

V.A., on behalf of minor child, K.M.A., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF COLLINGSWOOD,
CAMDEN COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioning parent contested the Board's expulsion of K.M.A. for changing the shutdown message on a computer to a message which the administration interpreted as a "bomb threat."

The ALJ determined that expulsion was too harsh a penalty, under these circumstances, and ordered K.M.A. suspended from March 23, 1999, the date of his offense, until the end of the 1998-99 school year. The ALJ further ordered that K.M.A.'s record should reflect that he is eligible for reinstatement thereafter and that K.M.A. shall be reinstated upon request.

The Commissioner affirmed the ALJ's conclusion that the Board's expulsion of K.M.A. cannot be upheld. The Commissioner ordered that K.M.A.'s record shall reflect that he is entitled to reinstatement for the 1999-2000 school year, and, should K.M.A. request readmission to the Board's District pursuant to *N.J.S.A. 18A:38-1*, the Board shall conduct a full and fair evaluation in order to determine whether a return to the regular school environment or an alternative placement is warranted for K.M.A.'s subsequent education in the District.

March 20, 2000

OAL DKT. NO. EDU 2799-99
AGENCY DKT. NO. 97-5/99

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board's exceptions and petitioner's reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in reaching his decision.

Upon careful and independent review of the record in this matter, which included transcripts of the hearings conducted at the OAL on August 31, 1999 and September 21, 1999, the Commissioner affirms the Administrative Law Judge's (ALJ) conclusion that the Board's expulsion of K.M.A. cannot be upheld. Like the ALJ, the Commissioner finds that the Board considered K.M.A.'s case on its own merits, rather than mechanically applying a "zero tolerance" policy. In addition, the Commissioner concurs with the determination of the ALJ, based upon a full evidentiary record and an assessment of the credibility of witnesses, that the Board did not act reasonably when it concluded, under the particular circumstances of this matter

and where K.M.A., due to the timing of his arrival in the District, was unaware of the applicable policy in regard to actions of the type at issue herein, that the appropriate sanction for K.M.A. was to sever permanently his entitlement to a free public education in its District. This is so notwithstanding that the Board later offered him, once this litigated matter was well under way and he was already enrolled in school in North Carolina, the opportunity to attend an alternative education program, a compromise which could be viewed as “subject to revocation or revision.” *C.S. v. Township of Piscataway*, 97 N.J.A.R. 2d (EDU) 573, 577, *aff’d* State Board April 1, 1998.

Accordingly, the Initial Decision of the ALJ is adopted, as set forth herein. K.M.A.’s record shall reflect that he is entitled to reinstatement for the 1999-2000 school year, and, should K.M.A. request readmission to the Board’s District pursuant to *N.J.S.A.* 18A:38-1, the Board shall conduct a full and fair evaluation in order to determine whether a return to the regular school environment or an alternative placement is warranted for K.M.A.’s subsequent education in the District.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: March 20, 2000

¹ This decision, as the Commissioner’s final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.