



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION ON

EMERGENT RELIEF

OAL DKT. NO. EDS 07959-24

AGENCY DKT. NO. 2024- 37729

L.R. ON BEHALF OF G.P.,

Petitioners,

v.

NEWTON TOWN BOARD OF EDUCATION

Respondent.

L.R., pro se

Robin Ballard, Esq., for respondent (Schenck, Price, Smith & King, LLP,
attorneys)

Record Closed: June 14, 2024

Decided: June 14, 2024

BEFORE **KIMBERLY A. MOSS**, ALJ:

STATEMENT OF THE CASE AND

In this case, petitioner L.R. obo G.P. seeks emergent relief to allow G.P. to attend and participate in the middle school graduation ceremony of Halsted Middle School scheduled for June 14, 2024 at 6:00p.m. The matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case on June 13, 2024,

on petitioner's application for emergency relief. Oral argument was held on June 14, 2024

FACTUAL DISCUSSION

I **FIND** the following to be the **FACTS** of this matter.

G.P. is a student at Halsted Middle School in Newton. He receives special education services in the category of other health impaired. He has been diagnosed with attention-deficit/hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD).

On May 24, 2024, an incident occurred at school. G.P. had a free period and was kicking a football around the weight room. The staff told him to not kick the ball, only throw the ball. Since kicking the ball was a safety concern. G.P. was told if he continued kicking the ball, he would need to leave the weight room. G.P. was given other options by staff but continued kicking the football. G.P. began taunting the staff saying, "What are you going to do about it little girl" and "I can do what I want and you can't stop me." This continued for ten minutes and G.P. was told that he had to leave the weight room.

G.P. was told that it was not safe to run and jump onto the pull bar. A staff member stood in front of the pull bar so that G.P. could not jump on the pull bar. G.P. stated "Get out of my way, I'm going to knock you over." G.P. ran around the staff member to get to the pull bar several times.

G.P. walked out of the weight room and went outside. A staff member told G.P. that he could not walk outside the building without asking for permission. G.P. was asked to return inside the building. G.P. stated "Get away from me" and "What are you gonna do about it."

When G.P. returned to the weight room he began insulting staff members. He told them not to talk to him and threatened the staff member that he was going to take a picture of the staff member's car and post it on social media, which would result in the tires being flattened within a week. G.P. pretended or actually took a picture of the staff member's car.

G.P. then stated that the teacher was bad and should lose his job. G.P. threatened the teacher stating that the teacher was going to get into a car accident next week because G.P. knows people. G.P. threatened to spit on the teacher. A short time later G.P. refused to enter the CST room for a meeting. He walked away from the staff member who was attempting to get him to attend the meeting, pushed down a recycling can, walked upstairs, told the teacher to "Get the f**k away" He then told the teacher to "Get the f**k away from me before I have someone beat the s**t out of you." G.P. punched the glass in the stairwell doors and refused to let the nurse look at his hand. Shortly thereafter Petitioner picked G.P. up from school. Petitioner states that the staff did not de-escalate G. P.'s behavior.

G.P. was given a ten day out of school suspension, he lost field day, the eighth grade field trip and dance. In addition, G.P. would not be allowed to participate in the eighth-grade graduation. Petitioner believes that not allowing G.P. to attend the graduation is excessive punishment.

A manifestation determination was held on June 6, 2024, with petitioner present, where it was determined that G.P.'s behavior was not a manifestation of his disability.

The District believes that G.P. is a security threat to the staff because of the threats he made to them. In addition, the Districts believe that it would send the wrong message to the other students that acting violently, and threatening teachers has no consequences.

G.P. will receive credit for completing the eighth grade and will continue to the ninth grade in the 2024-2025 school year.

Newton Board of Education Board Policy number 5610 states that “any student who is guilty of continued and willful disobedience, or open defiance of authority of any teacher or person having authority over him, or habitual use of profanity or of obscene language, or who shall cut, deface, or otherwise injury any school property, shall be liable to punishment and to suspension or expulsion from school.”

The Halsted Middle School hand book states “Students disciplined for harassment, intimidation, bullying, defiance or fighting may not be eligible to participate in school sponsored activities including, but not limited to class trips, field trips and promotion ceremonies”.

LEGAL DISCUSSION AND CONCLUSIONS

Petitioner did not meet the criteria of Crowe v. DeGioia for emergent relief. N.J.A.C. 6A:3-1.6(b) sets forth the standards governing motions for emergent relief. The regulation instructs in salient part:

A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief which shall address the following standards be met for granting such relief pursuant to Crowe v. DeGioia, 90 N.J. 126 (1982):

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

Petitioner has the burden of establishing each of the above requirements in order to warrant relief in his favor.

It is well settled that relief should not be granted except “when necessary to prevent irreparable harm.” Crowe, supra 90 N.J. at 132. In this regard, harm is generally considered irreparable if it cannot be adequately redressed by monetary damages. Id. at 132-33. In other words, it has been described as “substantial injury to a material degree coupled with the inadequacy of money damages.” Judice’s Sunshine Pontiac, Inc. v. General Motors Corp., 418 F. Supp. 1212, 1218 (D.N.J. 1976) (citation omitted). See New Jersey Dep’t of Environmental Protection v. Circle Carting, Inc., 2004 N.J. AGEN LEXIS 968 (April 2, 2004) (finding no irreparable harm in connection with the revocation of respondent’s solid waste license in that financial loss is generally insufficient to demonstrate this requirement). The moving party bears the burden of proving irreparable harm. More than the risk of irreparable harm must be demonstrated. Continental Group, Inc. v. Amoco Chemicals Corp., 614 F. 2d 351, 359 (D.N.J. 1980). The requisite for injunctive relief requires 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 common law.” Ibid. (citation omitted.)

As to the first requirement, there are a significant number of cases holding that a prohibition from attending a graduation ceremony or other similar events does not, in and of itself, rise to the necessary level of irreparable harm so as to warrant the extraordinary remedy being requested. Nevertheless, the Commissioner has pointed out that there is no adequate after-the-fact remedy that can adequately redress the intangibles of a lost experience after the event is over. Petitioner has not stated that G.P. would be harmed by not participating in the graduation. Further, he will receive credit for completing the eighth grade and will start the ninth grade in the 2024-2025 school year.

The next issue is likelihood of success on the merits and the legal right underlying the claim is settled. Participation in a graduation is a privilege, not a right. It is clear that each school district is obligated to provide a thorough and efficient system of education to all children residing in its school district. N.J. Const. (1947), art. VIII, ¶ 1; N.J.S.A. 18A:33-1. To carry out this policy, local boards of education have been

granted discretionary authority at N.J.S.A. 18A:11-1(c) and (d) to adopt rules for the management of the public schools of the district, and to perform all acts and do all things necessary for the lawful and proper conduct of the public schools of the district.

Local boards of education are responsible for protecting the health, safety and welfare of their students and ensuring the orderly conduct of the academic process. Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975). To accomplish this, such boards are empowered to establish rules of conduct and impose discipline to enforce such rules. It is established law that the actions of a board of education which lie within the area of discretionary powers, especially as it relates to matters of student discipline, cannot be upset unless there is a showing that the discipline imposed was arbitrary, capricious, without a rational basis, or induced by improper motives. J.M. v. Hunterdon Cent. Reg'l High Sch. Dist., 96 N.J.A.R.2d (EDU) 415, 419 (citing Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288 (App. Div. 1960)).

Board Policy number 5610 states that “any student who is guilty of continued and willful disobedience, or open defiance of authority of any teacher or person having authority over him, or habitual use of profanity or of obscene language, or who shall cut, deface, or otherwise injury any school property, shall be liable to punishment and to suspension or expulsion from school.”

The Halsted middle school hand book states “Students disciplined for harassment, intimidation, bullying, defiance or fighting may not be eligible to participate in school sponsored activities including, but not limited to class trips, field trips and promotion ceremonies.”

Petitioner has not shown that the legal right underlying her claim is settled or that there is a likelihood that she would prevail on the merits. Petitioner did not address the legal claim at all. In addition, G.P. violated both policy 5610 and the Halsted middle school policy on May 24, 2024. The District’s decision was not arbitrary or capricious.

When the equities are balanced the petitioner will not suffer greater harm than the District if the relief is not granted. Petitioner did not show that G.P. would be harmed in any way by not attending the promotion ceremony and the District has a valid safety concern about G.P.'s presence at the ceremony.

There is no question that graduation is a privilege, and that under the clearly enunciated policies of the school district, failure to comply with the disciplinary requirements of the school district can result in a student's exclusion from the graduation ceremony.

Based on the foregoing, I **CONCLUDE** that petitioner has failed to meet the requirements set forth in N.J.A.C. 6A:3-1.6(b) warranting a stay or emergent relief. Accordingly, I **ORDER** that petitioner's application for such relief be and hereby is **DENIED**.

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

June 14, 2024

DATE

ljb



KIMBERLY A. MOSS, ALJ