

M.G. AND M.G., on behalf of minor child, A.G., :
 PETITIONERS, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF WASHINGTON,
 GLOUCESTER COUNTY, :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioners challenged the Board’s determination to expel their son after he twice tested positive for marijuana, arguing that the Board failed to follow the Commissioner’s directives when reaching its determination.

At the conclusion of the hearing, the ALJ held that the Board’s determination to expel A.G. was not arbitrary, capricious or unreasonable. The ALJ determined that the testimony of the administrators from the district that placement of A.G. in the alternative school was considered and rejected as an option to expulsion because of A.G.’s failure to enroll in intensive drug treatment and based on his and his family’s apparent absence of desire to combat his drug abuse was credible.

Having reviewed the record and the transcript of the hearing, the Commissioner affirmed the decision of the ALJ with modification. The Commissioner affirmed the ALJ’s conclusion that petitioners failed to sustain their burden of establishing that the Board’s decision to expel A.G. was arbitrary, capricious or otherwise contrary to law and that, consequently, such determination must be sustained. The Commissioner, however, rejected the ALJ’s statement that “no legal support is cited by the Commissioner of Education for the proposition that a local board of education is required specifically to consider alternative educational options for a nonclassified student over sixteen years of age before expulsion can be ordered.***” Citing *Scher*, the Commissioner noted that it is well-established that “termination of a pupil’s right to attend public schools of a district is a drastic and desperate remedy which should be employed only when no other course is possible.” Consequently, in reviewing the propriety of such a decision, the Commissioner must be persuaded that expulsion is employed as the last ditch expedient. Petition was dismissed.

August 6, 2001

OAL DKT. NO. EDU 208-01
AGENCY DKT. NO. 20-1/01

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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 exceptions and the Board's reply thereto were filed in accordance with the requirements of *N.J.A.C.* 1:1-18.4.

In that petitioners' exceptions are essentially a verbatim recitation of their post-hearing brief advanced before the Administrative Law Judge (ALJ), and that the Initial Decision fully considers and addresses all relevant arguments made therein, petitioners' reiterative exception submission will not be revisited here.

Upon careful and independent review of the record in this matter, which included a transcript of the hearing conducted at the OAL on March 22, 2001, the Commissioner affirms the ALJ's conclusion that petitioners have failed to sustain their burden of establishing that the Board's decision to expel A.G. was arbitrary, capricious or otherwise contrary to law and that, consequently, such determination must be sustained.

In so concluding, however, the Commissioner specifically rejects the ALJ's discussion on page 11 of the Initial Decision wherein he states:

[I]t must be noted that no legal support is cited by the Commissioner of Education for the proposition that a local board of education is required specifically to consider alternative educational options for a nonclassified student over sixteen years of age before expulsion can be ordered.***

To the contrary, the Commissioner has long held that “[t]ermination of a pupil’s right to attend public schools of a district is a drastic and desperate remedy which should be employed only when no other course is possible.” *Scher v. West Orange Board of Education*, 1968 S.L.D. 92, 96; *see, also, C.S. v. Township of Piscataway*, 97 N.J.A.R.2d (EDU) 573, *aff’d* State Board April 1, 1998, slip op. at 5. Consequently, in his review of such a determination, the Commissioner must be persuaded that expulsion is employed as the last ditch expedient which it is expected to be. *See Scher, supra*.

Implicit in such a determination is assurance that a board, in making its decision, considered the appropriateness of alternatives, short of expulsion, which would accomplish its objective of removing a child from a regular educational environment while still allowing him to continue his educational program in a public school setting. The Commissioner, similarly, does not concur with the ALJ’s suggestion of apparent inconsistency between this matter and *Somerset County Educational Services Commission, supra*, a case with a wholly unique fact pattern.¹ Where, as in this matter, the “lawfulness” of the Board’s expulsion is itself at issue, which it was not in *Somerset*, and the Commissioner’s review leads him to believe that the Board *may* have taken such a drastic measure without the benefit of a sufficiently full deliberation of possible alternatives prior to permanently depriving a student of public education, it is entirely

¹ *Somerset* dealt with a board’s refusal to pay for tuition and services rendered to a child, domiciled in the district, who was enrolled in the Alternative to Incarceration Program pursuant to order of the Superior Court, as that child had previously been expelled from its schools. There the Commissioner rejected arguments advanced by petitioner and alluded to by the ALJ which conveyed the impression that there was any obligation on the part of a board to provide or pay for educational services for a student after it has *lawfully* acted to expel a student pursuant to *N.J.S.A. 18A:37-1 et seq.*, except, as was the circumstance in that case, where a court of appropriate jurisdiction orders the student’s school placement or where a statutory or regulatory provision imposes such an obligation.

appropriate, if not mandatory, that the Commissioner order a continuation of educational services to the child during the period while this concern is being addressed and resolved. Moreover, notwithstanding that the ALJ may not necessarily share the Commissioner's uneasiness with respect to this Board's initial deliberations in this regard, as the individual charged with the oversight of public schools and students in New Jersey, the Commissioner of Education must be satisfied in matters of this type that actions taken by school boards are not an abuse of their discretionary powers.

Finally, it must be emphasized that this decision does not in any way suggest that local boards of education cannot expel students from their schools. Rather, it once again emphasizes that before a board takes that dire step it must assure that less draconian courses of action were considered and found to be inappropriate under the particular circumstances of the case.

Accordingly, the Initial Decision of the OAL is adopted for the reasons stated therein, as modified above, and the Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: August 6, 2001

Date of Mailing: August 6, 2001

² 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:2-1.1 et seq.* Commissioner decisions are deemed filed three days after the date of mailing to the parties.