

EDU #11110-95
C # 479-97
SB # 81-97

RORY FREEDMAN AND LORRAINE HENNESSY, :
 :
 PETITIONERS-APPELLANTS, :
 :
 V. : STATE BOARD OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 BOROUGH OF PARK RIDGE, ET AL., :
 BERGEN COUNTY, :
 :
 RESPONDENTS-RESPONDENTS. :
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Decided by the Commissioner of Education, September 12, 1997

For the Petitioners-Appellants, Rory Freedman and Lorraine Hennessy, pro se

For the Respondents-Respondents, Schwartz, Simon, Edelstein, Celso & Kessler (Allan P. Dzwilewski, Esq., of Counsel)

This matter had its genesis in June 1992, when Rory Freedman and Lorraine Hennessy, who are the petitioners in this case, were high school seniors in the Borough of Park Ridge. At that time, the Board took disciplinary action against them based on a determination that they had consumed alcoholic beverages in a limousine on the way to the prom in violation of the Board's policy against the consumption of alcohol at any school activity. Because petitioners were minors, Meredith Freedman,

who is petitioner Freedman's mother, brought the challenge to the disciplinary action on their behalf, together with one of Lorraine Hennessy's parents.

Adopting Administrative Law Judge (ALJ) Bruce R. Campbell's determination, the Commissioner denied the emergent relief which had been sought on behalf of petitioners. The Commissioner also adopted ALJ Edith Klinger's subsequent determination granting summary decision to the Board on the merits of the matter. The State Board affirmed the Commissioner's decision on May 5, 1993, and the Appellate Division affirmed the State Board's determination of November 22, 1993. The New Jersey Supreme Court declined to review the matter and denied certification, thereby ending that litigation.

On August 31, 1995, petitioners initiated the current matter by filing a petition with the Commissioner of Education challenging the Board's revised regulations relating to substance abuse. By motion filed on November 15, 1995, Meredith Freedman moved to amend the petition to include her as a party so that she could participate in the matter. In that petitioners were no longer minors, the ALJ denied that motion.

On July 25, 1997, the ALJ issued her initial decision, recommending that res judicata and collateral estoppel be applied against petitioners and that the Board's motion for summary decision dismissing the petition should be granted.

By decision of September 12, 1997, the Commissioner adopted the ALJ's findings and conclusion and accepted her recommendation to dismiss the petition on the basis of res judicata and collateral estoppel. In doing so, the Commissioner found that petitioners in this case had not raised any new substantive issue and that the

merits of the arguments that petitioners were making in this case had been litigated and decided in the prior matter.

On appeal to the State Board, petitioners contend that the decision to dismiss that matter on the grounds of res judicata and collateral estoppel is erroneous because that matter considered the legality of the original prom regulations, but not the revised regulations which are the subject of their petition in this case. Petitioners argue that the revised prom regulations are invalid because N.J.S.A. 18A:40-11 and the Board's substance abuse policy do not provide for disciplining students who consume alcohol while traveling to a school activity or in their home prior to arrival. Petitioners also claim that the revised regulations are in violation of the due process and equal protection clauses of the United States Constitution.

In addition, petitioners have moved to recuse from consideration of this matter all members of the State Board who participated in the State Board decision of May 5, 1993, arguing that they do not believe that such members would act any differently in the current matter and contending that "[in] essence, the State Board members would be passing judgment on their own decision." Petitioner's letter brief of November 15, 1997, at 2.

Initially, we deny petitioners' motion to recuse all State Board members who participated in the May 1993 decision. Quite simply, petitioners have failed to provide any legitimate basis for such recusal.

Upon review of the arguments submitted in this appeal, we affirm the determination of the Commissioner to dismiss the petition. As the ALJ and the Commissioner properly concluded, principles of collateral estoppel preclude petitioners

from relitigating any issue which was litigated on their behalf and decided in the prior matter. Moreover, we conclude that petitioners lack the standing to challenge the Board's revised prom regulations. Petitioners have long since graduated from high school and have failed to identify any interest in the Board's revised prom regulations on their part which would justify allowing them to litigate this matter any further.

N.J.A.C. 6:24-1.1.¹

January 7, 1998

Date of mailing _____

¹ We note that because petitioners' challenge does not appear to involve any actual controversy arising from the revised prom regulations, their petition may be properly characterized as one for a declaratory ruling under N.J.A.C. 6:24-2.1. We also note that the determination to entertain such petitions lies within the discretion of the Commissioner. Id.