

D.B., on behalf of minor, B.B., :

PETITIONER, :

V. :

COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE :

MORRIS SCHOOL DISTRICT, :

MORRIS COUNTY, THE :

SUPERINTENDENT OF SCHOOLS AND :

THE ADMINISTRATION OF :

MORRISTOWN HIGH SCHOOL, :

RESPONDENTS. :

DECISION

SYNOPSIS

Petitioning parent alleged the Board improperly required high school student B.B. to be referred to the Board’s Core Team for further investigation into possible chemical dependency. B.B. had been one of the students found to be in attendance at a “senior cut day” party where extensive drinking had taken place. The Board contended it was complying with the provisions of *N.J.S.A. 18A:40A-8* through –21 (Act).

The ALJ concluded that, as a matter of law, it was reasonable and not an abuse of the District’s discretion to determine that this was a high-risk situation and to refer B.B. to the Core Team for further investigation. The ALJ also concluded that the District was required to carry out its obligations under the Act, and the regulations and policies promulgated thereunder, even if the perceived risk to a student did not occur on school premises. The ALJ found it reasonable for the school officials to suspect that B.B. might be at risk for substance abuse regardless of whether she actually consumed alcohol on the date in question. Thus, the District implemented its required procedures outlined in its substance abuse policy and, only if the Core Team determined that there was reasonable suspicion to believe that B.B. was affected by substance abuse would she be required to have a chemical dependency assessment and urine drug screen. Accordingly, the ALJ concluded that as a matter of law under the circumstances of this case, the District did not exceed the parameters of its lawful authority nor did it violate any of B.B.’s constitutional rights. The ALJ concluded that the District was entitled to summary decision dismissing the appeal and petitioner was entitled to no relief in this forum. The ALJ ordered the evaluation of B.B. by the Core Team to proceed at the earliest possible time.

The Commissioner concurred that the matter was ripe for summary decision since there was no genuine issue as to any material fact. The Commissioner found that petitioner failed to demonstrate that the Board abused its discretion when it applied its policy which was adopted pursuant to the Act. The Commissioner granted summary decision to the Board. Petition was dismissed.

June 12, 2000

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions¹ and the Board's reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in reaching his decision.²

Upon careful and independent review of the record in this matter, the Commissioner concurs that this matter is ripe for summary decision, since there is no genuine issue as to any *material* fact. (*N.J.A.C.* 1:1-12.5)

Initially, the Commissioner cautions that this matter is distinguishable from *Hedges, supra*, wherein the student was suspected of being under the influence of a controlled dangerous substance while in school and was thereafter required to undergo an immediate

¹ In addition to his exception arguments, by letter dated May 25, 2000, petitioner also requested an opportunity for oral argument.

² Although the Board did not submit exceptions, it did go on record informing the Commissioner that graduation for students from the Morristown High School is scheduled for June 21, 2000, and that, as a senior, B.B. may graduate

medical examination, pursuant to *N.J.S.A.* 18A:40A-12. Rather, the dispute herein arises upon application of the Board's policy which was adopted pursuant to *N.J.S.A.* 18A:40A-10, and the regulations relevant thereto. (Initial Decision at 2, 3) Like the Administrative Law Judge (ALJ), the Commissioner finds that, under these circumstances, petitioner has failed to demonstrate that the Board abused its discretion when it determined that B.B., who was found to be in attendance at a "senior cut day" party where extensive drinking had undisputedly taken place, was involved in a high-risk situation, thereby activating the policy which compelled her referral to its Core Team for further investigation. (Initial Decision at 9) Neither can the Commissioner find that the Board's application of its policy constitutes a violation of law.

Accordingly, the Commissioner adopts the ALJ's findings and concludes that summary decision is properly granted to the Board. The within petition is dismissed,³ thereby leaving undisturbed the Board's decision to refer B.B. to its Core Team.⁴

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: June 12, 2000

Date of Mailing: June 12, 2000

on that date. The Board, therefore, urged the Commissioner's "prompt attention to affirming this matter to allow the District to fulfill its obligations ***" as per the Initial Decision. (Board's Letter dated May 16, 2000)

³ D.B. notes in his exceptions that B.B. has now turned 18 years old and, therefore, joins in this petition, as well as the submission of exceptions to the Initial Decision. (Petitioner's Exceptions at 1)

⁴ The Order, issued by the OAL on December 6, 1999 granting an interim stay of Board action pending review of this matter on its merits (Initial Decision at 2) was not transmitted to the Commissioner for review. Accordingly, the Commissioner makes no finding herein as to whether petitioner would have satisfied the standard set forth in *Crowe v. DeGioia*, 90 *N.J.* 126 (1982).

⁵ This decision, as the Commissioner's final determination, 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.