

EDU #9575-03  
C # 34-04  
SB # 12-04

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

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Decided by the Commissioner of Education, February 5, 2004

For the Petitioner-Appellant, Loughlin & Latimer (Sherry Chachkin, Esq.,  
of Counsel)

For the Respondent-Respondent, Nowell, Amoroso, Klein, Bierman, P.A.,  
(William C. Soukas, Esq., of Counsel)

This case arose from a request made by J.C. (hereinafter “appellant”), the mother of J.C., a student who had attended the Bergen County Academies (hereinafter “Academies”), part of the Bergen County Vocational School District, until, while under short-term suspension, he had withdrawn in the face of further disciplinary proceedings. Following his withdrawal, J.C. enrolled in Bogota High School and the Academies transmitted his pupil records to Bogota as required by N.J.S.A. 18A:36-19a.<sup>1</sup> Pursuant

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<sup>1</sup> N.J.S.A. 18A:36-19a requires the chief school administrator or his designee of a school district that enrolls a new student to request in writing the student’s records from the school district of last attendance within two weeks of enrollment. The statute further requires the school district of last attendance to provide the school district in which the student has enrolled with “all information in the student’s record related to disciplinary actions taken against the student...”

to the statute, J.C.'s records included documents relating to circumstances of the disciplinary action against him.

The appellant made a request to the superintendents of both the Academies and the Bogota School District to expunge from J.C.'s record certain documents relating to the disciplinary action against him. Bogota granted the request. However, the Academies refused to expunge the documents, except for one letter to the appellant.

By the filing of a petition of appeal with the Commissioner of Education, the appellant sought to have the documents at issue expunged from the record maintained by the Academies.

Acting on a motion for summary decision filed by the appellant, the Administrative Law Judge ("ALJ") concluded that the documents should be expunged. The ALJ found that the documents at issue were not educationally relevant since J.C had transferred to another district.

The Commissioner rejected the ALJ's determination. The Commissioner found that, under the terms of N.J.A.C. 6:3-6.8(c), the destruction of the documents was governed by the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq.<sup>2</sup> The

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<sup>2</sup> N.J.A.C. 6:3-6.8(c) provides that:

Upon graduation or permanent departure of a pupil from the school system:

1. The parent or adult student 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, may be destroyed but only in accordance with the Destruction of Public Records Law....

N.J.A.C. 6:3-6.8(e) provides that the school district of last enrollment, graduation, or permanent departure must keep in perpetuity a permanent record of the pupil's name, date of birth, sex, address, telephone number, grades, attendance record, classes attended, grade level completed, name of parents and citizenship status.

Commissioner further found that, pursuant to the statute, the Board of Education of the Bergen County Vocational School District was prohibited from removing the documents and destroying them until after two years had passed or J.C. turned 23, whichever was longer.

On appeal to the State Board, the appellant argues that the Destruction of Public Records Law does not apply to the documents at issue. In this respect, she contends that, as determined by the Bogota Board, the documents are not educationally relevant and, therefore, should be expunged pursuant to N.J.A.C. 6:3-6.7(a)(1). The appellant further contends that the documents do not conform to the requirements of the regulations governing pupil records and, consequently, are not bona fide pupil records so as to be subject to the Destruction of Public Records Law.

After careful review of the record, including the documents at issue, we reject the appellant's arguments and affirm the decision of the Commissioner. We find that the documents involved remain educationally relevant until J.C. is no longer a student in the New Jersey public school system. The disciplinary incident that led to J.C.'s withdrawal from the Academies involved the threat of student violence.<sup>3</sup> We find that the character of the incident is such that all evidence of it should not be destroyed as a consequence of the fact that J.C. transferred to another school district to avoid expulsion proceedings.

We further find that the documents in question are pupil records within the meaning of the applicable regulations. Under N.J.A.C. 6:3-6.1, a pupil record means:

Information related to an individual pupil gathered within or outside the school system and maintained within the school system....Essential in this definition is the idea that any

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<sup>3</sup> As set forth more fully in the ALJ's initial decision, the circumstances involved statements made by J.C. regarding his intent to stab two faculty members. When interviewed by a school administrator, J.C. produced a last will and testament and some song lyrics expressing suicidal ideation.

information which is maintained for the purpose of second party review is considered a pupil record....

Pursuant to N.J.A.C. 6:3-6.3, a district board may not compile any pupil records other than those mandated or permitted by the regulation. Under N.J.A.C. 6:3-6.3(a)(2), permitted pupil records are “those which a district board of education has authorized by resolution adopted at a regular public meeting to be collected in order to promote the educational welfare of the student.” After careful examination, we find that the documents at issue are permitted pupil records as established by the Bergen County Vocational Board’s student records policy, Regulation No. R8330M.

We therefore conclude that the Commissioner correctly determined that the documents at issue here are within the purview of the Destruction of Public Records Law and that they must be retained until two years have passed or J.C. turns 23, whichever is longer. Hence, we affirm the Commissioner’s decision in this matter. In doing so, we stress that, while the Bergen County Academies must retain the documents in question, access to them is extremely limited since they are pupil records. See N.J.A.C. 6:3-6.5 and N.J.A.C. 6:3-6.6.

Josephine E. Figueras abstained.

July 7, 2004

Date of mailing \_\_\_\_\_