

R.P., on behalf of minor child,	:	
J.J.B.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF BEDMINSTER,	:	
SOMERSET COUNTY, AND BARKER BUS	:	
COMPANY,	:	
	:	
RESPONDENTS.	:	

SYNOPSIS

Petitioner challenged her daughter’s record of suspensions and discipline.

The ALJ concluded that the Board demonstrated that there were no genuine issues of material fact requiring a hearing and that the Board was entitled to prevail as a matter of law. Some of the allegations were time barred (strip search and harassment by a bus driver) while other allegations failed since the Board proved it acted within its authority and its decisions were entitled to a presumption of correctness (dress code, assault and detention matters). The ALJ granted the Board’s Motion for Summary Decision and dismissed the Petition of Appeal.

The Commissioner determined that to the extent he has jurisdiction to hear and decide this matter, he concurred with the findings and conclusions of the ALJ. He determined, however, that the evidence later placed on the record concerning J.J.B.’s classification for special education indicated that this matter was not properly before the Commissioner. The petition was dismissed.

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.

October 27, 2003

OAL DKT. NO. EDU 738-03
AGENCY DKT. NO. 362-11/02

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

This matter was opened before the Commissioner of Education by Petition of Appeal and a letter requesting emergent relief dated November 13, 2002. By letter dated November 14, 2002 from the New Jersey Department of Education, petitioner was apprised of the deficiencies in her petition and request for emergent relief. Additionally, due to the nature of her claims, petitioner was specifically advised therein:

that to the extent any issues related to your claim(s) herein implicate education programming and services regulated by Section 504 of the Rehabilitation Act of 1973 and/or the Individuals with Disabilities Education Act (IDEA), any such claim must be pursued before the Office of Special Education pursuant to *N.J.A.C. 6A:14-1.1 et seq.* (Letter from Director, Bureau of Controversies and Disputes at 2)

A copy of the letter was also sent to the Board Secretary, Superintendent and County Superintendent. Thereafter, although petitioner perfected her Petition of Appeal, she did not file

a proper application for emergent relief pursuant to *N.J.A.C.* 6A:3-1.6. Neither did petitioner clarify, amend or withdraw her petition in response to the Director's advisement, noted above.

The Board filed its Answer with Separate Defenses on February 6, 2003.¹ Notably, although the Answer addressed petitioner's substantive claims regarding the discipline issued to J.J.B. as raised in the Petition of Appeal, the Board did not indicate that J.J.B. had been classified while attending school in its District. Neither did the Board raise, within its Separate Defenses, the issue of the Commissioner's jurisdiction herein. Therefore, this matter was transmitted to the OAL for proceedings.

While at the OAL, the following evidence was placed on the record:

- A copy of a report from an IEP conference held for J.J.B. April 11, 2002, when J.J.B. was in sixth grade. The report indicates that J.J.B. is "eligible for special education services in the category of Emotionally Disturbed based on her initial assessment and eligibility of 4/6/01." (Bedminster Township School District IEP, received by the OAL on May 1, 2003 and again on May 28, 2003)
- A letter dated November 1, 2002 from Joyce Fitzmaurice, Director of Student Services for the Board, to petitioner, stating, in pertinent part:

As [J.J.B.] has been suspended for more than ten days this academic year, it is required that we hold a "manifestation determination" meeting to address such issues as to the appropriateness of [J.J.B.'s] IEP and placement and whether her behavior is manifestation of her disability.

We will hold this meeting on Monday, November 11th, at 9:00 a.m. [J.J.B.'s] teachers, the Child Study Team, the principal and I will be present. You are invited to attend.*** (Fitzmaurice's Letter, November 1, 2002, received by OAL on May 28, 2003)

¹ The delay in filing an Answer was due to petitioner's improper service of the Petition of Appeal.

- A letter dated November 20, 2002 from Joyce Fitzmaurice, enclosing a copy of the manifestation determination that was developed at the aforementioned meeting, wherein it was found that J.J.B.'s "behavior is judged to be a manifestation of her disability."² (Fitzmaurice's Letter and Report, November 20, 2002, received by OAL on May 28, 2003)
- An Affidavit dated April 23, 2003 from Diane Schmidt, Interim Principal of the Bedminster School, affirming, in pertinent part:

In late October of 2002, J.J.B. was issued a ten (10) day out of school suspension after she hit a male student on the back of his head, causing the child to suffer a recurrence of a previous head injury. The decision to suspend J.J.B. for a period of ten (10) days was made by me in consultation with the Superintendent of Schools as well as the Director of the Child Study Team.*** (Brief on Behalf of Respondent Board of Education of the Township of Bedminster In Support of Motion for Summary Decision Pursuant to *N.J.A.C. 1:1-12.5*, Affidavit of Diane Schmidt at 2)

Upon careful review of the record as supplemented at the OAL, the Commissioner determines that to the extent he has jurisdiction to hear and decide this matter, he concurs with the findings and conclusions of the ALJ. However, notwithstanding the parties' silence in their initial pleadings as to J.J.B.'s classification for special education, a fact which is of paramount importance when considering student discipline issues, the evidence later placed on this record strongly indicates that this matter is not properly before the Commissioner.³ *I.D. and M.D. on Behalf of C.D. v. Board of Education of the Township of Hazlet, Monmouth County*, State Board Decision April 2, 1997; *see also, East Brunswick Board of Education v. New Jersey*

² Petitioner was not listed as attending the meeting.

³ The Commissioner so concludes, notwithstanding that the record additionally contains a letter dated July 10, 2003 from petitioner to respondent's counsel, wherein petitioner states, in pertinent part, "Let me also remind out [sic] that JJB is not classified as an emotionally disturbed child.*** (Letter from Petitioner to Paul Green, Esq., July 10, 2003, received by the OAL on July 11, 2003)

State Board of Education, EHLR DEC. 554:122 (DCNJ 1982); *A.N. v. Clark Bd. of Ed.*, 6 *N.J.A.R.* 360 (1983).

Accordingly, the within Petition of Appeal is dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: October 27, 2003

Date of Mailing: October 27, 2003

⁴ This decision 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.*