



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 07049-23

AGENCY DKT. NO. 178-6/23

Y.C. ON BEHALF OF MINOR CHILD A.F.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY
OF PERTH AMBOY, MIDDLESEX COUNTY,**

Respondent.

Meredith Kilburn, Esq., appearing for petitioner (Education Law Center,
attorneys)

Isabel Machado, Esq., appearing for respondent (Machado Law Group,
attorneys)

Record closed: June 14, 2024

Decided: August 27, 2024

BEFORE **KIM C. BELIN**, ALJ:

STATEMENT OF THE CASE

The Perth Amboy Board of Education (respondent/Board) expelled A.F., the minor son of Y.C., (petitioner) for pulling the school fire alarm. At issue is whether the Board followed the procedural mandates in N.J.A.C. 6A:16-7.3 and -7.4 before expelling A.F. These State regulations mandate an informal hearing, timely written notice of a formal hearing, and a summary of the testimonial evidence presented at the formal hearing prior to terminating a student from school. The respondent failed to provide these and, thus, violated A.F.'s procedural due process rights.

PROCEDURAL HISTORY

By letter dated May 1, 2023, the Board notified the petitioner that A.F. was expelled and would be on home instruction pending an alternative school placement. On June 29, 2023, the petitioner filed a Petition of Appeal. The respondent filed its Answer on July 19, 2023, and the matter was transmitted as a contested case to the Office of Administrative Law (OAL), where it was filed on August 3, 2023. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

After a series of unsuccessful settlement attempts, the respondent filed a motion to dismiss dated April 19, 2024, asserting that the controversy was rendered moot because the Board was allowing A.F. to re-enroll for the 2024-25 school year. Petitioner opposed the motion to dismiss and filed a cross-motion for summary decision on May 6, 2024, asserting that she was entitled to prevail as a matter of law because the Board violated A.F.'s due process rights under the school laws, and expelled him illegally. Respondent filed a reply on May 28, 2024, and the petitioner filed a reply in opposition on June 14, 2024.

DISCUSSION AND FINDINGS OF FACT

The following facts are not in dispute and thus, I **FIND**:

A.F. is the minor son of the petitioner Y.C. Both A.F. and Y.C. reside within the Board's public school district boundaries. A.F. is a rising ninth grader. During the 2022-23 school year, A.F. attended the Samuel E. Shull Middle School (Shull), and on February 27, 2023, A.F. pulled the fire alarm, which triggered an evacuation of the school. On the same day, Perth Amboy high school students had a walk-out to protest the stabbing of another Shull student earlier in February. As a result of these two incidents, there were hundreds of students on the streets, which impacted the Shull administration's deployment of staff.

The respondent's Student Code of Conduct listed false public alarm as a Level III behavioral offense subject to expulsion. (Exhibit A, Rodrigez Certification.)

The petitioner was notified on the afternoon of February 27, 2023, that A.F. had to go to the Perth Amboy Police Department for questioning. On February 28, 2023, the petitioner contacted the respondent and was told that A.F. could not return to school until the principal authorized A.F.'s return.

The petitioner met with Shull's principal and the assistant superintendent on March 10, 2023. Most of this meeting was conducted in English although the petitioner had notified the assistant superintendent of her limited English. However, the assistant superintendent did tell the petitioner in Spanish that A.F. would never return to Perth Amboy public schools. The respondent offered an out-of-district placement in lieu of a Board disciplinary hearing. The petitioner was not given a written suspension notice during this meeting and A.F. was not given an opportunity to tell his side of the story. The petitioner refused to sign a form authorizing an out-of-district placement for A.F.

On March 22, 2023, the petitioner visited the Board's offices and was given a letter dated March 14, 2023, which was the notice of suspension. (Exhibit B, Petitioner's Motion for Summary Decision (PMSD).) This letter did not include the facts on which the charges were based or explain A.F.'s due process rights as required by N.J.A.C. 6A:16-7.3(a)5ii and iii. Instead, the letter stated that by signing the letter and attached waiver form, the petitioner was waiving the expulsion hearing. Id. Specifically, this letter stated:

As a summary of our meeting regarding this matter and in lieu of an expulsion hearing, we have agreed to the following:

- [A.F.] will continue to be homeschooled until such time as the District can locate an alternative placement. Instruction will be provided at home.
- [A.F.] will be strictly prohibited from entering school premises for any reason, until notified otherwise, if so. This prohibition will apply to all school premises, athletic fields, and administrative buildings. In addition, [A.F.] will not be able to attend any event hosted by the Perth Amboy Public School, whether the event is held on school property or elsewhere,
- On behalf of [A.F.] you agree to waive Board disciplinary hearings as provided in N.J.S.A. Section [sic] 18A:37-2, and N.J.A.C. Sections [sic] 6A:16-7.2, 7.3, 7.4 and 7 [sic].
- In the event [A.F.] fails to abide by the terms of this agreement and/ or re-engages in conduct warranting extended suspension or expulsion by virtue of the Section [sic] 18A:37-2 of N.J.S.A., it will correspond to a resignation on the part of [A.F.] as an informed and voluntary way [sic] to his right to receive public free education if the Board makes a decision to expel the student pursuant to N.J.S.A. sections [sic] 18A:37-2 and N.J.A.C. 6A:16-7.5.

[ibid.]

The letter further gave the petitioner until March 20, 2023, to sign the attached waiver form. The petitioner did not sign the letter or waiver form.

A Board employee attempted to hand-deliver a letter to the petitioner on April 21, 2023, however, the letter was in English, and the Board employee would not tell or explain to the petitioner the contents of the letter. The petitioner refused to sign for the letter.

A formal Board hearing was held on April 27, 2023, in which the Board approved the recommendation to expel A.F. and find an alternative educational program. Neither the petitioner nor A.F. attended the hearing. The petitioner received a letter dated May 1, 2023, written in English, notifying the petitioner that the Board had considered A.F.'s prior disciplinary record, and heard witness testimony along with other evidence. (Exhibit C, PMSD.) Based upon this evidence, the Board concluded that A.F. had violated Board policies No. 7610 and 5600 and, therefore, A.F. was expelled and would be on home instruction pending an out-of-district placement. Home instruction did not start until March 28, 2023.

The formal hearing was held beyond the thirty-day limit required by State law.¹ The notice of suspension was not provided to the petitioner within two school days of the suspension as required by State law.² There is no evidence that A.F. was provided an opportunity to share his version of the events prior to the suspension.³ The home instruction was not provided within the five-school day period as mandated by school law.⁴

A.F.'s Behavior Detail Report for the 2022-23 school year shows the following infractions and consequences:

- before/after school suspension for being out of school uniform;

¹ N.J.A.C. 6A:16-7.3(a)10iii.

² N.J.A.C. 6A:16-7.3(a)5.

³ N.J.A.C. 6A:16-7.3(a)2.

⁴ N.J.A.C. 6A:16-7.3(a)9i.

- conference with administrator for refusal to put phone away during class after multiple warnings;
- verbal warning for walking out of the gym without permission;
- three-day after school detention for cutting class; and
- one day out of school suspension for participating in a physical fight. (Exhibit A, PMSD.)

A.F. did not attend the Perth Amboy School District for the 2023-24 school year, or participate in the eighth-grade graduation, but was enrolled by the petitioner in the Academy for Urban Leadership Charter School (Charter School). There were no reports of behavioral infractions at the Charter School.

In a letter dated April 12, 2024, the respondent notified the petitioner that she could enroll A.F. in the Perth Amboy schools for the 2024-25 school year. In addition, the respondent provided A.F.'s eighth-grade graduation completion certificate. (Exhibit D, PMSD.)

LEGAL DISCUSSION AND CONCLUSIONS

The legal question presented is whether A.F. should be returned to school and his record expunged due to the Board's procedural due process violations. In this regard, the petitioner seeks an Order:

1. reinstating A.F. as a Perth Amboy student for as long as he is entitled to a public education,
2. expunging the expulsion from A.F.'s record, and changing his record to reflect that a suspension was imposed and that his parent transferred him to a charter school for the 2023-24 school year,

3. precluding the Board from imposing any further disciplinary actions against A.F. related to the incident at issue, compensatory education, and attorneys' fees.⁵

In addition, the petitioner seeks declaratory rulings that: (1) the respondent's conduct was illegal and violated A.F.'s rights to a free public education; and (2) the disciplinary hearing notice to Y.C. was inadequate and notice of a disciplinary hearing must be provided to parents in a language they understand.

Respondent's Motion to Dismiss

A motion to dismiss is recognized in the Administrative Code at N.J.A.C. 6A:3-1.5(g). The Commissioner of Education (Commissioner) may dismiss a petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute, or other good reason. N.J.A.C. 6A:3-1.10. In assessing such a motion, the claims made by the party who filed the petition must be deemed to be true and all reasonable inferences that such allegations may support must be accepted. The standard utilized by the courts in judging such a motion is traditionally quite liberal towards the non-moving party. Green v. Morgan Props., 215 N.J. 431, 451 (2013).

Here, the respondent contends that the petition must be dismissed because A.F. is now permitted to re-enroll as a student for the 2024-25 school year and thus the issue is moot. The remaining issues regarding expunging his record of the disciplinary charges are ancillary because it is undisputed that A.F. pulled the fire alarm and expulsion was a known consequence for this infraction.

The petitioner, however, contends that the petition should not be dismissed because two justiciable issues remain—namely, A.F.'s due process rights were violated and he was improperly expelled. The petitioner contends that these issues are capable

⁵ The requests for compensatory education and attorneys' fees were withdrawn.

of repetition in the future and therefore are not moot. In addition, the petitioner asserts that the respondent's letter dated April 12, 2024, does not guarantee that the respondent will not impose additional punishment on A.F. or that A.F. will be reinstated into the general education population.

N.J.A.C. 6A:16-7.4 provides that a local board of education may expel a general education student only after having provided the student with procedural due-process rights as outlined in N.J.A.C. 6A:16-7.1(c)3 and -7.3, after a long-term suspension and an appropriate educational program or service has been provided by the school district. The procedures for a long-term suspension are outlined in N.J.A.C. 6A:16-7.3(a) 1-11 and mandate that the school district must provide:

- a notice to the student of the charges prior to the student's removal from school;
- an informal hearing prior to the suspension which affords the student an opportunity to tell his/her side of the events;
- immediate notice to the student's parents of the student's removal from school;
- written notification to the parents by the principal or principal's designee within two school days of the start of the suspension stating the specific charges, the facts upon which the charges are based, the student's due process rights, and notice 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 list of witnesses and their statements or affidavits, no later than five days prior to the formal hearing;
- information on the right to secure counsel;

- in- or out-of-school educational services within five days of the suspension;
- a formal hearing before the board of education that allows the student to confront and cross-examine witnesses and present the student's defense; and
- a written statement to the student's parents regarding the board of education's decision within five school days after the close of the hearing.

The petitioner herein asserts, and the respondent does not refute, that A.F. was not given an informal hearing prior to being suspended on February 28, 2023, pursuant to N.J.A.C. 6A:16-7.3(a)2. It is also unrefuted that the respondent did not provide written notification from the principal to the petitioner within two school days of the start of the suspension with information about the basis for the suspension. The evidence shows that the petitioner did not get a letter from the respondent until March 14, 2023, which was eleven school days after the suspension. The formal hearing was held on April 27, 2023, which was more than thirty calendar days after the suspension which violates N.J.A.C. 6A:16-7.3(a)10iii. Finally, the respondent's notice to the petitioner containing the respondent's decision did not include a summary of the testimonial evidence, in violation of N.J.A.C. 6A:16-7.3(a)11ii.

Accordingly, drawing all inferences against the moving party and in favor of the opposing party, the petitioner's facts, if true, may make out a cause of action. For these reasons, I hereby **ORDER** that the respondent's motion to dismiss is **DENIED**.

Petitioner's Cross-motion for Summary Decision

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and that the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party in order to prevail must demonstrate by affidavit that there is a

genuine issue of fact which can only be determined in an evidentiary proceeding. Ibid. These provisions mirror the summary judgment language of R. 4:46-2 (c) of the New Jersey Court Rules.

The motion judge must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . , are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536 (citation omitted).

In this case, I **CONCLUDE** that no genuine issue of material fact exists, and that petitioner is entitled to prevail as a matter of law, for the reasons set forth below.

N.J.S.A. 18A:37-2 grants a local board of education authority to impose discipline, including suspension and expulsion, upon any student who is willfully disobedient, and N.J.S.A. 18A:37-5 allows a principal to suspend any student for good cause. However, disciplined students retain extensive due process rights. Goss v. Lopez, 419 U.S. 565 (1975); N.J.A.C. 6A:16-7.3. Prior to expulsion, a student is entitled to an informal hearing where the student can provide his or her version of the events, a formal board hearing with an opportunity to confront and cross-examine witnesses and provide the student’s own defense. N.J.A.C. 6A:16-7.3. In addition, regulations mandate that the parent must be provided notice of a long-term suspension within two school days of the start of the suspension. N.J.A.C. 6A:16-7.3(a)5. Here, the letter was not issued until eleven school days after the start of the suspension. The formal board hearing must be held no later than thirty calendar days following the suspension. N.J.A.C. 6A:16-7.3(a)10iii. After the formal board hearing, the board must provide a written summary to the parent outlining the documentary and testimonial evidence presented by the administration, and factual findings for each charge. N.J.A.C. 6A:16-7.3(a)11ii – iv. None of this was provided to the petitioner.

Moreover, A.F. has not served a long-term suspension for a previous incident as required by N.J.A.C. 6A:16-7.4(a). This regulation provides in relevant part:

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 the following:

1.The procedural due process rights set forth at N.J.A.C. 6A:16-7.1(c)3 and 7.3, subsequent to a long-term suspension, pursuant to N.J.A.C. 6A:16-7.3

[Emphasis added.]

The respondent attempts to justify the due process violations by stating that the petitioner failed to cooperate in scheduling the expulsion hearing. However, the relevant regulation regarding holding the formal hearing is clear, and it is well established that a regulation is subject to the same rules of construction as a statute and should be construed according to the plain meaning of its language. Medford Convalescent & Nursing Ctr. v. Division of Med. Assistance & Health Servs., 218 N.J. Super. 1, 5 (App. Div. 1985). N.J.A.C. 6A:16-7.3(a)10iii states that the formal hearing before the board of education “shall . . . [t]ake place no later than 30 calendar days following the day the student is suspended from the general education program” This language is mandatory, and, thus, the Board was duty bound to hold the hearing on or before March 30, 2023. When the petitioner did not respond by March 20, 2023, as instructed in the respondent’s March 14, 2023 letter, the respondent should have scheduled the hearing or documented an adjournment, along with efforts to reschedule the hearing.

It is undisputed that A.F. was suspended on February 28, 2023, and the expulsion hearing was not held until April 27, 2023, which is fifty-eight calendar days from the initial suspension. Failing to adhere to the thirty-day period contravened the regulation. Accordingly, I **CONCLUDE** that drawing all inferences against the moving party and in favor of the opposing party, there are no genuine issues of material fact concerning whether the Board followed the procedural mandates outlined in N.J.A.C. 6A:16-7.3 and

-7.4 before expelling A.F., and the petitioner is entitled summary decision. I further **CONCLUDE** that due to the procedural violations, the expulsion must be expunged from A.F.'s pupil records and changed to reflect that he was suspended as a result of an incident occurring on February 27, 2023, and the petitioner transferred him to a charter school for the 2023-24 school year.

In addition, the petitioner asserts that the Board's decision to expel A.F. was arbitrary, capricious, and unreasonable because the Board did not consider less extreme disciplinary options. Petitioner relies upon Scher v. Bd. of Educ. of West Orange, Essex County, 1968 S.L.D. 92, in which the Commissioner ruled that a hearing was required before a student could be expelled as well as being evaluated by a mental health team. Specifically, the Commissioner stated:

Termination of a pupil's right to attend the public schools of a district is a drastic and desperate remedy which should be employed only when no other course is possible. It involves a momentous decision which members of a board of education, most of whom have had little specific training in education, psychology, or medicine are called upon to make. The board's decision should be grounded, therefore, on competent advice. Such advice can be obtained from its staff of educators, from its school physician and school nurse, from its psychologist, psychiatrist, and school social worker, from its counsel, and from other appropriate sources. . . . It is obvious that a board of education cannot wash its hands of a problem by recourse to expulsion. . . . The Commissioner urges boards of education, therefore, to recognize expulsion as a negative and defeatist kind of last-ditch expedient resorted to only after and based upon competent professional evaluation and recommendation.

[Id. at 96-97.]

Here, there is no evidence that the Board considered any other less drastic options than discontinuing A.F.'s educational program. For example, there was no referral to the Intervention and Referral Services team, counseling, or professional evaluation of any kind. Without question, A.F.'s decision to pull the fire alarm resulted in pandemonium for

other students and staff and warranted discipline. However, it appears that the respondent was merely “washing its hands of a problem” by failing to consider other options. Accordingly, I **CONCLUDE** that the Board’s decision to expel A.F. was arbitrary, capricious, and unreasonable.

I am not persuaded, however, that the respondent’s letter dated April 12, 2024, which allows A.F. to re-enroll in the Perth Amboy School District for the 2024-25 school year, allows the respondent to rescind the letter, reinstate A.F.’s expulsion, or place him in an alternative education program, leaving A.F. unable to challenge the underlying expulsion, as the petitioner contends. This is conjecture and is not supported by the evidence. It is axiomatic that each local board of education has an affirmative duty not to act in bad faith, to ensure that its discretionary decisions are rationally based and not “induced by improper motives.” Kopera v. West Orange Bd. of Educ., 60 N.J. Super. 288, 296 (App. Div. 1960). If these duties are breached, the petitioner maintains her continuous rights under N.J.A.C. 6A:3-1.3 and -1.4 to file a petition before the Commissioner. Accordingly, I **CONCLUDE** the petitioner may enroll A.F. in the Perth Amboy School District for the 2024-25 school year.

Declaratory Rulings

The petitioner seeks declaratory rulings that: (1) the respondent’s conduct violated the petitioner’s rights under regulatory, statutory, and constitutional law; (2) the expulsion was illegal; (3) the disciplinary hearing notice to Y.C. was inadequate, and notice of a disciplinary hearing must be provided to parents in a language they understand. The respondent objects, stating that the petition seeks consequential relief and, thus, a request for a declaratory ruling is improper under the regulations. N.J.A.C. 6A:3-2.1 allows any interested person to file a petition with the Commissioner for a declaratory ruling with respect to the rights, responsibilities, and status arising from any statute or rule within the Commissioner’s jurisdiction. In addition, this regulation provides:

A request for a declaratory ruling shall reflect adverse positions on the statute or rule in question by the parties in interest, may not seek consequential relief beyond a declaration as to the meaning of the statute or rule, and may not be based on underlying facts that are future, contingent, uncertain, or disputed.

[N.J.A.C. 6A:3-2.1(a)1.]

The petitioner counters that she is not seeking declaratory relief under this regulation, but rather is merely asking this tribunal to decide if, based on the facts alleged, the Board violated these rights and responsibilities. Given the findings and conclusions above, which grant petitioner's motion for summary decision on the basis that the Board failed to adhere to the procedural requirements of N.J.A.C. 6A:16-7.3 and -7.4, and that the decision to expel A.F. was arbitrary, capricious, and unreasonable, I **CONCLUDE** that it is unnecessary to reach this issue, with the exception of the petitioner's request for a declaratory ruling stating that notice for a disciplinary hearing must be provided to parents in a language they understand. Such a requirement is only mandated for special education students. See N.J.A.C. 6A:14-2.3(g) and -2.4. Accordingly, I **CONCLUDE** that since A.F. is not a special education student, the requirement that disciplinary hearing notice must be provided to parents in a language the parent understands does not extend to the petitioner.⁶

ORDER

For the foregoing reasons, I hereby **ORDER** that the petitioner's motion for summary decision is **GRANTED**.

I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

⁶ N.J.A.C. 6A:15-1.12 requires notice in the parent's primary language when a student has been identified as a multilingual learner eligible for a language instruction educational plan. This does not apply here.

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

August 27, 2024

DATE

Date Received at Agency:

Date Mailed to Parties:



KIM C. BELIN, ALJ

August 27, 2024

APPENDIX

EXHIBITS

For petitioner

- Response to respondent's Motion to Dismiss and Cross-Motion for Summary Decision with certification and exhibits, dated May 6, 2024
- Reply to respondent's opposition to petitioner's Cross-Motion for Summary Decision with supplemental certification, dated June 14, 2024

For respondent

- Motion to Dismiss, dated April 19, 2024
- Reply to petitioner's opposition to respondent's Motion to Dismiss and in opposition to the petitioner's Cross-Motion for Summary Decision, dated May 28, 2024