

J.C., on behalf of minor child, J.C., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
BERGEN COUNTY VOCATIONAL :  
SCHOOL DISTRICT, BERGEN COUNTY, :  
RESPONDENT. :

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SYNOPSIS

Petitioner, parent of high school pupil J.C., challenged J.C.’s former District’s refusal to expunge certain items from J.C.’s pupil record pursuant to *N.J.A.C. 6:3-6.1 et seq.* The District contended the items at issue were disciplinary records within the scope of applicable rules.

The ALJ concluded that there was no genuine issue as to any material fact challenged; J.C. was entitled to prevail as a matter of law; and the records should be expunged. The ALJ found that the Board failed to provide a reason for it to maintain the disciplinary records of a former student, particularly once it has fulfilled its statutory obligation to provide a thorough and efficient educational system for J.C. or to its other pupils because J.C. was no longer the Board’s responsibility. The ALJ ordered the documents destroyed.

The Commissioner rejected the ALJ’s analysis and conclusions. Pursuant to *N.J.A.C. 6:3-6.8(c)*, the pupil record of a pupil who departs a school system may be destroyed only in accordance with the Destruction of Public Records Law, *N.J.S.A. 47:3-15 et seq.*, which specifies that a student’s Confidential Disciplinary File is to be retained for “two years after graduation or termination from school system or age 23, whichever is longer.” The Commissioner granted summary decision to the Board. Petition was dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioner’s exceptions and the Board’s reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4 and were duly considered by the Commissioner in reaching his determination herein.

Upon careful and independent review of this matter, the Commissioner has determined to reject the Administrative Law Judge’s analysis and conclusions for the reasons set forth below.

*N.J.A.C.* 6:3-6.8(c) provides that:

(c) *Upon graduation or permanent departure of a pupil from the school system:*

1. The parent or adult pupil shall be notified in writing that a copy of the entire pupil record will be provided to them upon request.
2. *Information in pupil records, other than that described in (e) below,<sup>1</sup> may be destroyed, but only in accordance with the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq.*

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<sup>1</sup> (e) provides that:

The New Jersey public school district of last enrollment, graduation or permanent departure of the pupil from the school district shall keep in perpetuity a permanent record of a pupil’s name, date of birth, sex, address, telephone number, grades, attendance record, classes attended, grade level completed, year completed, name of parent(s) and citizenship status.

Such destruction shall be accomplished only after written parental or adult pupil notification and written parental or adult pupil permission has been granted, or after reasonable attempts at such notification and reasonable attempts to secure parental or adult pupil permission have been unsuccessful. (emphasis supplied)

In the instant matter, J.C. withdrew from the Bergen County Vocational School District to attend school at Bogata High School and, thus, pursuant to *N.J.A.C. 6:3-6.8(c)2*, the destruction of his pupil records are governed by the Destruction of Public Records Law, *N.J.S.A. 47:3-15 et seq.*, which specifies that the destruction of public records are to be in accordance with the Records Retention and Disposition Schedules found at <http://www.njarchives.org/links/recman.html>.

With respect to a student's Confidential Disciplinary File, Record Series No. 0012-0001, the Records Retention and Disposition Schedule for school districts specifies that such file is be retained for "two years after graduation or termination from school system or age 23, whichever is longer." The Commissioner cannot, therefore, grant petitioner the relief he seeks as the Board is prohibited from removing the documents at issue from J.C.'s disciplinary file and destroying them until such time as two years have passed or until J.C. turns 23, whichever is longer.

Accordingly, summary decision is granted to the Board and the petition is hereby dismissed, with prejudice.<sup>2</sup>

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

COMMISSIONER OF EDUCATION

Date of Decision: February 5, 2004

Date of Mailing: February 6, 2004

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<sup>2</sup> The Commissioner observes that neither petitioner nor the Board moved to seal any part of the record during the proceedings in this matter. Although the ALJ sealed the petition and certain exhibits on his own volition as a result of his conclusion that the documents at issue were to be destroyed, given the Commissioner's rejection of the ALJ's analysis, there is no basis on which to seal any portion of the record in this matter.

<sup>3</sup> This decision 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. 6A:4 1.1 et seq.*