

433-24  
OAL Dkt. No. 07049-23  
Agency Dkt. No. 178-6/23

**New Jersey Commissioner of Education**  
**Final Decision**

Y.C., on behalf of minor child, A.F.,

Petitioner,

v.

Board of Education of the City of Perth Amboy,  
Middlesex County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner and the Perth Amboy Board of Education (“Board”), and their replies thereto.

Petitioner’s child, A.F., was expelled by the Board following an incident on February 27, 2023, wherein he pulled a fire alarm, causing the evacuation of Samuel E. Shull Middle School (Shull).<sup>1</sup> Petitioner challenges the Board’s expulsion for failure to adhere to the procedural mandates under *N.J.A.C. 6A:16-7.3* and *N.J.A.C. 6A:16-7.4*. Specifically, petitioner alleges that A.F. was not provided an opportunity to share his version of events in an informal hearing prior to his suspension; that the Board failed to provide petitioner with a written notice

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<sup>1</sup> On the same day, students at Perth Amboy’s high school staged a walk-out protest regarding the stabbing of another Shull student earlier in the month.

of suspension within two school days of the start of the suspension; that the Board did not schedule a disciplinary hearing for A.F. within 30 days of the February 28, 2023 suspension; and that the Board's decision letter, dated May 1, 2023, lacks a summary of the testimonial and documentary evidence upon which the Board relied in reaching its decision.

After the matter was transmitted to the OAL, the Board filed a motion to dismiss, arguing that it permitted A.F. to re-enroll in the district, rendering petitioner's claims moot. Petitioner filed opposition and a cross-motion for summary decision, arguing that her claims were not moot because justiciable issues remained, such as A.F.'s improper expulsion and the Board's violation of A.F.'s due process rights. Further, petitioner asserted that her petition is not moot given the continued harm A.F. experiences due to the presence of an illegal expulsion on his disciplinary record. Petitioner also contended that the Board's decision to expel A.F. was arbitrary, capricious, and unreasonable.

The ALJ denied the Board's motion to dismiss, concluding that when all inferences are drawn against the moving party and in favor of the opposing party, petitioner's facts – if true – could constitute a cause of action. In reaching her conclusion, the ALJ pointed to factual allegations unrefuted by the Board, namely that A.F. was not provided an informal hearing prior to his long-term suspension pursuant to *N.J.A.C. 6A:16-7.3(a)(2)*, and that the Board failed to give petitioner written notice about the suspension within two school days of the beginning of the suspension. The ALJ also found that the Board held a formal hearing more than 30 calendar days after the suspension had begun, in violation of *N.J.A.C. 6A:16-7.3(a)(10)(iii)*. Lastly, the ALJ found that the Board's May 1, 2023 letter to petitioner, notifying her of the Board's decision to expel

A.F., did not include a summary of the testimonial evidence, in violation of *N.J.A.C. 6A:16-7.3(a)(11)(ii)*.

Next, the ALJ granted petitioner's motion for summary decision. The ALJ found several procedural deficiencies in the Board's suspension and expulsion of A.F. In addition to the deficiencies noted above, the ALJ found that the Board improperly expelled A.F. even though he had never served a long-term suspension for a prior incident as required by *N.J.A.C. 6A:16-7.4(a)*. Accordingly, the ALJ held that the expulsion must be expunged from A.F.'s student record; additionally, his student record must be changed to show that A.F. was suspended due to the February 27, 2023 incident and that petitioner transferred him to a charter school for the 2023-2024 school year. The ALJ further concluded that the Board's decision to expel A.F. was arbitrary, capricious, and unreasonable for failing to consider options less drastic than discontinuing A.F.'s educational program. The ALJ concluded that petitioner may enroll A.F. in the Perth Amboy School District for the 2024-2025 school year. Finally, the ALJ held that since A.F. is not a special education student, the requirement that a disciplinary hearing notice be provided in a language that the parent understands does not apply to petitioner.

The Board takes exception to the ALJ's finding that as a result of the two incidents that occurred on February 27, 2023 — A.F. pulling the fire alarm and the walk-out protest by Perth Amboy high school students — “there were hundreds of students on the streets, which impacted the Shull administration's deployment of staff.” The Board contends that A.F.'s false pulling of the fire alarm during the protest brought hundreds more students to the street, not only impacting the deployment of staff but also jeopardizing the safety of students and staff and taking emergency teams away from monitoring safety during the walk-out at the high school.

The Board argues that it is from this context that they considered what disciplinary options to impose, and it takes exception to the ALJ's finding that the Board did not consider less extreme disciplinary actions.

The Board also challenges the ALJ's finding that it is unrefuted that A.F. was not given an informal hearing prior to his suspension. Further, the Board takes exception to the ALJ's finding that most of the March 10, 2023 meeting between petitioner and the Shull principal and assistant superintendent was conducted in English despite petitioner notifying the assistant superintendent of her limited English. Lastly, the Board argues that the ALJ incorrectly concluded that *N.J.A.C. 6A:16-7.4* requires a student to have served a long-term suspension for a previous incident before they can be expelled. The Board maintains that the plain meaning of *N.J.A.C. 6A:16-8.3* and *N.J.S.A. 18A:37-2* should be applied, arguing that there is no requirement that prior to being expelled, a student must have served a long-term suspension for a previous infraction.

In response, petitioner contends that none of the Board's exceptions to the ALJ's factual findings are material to the outcome of the instant matter and that the ALJ's fact finding sufficiently conveys the seriousness of A.F.'s offense. Petitioner also asserts that the ALJ correctly deemed the Board's failure to hold an informal suspension hearing as unrefuted since neither certification filed by the Board's assistant superintendent confirms that an informal suspension hearing was held. Citing to case law, petitioner contends that the ALJ correctly determined that a student must serve a long-term suspension for a previous incident in order to be expelled pursuant to *N.J.A.C. 6A:16-7.4*.

Petitioner takes exception to the ALJ's determination that since A.F. is not a special education student, petitioner is not entitled to receive a disciplinary notice hearing notice in a language she understands. Petitioner contends that it was unnecessary for the ALJ to have reached this determination since neither party raised issues about the Board's obligations to translate and interpret disciplinary notices in their motions or briefs. In reply, the Board argues that the issue of the language of the disciplinary hearing notification remains a disputed question of fact and as such, this matter should be remanded to the OAL for a hearing.

Upon review, the Commissioner adopts the ALJ's Initial Decision as the final decision in this matter, with the following modification. While the Commissioner concurs with the ALJ that the Board failed to adhere to the procedural requirements under *N.J.A.C. 6A:16-7.3* and *N.J.A.C. 6A:16-7.4* before expelling A.F., the Commissioner finds it unnecessary to reach a determination regarding the language of a disciplinary hearing notice.<sup>2</sup>

It is well recognized that school districts have the authority to expel and suspend students. *N.J.S.A. 18A:37-2*. That authority, however, is not unlimited, as the regulations provide for sufficient safeguards to protect the student's fundamental right to an education. Under *N.J.A.C. 6A:16-7.4(a)(1)*, "a district board of education may expel a general education student from school, pursuant to *N.J.S.A. 18A:37-2*, only after the district board of education has provided ... [t]he procedural due process rights set forth at *N.J.A.C. 6A:16-7.1(c)3* and *7.3* [and] subsequent to a long-term suspension, pursuant to *N.J.A.C. 6A:16-7.3* ...". A long-term suspension is defined

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<sup>2</sup> The Commissioner's findings are sufficient to grant petitioner's motion for summary decision, and the Commissioner declines to address an issue that was not fully briefed by the parties when it is not necessary to the outcome of this matter.

as the “removal of a student for more than 10 consecutive school days from the general education program”. *N.J.A.C. 6A:16-1.3.*

Prior to suspending a student long-term, *N.J.A.C. 6A:16-7.3(a)(2)* requires the Board to hold an informal hearing wherein the student can present his version of events. In addition, *N.J.A.C. 6A:16-7.3(a)(5)* mandates that a parent be given written notice by the chief school administrator or their designee within two school days of the beginning of the suspension. The notice must state the specific charges, the facts upon which the charges are based, and the student’s due process rights, and must include a notification that further engagement by the student in conduct warranting expulsion shall amount to a knowing and voluntary waiver of the student’s right to a free public education. A student is also entitled to a formal board hearing that must take place no later than 30 calendar days after the day the student is suspended. *N.J.A.C. 6A:16-7.3(a)(10)(iii)*. Following the close of the formal hearing, the Board must provide the student’s parents with a written statement regarding the Board’s decision. The statement must include a “summary of the documentary or testimonial evidence” presented by the student and the administration and “[f]actual findings relative to each charge and the [Board’s] determination of each charge.” *N.J.A.C. 6A:16-7.3(a)(11)*.

Here, the Board failed to provide A.F. with an informal hearing prior to the start of his suspension. It is undisputed that the Board’s written suspension notice, dated March 14, 2023, was provided to petitioner more than two school days after February 28, 2023, the first day of A.F.’s suspension. It is also undisputed that the formal hearing was held on April 27, 2023, more than 30 days after the commencement of A.F.’s suspension. Furthermore, the Board’s May 1, 2023 letter, informing petitioner of the disposition of the formal hearing, did not include

a summary of documentary or testimonial evidence on which the Board relied or factual findings relative to each charge. Instead, the letter lists the kinds of evidence the Board considered in reaching its determination that A.F. violated the Board's policy. Lastly, the Board expelled A.F. despite him never having served a long-term suspension for a prior incident. Accordingly, the Commissioner concurs with the ALJ that the Board violated A.F.'s due process rights by failing to provide the procedural protections mandated by *N.J.A.C. 6A:16-7.3* and *N.J.A.C. 6A:16-7.4*.

The Commissioner does not find the Board's exceptions to be persuasive. The Commissioner rejects the Board's argument that *N.J.A.C. 6A:16-7.4* does not require a student to have served a long-term suspension for a previous incident in order to be expelled. The Commissioner has previously found that, under *N.J.A.C. 6A:16-7.5*, expulsion can only take place after a student has "engaged a second time in conduct warranting possible suspension or expulsion, after having first served a duly imposed long-term suspension for an earlier infraction." *M.R., v. Board of Trustees of the Hoboken Charter School*, Commissioner Decision No. 89-10, decided March 22, 2010. In this matter, it is undisputed that A.F. has never served a long-term suspension for any other incident, thereby precluding the Board from expelling A.F.

In addition, the Board contends that the ALJ incorrectly found that it was unrefuted that A.F. was not provided with an informal suspension hearing prior to being suspended. The Board argues that it refuted this claim in its Answer wherein the Board denied any allegation that it failed to comply with the applicable law. However, nothing in the record – including the Board's Certification of Assistant Superintendent Delvis Rodriguez – indicates that A.F. had an informal hearing where he was afforded the opportunity to relay his version of events prior to his suspension. The Board merely suggests that it had conversations with petitioner in March 2023

to discuss options moving forward. *N.J.A.C. 6A:16-7.3(a)(2)* mandates an informal hearing where the *student*, not the parent, be given an opportunity to share his version of events before the suspension begins; further, A.F.'s suspension began on February 28, 2023, whereas the Board's discussions with petitioner occurred in March 2023. Thus, the Commissioner concurs with the ALJ that it is unrefuted that A.F. was not provided with an informal hearing prior to his suspension on February 28, 2023.

The Commissioner is not persuaded by the Board's argument that the ALJ erred in finding that 1) due to A.F. pulling the fire alarm and the walk-out protests, "there were hundreds of students on the streets, which impacted the Shull administration's deployment of staff," and 2) that the Board did not consider less extreme disciplinary actions. The Board contends that the pulling of the fire alarm jeopardized the safety of students and staff and took emergency and administrative teams away from monitoring the walkout, and that it is from this context that the Board considered the disciplinary options to implement. The Commissioner notes the seriousness of A.F.'s actions as presented by the Board, but nonetheless agrees with petitioner that this specific finding of fact is not material to the resolution of this matter. Further, the seriousness of A.F. pulling the fire alarm does not justify the many procedural violations the Board has committed in the instant matter. Regarding the second finding of fact, the record is devoid of any indication that the Board considered other disciplinary options prior to expelling A.F. The Commissioner therefore agrees with the ALJ's conclusion that the Board's decision to expel A.F. was arbitrary, capricious, and unreasonable for failing to consider other options prior to ending A.F.'s educational program.



Accordingly, the Initial Decision, as modified herein, is adopted as the Final Decision in this matter. The Board is ordered to correct A.F.'s records to remove references to the expulsion, as detailed by the ALJ. Additionally, to the extent that it has not already permitted same, A.F. shall be re-enrolled in the district.

IT IS SO ORDERED.<sup>3</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 21, 2024  
Date of Mailing: November 22, 2024

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<sup>3</sup> 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.