



*State of New Jersey*  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

**EMERGENT RELIEF**

OAL DKT. NO. EDS 07943-18

AGENCY DKT. NO. 2018-28179

**M.D. ON BEHALF OF P.N.,**

Petitioner,

v.

**CLIFFSIDE PARK BOARD OF  
EDUCATION,**

Respondent.

---

**Debra F. Schneider**, Esq., Law Offices of Debra F. Schneider, attorneys) for  
petitioner

**Douglas M. Bern**, Esq., for (Meyerson, Fox, Mancinelli, Conte & Bern,  
attorneys) for respondent

Record Closed: June 6, 2018

Decided: June 7, 2018

BEFORE **GAIL M. COOKSON**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, M.D., is seeking emergency relief and requests the determination to exclude her son, P.N., from his graduation on June 18, 2018, be reversed. Because the petition raised issues relating to her son's special education status, it was docketed and forwarded to the OAL as a special education matter subject to N.J.A.C. 6A:14-2.7.

This matter was argued on Wednesday, June 6, 2018, the emergent appeal having been filed on only June 5, 2018. The following are the relevant facts that were not in dispute at the hearing.

P.N. is a student who is receiving special education services at the middle school for Cliffside Park Board of Education (District) for a classification of emotionally disturbed and a learning disability. He has completed the requirements for graduation and receipt of an eighth-grade diploma this month. While P.N. will receive his diploma, he has been excluded from the graduation ceremonies and festivities – specifically, a traditional dinner-dance -- because of a serious incident that took place off school grounds on May 23, 2018. The present emergent application challenges his ten-day suspension, and exclusion from attending the dinner-dance and the graduation ceremony as a result of that incident.

The incident occurred at home at about 11:00 p.m. when P.N. saved a screen shot from a video he was watching which he then posted to a private Instagram account. The photo was of man, fully dressed, holding an assault weapon in a shower stall. His face is not visible as there is an emoji superimposed over it. P.N. captioned it with the comment “I’m ready.” Apparently, an Instagram friend and classmate reported it and at 1:00 a.m., Cliffside Park police officers arrived at the house to investigate. P.N. showed them the video where he grabbed the photo. The police officers explained why it was inappropriate and asked him to delete it, which he did.

On May 24, 2018, M.D. received a call at approximately 8:15 a.m. that her son was suspended and needed to be cleared by a psychiatrist whom the school would pay and to whom they would provide transportation. She picked up P.N. by 8:30 a.m. Later that day, she received the information of an appointment with Leslie Nagy, M.D., in Teaneck, New Jersey, scheduled for 2:00 p.m. on Friday, May 25, 2018. The parent was then advised by the vice principal that P.N. would receive a ten-day suspension imposed on May 25, 2018, notwithstanding the conversation the previous day.

Dr. Nagy undertook the psychiatric examination of P.N. and prepared her report for the District. In that report, Dr. Nagy concluded a diagnosis of P.N. of Anxiety Disorder Not Otherwise Specified (NOS) and Language and Learning Disabilities. She then recommended, based on her interviews of P.N. and M.D., that –

1. P[.] is not a danger to himself or others and may return to school. Decision to allow participation in eighth grade activities will be determined by appropriate school authority.
2. Any educational support needed to foster academic, behavioral, social, emotional progress, with continuance of special education classification and accommodations.

The District received it on June 1, 2018, but had not shared it with the parent prior to the emergency hearing. Prior to that hearing yesterday at the OAL, the District had also not held any hearing – not even an informal one – on P.N.s short-term suspension, nor had they issued any written notice of same, and I so **FIND**. I also **FIND** that as of yesterday, P.N. had been out of school since May 24, 2018, or nine (9) days.

Further, I **FIND** that in this day and age, unfortunately, there is reasonable and heightened concern about the posting of photos of assault rifles by students. Notwithstanding that the photo was a movie screen shot and not P.N., and notwithstanding that there were no threats to the school, students or any other persons, P.N.'s caption of "I'm ready" was both scary and ambiguous to anyone reading it.

### **ANALYSIS AND CONCLUSIONS**

The issue before me, however, is whether, based on the incident and the undisputed facts and procedural history before me, the criteria for the granting of emergency relief have been met. The applicable regulation incorporates the well-established standard for injunctive relief set forth in Crowe v. DeGioia, 90 N.J. 126 (1982):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;

2. The legal right underlying petitioner's claim is settled;
3. The petitioner has 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]

With respect to the first prong, I **FIND** that petitioner will suffer irreparable harm if the requested relief is not granted. A graduation is a once-in-a-lifetime event. It is not the type of relief which can be granted at the end of any future plenary hearing because once lost, the opportunity cannot be recaptured. One either attends or one does not, and for P.N., June 18, 2018, is that night for the middle school. Furthermore, his achievement at overcoming some learning obstacles is one that his family would like to mark with celebration. Nevertheless, this is just one factor as the privilege of attending graduation is certainly one that can be lost due to poor behavior or other incidents.

I have reviewed the second and third prong together because the merits and rights are intertwined here. Petitioner has a very high burden on this application with respect to proving that this forum is likely to reverse the discretionary determination of the Board of Education with respect to the appropriate discipline to have been meted out to P.N. in this indisputably inappropriate image posting. The standard is not whether I or any other reviewing court would have imposed a different discipline but whether there was sufficient competent evidence for the Board's exercise of its discretion. When a local board has acted within its authority, its actions carry a presumption of validity and will not generally be disturbed absent an affirmative showing that its judgment was arbitrary, capricious or unreasonable. See Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), *aff'd.*, 46 N.J. 581 (1966); Quinlan v. North Bergen Bd. of Educ., 73 N.J. Super. 40, 46-47 (App. Div. 1962). As I have stated above, there is now zero tolerance of activity online or otherwise that insinuates gun-school violence.

Nevertheless, there should also be zero tolerance of violating a student's rights, there is a second issue on the merits on which petitioner does stand a likelihood of success. From the record as it stands now, it has been conceded by the District that there was no written notice or informal hearing at which P.N. or his parents could provide their "version of events" in accordance with N.J.A.C. 6A:16-7.2(a). Nor has there been any since May 24, 2018. Thus, I **CONCLUDE** that the suspension of P.N. has been devoid of any pre- or post-deprivation due process. Under the facts of a school suspension and denial of graduation ceremony so close to the end of the school year, the delay evidenced here is not justified or reasonable. See Logan v. Zimmerman Brush Co., 455 U.S. 422, 434, 71 L. Ed. 2d 265, 102 S. Ct. 1148 (1982); Mathews v. Eldridge, 424 U.S. 319, 334-335, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976). See also Barry v. Barchi, 443 U.S. 55, 64-66, 61 L. Ed. 2d 365, 99 S. Ct. 2642 (1979).

On the last prong, I **FIND** that P.N.'s interest in going to the graduation is only slightly outweighed by the district's or the public's interest in maintaining discipline and order in its schools under these unique circumstances where the incident did not occur in school, was a movie screen-shot, and most importantly, did not threaten the school or any person. P.N. was remorseful and thought the emoji "mask" on the character in the shot was "funny," which itself could have been a manifestation of his emotional issues. He was also cleared to return to school by the psychiatrist to whom he was referred by the District. I understand the District's contention that allowing P.N. to participate in the graduation ceremony would undermine the authority of District personnel to restrict attendance at these events based on the student's academic and/or behavioral record during the school year in question.

In balancing these interests, I **CONCLUDE** that petitioner has satisfied her burden of proof on the Crowe factors and that they weigh in favor of granting the relief sought herein, with the limited exception of the privilege of attending the dinner-dance.

**ORDER**

Accordingly, it is hereby **ORDERED** that the emergent application for relief of the petitioner is hereby **GRANTED**. It is **FURTHER ORDERED** that the District shall permit P.N. to attend his graduation ceremony on the evening of June 18, 2018, with all the privileges attending that event.

This decision on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter. A due process hearing having been requested by the parents, this matter is hereby returned to the Department of Education for a local resolution session, pursuant to 20 U.S.C.A. § 1415 (f)(1)(B)(i). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

June 7, 2018

\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
**GAIL M. COOKSON, ALJ**

Date Received at Agency

6/7/18\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

id