

Education found that the petitioner had demonstrated substantive and procedural infirmities such as to warrant setting aside the expulsion.

However, the Commissioner's decision did not entirely resolve the matter because the petitioner continued to pursue separate claims against the Commissioner and the State Board of Education (hereinafter "State respondents"). Petitioner claimed that the State respondents had violated his son's constitutional rights by failing to promulgate regulations or to otherwise ensure that no student is expelled in a manner that is fundamentally unfair, arbitrary, capricious or unreasonable and by failing to ensure that his son was provided with an appropriate alternative education program following his expulsion.

The Administrative Law Judge ("ALJ") rejected petitioner's claims and granted the State respondents' motion for summary decision. Finding that there were no material facts in dispute, the ALJ determined that, although the initial expulsion by the district board had been an overreaction, the Commissioner's decision setting aside the expulsion had corrected the situation. In that the State respondents had not been under any obligation to act preemptively, the ALJ concluded that they were entitled to prevail as a matter of law with regard to petitioner's claims that they had violated petitioner's son's constitutional rights by failing to promulgate regulations to govern student expulsions. Similarly, the ALJ found that the Commissioner, by his decisions in the matter, had fulfilled his obligation to ensure that petitioner's son was provided an alternative education program. The ALJ therefore recommended that the Commissioner dismiss the matter.

The Commissioner adopted the ALJ's initial decision. In doing so, the Commissioner observed that the only relief that the petitioner sought was a finding that the State respondents had violated his son's right to a thorough and efficient education under the New Jersey Constitution and an order directing them to promulgate regulations to govern long-term suspensions and expulsions.

For the reasons expressed by the ALJ and the Commissioner, the State Board of Education affirms the decision of the Commissioner. In doing so, we stress that, as noted by the Commissioner, the proper course to follow in order to obtain the promulgation of regulations is not agency adjudication. E.g., P.H. and P.H., on behalf of minor child, M.C. v. Board of Education of the Borough of Bergenfield, decided by the State Board of Education, July 2, 2002. Rather, as provided by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the proper course for seeking the adoption of regulations by an administrative agency is to petition the agency to adopt a new rule according to the procedures prescribed by such agency. N.J.S.A. 52:14B-4(f). See N.J.A.C. 6A:6-4, codifying the procedures to be followed in filing a petition for rulemaking with the Department of Education. In the event that a party is dissatisfied with the disposition of his petition or with regulations adopted as a result of such petition, his recourse is to appeal to the Appellate Division. E.g., In re Adoption of N.J.A.C. 9A:10-7.8(b), 327 N.J. Super. 149 (App. Div. 2000). See In re 1999-2000 Abbott v. Burke Implementing Regulations, 348 N.J. Super. 382 (App. Div. 2002).

August 6, 2003

Date of mailing _____