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OAL DKT. NO. EDU 7495-03 (http://lawlibrary.rutgers.edu/oal/html/initial/edu07495-03_1.html)
AGENCY DKT. NO. 221-6/03

P.G., on behalf of minor child M.G.,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH OF WOODCLIFF LAKE, BERGEN COUNTY,	:	DECISION
RESPONDENT.	:	

The Commissioner has reviewed the record of this case, the Initial Decision, and the parties' exceptions.[1]

It is undisputed that, pursuant to the "Uniform State Memorandum of Agreement between Education and Law Enforcement Officials" (the Agreement), which is approved by the New Jersey Department of Law and Public Safety (Department of Law and Public Safety) and the New Jersey Department of Education (the Department), respondent's community had a police officer who worked with the schools on matters pertaining to juveniles. That police officer was Detective James Uhl of the Woodcliff Lake police department. Detective Uhl's mission was to enhance school security, deter drug use, sales and other forms of criminal behavior in the schools, interact with the students in positive and constructive ways, enhance the working relationship between education and law enforcement officials, and facilitate the handling of delinquency complaints. To that end, he requested that the other officers in the Woodcliff Lake

[1] Since respondent was granted an extension to March 23, 2006 to file its exceptions, and since petitioner's "amended exceptions" were filed within five days of that date, petitioner's amended exceptions were deemed reply exceptions and considered by the Commissioner.

police department inform him of any incidents brought to their attention that involved Woodcliff Lake juveniles. 2T10.[2]

Such an incident was brought to his attention on Saturday, April 12, 2003, when Sergeant John Burns of the Woodcliff Lake police called him at home. 2T10 Sergeant Burns related that M.G. had been arrested by the Hillsdale police when a traffic stop of a car in which M.G. was a passenger led to the discovery of six small bags of marijuana in M.G.'s backpack. 2T10-13. Facts relating to the incident are set forth in petitioner's hearing exhibits P-15, P-16 and P-17. In Detective Uhl's experience, the possession of marijuana in multiple small bags signified an intent to distribute same. 2T12; 2T16; 2T34.

On Monday morning, April 14, 2003, Detective Uhl went to Woodcliff Lake Middle School, in which M.G. was a student, and spoke to the principal, Lauren Barbelet. 2T15. He conveyed the information referenced above about M.G.'s arrest following a traffic stop. He reported that M.G. had exited the car after the stop, and had been found later, some distance from the scene of the traffic stop, 2T30-31, with his backpack which contained six bags of marijuana. 2T15-16. Marijuana was also found in the possession of other occupants of the car. *Ibid.* Detective Uhl also shared with Barbelet his opinion that multiple small bags of marijuana indicated an intent to distribute. 1T169; 2T16. [3]

A search of M.G.'s school locker conducted by Barbelet and Detective Uhl revealed nothing but a sweatshirt. 2T17.[4] Barbelet attempted to bring M.G. to her office to discuss the matter but M.G. was not in school that day. 1T172. Bartelet's attempts to reach

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[2] 1T = transcript of hearing dated June 28, 2005; 2T – transcript of hearing dated June 29, 2005.

[3] Detective Uhl testified that although M.G.'s parents could have contacted him for information or discussion, they did not. Uhl was aware that Detective Farrell of the Hillsdale Police Department had communicated with C.G. prior to the release of M.G. to her custody. 2T37.

[4] Barbelet testified that the fact that there was absolutely nothing but a sweatshirt, i.e., no books, etc., concerned her. 1T236.

M.G.'s mother, C.G., at home were unsuccessful, so she left a message with her home number. 1T172-73. When C.G. telephoned Bartelet at home in the evening, Bartelet related what she had been told by Detective Uhl, and explained to C.G. that M.G. would be suspended for two days (April 15 and 16), would have to pass a drug screening before reentering school, and would lose his privilege to attend the eighth grade class trip. 1T175-79. C.G. was aware of the charges against M.G., 1T252, and told Bartelet that M.G. regretted what he had done. 1T176. She offered no facts or circumstances that would mitigate the behavior. 1T252. M.G.'s April 17, 2003 drug screen was negative, so he was able to return to school after his two-day suspension (and the school holiday). 1T176-78.

Bartelet determined that an immediate suspension was warranted both for M.G.'s sake and the sake of the other students in the school: "If there [was] something going on, I think for his own good it needed to be addressed as soon as possible, and if there was anything, because it was packaged in individual bags according to what I was told by the police officer, that . . . can endanger the students in my building which range from 11 to 14 [years old]." 1T206. See also 1T252-53. Bartelet also determined that M.G. would lose his privilege to participate in the class trip because the trip was the next event/privilege on the calendar. 1T248-49. As bases for her position, Bartelet relied upon provisions in respondent's policy 5530 and regulation 5530, hearing exhibits R-2 and R-3. 1T209; 1T219, 1T249-51. Those provisions state, in pertinent part:

> Woodcliff Lake Board of Education Substance Abuse Policy 5530 (page 2).
>
> The Board prohibits the use, possession, and/or distribution of a substance on school premises, at any event away from the school premises that is sponsored by this Board, and on any transportation vehicle provided by this Board.
>
> A pupil who uses, possesses, or distributes a substance, on or off school premises, will be subject to discipline. Discipline will be

> graded to the severity of the offense, the nature of the problem and the pupil's needs. Discipline may include suspension or expulsion.
>
> AND
>
> Woodcliff Lake Board of Education Substance Abuse Regulation 5530, Section B(1)(a).
>
> Any violation of Board rules prohibiting the use, possession and/or distribution of a substance is a serious offense, and the pupil who violates a substance abuse rule will be disciplined accordingly. Repeated violations are more severe offenses and warrant stricter disciplinary measures. Pupils who violate the substance abuse rules will be disciplined as follows:
>
> a. First offense: Police Intervention, 2 day suspension, parent conference, loss of school privileges. [5]

Respondent's Superintendent, Edward Michaelson, had studied the district's policies and regulations with Barbelet, 2T53, and had concurred with her determinations. 2T55. Petitioner and C.G. met with Michaelson on May 20, 2003 to discuss the matter, 2T70-71, but he implemented no change to the discipline imposed by Bartelet. 2T72. It was further Michaelson's view, as a result of many years' experience handling student discipline related to substance abuse, that many students who used drugs were aware of ways to manipulate the drug screening procedures to produce false negatives. 2T69-70. Thus, when asked whether M.G.'s negative drug screening should have mitigated the discipline M.G. received for his possession of six bags of marijuana, Michaelson testified that he "would not take the results of the drug screening to be an absolute that a child was not smoking marijuana or involved in drugs of any kind." 2T71.

[5] Related to the policy and regulation were provisions of the code of conduct in the handbook that was distributed to all students at the beginning of each year, signed by the students and their parents, and discussed during assemblies and lunch periods. The provisions explained, among other things, that school-related functions such as trips were not rights, but rather were privileges that could be revoked for just cause. They further explained that a suspension would result in the loss of a student privilege, and that the use of "banned substances" such as drugs would result in suspensions. R-5 Bartelet testified that when a student was suspended, he or she lost the next privilege on the school calendar. 1T248-49.

Barbelet planned a three-day program for M.G.'s benefit, that was designed to cover the subject matter of the class trip. She gave petitioner an outline of same. R-6. Certified teachers who could assist M.G. with the work were expected to be in school during the three days of the class trip. 1T180. In addition, at petitioner's request, Barbelet had a team meeting with M.G.'s teachers to put together a packet of M.G.'s missing assignments. 1T 181-82.[6] The packet was ready for pick-up by M.G.'s parent on Tuesday afternoon, May 27, 2003. 1T182. Upon the request of M.G.'s parents, however, M.G. did not attend school on the three days of the class trip. 1T116. C.G. picked up the work assignments that had been prepared for M.G. on the afternoon of the third day of the trip. 1T114.

It is undisputed that no record of M.G.'s arrest or discipline was forwarded to the high school that M.G. would subsequently attend. Under cover of a letter dated June 19, 2003, Barbelet provided petitioner with a copy of the educational file sent to the high school, which contained only M.G.'s report cards and standardized test labels. R-11 and R-12.

On June 24, 2003, petitioner filed an appeal with the Commissioner of Education, naming the Woodcliff Lake Board of Education, Michaelson and Bartelet as respondents. In February 2004, after answering the petition and after the adjournment of the scheduled hearing, respondents filed a motion for summary decision. On March 21, 2005, the Administrative Law Judge (ALJ) entered an order dismissing the claims against Michaelson and Bartelet, which dismissals were not appealed.

The summary judgment motion was denied, and a hearing took place on June 28 and June 29, 2005. As the ALJ noted, during the hearing petitioner submitted a "Request for Relief, Revised June 27, 2005," in which he demanded an order declaring that:

[6] Teacher comments on M.G.'s report card, P-12, indicated that in all his classes except possibly social studies, he was not demonstrating sufficient effort and/or was failing to submit homework assignments.

> M.G.'s suspension for the period April 15-16, 2003, was unjust and unlawful;
>
> Respondents unjustly denied M.G. a rightful opportunity to participate in the regular school program during the period of May 28-30, 2003;
>
> Respondents ignored M.G.'s right to due process; and
>
> Respondent violated *N.J.S.A.* 18A:40A-10, which requires, among other things, that school districts establish and disseminate to students and parents at the beginning of each school year, substance abuse policies which address prevention strategies, identification techniques, and referral and intervention activities.

Petitioner's Exhibit P-1.

At the outset of the Initial Decision, the ALJ addressed respondent's contention that petitioner's claims should be dismissed as moot, since M.G. transitioned to the high school, and since no record of his arrest or suspension exists in his educational file either at the middle school or at the high school. She agreed that

> Petitioner's claim relating to M.G.'s inability to participate in the eighth grade class trip is moot. In short, M.G. has already missed the event, which occurred before the petition was filed, and there is no indication that this event remains in M.G.'s educational records. As such, there is simply no relief that can be granted. . . .
>
> Further, the undersigned does not view a student's loss of the opportunity to participate in a class trip, which the school's Handbook makes clear is a privilege and not a right, as presenting an issue of great importance compelling resolution despite its mootness.
>
> Initial Decision at 11.

Next, the ALJ noted that in his post hearing submissions, petitioner did not address the issue concerning respondent's alleged violation of *N.J.S.A.* 18A:40A-10 (presumably for failure to distribute to parents changes that were made in the district's substance abuse policy). In any event, in her view: "In as much as M.G. is no longer a student at the school, this claim is also moot." Initial Decision at 12.

The ALJ regarded as related, petitioner's claims of improper suspension and failure to provide due process. She rejected petitioner's contention that due process was denied, Initial Decision at 12-14, and acknowledged that the issue of the suspension was "technically moot," Initial Decision at 12, but determined that it "stands on somewhat different footing." *Ibid.* She explained:

> Although the record reveals that information regarding this suspension, including the underlying basis for the suspension and actions taken by respondent, do not appear in any educational record maintained by the Middle School or sent to the high school, this does not equate to a rescission of the suspension. Apart from this, the propriety of the suspension, which was based on the reported conduct away from school grounds, raises an important issue that is capable of repetition warranting disposition even though it may be technically moot.
>
> *Ibid.*

Having determined that petitioner's claim about M.G.'s suspension warranted a decision on the merits, the ALJ considered "whether respondent's determination to suspend the student based on the alleged conduct reported by the police [was] within the scope of its authority or [was] otherwise arbitrary, capricious or unreasonable." Initial Decision at 14. In so doing, the ALJ reviewed the relevant statutes, regulations and policies of the respondent district.

First, the ALJ discussed *N.J.S.A.* 18A:37-2, which sets forth conduct that constitutes good cause for suspension or expulsion. Initial Decision at 15. One of the identified conducts is "[k]nowing possession or knowing consumption without legal authority of alcoholic beverages or controlled dangerous substances <u>on school premises</u>, or being under the influence of intoxicating liquor or controlled dangerous substances while on school premises." *N.J.S.A.* 18A:37-2(j) (emphasis added by ALJ). *Ibid.* The legislative history explained that the foregoing provision was enacted to help control the problem of youth/alcohol abuse, especially in schools. Senate Education Committee Statement, Assembly No. 689 – L.1981, c. 59.

Second, the ALJ noted that *N.J.S.A.* 18A:40A-11 requires boards of education to adopt and implement "policies and procedures for the evaluation, referral for treatment and discipline of pupils involved in incidents of possession or abuse of substances . . . on school property or at school functions, or who show significant symptoms of the use of those substances on school property or at school functions." Emphasis added by ALJ; *Ibid.* She further noted that this statutory mandate is implemented via regulation *N.J.A.C.* 6A:16-4.1, which requires each district board of education to

> adopt and implement policies and procedures for the assessment, intervention, referral for evaluation, referral for treatment, and discipline of students whose use of alcohol or other drugs has affected their school performance, or for students who consume or who are suspected of being under the influence of the following substances in school or at school functions.[7]
>
> Emphasis added by ALJ; *Ibid.*

Third, the ALJ referred to respondent's substance abuse policy and regulation, emphasizing again that their language refers to substance abuse on school grounds, at school sponsored events, or in school transportation vehicles. Initial Decision at 16. She consequently reasoned that the policy did not extend to M.G.'s conduct, which was not on school property or connected with a school function. Initial Decision at 17.

Respondent argued that the second paragraph of the section concerning discipline in respondent's substance abuse policy requires discipline of all pupils who use, possess or distribute substances "on or off school premises," R-2, p.2, but the ALJ concluded that this language must be read *in pari materia* with the preceding paragraph, which appears to limit respondent's prohibition of the use, possession and/or distribution of a substance to school premises, to off-premises events sponsored by the school district, and to vehicles provided by

[7] The enumerated substances included alcohol, controlled dangerous substances as identified in *N.J.S.A.* 24:21-2, chemicals that release fumes that cause certain effects on the brain or nervous system, improperly used over-the-counter and prescription medications, and anabolic steroids.

respondent. Initial Decision at 17. She pointed out that such an interpretation comported with the language quoted above from *N.J.S.A.* 18A:40A-11 and *N.J.A.C.* 6A:16-4.1. *Ibid.*

In addition, the ALJ considered certain school law cases. In *R.R. v. Shore Regional High School Bd. of Educ.*, 109 *N.J. Super.* 337 (Ch. Div. 1970), a student was accused of stabbing a neighbor after school and, when the school authorities learned of the charges, was suspended with no formal or informal hearing prior or subsequent to his removal from school. *R.R.*, *supra*, 109 *N.J. Super.* at 339. The ALJ in the within case acknowledged that the *R.R.* court held that the school district was authorized to discipline a student for conduct occurring off school grounds that posed a risk to the physical or emotional safety and well-being of students, faculty and property. *Id.* at 344.[8] Initial Decision at 17-18.

On the other hand, the ALJ in the instant case noted that in *F.B. and M.B. on behalf of J.B. and L.B. v. Moorestown Tp. Bd. of Educ.*, EDU 2655-99 (November 16, 1999), an Initial Decision adopted by the Commissioner of Education on February 15, 2000, the ALJ cautioned that the mere fact that a student's conduct off of school grounds is unlawful or inappropriate does not confer upon a board of education the legal authority to discipline because of it. *F.B. and M.B.*, *supra*, at 15-16. Initial Decision at 18. In *F.B.*, students admitted to drinking beer, off of school premises, before attending a school sponsored dance. School employees supervising the dance had not observed any symptoms of intoxication, but the district none-the-less imposed suspensions on the students for violation of the substance abuse policy. The ALJ in that case ultimately concluded that the respondent's Board policy was too vague to constitute the legal authority required to impose sanctions upon the students for their conduct -

[8] In that particular case, however, the court found that the student had not been provided with even the most basic procedural due process. *Id.* at 350. The court consequently allowed the student to return to school, subject to a medical examination. *Ibid.*

which occurred one to one half hours prior to the dance, at a substantial distance from school property, and which did not affect their behavior or appearance at the dance. *F.B.* at 21.

From the foregoing statutory and decisional law the ALJ in this case concluded that the key to a determination about the appropriateness of discipline for off-school premises conduct was the nature of the nexus between the conduct and school-related activities. Initial Decision at 18. In so concluding, the ALJ specifically referred to *N.J.S.A.* 18A:37-2(c), which states that "[c]onduct of such a character as to constitute a continuing danger to the physical well-being of other pupils" constitutes good cause for suspension or expulsion. *Ibid.* The ALJ also referred to respondent's Suspension Policy, R-1, which provides that pupils may be suspended if it is "necessary to protect the physical or emotional safety and well being of the pupil or other students." Initial Decision at 19.

It was the ALJ's ultimate conclusion that M.G.'s "arrest for alleged possession of a controlled dangerous substance" did not, alone, bear a sufficient nexus to school related activities to warrant a suspension. *Ibid.* She distinguished *M.P. for A.P. v. Paramus Bd. of Educ.*, EDS 9304-99 (October 14, 1999), a case in which the discipline of a student after his arrest, during a car stop, for possession of marijuana (outside of school premises) was upheld. The ALJ concluded that the Paramus School district's evidence had been stronger, *i.e.*, Paramus had presented a police officer witness who had observed and recognized the substance found in A.P.'s possession as marijuana and had been present when A.P. had admitted that he had "weed" for himself and his friends, *M.P. for A.P., supra,* at 6. Initial Decision at 19. Because M.G. had not been charged with distribution, because, in the ALJ's opinion, no competent evidence had been presented to support an intent by M.G. to distribute, and because witness Detective Uhl had

not been directly involved in the incident leading to M.G.'s arrest, the ALJ concluded that *M.P. for A.P.* could not be used as precedent for the present case. Initial Decision at 20.

In sum, the ALJ concluded 1) that M.G.'s conduct did not fall under the purview of respondent's policy and code of conduct; 2) that there was insufficient competent evidence to support a finding that M.G.'s suspension was necessary to protect his, other students,' or teachers' physical or emotional safety and well-being or school property; 3) that there was insufficient competent evidence to support a finding that M.G.'s conduct materially interfered with the maintenance of good order in the school; 4) that respondent was without authority to impose discipline against M.G. based upon the information received regarding his arrest; and 5) that, consequently, the manner in which respondent enforced its policy was arbitrary, capricious and unreasonable, requiring a reversal and expungement of the disciplinary action taken. Initial Decision at 20-21. The Commissioner disagrees.

The Commissioner finds that it was not arbitrary and capricious for respondent to conclude that M.G.'s conduct fell under the purview of respondent's policy and code of conduct. Respondent's Policy 5610 regarding suspensions, third paragraph, states:

> No pupil otherwise eligible for attendance at the schools of this district shall be excluded from school unless that pupil has materially and substantially interfered with the maintenance of good order in the schools or unless it is necessary to protect the physical or emotional safety and well-being of the pupil or other students. [Emphasis added.]

On April 14, 2003, Detective Uhl informed Bartelet that M.G. had been arrested after the discovery of six bags of marijuana in his backpack, and that, in his experience, such packaging indicated an intent to distribute. Bartelet did not have an opportunity to speak to M.G. when she received the information from Detective Uhl because he was absent from school. When C.G. responded to Bartelet's attempts to reach her, C.G. did not deny any of the

allegations, but rather relayed M.G.'s regrets about his actions. It was not arbitrary or capricious for Bartelet to regard M.G.'s conduct, which suggested an intent to distribute marijuana to others, as a potential threat to the physical or emotional safety and well-being of M.G. or his fellow students in her school, and to impose discipline.[9] *See, e.g., Kopera v. West Orange Bd. of Educ.*, 60 *N.J. Super.* 288, 296 (App. Div. 1960) (the purpose of administrative review of a board of education's action is not to substitute the reviewer's judgment for the judgment of the board, but rather to determine whether the board had a reasonable basis for its determination about what action to take).

Both *R.R.* and *M.P. for A.P., supra*, hold that students may be disciplined for actions taken outside of the school environment, and *M.P. for A.P.*, in particular, holds that a student exhibiting conduct that implies intent to distribute a controlled dangerous substance, whether or not the behavior is discovered on school grounds, can pose a danger to the physical and emotional safety and well-being of himself and other pupils. The Commissioner does not agree that *M.P. for A.P.* can be materially distinguished from the present case. In *M.P. for A.P.*, the fact that the police officer who witnessed A.P.'s confession testified at the hearing buttressed the Paramus Board of Education's case. However, at the time the Paramus school authorities expelled A.P., no charges had been filed. The ALJ in that case recognized that Paramus had had the authority to make a disciplinary determination about A.P. - simply on the basis of information provided by the police about A.P.'s possession of marijuana for himself and his friends - without awaiting the outcome of charges and proceedings in another jurisdiction, *i.e.*, Superior Court. *M.P. for A.P., supra,* at 3.

[9] The Commissioner does not agree with petitioner that the police's confiscation of the marijuana found in M.G.'s possession neutralized the potential danger to M.G. and other students. Once behavior was disclosed that evidenced an intent to distribute, the possibility that M.G. possessed other contraband or had access to other contraband could not be discounted.

Nor did the petitioner in this case present any evidence at the hearing that rebutted Detective Uhl's report that M.G. possessed six bags of marijuana. The fact that Uhl's account of the marijuana found with M.G. was hearsay does not automatically render the evidence incompetent. *N.J.A.C.* 1:1-15.5(a) and (b). Petitioner, himself, offered into evidence three exhibits (P-15, P-16 and P-17), *i.e.*, reports by Woodcliff Lake officers Uhl and Burns, and by an eye witness to the car stop, that described M.G.'s apprehension and possession of marijuana and the circumstances leading up to same. While the reports were all hearsay, they nonetheless corroborated each other and were from three separate individuals, one of whom was a witness, Jeffrey Alboum, to the car stop and police activity. Alboum's statement did not directly refer to M.G., but it corroborated facts in Burns' and Uhl's reports of the information they had received from the Hillsdale police.

Petitioner also failed to present any expert testimony to rebut Detective Uhl's expert opinion about the significance of the packaging of M.G.'s marijuana into several bags. Nor did the ALJ find any facts or make any conclusions as to why Uhl's expert testimony should not have been accepted as evidence that M.G. intended to distribute his marijuana.

In sum, respondent presented allegations and direct testimony, such as the testimony of Barbelet that C.G. had conveyed M.G.'s remorse for the conduct that led to the discipline at issue in this case, that on April 12, 2003, M.G. possessed several bags of marijuana. Respondent also presented unrebutted expert testimony that the packaging of the marijuana indicated intent to distribute. Respondent cited statutes, regulations and policies that bestow upon school boards the authority to protect their students from physical or emotional harm, and cited the legal holding of *M.P. for A.P.*, i.e., that juvenile conduct away from school, such as

drug possession, can constitute the basis for discipline designed to protect the safety and well-being of the juvenile's fellow students at school.

Petitioner cannot prevail, in this administrative proceeding, by simply leaving respondent to its proofs. Since respondent has presented evidence to support the discipline which petitioner challenges, petitioner must present facts supporting his challenge, that are sufficient to constitute a preponderance of the credible evidence.[10] *E.A., Sr. and D.A., on behalf of minor child, E.A., Jr., v. State-operated School District of the City of Jersey City, Marie Morrissey, and Richard DiPatri*, OAL DKT. NO. EDU 3499-98, AGENCY DKT. NO. 50-3/98, decided December 23, 1999, at p.16 (the burden of proof in matters of student discipline is on petitioners, by a preponderance of the credible evidence).

Also related to the parties' respective duties to provide evidence is a Letter Order in the file, dated February 10, 2004, indicating that respondent requested police records about M.G.'s conduct on April 12, 2003, and was denied same. Thus, respondent was denied competent evidence that it could have used to support its position that M.G.'s conduct warranted concern about himself and the other students.

The authority the ALJ relied upon for the denial was *R.* 5:19-2(b), which states:

> Social, medical, psychological, legal and other records of the Court, Probation Division and law enforcement agencies pertaining to juveniles charged as delinquents shall be strictly safeguarded from public inspection and shall be made available only pursuant to *N.J.S.* 2A:4A-60 to 62. Any application for such records shall be made by motion to the court.

The ALJ interpreted *R.* 5:19-2(b) to require that applications to the court accompany <u>all</u> requests for information about juveniles. Letter Order dated February 10, 2004. However, the

[10] Petitioner's contention that the absence of a criminal charge of possession with intent to distribute bars respondent from disciplining M.G. for intent to distribute is meritless. The elements of the various criminal statutes are based on different criteria and standards, and drafted to address different objectives than the policies and regulations promulgated by school administrators.

Commissioner notes that Comment to *R.* 5:19-2(b) states that the rule provides "that unless the statute [*N.J.S.A.* 2A:4A-60] clearly applies, all applications for and resistance to disclosure must be made by motion." Emphasis added. Thus, conversely, if *N.J.S.A.* 2A:4A-60 does clearly apply to the circumstances of the case, no application to the court is needed.

The Commissioner finds that *N.J.S.A.* 2A:4A-60(c)(3) and (e) clearly do apply to the facts of this case. *N.J.S.A.* 2A:4A-60, 60.1, 61 and 62 address the conditions under which information about juveniles may be disclosed and to whom. *N.J.S.A.* 2A:4A-60(c)(3) states that:

> At the time of charge, adjudication or disposition, information as to the identity of a juvenile charged with an offense, the offense charged, the adjudication and disposition shall, upon request, be disclosed to: . . . [o]n a confidential basis, the principal of the school where the juvenile is enrolled for use by the principal and such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety or discipline in the school or to [sic] planning programs relevant to the juvenile's educational and social development, provided that no record of such information shall be maintained except as authorized by regulation of the Department of Education . . . . [Emphasis added.]

And *N.J.S.A.* 2A:4A-60(e) provides that:

> Nothing in this section prohibits a law enforcement or prosecuting agency from providing the principal of a school with information identifying one or more juveniles who are under investigation or have been taken into custody for commission of any act that would constitute an offense if committed by an adult when the law enforcement or prosecuting agency determines that the information may be useful to the principal in maintaining order, safety or discipline in the school or in planning programs relevant to the juvenile's educational and social development. Information provided to the principal pursuant to this subsection shall be treated as confidential but may be made available to such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety or discipline in the school or for planning programs relevant to the juvenile's educational and social development. No information provided pursuant to this section shall be maintained. [Emphasis added.]

As stated above, the Commissioner finds that respondent presented enough evidence to support the proposition that Bartelet's concerns, on April 14, 2003, about protecting students and maintaining order were reasonable, and therefore satisfied *N.J.S.A.* 2A:4A-60's requirements for obtaining information about juveniles. Thus, respondent should have received the information about the offense charged, the adjudication, and the disposition, without an application to the court. That information could have, for instance, confirmed or denied whether M.G. was found with six bags of marijuana. In a case such as the present case, it is important to avoid the creation of catch-22's by requiring parties to prove their cases in order to get access to the information that they need to prove their cases.

The Commissioner also finds that sufficient competent evidence and authority exist to support the two-day suspension imposed by respondent. The suspension period can provide for drug screening, meetings with parents, and other activities designed to ascertain whether the student has been engaging in prohibited conduct and assess the likelihood that the student will continue conduct potentially detrimental to other students. Furthermore, in dispensing student discipline it is legitimate to factor in a message to other students, *M.T. on behalf of G.T. v. Ewing Township Board of Education*, OAL DKT. NO. EDS 10042-03, AGENCY DKT. NO. 2004 8471, decided May 6, 2004, at p.5.

As to the application of *N.J.S.A.* 18A:37-2(c), the Commissioner finds that it applies to M.G.'s conduct, for the same reasons as have been articulated above. *N.J.S.A.*18A:37-2 sets forth categories of conduct that warrant suspension. Category c. is "conduct of such character as to constitute a continuing danger to the physical well-being of other pupils." Considering the warning in respondent's Policy 5530 concerning Substance Abuse, which states that the Board "will take necessary and appropriate steps to protect the

school community from harm and from exposure to harmful substances," it is clear that under respondent's Policy 5530, distribution of such substances as marijuana is considered conduct that poses a "continuing danger to the physical well-being of other pupils." It should also be noted that by the statute's own language, conduct constituting good cause for suspension or expulsion includes, but is not limited to the conduct described in sections a through j of *N.J.S.A.* 18A:37-2

In sum, for the reasons set forth above, the Commissioner dismisses petitioner's claims relating to the two-day suspension imposed upon M.G. in April 2003,[11] The Commissioner dismisses the balance of petitioner's claims for the reasons set forth in the Initial Decision. The Commissioner also adopts the ALJ's order that exhibits P-15, P-16 and P-17 be sealed.

IT IS SO ORDERED.[12]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 28, 2006

Date of Mailing: June 29, 2006

[11] The Commissioner notes the mootness of the demand for expungement of the disciplinary action imposed by respondent since, as the ALJ found, there is no reference to the two-day suspension or the revocation of the class trip in M.G.'s educational record. It is not necessary to analyze whether the discipline imposed by respondent was of public importance, likely to reoccur, but capable of evading review, because the Commissioner upholds respondent's actions.

[12] This decision 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.*