

## New Jersey Commissioner of Education

## Final Decision

N.H., on behalf of minor child, S.A.,

Petitioner,

v.

Board of Education of the Kingsway Regional  
School District, Gloucester County,

Respondent.

## Synopsis

Petitioner appealed the long-term suspension imposed by the respondent Board upon her daughter, S.A., for her alleged participation in an altercation in the cafeteria at Kingsway Regional High School on March 6, 2023. Petitioner contended that the Board, *inter alia*, failed to follow applicable statutes and regulations when imposing a long-term suspension upon S.A., rendering its decision arbitrary, capricious, and unreasonable. Petitioner sought to reverse the suspension and to compel the Board to expunge any reference to a long-term suspension from S.A.'s student record; petitioner further sought an order compelling the Board to allow S.A. to return to the general education setting immediately.

The ALJ found, *inter alia*, that: following a lengthy period of discussions, discovery, and motion practice, the respondent Board submitted a letter dated July 18, 2024, voluntarily withdrawing its answer and separate defenses to the petition; as such, the facts set forth in N.H.'s verified petition are uncontested. The ALJ concluded that justice, fairness in administration, and simplicity require that, consistent with the spirit of *N.J.A.C. 6A:3-1.5(e)* and *N.J.A.C. 1:1-1.3*, the facts outlined in petitioner's complaint be adopted and incorporated by reference. Accordingly, the ALJ ordered that S.A.'s long-term suspension be reversed; that S.A. be returned to the general education setting at Kingsway without restriction; that S.A.'s disciplinary record be amended to reflect a lesser violation of Kingsway's code of conduct; that all references to the improperly imposed long-term suspension be removed from S.A.'s student records and that such records be amended to reflect the initial short term suspension of eight days; and that S.A.'s attendance records reflect that from March 17, 2023 to June 14, 2024, S.A. received home instruction, without reference to any suspension.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader and has been neither reviewed nor approved by the Commissioner.

**New Jersey Commissioner of Education**

**Final Decision**

N.H., on behalf of minor child, S.A.,

Petitioner,

v.

Board of Education of the Kingsway Regional  
School District, Gloucester County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that, following the Kingsway Regional School District Board of Education's (Board) withdrawal of its opposition to the petition of appeal, the facts outlined in the petition should be adopted. The Commissioner further concurs with the ALJ's orders regarding the relief to be granted to petitioner, as comprehensively outlined in the Initial Decision. Accordingly, the Initial Decision is adopted as the final decision in this matter.

IT IS SO ORDERED.<sup>1</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 5, 2024

Date of Mailing: September 6, 2024

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<sup>1</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. EDU 13237-23

AGENCY DKT. NO. 298-10/23

**N.H. ON BEHALF OF MINOR CHILD, S.A.,**

Petitioner,

v.

**KINGSWAY REGIONAL SCHOOL DISTRICT**

**BOARD OF EDUCATION,**

**GLOUCESTER COUNTY**

Respondent.

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**Sarah E. Zuba**, Esq., for petitioner N.H., on behalf of minor child, S.A. (Reisman, Carolla, Gran & Zuba, LLP, attorneys)

**Stephen J. Edelstein**, Esq., for respondent Kingsway Regional School District Board of Education, Gloucester County (Weiner Law Group, LLP, attorneys)

Record Closed: July 18, 2024

Decided: July 31, 2024

BEFORE **ROBERT D. HERMAN**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, N.H., on behalf of her daughter, S.A., filed a verified petition seeking various relief from respondent, the Kingsway Regional School District Board of Education, Gloucester County (Board). The Board withdrew its answer and separate defenses

during the litigation. The issues presented are: (1) what to do when the respondent in a Department of Education matter withdraws its answer and separate defenses; and (2) what relief, if any, may be granted.

### **PROCEDURAL HISTORY**

On March 6, 2023, S.A. was involved in an altercation at Kingsway Regional High School (KRHS). On March 7, 2023, disciplinary action was initiated against S.A., resulting in an eight-day out-of-school suspension. N.H. sought appeal of the infraction level and suspension imposed on S.A. On March 16, 2023, the superintendent, Dr. James Lavender, sought to increase the out-of-school suspension from eight days to indefinite.

On July 27, 2023, a disciplinary hearing was conducted before the Kingsway Regional School District Board of Education. At the conclusion of the hearing, the Board voted to uphold the infraction level and discipline recommended by Dr. Lavender. This was formalized in an undated Board resolution. On September 8, 2023, N.H. received a letter from the Board dated August 3, 2023, and a copy of the Board's resolution upholding the infraction level and discipline imposed.

On October 31, 2023, petitioner filed her verified petition with the Acting Commissioner of the Department of Education (Commissioner). On November 20, 2023, the Board filed an Answer to Petition of Appeal and Separate Defenses. On November 22, 2023, this matter was transmitted to the Office of Administrative Law (OAL), where it was filed as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

On December 26, 2023, petitioner filed her first motion for emergent relief. Following extensive discussions between counsel, the motion for emergent relief was withdrawn on January 18, 2024. After attempts at resolution proved unsuccessful, a final prehearing conference was conducted on February 14, 2024.

On March 1, 2024, the Board filed a motion for summary decision based upon the alleged failure to file an appeal within ninety days of notification of the disciplinary final

order pursuant to N.J.A.C. 6A:3-1.3(i). An order denying the Board's motion for summary decision was entered on April 16, 2024. On April 23, 2024, the Board applied to the Commissioner seeking interlocutory review and reversal of the April 16, 2024, order denying its motion for summary decision.

On May 3, 2024, in a four-page decision, the Commissioner denied the Board's request for interlocutory review. D.O.E. Order 178-24 (May 3, 2024). In the decision, the Commissioner explained the Board's obligations pursuant to N.J.A.C. 6A:16-7.3(c), N.J.A.C. 6A:16-7.3(d), and N.J.A.C. 6A:16-7.3(e). Further, and while S.A.'s suspension is ongoing, the Commissioner required the Board to make determinations pursuant to N.J.A.C. 6A:16-7.3(d) at its next scheduled meeting and at every scheduled Board meeting thereafter. Id. at 3–4.

Following the matter's return to the OAL, settlement discussions again commenced but, as before, failed to bear fruit. On May 20, 2024, petitioner filed a second emergent motion seeking to "[r]everse the Board's determination following the July 27, 2023 hearing to continue S.A.'s suspension; and . . . [o]rder the Board to allow S.A. to return to the general education setting without any further conditions or restrictions immediately."<sup>1</sup> On May 21, 2024, petitioner's motion seeking emergent relief was transmitted to the OAL for determination.

Also on May 21, 2024, the Board provided its opposition to petitioner's motion for emergent relief. The Board supplemented its opposition by way of certification from Dr. Lavender on May 23, 2024.

On May 24, 2024, in advance of oral argument, the administrative law judge (ALJ) sent counsel a letter with six questions for consideration and response. The Board provided a written response on May 25, 2024, and petitioner provided a written response the day thereafter.

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<sup>1</sup> Petitioner's Motion for Emergent Relief, May 20, 2024, at 2.

On May 28, 2024, extensive oral argument was conducted. Following oral argument, the record remained open for the Board to submit a copy of the May 27, 2024, executive session “meeting minutes” and for petitioner to provide supplemental submissions involving extracurricular activities at KRHS. On May 30, 2024, the Board provided the meeting minutes. Also on May 30, 2024, petitioner provided supplemental submissions relating to the Naval Junior Reserve Officer Training Corps (NJROTC) cadet program at KRHS and S.A.’s request to partake in “senior portraits,” which were scheduled at KRHS on June 20, 2024, and June 21, 2024.

On May 31, 2024, the OAL sent an email to the Board’s counsel. First, the email asked if the Board consented to petitioner sitting for her senior portraits. Second, the email asked the Board if it considered anything additional, in greater depth, or with greater detail than what is contained in the May 27, 2024, summary in its May 16, 2024, Executive or Public Session(s).

In a response dated Friday, May 31, 2024, the Board advised that it did not consent to petitioner sitting for her senior portraits. After close of business on the same day, the Board emailed a response to the second query, advising that its considerations were reflected in Dr. Lavender’s May 23, 2024, certification, which was previously submitted and of which a courtesy copy was provided with the response.

The Board’s after-hours email of May 31, 2024, was reviewed by me on Monday, June 3, 2024. Following review and in an order dated June 4, 2024, petitioner’s emergent relief was granted in part and denied in part.

By decision dated June 14, 2024, the Commissioner affirmed in part (senior portraits) and reversed in part (Commissioner then granting immediate reentry into KRHS and NJROTC) my order of June 4, 2024.

Following receipt of the Commissioner’s June 14, 2024, decision, discussions were held between the ALJ and counsel. Ultimately, these discussions culminated in the Board withdrawing its Answer to Petition of Appeal and Separate Defenses. On July 18, 2024, the Board expressly withdrew its opposition to petitioner’s verified petition.

## **FACTS**

Following extensive discussions, discovery, motion practice, and upon receipt of the July 18, 2024, correspondence from the Board, and after a colloquy between the parties and myself, I **FIND** that respondent, Kingsway Regional School District Board of Education, by way of letter dated July 18, 2024, which is attached to this initial decision, knowingly and voluntarily withdrew its answer and separate defenses to petitioner's Verified Petition of Appeal. I **FURTHER FIND**, for the reasons set forth herein, that the facts set forth in petitioner's verified petition are uncontested, and for purposes of this initial decision, true. As such, the statements of fact set forth in petitioner's Verified Petition of Appeal, to wit, paragraphs 1–34, are hereby incorporated by reference.

## **LEGAL ANALYSIS AND CONCLUSION**

The Board's withdrawal of its answer and separate defenses during the course of litigation presents a rather unusual issue for consideration. Pursuant to N.J.A.C. 6A:3-1.5(a), a respondent in Department of Education matters is required to "serve an answer upon the petitioner within 20 days after receipt of the petition, unless a shorter period is required by statute, regulation, or court order, or directed by the Commissioner due to the emergent nature of a matter." N.J.A.C. 6A:3-1.5(a). Where a respondent fails to answer such petition timely, notice is sent to petitioner advising that, "unless an answer is filed within 10 days of the receipt of said notice, each count in the petition shall be deemed admitted and the Commissioner may decide the matter on a summary basis." N.J.A.C. 6A:3-1.5(e). The opposite of this, where a respondent knowingly and voluntarily withdraws its answer, is not covered.

Essentially, there are four potential ways to go about this. The first is to return the matter to the agency for want of jurisdiction. See generally N.J.A.C. 1:1-3.3 (Return of Transmitted Cases) (withdrawal of answer not listed). This is economical but not particularly responsive to the situation. The second is to consider this an uncontested matter. In itself, this fits within the ambit of N.J.A.C. 6A:3-1.5(e) where each count is deemed admitted. However, N.J.A.C. 6A:3-1.5(e) involves those matters filed with the

Department of Education and where jurisdiction is not yet conveyed to the OAL. Third, the matter could be treated as one for summary disposition pursuant to N.J.A.C. 1:1-12.5(a). Though arguably no motion was filed, the administrative rules “may be relaxed or disregarded if the judge determines that adherence would result in unfairness or injustice.” N.J.A.C. 1:1-1.3(b). Fourth, and perhaps most importantly, pursuant to N.J.A.C. 1:1-1.3(a), the procedural rules “shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.” N.J.A.C. 1:1-1.3(a). Together, N.J.A.C. 1:1-1.3(a) (construction of administrative rules) and N.J.A.C. 1:1-1.3(b) (focus on fairness and justice) are a potent combination.

It is now late July, and summer recess enters its final month. September, and with it the beginning of the new school year, will be here quickly. There is no reason to wait; there is no reason to delay. The fourth option, noted above, includes a combination of the prior three and makes the most sense in this circumstance. It is time.

Accordingly, I **CONCLUDE** that justice, fairness in administration, and, equally important, simplicity—both individually and collectively—require that the facts outlined in petitioner’s verified complaint are hereby adopted and incorporated by reference. This is consistent with the spirit of N.J.A.C. 6A:3-1.5(e) and N.J.A.C. 1:1-1.3. Based on this, petitioner’s requests for relief should be, and will be, granted.

### **ORDER**

As a result of respondent’s withdrawal of its opposition to petitioner’s verified complaint, I **ORDER** that the following relief be granted based upon the relief sought in the Verified Petition of Appeal:

1. The Kingsway Regional School District Board of Education’s determination to continue S.A.’s suspension on or about July 27, 2023, shall be and hereby is **REVERSED**.



2. S.A. shall be returned to the general education setting at Kingsway Regional High School forthwith, along with all rights of participation, privileges, and abilities associated therewith, without restriction.

3. In paragraph 32 of her verified petition, petitioner submits that the disciplinary charge of Tier IV.A. Assault, as set forth in the Kingsway Regional High School 2022–2023 Student Handbook, is unsupported and that any such finding by the Kingsway Regional School District Board of Education was “arbitrary, capricious, and unreasonable in light of the offense.” Petitioner sought, in her demand for relief, at paragraph (d), “such other relief as is necessary and proper and within the jurisdiction of the Commissioner.” Pursuant to this demand for relief, I **FURTHER ORDER** that petitioner’s disciplinary/school record(s) be amended to reflect a violation of “Tier III.I. Incitement to Fight,” a “Misdemeanor” violation, which includes “verbal or electronic threats and/or battery (unwanted physical contact),” for and relating to the March 6, 2023, altercation.

4. Pursuant to petitioner’s demand for relief, at paragraph (b) of petitioner’s verified petition, I **FURTHER ORDER** that references to the long-term suspension improperly imposed in this matter be removed from petitioner’s disciplinary/school record(s) and that such records are amended to reflect the initial short-term suspension of eight days.

5. Pursuant to petitioner’s demand for relief, at paragraph (b) and paragraph (d) of petitioner’s verified petition, I **FURTHER ORDER** that petitioner’s school attendance record reflect, from March 17, 2023, through June 14, 2024, inclusive, that petitioner received “home instruction” without reference to any suspension or reference to any action or inaction by Kingsway Regional High School, including its administration, by the Kingsway Regional School District administration, or by the Kingsway Regional School District Board of Education.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to **ControversiesDisputesFilings@doe.nj.gov** or by mail to **Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**. A copy of any exceptions must be sent to the judge and to the other parties.



July 31, 2024  
DATE

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**ROBERT D. HERMAN, ALJ**

Date Received at Agency:

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Date Mailed to Parties:

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RDH/sw/dc

**LIST OF EXHIBITS**

Petitioner's October 31, 2023, Verified Petition of Appeal (7 pages)

Respondent's July 18, 2024, letter to the ALJ (1 page)