

B.E., on behalf of minor child, F.E., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF PISCATAWAY,
 MIDDLESEX COUNTY, :
 RESPONDENT. :

SYNOPSIS

Petitioner appealed the decision of the respondent Board to suspend F.E. for one year based upon incidents that included cyberbullying and disruption of school activities. Prior to the commencement of the 2018-2019 school year, petitioner withdrew F.E. from Piscataway High School (PHS) and enrolled him in a private school in Edison, New Jersey. The Board filed a motion to dismiss the petition for lack of jurisdiction. Petitioner claimed that he retained standing to challenge the findings of the Board and the discipline imposed, notwithstanding the decision to enroll F.E. in a private school. The Board contended that once F.E. was disenrolled from PHS, the Commissioner and the Office of Administrative Law lost jurisdiction over this matter; therefore, petitioner can no longer challenge the accuracy of F.E.’s disciplinary records using the regulations at *N.J.A.C. 6A:32-7.7*, but instead must rely on the Destruction of Public Records Law, *N.J.S.A. 47:3-15*. Petitioner argued that he has not asked for expungement of F.E.’s records, even though the Board has tried to frame the issue herein as a challenge to their accuracy pursuant to *N.J.A.C. 6A:32-7.7*; rather, petitioner seeks only a review of the merits of the Board’s decision which resulted in F.E.’s suspension.

The ALJ found, *inter alia*, that: the only issue to be determined in this case is whether the Commissioner maintained jurisdiction to hear the appeal after F.E. was disenrolled from PHS; though the within dispute began as a challenge to discipline under the school laws, once F.E. was disenrolled from the Piscataway school district, the Commissioner no longer retained jurisdiction over this matter. In so determining, the ALJ relied upon *R.W., on behalf of minor child, A.W. v. Board of Educ. of the Township of Washington, Gloucester County* in support of the position that since F.E. is no longer a student in the respondent’s school district, the Commissioner is without jurisdiction to adjudicate the controversy. The ALJ granted the Board’s motion to dismiss the petition.

Upon comprehensive review and consideration, the Commissioner found, *inter alia*, that the ALJ erroneously dismissed the petition for lack of jurisdiction and remanded the matter to the OAL for further proceedings. In so finding, the Commissioner noted, *inter alia*, that F.E.’s disenrollment from the District during these proceedings does not void the Commissioner’s jurisdiction to review a challenge to the one-year suspension, and petitioner is entitled to a decision on the merits. Accordingly, the matter was remanded to the OAL for further proceedings consistent with these concerns.

<p>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.</p>

OAL DKT. NO. EDU 11838-18
AGENCY DKT. NO. 182-7/18

B.E., on behalf of minor child, F.E., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF PISCATAWAY,
MIDDLESEX COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioner, B.E., and the Piscataway Board of Education’s (Board) reply thereto. In this matter, the petitioner is challenging the Board’s decision to suspend F.E. for one year, as the result of an incident that occurred in March 2018. After the petition was filed in July 2018, the petitioner withdrew F.E. from the District and enrolled him in private school. The Administrative Law Judge (ALJ) found that because F.E. was disenrolled from the District, the Commissioner no longer has jurisdiction over this matter; consequently, the ALJ granted the Board’s motion to dismiss.

Upon a comprehensive review of the record, the Commissioner finds that the ALJ erroneously dismissed the petition of appeal for lack of jurisdiction. It is well established that the Commissioner of Education’s jurisdiction extends to controversies and disputes arising under New Jersey school law. *N.J.S.A.* 18A:6-9. Further, a challenge to a board of education’s decision to impose discipline on a student falls squarely within the Commissioner’s jurisdiction. Therefore, the Commissioner has jurisdiction to determine whether the Board’s decision to impose a one-year suspension on F.E. was arbitrary, capricious or unreasonable. Importantly, the disenrollment of F.E. from the District during these proceedings does not void the Commissioner’s jurisdiction to review a

challenge to the one-year suspension. *See, Destiny Jackson v. Board of Educ. of the Morris School District, Morris County, et al.*, Commissioner Decision No. 462-14, decided November 20, 2014 (Despite the fact that the petitioner had graduated from high school and was no longer a student in the school district, the petitioner was entitled to a hearing to determine whether the board of education's decision to give her a long term suspension was arbitrary, capricious or unreasonable).¹ Moreover, any impact that a final decision may have on the petitioner's ability to seek the modification of F.S.'s student records would likewise not negate the Commissioner's jurisdiction over the suspension decision itself. The petitioner is entitled to a decision on the merits of the Board's imposition of a one-year suspension on F.E.; thus, this matter should not be dismissed on procedural grounds.²

Accordingly, the Commissioner hereby remands this matter to the OAL for further proceedings consistent with the concerns set forth above.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: January 4, 2019

Date of Mailing: January 8, 2019

¹ In the Initial Decision, the ALJ relied on *R.W., on behalf of minor child, A.W. v. Board of Educ. of the Township of Washington, Gloucester County*, EDU 8073-09, Initial Decision, decided October 21, 2009, *affirmed*, Commissioner Decision No. 396-08, decided December 2, 2009, in support of the position that, since F.E. is no longer a student in the District, the Commissioner does not have jurisdiction in this matter. The facts and procedural history in *R.W., supra*, are distinguishable from this matter. The ongoing dispute between R.W. and the Washington Township Board of Education outlined in the Initial Decision indicates that other concerns regarding *res judicata* and the 90-day rule were also a factor that led to the disposition of that case. The Commissioner's decision in *Jackson, supra*, is analogous to the circumstances in this case, and is more appropriately applied to support the remand of this matter for a determination as to whether the Board's disciplinary decision was arbitrary, capricious or unreasonable.

² It appears from the record that the decision to disenroll F.E. from the District and to place him in a private school was in direct response to the fact that he was suspended from Piscataway High School for one year. The one-year suspension ends in March 2019, and it is possible that F.E. could be reenrolled in the District at some point thereafter. The potential reenrollment of F.E. in the District also accentuates the need for a decision on the merits.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

GRANTING MOTION TO DISMISS

OAL DKT. NO. EDU 11838-18

AGENCY REF. NO. 182-7/18

B.E. O/B/O F.E.,

Petitioner,

v.

BOARD OF EDUCATION

OF THE TOWNSHIP OF PISCATAWAY

SCHOOLS, MIDDLESEX COUNTY,

Respondent.

Chinemerem N. Njoku, Esq., for petitioner (C.N. Njoku, LLC, attorneys)

David B. Rubin, Esq., for respondent

Record Closed: October 29, 2018

Decided: November 20, 2018

BEFORE **TRICIA M. CALIGUIRE, ALJ:**

STATEMENT OF CASE

Petitioner B.E. brings this action on behalf of his son, F.E., to appeal the decision of respondent Board of Education of the Township of Piscataway Schools (BOE) to suspend F.E. for one-year, effective March 29, 2018.

PROCEDURAL HISTORY

On March 16, 2018, Teresa M. Rafferty (Rafferty), Superintendent of the Piscataway Township Schools, sent written notice to petitioner that F.E. was suspended for ten days as a result of an incident that occurred on March 14, 2018. On March 28, 2018, Rafferty sent written notice to petitioner that F.E.'s suspension was extended for one year, through March 13, 2019. Petitioner appealed this decision to the BOE and on April 12 and 26, 2018, the BOE held a hearing to consider Rafferty's recommendation to suspend F.E. for one year. On May 1, 2018, the BOE issued a decision upholding Rafferty's finding that F.E. engaged in disciplinable conduct but modifying the grounds and terms of the suspension.

On July 30, 2018, petitioner filed an appeal of the Board's decision to issue the suspension with the Commissioner of the New Jersey Department of Education (DOE), which was transmitted to the Office of Administrative Law (OAL) and filed as a contested matter on August 16, 2018. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. During a prehearing telephone conference on September 24, 2018, the parties acknowledged that prior to the commencement of the 2018-2019 school year, petitioner withdrew F.E. from Piscataway High School and enrolled him in a private school. As directed during the conference on October 11, 2018, the BOE filed the present motion to dismiss the petition for lack of jurisdiction or, alternatively, for failure to state a claim upon which relief may be granted. Petitioner filed a response on October 25, 2018. The BOE filed a reply on October 29, 2018, and the motion is now ripe for consideration.

FACTUAL DISCUSSION AND FINDINGS

The facts in this matter are undisputed. Accordingly, I **FIND** the following **FACTS**:

1. During the 2017-2018 school year, F.E. was enrolled in Piscataway High School (PSH).
2. Due to an incident or series of incidents that occurred on March 14, 2018, Rafferty suspended F.E. from PSH for ten days. On March 29, 2018, Rafferty

sent a letter to petitioner stating that F.E. was guilty of cyberbullying and disruption of school activities and that his suspension was extended for one year, through March 13, 2019.

3. Petitioner appealed Rafferty's decision to the BOE. The BOE modified the grounds and terms of suspension but continued to suspend F.E. from the PSH general education program until the beginning of the third marking period of the 2018-2019 school year.
4. Petitioner appealed the BOE decision to the Commissioner of the DOE.
5. Prior to the commencement of the 2018-2019 school year, petitioner withdrew F.E. from PSH and enrolled him in a private school in Edison, New Jersey.

POSITIONS OF THE PARTIES

The parties agree that petitioner initially appealed the decision of the BOE that F.E. engaged in misconduct and the penalty imposed and sought to have F.E. reinstated at PSH for the 2018-19 school year. Respondent contends, however, that the Commissioner, and the OAL, lost jurisdiction over this matter when F.E. disenrolled from PSH and that petitioner can no longer challenge the accuracy of F.E.'s disciplinary records using the regulations at N.J.A.C. 6A:32-7.7. Respondent states that petitioner must rely on the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq.

Petitioner claims that he retained standing to challenge the findings of the BOE and the discipline imposed, notwithstanding his decision to enroll his son in a private school. Petitioner has not asked for expungement of his records, even though the Board has tried to frame the issue here as a challenge to their accuracy, pursuant to N.J.A.C. 6A:32-7.7. All petitioner is asking for is a review of the merits of the Board's decision in the underlying case, which resulted in the imposition of discipline.

LEGAL ANALYSIS AND CONCLUSION

“To exercise jurisdiction over a dispute, an administrative agency must have specific legislative authority.” Dolan v. Centuolo, Nos. A-2470-10T4, A-2710-10T4, at *11 (App. Div. July 9, 2012), <<http://njlaw.rutgers.edu/collections/courts/>> (citing Archway Programs, Inc. v. Pemberton Twp. Bd. of Educ., 352 N.J. Super. 420, 426 (App. Div. 2002)). Pursuant to N.J.S.A. 18A:6-9, the Commissioner of Education

shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the State board or of the commissioner . . .

[N.J.S.A. 18A:6-9 (emphasis added).]

Even though this dispute began as a challenge to discipline under the school laws, and despite the arguments made by both parties regarding the legal basis by which petitioner might seek to have F.E.’s records from PSH expunged,¹ the only issue here is whether the Commissioner maintained jurisdiction to hear F.E.’s appeal after F.E. disenrolled from PSH. As the Commissioner succinctly stated in R.W. o/b/o A.W. v. Board of Education of the Township of Washington, Gloucester County, OAL Docket No. EDU 8073-08, Initial Decision (October 21, 2009), affirmed, Commissioner (December 2, 2009):

As the minor child on whose behalf the case was brought has been disenrolled from respondent’s school district, the Commissioner is without jurisdiction to adjudicate the controversy.

Accordingly, I **CONCLUDE** that petitioner’s challenge to the decision of the respondent Board is no longer within the jurisdiction of the Commissioner.

¹ The Board concedes that its “research has not disclosed any authority that would confer standing on petitioners to seek expungement of their son’s disciplinary records . . . now that he has been disenrolled from [PSH].” Letter Br. of Resp’t. (October 10, 2018), p. 4. Such authority is arguably not necessary (even were the Commissioner to maintain jurisdiction) given that petitioners are not seeking to expunge their son’s records, they are seeking to challenge the decision of the Board memorialized in those records.

ORDER

It is hereby **ORDERED** that respondent's Motion to Dismiss is **GRANTED** and **B.E.'s** petition is **DISMISSED**.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the 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 **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU 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.

November 20, 2018 _____

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

nd

APPENDIX

EXHIBITS

For Petitioner:

- P-1 Petitioner B.E. on behalf of F.E.'s Response to Respondent's Motion to Dismiss, dated October 24, 2018

For Respondent:

- R-1 Respondent Township of Piscataway Board of Education, Middlesex County, Motion to Dismiss the Petition of Appeal for Lack of Jurisdiction or, Alternatively, for Failure to State a Claim Upon Which Relief May be Granted, dated October 10, 2018