

A.K. on behalf of minor child L.K., :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
BOARD OF EDUCATION OF THE :  
NORTHERN BURLINGTON COUNTY :  
REGIONAL SCHOOL DISTRICT, :  
BURLINGTON COUNTY, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioner alleged, *inter alia*, that the respondent Board violated her son's due process rights relative to the imposition of a long-term suspension on L.K. following an incident that occurred on December 19, 2011. Petitioner sought to have any reference to a long-term suspension from December 20, 2011 to January 25, 2012 expunged from L.K.'s student records, and requested compensatory education for the period when he was denied educational services while on suspension. Respondent asserted that L.K. was not entitled to formal due process because he was given only a short-term suspension of five days, and that the Commissioner does not have jurisdiction to decide the claim for compensatory education since the petition was not filed with the Office of Special Education Programs (OSEP). The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: petitioner's appeal does not contest the basis for the discipline which was meted out in this matter, but rather challenges the respondent's imposition of a *de facto* long-term suspension without consideration of L.K.'s due process rights; summary decision in favor of petitioner is appropriate as it relates to petitioner's request that L.K.'s disciplinary record be expunged of any mention of a suspension exceeding five days for the alleged December 19, 2011 incident; however, summary decision cannot be granted regarding the request for compensatory education, as the petition does not allege a violation of the IDEA, and even if it did, the Commissioner lacks jurisdiction to decide a matter arising under the IDEA. Likewise, the Commissioner does not have jurisdiction to decide if L.K. is entitled to any compensatory education as a result of a violation of the IDEA or New Jersey special education laws. Accordingly, the ALJ ordered respondent to expunge any reference to a long-term suspension and verify that L.K.'s student record reflects that a suspension of only five days was imposed, for the period from December 20, 2011 through January 4, 2012. The ALJ dismissed the balance of the petition for lack of jurisdiction.

Upon a full and independent review, the Commissioner concurred with the findings and conclusions of the ALJ. Accordingly, the Initial Decision of the OAL was adopted as the final decision, petitioner's motion for summary decision was partially granted, and respondent's cross-motion for summary decision was denied.

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.

March 21, 2014

OAL DKT. NO. EDU 6071-12  
AGENCY DKT. NO. 92-4/12

A.K. on behalf of minor child L.K., :  
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Before the Commissioner are petitioner’s allegations that respondent’s imposition of discipline upon her minor child, L.K., failed to satisfy due process and other requirements relative to long-term suspensions. The Commissioner notes that the question of whether L.K. committed an infraction was not adjudicated in the OAL and is therefore not at issue before the Commissioner. The instant controversy centers wholly upon the nature of the imposed discipline and whether respondent’s actions complied with the category of discipline which was meted out. Upon review of the record and Initial Decision of the Office of Administrative Law (OAL),<sup>1</sup> the Commissioner concurs with the OAL that respondent violated L.K.’s rights.

It is undisputed that, although respondent may have intended to impose upon L.K. the minor discipline of five days of suspension, in actuality, L.K. was kept out of school for well over ten days – ultimately creating a long-term suspension. Thus, as the Administrative Law Judge (ALJ) found, L.K.’s *de facto* long-term suspension entitled him to, among other things, a formal hearing with proper notice, a formal decision by the board of education, and

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<sup>1</sup> Neither party filed exceptions to the Initial Decision.

home instruction within five days of the beginning of the suspension. *See, N.J.A.C. 6A:16-7.3, N.J.S.A. 18A:37-5, and N.J.A.C. 6A:16-10.2(b).*

Since none of the above-mentioned rights were afforded to L.K., he was entitled to the relief prescribed in such cases as *Asia Robinson v. State-Operated Sch. Dist. of the City of Paterson*, Commissioner Decision No. 47-11, decided January 25, 2011, *aff'd*. Appellate Division, Dkt. No. A-2914-10T1, November 17, 2011. (stating that the remedies of reinstatement and expungement are possible if a suspension violates a student's due process rights); *see also N.J.A.C. 6A:32-7.7* (providing for the ability to "expunge inaccurate, irrelevant or otherwise improper information from the student record"). Thus, the Commissioner concurs with the ALJ's recommendation that any document referencing a long-term suspension between December 20, 2011 and January 25, 2012 be expunged from L.K.'s school records. Since L.K. is currently attending school, there is no need to order the remedy of reinstatement.

Finally, the Commissioner is in accord with the ALJ's denial of petitioner's request for "compensatory education" for L.K. Setting aside the fact that L.K. appears to have been without educational instruction for no more than ten school days, the remedy of compensatory education has been judicially fashioned to compensate special education students for violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.S. § 1400 *et seq.* *See, e.g. Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717 (3d Cir. 2010) (Compensatory education . . . . is not defined within the IDEA and is a judicially created remedy. . . . The Court of Appeals for the District of Columbia has stated that compensatory education serves to "replace [] educational services the child should have received in the first place" and that such awards "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA." [\*Reid v. District of Columbia\*, 401 F.3d](#)

[516, 518, 365 U.S. App. D.C. 234 \(D.C. Cir. 2005\)](#)). As the Commissioner of Education does not have jurisdiction to adjudicate challenges to the IDEA, he may not award remedies designed to compensate students for IDEA violations.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this case, petitioner's motion for summary decision is partially granted as set forth *infra*, and respondent's cross-motion for summary decision dismissing the petition is denied.

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 21, 2014

Date of Mailing: March 24, 2014

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<sup>2</sup> This decision, as the Commissioner's final determination in the instant matter, may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*.