

New Jersey Commissioner of Education

Final Decision

David Moy,

Petitioner,

v.

Board of Education of the Township of
Maple Shade, Burlington County,

Respondent.

Synopsis

Pro se petitioner challenged the attendance and care of school property policies of the respondent Maple Shade Board of Education (Board), and argued that the Superintendent of Schools violated District policy regarding the duties of the superintendent. More specifically, petitioner contended, *inter alia*, that these Board policies violated *N.J.A.C.* 6A:32-7.6, and further claimed that the attendance policy conflicted with other Board policies on: promotion and retention; reporting student progress; student discipline and code of conduct; and high school graduation. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: the petitioner challenged the District's policies on attendance and care of school property and alleged that the Superintendent violated District policy regarding the Superintendent's duties, but failed to dispute the veracity of the facts as set forth by the Board; nor did petitioner set forth any specific evidence to show that there are material facts in dispute; additionally, aside from invoking various Board policies, the petitioner has set forth no facts explaining the alleged conflicts or showing that any genuine issue of material fact exists; even if petitioner were to set forth evidence supporting a policy, statutory, or regulatory violation by the Superintendent, he would not be entitled to any relief, as evaluation of the superintendent's performance and any action resulting therefrom is governed by contract and statute; accordingly, as there are no real issues of material fact herein, the matter is ripe for summary decision; petitioner's claims regarding the District's attendance policy are moot because, *inter alia*, the implementing regulation of the attendance policy has been revised to modify or eliminate the challenged provisions; regarding the care of school policy, petitioner has produced no evidence to show that the District has withheld report cards from students with outstanding fines for damage to school property; and it is well settled that decisions of local boards of education are entitled to a presumption of correctness; petitioner has not met his burden to prove that the District's attendance and care of school property policies are arbitrary, capricious or unreasonable. Accordingly, the ALJ granted summary decision to the Board.

Upon comprehensive review of the record, and for the reasons expressed by the ALJ, the Commissioner adopted the Initial Decision of the OAL as the final decision in this case. 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.

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Final Decision

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v.

Board of Education of the Township of
Maple Shade, Burlington County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision. In this case, the petitioner is challenging the Maple Shade School District's attendance policy and the care of school property policy. The petitioner further contends that the Superintendent violated District policy.

Upon a comprehensive review of the record, the Commissioner concurs with the Administrative Law Judge – for the reasons thoroughly outlined in the Initial Decision – that Board of Education is entitled to summary decision. Accordingly, the recommended decision of the ALJ is adopted for the reasons expressed therein and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: February 27, 2019
Date of Mailing: February 27, 2019

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A* 18A:6-9.1).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 04389-18

AGENCY DKT. 36-2/18

DAVID MOY,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF MAPLE SHADE,
BURLINGTON COUNTY,**

Respondent.

David Moy, petitioner, pro se

Victoria S. Beck, Esq., for respondent (Parker McCay, P.A., attorneys)

Record Closed: November 29, 2018

Decided: January 14, 2019

BEFORE **SUSAN L. OLGATI**, ALJ:

STATEMENT OF THE CASE

The petitioner, David Moy, challenges the attendance and care of school property policies of the respondent, Maple Shade School District Board of

Education²(District) and argues that the Superintendent of Schools violated the District's policy regarding the duties of the superintendent.

PROCEDURAL HISTORY

On February 12, 2018, petitioner filed a petition with the Department of Education challenging respondent's policies. The Commissioner transmitted the matter to the Office of Administrative Law, where it was filed on March 26, 2018, for determination as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The matter was assigned to this ALJ in July 2018, and multiple status conferences were held with the parties. On November 5, 2018, the Board filed a motion for summary decision³. On November 17, 2018, petitioner filed a letter in opposition to the motion and on November 21, 2018, the District filed a letter brief in reply to petitioner's letter.⁴ On November 29, 2018, a final status conference regarding the motion for summary decision was held and the record closed on that date.

FACTUAL DISCUSSION AND FINDINGS

In response to the District's motion for summary decision petitioner filed a one paragraph letter stating "...I'm reaffirming that Ms. Beck and the Maple Shade BOE has failed to address ALL items in the original petition. I'm asking that her motion be denied for the above mentioned reasons." Petitioner provided no statement of facts, affidavit, nor certification supporting his opposition to the motion. Nor did he dispute the District's statement of facts or the certification of Superintendent of Schools, Beth Norcia, in support of the District's motion. The below facts are gleaned from the parties' submissions and exhibits attached thereto.

² Pled as the Board of Education of the Township of Maple Shade, Burlington County.

³ On or about March 19, 2018, prior to the matter being transmitted to the Office of Administrative Law for hearing as a contested case, the District filed a motion to dismiss with the Department of Education.

⁴ On November 5, 2018, petitioner sent an email advising "I'm reaffirming that Ms. Beck has failed to answer or address items in my original petition and her latest motion also supports my case in regard to policy 5513. I'm asking that her motion be denied." Thereafter, by letter dated November 15, 2018, this ALJ confirmed the briefing schedule in this matter including that petitioner had until November 25, 2018, to file a formal response to the motion.

1. In January 2018, the implementing regulation of the District's attendance policy-5200 was revised. The key revisions related to the "Student Attendance Policy" section of regulation 5200.
2. The definition of the term "Failure Due to Attendance" (FDA) was revised to remove the condition that a student is placed on FDA status when they accumulate a specific number of unexcused absences in one marking period. (Norcia Certification Exhibit A at 9; Exhibit B at 9.)
3. There were also revisions to the "Maintaining Academic Credit as it Pertains to Attendance" provision of the regulation. Students who accumulate greater than four unexcused absences per marking period, no longer receive a grade of "59" for the marking period. Such students will now receive "no credit" for the marking period. Id. (Exhibit A at 10-11; Exhibit B at 10.)
4. The revised regulation allows students to restore their academic credit by attending a Saturday or Wednesday session. It also removes the prior provision regarding "Mandatory Tutoring" sessions. Id.
5. Students are now at risk of earning no credit for the year only if they are on FDA status and exceed sixteen unexcused absences for the year. Id.
6. The revisions address the "Fourth Marking Period" provision of the regulation. Students placed on FDA status during the fourth marking period are now able to make up credit by attending a credit completion program. Id. (Exhibit A at 11; Exhibit B, at 10.)
7. Parents/guardians of students on FDA status receive a notice explaining that their student did not meet the attendance criteria for the marking period and is "in danger of not earning credits for the year due to high absenteeism/lateness." The notice requests parents to schedule a meeting to develop an action plan for improved attendance. Parents are further advised

that both they and their student must log into their portal account and acknowledge the attendance document before grades can be viewed. (Exhibit D, Norcia Certification.)

8. On September 30, 2014, the Department of Education issued a memo to Chief School Administrators regarding “Reporting Student Absences.” The memo noted in pertinent part that:

N.J.A.C. 6A: 16-7.6(a) requires each district board of education to “develop, adopt, and implement policies and procedures regarding the attendance of students” and these policies must contain, at a minimum, a “definition of excused absence that count towards truancy...” See N.J.A.C. 6A:16-7.6(a)(3). See Exhibit F, Norcia Certification.

9. The District’s care of school property policy-5513 and implementing regulation authorize the imposition of a fine for the loss, damage or defacement of a textbook and reserves the right to withhold a report card or diploma from any pupil whose payment of a fine is in arrears. (Exhibit H, Norcia Certification.) While the policy and implementing regulation-5513 reserve the right to withhold a report card for outstanding fines, it is not the District’s practice to do so. Id.

LEGAL ANALYSIS AND CONCLUSION

Legal Analysis

The issue is whether the respondent, District, should be granted summary decision in its favor or whether petitioner is entitled to an evidentiary hearing on his challenge to District policies.

I. Summary Decision Standard

A summary decision may be granted when the papers and discovery that have been filed show that there is no genuine issue as to any material fact challenged and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). “An adverse party in order to prevail must by responding affidavit set forth specific facts

showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid. See Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). The non-moving party has the burden “to make an affirmative demonstration. . . that the facts are not as the movant alleges.” Spiotta v. William H. Wilson, Inc., 72 N.J. Super. 572, 581 (App.Div. 1962).

While petitioner challenges the District’s policies on attendance and care of school property and alleges that the Superintendent violated the District policy on the Superintendent’s duties, he has not made any declaration to this tribunal that the facts are not as the movant alleges or set forth any specific facts showing that there is any material fact in dispute. In addition to claiming that the attendance and the care of school property policies violate N.J.A.C. 6A:32-7.6, petitioner also contends that the attendance policy conflicts with the District’s policy on promotion and retention-5410, reporting pupil progress- 5420, student discipline/ code of conduct- 5600, and high school graduation – 5460. Aside from invoking these policies, petitioner sets forth no specific facts explaining the alleged conflicts or showing that a genuine issue of material fact exists.

Similarly, the petitioner claims that the Superintendent violated the District policy regarding the duties of a superintendent as it relates to various state statutes and regulations including “N.J.S.A 18A:7A-11; N.J.S.A 18A:17-17; N.J.S.A 18A:17-18; N.J.S.A 18A:17-20; N.J.S.A 18A:17-21; N.J.S.A 18A:22-8.1; N.J.S.A 18A:27-4.1; N.J.S.A 18A:37-4, N.J.A.C. 6A:8-3.1; N.J.A.C 6A: 32-4.1, and N.J.A.C 6A: 32-12-2.” Here too, aside from citing to these various statutes and regulations, petitioner provides no facts explaining how the superintendent’s alleged action or inaction, regarding the challenged policies, implicates or violates his duties in reference to the cited statutes and regulations. Finally, even if petitioner were to set forth facts supporting a policy, statutory, or regulatory violation by the Superintendent, he would not be entitled to any relief for same. Evaluation of the superintendent’s performance and any action resulting therefrom is governed by contract and statute. As a result, petitioner is not entitled to any relief he may seek regarding the Superintendent’s alleged violations, and this tribunal is without authority to grant same.

Further, even accepting petitioner’s petition to the Department of Education

dated February 12, 2018, as opposition to respondent's motion for summary decision, there too he fails to set out any genuine issue of material fact which might preclude the granting of respondent's motion. Accordingly, petitioner has failed to meet his burden of proof as required by Spiotta and the matter is ripe for summary decision.

II. Mootness

It is well settled law that once a matter becomes moot prior to judicial resolution, it is appropriate to dismiss. Oxford v. NJ. State Bd. of Education, 68 N.J. 301 (1975), Nini v. Mercer County Comm. College, 202 N.J. 98, (2010). In Cinque v. New Jersey Dept. of Corrections, 261 N.J. Super. 242 (App Div. 1993) the Appellate Division explained that there are two basic reasons for this doctrine:

First, for reasons of judicial economy and restraint, courts will not decide cases in which the issue is hypothetical, a judgment cannot grant effective relief, or the parties do not have concrete adversity of interest. Second, it is a premise of the Anglo-American judicial system that a contest engendered by genuinely conflicting self-interests of the parties is best suited to developing all relevant material before the court. (citing to Anderson v. Sills, 143 N.J. Super. (Ch. Div. 1976) 432, 437.) Id.

A. Attendance Policy

Petitioner claims that the District's attendance policy withholds students' unaltered grades in violation of N.J.A.C. 6A:32-7.6 (Conditions for access to student records.) His challenge to the attendance policy, specifically provisions relating to FDA status and maintaining academic credit, are however moot because the implementing regulation of attendance policy-5200 has been revised to modify or eliminate the challenged provisions.⁵

⁵ If petitioner contends that the revised attendance policy/implementing regulation continues to violate the regulation on access to student grades he may wish to file a new petition.

Additionally, petitioner's claims that the attendance policy/regulation improperly withholds students' grades are moot because grades are available to students and parents/guardians online via their portal accounts.

Finally, petitioner claims that the current version of the attendance policy is not posted on the District's website. Aside from failing to set forth any specific facts opposing the District's claim that the revised attendance policy/regulation have been posted on its website, petitioner fails to cite to any legal authority which requires the District to do so. Thus, petitioner's claims regarding the attendance policy are moot.

B. Care of School Property Policy

Petitioner contends that the District's care of school property policy-5513 violates N.J.A.C. 6A:32-7.6 (Conditions for access to student records.) Pursuant to the District's policy, the board of education authorizes the imposition of a fine for the loss, damage, or defacement of a textbook and reserves the right to withhold a report card or diploma from any pupil whose payment of a fine is in arrears.

Despite petitioner's contentions, he has produced no evidence that the District has engaged in the practice of withholding report cards of students with outstanding fines for damage to school property. Moreover, petitioner did not oppose or otherwise challenge the certification of Superintendent Norcia in which she stated that while the policy reserves the District's right to withhold report cards due to outstanding fines, it is not the District's practice to do so. Thus, petitioner has not demonstrated an adversity of interest between the parties on this issue.

III. Presumption of Correctness

It is well settled in New Jersey that decisions of local boards of education are entitled to a presumption of correctness and are to stand undisturbed unless shown to be "patently arbitrary, without rational basis or induced by improper motives." J. M., by His Guardian, D. M. v. Hunterdon Central Regional High School District, Hunterdon County, 96 N.J.A.R.2d (EDU) 415, 419; R. A. M. and C. A. M. v. Board of Educ. of the

Township of Tabernacle, 94 N.J.A.R.2d (EDU) 573, 576 (citing, Kopera v. West Orange Bd. of Educ., 60 N.J. Super. 288 (App. Div. 1960)). See, Boult v. Board of Educ. of Passaic City, 136 N.J.L. 521 (E. & A. 1948); Fraser v. State Bd. of Educ., 133 N.J.L. 15 (Sup. Ct. 1945); Offhouse v. State Bd. of Educ., 131 N.J.L. 391 (Sup. Ct. 1944); Greenway v. Board of Educ. of the City of Camden, 129 N.J.L. 461 (E. & A. 1943). Petitioner bears the burden of proving, by a preponderance of the evidence, that the respondent's action was "arbitrary, capricious or unreasonable." J.M., 96 N.J.A.R.2d at 419.

N.J.A.C 6A:16-7.6 directs that boards of education shall develop policies and procedures regarding student attendance. The District's attendance policy-5200 and its implementing regulation are in keeping with the directive of this regulation.

Similarly, N.J.S.A. 18A:34-2, provides that every board of education shall make rules for the safekeeping and proper care of textbooks, and shall keep an account of all moneys expended for textbooks and supplies. The District's policy on care of school property is consistent with the directive of N.J.S.A. 18A: 34-2. The District's policy is also consistent with case law. In Ballato v. Board of Education of the City of Long Branch, Monmouth County, 1990 S.L.D. 1296, the Commissioner of Education held that it was not arbitrary, capricious, or unreasonable for a board to withhold a diploma from a student who is otherwise qualified if financial obligations exist for loss or damage to property. Id. (at 1300.) Even if petitioner had presented evidence that the District was exercising its right to withhold report cards due to outstanding fines for damage to school property, such action would be consistent with applicable statutory and case law.

Thus, petitioner has failed to meet his burden that the attendance and the care of school property policies are arbitrary, capricious, or unreasonable.

Conclusions

I **CONCLUDE** that there exists no genuine issue of material fact. I further **CONCLUDE** that the District has met its burden of proof that it is entitled to judgment as a matter of law; therefore, its motion for summary decision is **GRANTED**.

ORDER

It is hereby **ORDERED** that the District's motion for summary decision is **GRANTED** and petitioner's appeal is **DENIED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 14, 2019

DATE



SUSAN L. OLGATI, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

SLO/vj

APPENDIX

EXHIBITS

For petitioner:

Petition of Appeal to the Commissioner of Education of New Jersey, February 12, 2018.

Letter requesting that the Board's motion for summary decision be denied, dated November 17, 2018.

For respondent:

Brief in support of motion for summary decision, dated November 2, 2018

Letter brief in reply to petitioner's opposition to the motion, dated November 21, 2018.