State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION DENYING EMERGENT RELIEF

OAL DKT. NO. EDS 07544-24

AGENCY DKT. NO. 2024-37642

N.K. ON BEHALF OF A.K.,

Petitioner,

v.

GLEN ROCK BOARD OF EDUCATION,

Respondent.

_____

Maxine Checchi, Esq., (Cheechi Law, attorneys) for petitioner

Rodney T. Hara, Esq**.,** for respondent (Fogarty and Hara, attorneys)

Record Closed: June 6, 2024 Decided: June 7, 2024

BEFORE **ERNEST M. BONGIOVANNI, ALJ**

STATEMENT OF THE CASE

The petitioner, N.K. on behalf of A.K.., 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.K. be allowed to participate in the graduation ceremony of Glen Rock High School (GRHS/district).

PROCEDURAL HISTORY

On May 30, 2024, the petitioner filed a Parental Request an Expedited Due Process Hearing with the Office of Special Education Policy and Dispute Resolution (OSEP) pursuant to N.J.A.C. 6A:3-1.6 et seq, together with a Certified Request for Emergent Relief. The request for Emergent Relief was transmitted to the Office of Administrative Law (OAL), where it was filed on June 4, 2024. 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 6, 2024, and the record was closed on that date. The Request for an Expedited Due Process Hearing remains with OSEP "until the end of the 15-day resolution period."

FACTUAL DISCUSSION

At the hearing, the petitioners presented no certified or sworn statements refuting the certifications provided to the court by Dr Brett Charleston, Superintendent of the Glen Rock Public School District and by Michelle Giurlando, the Principal of GRHS. A summary of the pertinent evidence per their certifications and attached exhibits presented is as follows, and I **FIND** the following as **FACTS**:[1]

1. A.K. is a twelfth-grade student who is currently on home instruction through the Glen Rock Board of Education (BOE/District) and is scheduled to graduate this June, 2024.
2. A graduation ceremony is scheduled at the GRHS June 20, 2024.
3. A.K. was suspended for ten school days May 23, 2024, through June 7, 2024. The suspension also left him ineligible to participate in GHRS events for the remainder of the school year including Senior Prom, Senior Class Trip and Graduation Ceremony,

[1] The petitioners did submit a three-page letter written to the Superintendent by petitioners' attorney, a copy of his IEP, a psychoeducational evaluation, of the school psychologist dated November 28 and November 30, 2023, and a 3-page evaluation dated November 22, 2023. As none those submitted documents except the attorney's letter were prepared for, nor did they address the school suspension, they were not directly relevant to the immediate controversy.

4. The ongoing suspension from school activities for the remainder of the 2023-2024 school year was motivated by the "obligation to ensure the safety and well being of all students and staff," and the belief that to do otherwise creates a situation "where the safety and well being of the students and staff are at risk based on A.K.'s conduct and actions." (Certification of Superintendent Charleston)
5. The Suspension occurred as a response to A.K.'s and his parents' refusal to attend a meeting scheduled for May 23, 2024, to discuss the events which led up to A.K.'s extended medical leave that occurred soon after A.K. reported to his counselor at a therapy session.
6. A.K. is classified as eligible for special education and related services under the category of autism, and receives instruction in mainstream classes except for English and Math and individual counseling.[2]
7. On May 6, 2024, A.K. reported to his school counselor that he was "going to get a crossbow and shoot up the school and his church."
8. As a result of this report, A.K. was taken to hospital and his statements to his counselor were reported to the police and investigated by the district.
9. From the police, the District learned that A.K. had a plan to purchase the crossbow in Pennsylvania and to bring it to school. The police have since put A.K. on a "watch list."
10. A.K. was involuntarily committed to a hospital by a judge.
11. A search of A.K.'s internet history on A.K.'s school issued laptop found that A.K. navigated sites including, but not limited to "the deadliest school shooting in school history, Parkland shooting," capital punishment and "why did TJ Lane not get the death penalty," "life in prison in New Jersey" hate lists and violent ends "full PDF[s]" "what do death row inmates do all day, how long are you on death row? Nikolas Cruz."

[2] All remaining quotes and facts are derived from the unrefuted Certification of Principal Giurlando

12. A.K. was discharged from the involuntary commitment on May 22, 2024, and was "cleared to return to school" by a treating psychiatrist, who gave no other comment with the discharge of the patient.

13. Because of the lack of information surrounding the hospital discharge, the District immediately sought a meeting with A.K. and his mother. However, they refused to attend the meeting.[3]

14. The suspension commencing immediately followed (Exhibit B, Giurlando Certification)

15. The suspension "took into account" an earlier event when A.K. brought Thallium into the school which spilled in the Nurse's office, and which caused a HAZMAT alert. District employees who had been exposed to Thallium were taken to the hospital and the school was dismissed early that day. Further as a result of taking Thallium at school, A.K. was taken to the hospital for medical treatment.

16. As the suspension required a psychiatric evaluation before A.K. could return to school, A.K. now being instructed at school, provided by the District, was scheduled for a psychiatric evaluation on June 6 at 3:45 p.m. Also, as A.K. is a classified student, a manifestation determination (to determine whether this recent episode was related to his classification) was scheduled for June 7, 2024.

17. A school guidance counselor learned that, after A.K.'s discharge from the hospital, A.K. engaged in text messaging which in part involved guns and school shootings.

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:

[3] During argument on the matter, Petitioner contended the refusal was limited to refusing to attend that day without a lawyer. Respondent argued their demand in return for the meeting was A.K.'s immediate return to school.

> 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;
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> 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
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> 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).[4]

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,

[4] Here the request for emergent relief was made by petitioners on May 30, 2024, and the parties were notified on June 4, 2024 via email, the hearing would take place June 6, 2024 at 1:30 p.m.. However, no such certifications letter brief or memorandum was presented to the court by that time.

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"). Under the circumstances, I **CONCLUDE** that the petitioner has not met the 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.
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> [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 a school disciplinary action is well established; however, it is also well established in New Jersey that there is no legal right to participate in a graduation ceremony when that denial is the result of a disciplinary action. Further, under the third prong of the Crowe test, the applicable "arbitrary and

capricious" legal standard makes the probability of success on the merits dubious. I can hardly imagine a more important school interest than protecting the school children's and staff's safety where a real threat to school safety has been issued as has occurred here. It is obvious the District gave serious consideration to the matter of what to do in light of the uncertainty caused by a lack of information given to them after A.K.'s discharge from the hospital and the subsequent decision of the parents and A.K., who is 18 years of age not to discuss the facts and circumstances surrounding it, immediately with the District. I note the context of the District's concern in that A.K.'s previously exposing others at the school to a risk of grave harm (Thallium being a highly toxic metal) makes the District's action for immediate answers seem entirely reasonable.

Petitioner contended that A.K.'s rights were violated because a manifestation determination has not yet taken place. Petitioner contends the manifestation determination should have been made on the first day of suspension because A.K. had previously been suspended for ten days by the District in the 2023-2024 school year. A manifestation determination is required only when the suspension is for more than ten consecutive school days. N.J.A.C. 6A:14-2.8. The previous suspension occurred in October, 2023. The disciplinary action does not demonstrate a pattern of disciplinary history warranting an earlier Manifestation determination. Even if it did, that issue is not properly before me at this time as the Emergent hearing referred to the Office of Administrative Law concerns the graduation ceremony and only the graduation ceremony. 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. Although petitioner challenges the accuracy of allegations as set forth in the District's Certifications and Exhibits, the only real dispute with the allegations as articulated in the proceeding is that no harm has yet occurred to anyone as a result of this latest episode. That is clearly not enough to satisfy this third standard as provided for in Crowe.

Simply put, the petitioner has failed to demonstrate that A.K. possesses a right to attend the graduation ceremony and that the Board's decision disallowing A.K.'s 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 the present claim.

Although none of the other three Crowe standards have been met, and all of them must be met to grant emergent relief, in order to give a full review of the petition, I will also discuss the equities. Based on A.K.'s recent conduct, the equities could hardly be more weighed in favor of the Board's than as they are here.

The petitioner argues that A.K. is being punished for simply confiding his thoughts while seeking to get treatment from the school's therapist. First, as the therapy was part of the school program for A.K., his confiding to the therapist was required, not voluntary. Second, any claim of privilege was lost by the threat of obviously criminal wrongdoing being contemplated. As pointed out by their certifications, A.K. is now on a police watch list. Third, A.K and his parents refused to discuss the matter further with the school as if every legitimate concern was addressed by his being discharged from an involuntary commitment. Fourth, A.K. has shared some of his threats by texting others on the same subjects. Fifth there was a previous instance where A.K. took a highly toxic metal poison at the school nurse's office endangering other students and staff and which caused the school to be closed early. The District should not have to be concerned of the consequences of disrupting the graduation caused by A.K.'s participation in it, as it has been brought on by his own conduct, and if others know about it and are concerned about it, that is only because A.K. has publicly made the issue. Regarding the equities that favor respondent, the harm that can come to respondent is that if A.K. is allowed to participate in the graduation include the risk that he may exhibit conduct that is inappropriate or, worse, dangerous, as has occurred in the recent past. 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 he or his parents strongly wishes to attend, A.K. 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. 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 the petition for emergency relief therefore must be **DENIED.**

ORDER DENYING EMERGENCY RELIEF

The petitioner's request that emergent relief to Order the District to permit A.K. to attend the High School Graduation ceremony is denied.

This order on application for emergency relief remains in effect until a final decision is issued on the merits of the case. If the parent or adult student believes that this order is not being fully implemented, then the parent or adult student is directed to communicate that belief in writing to the Director of the Office of Special Education. Since the parents requested the due process hearing, this case is returned to the Department of Education for a local resolution session under 20 U.S.C. § 1415(f)(1)(B)(i).

June 7, 2024

Ernest M. Bongiovanni

DATE

ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency 6/7/24

Date Mailed to Parties: 6/7/24

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