

221-26
OAL Dkt. No. EDU 21585-25
Agency Dkt. No. 381-11/25

New Jersey Commissioner of Education

Decision

D.D., on behalf of minor child, A.D.,

Petitioner,

v.

Board of Education of the Township of Toms
River, Ocean County, Edward W. Keller, Dave
Oizerowitz, Greg Elias, and Jacob McCartney,

Respondents.

The record of this matter, the Amended Order Granting Summary Decision of the Office of Administrative Law (OAL), and the exceptions filed by petitioner, D.D., have been reviewed and considered.¹ Respondents did not file exceptions or reply exceptions.

D.D. appeals the Toms River Board of Education (Board)'s decision to prohibit his son, A.D., from participating in the fall 2025 freshman football program for alleged misconduct that occurred off school grounds. Specifically, on August 14, 2025, a coach from the program reported that A.D. stole – and then returned – a scooter from the coach's son, and used profane language. After respondent filed an answer, the matter was transmitted to the Office of Administrative Law

¹ Petitioner's second submission dated May 23, 2026, was not considered, as only one submission is permitted by *N.J.A.C. 1:1-18.4*.

(OAL) as a contested case. On February 9, 2026, respondents filed a motion for summary decision. On February 17, 2026, D.D. filed opposition.

On April 8, 2026, the Administrative Law Judge (ALJ) issued an order granting respondents' motion for summary decision with respect to: 1) participation in public-school sports, concluding that it is a privilege, not a right protected by due process; 2) qualified immunity, concluding that the individual respondents in this matter are protected under the doctrine; and 3) petitioner's claims for relief two through five, concluding that they are outside the Commissioner's purview. The ALJ denied respondents' motion in part, finding that there are genuine issues of material fact concerning whether A.D. engaged in theft and whether the alleged misconduct impacted the security, safety, and well-being of the students, staff, or school grounds. The ALJ also determined that a plenary hearing was necessary to determine whether petitioner's first claim for relief is outside the Commissioner's purview. The ALJ submitted the order to the Commissioner for immediate review, pursuant to *N.J.A.C. 1:1-12.5(e)*.

In his exceptions, D.D. argues that the ALJ erred in granting summary decision because genuine issues of material fact remain in dispute. It appears that D.D. may have misconstrued the ALJ's Order to be a dismissal of the entire petition. However, the ALJ granted respondents only partial summary decision and, in fact, agreed with D.D.'s argument that there are several genuine issues of material fact regarding the alleged theft that must be addressed in further proceedings. D.D. also contends that the Initial Decision mischaracterizes the claim raised in his petition as asserting a right to participate in extracurricular activities. Petitioner argues that "issue [he] presented is whether the District, in imposing disciplinary sanctions, complied with its own policies, afforded constitutional required due process, and acted within the limits of its

lawful authority – particularly where the alleged conduct occurred entirely off campus.” Exceptions at 9. D.D argues that the Board violated A.D.’s due process rights and its own policies by failing to provide notice, a hearing, or an adequate investigation prior to imposing discipline. Lastly, D.D. contends that the Board has not established how A.D.’s alleged off-campus theft disrupted the school environment or impacted the rights of other students within the school setting. The Commissioner notes that the ALJ denied summary decision on this issue in her Order, for the same reason advanced by petitioner in his exceptions.

Upon review, the Commissioner adopts the ALJ’s Amended Order Granting Partial Summary Decision for the reasons set forth therein, but with the following modification. Pursuant to the Board’s Extra-Curricular Interscholastic Code of Conduct (Code of Conduct), “[a] fair investigation and hearing will follow each incident reported to the Building Principal.” The parties’ submissions demonstrate that the material facts pertaining to whether the Board held an investigation and hearing into A.D.’s alleged theft as required by the Code of Conduct present a genuine issue which can only be determined in an evidentiary proceeding. *N.J.A.C. 1:1-12.5(b)*. This issue should be addressed along with the other issues that remain in dispute.

Accordingly, the Board’s motion for summary decision is granted in part, as reflected in the ALJ’s Order. This matter shall continue to an evidentiary hearing at the OAL to address the disputed issues of material fact identified by the ALJ and herein.

IT IS SO ORDERED.


COMMISSIONER OF EDUCATION

Date of Decision: June 25, 2026
Date of Mailing: June 25, 2026



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

AMENDED
ORDER GRANTING PARTIAL
SUMMARY DECISION

OAL DKT. NO. EDU 21585-25

AGENCY DKT. NO. 381-11/25

D.D. ON BEHALF OF A.D.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP OF
TOMS RIVER, EDWARD W. KELLER, DAVE
OIZEROWITZ, GREG ELIAS AND JACOB
MCCARTNEY,**

Respondents.

D.D. on behalf of **A.D.**, petitioner, pro se

R. Taylor Ruilova, Esq. for respondents (Comengo Law Group, P.C., attorneys)

Record Closed: March 11, 2026

Decided: April 6, 2026

BEFORE **ADVIA KNIGHT FOSTER**, ALJ:

STATEMENT OF THE CASE

D.D.'s son A.D. was prohibited from participating in the fall 2025 freshman football program for alleged misconduct occurring away from school grounds, but D.D. claims that he was denied procedural due process and claims that the school had no authority to suspend his son. Was petitioner denied due process? No. Participation in sporting activities at a public school is a privilege and not a right and not afforded procedural due-process protection. Todd v. Rush Cnty. Sch., 133 F.3d 984, 986 (7th Cir.) cert. denied, 525 U.S. 824 (1998).

PROCEDURAL HISTORY

On November 4, 2025, petitioner filed a pro se petition of appeal with the Office of Controversies and Disputes of the New Jersey Department of Education. The Acting Commissioner did not decide the appeal, and the case was transmitted to the Office of Administrative Law for hearing as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. On January 29, 2026, I held a prehearing conference, and respondents informed me that they would file a motion for summary decision, and I ordered a briefing schedule. On February 9, 2026, respondents filed their brief, and on February 17, 2026, petitioner filed his opposition. On February 27, 2026, respondents filed a reply to the opposition. On March 11, 2026, I heard oral argument and issued an oral decision. On March 13, 2026, I issued a letter order.

FINDINGS OF FACT

Based on the documents the parties submitted in support of and in opposition to the motion for summary decision, I **FIND** the following as **FACT** for purposes of this motion only:

A.D. is a fourteen-year-old student at Toms River High School North.

As an incoming freshman for the 2025–26 school year, A.D. registered to play on the interscholastic freshman football team at the high school for the fall season.

On August 14, 2025, one of the coaches, Coach Elias, reported that A.D. stole a scooter from his son but returned it, and used profane language.

On August 14, 2025, Coach Elias reported the incident to high school administration.

On August 14, 2025, Coach Elias advised the parents by email that A.D. could not attend practice the following day and asked that they contact him.

Prior to the start of the school year, A.D. and his parents signed the Student Code of Conduct and Extracurricular Code, in which theft is listed among the violations.

Respondents informed petitioner that A.D. would be prohibited from participating in the fall 2025 football program for violating the Extracurricular Code but he could participate in any winter sport.

On August 26, 2025, respondents discussed the suspension with petitioner on the phone.

On August 27, 2025, respondents held an in-person meeting with petitioner to discuss the suspension, and respondent also informed petitioner that there would be no formal in-school discipline.

On November 4, 2025, petitioner filed a pro se petition seeking the following requests for relief:

1. A clear expungement of the record incident for future participation
2. Accommodation to include participation in school sports.
3. Coaches be barred from the seasonal games.
4. Mandatory training/workshops specifically required complete courses related to rules and regulations
5. Reprimand warning and /or monetary penalty.

CONCLUSIONS OF LAW

A motion for summary decision “shall be served with briefs and with or without supporting affidavits” and the decision sought “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). To defeat a summary decision motion, the adverse party must respond by affidavit setting forth specific facts showing that there is a genuine issue that can only be determined in an evidentiary hearing. Ibid. Use of the summary procedure is aimed at the swift uncovering of the merits and either their effective disposition or their advancement toward a prompt resolution by trial. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954).

The New Jersey Supreme Court encouraged trial-level courts not to refrain from granting summary judgment when the proper circumstances present themselves. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 541 (1995). While cautioning that a judge should not weigh the truth of the evidence or resolve factual disputes at this early stage of the proceedings, the Court clarified that when the evidence is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment. Id. at 540. A determination whether a genuine issue of material fact exists that precludes summary judgment requires the judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. Ibid. Our courts have long held that “if the opposing party . . . offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘Fanciful, frivolous, gauzy or merely suspicious,’ he will not be heard to complain if the court grants summary judgment” Id. at 529 (quoting Judson, 17 N.J. at 75).

It is well settled that participation in extracurricular activities and sporting activities is not a right guaranteed under the Constitution but a privilege. Todd, 133 F.3d at 986. Those who have “property” interests created by state law are protected by procedural due process. Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972).

The doctrine of qualified immunity protects government officials “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). To apply, there must be a constitutional violation.

Here, D.D.’s son was prohibited from participating in freshman football for the fall 2025 season for alleged misconduct occurring away from school grounds. Under N.J.A.C. 6A:16-7.1, each district board of education must “develop, adopt, disseminate, and implement a code of student conduct that establishes standards, policies, and procedures” for student behavioral expectations on and away from school grounds.

Under N.J.A.C. 6A:16-7.5(a), “Conduct away from school grounds,” the local board may regulate student conduct if it shows: (1) that the regulation is reasonably necessary to protect the physical and emotional safety of the student, or for reasons relating to the safety and well-being of other students, staff, or public-school property, R.R. v. Bd. of Educ. of the Shore Reg’l High Sch. Dist., 109 N.J. Super. 337, 344 (Ch. Div. 1970), and (2) that the conduct subject to disciplinary consequences materially and substantially interferes with the orderly operation of the school.

Respondents assert that there are no genuine issues of material fact. However, petitioner disputes the alleged theft, which is a material fact, in his reply to respondents’ answer and his opposition to the summary decision motion. Under the first prong of N.J.A.C. 6A:16-7.5(a), the regulation permits the district to discipline students for off-campus conduct if doing so is related to the “safety, security, and well-being of other students, staff or school grounds.” G.D.M. v. Bd. of Educ. of the Ramapo Indian Mills Reg’l High Sch. Dist., 427 N.J. Super. 246 (App. Div. 2012). Respondents have not shown how the alleged conduct impacted the safety, security, and well-being of the students, staff, or school grounds, and without a plenary hearing to deduce those facts, respondents have failed to meet the requirements, and, thus, there is a material fact in issue. Since there are genuine issues of material fact regarding whether A.D. engaged in a theft and whether the alleged misconduct impacted the safety, security, and well-being of the

students, staff, or school grounds, I must **DENY** the motion for summary decision on those issues.

In this case, petitioner has no property interest in playing football since there is no legal right to play football and he is therefore not afforded procedural due-process protections. I **CONCLUDE** that playing high school football is a privilege and is not afforded procedural due-process protection. I **GRANT** the motion on the issue that playing high school football is not a right but a privilege and is not afforded due-process protection.

For qualified immunity to apply, there must be a constitutional violation. Respondents argue in part that the individual respondents have insulation from liability under the qualified immunity doctrine since there was no violation of a constitutional right. Petitioner argues that he was denied due process, but the procedural due-process protections are inapplicable and there is no protected right to participate in extracurricular sports activities and thus no constitutional violation. Therefore, I **CONCLUDE** that the individual respondents are protected under the doctrine of qualified immunity. I **GRANT** the motion on the issue of qualified immunity.

Finally, respondents argue that petitioner's claims for relief fail to state a law subject to the Commissioner's purview and, therefore, petitioner has no right to the relief. I **GRANT** respondent's motion on claims for relief two through five on this basis. Moreover, regarding D.D.'s second request for relief, participation in school sports, the prohibition from participation in football was limited to the fall 2025 season, there was no prohibition from participation in future school sports and therefore this request is not justiciable. The petitioner, however, is a pro se litigant and should receive "leeway on procedural matters," including pleading requirements, and "should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims." McZeal v. Sprint Nextel Corp., 501 F.3d 1354, 1356 (Fed. Cir. Sept. 14, 2007); Ericson v. Pardus, 551 U.S. 89 (2007); Ashcroft v. Iqbal, 556 U.S. 662 (2009). Regarding the first request for relief, a plenary hearing would provide petitioner an opportunity to present additional facts and law on that issue. Accordingly, respondent's motion on the first request for relief is **DENIED**.

Although respondents argue that petitioner's appeal is moot because the discipline ended at the end of the fall 2025 season, a court may rule on issues that are technically moot because the legal questions under review concern matters of substantial public importance, In re Geraghty, 68 N.J. 209, 212 (1975), and are capable of repetition, Gilbert v. Gladden, 87 N.J. 275, 295–96 (1981).

ORDER

I **ORDER** that respondents' motion for summary decision on the issue of participation in public-school sports is a privilege not a right protected by procedural due process is **GRANTED**.

I **FURTHER ORDER** that respondents' motion for summary decision regarding whether A.D. engaged in a theft and whether the alleged misconduct impacted the safety, security, and well-being of the students, staff, or school grounds is **DENIED** because there are genuine issues of material fact.

I **FURTHER ORDER** that respondents' motion for summary decision regarding whether the individual respondents are protected by qualified immunity is **GRANTED** since there is no constitutional violation.

I **FURTHER ORDER** that respondents' motion for summary decision regarding petitioner's claims for relief two through five must fail since they are outside the purview of the Commissioner of the Department of Education is **GRANTED**.

I **FURTHER ORDER** that respondents' motion for summary decision regarding petitioner's first claim for relief as being outside the purview of the Commissioner of the Department of Education is **DENIED** since a plenary hearing is necessary to deduce additional facts to make that determination.

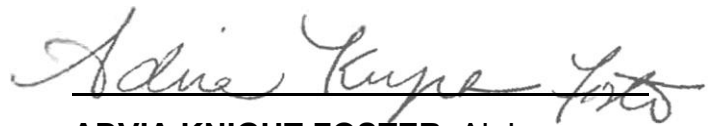
This order granting partial summary decision is being submitted under N.J.A.C. 1:1-12.5(e) for immediate review. This recommended order may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law

is authorized to make the final decision in this matter. If the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** does not adopt, modify or reject this order within forty-five days and unless such time limit is otherwise extended, this recommended order shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this order was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, by mail to Office 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.

April 8, 2026 _____

DATE

A handwritten signature in cursive script, reading "Advia Knight Foster". The signature is written in black ink and is positioned above a horizontal line.

ADVIA KNIGHT FOSTER, ALJ

AKF/tc

APPENDIX

Exhibits

For petitioner:

P-1 Petitioner's opposition to summary decision brief dated February 17, 2026

For respondent:

R-1 Respondent's motion for summary decision brief dated February 9, 2026

R-2 Respondent's reply brief dated February 27, 2026