

Z.G., ON BEHALF OF MINOR CHILD, :
E.G., :
PETITIONER, : COMMISSIONER OF EDUCATION
: DECISION
V. :
: NEW JERSEY STATE DEPARTMENT
OF EDUCATION, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner challenged the New Jersey Department of Education’s assignment to his son, E.G., of a “V2” score on the March 2004 High School Proficiency Assessment (HSPA), and sought alteration of the Department’s records reflecting such designation. “V2” indicates that the student “cheated or was disruptive on the exam” and was assigned to E.G. because he refused to take the math portion of the HSPA test. Petitioner maintained that E.G. was unable to take this section of the exam because he is physically handicapped and was not allowed an appropriate accommodation for his disability; specifically, E.G. was not allowed to use a Palm Pilot in place of the graphing calculator necessary to complete the math portion of the test, and was instead instructed to use a TI-83 emulator, on which he maintained he had not been adequately trained.

The ALJ recommended dismissal of the petition, finding that petitioner demonstrated no basis, either in law or fact, on which the Department could be compelled to set aside its policy—for which the Department had demonstrated a sound basis—of not permitting changes to the final report generated by the Department for any given administration of the HSPA test. The ALJ found petitioner’s allegations of harm speculative at best, given that access to Department HSPA records is strictly controlled, and noted that the local school district is free to handle the designation in E.G.’s individual pupil record as it sees fit.

The Commissioner adopted the Initial Decision as his own for the reasons expressed therein, further noting that the “V2” score was appropriately assigned because E.G. began the math portion of the exam, but then refused to continue taking it—thus producing, for purposes of Department record-keeping, an answer book that needed to be voided for scoring purposes due to disruption of the standard testing procedure by the test-taking student.

<p>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.</p>

OAL DKT. NO. EDU 11503-04
AGENCY DKT. NO. 343-9/04

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have petitioner’s exceptions and the reply thereto filed by the Department of Education (Department) in accordance with *N.J.A.C. 1:1-18.4*.

On exception, petitioner reiterates his previously expressed contention that a Department policy rooted in “administrative convenience” should not be allowed to take precedence over the civil rights of a handicapped minor, either E.G. or any future student who may find himself in a similar situation. Petitioner further contends that the Administrative Law Judge (ALJ) erred in failing to consider—as she was required to do in a matter decided on a summary basis—the potential for outside access to E.G.’s “V2” designation in the light most favorable to E.G., who has additionally suffered emotional damage by being falsely labeled a “cheater.” (Petitioner’s Exceptions at 1-2)

In reply, the Department reiterates that petitioner has identified no basis in law that would compel the Department to alter procedures which have been specifically

developed to address the unique requirements of the State testing program and are enforced without exception so as to ensure the integrity of the score reporting and data compilation process for each test cycle; certainly, petitioner has not established that the Department in any way violated E.G.'s civil rights or caused him actionable harm. The Department further urges that the ALJ was correct in her assessment of petitioner's proffered concerns about possible release of E.G.'s "V2" Department test report, not only because such concerns were unsupported by any facts brought to the record, but also because—even if release were theoretically possible—there would still be no harm to E.G. since the "V2" designation is nothing more than an administrative code reflecting the fact that an irregularity occurred subsequent to the student's commencing the test such that the answer book for that particular test administration could not be scored. (Department's Reply at 1-4)

Upon his own independent review and consideration, the Commissioner determines to adopt the Initial Decision of the ALJ. It is clear from the record that there are sound reasons for the Department's policies and practices with respect to alteration of test reports, particularly given the nature and purpose of the final (Cycle II) report issued at the conclusion of any given test administration. (See Certification of Timothy A. Peters, appended to Brief in Opposition to Petitioner's Motion for Summary Decision and in Support of Respondent's Cross-Motion for Summary Decision) It is equally clear that, even assuming *arguendo* that such alteration could be compelled under appropriate circumstances, no change would be warranted in this case because E.G.'s actions did, in fact, fall within the purview of the "V2" administrative designation, which encompasses student-initiated disruption of testing procedures as well as cheating;

whatever issues E.G. may have had with the accommodation provided by the district, and, regardless of whether he was justified in his decision, E.G. undisputedly began taking the test and then refused to continue it, thus producing—for purposes of the Department’s record-keeping—an answer book that needed to be voided for scoring purposes due to disruption of the standard testing procedure by the test-taking student. In this regard, the Commissioner concurs with the Department that: 1) allowing changes to test reports “without a cognizable legal basis or actionable harm alleged as the justification for doing so,” would set a precedent allowing any unhappy test taker to seek alteration of reported results; 2) the Department should not be compelled to create new administrative classification categories every time a particular situation is perceived by an involved party as not “fitting comfortably into [the established] reporting and scoring scheme,” and 3) to prevail in a claim of the type made herein, a petitioner must at the very least make some demonstration of an interest that outweighs the Department’s demonstrated interest in “uniformity, efficiency, and security” with respect to administration of the Statewide testing program. (Reply in Opposition to Petitioner’s Motion for Summary Decision and in Support of Respondent’s Cross-Motion for Summary Decision at 3)¹

¹ To the extent that petitioner remains concerned about disclosure of the “V2” designation on E.G.’s *local district* pupil record because petitioner and the district Board of Education entered—in the due process proceeding referenced in the Initial Decision at 2—into a settlement agreement providing that the district will enter into its pupil record for E.G. whatever test score designation is found appropriate in the instant matter (Exhibit E), the Commissioner concurs that the outcome of petitioner’s dispute with the Department cannot be dictated by a settlement agreement reached between petitioner and the local district Board in a separate proceeding to which the Department was not a party. The Department correctly notes that nothing, save their own settlement agreement, prevents petitioner and the district from reaching independent accord on how the test score in question will be handled with respect to clarification or release of E.G.’s local district pupil record. (Reply in Opposition to Petitioner’s Motion for Summary Decision and in Support of Respondent’s Cross-Motion for Summary Decision at 6)

Accordingly, for the reasons expressed therein and above, the Initial Decision of the OAL dismissing the Petition of Appeal is adopted as the final decision in this matter.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 9, 2005

Date of Mailing: September 12, 2005

² 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.*