

#332-11 (OAL Decision: Not yet available online)

G.D.M. and T.A.M., on behalf of minor child, :  
G.D.M., :  
PETITIONERS, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
RAMAPO INDIAN HILLS REGIONAL, :  
HIGH SCHOOL DISTRICT, :  
BERGEN COUNTY, :  
RESPONDENT. :

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### SYNOPSIS

In 2009, petitioners challenged the Board’s adoption and implementation of Regulation 6145, entitled “Extracurricular Activities,” which set forth requirements related to students’ conduct both on and off school grounds and specifies consequences for failure to comply therewith. Consequences of violating the requirements of the regulation include the temporary revocation of participation in extracurricular activities. Petitioners contended that Regulation 6145 was unconstitutional, overbroad, and in violation of their constitutional rights. The case was heard in the OAL and the Commissioner subsequently issued a final decision finding that Regulation 6145 was unlawful and directing the Board to revise its policy to bring it into compliance with *N.J.A.C. 6A:16-7.1* and *N.J.A.C. 6A:16-7.6*. In October 2010, the Board adopted a revised version of Regulation 6145. The instant appeal was filed in November 2010, in which petitioners allege that the revised regulation is unlawful and does not comply with the Commissioner’s final decision.

The ALJ found, *inter alia*, that: there are no material facts in dispute and the matter is ripe for summary decision; the Board’s argument that the petitioners’ appeal should be dismissed because their claims are barred by the doctrine of res judicata is without merit; Regulation 6145 as revised is still unlawful, as it is not in compliance with the requirements of *N.J.A.C. 6A:16-7.1* and *N.J.A.C. 6A:16-7.6*, and is unconstitutional and overreaches a school board’s authority. The ALJ granted the petitioners’ motion for summary decision and directed the Board to revise its policy to bring it into compliance with the regulation.

Upon consideration and review, the Commissioner rejected the Initial Decision of the ALJ and dismissed the petition. The Commissioner determined that Regulation 6145 as revised does comply with the requirements of *N.J.A.C. 6A:16-7.1* and *N.J.A.C. 6A:16-7.6*, finding, *inter alia*, that the key inquiry relating to the suspension from extracurricular activities based on off-school-grounds conduct is not whether the conduct was unlawful or whether the student was arrested, but rather whether the suspension is reasonably necessary to protect the well-being of the student, other students or the school staff, and whether the conduct interferes with the requirements of appropriate discipline in the operation of a school.

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.
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August 22, 2011

OAL DKT. NO. EDU 13033-10  
AGENCY DKT. NO. 638-11/10

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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 the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the Board of Education. This case involves the interpretation of the Board’s revised version of Regulation 6145, which contains a provision that enables the Board to deny participation in extracurricular activities based on student conduct away from school grounds.<sup>1</sup>

The Board takes exception to the Administrative Law Judge’s (“ALJ”) determination that the revised version of Regulation 6145 still does not comply with *N.J.A.C. 6A:16-7.1* and *N.J.A.C. 6A:16-7.6*. The Board argues that Regulation 6145 was revised to fully comply with governing regulations, and the exact language contained in *N.J.A.C. 6A:16-7.6(a)* is included in Regulation 6145. In its exceptions, the Board stresses that Regulation 6145 no longer enables the Board to suspend a student from extracurricular activities without a finding

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<sup>1</sup> On September 13, 2010, the Commissioner issued a decision finding that the original version of Regulation 6145 was unlawful and ordered the Board to revise Regulation 6145 to bring it into compliance with the governing regulatory provisions.

that the out-of-school conduct relates to and affects the management of the school and its efficiency.

Additionally, the Board takes exception to the ALJ's interpretation of a "consequence" under *N.J.A.C. 6A:16-7.6(a)*. The Board contends that once an alleged violation of the District's Code of Conduct occurs, the school administrator holds a conference with the student, his or her parents and the appropriate personnel in order for the administration to determine if a student should be suspended from extracurricular activities as a result of the out-of-school conduct. The Board argues that it is not the holding of the conference that amounts to a consequence contemplated by the Administrative Code, but rather the consequence is the suspension from extracurricular activities. Finally, the Board takes exception to the ALJ's finding that Regulation 6145 is unconstitutional.

After consideration and review, the Commissioner finds that the revised version of Regulation 6145 complies with the requirements outlined in *N.J.A.C. 6A:16-7.1* and *N.J.A.C. 6A:16-7.6* relating to the Board's authority to discipline students for conduct that occurs away from school grounds. The New Jersey Administrative Code contains provisions that establish the parameters by which all boards of education are bound in the establishment of student conduct codes. *N.J.A.C. 6A:16-7.1* provides, in pertinent part:

Each district board of education shall develop, adopt and implement a code of conduct which establishes standards, policies and procedures for positive student development and student behavioral expectations on school grounds, including on school buses or at school sponsored functions, and as appropriate, for conduct away from school grounds, in accordance with *N.J.A.C. 6A:16-7.2* through *7.5*, *7.8* and *7.9*. [*N.J.A.C. 6A:16-7.1(a)*].

Further, "[a] district board of education may deny participation in extracurricular activities, school functions, sports or graduation exercises as disciplinary sanctions, where such measures

are designed to maintain the order and integrity of the school environment.” *N.J.A.C. 6A:16-7.1(e)*. Under *N.J.A.C. 6A:16-7.6*, a board also has the authority to “impose a consequence on a student for conduct away from school grounds ... that is consistent with the district board of education’s code of student conduct.” The board, however, can only exercise that authority when:

1. “it is reasonably necessary for the student’s physical or emotional safety, security and well-being or for reasons relating to the safety, security and well-being of other students, staff or school grounds pursuant to *N.J.S.A. 18A:25-2* and *18A:37-2*” [*N.J.A.C. 6A:16-7.6(a)1*] and
2. “the conduct which is the subject of the proposed consequence materially and substantially interferes with the requirements of appropriate discipline in the operation of the school.” [*N.J.A.C. 6A:16-7.6(a)2*.]

Based on the Commissioner’s September 13, 2010 decision, the Board revised the original version of Regulation 6145 by incorporating the exact language contained in *N.J.A.C. 6A:16-7.6(a)*. Specifically, Regulation 6145 expressly states that “no consequence shall be imposed upon a student for conduct occurring away from school grounds/events, unless the administrative personnel” determine that the requirements contained in *N.J.A.C. 6A:16-7.6(a)*, have been met.<sup>2</sup> Therefore, with the addition of those safeguards, the Board has brought Regulation 6145 into compliance with *N.J.A.C. 6A:16-7.6(a)*, and significantly, the Board has not afforded itself more authority than was contemplated by the adoption of the regulatory provisions.

Additionally, the Commissioner finds that the administration’s holding of a conference as provided for in Regulation 6145 does not amount to a consequence as envisioned by *N.J.A.C. 6A:16-7.6(a)*. The consequence for the student’s off-school-grounds conduct is the

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<sup>2</sup> The full version of Regulation 6145 is contained in the Initial Decision and will not be repeated here.

suspension from extracurricular activities, not the administration's meeting to discuss the nature and extent of the conduct. The petitioners' argument that *N.J.A.C. 6A:16-7.6(a)* prohibits the administration from even holding a conference until the link between the conduct and the school environment is established is too restrictive a reading of the regulation. Certainly, it is not unreasonable for the Board to hold a conference to gather information before determining whether the off-school-grounds conduct should result in a suspension from extracurricular activities based on the requirements contained in *N.J.A.C. 6A:16-7.6(a)*. In fact, the information obtained during the conference may be an essential component in the administration's mission to appropriately ascertain whether the necessary link exists. Moreover, the absence of such fact-finding would almost certainly result in complaints from parents that disciplinary decisions were being haphazardly made without the administrators incorporating the requisite analysis.

The petitioners also contend that Regulation 6145 is unconstitutional based on the fact that an arrest for conduct away from school grounds triggers a conference with the student, which the petitioners argue is really an unlawful hearing on the criminal guilt or innocence of the student.<sup>3</sup> The petitioners maintain that the holding of the conference violates the student's First Amendment right against self-incrimination, compelled speech and the right to privacy. As the Board points out, however, the conference is not mandatory for the student nor is it an interrogation as the petitioners argue, but instead is an opportunity for the student to present his or her side of the story before the administration determines whether a suspension from extracurricular activities is warranted. Further, the student is not required to speak at the

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<sup>3</sup> According to Regulation 6145, "[w]ith respect to conduct occurring away from school grounds/events, an alleged violation of the above conduct requirements shall occur if a student is formally charged and/or arrested by law enforcement for an alleged violation of the New Jersey Code of Criminal Justice, and/or applicable municipal codes or ordinance provisions". To the extent that this language is not clear, the Commissioner emphasizes that the arrest or charge is not a violation of the Student Code of Conduct but merely a trigger for a conference to enable the administration to determine whether the student's out-of-school conduct should result in a suspension from extracurricular activities. In addition, the Commissioner contemplates that there will be instances where it is so clear that there is no nexus between the alleged conduct and the school environment, no conference will be required.

conference or to incriminate him or herself in any way. As such, the conference is simply part of the process whereby the administration determines whether the student should be suspended from extracurricular activities in accordance with *N.J.A.C. 6A:16-7.6(a)*, and the inclusion of the provision directing the administrators to hold a conference does not violate the student's constitutional rights.

It is important to recognize that the key inquiry relating to the suspension from extracurricular activities based on off-school-grounds conduct is not whether the conduct was unlawful or whether the student was arrested, but rather whether the suspension is reasonably necessary to protect the well-being of the student, other students or the school staff, and whether the conduct materially and substantially interferes with the requirements of appropriate discipline in the operation of the school. *N.J.A.C. 6A:16-7.6(a)(1)* and (2). Regardless of the role that the student plays in connection with the conference, the Board is still obligated to meet the requirements enumerated in *N.J.A.C. 6A:16-7.6(a)* – and duplicated in Regulation 6145 – before a student can be suspended from extracurricular activities based on out-of-school conduct.

Accordingly, the revised version of Regulation 6145 is lawful and in compliance with *N.J.A.C. 6A:16-7.1* and *N.J.A.C. 6A:16-7.6*; therefore, the recommended decision of the ALJ is rejected, and the petition of appeal is dismissed.

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

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 22, 2011

Date of Mailing: August 23, 2011

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<sup>4</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.