

G.D.M. and T.A.M. on behalf of, :
minor child, B.M.M., :
 :
 PETITIONERS, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 RAMAPO INDIAN HILLS REGIONAL, :
 HIGH SCHOOL DISTRICT, :
 BERGEN COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioners challenged the Board’s adoption and implementation of Regulation 6145, entitled “Extracurricular Activities”, which sets forth requirements related to students’ conduct both on and off school grounds and specifies consequences for failure to comply therewith. Regulation 6145 was adopted in an effort to minimize the use of drugs and alcohol among students, but is not limited to drug or alcohol-related conduct. Consequences of violating the requirements of the regulation include the temporary revocation of participation in extracurricular activities. Petitioners contend that Regulation 6145 violates various provisions of the New Jersey and United States Constitutions and several New Jersey statutes and regulations. Both parties moved for summary decision.

The ALJ found, *inter alia*, that: the authority of a board of education over its students is subject to limitations, and is no greater than the authority conferred by statute; the authority of the board applies to student conduct on school grounds and at school-sponsored functions, with limited exceptions where the exercise of that authority is reasonably necessary for the student’s physical or emotional safety, security and well-being, or for reasons relating to the safety, security and well-being of other students, staff or school grounds; Regulation 6145 not only restrains students from the use, possession or distribution of drugs or alcoholic beverages, but also applies to violations of the New Jersey Code of Criminal Justice and/or applicable municipal code or ordinance provisions; respondent has disregarded the limitations on its authority over conduct of students away from school grounds, and has no authority in regard to the New Jersey criminal code or municipal code or ordinance provisions. Accordingly, the adoption of Regulation 6145 was *ultra vires*, and its enforcement is therefore unlawful. Additionally, the ALJ found that the Board disregarded parental rights protected by the Fourteenth Amendment to the United States Constitution. The ALJ granted petitioners’ motion for summary decision and ordered that Regulation 6145 is null and void.

Upon consideration and review, the Commissioner determined that Regulation 6145 gives the Board authority beyond the scope of the governing regulatory provisions, and is therefore unlawful. In so deciding, the Commissioner found that it was not necessary to reach to the constitutional arguments discussed by the ALJ. The Commissioner directed the Board to revise its policy to bring it into compliance with the requirements of *N.J.A.C. 6A:16-7.1* and *N.J.A.C. 6A:16-7.6*.

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.

September 13, 2010

OAL DKT. NO. EDU 11597-09
AGENCY DKT. NO. 225-9/09

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the respective exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by petitioners and the Board of Education. This case involves the interpretation of Regulation 6145, which contains a provision that enables the Board to deny participation in extracurricular activities based on student conduct away from school grounds. Although the Board adopted Regulation 6145 in an effort to minimize the use of drugs and alcohol among students, a violation of the policy and regulation is not limited to drug or alcohol related conduct.

In their exceptions, the petitioners did not dispute any of the findings made by the Administrative Law Judge (ALJ) but rather ask the Commissioner to reference the applicable regulatory provisions in the Final Decision, and to make a finding that extracurricular activities are an integral part of a thorough and efficient education, and that the exclusion therefrom based on charges unrelated to the school would violate B.M.M.'s rights guaranteed by the New Jersey Constitution.

In its exceptions, the Board initially argues that the petitioners did not have standing to bring this action because Regulation 6145 was never applied to B.M.M., and similarly that the Commissioner does not have jurisdiction to decide the constitutionality of Regulation 6145 because it amounts to a facial challenge. The Board also takes exception to the ALJ's reliance on three newspaper articles that were attached to the petitioner's certification.

Additionally, the Board takes exception to the ALJ's finding that Regulation 6145 is unconstitutional. The Board maintains that because the constitutionally protected interest of a parent's right in the care, custody, and control of their children does not extend to the circumstances at issue in this case, Regulation 6145 is not unconstitutional. Finally, the Board takes exception to the ALJ's determination that Regulation 6145 is *ultra vires* and violates the applicable regulatory provisions. Specifically, the Board argues that Regulation 6145 complies with *N.J.A.C. 6A:16-7.1* because it is designed to maintain the order and integrity of the school environment. The Board further argues that the revocation of a student's ability to participate in extracurricular activities is not discipline because such participation is a privilege not a right, and thus *N.J.A.C. 6A:16-7.6* does not apply in this case.

After consideration and review, the Commissioner finds that Regulation 6145 gives the Board authority that is beyond the scope of the governing regulatory provisions, and is therefore unlawful.¹ Although there were constitutional arguments presented by the parties and discussed by the ALJ, this case can be decided by evaluating whether Regulation 6145 is

¹ The Commissioner also finds that the petitioners did have standing to bring this action. Although the Board had never determined that B.M.M. violated Regulation 6145, the petitioners were asked to sign a consent form at the beginning of the school year stating that they had received a copy of the policy. It is well recognized that the courts apply a liberal approach to standing in New Jersey, and the fact that they were asked to sign the policy and that the policy would be applied to all students is a sufficient stake and adverseness to establish standing. *See, Crescent Park Tenants Ass'n v. Realty Equities Corp. of N.Y.*, 58 *N.J.* 98, 107 (1971).

consistent with the regulations governing the Board's authority to deny participation in extracurricular activities for conduct that occurs off school grounds that is unrelated to a school event. *N.J.A.C. 6A:16-7.1* and *N.J.A.C. 6A:16-7.6*.

The relevant portions of Regulation 6145 state the following:

1. General Behavioral Expectations:
 - a. Students are expected to comply with all of the Board's policies and regulations at all times ... and the District's Code of Student Conduct.
 - b. Students are required to conform to reasonable standards of acceptable behavior, to respect the rights, person and property of others, to preserve the degree of order necessary for the conduct of the educational program, and to obey those in authority.
 - c. Students shall not engage in activities that constitute criminal offenses or juvenile delinquency as defined by law.
2. Use of Alcoholic Beverages and/or Drugs:
 - a. Expectations: All student participants in Board-sponsored extracurricular activities must refrain from the use, possession or distribution of any alcoholic beverage or other drugs (unless prescribed by a physician) both on and off school grounds, during the season or activity in which the student wishes to participate in the extracurricular activity.

Consequences for Violations of Conduct Requirements:

1. Alleged violations of the above behavioral expectations occurring on school grounds and/or at school sponsored events will be reported by supervising staff member to the building administrator. **With respect to conduct occurring away from school grounds/events, an alleged violation of the above conduct requirements shall occur if a student is formally charged and/or arrested by law enforcement for an alleged violation of the New Jersey Code of Criminal Justice, and/or applicable municipal codes or ordinance provisions.**
2. Following notification of a student's alleged violation, the building administrator shall conduct a conference with the student and his/her parents, which shall include the student assistance counselor

(SAC) and other district personnel, as appropriate, at which time the student shall be provided the opportunity to address the alleged violation.

3. At the conclusion of the conference, the administrative personnel shall determine whether or not a violation of this Policy and Regulation has occurred.
4. If a violation has occurred, appropriate consequences under this Policy and Regulation shall be determined following consideration of all the facts and circumstances of a particular situation, but shall include as a minimum the following:
 - a. First Violation: The student may not participate in any extracurricular activities for seven (7) school days, and/or, at the discretion of the administrator, through and including the next scheduled competitive game and/or event.
 - b. Second Violation: The student may not participate in any extracurricular activities for ninety (90) school days.
 - c. Third Violation: The student may not participate in any extracurricular activities for one-hundred eighty (180) school days.

It is undisputed that the Board has an obligation to establish a code of conduct for students, and that the Board's desire to limit drug and alcohol abuse is a reasonable objective. The New Jersey Administrative Code contains provisions that establish the parameters by which all boards of education ("board") are bound in the establishment of student conduct codes. *N.J.A.C. 6A:16-7.1* provides in pertinent part,

Each district board of education shall develop, adopt and implement a code of conduct which establishes standards, policies and procedures for positive student development and student behavioral expectations on school grounds, including on school buses or at school sponsored functions, and as appropriate, for conduct away from school grounds, in accordance with *N.J.A.C. 6A:16-7.2* through 7.5, 7.8 and 7.9. [*N.J.A.C. 6A:16-7.1(a)*].

Further, "[a] district board of education may deny participation in extracurricular activities, school functions, sports or graduation exercises as disciplinary sanctions, where such measures

are designed to maintain the order and integrity of the school environment.” *N.J.A.C.* 6A:16-7.1(e). As such, there is no doubt that under certain circumstances a board may deny participation in extracurricular activities.

The regulations, however, place limits on a board’s authority to deny participation in extracurricular activities for conduct that occurs off school grounds that is unrelated to a school event. Under *N.J.A.C.* 6A:16-7.6, a board has the authority to “impose a consequence on a student for conduct away from school grounds ... that is consistent with the district board of education’s code of student conduct”. The board, however, can only exercise that authority when:

1. “it is reasonably necessary for the student’s physical or emotional safety, security and well-being or for reasons relating to the safety, security and well-being of other students, staff or school grounds pursuant to *N.J.S.A.* 18A:25-2 and 18A:37-2” [*N.J.A.C.* 6A:16-7.6(a)1] and
2. “the conduct which is the subject of the proposed consequence materially and substantially interferes with the requirements of appropriate discipline in the operation of the school.” [*N.J.A.C.* 6A:16-7.6(a)2]

It is against this backdrop that Regulation 6145 must be evaluated. As a threshold matter, the Board has attempted to suggest that the revocation of a student’s ability to participate in extracurricular activities is not discipline but merely a “non-disciplinary consequence” because such participation is a privilege, not a right. The Board’s argument is unfounded, and appears to be an attempt to circumvent the limitations on the authority of the Board imposed by *N.J.A.C.* 6A:16-7.6. The Commissioner agrees that participation in extracurricular activities is a privilege, and not a right, but that does not negate the fact that a board’s decision to revoke a student’s ability to participate amounts to a form of discipline. Therefore, the Commissioner

finds that Regulation 6145 must comply with the requirements relating to discipline for conduct away from school grounds that is outlined in *N.J.A.C. 6A:16-7.6*.

The Commissioner further finds that Regulation 6145 does not meet the elements contained in *N.J.A.C. 6A:16-7.6(a)*, which must be established in order for the Board to revoke a student's ability to participate in extracurricular activities as a result of conduct that occurs off school grounds. The plain language of Regulation 6145 encompasses too many potential conduct violations that would not meet the elements of *N.J.A.C. 6A:16-7.6(a)*. Although the purpose behind Regulation 6145 is the deterrent of drug and alcohol abuse, the Regulation can also be violated if a student is merely charged with any "violation of the New Jersey Code of Criminal Justice, and/or applicable municipal codes or ordinances". It is too much of a stretch to find that all off-school-grounds conduct that may result in one of those violations would automatically make it necessary for the Board to suspend or revoke a student's ability to participate in extracurricular activities in order to protect the well-being of the student, other students or the school staff. Further, the requirement in *N.J.A.C. 6A:16-7.6(a)2* that authorizes a board to revoke a student's ability to participate in extracurricular activities when the student's off-school-grounds conduct "materially and substantially interferes with the requirements of appropriate discipline in the operation of the school" emphasizes the notion that there must be some link between the conduct and the school environment. See also, *R.R. v. Bd. of Ed., Shore Reg. H.S.*, 109 *N.J. Super.* 337, 343-344 (Ch. Div. 1970).

Finally, the Commissioner is mindful that Regulation 6145 contains a due process provision that gives the student an opportunity to be heard once a charge is reported to the Board. However, Regulation 6145 does not require the Board to take into consideration the mandates contained in *N.J.A.C. 6A:16-7.6(a)* before the Board suspends or revokes participation in

extracurricular activities. Regulation 6145 equates to a blanket authorization permitting the Board to suspend participation in extracurricular activities based on off-school-grounds conduct without the requirements imposed by *N.J.A.C. 6A:16-7.6(a)*.

It is important to recognize that the regulations clearly distinguish between a board's authority to impose discipline for conduct that occurs on-site or at a school event as opposed to conduct that is completely unrelated to the school system. Certainly the Board has broad authority to impose discipline for student conduct that occurs on school grounds or at school events, which includes a ban on participation in extracurricular activities. Further, the Commissioner recognizes that there will be occasions where a student's conduct away from school grounds would necessitate the revocation of a student's ability to participate in extracurricular activities. As it is written, however, Regulation 6145 gives the Board more authority than is authorized by the New Jersey Administrative Code.

In light of the fact that Regulation 6145 does not comply with the governing regulatory provisions, there is no need to explore the constitutional arguments made by the petitioner and discussed by the ALJ. Accordingly, the recommended decision of the ALJ is adopted with respect to his finding that Regulation 6145 is unlawful. The Board is directed to revise its policy to bring it into compliance with the requirements of *N.J.A.C. 6A:16-7.1* and *N.J.A.C. 6A:16-7.6*.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 13, 2010

Date of Mailing: September 14, 2010

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