

New Jersey Commissioner of Education

Final Decision

F.M. and A.M., on behalf of minor child, A.M.,

Petitioners,

v.

Board of Education of the Clinton-Glen Gardner
School District, Hunterdon 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 no issues remain to be addressed following the resolution of the 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 11, 2024
Date of Mailing: July 12, 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.

227-24E
OAL Dkt. No. EDU 07454-24
Agency Dkt. No. 172-5/24

New Jersey Commissioner of Education
Order on Emergent Relief

F.M. and A.M., on behalf of minor child, A.M.,

Petitioners,

v.

Board of Education of the Clinton-Glen Gardner
School District, Hunterdon County,

Respondent.

The record of this emergent matter and the Initial Decision Denying Emergent Relief have been reviewed. Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioners have failed to demonstrate entitlement to emergent relief pursuant to the standards enunciated in *Crowe v. DeGioia*, 90 N.J. 126 (1982), and codified at N.J.A.C. 6A:3-1.6.

Accordingly, the portion of the Initial Decision denying petitioners' application for emergent relief is adopted, for the reasons stated therein.

The ALJ noted that there are no other issues to be decided on the underlying petition and dismissed the petition. Pursuant to N.J.A.C. 1:1-18.4, parties may file exceptions to an Initial Decision within 13 days. Accordingly, the Commissioner's decision herein is limited to the issue of emergent relief. Following the filing of any exceptions from the parties, or the expiration

of the time period without any exceptions being filed, the Commissioner will issue a final agency decision in the usual course.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to be 'L. H.', is positioned above the title.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 10, 2024
Date of Mailing: June 10, 2024



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION DENYING

EMERGENT RELIEF

OAL DKT. NO. EDU 07454-24

AGENCY DKT. NO. 172-5/24

F.M. AND A.M., ON BEHALF OF MINOR

CHILD A.M.,

Petitioners,

v.

BOARD OF EDUCATION OF

CLINTON-GLEN GARDNER SCHOOL DISTRICT,

Respondent.

F.M. and A.M., o/b/o A.M., petitioners, pro se

Marc Mucciolo, Esq., for respondent

Record Closed: June 6, 2024

Decided: June 7, 2024

BEFORE **MICHAEL R. STANZIONE, ALJ:**

STATEMENT OF THE CASE

Petitioners, F.M. and A.M., on behalf of A.M., filed an emergent petition for an order permitting A.M. to walk in his eighth-grade graduation on June 14, 2024. Respondent,

Clinton-Glen Gardner School District, determined that A.M. could not walk in the graduation ceremony due to 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 June 3, 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 6, 2024, and the record closed that day.

FACTUAL DISCUSSION AND FINDINGS

A.M. is a fourteen-year-old eighth-grade student at Clinton Public School (CPS) within the Clinton-Glen Gardner School District (District). A.M. has a Section 504 plan due to a diagnosis of ADHD. R-2. A 504 Plan in New Jersey is designed to allow a disabled student to participate fully in the educational environment.

A.M. has engaged in disruptive and inappropriate behavior requiring significant discipline. Respondent articulated that it would rely on the certification of Dr. Seth Cohen, superintendent and principal of Clinton Public School, in opposition to petitioners' application for emergent relief.

Dr. Cohen's certification lists the following disciplinary incidents and harassment, intimidation, and bullying (HIB) findings that took place throughout the school year:

- On September 7, 2023, A.M. broke his Chromebook. A.M. stated it was "kinda on purpose." A.M. was shadowboxing and punched the Chromebook screen.
- On September 11, 2023, two of A.M.'s teachers raised concerns about behavior in class; especially concerning student safety, including impulsive behaviors,

shadowboxing, blurting out, and grabbing friends in headlocks and other mixed martial arts (MMA) moves.

- On September 13, 2023, A.M. twice put a chokehold on another student and got out of his seat to shadowbox during instruction.
- On September 14, 2023, A.M.'s teacher, Mr. Adase, reported that "within twenty seconds of entering the classroom, A.M. put his hands on another student in a headlock or half nelson fashion, followed by a light kick to the other student's leg. Mr. Adase immediately sent A.M. to the office. Upon A.M.'s return (about 30 min later) he was able to complete the class notes, participate, and start working on his homework independently."
- On September 22, 2023, A.M. and another student repeatedly threw a peer's water bottle in the air multiple times, resulting in a damaged and broken water bottle.
- On October 6, 2023, A.M. wrapped his hands around a peer's neck and then continued to shadow-box.
- On October 18, 2023, A.M. put a peer in a headlock during recess.
- On October 24, 2023, Mrs. Ruch sent A.M. to the main office. First, A.M. threw two pieces of candy corn at student E.H. Then, he stuck candy corn up his nose.
- On November 29, 2023, Mr. Adase called Mr. Stanbro and asked for A.M. to finish his social studies work in Mr. Stanbro's office after numerous disruptions and class distractions. A.M. was yelling things out, throwing things, moving around, and running into furniture.
- On December 8, 2023, A.M. asked to go to the bathroom, and Mr. Viotto noticed his phone in his pocket. Mr. Viotto asked A.M. to give it to him, and he did.

- On December 15, 2023, Mr. Adase reported the following to Dr. Cohen: “I wanted to bring to your attention that A.M. has been very disruptive in class, and I feel it is impact[ing] the other students['] ability to learn and focus. In addition, he is choosing to do little to no work in class. In the past, I was able to send him to the library with support staff and he was able to get some work accomplished. However, at present, this is not an option. To date, I’ve reduced his workload, modified assignments, tried several seating arrangements, provided extended breaks, allowed plenty of class time to work on homework, provided praise, and positive reinforcement. I’m reaching out for solutions, as I don’t see the situation improving.”
- On January 2, 2024, A.M. said the “F-word” loudly and was given a recess detention.
- On January 8, 2024, A.M. had his cell phone out during study hall. Mr. Decker confiscated it and returned it at the end of the day.
- On January 9, 2024, A.M. fell asleep twice during English language arts (ELA) and was unable to engage in class activities. He was sent to the nurse. Instead of going straight to the nurse, he wandered the halls. Mrs. Rizzi needed to leave class to find him and escort him to the nurse. The nurse sent him back within minutes.
- On January 17, 2024, Mr. Decker spoke with A.M. in homeroom about his use of inappropriate language, which referred to a male body part. In study hall, he used the same word again. Mr. Decker spoke with A.M. again and asked him to be respectful of the people in the class. Mr. Decker told A.M. that he would impose lunch detention if he heard A.M. use the word again.
- On January 23, 2024, A.M. asked to go to the restroom during class, and Mr. Viotto noticed his cell phone in his pocket. Mr. Viotto asked A.M. to give him the cell phone, and A.M. complied. At the end of class, A.M. asked if he could have it back

and promised to put it in his locker. Mr. Viotto declined and took it down to the main office.

- On January 24, 2024, the 8th grade team raised numerous concerns from the prior week regarding a pattern of A.M.'s disruptive and distracting behavior: excessive calling out, physicality among peers like shadow-boxing and pretend fighting (teachers report that the other students are uncomfortable with the headlocks and similar actions but fear speaking up), physical actions around the classroom (intentionally running into and knocking over desks/chairs), crawling on the floor, throwing things at peers, not doing his work, taking belongings from peers, inappropriate language, ignoring teacher directions, and aggressive behavior towards both males/females while walking in the halls. As a result, administration, counselors, and teachers collaborated on a plan to offer additional modifications and provide structured breaks three times per day.
- On January 26, 2024, A.M. was told not to kick basketballs and not to throw balls in the direction of other students. He continued to do so after Mr. Stanbro asked him not to and Mrs. McVerry asked him not to. Continued to play after the bell and was told multiple times recess was over.
- On January 31, 2024, A.M. returned from Mr. Stanbro's office at 2:10. He was given instructions to continue to read the short story he selected and note two dystopian characteristics. A.M. said he didn't remember anything that Mr. Stanbro had said to him. This was the second time he returned saying that. He said he couldn't read the story or find two dystopian characteristics even after prompting. He put his head down and slept the remainder of the period.
- Also on January 31, 2024, A.M. answered about six questions on IXL, then put his head down and slept for thirty minutes.
- On February 5, 2024, A.M. was disruptive in several classes. When asked to work on his classwork, he told Dr. Cohen that he would do it at home so he could use

Photomath to get the answers. His teacher asked him several times to please work on his assignment. He kept laughing and trying to engage other students. In addition, A.M. was asked to try and remain more focused on his academics. The poor behavior continued, and he was removed from class and given an after-school detention. Finally, AM kept talking over his teacher during a lesson with little regard for his actions.

- On February 8, 2024, one of A.M.'s teachers asked him to read his independent novel. He refused. He took his cell phone out. Mrs. Rizzi took it and then the teacher gave it to Mr. Stanbro. Because his behavior was poor, his teacher asked him to sit in the office.
- On February 9, 2024, a teacher reached out to the administrator for support regarding a pattern of distracting and disruptive behaviors.
- On February 14, 2024, A.M. was found to be in possession of a marijuana vape in school. He was sent for testing and tested positive.
- On February 23, 2024, A.M. had his cell phone out during class. His teacher took it and gave it to the main office for him to pick up after school.
- On February 5, 2024, during health class, A.M. pushed another classmate out of their chair and across the floor. His teacher brought him into the hallway to ask what happened and if that student said anything to him to cause that response. A.M. said they didn't say anything. His teacher issued a lunch detention.
- On March 7, 2024, A.M. was asked to leave the room with another student and Dr. Brenner to work in a small group setting, as he was not able to accomplish anything in the large group setting. He became combative and flipped his desk over. Dr. Brenner was going to take him to the office, and he refused to go. She explained the situation to Dr. Cohen, and Mr. Merrigan called the classroom and asked the teacher to send A.M. down. After his teacher asked him several times to go to the

office, he finally left the room. He came back about seven minutes later, at which time Mr. Stanbro came to get him, as he never went to the office.

- On March 12, 2024, two teachers reported that over the last few weeks, they have observed A.M. taking food from others' lunches, particularly 7th graders. Both teachers asked A.M. to stop. A.M. has responded "No, it's fine" and "I'm allowed to." None of the students gave permission for A.M. to take their food.
- On March 14, 2024, Mrs. Lauricella reported that A.M. held a ruler to his crotch, turned towards peers and said, "Mine is longer than this ruler." This resulted in a Student-Administration discussion and warning about appropriate comments. A.M.'s response was "Mrs. Lauricella told me I get two passes (warnings) so that's one of them."
- On March 15, 2024, A.M. shot a rubber band across the room that nearly hit the teacher. He followed it up by slapping his hand against his stomach and making farting noises. He was sent to Mr. Stanbro's office. In addition, A.M. was not doing his artwork; he was out of his seat frequently; touched other students; crawled on the floor and meowed; and tried to leave the classroom without permission. A lunch detention was assigned after several verbal warnings.
- On March 18, 2024, A.M. barely completed any classwork. At one point, he was on the floor sliding around on his stomach. Also, during class, A.M. was sending photos of a rapper to the media center's printer without permission. This was not part of any work assigned that day.
- On March 22, 2024, A.M. finished his test and was told to work on his diagnostic. While the other students were working on their test, A.M. yelled out "Skibidi Toilet." Mr. Merrigan sent him to the office with his Chromebook to work on IXL.
- On April 8, 2024, A.M. was involved in the harassment of a peer, E.H., that involved derogatory terms which were recorded and shared via social media. A.M. admitted

to CPS staff that the voice in the background of the video was his. The two students pictured in the video confirmed A.M. was present and contributed to the video. A.M. said in the video, “Fuck [E.H.], Fuck [E.H.], SKANK, SKANK, SKANK.” A.M. received a two-day out-of-school suspension on April 12 and April 15, 2024. This incident was also investigated and found to be HIB.

- On April 11, 2024, during lunch, A.M. made physical threats towards a peer, including saying “I’m going to get you,” “I’m going to beat you up,” and “I’m going to come to your house.” These were overheard by two teachers. The teachers also observed A.M. aggressively stepping towards the peer and flexing, which seemed intimidating. A.M. also told a teacher that he asked the peer to punch him and to “give me a reason because I handle my own business.” A.M. stated that this was all “joking around.” A.M. also stated he gave the peer a fist bump “to show him we’re good.” A.M. was given an administrative warning and was told that joking about threats is not allowed and will be handled as serious threats in the future.
- On April 26, 2024, A.M. had another vape device and admitted it was his. His parent was called to pick him up. A.M. punched the walls while leaving the building.
- On May 2, 2024, during a suspension reentry meeting with the parent, CPS recommended referring A.M. to the child study team, and the parent did not agree.
- On May 3, 2024, several students confirmed that A.M. called E.H. “whore” and “skank” while in the hallway. A.M. admitted to this, but claimed he was speaking about a different person. Upon A.M.’s return from his suspension on April 12 and 15, 2024, Mr. Stanbro clearly communicated to A.M. that retaliation would not be permitted and that derogatory terms such as hoe, skank, etc. were code of conduct violations. Additionally, A.M. turned and shouted “Fuck up” directed at E.H. while exiting his homeroom. After homeroom, A.M. entered Spanish class. As reported by a staff member, “I did not hear what was said in the hall, but when A.M. walked

into class he said 'Something smells in here' and it was directed at E.H." E.H. also reported that A.M. told her to shut up and called her a skank again.

- Dr. Kastner and Mr. Stanbro met with A.M. After Dr. Kastner asked for clarification, A.M. shouted, punched the table, then punched the wall behind his chair. A.M. then left Dr. Kastner's office despite attempts to calm and de-escalate him. A.M. ignored administrative directions to remain in the office and kept walking. Mr. Stanbro walked with A.M. through the halls with Officer Testa and Dr. Kastner following. Mr. Stanbro attempted multiple times to de-escalate as A.M. continued shouting. During this, A.M. saw E.H.'s older sister, who initially turned towards them coming out of CST, then quickly redirected to go the opposite way. A.M. said out loud "Yeah, she better walk the other way." A.M. was still visibly frustrated, but Mr. Stanbro did get him to return to Dr. Kastner's office and then to his own office. After discussion, A.M. seemed calm. A.M. was permitted to go to social studies with the understanding that Mr. Stanbro and Dr. Kastner would address the comments later. After further understanding of events, Mr. Stanbro attempted to clarify the order of events with A.M. in his office. A.M. became upset again, punched his Chromebook, then left Mr. Stanbro's office without permission again. A.M.'s dad was called to pick him up. A HIB investigation was opened regarding this incident, and it was determined to be founded.
- On May 6, 2024, in the hallway, A.M. called E.H. "fat." One student confirmed that A.M. said this and that when E.H. responded by calling him ugly, A.M. responded to her by saying "you're fuckin' fat." This was overheard by a staff member in the hall as well. A.M. was brought to the main office to avoid any additional issues and to keep E.H. safe. Work was provided by teachers to A.M. while in the office, and lunch was also provided. A.M. left the office several times without permission and would not respond to directives. A.M.'s parents were emailed to pick him up from school. As a result of this conduct, A.M. received a four-day out-of-school suspension followed by home instruction pending a CST evaluation.

- On May 8, 2024, E.H.'s parent reported the following: "Last night I picked E. up from her friend's house in Clinton. We go through town to get to Rt 31. As we were driving through on Halstead Street, we see A.M. with a group of friends, he sees E.H. and starts jumping up and down, as we pass he flips us off and yells 'Skank!'"
 - Since these incidents, the parents of E.H. reach out on a regular basis to inquire about A.M.'s attendance at school events, due to the significant concerns they have about E.H. being around A.M. in any capacity.
 - On May 16, 2024, the parents of A.M. were requested to sign a release of records to North Hunterdon High School and alternate program but refused.
 - As a result of these incidents, the CPS administrative team placed A.M. on home instruction for the last few weeks of the school year. This decision was not taken lightly but was necessary to ensure the safety of other students and ensure that A.M. would continue to be educated.
 - Often, A.M.'s emotional state dictates his level of compliance and participation daily. When he becomes frustrated, A.M. will simply walk away and not communicate with his teachers. A.M. requires a significant level of accommodations, such as frequent breaks as reinforcement as well as to meet his need for constant movement. A.M. is a bright young man, but his behavior and noncompliance interfere with his ability to participate in his current educational setting without a significant level of support, accommodations, and modifications.
- R-2.
- As a result of A.M.'s increasingly inappropriate, disruptive, and aggressive behaviors, including the two HIB findings against him and his specific targeting of student E.H., CPS made the administration decision, based upon the totality of A.M.'s conduct, to revoke the privilege of A.M. attending end-of-the-year 8th grade

activities. These activities included the 8th grade breakfast and BBQ, prom, overnight class trip, and graduation.

- CPS's decision stems from the administration's responsibility to ensure the safety of the District's students, including E.H., and not simply to discipline A.M.
- CPS respectfully submits that due to A.M.'s increasing and unmanageable behaviors, and specific targeting of student E.H., he should not be permitted to attend graduation. A.M.'s past behavior raises legitimate concerns about the likelihood of disruption at this event should he be permitted to attend.

Certification of Dr. Seth Cohen. R-2.

Petitioners testified that A.M. has been painted in a bad light by CPS and Dr. Cohen. A.M. has never been involved in a fight or an altercation, despite the assertions previously made by the respondent. As parents, they feel that A.M. should be acknowledged at graduation for his hard work and dedication throughout the school year. Closing the chapter of middle school is a big deal, and though A.M. faced many challenges to get through the school year, he maintained his grades. They believe that the school has mishandled A.M. and built a case against him just to exclude him from end of the year activities.

Petitioners did not dispute the facts offered by the Board. They did testify that there were incidents the board "left out." On March 19, 2024, Dr. Cohen falsely accused A.M. of being under the influence of alcohol, when in fact he was experiencing spring allergies. Dr. Cohen has admitted to closely monitoring A.M. and has exhibited a pattern of bias and mistreatment towards him, attempting to manipulate A.M. into causing trouble to build a case against him. Petitioners cited an October 11, 2023, incident involving a school aide, David Henry, who dragged A.M. across the school corridor. In February 2023, A.M. was falsely accused of attacking a teacher. During a June 2023, Board meeting, the minor child A.M. and his mother F.M. shared A.M.'s side of the story with respect to one of the incidents that involved E.H. Dr. Cohen became volatile towards A.M.

and F.M. He did not like the questions A.M. and F.M. asked or the answers his staff was providing. Dr. Cohen rose from his seat, slammed the desk, and screamed, “no more questions and no more answers,” pointing the finger at this staff. He turned to F.M. and A.M. and asked them to leave immediately, as they had exceeded their fifteen minutes of allowed time. Petitioners asserted that these incidents demonstrate a clear pattern of mistreatment, discrimination, and harassment towards A.M. by CPS. Such behavior violates A.M.’s rights as a student and undermines the integrity and fairness of the educational environment at CPS.

Petitioners do not believe A.M.’s ADHD is a learning disability, and they further assert that the school is not equipped to handle him. Petitioners rejected the school trying to place A.M. in an individualized educational plan (IEP) because they want him to “figure it out on his own.” They believe that CPS has tirelessly tried to put A.M. “in a box” and back on an IEP.

LEGAL ANALYSIS AND CONCLUSIONS

The regulations governing controversies and disputes before the Commissioner of Education provide that “[w]here the subject matter of the controversy is a particular course of action by a district board of education . . . [,] the petitioner may include with the petition of appeal, a separate motion for emergent relief or a stay of that action pending the Commissioner’s final decision in the contested case.” N.J.A.C. 6A:3-1.6(a). The regulations further provide that the Commissioner may “[t]ransmit the motion to the OAL for immediate hearing on the motion.” N.J.A.C. 6A:3-1.6(c)(3).

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

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying petitioner’s claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and

4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

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

The petitioner must prove each of these standards by clear and convincing evidence. Garden State Equality v. Dow, 216 N.J. 314, 320 (2013). 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, A.M. will suffer irreparable harm if the requested relief is not granted. If he does not attend graduation, that opportunity will be lost forever.

Accordingly, I **CONCLUDE** that petitioners have met their burden of proof with respect to this prong.

2. **Settled Legal Right**

However, 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). 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 Bd. of Educ., 95 N.J.A.R. 2d (EDS) 210. Therefore, because he has no legal right to attend the ceremony, he cannot satisfy that prong of the test. Therefore, I **CONCLUDE** that petitioners have not shown a legal right underlying this claim.

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

Petitioners have not demonstrated that they are 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 petitioners have 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 that resulted in discipline of A.M. is exorbitant. Although petitioners claim that the school is building a case against them, they have not provided any clear and convincing evidence or legal authority showing that they have a reasonable

probability of ultimate success on the merits. I therefore **CONCLUDE** that petitioners have 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 A.M. will not walk at graduation. 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 petitioners 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 petitioners’ application for emergent relief be and hereby is **DENIED**. 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING 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 7, 2024

DATE


MICHAEL STANZIONE, ALJ

Date Received at Agency:

Date Mailed to Parties:

APPENDIX

WITNESSES

For petitioner

F.M.

A.M.

For respondent

None

EXHIBITS

For petitioner

P-1 Request for emergent relief dated May 30, 2024

For respondent

R-1 Opposition dated June 5, 2024

R-2 Certification of Dr. Seth Cohen dated June 5, 2024