apply in writing for emergent relief. An emergency relief application is required to set forth the specific relief sought and the specific circumstances the applicant contends justify the relief sought. N.J.A.C. 6A:3-1.6(b) sets forth the standards governing motions for emergent relief:

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 the 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.

The petitioner has the burden of establishing all of the above requirements in order to warrant relief in their favor. D.I. and S.I. on behalf of T.I. v. Monroe Township Board of Education, 2017 N.J.Agen LEXIS 814, 7 (OAL Docket No. EDS 10816-17, October 25, 2017). The moving party bears the burden of proving each of the Crowe elements "clearly and convincingly." Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

Beginning with the first requirement, it is well-settled that relief should not be granted except "when necessary to prevent irreparable harm." Crowe, 90 N.J. at 132-33. In this regard, harm is generally considered irreparable if it cannot be adequately redressed by monetary damages. Id. at 132-33. In other words, it has been described as "substantial injury to a material degree coupled with the inadequacy of money damages." Judice's Sunshine Pontiac v. General Motors Corp., 418 F.Supp. 1212, 1218 (D.N.J. 1976) (citation omitted).

The moving party bears the burden of proving irreparable harm. More than a risk of irreparable harm must be demonstrated. Continental Group v. Amoco Chemicals Corp., 614 F.2d 351, 359 (D.N.J. 1980). Ordinarily, the opportunity at issue here, namely the chance to walk in a high school graduation ceremony, is an event that, once missed, cannot be regained since it is a once in a lifetime event. See C.D. o/b/o S.C. v. Mainland Regional Bd. of Educ., EDS 08459-17, Decision on Emergent Relief, (June

16, 2017) <http://lawlibrary.rutgers.edu/oal/search.html> (“[T]he opportunity to participate in the graduation ceremony is an event that, once missed, cannot be regained since it is a once in a lifetime event”); K.H. o/b/o M.G. v. Kingsway Regional Bd. of Educ., EDS 6903-11, Decision on Emergent Relief, (June 17, 2011) <http://lawlibrary.rutgers.edu/oal/search.html>; R.C. o/b/o M.C. v. Pemberton Twp. Bd. of Educ., EDS 4212-02, Decision on Emergent Relief, (June 17, 2002) <http://lawlibrary.rutgers.edu/oal/search.html>. But see T.S. v. Jackson Township Board of Education, EDS 4113-07, Oral Decision on Emergent Relief, (May 25, 2007) <http://lawlibrary.rutgers.edu/oal/search.html> (concluding “prom and graduation, although important in one’s young life, will not result in irreparable harm if missed”). In this case, the Board has extended the opportunity to A.H. to walk in NHS’ graduation ceremony next year, provided that she completes the credits required for graduation and does not have any additional disciplinary problems. A.H. will still have the opportunity to participate in her high school graduation at NHS, however, it will be a year later. This graduation would be with a different class of fellow students. Although A.H. has been attending Coastal since January 2018, she did begin her high school education at NHS and wishes to graduate with the students she started high school with so the graduation ceremonies, this year or next year, are not completely fungible events. Under the circumstances, I **CONCLUDE** that the petitioner has met her burden of establishing a clear showing of immediate irreparable injury unless the requested relief is granted.

Secondly, the petitioner must also demonstrate that the legal right underlying her claim is settled and petitioner must make a preliminary showing of a reasonable probability of success on the merits. Crowe, 90 N.J. at 133. The law on this point is well-settled in favor of the respondent, who has broad discretion to take the actions needed to effectively operate its public schools and to protect the health, welfare, and safety of its students. C.D. o/b/o S.C., EDS 08459-17. Rules and regulations regarding participation in graduation ceremonies are matters clearly within the purview of the respondent’s discretion. J.M. o/b/o C.P. v. Hanover Park Regional Board of Education, EDS 5606-00, Final Decision, (June 23, 2000) <http://lawlibrary.rutgers.edu/oal/search.html> (matters concerning graduation are within the discretion of the district); J.Z. o/b/o C.Q. v. Bd. of Educ. of the Buena Regional

School Dist., Atlantic County, EDS 0297-07, Final Decision, (July 23, 2007) <http://lawlibrary.rutgers.edu/oal/search.html>. See also Buonasorte v. Bd. of Educ. of Mainland Regional High School District, EDU 8012-09, Order on Application for Emergent Relief, (June 19, 2009), adopted, Comm'r (June 19, 2009) <http://njlaw.rutgers.edu/collections/oal/> ("The applicable case law establishes beyond question that participation in a graduation ceremony is a privilege and not a right"). School board policies and actions within their authority are entitled to a presumption of lawfulness and good faith, and where they are challenged, the challenger bears the burden of proving that the actions are unlawful, arbitrary, capricious, or unreasonable. Schuster v. Bd. of Educ. Montgomery Twp., 96 N.J.A.R. 2d (EDU) 670, 676 (citing Schnick v. Westwood Bd. of Educ., 60 N.J.Super. 448 (App.Div. 1960) and Quinlan v. Bd. of Educ. of North Bergen Twp., 73 N.J.Super. 40 (App.Div. 1962)). See also Thomas v. Morris Twp. Bd. of Educ., 89 N.J.Super. 327, 332 (App.Div. 1965), aff'd, 46 N.J. 581 (1966); Kopera v. West Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960).

In other words, while the Board cannot be arbitrary and capricious in its actions, it does have the authority to establish and enforce rules with regard to attendance and participation at school-sponsored events such as graduation ceremonies. The arbitrary, capricious and unreasonable standard of review imposes a heavy burden on challengers of board actions. This standard has been defined by New Jersey courts as follows:

In the law, "arbitrary" and "capricious" means having no rational basis. Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is no 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 . . . Moreover, the court should not substitute its judgment for that of an administrative or legislative body if there is substantial evidence to support the ruling.

[Piccoli v. Ed. of Educ. of Ramapo Indian Hills Regional School District, EDU 1839-98, Initial Decision, (January 22, 1999) <http://lawlibrary.rutgers.edu/oal/search.html> (citing Bayshore Sewage Co. v. Dent. of Envir. Protection, 122 N.J.

Super. 184, 199-200 (Ch. Div. 1973), aff'd 131 N.J. Super. 37 (App. Div. 1974).]

The petitioner's legal right to challenge the Board's decision is well-established; therefore, I **CONCLUDE** that the petitioner has met her burden to show a well-settled legal right underpins her claim. While her right to appeal is well-established, the applicable "arbitrary and capricious" legal standard makes her probability of success on the merits dubious. I **CONCLUDE**, therefore, that the petitioner has not shown a likelihood of prevailing on the merits of the underlying claim given the applicable "arbitrary and capricious" standard which applies. The petitioner challenges the accuracy of allegations set forth in the reports from Coastal and holds that these types of outbursts are a manifestation of A.H.'s disabilities and that A.H. is not a danger to herself or others. The respondent contends that A.H.'s discipline problems are ongoing and, following recent manifestation testing, these outbursts are not a manifestation of A.H.'s disability. The respondent takes threats in the learning environment seriously and believes that A.H. may be disruptive or even dangerous to other students participating in the graduation ceremony. Further, both parties agree that, as of now, A.H. lacks the requisite credits to obtain her diploma and graduate. A.H. is seeking to walk in the upcoming NHS graduation ceremony not by virtue of having earned her diploma from NHS, but as a courtesy extended by the Board to help encourage her to continue working towards her diploma.

I have carefully reviewed the documents submitted by the parties and have considered the testimony offered and the arguments made. Simply put, the petitioner has failed to demonstrate that A.H. possesses a right to attend the graduation ceremony and that the Board's decision disallowing her participation is arbitrary, capricious or unreasonable. Further, there has been no demonstration that the Board's decision lacks a rational basis or was induced by improper motives. Therefore, the evidence at this point does not establish that the petitioner is likely to prevail on the merits of her claim.

Having concluded that the petitioner has not met two of the requisite standards for emergent relief, I need not go to the fourth standard. However, in order to give a full

review of the petition, I will discuss the equities. If the requested relief is not granted, petitioner will be harmed in that she will not be able to walk in the graduation ceremony with her friends at NHS even though NHS has not been her school since January 2018. Regarding the equities that favor respondent, the harm that can come to respondent is that if A.H. is allowed to participate in the NHS graduation include the risk that she may exhibit conduct that is inappropriate or, worse, dangerous, as she allegedly has in the recent past. This would be a great embarrassment for the school, having been on notice of A.H.'s disciplinary record. In addition, it could potentially ruin a major event in the lives of other students by disrupting their graduation. The Board has a well-established substantial and valid interest in ensuring the safe and orderly operation of the activities of its schools.

Further diminishing the weight of the petitioner's interests in this matter is the governing law clearly holds that participating in a graduation ceremony is considered a privilege and not a right. See M.A.A. v Edison Board of Education, EDU 4134-98, Initial Decision (May 29, 1998), affirmed, Comm'r (June 12, 1998), <http://njlaw.rutgers.edu/collections/oal/>; N.B. v Gloucester Board of Education, EDU 6740-11, Initial Decision (June 14, 2011), <http://njlaw.rutgers.edu/collections/oal/>. Although I entirely appreciate why she so strongly wishes to attend, A.H. has no right to attend this ceremony, and for this reason the petitioner cannot demonstrate a harm weighty enough to tip the balance in her favor to justify a grant of extraordinary relief. Further, the Board has expressed that A.H. may participate in NHS' graduation next year provided she completes the required number of credits and does not create any additional disciplinary concerns. Under these circumstances, A.H. is not being completely deprived of the high school graduation experience by the respondent's actions. Balancing the equities does not yield a favorable result for petitioner and I **CONCLUDE** that the equities in this matter balance in favor of the respondent.

As all four of the Crowe v. De Gioia standards as codified in N.J.A.C. 6A:3-1.6 must be met in order for emergent relief to be granted. I **CONCLUDE** that the petitioner has not met all four standards, and her petition for emergent relief therefore must be **DENIED**.

ORDER

Having concluded that the petitioner has not met the four requirements for emergent relief, the petitioner's request for emergent relief is **DENIED**.

This decision on application for emergency relief resolves all of the issues raised in the due process complaint; therefore, no further proceedings in this matter are necessary. This decision on application for emergency relief is final pursuant to 20 U.S.C.A. §1415(i)(1)(A) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. §1415(i)(2). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs

June 24, 2019

DATE



DAVID M. FRITCH, ALJ

Date Received at Agency:

Date Mailed to Parties:

/dw

APPENDIX

EXHIBITS

For petitioner:

None

For respondent:

Documents submitted with the respondent's response to petitioner's petition:

- Coastal Learning Center, Problem Behavioral Reports, June 11, 2019
- Neptune Township School District, Letter of Termination, June 2, 2019