

D.H., on behalf of minor child, G.H., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF WEST ORANGE, ESSEX COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner challenged her son’s suspension for possession of a firearm on school property, arguing that the penalty was excessive since the gun was a toy. Respondent Board contends that the penalty is warranted since the gun fits the statutory definition of “Firearm”.

The ALJ found, *inter alia*, that: the firearm in question is a soft air pistol that shoots pellets, and meets the definition of a firearm as set forth in *N.J.S.A. 2C:39-1f*; G.H. admitted that he had the gun on the school bus and in his locker on school property; there was no violation of procedural due process; and the Board’s disciplinary action was not arbitrary, capricious, or unreasonable. Accordingly, the ALJ affirmed the Board’s action in suspending G.H., and ordered the petition dismissed.

Upon full and independent review, the Commissioner concurs with the ALJ’s determinations articulated in the Initial Decision, and dismisses the petition for the reasons stated therein.

<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>

April 5, 2007

OAL DKT. NO. EDU 9015-06
AGENCY DKT. NO. 229-6/06

D.H., on behalf of minor child, G.H., :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner filed timely exceptions pursuant to *N.J.A.C. 1:1-18.4*.¹ No reply exceptions were received from the Board.

Petitioner's exceptions recast and reiterate her arguments advanced below. Specifically, she again argues that G.H. was denied procedural due process at the Board's hearing in that 1) the track coach should have been allowed to testify and 2) petitioner was not provided an opportunity to cross examine witnesses. Petitioner, additionally, corrects certain statements made by the Administrative Law Judge (ALJ) in her decision which petitioner contends do not comport to exact testimony at the instant hearing.

¹ Petitioner, who at all times during these proceedings was represented by legal counsel, submitted *pro se* exceptions to the Initial Decision. In that the Commissioner and her staff are, by law, strictly proscribed from considering information or argument outside the record of contested case proceedings – including papers sent directly by a party who is represented by legal counsel – petitioner was advised that her submission could not be taken into account or commented on in any way and this material was, therefore, returned to her. Petitioner subsequently advised the Bureau of Controversies and Disputes (the Bureau) that her representation by legal counsel had ended at the conclusion of the OAL hearing and she, therefore, requested that she be allowed to resubmit her *pro se* exceptions. By letter dated March 20, 2006, the Director of the Bureau advised the parties that, notwithstanding that petitioner was obligated at the time of her original submission to advise that she had elected to proceed *pro se*, in that she now attests that such is the case, her resubmitted exceptions, originally filed on March 6, 2007, would be accepted and considered by the Commissioner in her determination in this matter. Board counsel was afforded 5-days within which to file reply exceptions on behalf of the Board.

Upon a full and independent review, the Commissioner agrees with the conclusion of the ALJ that petitioner has failed to sustain her burden of establishing that the Board's action suspending her son, G.H., – for possession of a firearm on school property – was arbitrary, capricious, or unreasonable. As to petitioner's charges that the Board's hearing in this matter violated G.H.'s procedural due process rights, the Commissioner is in full accord with the ALJ that:

[t]here is no dispute by the Board of Education in this matter that the right to confront and cross-examine witnesses is preserved in our Constitution. However, the facts and circumstances of this case are such that the student admitted to the possession. Therefore, other students who were on the bus on April 25, 2006 could not add to the admission. And, regardless of whether or not the track coach intervened or should have intervened in this situation, the fact remains that G.H. had a gun on school property which has been legally described as a firearm. Testimony from the track coach could not change the admission made by G.H. Once G.H. confessed that he was in possession of the firearm on school property, there were no questions of fact remaining.
(Initial Decision at 7)

Accordingly, the recommended decision of the OAL is adopted – for the reasons stated therein – and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: April 5, 2007

Date of Mailing: April 5, 2007

² 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.*