

H.D., on behalf of minor child, E.B.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE CITY	:	DECISION
OF JERSEY CITY, HUDSON COUNTY	:	
AND MS. EVERETT, TEACHER,	:	
	:	
RESPONDENTS.	:	

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### SYNOPSIS

Petitioner filed a *pro se* appeal alleging that personnel employed by the respondent Board improperly notified the Division of Child Protection and Permanency (Division) that E.B. had been physically abused by his father. Petitioner asserted that E.B.'s black eye was caused by a fight at school, which Ms. Everett – E.B.'s classroom teacher – communicated to petitioner via a telephone call on Friday, along with the message that she did not want to report the fight because the children would be suspended and might miss scheduled PARCC testing. On the following Monday, however, petitioner alleged that Ms. Everett called her claiming that E.B.'s injury – a noticeable black eye – had occurred over the weekend and not at school; the reporting of this information to the Division led to E.B.'s removal from petitioner's care and placement in a foster home. Petitioner contended that the teacher changed her story to protect her teaching position, as she was required to report classroom fighting and had not done so. Petitioner requested that the school be investigated and that the teacher be reprimanded for her behavior. The respondents contended that the Commissioner lacks jurisdiction in this case, and filed a motion to dismiss pursuant to *N.J.A.C. 6A:3-1.5(g)*.

The ALJ found, *inter alia*, that: respondent's motion to dismiss in lieu of an answer was filed in accordance with *N.J.A.C. 6A:3-1.5(g)*; for the purposes of the motion, all facts alleged by the petition were deemed admitted; *N.J.S.A. 18A:11-1(c)* vests the power to control and regulate the conduct of public school employees exclusively in the local board of education; pursuant to *N.J.S.A. 18A:6-9*, the Commissioner's jurisdiction extends only to "controversies and disputes arising under the school laws"; and the relief sought by the petitioner herein is not available under the Commissioner's authority to resolve controversies and disputes. The ALJ concluded that the petition must be dismissed for lack of jurisdiction.

Upon comprehensive review, the Commissioner concurred with the findings and conclusions of the ALJ. Accordingly, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

<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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January 6, 2017

OAL DKT. NO. EDU 10655-16  
AGENCY DKT. NO. 156-5/16

H.D., on behalf of minor child, E.B.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
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BOARD OF EDUCATION OF THE CITY	:	DECISION
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	:	
RESPONDENTS.	:	

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon a comprehensive review of this matter, the Commissioner concurs with the Administrative Law Judge – for the reasons stated in the Initial Decision – that the Commissioner does not have jurisdiction to grant the relief sought by the petitioner in this matter. Accordingly, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.\*



ACTING COMMISSIONER OF EDUCATION

Date of Decision: 1/06/17  
Date of Mailing: 1/06/17

\* This decision may be appealed to the Superior Court, Appellate Division, pursuant to P.L. 2008, c. 36.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**MOTION TO DISMISS**

OAL DKT. NO. EDU 10655-16

AGENCY DKT. NO. 156-5/16

**H.D. ON BEHALF OF E.B.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF  
JERSEY CITY, HUDSON COUNTY, AND MS.**

**EVERETT, TEACHER,**

Respondents.

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H.D., pro se

**Cherie Adams**, for respondents (Adams, Gutierrez and Lattiboudere, attorneys)

Record Closed: October 17, 2016

Decided: November 29, 2016

BEFORE **ELLEN S. BASS**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, H.D., a former resident of Jersey City and the mother of E.B., alleges school personnel improperly notified the Division of Child Protection and Permanency (the Division) that E.B. had been physically abused by his father. She requests that the

Martin School for the Arts “be investigated.” She also demands that the classroom teacher, Ms. Everett, be “reprimanded.” The respondents, Jersey City Board of Education (the Board) and Ms. Everett, ask that the petition be dismissed for lack of jurisdiction.

### **PROCEDURAL HISTORY**

The petition of appeal was filed on April 26, 2016. Upon being advised by the Department of Education that her appeal was procedurally flawed, H.D. refiled her petition on May 31, 2016. Via letter dated June 22, 2016, counsel for the Board asked that the petition be dismissed for lack of jurisdiction. She was advised by letter dated June 23, 2016, that it was necessary that respondents file a responsive pleading. Via letter dated July 15, 2016, respondents filed a motion to dismiss the petition in lieu of an answer.

The case was transmitted to the Office of Administrative Law on July 18, 2016, and was originally assigned to Judge Karaszegi. H.D. filed opposition to the pending motion on September 30, 2016, and via letter dated October 11, 2016, respondents renewed their request that the petition be dismissed. The case was reassigned to me on October 14, 2016, after Judge Karaszegi’s appointment to the New Jersey Superior Court. Via letter dated October 17, 2016, I advised the parties of the change in judge and indicated that I would be ruling on the pending motion to dismiss. I adjourned a pending March 2017 hearing date, and closed the record as of the date of my letter.

### **FINDINGS OF FACT**

Respondent’s motion is filed in accordance with N.J.A.C. 6A:3-1.5(g), which permits the filing of a motion to dismiss in lieu of an answer. In ruling on a motion to dismiss

The judge considers whether all the evidence together with all legitimate inferences therefrom could sustain a judgment in favor of the party opposing the motion. The judge is not concerned with weight, worth, nature or extent of the evidence. The judge must accept all the evidence supporting the party defending against the motion and accord that party the benefit of all inferences that can reasonably and

legitimately be deduced therefrom. If reasonable minds could differ, the motion must be denied.

[37 New Jersey Practice, Administrative Law and Practice § 5.19, at 259-60 (Steven Lefelt, Anthony Miragliotta & Patricia Prunty) (2d ed. 2000).]

All evidence supporting the party defending the motion must be accepted, and that party must be "accorded the benefit of all inferences which can be reasonably and legitimately deduced therefrom." Syvertsen v. Scotch Plains-Fanwood Bd. of Educ., 92 N.J.A.R.2d (EDU) 251 (citing Dolson v. Anastasia, 55 N.J. 2 (1969)). Accordingly, for purposes of the motion, all facts alleged by the petition will be deemed admitted, and I **FIND** as follows:

On Friday, April 8, 2016, H.D. received a call from Ms. Everett, the classroom teacher, advising that her son, E.B., had been involved in an altercation with W., a classmate, and that W. had punched her son in the face. Everett advised H.D. that E.B.'s eye was bruised, and that she had applied ice to help reduce swelling. Everett told H.D. she did not want to report the fight because the children were friends and would get suspended; and as a result might miss important PARCC testing. H.D. sent her husband, D.D., to pick up E.B. after school. D.D. arrived to find E.B. crying and upset, and he spoke with Ms. Everett who shared the same story with him about the fight with W. When H.D. returned home that evening, E.B. reported that W. was teasing him and calling him names, so E.B. hit W. with his hat. W. then punched him in the face.

E.B. returned to school on Monday, April 11, 2016. That morning, Ms. Everett called H.D. and advised that she believed E.B.'s black eye was the result of an injury at home. They talked about having H.D. come to school to discuss the situation, and while they never finalized their plans to do so, H.D. left work at 12:30 that day and went to the school at 2:00 p.m. She met with the building principal, Ms. Jennings, who inquired about how the bruise occurred. Ms. Everett was called to join the conversation. Everett denied calling H.D. the prior Friday and advising that W. had struck E.B.; she now stated that school personnel believed that E.B.'s father had struck him. Everett advised that she was obliged to report her concerns to the Division and had done so. The petition avers that

On Monday about 9:00 p.m. DYFS took my son and placed him into a foster home. The worker offered for a homecare worker to live in the home but I refused. Till this time I do not know what my son said and I also don't know what they told him to say to hide the fact there was a fight in the classroom.

### CONCLUSIONS OF LAW

The Commissioner of Education is without the authority to grant petitioner the relief she seeks. I **CONCLUDE** that the petition of appeal must be dismissed. N.J.S.A. 18A:11-1(c) vests the power to control and regulate the conduct of public school employees exclusively in local boards of education. See: F.R. on behalf of M.R. v. Montville Tp. Bd. of Educ., Dkt. No. 47-2/05, Comm'r (July 21, 2005). <http://njlaw.rutgers.edu/collections/oal/>>. In F.R., a parent asked that a building principal be directed to apologize to his elementary age son for falsely accusing him of improperly selling merchandise in school. The petition was dismissed, as there was "no statutory authority for the Commissioner to order an employee of a public school district to tender an apology to students, parents or anyone else, and no statutory authority for the Commissioner to impose discipline on employees of a local board of education" except as prescribed by N.J.S.A. 18A: 6-10, et. seq. Ibid.

Moreover, to the extent that H.D. alleges that Ms. Everett improperly brought her concerns about abuse to the Division's attention, respondents correctly assert that Everett's obligation to do so was governed by N.J.S.A. 9:6-8.10, and any review of the propriety of her actions is not justiciable here. Pursuant to N.J.S.A. 18A:6-9, the Commissioner's jurisdiction extends only to "controversies and disputes arising under the school laws."

The demand that the Martin Center for the Arts "be investigated" flows from the actions of Ms. Everett, and accordingly, for the reasons expressed above, is likewise not a claim that is within the Commissioner of Education's jurisdiction. Nor is a request that school personnel be "investigated" properly the subject of a petition of appeal before the Commissioner. For a matter to be justiciable a party must have suffered a distinct injury or harm that was caused by the adverse party and that can be remedied by a court, or

here, by the Commissioner. New Jersey Turnpike Auth. v Parsons, 3 N.J. 235, 240 (1949); In re Ass'n of Trial Lawyers of Am., 228 N.J. Super. 180 (App. Div. 1988). A request for an "investigation" is not relief available under the Commissioner's authority to resolve controversies and disputes. See e.g.: Ciambrone v. Witty and Bloomingdale Bd. of Educ., EDU 9202-00, Initial Decision (March 21, 2001), modified, Comm'r (May 7, 2001), <<http://njlaw.rutgers.edu/collections/oal/>>.

### **ORDER**

Based on the foregoing, it is hereby **ORDERED** that the petition of appeal be **DISMISSED**.

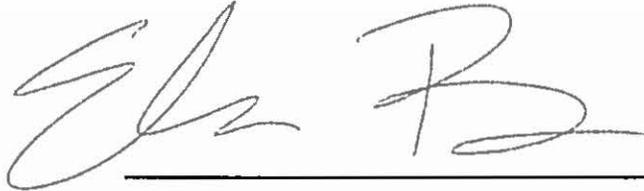
I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 29, 2016

\_\_\_\_\_  
DATE



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**ELLEN S. BASS, ALJ**

Date Received at Agency:

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Date Mailed to Parties:

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