

EDU #5449-00
C # 8-01
SB # 6-01

L. H. AND L.H., on behalf of minor child, H.R., :
PETITIONERS-APPELLANTS, : STATE BOARD OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE CITY OF :
RAHWAY, UNION COUNTY, COMMISSIONER :
DAVID C. HESPE, AND THE STATE BOARD :
OF EDUCATION, :
RESPONDENTS-RESPONDENTS. :
_____ :

Decided by the Commissioner of Education, January 8, 2001

For the Petitioners-Appellants, Education Law Center (Ellen M. Boylan, Esq., of Counsel)

For the Respondent Board of Education of the City of Rahway, Schenck, Price, Smith & King (Joanne L. Butler, Esq., of Counsel)

For the Respondents Commissioner David C. Hespe and State Board of Education, Michael C. Walters, Deputy Attorney General (John J. Farmer, Jr., Attorney General of New Jersey)

Petitioners in this matter are the parents of a classified special education student, H.R., who was expelled by the Rahway Board of Education (hereinafter "Board" or "Rahway Board") on the basis of an incident that occurred on October 5, 1999, at which time the student allegedly was in possession of a "weapon" on school property.¹

¹ The "weapon" at issue was an 18 inch miniature baseball bat.

Following the expulsion of H.R., petitioners challenged the Board's action by filing a petition of appeal with the Commissioner of Education asserting that the Board had violated their son's rights under the New Jersey and United States Constitutions. In their petition, the petitioners also claimed that the Commissioner and the State Board of Education had violated their son's right to a thorough and efficient education under the New Jersey State Constitution by failing to set uniform standards to guide school districts in imposing long-term suspensions and expulsions.

Following transmittal of the case to the Office of Administrative Law, the Administrative Law Judge ("ALJ") raised the question of whether the matter should have been filed as a request for a due process hearing pursuant to the Individuals with Disabilities Education Act ("IDEA") rather than as one under the Commissioner's jurisdiction pursuant to N.J.S.A. 18A:6-9 (Commissioner has jurisdiction over all controversies and disputes arising under the education laws). Counsel for the petitioners specifically advised the ALJ that although the petitioners were cognizant of H.R.'s status as a classified special education student, they did not wish to invoke the special provisions of statute and regulation governing the process for disciplining classified students.²

On October 6, 2000, counsel for the petitioners submitted to the ALJ a Stipulation of Settlement and Dismissal of Claims Against Rahway Board of Education executed by herself and the counsel for the Rahway Board. Pursuant to the terms of the settlement,

² We note that the protections afforded classified special education students subject to disciplinary action are, under our regulations, as well as the IDEA, greater than those applicable to non-classified students. See N.J.A.C. 6A:14-2.8.

which was dated July 20, 2000,³ H.R. was to be reinstated to the educational program from which he had been removed, his record was to be expunged, the Board was to investigate the availability of compensatory vocational education services to make up for the vocational program H.R. had missed, and the Rahway Board would withdraw the criminal charges against him. In return, the petitioners agreed to dismiss with prejudice the claims they had raised against the Board and to release the Board from all other claims they might have arising from the incident and expulsion.

On November 14, 2001, the ALJ issued his initial decision in the matter. On the basis of motions for summary decision, the ALJ dismissed the matter in its entirety, concluding that it was moot. The lynchpin of the ALJ's determination was that the "practical effect of the settlement reached between the petitioners and the [Rahway Board] is that the student is no longer expelled and his record is clear." Initial Decision, slip op. at 5.

The Commissioner adopted the ALJ's determination as his final decision in the matter.

Petitioners appealed to the State Board. Counsel for the petitioners contends that the matter is not moot as to the petitioners' claims against the Commissioner and the State Board. In this respect, counsel argues that the constitutionality of zero tolerance policies and the responsibility of the State respondents to issue uniform guidelines for the discipline of students are of great public importance so that settlement of the petitioners' claims against the Rahway Board should not render the claims

³ In her October 6, 2000 cover letter submitting the Stipulation of Settlement to the ALJ, counsel for the petitioners indicated that the parties had settled their dispute in July 2000, at which time she had prepared the Stipulation and sent it to the counsel for the Board, but that she had not received an executed copy from the Board's counsel until October.

against the State respondents moot. Counsel for the petitioners also seeks to supplement the record in the matter with comments submitted to the Department of Education by the Education Law Center, which is representing the appellants in this case, on discussion level regulations on Programs to Support Student Development and the response of Department staff thereto.

Our review has revealed that while the record includes the Stipulation of Settlement submitted to the ALJ on October 6, 2001, there is no indication that the settlement was ever approved by the ALJ pursuant to the regulatory requirements of N.J.A.C. 1:1-19.1. We cannot ignore this fact in view of the character and specificity of those requirements. Specifically, that regulation requires in pertinent part that:

(a) Where the parties to a case wish to settle the matter, and the agency head has not consented to the settlement terms, the judge shall require the parties to disclose the full settlement terms:

1. In writing, by consent order or stipulation signed by all parties or their attorneys; or
2. Orally, by the parties or their representatives.

(b) Under (a) above, if the judge determines from the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the judge shall issue an initial decision incorporating the full terms and approving the settlement.

In that execution of some of the terms of the settlement provided the basis for the ALJ's initial decision and because the Commissioner adopted that decision, we are not able to decide the appeal before us without assurance that the regulatory requirements have been met and that the settlement has been properly approved. We therefore remand this matter to the Commissioner for this purpose. We retain jurisdiction over the

appeal, including the petitioners' motion to supplement the record, but place the matter in abeyance pending the Commissioner's determination with respect to the settlement.

June 6, 2001

Date of mailing _____