

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

509

**CA 23-01853**

PRESENT: SMITH, J.P., BANNISTER, MONTOUR, GREENWOOD, AND NOWAK, JJ.

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IN THE MATTER OF JAMES L. AND MICHELLE L.,  
AS PARENTS AND NATURAL GUARDIANS OF THEIR SON,  
J.L., A PERSON UNDER THE AGE OF 18,  
AND LANDON GRAINY, PETITIONERS-APPELLANTS,

V

MEMORANDUM AND ORDER

STARPOINT CENTRAL SCHOOL DISTRICT, BOARD OF  
EDUCATION OF STARPOINT CENTRAL SCHOOL DISTRICT  
AND DR. SEAN M. CROFT, SUPERINTENDENT OF SCHOOLS,  
STARPOINT CENTRAL SCHOOL DISTRICT,  
RESPONDENTS-RESPONDENTS.

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GROSS SHUMAN P.C., BUFFALO (B. KEVIN BURKE, JR., OF COUNSEL), FOR  
PETITIONERS-APPELLANTS.

WEBSTER SZANYI LLP, BUFFALO (RYAN G. SMITH OF COUNSEL), FOR  
RESPONDENTS-RESPONDENTS.

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Appeal from a judgment (denominated order) of the Supreme Court, Niagara County (Frank Caruso, J.), entered May 4, 2023, in a proceeding pursuant to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Petitioners commenced this CPLR article 78 proceeding seeking to annul respondents' determination to remove two students from school on an emergency basis following allegations that they repeatedly engaged in the sexual assault of a wrestling teammate during practices. Petitioners appeal from a judgment that dismissed their petition. We affirm.

Upon receiving credible allegations of sexual assault by two students, respondents provided a detailed factual recitation of the allegations against each student and determined that each student posed an immediate threat to the physical health and safety of other students (*see* 34 CFR 106.44 [c]). Contrary to petitioners' contention, upon our review of the record, we conclude that respondents' emergency removal determination is supported by a rational basis and is not arbitrary and capricious (*see generally* *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; *Matter of Doe 1*

*v Syracuse Univ.*, 188 AD3d 1570, 1575-1576 [4th Dept 2020], *lv denied*  
37 NY3d 906 [2021]).

Entered: July 26, 2024

Ann Dillon Flynn  
Clerk of the Court