

#1-15 (OAL Decision: http://njlaw.rutgers.edu/collections/oal/html/initial/edu07224-12_1.html)

G.L. AND S.L., on behalf of minor child, :
S.L., :

PETITIONERS, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF NEW PROVIDENCE,
UNION COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioners alleged that the respondent Board failed to safeguard their child's student records, and that the failure resulted in improper public commentary over the Internet. Specifically, this matter involves a 2009 letter sent to the Board by petitioner G.L. in which she appealed the decision to deny S.L. admission to the school district's Gifted and Talented Program (GTP) because her scores on a particular test were below the school's cutoff; the petitioner argued for a policy change to use more criteria for entrance to the program. In 2011, an unnamed blogger posted comments of a political nature regarding New Providence's school board election. These comments included the statement that S.L. "didn't get into the gifted and talented section...". Petitioners maintain that this information could only have been available because the Board failed to treat G.L.'s appeal letter to the Board as a confidential school record, and maintain it in a manner that assured the security of the record in accordance with *N.J.A.C. 6A:32-7.1 to 7.8*. The Board contended that the document in question was not a student record but was nonetheless adequately protected; further, no evidence exists to link the comments in the anonymous blog to the Board. Petitioners filed their complaint in Superior Court. Subsequently, the Superior Court judge assigned to the case determined that the Commissioner of Education had primary jurisdiction, and transferred the matter to the Commissioner.

The ALJ found, *inter alia*, that: documents that are maintained by the school and that facially relate to an individual as a pupil in the school, are pupil records under *N.J.A.C. 6:32-2.1*; G.L.'s appeal letter was properly a student record within the State Board's definitions; there is no evidence to show that the Board left student documents lying around; the blogger has never been identified, and it is impossible to determine how he or she came to know that S.L. was not accepted into the GTP; and there are many possibilities but no actual evidence connecting the filing of the appeal letter to the release of confidential information by the blogger. The ALJ concluded that petitioners failed to sustain their burden of demonstrating that the record was improperly safeguarded or that Board action or inaction led to the blogging incident. Accordingly, the ALJ dismissed the petition with prejudice.

Upon a full and independent review, the Commissioner concurred with the findings and conclusion of the ALJ. Accordingly, the Initial Decision of the OAL was adopted as the final decision with respect to all school law issues. The Commissioner noted that any outstanding common law claims contained in the petitioners' Superior Court complaint may be adjudicated in that forum.

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.

January 2, 2015

OAL DKT. NO. EDU 07224-12
AGENCY DKT. NO. 141-5/12

G.L. AND S.L., on behalf of minor child, :
S.L., :
PETITIONERS, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF NEW PROVIDENCE, :
UNION COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (“OAL”) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioners and the Board of Education’s reply thereto. This matter originated as a complaint filed in the Law Division of the Superior Court of New Jersey, Union County, wherein the petitioners’ alleged that the Board failed to safeguard S.L.’s confidential student records, and as a result, private academic information was published by a blogger on a website. The petitioners further allege that there was a violation of their privacy rights resulting in public embarrassment and a loss of reputation.

On May 16, 2012, this matter was transferred to the Commissioner of Education from the Superior Court of Union County for a determination as to whether the Board violated any school laws. The matter was then transmitted to the Office of Administrative Law. The Administrative Law Judge found that the letter written by petitioner, G.L., appealing the Board’s decision denying her child admission to the Gifted and Talented Program was a student record. Additionally, the ALJ determined that the petitioners failed to show that the Board did not properly safeguard S.L.’s student records, and – as a result – she dismissed the petition of appeal.

In their exceptions, the petitioners do not challenge the ALJ's determination that the appeal letter constituted a student record, but rather they contend that the ALJ exceeded the limited scope of the transmittal Order from Superior Court. The petitioners contend that they set forth numerous allegations of negligence and other common law claims against the Board in their Superior Court Complaint, and the ALJ deprived them of their right to a jury trial when she assumed jurisdiction over said issues and purported to resolve them in the Initial Decision. Therefore, the petitioners argue that once the ALJ determined that the appeal letter was a student record, she was required to transmit the remainder of the dispute back to Superior Court.

In reply, the Board urges the Commissioner to adopt the Initial Decision as the final decision in this matter.¹ The Board maintains that the ALJ has jurisdiction to hear matters involving New Jersey school law, and that the alleged negligent maintenance of S.L.'s confidential student records is directly related to the implementation and interpretation of school laws. Therefore, the ALJ did not exceed her authority in deciding the case in its entirety. The Board also stresses that the ALJ properly drew inferences from the testimony and the documentary evidence in the record to support her finding that there was no nexus between the anonymous blogger and the Board's mechanisms for protecting student records.

The Commissioner's jurisdiction in this matter is limited to whether the appeal letter constitutes a student record, and if so, whether the Board failed to maintain the record in a manner that assured the security of the record in accordance with *N.J.A.C.* 6A:32-7.1 to 7.8. Upon a comprehensive review of the record, the Commissioner concurs with the ALJ's determination that the appeal letter was a student record. The Commissioner is also in accord with the ALJ's determination that the petitioners' failed to establish that the Board did not properly secure S.L.'s student records.

¹ The Board does not take exception to the ALJ's determination that the appeal letter constituted a student record.

There is nothing in the record that establishes a link between the information contained in the blog and the Board's procedures for safeguarding records. Indeed, as the ALJ emphasized in the Initial Decision, there were a variety of ways that the unknown blogger could have ascertained that G.L.'s daughter had not been accepted into the Gifted and Talented Program. Moreover, the Commissioner's jurisdiction is limited to controversies and disputes that arise under the school laws, *N.J.S.A. 18A:6-9*, and as such the Commissioner does not have jurisdiction over the acts of an unknown blogger who posts information on the internet where no school laws are implicated.

Accordingly, the ALJ's Initial Decision is adopted as the final decision in this matter with respect to all school law issues. To the extent that the petitioners are asserting common law claims and seeking damages that fall outside the scope of the Commissioner's jurisdiction, any outstanding claims contained in the petitioners' Superior Court complaint may be adjudicated in that forum.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: January 2, 2015

Date of Mailing: January 5, 2015

² Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.