

G.J.C. AND L.C., on behalf of minor child, :
N.C., :

PETITIONERS, :

V. :

COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE :
BOROUGH OF SOMERVILLE, :
SOMERSET COUNTY, :

DECISION

RESPONDENT. :

SYNOPSIS

Petitioning parents appealed the Board's denial of credit for their son's senior- year, first-period Physics course due to excessive absenteeism, which barred him from graduation with his class on June 25, 1999 and prevented his graduation until he passed a five-credit course of his choosing, bringing the number of prerequisite credits to the total required.

The ALJ ordered that N.C. be credited with the A- grade earned and with the credits accumulated for successful completion of his Physics course, that N.C.'s cumulative grade point average be recalculated to reflect the actual grade earned and that N.C. be awarded his high school diploma.

The Commissioner concurred with the ALJ's finding of infirmity in the Board's appeal process for failure to provide petitioners with a clear listing of the absences underlying the decision to alter N.C.'s scholastic record, noting, however, that petitioners were warned about N.C.'s swiftly accumulating absences and reminded of the Board's policy of excessive absenteeism resulting in no course credit. Nonetheless, the Commissioner, like the ALJ, found that the Board's decision to compel N.C. to take a summer course after he had successfully completed his Physics course was unreasonable. The Commissioner affirmed the ALJ's recommended order of relief.

OAL DKT. NO. EDU 4627-99
AGENCY DKT. NO. 164-6/99

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. The Board's exceptions were untimely filed pursuant to *N.J.A.C. 1:1-18.4(a)*, in that the Initial Decision was mailed to the parties on October 15, 1999 and the exceptions were filed on November 1, 1999. Accordingly, the exceptions are not considered in the Commissioner's determination of this matter.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the ALJ's finding of infirmity in the Board's appeal process, in that the Board failed to provide petitioners with "a clear listing of those absences which underlay the school's decision to alter their son's scholastic record***." (Initial Decision at p. 13) Nonetheless, the Commissioner is compelled to observe that petitioners *were notified* by letters dated January 18, 1999 and April 28, 1999 that N.C.'s absences were swiftly accumulating, and were therein reminded of the Board's rule regarding 15 absences for full year courses and eight absences per semester course, as well as the Board's rule regarding tardiness after the first ten

minutes of class being recorded as a full absence. The letters further instructed petitioners that absences which exceed these amounts “*will result* in no credit being granted for the particular course” (Exhibits R-2 and R-3) (emphasis added) and referred petitioners to the handbook for further explanation. Thus, petitioners were duly informed that, as of December 23, 1998,¹ N.C. had five absences in his first period class and that, as of April 1, 1999,² N.C. had 14 absences in his first period class.

Thereafter, in his letter of May 14, 1999, petitioners were informed by Mr. Roesch that N.C. had been absent more than 15 times from his first period Physics course and would, therefore, receive an “Incomplete” at the end of the year. That correspondence provided petitioners with the process for appeal, noting that the appeal, as per the handbook, was “limited to situations where unforeseen factors have created hardships.” (Exhibit R-1a at p. 3) Therefore, while the Commissioner concurs with the ALJ that the Board should have provided petitioners with the information that formed the basis of its decision, *i.e.*, the specific dates on which absences were problematic, his finding does not in any way presume that petitioners were without knowledge of N.C.’s precarious position *for months before their appeal was initiated*, and also does not negate petitioners’ duty to know the Board’s rules regarding absenteeism and tardiness, to know exactly when their son was absent from school and the reasons therefor, and to monitor for themselves their son’s absences in relation to the Board’s rules.

Notwithstanding that petitioners cannot be held blameless in the events underlying the within dispute, like the ALJ, the Commissioner finds that the Board’s decision to compel N.C. to take a summer course, after he had successfully completed his Physics course, and received a grade of A-, was unreasonable. (Initial Decision at p. 12) *See also V.J.H. v.*

¹ As noted in the January 18, 1999 correspondence.

² As noted in the April 28, 1999 correspondence.

Board of Education of the City of Orange Township and Woodrow Zaros, 1987 S.L.D. 1669 at 1678, 1679 (wherein the Commissioner affirmed that although excessive absences and truancy from class may justifiably lead to the withholding of credit and denial of graduation, policies which call for an automatic imposition of a grade penalty for unexcused absence or absences resulting from suspensions will not be upheld); *J.B., on behalf of W.B. v. Board of Education of the Township of Pequannock, Passaic County*, 93 N.J.A.R. 2d (EDU) 664 (where the Commissioner held that a grading policy which automatically reduced a high school senior's grade to failing for cutting physical education class on the last day of school was arbitrary.)

Accordingly, the Initial Decision of the ALJ is affirmed, as amplified herein.³

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

January 12, 2000

³ This decision, as the Commissioner's final determination in the instant matter, 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. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.