

R.T. AND C.T., on behalf of minor child, N.T., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF WAYNE, :
 PASSAIC COUNTY, :
 RESPONDENTS. :

SYNOPSIS

Petitioners challenged the respondent Board’s decision to suspend N.T. for the duration of the 2017-2018 academic year following N.T.’s arrest for possession of marijuana with intent to distribute on school grounds. N.T. was arrested after an incident on November 30, 2017 in which he attempted to prevent a drug screening of a student who was reasonably suspected of using drugs at school by slipping the student a vial of “clean” urine in the nurse’s office. Evidence was considered at a disciplinary hearing on December 21, 2017, after which the Board voted to suspend N.T. for the remainder of the school year; he was also barred from school grounds and all school activities, including prom and graduation. Home instruction was provided to N.T., which enabled him to graduate at the conclusion of the school year. A hearing in this matter was held on May 15, 2018; petitioners declined to appear at the hearing.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A. 18A-37.2*, school districts may suspend or expel students found guilty of certain conduct, including possession of controlled dangerous substances on school grounds and any conduct that constitutes a continuing danger to the well-being of other pupils; the Board’s District Policy 5530 provides that students who possess, consume, use or distribute alcohol or other drugs on or off school premises shall be subject to disciplinary action based on the severity of the offense; further, a student who is found to have distributed, attempted to distribute, or possessed with intent to distribute alcohol, drugs or drug paraphernalia shall be suspended for no less than ten days, subjected to a Board hearing, and possible expulsion; the Board charged N.T. with possession with intent to distribute, and possession of over 50 grams of marijuana within 1000 feet of the school property; the Board considered the severity of the drug offense at its December hearing, including unrefuted evidence that N.T. intended to distribute marijuana and to help at least one other student evade the school’s drug policy; such conduct clearly constituted “good cause” for a long-term suspension under *N.J.S.A. 18A-37.2*; the incident herein was N.T.’s third drug infraction in three months, constituting continued and willful disobedience; and the search of N.T.’s backpack on November 30th revealed, in addition to packets of marijuana, a larger bottle of urine, indicative of an ongoing plan to help himself and others evade the school’s drug policy through interference with regular and necessary drug screening performed in the nurse’s office. The ALJ concluded that the Board was not arbitrary, capricious or unreasonable in imposing the long term suspension on N.T., and affirmed the Board’s findings and penalty.

Upon comprehensive review, the Commissioner concurred with the ALJ’s findings and conclusions, and dismissed the petition. In so doing, the Commissioner, *inter alia*, reminded the Board of the regulatory provisions of *N.J.A.C. 6A:16-7.3(d)-(f)*, but determined that the Board’s failure to revisit N.T.’s suspension would not have resulted in any change to either the penalty or his disciplinary record.

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 5380-18
AGENCY DKT. NO. 70-3/18

R.T. AND C.T., on behalf of minor child, N.T., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF WAYNE,
PASSAIC COUNTY, :
RESPONDENTS. :

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. In this case, the petitioners are challenging the Wayne Township Board of Education's (Board) decision on December 22, 2017 to suspend N.T. for the remainder of the 2017-2018 school year.

Upon a comprehensive review of this matter, the Commissioner concurs with the Administrative Law Judge that the Board's decision to impose a long-term suspension on N.T. based on the nature and extent of his conduct was not arbitrary, capricious or unreasonable. However, the Board is reminded that when it imposes a long-term suspension on a student, it must follow the applicable regulatory provisions governing the process for determining whether the long-term suspension should continue and/or when the student should return to the general education program. *N.J.A.C. 6A:16-7.3(d)-(f)*. Typically, the suspension of a general education student shall not be continued beyond the district board of education's second regularly scheduled meeting following the suspension unless the district determines the suspension should continue. *N.J.A.C. 6A:16-7.3(c)*. Therefore, the Board should have revisited the status of N.T.'s

suspension at the Board's second regularly scheduled board meeting following the December 22, 2017 notice of suspension.¹

Despite the fact that the Board should have discussed whether to continue N.T.'s suspension at subsequent board meetings, the 2017-2018 school year is now complete;² thus, there is no recourse available to the petitioners at this juncture. Notably, since the Commissioner has determined that the long-term suspension was justified, the Board's failure to revisit N.T.'s suspension would not result in any changes to N.T.'s disciplinary record. It should also be emphasized that the petitioners did not appear at the hearing held at the OAL, nor did they file exceptions to the Initial Decision. Accordingly, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: July 11, 2018

Date of Mailing: July 12, 2018

¹ The Commissioner recognizes that based on the nature and extent of N.T.'s conduct it is likely that the Board would have voted to continue his suspension.

² The Board continued to provide N.T. with educational services throughout his suspension.

³ 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

OAL DKT NO. EDU 05380-18

AGENCY REF. NO. 70-3/18

R.T. and C.T. o/b/o minor child, N.T.,

Petitioners,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF WAYNE, PASSAIC COUNTY,**

Respondents.

No Appearance by petitioners

John G. Geppert Jr., Esq., (Scarinci Hollenbeck attorneys) for respondents

Record Closed: May 15, 2018

Decided: June 6, 2018

BEFORE **ERNEST M. BONGIOVANNI**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners appeal the suspension of N.T. from school for the duration of the 2017-2018 academic year by respondent, Wayne Township Board of Education (BOE). The incident giving rise to the suspension occurred at the Wayne Hills High School on November 30, 2017 at the Nurse's office during a drug screening. N.T. was arrested for possession of marijuana with intent to distribute it on the school grounds. On December

21, 2017 a disciplinary hearing was held at the Wayne Township Board of Education (BOE). Evidence and comments were considered, and after deliberation, the BOE voted to suspend N.T. for the remainder of the school year. N.T. was barred him from the school grounds, participation in school activities and off campus events including sporting events. He was also barred from the prom and graduation ceremonies. N.T. was offered home instruction to complete his senior year studies in time to graduate by the conclusion of the school year.

An Appeal was timely filed by N.T.'s parents. The Department of Education, Bureau of Controversies and Disputes, transmitted this matter on April 11, 2018 to the Office of Administrative Law (OAL), where it was filed on April 13, 2018 as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to-13.

The parties exchanged informal discovery. The hearing was held on May 15, 2018. The petitioners, after claiming their son, N.T. had a fever, chose not to appear for the hearing.

ISSUES

- (1) Did N.T. commit any acts that violated the Code of Student Conduct?
- (2) Does the preponderance of the credible evidence support the BOE's decision?
- (3) Was the penalty of suspension for the duration of the school year and additional penalties supported by the evidence or were they in whole or in part imposed in an arbitrary and capricious manner?

SUMMARY OF RELEVANT TESTIMONY

The Wayne Board of Education charged N.T. with involvement in inappropriate and threatening incidents by engaging in possession with intent to distribute and possession of over 50 grams of marijuana within 1000 feet of the school property.

Principal Michael Rewick

Principal Rewick testified he has been employed by the Wayne BOE for eighteen years, thirteen in administration. He is currently the high school principal.

According to Principal Rewick, on November 30, 2017, N.T. was observed in the Nurse's office at the Wayne Hills High School passing a "Visine bottle", later found to contain urine, to another student, K.S., who was undergoing drug screening. When questioned, N.T. admitted the bottle contained "just clean pee." Further questioning resulted in N.T. admitting he had marijuana in his backpack. Examination of the backpack revealed a mason jar filled with individual packets of marijuana and empty packets (R-5). All the evidence was turned over that day to the police who charged N.T. with possession with intent to distribute under 50 grams of marijuana within 1000 feet of a school (R-12). Principal Rewick believed the only explanation for N.T.'s conduct on November 30, 2017 was that N.T. was attempting to help one of his "customers," a student to whom he distributes marijuana, to prevent the customer from testing positive at a school drug screening. This was not his first offense. N.T. received a ten-day suspension for a drug offense earlier in November 2017.

N.T. received disciplinary charges stemming from the November 30, 2017 incident. A hearing on those charges was conducted by the BOE on December 21, 2017. At the hearing, the BOE suspended N.T. from the school for the duration of the school year, and banned him from entering school property. He was also barred from participating in any school activities including sports, prom and graduation ceremony (R-15).

Principal Rewick said the operative District School Policy (DSP) 5600, governing the Student District Code of Conduct, DSP 5610 governing suspensions, and DCP 5530 governing Substance abuse by students, were all followed by the Board. He noted that since the conduct was so egregious, N.T. could have been expelled and lost the opportunity to graduate. N.T. was suspended by the Board rather than expelled, and

the Board provided home instruction in English and Math, allowing N.T. to graduate by the end of the term.

Assistant Principal Christina Ventimiglia

Assistant Principal (AP) Ventimiglia has been employed by the Wayne BOE for fifteen years, the last five as a high school Vice Principal. She is responsible for grade level discipline and specifically in charge of the 2017-2018 senior class.

AP Ventimiglia noted that N.J.S.A. 18:37-2 and N.J.A.C. 18A-32- and 13.1 provide for suspensions for student behaviors such as drug offenses. After she learned of the incident concerning N.T., passing a Visine bottle containing “clean pee” to K.S., she and AP Cavins searched N.T.’s belongings. N.T. admitted he had marijuana in his backpack and the search revealed between 20-25 baggies of marijuana in a mason jar and a Poland Spring water container which turned out to contain urine. She said that after the marijuana and urine were confiscated, she asked for a chemical screening of N.T. The screening revealed the presence of a “negative dilute,” which to her knowledge means that the sample had been “watered down” to mask the presence of Marijuana in the urine.

Regarding the suspension to the end of the school year, which included banning N.T. from all school activities, and from school grounds and places where school activities take place, AP Ventimiglia believed that a lesser penalty such as allowing N.T. to return to school before the end of the school year would be a “distraction” especially to other seniors and would send students the wrong message. She noted that academically, N.T. was a C plus B minus student, and that his education was on a college track. N.T.’s primary activity was being on the soccer team. N.T. had no disciplinary record prior to 2017-2018, but began the school year in possession of a “Vaping” device, employed by students for tobacco use (although they can be altered to use illegal substances), for which he received three hours detention. On November 13, 2017, N.T. was found to be using a vaping device during gym class, resulting in a ten-

day suspension. AP Ventimiglia noted the proximity between the conclusion of the suspension and the commission of a new offense of November 30, 2017.

Nurse Catherine Eck

Nurse Eck has been a nurse for forty years, employed as such by the Wayne BOE for nineteen years, the last two at the high school. In addition to nursing duties, her office assists in conducting random drug screening of students who volunteer in a program known as “Be Proud.” These students, with their parents’ permission, are subject to random screening as a preventative and as a way of treating illegal substance abuse. The nurse’s office also conducts screenings by urine tests of students whom the staff reasonably suspect are under the influence at school or during school activities. She was conducting one such “reasonable suspicion” test was when she saw N.T. interfere with the drug screening of K.S. by attempting to surreptitiously pass the Visine bottle to K.S. while shaking his hand. She noted that N.T. had entered the nurse’s office with a “fake” complaint about a sore throat. When she demanded to know what was passed, K.S. refused to hand it over. Eventually the assigned officer for the school, Detective Dubois, was called. Later, she conducted the drug screening of N.T.

Assistant Principal Jacob Cavins

AP Cavins testified is presently finishing his second year as AP at the high school, and among other things is involved in overseeing school disciplinary measures. Regarding the incident of November 30 at the high school, he stated that he “had never seen anything like this” during his eight years as a professional educator. He was particularly concerned with N.T.’s intent to undermine the chemical screening process. He believed that a lesser suspension would be counterproductive to the “life lesson” N.T. needs.

English Teacher & Home Instructor Holly Johnson

Ms. Johnson testified as to the academic services through home instruction being provided to N.T. to assist him in graduating. N.T. has been offered two hours of

English every week although he has only availed himself to a small portion of that instruction by continually cancelling meetings. She said that two hours of one on one teaching at home is “equivalent” to the daily 42 minutes (210 minutes a week) English a student gets at school with a full classroom. She believed that N.T. recently has improved his attendance and has been completing assignments as graduation date grows nearer.

FINDINGS OF FACTS

Based on the evidence presented at the hearing, as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** the following **FACTS**:

1. N.T. was caught “red-handed” at the high school nurse’s office attempting to prevent a drug screening of a student who was reasonably suspected of using drugs while at school by passing him a bottle of “clean pee”, a.k.a. urine clear of evidence of drug use.
2. After administrative staff in charge of student conduct and a police officer were called to the scene, N.T. was found to be in possession of marijuana in his backpack. N.T.’s attempted undermining of the drug screening, the packaging and quantity (20-25) of the marijuana packets led the school administration officials to reasonably infer that N.T. intended to distribute marijuana to fellow students while on school grounds.
3. School officials were particularly concerned with the calculated and deliberate nature of N.T.’s action and his possible drug distribution activities while on school grounds.
4. N.T. was receiving adequate home instruction to permit him to finish school and graduate by the conclusion of the 2017-2018 school year.

LEGAL ANALYSIS AND CONCLUSION

The laws governing the discipline of public school students are found in N.J.S.A. 18A:37-1 through -37. They obligate students to comply with the school's rules. N.J.S.A. 18A-37.2 provides that school districts may suspend or expel students found guilty of certain conduct and itemizes some, but not all, conduct which constitutes "good cause" for either penalty. "Good cause" includes

- a. Continued and willful disobedience
- b. Open defiance of the authority of any teacher or person having authority over him
- c. Conduct of such character as to constitute a continuing danger to the physical well-being of other pupils....
- j. Knowing possession or knowing consumption without legal authority of alcoholic beverage or controlled dangerous substances on school grounds...[.]

District Policy 5530, Administrative Discipline Procedures, provides:

1a. Students who possess, consume, use or distribute alcohol or other drugs...on or off school premises shall be subject to disciplinary action pursuant to Board Policy. Discipline shall be graded according to the severity of the offense.

....

3a. (2) A student found to have distributed, attempted to distribute or possessed with intent to distribute alcohol or other drugs or drug paraphernalia, shall be suspended for no less than ten days, and subject to a Board hearing. Such activity may result in consideration for expulsion.

The school policies are authorized by N.J.S.A. 18A:37-2 and N.J.A.C. 6A:16-7.1 et. seq. They provide for a long-term suspension or expulsion for drug offenses committed at the schools. Marijuana is a drug in the Wayne Township list of substances warranting disciplining and treating student substance abuse offenders. District Policy 5530, Substance Abuse, incorporating "drugs" defined in N.J.S.A. 24:21-2 and 2C:35-10.4

At the hearing, the BOE had to consider the severity of the drug offense. If they found N.T. guilty of the intent to distribute drugs a long-term suspension of ten or more

days was mandatory (“shall be suspended”). On this administrative appeal, the BOE emphasized the unrefuted evidence that N.T. was in possession of a controlled dangerous substance, to wit, marijuana, while at the high school. Ample evidence of his intent to distribute it, and to help at least one other student evade the school’s drug policy prohibiting the use of such products on school grounds, clearly constituted “good cause” for a long-term suspension under subsection j. of N.J.S.A. 18A:37-2.

N.T.’s conduct also fit the other cited “good causes” criterion in the statute for the penalty imposed. His conduct constituted continued and willful disobedience in that it was his third drug infraction in three months. He openly defied the authority of the school administration by faking a reason to enter the nurse’s office, then willfully and knowingly interfering with a drug screening of another pupil while himself carrying 20-25 individual packets of marijuana, suitable for distribution. His deceptive conduct and brazen attempt to undermine drug screening, while apparently intending to distribute drugs as well, constituted an obvious danger to other students. The fact that his backpack contained a larger bottle of clean urine indicated that N.T. had an ongoing plan to help himself and others evade the school drug policy by unlawful interference with regular and necessary drug screening done at the school’s nurse’s office.

N.T.’s parents in their petition stated that the penalty, including banning N.T. from all school activities, including senior graduation, was harsh and presumably, unjust, and that N.T. was ultimately not charged with distribution, or intent to distribute by the law enforcement authorities of the County or township. The fact that authorities chose not to prosecute is of little consequence as the evidence of intent to distribute was clear and no contrary evidence explaining the conduct was even advanced. Moreover, there is no evidence upon which to determine that the permissible penalty of suspension for more than ten days was unjust or harsh.

I therefore **CONCLUDE** that the facts fully support the Board’s long-term suspension of N.T. to the end of the school year and barring him from all school activities, as well as banning N.T. from school grounds. I also **CONCLUDE** that the BOE did not act in an arbitrary or capricious manner when it imposed the aforesaid

penalty against N.T. I **CONCLUDE** that the findings of the BOE and penalty imposed should be **AFFIRMED**.

ORDER

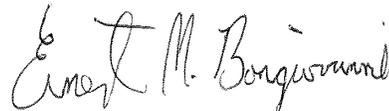
Based upon the foregoing it is **ORDERED** that the petitioner's Appeal is **DENIED** and the respondent's decision is **AFFIRMED**.

I hereby **FILE** my 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 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, PO Box 500, Trenton, New Jersey 08625-500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 6, 2018



DATE _____

Date Received at Agency:

6/6/18

Date Mailed to Parties: _____

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APPENDIX

LIST OF WITNESSES

For Petitioners

None

For Respondent

Principal Michael Rewick

Assistant Principal Christina Ventimiglia

Nurse Catherine Eck

Assistant Principal Jacob Cavins

English Teacher & Home Instructor Holly Johnson

LIST OF EXHIBITS IN EVIDENCE

For Petitioners:

None

For Respondent

R-1 District Policy No.: 5600 - Student Discipline/ Code of Conduct

R-2 District Policy No.: 5610 - Suspension

R-3 District Policy No.: 5620 - Expulsion

R-4 District Policy No.: 5530 – Substance Abuse

R-5 NT Incident Summary by Michael Rewick, dated November 30, 2017

R-6 Timeline of Events on November 30, 2017 for N.T. incident by School Nurses, Judy Daly, RN and Cathryn Eck, RN, undated

R-7 Timeline of Events for 2017-2018 School Year and November 30, 2017

Statement by Christine Ventimiglia, Assistant Principal, Wayne Hills High School

R-8 Statement of events by Kristy Stofey, dated November 30, 2017

- R-9 Statement events by Jacob Cavins, Assistant Principal, Wayne Hills High School dated November 30, 2017
- R-10 Student Safety Data System Incident Report Form 2017-2018 by Christina Ventimiglia, Assistant Principal, Wayne Hills High School, dated November 30, 2017
- R-11 School Security Incident Report at 1:30 p.m. dated November 30, 2017.
- R-12 Wayne Township Police Department, Notification to School Principal of Juvenile Charged with Delinquency for N.T.by Detective Mark DuBois, dated November 30, 2017
- R-13 Wayne Hills High School, Discipline Disposition Summary Report for N.T. from 2016-2018
- R-14 Notice of Suspension Hearing from Mark Toback, dated December 13, 2017

- R-15 Notice of Outcome of Board Hearing from Mark Toback, dated December 22, 2017
- R-16 Text Messages between Brittany Warther, Home Instructor and N.T or C.T. regarding home instruction in month of January 2018
- R-17 E-mails between Holly Johnson, Home Instructor and N.T. or C.T regarding home instruction from March 22, 2018 to April 10, 2018
- R-18 Home Instruction Log for N.T.