

New Jersey Commissioner of Education

Final Decision

K.F.-M., on behalf of minor child, P.F.,

Petitioner,

v.

Board of Education of the Township of
Branchburg, Somerset County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge that this matter should be dismissed because petitioner indicated that no issues remain to be addressed following the resolution of her motion for emergent relief.

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

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 1, 2024

Date of Mailing: July 3, 2024

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 DENYING

EMERGENT RELIEF

OAL DKT. NO. EDU 07247-24

AGENCY DKT. NO. 167-5/24

K.F.M., ON BEHALF OF MINOR CHILD

P.F.,

Petitioner,

v.

THE BOARD OF EDUCATION OF

THE TOWNSHIP OF BRANCBURG,

Respondent.

K.F.M., o/b/o P.F., petitioner, pro se

David B. Rubin, Esquire, for respondent

Record Closed: June 3, 2024

Decided: June 4, 2024

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE

Petitioner, K.F.M., on behalf of P.F., moves for emergent relief, appealing that P.F. be permitted to attend the 8th grade school dance on June 8, 2024, and walk for

graduation on June 18, 2024. Respondent, the Township of Branchburg Board of Education, declines and presents safety concerns.

PROCEDURAL HISTORY

Petitioner filed a verified petition and request for emergent relief with the Commissioner of the Department of Education, Office of Controversies and Disputes (DOE). On May 29, 2024, DOE transmitted this matter to the Office of Administrative Law (OAL), where it was filed 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. The hearing was held on June 3, 2024, and the record closed that day.

The request for emergent relief is now ripe for adjudication.

FACTUAL DISCUSSION AND FINDINGS

Petitioner articulated that on October 11, 2023, Mr. Tylin, P.F.'s math teacher, placed a trashcan to her face in front of the class and addressed her in front of her peers as a spoiled brat and spoiled Jersey girl and told her how she is not in the hood. Despite his apology and being told he was joking, this incident set an unfortunate tone for further inappropriate behavior.

On November 29–30, 2023, during health class, students were asked to close their computers. P.F.'s computer was open, as she was logging off. Ms. McGirl, who is the health teacher, walked over to P.F. and slammed the computer shut with P.F.'s hands inside. While her hands were still inside, Ms. McGirl snatched the computer away. Ms. McGirl then physically yanked P.F. by the arm to pull her from her chair to leave the class. P.F. turned and told her "If you touch me that way again, I will punch you in the face." She walked to the office to explain what transpired and was sent to the nurse to have her hands and arm checked. K.F.M. received a call from the school notifying her that P.F. was in the nurse's office being checked, as her hands were smashed, and she was forcibly yanked from her chair by her teacher. When asked if K.F.M. could speak to the teacher, she was told that she could not for the teachers' safety. K.F.M. didn't quite

understand that response because P.F. had never been hostile or aggressive in speech or action. Shortly after, she received a phone call from the vice principal, Mr. Derflinger, stating that they had to write an HIB against P.F. because her remarks were threatening to the teacher, and she also received a in school suspension. For this incident, K.F.M. did file a police report in Branchburg, as it was an assault, to document the event. This was not the first time Ms. McGirl has shown aggression towards P.F. and even K.F.M. in conversation.

P.F. was not removed from the class but was isolated by Ms. McGirl during class time. She would pull any students who would sit next to or talk to P.F. Because of the number of reoccurring incidents with Branchburg Central Middle and because a few of the other African American parents were having similar issues with staff and even some students calling the children “n*****s,” referring to them as “monkeys,” and making it a point to tell them they won’t have the same opportunities, K.F.M. began to pay closer attention to the discipline and reasoning when presented with problems that were concerning P.F. Her first encounter with acting principal Steffner was on January 11, 2024.

January 11, 2024, Ms. Steffner, school principal, informed K.F.M. that P.F. was on the list for retention, adding to the growing concerns about her academic standing, which was alarming because after reading both the student handbook and the code of conduct, P.F. didn’t meet any of the qualifications. K.F.M. and P.F.’s grandmother met with Ms. Steffner, where she said P.F. wasn’t on a retention list and then in front of the superintendent said she never mentioned a retention list to K.F.M. K.F.M. was a bit confused, as Ms. Steffner had spoken with not just K.F.M., but her husband also. This incident “drew more red flags,” and K.F.M. began to get more frequent calls about P.F. from Ms. Steffner that were bothersome.

On January 29, 2024, Ms. Steffner and K.F.M. had an in-person meeting for the first time, and she started the meeting with the incident that happened on November 29, 2023, with Ms. McGirl. She stated that she was alarmed by what she read concerning P.F. and how it was unacceptable to threaten a teacher. K.F.M. was confused because at that time, Ms. Steffner was not the acting principal. P.F. then began to be reprimanded

for everything. K.F.M. was notified that there were mass emails sent to every teacher in the school to look out for her, if they saw her in the hall to stop her, find out where she was going or where she should be, and send her there or to the office for a conduct (disciplinary form). The teacher (Ms. Jordan) who mentioned the emails also shared with P.F. that the reason she is not liked by the adults in the building is because they can't take her strong personality. All of these were red flags for K.F.M.

On January 22, 2024, P.F. received conduct emails for being late to class due to a misunderstanding with the resource teacher, Ms. Jordan, resulting in two after-school detentions. P.F. was on a list for one teacher's class but was told she was supposed to be somewhere else. On January 23, 2024, P.F. received another conduct report for being late to class, despite confirmation from the nurse about P.F.'s legitimate health concern. P.F. was in the nurse's office with a runny stomach. On January 24, 2024, P.F. received a conduct report for having her computer open during a Spanish class, with the teacher's reaction appearing disproportionate. On January 25, 2024, P.F. received another conduct report from the same Spanish teacher, raising questions about the consistency and fairness of disciplinary actions. On January 25, 2024, K.F.M. received an email regarding academic dishonesty from the science teacher, Ms. Furnari, which was later proven unfounded but contributed to the overall distress. During P.F.'s music class, the teacher gave them free time, and P.F. asked if she could complete a science worksheet. The music teacher told her, yes. There were other students in her class who were also unaware they had to complete the back of the worksheet, so they all began to work on it. The music teacher, Ms. Devita, sent an email to the science teacher saying that P.F. was copying another student's work, and K.F.M. received the email explaining she was cheating, but it was an ungraded assignment (busy work for students). She wanted students to complete it alone. After speaking to P.F., she of course said she wasn't cheating and that she in fact had not even completed the page, just what she and K.F.M. had done at home the night before. When this was shown, to everybody's amazement, it was a misunderstanding and proven unfounded. Again, K.F.M. was confused because the educator Ms. Devita, who claimed to have seen her cheating, never once said anything to her while in class; she just sent the email to her coworker. On January 29, 2024, on this day as listed above, K.F.M. was actually in the building meeting with Principal Steffner. P.F. and her friends were walking to their science class, where Ms.

Furnari is the teacher, and as they walked to the class and got closer to the door, the teacher stopped her to ask if she had everything she needed. They responded yes, the bell rang, and Ms. Furnari said, “sorry you guys are late” and closed the door. Despite providing evidence that she was indeed close enough to have a brief conversation with the teacher, P.F. received an unexcused tardy for a class, highlighting potential communication issues within the school.

On January 30, 2024, K.F.M. received a phone call from Ms. Steffner suggesting K.F.M.’s involvement in P.F.’s request to leave school early, reflecting a lack of accurate communication. Ms. Steffner called K.F.M. and told her that P.F. told her that K.F.M. called her, and during this alleged phone conversation, K.F.M. told her to come home because she had to go to class. K.F.M. had never spoken to P.F., but did indeed have class, so she was confused. Upon P.F.’s arrival home from school, K.F.M. asked if what Ms. Steffner reported was true. P.F. explained she didn’t say what Ms. Steffner claimed, but she was overwhelmed and really wanted to come home, so she asked Ms. Steffner if she could make up the detention (which she receives for every conduct). K.F.M. spoke to Ms. Steffner, and she then said that P.F. made it seem like she spoke to her because she asked if she could make up the detention another day because her mom had class. Now normally, K.F.M. picks P.F. up from school because it saves her from an hour-long bus ride and gives her some extra time to complete homework assignments. If K.F.M. is unable because of school, her husband will go. Ms. Steffner then said that P.F. had double detention for dishonesty. She said P.F. lied to her and made it seem like K.F.M. called her and told her to come home. But K.F.M. didn’t understand, nor did K.F.M. want to send the wrong message with what she was being punished for, so K.F.M. told Ms. Steffner that P.F. would not be serving detention for something that was assumed on her end and that K.F.M. didn’t like that she lied to her and said P.F. told her she called. Ms. Steffner began to yell that if P.F. did not serve her detentions, that she would suspend her from school and if K.F.M. didn’t comply, she would have her removed from the school altogether before hanging up.

On January 31, 2024, Ms. Steffner shared screenshots suggesting academic dishonesty, creating confusion and seemingly escalating the situation from January 25th unnecessarily.

In February 2024, during math class, Mr. Tylin walked up to P.F., snapping his fingers in her face and asking why she doesn't do that. P.F. responded, because she "just don't." Mr. Tylin continued and said, "but why you don't do that? She gave him the same response. Mr. Tylin went on to say, "I didn't like you before but now I have a reason." He continued with, get mad. "I like it when you're mad, I like to make P.F. mad, I like to see her roll her eyes." P.F. repeatedly asked to be excused from class to go to the office. Mr. Tylin refused, and P.F. walked out and went to the office, where she explained what was happening, and the supporting teacher explained that "Mr. Tylin was being very inappropriate and that he seemed a little off," but she wanted P.F. to relax and go to the office after class. K.F.M. didn't understand how P.F. could even function in the classroom after this happened and all that was said to her in front of her peers. P.F. was issued a warning for walking out of the class. Ms. Steffner said she is to stay in class until it's over and get a pass to come to the office for incidents such as this. She is not to leave class in conflict; she is to wait until the class is over.

On February 9, 2024, K.F.M. met with both Ms. Steffner and superintendent Dr. Chase, who seemed to be very understanding of all of her discomforts with P.F. and how she felt she was being targeted by the acting principal, Ms. Steffner, and some of the staff. That nothing was being done when P.F. was wrongfully accused, reprimanded, and harshly punished for things that other students got passes on. K.F.M. explained that the books on suicide and the conversations about how the white students feel about Newark and Irvington, a place where the majority is the minority, were inappropriate and made her daughter uncomfortable to listen to. Students say that criminals, unclean people, poor people live in these places, and they feel unsafe, how it's dirty and run down. She assured K.F.M. that they would speak to the teachers, that the town was changing, and they had a lot of work to do. P.F. has also reported to the guidance counselor, Ms. Nelson, that she has been called "n*****r" by some of the same students, and nothing was done. P.F. was also spoken to by an educator (Ms. Kepner) who said to her she already has a tally against her because of the color of her skin and that she won't get away with what the other students get away with because of that. The teacher felt it was best if P.F. just laid low and kept her head down.

On February 22, 2024, the family received a call from Ms. Steffner, notifying that P.F. was being issued an in-school suspension for leaving the class without a pass. Both P.F. and K.F.M. were confused, as class didn't start until 8:07 a.m., and it wasn't even 8:00 a.m. yet. Initially, Ms. Steffner said it was because she was late, but P.F.'s bus arrived at school early at 7:45 a.m. She took her things to her first period class to be prepared when classes started and went to her resource teacher's classroom. K.F.M. spoke to the superintendent, who reiterated what Ms. Steffner said: that P.F. left the class and didn't have a pass, so that behavior warranted an in-school suspension. She then went on to say that P.F. was being disrespectful to a teacher by the name of Ms. Gatti, whom P.F. has shared on numerous occasions that she can be a bit touchy, and on this day, with getting in trouble first thing in the morning and not understanding why, P.F. didn't like that she kept rubbing her arms, shoulders, and neck. She also wasn't feeling too great and was later picked up from school with a fever of 104 (reported by the nurse). She also received documented medical care that day.

On March 1, 2024, P.F. was suspended from school for cutting class and theft. K.F.M. received a call that P.F. received a pass from her technology teacher to leave class and that she and another student met up and walked the halls until they were outside of a teacher's class where student pencil cases and supplies were left outside. K.F.M. was made aware that the incident happened on February 21, 2024. They received an anonymous tip from a student and teacher who reported that there were two black girls going through the pencil cases in the hall, so they checked the cameras and saw P.F. going in another student's pencil case. After investigation, they found that P.F. had permission from the student to take lead for a pencil out of the pencil case but said it is against school policy to go in another student's belongings. There is also a record that P.F. got the pass from her teacher whose class she allegedly cut to go to the nurse. The nurse called K.F.M. on February 21, 2024, and asked if she could give P.F. Tylenol for a headache. K.F.M. had the understanding that by law, when medication is administered, the child is watched while taking the medication and is monitored a little while after to make sure there are no reactions.

Once P.F. left the nurse's office, she ran into her classmate, which isn't uncommon, and before going back to class, she went to get the lead she asked her friend

for that morning and reported back to class. K.F.M. was told she received the suspension for cutting and theft because she didn't go straight back to class, so it was considered a cut despite the pass, and despite having consent to go in her friend's pencil case, it's against school policy to do so.

On March 7, 2024, K.F.M. had a meeting with principal Steffner, vice principal Derflinger, two of the school counselors, one being Ms. Nelson, and the teacher who reported P.F. was stealing. They wanted to set up a behavioral plan along with each of her teachers (even the ones who don't like her) because she is insubordinate and blatantly defiant among many others, all words used by principal Steffner. After K.F.M. shared her concerns and how the suspension was not warranted as P.F. hadn't broken any rules according to their student handbook and code of conduct, there was complete silence, as if amazed she had read it in its entirety. K.F.M. explained she felt at this point that P.F. was being targeted, and it was made plausible when mass emails were sent out about her and teachers felt the need to watch her so closely that she was publicly ostracized and verbally and physically attacked, and that had become her norm when walking the halls at Branchburg Central Middle School. Since starting at Branchburg Middle, she had never seen such a drastic change in her daughter's behavior as to always be on guard, and at times, defeated. She even got so overwhelmed with school and the adjustment to the culture of the school, with not many students who look like her in her classes and them so freely being able to call her a nigger or a monkey with no penalty, that she took a handful of Tylenol with the intent to not only stop the headaches she always having now, but to go to sleep and never wake up. It has been affirmed by teachers that "she is not liked and is targeted because of her personality and because of the color of her skin" (their words). It had gotten so bad that P.F. was coming home every day with a headache and was in the nurse's office every other day complaining of headaches, where the nurse administered medicine. With no resolve, and to save her daughter from being a partaker in the abuse of power from the authorities at Branchburg Middle School, K.F.M. removed her, and she is now being homeschooled for the remainder of the year. At this point, it is the safest option, as K.F.M. does not feel P.F. is protected while in school.

The petition is for P.F. to attend the 8th grade prom and graduation. P.F. entered the education system with boundless enthusiasm, eager to learn and excel. Her early years in school were marked by academic promise and a thirst for knowledge. However, P.F.'s journey turned dark when she became the target of discrimination. It began subtly, with biased remarks and microaggressions from classmates and even some educators. P.F. found herself marginalized and isolated, her confidence eroded by the constant reminders of her perceived differences. Each incident that K.F.M. has shared highlights a pattern of unfair treatment and prejudice against P.F., causing significant distress and harm to her well-being. The cumulative effect of the nine incidents in one month cannot be overstated, causing immense stress and isolation. The behavior exhibited by the staff at Branchburg Central Middle School created an intimidating and hostile environment for P.F., further exacerbating her distress. Even in the face of such blatant discrimination and harassment, the school failed to take appropriate action. Several meetings were held with no change; K.F.M.'s only recourse was to disenroll P.F. from school to protect her physical and mental health.

Closing the chapter of middle school is a big deal, and though P.F. faced many challenges to get through the school year, she maintained her grades to participate in her 8th grade festivities. P.F. should be given the opportunity to attend her 8th grade dance and graduate with her peers. P.F. has endured enough and deserves some relief.

Respondents claim that P.F. is a fourteen-year-old 8th grade student who no longer attends school in the Branchburg School District. P.F. was unilaterally disenrolled from the district by her parent on or about March 7, 2024. During the 2023–2024 school year, there were forty-one (41) incidents of various forms of inappropriate behavior reported by sixteen (16) different staff members involving P.F. Of the forty-one violations of the code of conduct, she received consequences ten times—the remaining thirty-one infractions involved conversations with counselors or administration. Additionally, there are several other infractions that have not been captured here and did not result in disciplinary outcomes, as respondent was trying to build a relationship with the student. These incidents illustrated a consistent pattern of non-compliance, disrespect, and disruption in the school environment.

On October 5, 2023, at 11:13 a.m., Mr. Tylin, a teacher, reported that P.F. was asked multiple times to spit out her gum, but she refused. Instead, she continued chewing gum while denying having any, demonstrating a failure to comply and being disrespectful. The recommended action was for P.F. to take a few minutes to reset before returning to class. On October 11, 2023, at 11:04 a.m., Mr. Tylin reported that P.F. used profanity in class, telling the teacher to “eat her dick.” This behavior was categorized as inappropriate language, disruptive, work avoidance, and disrespectful. The action taken was to have P.F. remain in the office for the period, with work sent down for her to complete, and she was assigned two lunch detentions.

On October 16, 2023, at 8:31 a.m., Ms. Furnari, another teacher, reported that substitute Victoria Nguyen noted P.F.’s disrespect during her instruction. P.F. talked to a friend during Mrs. Nguyen’s instruction and responded dismissively to the substitute’s request to pay attention. This behavior was categorized as failure to comply, work avoidance, and disrespect. The recommended action was for P.F. to be sent back to class after speaking to someone.

On October 18, 2023, at 8:55 a.m., Ms. Valinoti, another teacher, reported that P.F. refused to start her Social Studies assignment, choosing instead to check emails and work on Science Gizmo. Despite verbal prompts and GoGuardian chats, she softly refused redirection and continued working on other assignments. This behavior was categorized as failure to comply and work avoidance. The recommended action was for P.F. to be sent back to class after speaking to someone.

On October 26, 2023, at 3:04 p.m., Mr. Wright, another teacher, reported that P.F. used foul language in class. This behavior was categorized as inappropriate language. The action taken was to have P.F. remain in the office for the period, with work sent down for her to complete. On November 21, 2023, at 9:03 a.m., Ms. Valinoti reported that P.F. was eating Twizzlers in class and lied about the quantity she had. This behavior was categorized as failure to comply, disruptive, and disrespectful. The behavioral focus was on respecting teachers. On November 22, 2023, at 7:42 a.m., Ms. Furnari reported that P.F. was in the bathroom for approximately seventeen minutes on November 21, cutting

class. This behavior was categorized as a student not being where they need to be. The behavioral focus was on respecting teachers and herself.

On November 22, 2023, at 7:44 a.m., Ms. Furnari reported that P.F. was in the bathroom for approximately ten minutes on November 13, cutting class. This behavior was categorized as a student not being where they need to be. The behavioral focus was on respecting teachers and herself. Also on November 22, 2023, at 7:46 a.m., Ms. Furnari reported that on November 14, P.F. left to go to the nurse's bathroom and did not return within a reasonable time. She was found hanging out with a friend in a different bathroom. This behavior was categorized as a student not being where they need to be. The behavioral focus was on respecting teachers and herself. On November 27, 2023, at 10:28 a.m., Ms. Furnari reported that P.F. was out of the classroom for more than ten minutes, cutting class. This behavior was categorized as a student not being where they need to be. The recommended action was for P.F. to be sent back to class after speaking to someone, with a focus on respecting teachers and herself.

On November 28, 2023, at 8:16 a.m., Vicki Brody, another teacher, reported that P.F. refused to take her new assigned seat after the entire class was given new seating assignments. P.F. voiced her refusal to the entire class and was told to either take her new seat or go to the office. She chose to leave for the office. This behavior was categorized as failure to comply and disruptive. The recommended action was for P.F. to take a few minutes to reset before returning to class. Also on November 28, 2023, at 11:49 a.m., Debbie Glick, another teacher, reported that she caught P.F. at her locker with a lollipop in her mouth. When asked what she had in her mouth, P.F. ignored the question and walked away. After being followed and asked again, she responded with "a stick" and then ran into Mr. Tylin's classroom. This incident was not the first time she had been told not to have candy in the halls. The behavior was categorized as failure to comply and disrespectful. The behavioral focus was on respect in the hallways and respect to teachers.

On November 29, 2023, at 3:10 p.m., Ms. Maloney, another teacher, reported that P.F. was off task during an activity and given an alternate task, which she tore up and refused to complete. She later asked to go to the bathroom and returned with her

backpack and jacket, suggesting she went to her locker instead. The behavior was categorized as failure to comply and student not being where they need to be. The behavioral focus was on respect to teachers.

On December 1, 2023, Ms. McGirl, another teacher, reported that P.F. got upset at a teacher and told her that “If you weren’t a teacher, I would punch you in the face.” The behavior was categorized as disrespectful to a staff member. The student was assigned an in-school suspension that was served on December 4, 2023.

On December 6, 2023, at 2:45 p.m., Ms. Maloney reported that P.F. appeared to be speaking negatively about another student’s appearance. When asked about it, she told the teacher to mind their own business, mimicked the teacher, and then left the class to see Ms. Nelson despite being told to wait. This behavior was categorized as failure to comply, disruptive, and disrespectful. The behavioral focus was on respect to teachers and respect to each other.

On December 8, 2023, at 10:52 a.m., Mr. Tylin reported that P.F. came to class on time and was praised for making up her homework but left the classroom without notice when the bell rang. She returned only after being called back and was unaccounted for five minutes. The behavior was categorized as failure to comply, student not being where they need to be, and disruptive. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect to teachers.

On December 13, 2023, at 10:25 a.m., Mr. Tylin reported that P.F. disappeared after the bell without checking in. The behavior was categorized as failure to comply and student not being where they need to be. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect to teachers and accountability.

On December 14, 2023, at 8:25 a.m., Ms. Brody reported that after two verbal prompts and two GoGuardian messages, including a code word, P.F. refused to put her food back in her locker, hiding a bag of food under her hoodie. The behavior was categorized as failure to comply and disruptive. The recommended action was to send

the student back to class after speaking to someone. The behavioral focus was on following school rules.

On December 14, 2023, at 8:28 a.m., Ms. Brody reported that P.F. refused to go to the office, claiming her food was put away, but this was not confirmed. The behavior was categorized as failure to comply and disruptive. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect to teachers.

On December 15, 2023, at 3:16 p.m., Ms. Villanova reported that P.F., along with other students, was seen hanging out at a locker and meandering down the hallway during class. Despite being told to get to class, they ignored the instruction and continued strolling outside the gym. The behavior was categorized as failure to comply, student not being where they need to be, disrespectful, and physical/disrespectful towards school property. The behavioral focus was on respect to the school and its rules.

On December 19, 2023, at 2:15 p.m., Ms. Valinoti reported that P.F. entered a classroom to give a gift to another student and disrupted the class. She refused to leave when asked. The behavior was categorized as failure to comply and student not being where they need to be. The behavioral focus was on respect to teachers.

On December 20, 2023, at 8:49 a.m., Ms. Brody reported that P.F. left for the bathroom at 8:32 a.m. but had not returned by 8:47 a.m. She was reported to be hanging out in the 7th grade hall during her Social Studies class. This behavior was categorized as a failure to comply. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect in the hallways.

On December 21, 2023, at 10:29 a.m., Ms. Furnari reported that P.F. cut class by hanging out in the hallway, visiting the nurse, and then going to the office to avoid attending her class. The previous day, she had received a 5/50 on quiz. This behavior was categorized as student not where they need to be and work avoidance. The behavioral focus was on respect for teachers and self.

On December 21, 2023, at 11:02 a.m., Mr. Tylin reported that P.F. was not where she needed to be, which showed a lack of accountability. She asked to go to the bathroom and ended up in another room. The behavioral focus was on respect to teachers.

On January 8, 2024, at 8:56 a.m., Ms. Valinoti and Ms. Brody reported that P.F. had done no work for the entire class period, despite several redirections. She was talking to other students, using foul language, and disrupting classmates. This behavior was categorized as failure to comply, inappropriate language, disruptive, and work avoidance. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect to teachers.

On January 8, 2024, at 11:43 a.m., Ms. Pereira, another teacher, reported that P.F. did not show up to resource class and was missing for twelve minutes. This behavior was categorized as failure to comply and student not where they need to be. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on cutting class.

On January 17, 2024, at 8:36 p.m., Ms. Gatti, an instructional aide, reported repeated defiance of instructions by P.F. This behavior was categorized as failure to comply. The behavioral focus was on respect for each other.

On January 22, 2024, at 9:54 a.m., Ms. Furnari and Ms. Brody reported that P.F. and another student were over five minutes late to class without a pass, claiming they were in the bathroom. Both students left their first period early as well. This behavior was categorized as student not where they need to be. The behavioral focus was on respect in the hallways and respect to teachers.

On January 22, 2024, at 12:20 p.m., Ms. Pereira reported that P.F. did not report to her assigned resource class, was missing for over ten minutes, and falsely claimed she was pulled to another resource list. She argued and refused to follow directions, showing disrespect and work avoidance. This behavior was categorized as failure to comply, student not where they need to be, and disrespectful. The behavioral focus was on

respect to teachers. P.F. was assigned two (2) after-school detentions on January 23 and 25, 2024.

On January 23, 2024, Ms. McGirl reported that P.F. had arrived to her class late and was considered absent. She was assigned an after-school detention on January 3, 2024. On January 24, 2024, at 2:25 p.m., Ms. Maloney reported that P.F. refused to hand over her Chromebook when asked and was working on a project instead of listening to a presentation. This behavior was categorized as a failure to comply. The behavioral focus was on respect to teachers. She was assigned an after-school detention on February 1, 2024.

On January 25, 2024, at 9:06 a.m., Ms. Gatti reported that P.F. openly defied instructions and did not report to her scheduled class. This behavior was categorized as failure to comply and disrespectful. The behavioral focus was on respect to teachers.

On January 25, 2024, at 9:52 a.m., Ms. Furnari reported that P.F. was caught copying another student's science packet for the third time. This behavior was categorized as cheating/academic integrity. The behavioral focus was on respect to teachers and each other. P.F. was assigned a lunch detention on January 26, 2024.

On January 30, 2024, at 11:26 a.m., Mr. Tylin reported that P.F. asked to go to the office in the middle of class, did not accept the answer to wait until the end, and walked out of class. This behavior was categorized as failure to comply, technology misuse/electronics, student not where they need to be, disruptive, and disrespectful. The recommended action was for P.F. to take a few minutes to reset before returning to class. The behavioral focus was on respect to teachers. P.F. conferenced with the principal.

On February 7, 2024, at 3:20 p.m., Ms. Volpe reported that P.F. was observed pushing and shoving another student during dismissal, creating a potential safety hazard. This behavior was categorized as disruptive. The behavioral focus was on respect in the hallways. P.F. conferenced with the principal.

On February 9, 2024, at 10:36 a.m., Ms. Furnari reported that P.F. left for the bathroom at 10:13 a.m. and did not return, missing an entire lab session. This behavior was categorized as student not where they need to be. The behavioral focus was on respect for teachers and self. P.F. was assigned lunch detention on February 9, 2024.

On February 22, 2024, at 8:25 a.m., Ms. Maloney reported that P.F. was found in the World Language hallway going through another student's locker without a pass and without communicating her reason for being there. This behavior was categorized as student not where they need to be. The behavioral focus was on respect in the hallways.

On February 22, 2024, at 9:35 a.m., Mr. Wright reported that P.F. was in another student's locker in the 7th grade wing while she should have been in her first period class in the 8th grade wing. This behavior was categorized as cutting class. The behavioral focus was on respect in the hallways and respect for each other. (This may be two write-ups for the same situation since the student has gym first period—Mr. Wright wrote her up for the cut since she was supposed to be with him, and Ms. Maloney witnessed it and wrote it up because she was in someone else's locker.)

On February 23, 2024, at 8:24 a.m., Ms. Valinoti and Ms. Brody reported that P.F. left homeroom to talk to a friend and then went to Ms. Jordan's room despite being told to return to homeroom. This behavior was categorized as failure to comply. The recommended action was to send the student back to class after speaking to someone. The behavioral focus was on respect to teachers. P.F. was assigned in-school suspension on February 23, 2024.

On February 29, 2024, at 8:25 a.m., Mr. Updegrave reported that P.F. was walking down the hallway eating from a bag of goldfish crackers and responded disrespectfully when asked why she was eating in the hallway. This behavior was categorized as disrespectful. The behavioral focus was on respect in the hallways and respect to teachers. P.F. was assigned a lunch detention on March 1, 2024.

On March 1, 2024, a student reported property missing. Camera footage verifies that P.F. went into the student's belongings and stole items. Additionally, P.F. was

wandering hallways prior to this incident. P.F. was suspended from March 4 to March 6, 2024, spanning three days, due to theft and cutting class.

On or about March 7, 2024, a re-entry meeting was held with Mr. Derflinger, vice principal; Ms. Volpe, 8th-grade team leader; Ms. Nelson, counselor (attending virtually); and Mr. Harris, school psychologist. During this meeting, respondent offered a variety of strategies, including, among other things, regular check-ins with P.F.'s counselor, Ms. Nelson, counseling sessions with Ms. Ryan, MSW, LCSW, EdS, LMFT, who is the district's Mental Health & Well-Being Social Worker, and access to the school's behaviorist to determine methods that could help P.F. be more successful. When respondent asked the parent for her thoughts on the plan and whether she had any other suggestions, she abruptly stated that she would be homeschooling P.F. for the remainder of the school year. She was given the necessary paperwork and signed her child out of school. The parent completed the appropriate paperwork and disenrolled P.F. from the district shortly thereafter.

P.F. is ineligible to participate in the 8th grade prom and graduation, as she was disenrolled from the district several months ago. Unfortunately, based on the course of conduct set forth above and the likelihood that her presence at these events would be disruptive, it is unlikely that P.F. would have been allowed the privilege of attending the 8th grade dance and graduation even if she were still enrolled in the district. (Policy & Regulation 5541.)

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, 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 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. (citations omitted).

Here, with respect to the first prong, despite the fact that K.F.M. testified that they “don’t care about the dance,” P.F. will suffer irreparable harm if the requested relief is not granted. If she does not attend either event, that opportunity will be lost forever.

Petitioner sustains her burden to show by clear and convincing evidence that P.F. will suffer irreparable harm. Accordingly, **I CONCLUDE** that petitioner has shown irreparable harm.

2. Settled Legal Right

However, as explained to the petitioner, there is a difference between emergent and important. I understand that the requests here are important; however, they are not emergent. 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). While it is understood that P.F. will receive her diploma, the legal right underlying petitioner’s claim is well settled. That is, case law establishes that attendance at a graduation ceremony is a privilege and not a right. See I.K. v. West Windsor-Plainsboro School District, 97 N.J.A.R. 2d (EDU) 639; M.P. v. Hackettstown Board of Education, 95 N.J.A.R. 2d (EDS) 210. Therefore, because she has no legal right to attend the ceremony, she cannot satisfy that prong of the test. Therefore, **I CONCLUDE** that petitioner has not shown a legal right underlying this claim.

3. Likelihood of Success on the Merits

Petitioner has not demonstrated that she 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 petitioner has not shown a legal right underlying this claim, it logically follows that there is not a likelihood of success on the merits. The number of incidents allegedly perpetrated by P.F. that warranted discipline was exorbitant. Petitioner’s claim is that there is a “cultural difference.” Petitioner has not provided any clear and convincing evidence or legal authority showing that they have a reasonable probability of ultimate success on the merits, and **I CONCLUDE** that petitioner 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 the fact that P.F. will not walk at graduation nor attend her dance. However, that was dealt with in the above analysis.

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

Based upon the foregoing, **I CONCLUDE** that petitioner failed to meet 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**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

June 4, 2024 _____

DATE



DEAN J. BUONO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

DJB/oni

APPENDIX

WITNESSES

For petitioner

K.F.M.

For respondent

None

EXHIBITS

For petitioner

Request for emergent relief dated May 24, 2024

For respondent

Opposition dated May 31, 2024