

57-03

S.R.R., on his own behalf and on behalf of minor child, S.R., :  
 :  
 PETITIONER, : COMMISSIONER OF EDUCATION  
 V. :  
 : DECISION  
 BOARD OF EDUCATION OF THE :  
 BOROUGH OF ROSELLE, UNION :  
 COUNTY, WILLIAM L. LIBRERA, :  
 COMMISSIONER OF EDUCATION AND :  
 NEW JERSEY STATE BOARD OF :  
 EDUCATION, :  
 RESPONDENTS. :

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SYNOPSIS

Petitioner challenged Board’s decision to permanently expel his 14-year-old son, S.R., when S.R. made threats against students and brought to school an inoperable BB gun to frighten another student. Petitioner’s claims against the State were bifurcated from earlier proceedings. Petitioner asserts that State respondents violated S.R.’s constitutional rights.

In “Part II” of these bifurcated proceedings, the ALJ found that this matter was ripe for summary decision in that no genuine issues of material fact remain to be determined. The ALJ further found that petitioner had not proven that the State respondents violated S.R.’s constitutional rights and, therefore, dismissed Counts Five, Six and Seven.

The Commissioner adopted the Initial Decision, with modification. The Commissioner concurred with the ALJ’s findings as to Counts Five, Six and Seven, specifically noting that there was no relief petitioner sought from the State respondents which could be granted. The Commissioner also ordered that the decision in this matter be unsealed, while the record remain sealed.

<p>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.</p>
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February 18, 2003

OAL DKT. NOS. EDU 1914-02 AND EDU 5616-02  
AGENCY DKT. NO. 35-2/02

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The record of this bifurcated matter and the Initial Decision of the Office of Administrative Law (OAL), identified as “Part II,” have been reviewed.<sup>1</sup> Petitioner’s exceptions and the State’s reply thereto were filed in accordance with *N.J.A.C.* 1:1-18.4 and considered by the Commissioner in reaching his decision.

UNSEALING THE DECISION

Pursuant to motion filed by counsel for petitioner, on January 8, 2003, the Commissioner of Education issued an Order **unsealing** the decision issued by the Commissioner on November 1, 2002 (No. 384A-02) in the matter entitled *S.R.R., on his own behalf and on behalf of minor child, S.R. v. Board of Education of the Borough of Roselle, Union County, William L. Librera, Commissioner of Education and New Jersey State Board of Education*, OAL

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<sup>1</sup> As noted in the Initial Decision at page three, the issues relating to the State respondents were bifurcated from those relating to the Roselle Borough Board of Education.

DKT. NOS. EDU 1914-02 and 5616-02, or “Part I.” The record of that matter, however, remains sealed.

By letter dated January 22, 2003, the parties were invited to submit reasons why the Initial and Final Decisions herein, *i.e.*, “Part II” of the above-captioned matter, should not be unsealed, as well. Objections, if any, were to be filed by January 30, 2003. No objections were filed. Consequently, the Commissioner determines that this decision is unsealed, while the record remains sealed.<sup>2</sup>

#### COMMISSIONER’S DETERMINATION, PART II

Upon careful and independent review of the record in this matter, the Commissioner determines that the remaining counts with respect to the State respondents are properly dismissed. As the Administrative Law Judge (ALJ) notes, at this stage of these proceedings, there is a motion for summary decision pending *after* extensive findings of fact have been rendered by the ALJ, then adopted and supplemented by the Commissioner in his November 1, 2002 decision. Moreover, nothing in the exceptions submitted by petitioner suggests that there remains a genuine issue which can be determined only in an evidentiary proceeding. *N.J.A.C.* 1:1-12.5(b). Rather, at this point in time, the parties dispute the *significance of the facts* relative to petitioner’s allegations in Counts Five, Six and Seven. In this regard, the Commissioner recognizes that “It is well-stablished that where no disputed issues of material fact exist, an administrative agency need not hold an evidential hearing in a contested case.” *Frank v. Ivy Club*, 120 *N.J.* 73, 98 (1990), *citing Cunningham v. Dept. of Civil Service*, 69 *N.J.* 13, 24-25 (1975). “Moreover, disputes as to the conclusions to be drawn from the facts, as opposed to the facts themselves, will not defeat a motion for summary judgment.” *Contini v.*

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<sup>2</sup> A copy of this decision, however, will be forwarded to the OAL for appropriate action.

*Board of Education of Newark*, 96 N.J.A.R. 2d (EDU) 196, 215, citing *Lima & Sons, Inc. v. Borough of Ramsey*, 269 N.J. Super. 469, 478 (App. Div. 1994). *In the Matter of the Tenure Hearing of Andrew Phillips, School District of the Borough of Roselle, Union County*, Commissioner's Decision No. 129-97, decided March 20, 1997; *In the Matter of the Tenure Hearing of Neal A. Ercolano, Board of Education of Branchburg Township, Somerset County*, Commissioner's Decision No. 140-00, decided May 1, 2000. Therefore, the Commissioner finds that this matter is ripe for summary decision.

Having so determined, the Commissioner concurs, for the reasons set forth in the Initial Decision, that Counts Five, Six and Seven are properly dismissed.<sup>3</sup> Furthermore, and significantly in this bifurcated matter, the Commissioner notes that the *only* relief sought by petitioner which remains to be granted *relative to the State respondents* is:

- A finding that the Commissioner and the State Board violated S.R.'s right to a thorough and efficient education under Article VIII, Section IV, paragraph 1 of the New Jersey Constitution; and
- An Order directing the Commissioner and State Board to promulgate regulations to guide school districts on how to administer long-term suspensions and expulsions without

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<sup>3</sup> These counts allege as follows: **Count Five:** The Commissioner and State Board violated S.R.'s constitutional right to due process guaranteed by the Fourteenth Amendment to the United States Constitution by failing to take steps necessary and readily available, such as issuing regulations governing pupil expulsions, to ensure that no pupil enrolled in a public school in the State of New Jersey is expelled from such school without due process and in a manner that is fundamentally unfair or arbitrary, capricious and unreasonable, and that pupils are not expelled from school without it first being demonstrated that expulsion is the most narrow means available to achieve the local education agency's interest in maintaining safe and orderly schools.

**Count Six:** The Commissioner and State Board violated S.R.'s right to a thorough and efficient education established under New Jersey Constitution Article VIII, Section IV, paragraph 1 by failing to take steps necessary and readily available, such as issuing regulations governing pupil expulsions, to ensure that no pupil enrolled in a public school in the State of New Jersey is expelled from such school without due process and in a manner that is fundamentally unfair or arbitrary, capricious and unreasonable, and that pupils are not expelled from school without it first being demonstrated that expulsion is the most narrow means available to achieve the local education agency's interest in maintaining safe and orderly schools.

**Count Seven:** The Commissioner and State Board violated S.R.'s right to a thorough and efficient education established under New Jersey Constitution Article VIII, Section IV, paragraph 1 by failing to provide S.R. or otherwise failing to ensure that S.R. was provided an appropriate alternative education program after he was expelled from the public schools operated by the Board. (Petition of Appeal at 8, 9)

violating substantive and procedural due process rights of pupils protected by the United States and New Jersey Constitutions and in a manner that is not fundamentally unfair, arbitrary, capricious and unreasonable. (Petition of Appeal at 9, 11)

Consistent with the ALJ's discussion and the decision herein, however, the Commissioner is compelled to deny the remaining relief requested.<sup>4</sup>

Accordingly, there being no cause of action for which relief can be granted, the Commissioner adopts the Initial Decision, with modification as set forth above, and finds that summary decision is properly granted in the Board's favor.

IT IS SO ORDERED.<sup>5</sup>

COMMISSIONER OF EDUCATION

Date of Decision: February 18, 2003

Date of Mailing: February 19, 2003

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<sup>4</sup> Indeed, the Commissioner notes that the State Board of Education's decision issued on July 2, 2002 in the matter entitled *P.H. and PH., on behalf of minor child, M.C. v. Board of Education of the Borough of Bergenfield et al.* specifically instructs that "the proper course for seeking the adoption of regulations by an administrative agency is to petition the agency to adopt a new rule according to the procedures prescribed by such agency. *N.J.S.A. 52:14B-4(f).\*\*\**" *Bergenfield* at 13.

<sup>5</sup> 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. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.