

S.N.K. and S.K. on behalf of minor child :
S.N.K., JR., :
PETITIONERS, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
NORTHERN HIGHLANDS REGIONAL :
HIGH SCHOOL DISTRICT, BERGEN :
COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioners challenged the Board’s decision to suspend their son from two varsity basketball games and several scrimmages as discipline for conduct that occurred off school premises in October 2010 – specifically, under-aged consumption of alcohol. Petitioners applied for emergent relief in December 2010, but were denied. There was no dispute regarding the fact that S.N.K., Jr., consumed alcohol and was under-age. Rather, petitioners contended that respondent Board overreached its authority by disciplining S.N.K., Jr., for an episode of underage drinking that took place at a private gathering off school grounds, and argued that a school district cannot – through a policy or student handbook – grant itself disciplinary authority that it would not have under law. In the interim since the petition was filed, S.N.K., Jr. served his suspension from the basketball team, participated in the balance of the basketball season, and subsequently graduated respondent’s high school.

The ALJ determined that the failure to obtain emergent relief rendered this matter moot, as the discipline in question was served prior to consideration of the case on its merits. In so determining, the ALJ commented that both the school district’s handbook for students and a contractual agreement for student athletes – which both S.N.K., Jr. and his parents signed – prohibit the use of drugs and alcohol by both students and athletes, and further found that the Board does have the authority to discipline those who are in violation of drug and alcohol codes.

Upon full consideration, the Commissioner concurred with the ALJ that this appeal is moot. In so determining, the Commissioner commented on the petitioners’ exceptions – which urged that the issue underlying their appeal is likely to recur, is capable of evading review, and should be adjudicated pursuant to principles set forth in prior cited case law. The Commissioner noted that – in order to preserve judicial resources – abstract issues are generally not adjudicated. When moot controversies are adjudicated, the underlying issues must be of substantial public importance – such as those addressed in the cases to which petitioners cite in their exceptions. Under the facts in the present matter where petitioners had agreed that the student athlete would refrain from any alcohol consumption, the Commissioner declined to adjudicate respondent’s application of its policy to S.N.K., Jr. Accordingly, the petition was dismissed as moot.

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.

OAL DKT. NO. EDU 13039-10
AGENCY DKT. NO. 694-11/10

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This appeal arose when respondent disciplined the petitioners' minor child, S.N.K., Jr., for a second incident of underage drinking that occurred off school premises. It does not appear that petitioners deny that their son consumed alcohol on the occasions identified in respondent's pleadings.

The designated discipline was S.N.K.'s exclusion from participation in three scrimmages and two basketball games during the 2010-2011 basketball season. Petitioners' application for emergent relief was denied, and the discipline was imposed. S.N.K. apparently participated in the balance of the basketball season and, subsequently, graduated from respondent's high school.

Upon review of the record, Initial Decision of the Office of Administrative Law (OAL), and the parties' exceptions, the Commissioner agrees with the Administrative Law Judge (ALJ) that this appeal is moot. In their exceptions, however, petitioners urge that the issue

underlying their appeal is likely to recur and is capable of evading review. Thus, they contend, it should be adjudicated, pursuant to the principles set forth in such cases as *In re Geraghty*, 68 N.J. 209, 212-13 (1975); [*Advance Elec. Co., Inc. v. Montgomery Twp. Bd. of Educ.*, 351 N.J. Super. 160, 166-68 \(App. Div. 2002\)](#), *certif. denied*, [174 N.J. 364 \(2002\)](#); *In re Conroy*, N.J. Super. 453, 458-59 (App. Div. 1983), *rev'd on other grounds*, 98 N.J. 321, 342 (1985).

In the interest of preserving judicial resources, abstract issues – such as the instant moot controversy – are generally not adjudicated. See [*Oxford v. New Jersey State Bd. of Educ.*, 68 N.J. 301, 303-04 \(1975\)](#); [*Sente v. Mayor & Mun. Council of Clifton*, 66 N.J. 204, 205 \(1974\)](#). Such moot controversies may be adjudicated, however, if the underlying issues are of substantial importance, likely to reoccur, but capable of evading review. See, e.g., [*Division of Youth & Family Servs. v. J.B.*, 120 N.J. 112, 118-19 \(1990\)](#); [*Matter of J.I.S. Indus. Serv. Co. Landfill*, 110 N.J. 101, 104-05 \(1988\)](#); [*Matter of Conroy*, 98 N.J. 321, 342 \(1985\)](#); [*Guttenberg Sav. & Loan Ass'n v. Rivera*, 85 N.J. 617, 622-23 \(1981\)](#).

The cases upon which petitioners rely were of substantial public importance. More specifically, *In re Geraghty* resolved questions about the legal rights and procedures requisite to involuntary civil commitments. *Advance Elec. Co., Inc. v. Montgomery Twp. Bd. of Educ.* concerned the regulation of subcontractors hired for school construction, and *In re Conroy* addressed the bioethical issues pertinent to the withdrawal of life-sustaining medical treatment.

In the context of a different set of circumstances, petitioner's challenge to respondent's application of its policy to impose discipline upon S.N.K., Jr. for off-campus, underage drinking might have presented an important enough controversy to warrant adjudication, notwithstanding its mootness as regards S.N.K., Jr.. Although the Commissioner certainly regards alcohol consumption by underage drinkers as a serious societal concern, the

facts in this case mitigate against further litigation. Respondent's Student-Parent Handbook (Exhibit B to the December 6, 2010 Certification of Joseph J. Occhino, Principal of Northern Highlands Regional High School) clearly sets forth the expectations for student athletes. Those expectations expressly include complete abstinence from alcohol either on or off campus. *Id.* at 45. The consequences for deviation from those expectations are clearly set forth in the same Handbook on page 16, and include the penalties that were imposed upon S.N.K., Jr. On September 1, 2010, both S.K. and her son, S.N.K., Jr., signed a form verifying that they had reviewed the standards and expectations set forth in the handbook and that they understood that students would be held accountable for conforming to same.

Thus, S.N.K.'s temporary exclusion from the privilege of extracurricular athletics flowed not just from respondent's policies, but also from a contract between petitioners and respondent. The Commissioner will not adjudicate an action to which petitioners gave their consent, and which is no longer applicable to petitioners' son.

Accordingly, the Commissioner dismisses the petition.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 17, 2011

Date of Mailing: November 18, 2011

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*)