

#89-10 (OAL Decision: Not yet available online)

M.R., on behalf of minor child, D.R., :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
BOARD OF TRUSTEES OF THE :  
HOBOKEN CHARTER SCHOOL, :  
HUDSON COUNTY, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioner challenged her son’s expulsion from Hoboken Charter School as a consequence of D.R.’s participation in a fight with three other students in the hallway on April 27, 2009, and for possession of homemade brass knuckles at the time of the altercation. Petitioner contends that D.R. was punished unfairly as he was defending himself, and seeks to have D.R.’s expulsion declared invalid and expunged from his records; additionally, she seeks to have D.R. receive credit for his fourth-marking period work as a ninth grader so that he may graduate from the private school in which he is now enrolled in a “reasonable amount of time.”

The ALJ found that: it is undisputed that D.R. participated in a fight, broke school property, and was found to be in possession of a weapon at school – all violations of school rules which M.R. and D.R. had acknowledged receipt of at the beginning of the school year in question; the security video documenting the fight in question depicts the seriousness of the infractions; pursuant to *N.J.S.A. 18A:37-1 to -5*, a student may be suspended and/or expelled from school subject to due process requirements, which were satisfied in this case; there was no lack of notice as to the school rules that could serve as a basis for vacating the expulsion; and, as to D.R. receiving credit for his ninth grade work, M.R. and D.R. had been duly notified well before the fight – on February 13, 2009 – that D.R. had been determined ineligible for promotion to tenth grade because of excessive absenteeism. Accordingly, the ALJ affirmed the action of the Board in suspending and expelling D.R., and dismissed the petition.

Upon a full and independent review, the Commissioner adopted in part, and rejected in part, the Initial Decision of the OAL, finding, *inter alia*, that, pursuant to *N.J.A.C. 6A:16-7.5*, a student cannot be expelled unless he engaged a second time in conduct warranting possible suspension or expulsion, after having first served a duly imposed long-term suspension for an earlier infraction. Accordingly, the Commissioner determined that the appropriate remedy in this matter is the revision of D.R.’s school record to reflect imposition of a long-term suspension on D.R., commencing on May 14, 2009, followed by his withdrawal from the school at the end of the school year. The Commissioner directed the charter school to revise D.R.’s student records accordingly, and dismissed petitioner’s request for credit for D.R.’s work during the fourth-marking period of the 2008-2009 school year.

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.

March 22, 2010

OAL DKT. NO. EDU 9662-09  
AGENCY DKT. NO. 204-8/09

M.R., on behalf of minor child, D.R., :  
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 PETITIONER, :  
 : COMMISSIONER OF EDUCATION  
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 BOARD OF TRUSTEES OF THE :  
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon such review, the Commissioner adopts in part, and rejects in part, the Initial Decision.

In her pleading before the Commissioner, petitioner sought to have D.R.’s expulsion “declared invalid and expunged from Hoboken Charter School records” and to have him receive credit for his fourth-marking period work as a ninth grader at the school so that he may “graduate from KAS Prep [the school he has been attending since the beginning of the 2009-10 school year<sup>1</sup>] in a reasonable amount of time.” (Petition of Appeal at 2)

With respect to petitioner’s request for D.R. to receive credit for work completed during the 2008-09 school year, the Commissioner fully concurs with the Administrative Law Judge (ALJ), for the reasons set forth in the Initial Decision, that – quite apart from any

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<sup>1</sup> See Board’s Answer at 5, not disputed by petitioner.

consequences flowing from D.R.'s suspension and expulsion following the fight of April 27, 2009 – D.R. is not entitled to any such credit.

With respect to D.R.'s expulsion from the charter school, however, the Commissioner cannot agree that the charter school complied with all applicable rules of procedure; indeed, the ALJ does not discuss, and appears not to have considered, petitioner's allegations with respect to compliance with the rules and regulations adopted by the State Board of Education to implement the controlling statutes. Specifically, while there is no question that D.R.'s conduct was sufficiently serious to warrant suspension or expulsion and that he was provided with the requisite due process by school staff and before the Board of Trustees prior to the determination to impose discipline, the fact remains that – as clearly stated in *N.J.A.C. 6A:16-7.5*<sup>2</sup> – D.R. could not be *expelled* unless he had engaged a *second* time in conduct warranting possible suspension or expulsion, after having first served a duly imposed long-term suspension for an earlier infraction and received programs or services pursuant to *N.J.A.C. 6A:16-7.3(f)* – thus waiving his entitlement to educational services or payment therefor by the charter school. There is no dispute that that did not occur in this instance, where: 1) there is no indication in the record of any prior long-term suspension; 2) the behavior subject to discipline occurred on April 27, 2009; and 3) the Board of Trustees acted to discontinue all services to D.R. on May 13, 2009.<sup>3</sup>

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<sup>2</sup> Pursuant to *N.J.A.C. 6A:16-1.2*, the rules of the chapter apply to charter schools as well as to district boards of education.

<sup>3</sup> Although the referenced rule additionally requires provision of an educational program or services to an expelled student while appeal to the Commissioner is pending, petitioner's appeal was not filed until August 17, 2009, by which time petitioner had – as evidenced by her petition – arranged for D.R. to attend KAS Preparatory School. The Commissioner further notes that a charter school's obligation to provide the programs and services for suspended students required by *N.J.A.C. 6A:16* is not obviated by a student's ability to enroll in the district where he or she is entitled to attend school pursuant to *N.J.S.A. 18A:38-1*.

In view of this finding and in light of the relief requested by petitioner – who has not sought D.R.’s return to the charter school and who has for other reasons failed to demonstrate D.R.’s entitlement to credit for any part of the 2008-09 school year – the Commissioner deems the appropriate remedy in this matter to be revision of D.R.’s student record to reflect imposition on D.R., commencing May 14, 2009 by action of the Board of Trustees taken on May 13, 2009, of a *long-term suspension*, followed by his withdrawal from the school at the end of the school year.

Accordingly, for the reasons expressed herein, the Initial Decision of the OAL is adopted in so far as it dismisses petitioner’s request for credit, and rejected in so far as it upholds the charter school’s disciplinary action against D.R. in all respects. The Hoboken Charter School is directed to revise D.R.’s student records to reflect long-term suspension and withdrawal as set forth above.

IT IS SO ORDERED.<sup>4</sup>

COMMISSIONER OF EDUCATION

Date of Decision: March 22, 2010

Date of Mailing: March 23, 2010

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<sup>4</sup> Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Appellate Division of the Superior Court.