

June 21, 2002

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Dear Counsel:

ADAM BUSH V. BOARD OF EDUCATION OF THE TOWNSHIP OF MAPLE SHADE,
BURLINGTON COUNTY, STATE BOARD DOCKET #29-02

Adam Bush (hereinafter "petitioner") filed a motion for emergent relief with the Commissioner of Education, challenging the determination by Raymond S. Marini, the principal at Maple Shade High School, to bar him from attending the senior prom on June 14, 2002 and commencement exercises on June 25, 2002.

The record reveals that the petitioner had been caught shoplifting during the senior class trip to Orlando, Florida during the week of May 6, 2002. The student handbook expressly provides that "[a]ny drug/alcohol/theft violation while on the senior trip...will also result in the loss of the privilege of participation in commencement exercises and all other senior class activities." This policy was reiterated in the guidelines distributed prior to the trip. Upon the petitioner's return from Florida, Marini opted to place him on probation and warned him that any further infractions would result in his exclusion from the prom and graduation ceremonies.

On or about June 4, 2002, the petitioner was suspended for one day as a result of his failure to obtain a late pass and then lying about it to his teacher. Marini determined that this conduct violated the terms of the petitioner's probation, and, as a result, he barred the petitioner from attending the prom and participating in graduation ceremonies.

On June 13, 2002, following a hearing, an Administrative Law Judge ("ALJ") recommended denying the petitioner's motion for emergent relief. The ALJ explained:

This matter is governed by the tenets expressed in Crowe v. DeGioia, 90 N.J. 126 (1982). Petitioner must show, among other things, that he would likely prevail on the merits at a plenary hearing. This has not been done. Boards of

Education enjoy wide policy-making discretion and their decisions may not be disturbed unless arbitrary and capricious. [Citations omitted.] Shoplifting is a criminal offense and of itself was sufficient cause to exclude petitioner from the prom and graduation exercises. However, the district gave him a second chance and petitioner could not manage to stay out of difficulty for the remainder of the semester. Instead of obtaining a late pass he lied twice to his teacher about having done so. Mr. Marini's actions were well within the range of reasonable and it is highly unlikely that petitioner could prove that the district was arbitrary and capricious.

Initial Decision, slip op. at 3.

On June 14, 2002, the Commissioner adopted the ALJ's conclusions and denied the petitioner's application.

The petitioner thereupon filed the instant motion for emergent relief with the State Board. Although acknowledging that his request to attend the prom is now moot, the petitioner renews his request to participate in graduation ceremonies on June 25.

Inasmuch as we agree with the ALJ and the Commissioner that the petitioner's motion fails to meet the standards that would entitle him to relief under Crowe v. De Gioia, supra, we deny his application.¹ We stress in so doing that we find no basis in the petitioner's submissions for concluding that he is likely to prevail on the merits of this matter.²

Sincerely,

Maud Dahme, President
State Board of Education

Ronald K. Butcher, Chairperson
Legal Committee of the State Board

c: Members, State Board of Education
Walter J. Keiss, County Superintendent
Steven M. Marinoff, Board Secretary

¹ Pursuant to N.J.A.C. 6A:4-3.3, "[t]he President of the State Board or, in the President's absence, the chairperson of the Legal Committee is authorized to decide on behalf of the State Board applications for emergency relief made pursuant to N.J.A.C. 6A:4-2.4 unless the determination would constitute the final decision with respect to the controversy."

² The petitioner has requested that we supplement the record with letters from him, his parents and a former employer. Given the subject matter involved here and the fact that the graduation ceremony is to be held next Tuesday, we have considered these items in reviewing this matter.