

F.B. AND M.B., on behalf of minor children, :
 J.B. AND L.B.,

 PETITIONERS, :

 V. : COMMISSIONER OF EDUCATION

 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF MOORESTOWN,
 BURLINGTON COUNTY, :

 RESPONDENT. :

 _____:

SYNOPSIS

Petitioners appealed the Board’s decision to suspend J.B. and L.B. from classes and extra-curricular activities for five and ten days, respectively, for consumption of alcohol off school premises prior to a school-sponsored dance.

The ALJ concluded that the Board’s punishment of J.B. and L.B. was arbitrary and capricious since it did not enforce its Drug and Alcohol Policy against all students suspected of involvement in the incident. The ALJ further determined that the Board was not authorized by its policy to impose sanctions for this type of conduct since the policy’s express terms do not clearly extend to such conduct, noting that the prohibition against drinking “near school property” is vague and overbroad and no one standing on school property would have been able to see or be affected by the prohibited activity.

The Commissioner adopted the Initial Decision of the ALJ for the reasons expressed therein but clarified that distance is not determinative of the nexus between alcohol consumption and school functions, citing *R.F. v. Park Ridge Board of Education*. The Commissioner directed the Board to revise its policy to eliminate the phrase “near school property” to reflect more clearly the sphere of the Board’s disciplinary authority and to remove from J.B.’s and L.B.’s school records all references to the disciplinary action imposed.

OAL DKT. NO. EDU 2655-99
AGENCY DKT. NO. 41-3/99

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The record in this matter and the Initial Decision of the Office of Administrative Law have been reviewed. No exceptions were filed by the parties.

Upon his independent review of the record in this matter, the Commissioner concurs with the ultimate conclusion of the Administrative Law Judge (ALJ) that the Board's action in suspending J.B. and L.B. from classes for five days and from extra-curricular activities for ten days was arbitrary and capricious since the Board did not enforce its Drug and Alcohol Policy towards all students who were suspected of involvement in this incident. The Commissioner concurs with the ALJ that "[s]ubstantive due process and fundamental fairness require that similarly situated persons receive similar treatment from disciplinary authorities." (Initial Decision at 12)

The Commissioner further concurs that the Board was not authorized by its own disciplinary policy to impose sanctions for conduct of the type at issue herein since

the wording of that policy does not clearly extend to such conduct. Notwithstanding such concurrence, however, the important public policy question raised in this matter necessitates comment on the ALJ's conclusions regarding the language "near school property" as found in the Board's policy. While the Commissioner agrees that the phrase "near school property" is vague and that the Board should revise its policy to reflect more accurately the sphere of the Board's disciplinary authority, the Commissioner disagrees with any intimation that the Board's authority is restricted to a distance from the school where "[n]o one standing on school property would have been able to see these prohibited activities or be affected by them." (*Id.* at 11) The Commissioner avers that distance is not determinative of the nexus between alcohol consumption and school functions. Whether the alcohol consumption occurs within the boundaries of the school district, before or after a school event, or on the way to or from a school event, within or across school boundaries, the Commissioner's sentiment regarding alcohol consumption by students remains unambiguous, as articulated in *R.F. v. Park Ridge Board of Education*, 93 N.J.A.R. 2d (EDU) 79, 82, *aff'd* 93 N.J.A.R. 2d (EDU) 416 and *R.F. v. Park Ridge Borough Board of Education*, 97 N.J.A.R. 2d (EDU) 1:

Let there be no misunderstanding of the Commissioner's conviction in this regard: be it a sip, a slug, or a keg of alcohol consumed on the way to, during or following a school-sponsored event, such behavior as exhibited by these teenaged students, who were fully cognizant of the consequences that could flow from their voluntary act, cannot and will not be sanctioned, excused or mitigated in the face of the Legislature's clear intent as stated in *N.J.S.A. 18A:37-2* and reflected in the Board's policy***.

The Commissioner therefore adopts the Initial Decision of the ALJ for the reasons expressed therein, as clarified above.¹ The Board is directed to revise its policy to eliminate the phrase “near school property” and to reflect more clearly the sphere of the Board’s disciplinary authority, consistent with the cautions articulated by the ALJ. The Board is further directed to remove from J.B.’s and L.B.’s school records all references to the disciplinary action imposed.²

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

February 15, 2000

¹ The Commissioner notes, with reference to the statements of the ALJ (Initial Decision at 9 and 11), that although parents are excluded from prosecution under certain circumstances pursuant to *N.J.S.A. 2C:33-17*, the conduct at issue herein would be unlawful even if parental permission had been given.

² 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.