



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
33 Washington Street
Newark, NJ 07102
(973) 648-6008

**A copy of the administrative law
judge's decision is enclosed.**

**This decision was mailed to the parties
on JUN 14 2010**



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 11597-09
AGENCY DKT. NO. 225-9/09

**G.D.M. AND T.A.M., ON BEHALF OF
MINOR CHILD, B.M.M.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE
RAMAPO INDIAN HILLS REGIONAL
HIGH SCHOOL DISTRICT,
BERGEN COUNTY,**

Respondent.

G.D.M., Esq., for petitioners
(Price, Meese, Shulman & D'Arminio, attorneys)

Stephen R. Fogarty, Esq., for respondent
(Fogarty & Hara, attorneys)

Record Closed: June 11, 2010

Decided: June 11, 2010

BEFORE RICHARD McGILL, ALJ:

This matter involves a challenge by G.D.M. and T.A.M. on behalf of their daughter, B.M.M. (hereinafter collectively "petitioners") to Regulation 6145, entitled "Extracurricular Activities," which was adopted by the Board of Education of the Ramapo

Indian Hills Regional High School District (hereinafter "respondent") on June 22, 2009, and implemented within the school district at the commencement of the 2009-2010 school year. Regulation 6145 sets forth requirements related to students' conduct both on and off school grounds and specifies consequences for failure to comply therewith. More specifically, in addition to general behavioral expectations, the conduct requirements relate to use of alcoholic beverages and/or drugs and compliance with the New Jersey Code of Criminal Justice, and/or applicable municipal codes or ordinance violations. The consequences of a violation of the requirements set forth in Regulation 6145 include the temporary revocation of participation by the student in extracurricular activities. Petitioners maintain that Regulation 6145 violates various provisions of the New Jersey and United States Constitutions and several New Jersey statutes and regulations. Both parties new move for summary decision.

PROCEDURAL HISTORY

Petitioners filed their petition with the Commissioner of Education on September 2, 2009, invoking the Commissioner's authority to hear and determine controversies arising under the school laws pursuant to N.J.S.A. 18A:6-9. On September 21, 2009, respondent filed a motion to dismiss in lieu of an answer pursuant to N.J.A.C. 6A:3-1.5(g). The matter was transmitted to the Office of Administrative Law on September 21, 2009, for determination as a contested case.

On October 6, 2009, petitioners filed a motion for summary decision. In addition to supporting the motion, petitioner's brief opposed respondent's motion to dismiss. On November 13, 2009, respondent filed a cross-motion for summary decision. After the submission of various responsive papers, respondent's motion to dismiss was denied by Order dated June 11, 2010.

MOTIONS FOR SUMMARY DECISION

A. Legal Standard

A motion for summary decision should be granted where there is no genuine issue as to any material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). The same standard is applied in the courts of this State pursuant to R. 4:46-2. Summary judgment "is designed to provide a prompt, businesslike and inexpensive method" to dispose of actions which do not present any genuine issue of material fact. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). The movant must show that there is no genuine issue of material fact, and all inferences of doubt are drawn against the movant. Id. at 74-75. However, excessive caution which would undercut the purposes of a motion for summary judgment should be avoided. Pierce v. Ortho Pharmaceutical Corp., 84 N.J. 58, 65 (1980). Thus, if the opposing party offers only facts which are immaterial or insubstantial in nature, these circumstances should not defeat a motion for summary judgment. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. at 75. Although the pleadings may raise a factual issue, summary judgment procedure pierces the allegations in the pleadings, where the other papers show the absence of any genuine issue of material fact. Ibid.

In determining whether there exists a genuine issue as to a material fact, the judge must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 523 (1995).

B. Issues

The issues in this proceeding are as follows: (1) whether Regulation 6145 violates N.J.A.C. 6A:16-7.1 or -7.6 or any other State regulation; (2) whether Regulation 6145 is unconstitutional; (3) whether Regulation 6145 is ultra vires; (4) whether Regulation 6145 violates the student's rights to a thorough and efficient education; and (5) whether Regulation 6145 infringes on the parental rights of petitioners.

C. Facts

In support of their motion for summary decision, petitioners submitted a statement of facts and a certification of T.A.M. with twenty-three exhibits attached thereto. Respondent submitted a statement of facts and a certification of C. Lauren Schoen, its Superintendent of Schools. The parties characterize Regulation 6145 somewhat differently, but the document speaks for itself. There is no question as to the wording of Regulation 6145. Petitioners presented a number of newspaper articles concerning an extended consideration of Regulation 6145 presumably to show its intent. Newspaper articles are not inherently reliable as a source of facts, but they seem to provide an indication as to some of the concerns that led to the adoption of Regulation 6145. After a review of the submissions of the parties, I am satisfied that there is no genuine issue concerning the following facts.

Based upon the submissions of the parties, I **FIND** as follows:

1. Petitioners are taxpayers and property owners in the Borough of Franklin Lakes and are the parents and natural guardians of their daughter, B.M.M., who is a senior at respondent's Indian Hills High School.
2. Franklin Lakes is one of three towns that share two public high schools operated by respondent.

3. During her first three years at Indian Hills High School, B.M.M. participated in numerous extracurricular activities and plans to engage in those same activities during her final year.
4. In 2007, respondent proposed a regulation granting the school district the authority to temporarily deny students the opportunity to participate in extracurricular activities.
5. Thereafter, respondent held numerous public hearings between 2007 and 2009 to discuss the proposed regulation.
6. T.A.M. attended all but one of the public hearings in regard to Regulation 6145.
7. G.D.M. and T.A.M. spoke against the proposed regulation at the public hearings.
8. A primary motivation for the proposed regulation was concern about illegal use of drugs and alcohol by students.
9. An article in the Franklin Lakes and Oakland Suburban News on August 20, 2008, in regard to the proposed regulation stated in part as follows:

The impetus of the policy, officials say, was a survey of student drug and alcohol use conducted by the Rocky Mountain Behavior Science Institute in 2005.

"The statistics that jumped off the page were the high percentage of students drinking at home with parental knowledge, [Schools Superintendent Paul] Saxton said. "That was alarming. We have data that reflects a significant problem."

Saxton said the policy is meant to be a deterrent to illegal activities.

10. An article in The Villadom Times on July 16, 2008, concerning the proposed regulation stated in part as follows:

Saxton explained that the policy was created after a survey of the district's students indicated by grade level the degree to which students were experimenting with alcohol and drugs. "The results scared us to death," he said, adding that the survey also indicated that an alarming number of kids were drinking alcohol at parties when the parents were home.

"How do you wrap your arms around a problem like that?" he said. "We felt compelled, as educators, to do something constructive.

11. An article in The Record on August 17, 2007, concerning the proposed regulation stated in part as follows:

School officials first thought of banning Ramapo and Indian Hills High School students from sports and clubs for off-camps misbehavior when they saw the district's survey on drug and alcohol use two years ago.

The survey found that students who drank alcohol did it at home approximately 85 percent to 90 percent of the time, district Superintendent Paul Saxton said.

To curb the bad behavior, officials last week introduced a draft of a pledge that students would be required to sign before they participate in clubs and sports. The pledge states that they will face suspension from extracurricular activities if they break school rules or the law.

"If I thought the parents were dealing with them, we wouldn't be doing this," Saxton said, referring to the pledge. "I'm not making a blanket statement that all parents aren't taking action ... but are they aware of where [their children] are and what they're doing?"

12. On June 22, 2009, respondent voted to adopt Regulation 6145, which provides in pertinent part as follows:

Introduction:

Participation in Board-sponsored extracurricular activities is a privilege enjoyed only by students in good academic and disciplinary standing. This privilege is earned through compliance with all applicable rules and regulations. This policy is intended to be a positive statement in support of our students as they strive to remain free of all drugs and alcohol as required by state law. This policy also encourages a student to maintain good attendance and grades, abide by all school rules, and to be a good citizen. The Board has the authority to restrict or revoke a student's privilege to participate in extracurricular activities.

The consequences set forth in this Policy and Regulation relate solely to limiting the opportunity of any student found to be in violation of this Policy or Regulation to participate in Board-sponsored extracurricular activities. Nothing set forth in this Policy or Regulation shall limit the District's ability to discipline/impose additional consequences upon a student whose conduct amounts to a violation of any Board Policy or Regulation and/or the Code of Student Conduct.

.....

Conduct Requirements:

1. **General Behavioral Expectations:**
 - a. Students are expected to comply with all of the Board's policies and regulations at all times, including but not limited to Board Policy and Regulation No. 5131 ("Student Conduct/Discipline"), Board Policy No. 5131.6 ("Substance Abuse"), Board Policy No. 6145.1 and 2 ("Intramural Competition/Interscholastic Competition") and the District's Code of Student Conduct.
 - b. Students are required to conform to reasonable standards of acceptable behavior, to respect the rights, person and property of others, to preserve the degree of order necessary for the conduct of the educational program, and to obey those in authority.
 - c. Students shall not engage in activities that constitute criminal offenses or juvenile delinquency as defined by law.
2. **Use of Alcoholic Beverages and/or Drugs:**

- a. Expectations: All student participants in Board-sponsored extracurricular activities must refrain from the use, possession or distribution of any alcoholic beverage or other drugs (unless prescribed by a physician) **both on and off school grounds**, during the season or activity in which the student wishes to participate the extracurricular activity.

Consequences for Violations of Conduct Requirements:

1. Alleged violations of the above behavioral expectations occurring on school grounds and/or at school sponsored events will be reported by supervising staff member to the building administrator. With respect to conduct occurring away from school grounds/events, an alleged violation of the above conduct requirements shall occur if a student is formally charged and/or arrested by law enforcement for an alleged violation of the New Jersey Code of Criminal Justice, and/or applicable municipal codes or ordinance provisions.
2. Following notification of a student's alleged violation, the building administrator shall conduct a conference with the student and his/her parents, which shall include the student assistance counselor ("SAC") and other district personnel, as appropriate, at which time the student shall be provided the opportunity to address the alleged violation.
3. At the conclusion of the conference, the administrative personnel shall determine whether or not a violation of this Policy and Regulation has occurred.
4. If a violation has occurred, appropriate consequences under this Policy and Regulation shall be determined following consideration of all the facts and circumstances of a particular situation, but shall include as a minimum the following:
 - a. First Violation: The student may not participate in any extracurricular activities for seven (7) school days, and/or, at the discretion of the administrator, through and including the next scheduled competitive game and/or event.
 - b. Second Violation: The student may not participate in any extracurricular activities for ninety (90) school days.

- c. Third Violation: The student may not participate in any extracurricular activities for one-hundred eighty (180) school days.

-
13. Regulation 6145 was implemented within the school district at the commencement of the 2009-2010 school year. The students were notified of this policy through start-of-year assemblies, the Student Handbook and the school website.
 14. Additionally, some athletic teams were specifically notified of this policy by coaching staff at the commencement of the practice season.
 15. At the beginning of the 2009-2010 school year, each student including B.M.M. was given a Student Handbook, together with a Consent Form, to be signed by students and parents acknowledging receipt of the Handbook and that students will be held accountable for their behavior and will be subject to the disciplinary consequences outlined in the Handbook.
 16. G.D.M., T.A.M. and B.M.M. refused to sign the Consent Form based upon the belief that they were waiving constitutional rights and would be bound by Regulation 6145.
 17. On September 22, 2009, B.M.M. was called to the Indian Hills High School Administration Office and asked to explain why she did not sign the Consent Form. B.M.M. was told that the matter would be referred to the high school's principal.
 18. G.D.M. and T.A.M. received a notice entitled "Mandatory Consent Form" stating that "(i)f you fail to return the signed Consent Form, the matter will be turned over to the Administration, and it is likely that your parent's access to Genesis will be blocked."

19. Genesis is the high school's online parental tool that allows parents real-time access to vital information regarding the student's conduct in the school, including missing homework assignments and grades.
20. In response, G.D.M. and T.A.M. sent a letter to the high school principal on September 23, 2009, stating that they and their two children, including B.M.M., would not sign the Consent Form, because they believed that it was unlawful.

D. Law and Analysis

The United States Supreme Court delineated parents' liberty interest in the care, custody and control of their children in Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L.Ed. 2d 49 (2000) as follows:

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." Washington v. Glucksberg, 521 U.S. 702, 719, 138 L. Ed. 2d 772, 117 S. Ct. 2258 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." 521 U.S. at 720; see also Reno v. Flores, 507 U.S. 292, 301-302, 123 L. Ed. 2d 1, 113 S. Ct. 1439 (1993).

The liberty interest at issue in this case – the interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in Meyer v. Nebraska, 262 U.S. 390, 399, 401, 67 L. Ed. 1042, 43 S. Ct. 625 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in Pierce v. Society of Sisters, 268 U.S. 510, 534-535, 69 L. Ed. 1070, 45 S. Ct. 571 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." We explained in Pierce that the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to

recognize and prepare him for additional obligations.” 268 U.S. at 535. We returned to the subject in Prince v. Massachusetts, 321 U.S. 158, 88 L. Ed. 645, 64 S. Ct. 438 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.” 321 U.S. at 166.

In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. See, e.g., Stanley v. Illinois, 405 U.S. 645, 651, 31 L. Ed. 2d 551, 92 S. Ct. 1208 (1972) (“It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children ‘comes to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements’” (citation omitted)); Wisconsin v. Yoder, 406 U.S. 205, 232, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972) (“The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition”); Quilloin v. Walcott, 434 U.S. 246, 255, 54 L. Ed. 2d 511, 98 S. Ct. 549 (1978) (“We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected”); Parham v. J.R., 442 U.S. 584, 602, 61 L. Ed. 2d 101, 99 S. Ct. 2493 (1979) (“Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course”); Santosky v. Kramer, 455 U.S. 745, 753, 71 L. Ed. 2d 599, 102 S. Ct. 1388 (1982) (discussing “the fundamental liberty interest of natural parents in the care, custody, and management of their child”); Glucksberg, supra, at 720 (“In a long line of cases, we have held that in addition to the specific freedoms protected by the Bill of Rights, the ‘liberty’ specially protected by the Due Process Clause includes the right ... to direct the education and upbringing of one’s child” (citing Meyer and Pierce)). In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decision concerning the care, custody, and control of their children. [Id., at 56-57.]

After citing Troxel v. Granville, supra, the Third Circuit Court of Appeals stated in Gruenke v. Seip, 225 F.3d 290 (3rd Cir. 2000) that the United States Supreme Court recognized that:

for some portions of the day, the children are in the compulsory custody of state-operated school systems. In that setting, the state's power is "custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults." Vernonia Sch. Dist. v. Acton, 515 U.S. 646, 655, 132 L. Ed. 2d 564, 115 S. Ct. 2386 (1995). For some purposes, then, "school authorities act[] in loco parentis." Bethel Sch. Dist. v. Fraser, 478 U.S. 675, 684, 92 L. Ed. 2d 549, 106 S. Ct. 3159 (1986). But see New Jersey v. T.L.O., 469 U.S. 325, 336-37, 83 L. Ed. 2d 720, 105 S. Ct. 733 (1985) (school authorities are not merely parental surrogates but also exercise public authority for Fourth Amendment purposes.).

Thus, there may be circumstances in which school authorities, in order to maintain order and a proper educational atmosphere in the exercise of police power, may impose standards of conduct on students that differ from those approved by some parents. See, e.g., Vernonia, 515 U.S. at 664-65 (allowing participation in school athletics to be conditioned upon testing for illegal drugs); Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273, 98 L. Ed. 592, 108 S. Ct. 562 (1988) (permitting censorship of school-sponsored publication); T.L.O., 469 U.S. at 347-48 (upholding warrantless search of student's effects).

Although a student may not enjoy a right of privacy to the same extent as a free adult, there are nevertheless limitations on intrusions by school authorities. Thus, in Vernonia, although the Court approved drug tests, it was also careful to indicate that the tests were inappropriate to determine "whether the student is, for example, epileptic, pregnant, or diabetic." 515 U.S. at 658. In describing the justification for the random, coerced drug testing in Vernonia, the Court pointed out that the State must demonstrate "an interest that appears important enough to justify the particular search at hand, in light of other factors that show the search to be relatively intrusive upon a genuine expectation of privacy." Id. at 661.

It is not unforeseeable, therefore, that a school's policies might come into conflict with the fundamental right of parents to raise and nurture their child. But when such collisions occur, the primacy of the parents' authority must be recognized and should yield only where the school's action is tied to a compelling interest.

As the Court said in Roberts v. United States Jaycees, 468 U.S. 609, 82 L. Ed. 2d 462, 104 S. Ct. 3244 (1984), "the Court has long recognized that because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the State." Id. at 618.

Familial relationships are the quintessential "personal bonds" that "act as critical buffers between the individual and the power of the State." Id. at 619-20. [Id., at 304-305.]

The Court of Appeals further stated:

School-sponsored counseling and psychological testing that pry into private family activities can overstep the boundaries of school authority and impermissibly usurp the fundamental rights of parents to bring up their children, as they are guaranteed by the Constitution. See Merriken v. Cressman, 364 F. Supp. 913, 922 (E.D. PA. 1973) (questionnaire probing family relationships by school authorities held unconstitutional). Public schools must not forget that "in loco parentis" does not mean "displace parents."

It is not educators, but parents who have primary rights in the upbringing of children. School officials have only a secondary responsibility and must respect these rights. State deference to parental control over children is underscored by the Court's admonitions that "the child is not the mere creature of the State," Pierce, 268 U.S. at 535, and that it is the parents' responsibility to inculcate "moral standards, religious beliefs, and elements of good citizenship." Yoder, 406 U.S. at 233. [Id., at 307.]

The authority of a school district over students derives from statute. One applicable statute, N.J.S.A. 18A:25-2, provides in pertinent part as follows: "A teacher or other person in authority over such pupil shall hold every pupil accountable for disorderly conduct in school and during recess and on the playgrounds of the school and on the way to and from school." Another statute, N.J.S.A. 18A:37-1, states as follows: "Pupils in the public schools shall comply with rules established in pursuance of law for the government of such schools, pursue the prescribed course of study and submit to the authority of the teachers and others in authority over them."

Causes for suspension or expulsion of pupils are set forth in N.J.S.A. 18A:37-2, which lists ten specific reasons. Nine of the ten reasons are clearly related to school. The other reason refers to conduct of such character as to constitute a continuing danger to the physical well-being of other pupils. This type of situation could be based on conduct off school property and totally unrelated to school activities, e.g., R.R. v. Bd.

of Educ. of the Shore Reg'l High School District, 109 N.J. Super. 337, 343-44 (Ch. Div. 1970) (where R.R. allegedly visited a neighbor's home after school and hit her on the back of the head with a piece of wood and cut her four times with a knife, the Court upheld a suspension from school out of concern for the safety and emotional well-being of other students, teachers and school property.).

Two regulations related to student conduct are applicable to this situation. One regulation, N.J.A.C. 6A:16-7.1(a), provides in part as follows:

Each district board of education shall develop, adopt and implement a code of student conduct which establishes standards, policies and procedures for positive student development and student behavioral expectations on school grounds, including on school buses or at school-sponsored functions, and, as appropriate, for conduct away from school grounds, in accordance with N.J.A.C. 6A:16-7.2 through 7.5, 7.8 and 7.9

The reference to "conduct away from school grounds" is clarified by N.J.A.C. 6A:16-7.6, which provides as follows:

(a) School authorities have the right to impose a consequence on a student for conduct away from school grounds, including on a school bus or at a school-sponsored function that is consistent with the district board of education's code of student conduct, pursuant to N.J.A.C. 6A:16-7.1.

1. This authority shall be exercised only when it is reasonably necessary for the student's physical or emotional safety, security and well-being or for reasons relating to the safety, security and well-being of other students, staff or school grounds, pursuant to N.J.S.A. 18A:25-2 and 18A:37-2.

2. This authority shall be exercised only when the conduct which is the subject of the proposed consequence materially and substantially interferes with the requirements of appropriate discipline in the operation of the school.

3. The consequence pursuant to (a) above shall be handled in accordance with the district board of education approved code of

student conduct, pursuant to N.J.A.C. 6A:16-7.1, and as appropriate, in accordance with N.J.A.C. 6A:16-7.2, 7.3 or 7.5.

All of the above-mentioned provisions of the United States Constitution and New Jersey statutes and regulations indicate that the authority of a district board of education over students is subject to limitations. The powers of a district board of education are no greater than the authority conferred by statute. With limited exceptions, the authority of the board of education applies to student conduct on school grounds and at various school-sponsored functions. The right to impose a consequence for conduct away from school grounds is specifically limited to situations where the exercise of that authority is reasonably necessary for the student's physical or emotional safety, security and well-being or for reasons relating to the safety, security and well-being of other students, staff or school grounds.

In Regulation 6145, respondent purports to require students to refrain from use, possession or distribution of any alcoholic beverage or other drugs both on or off school grounds. In addition, Regulation 6145 applies to violations of the New Jersey Code of Criminal Justice and/or applicable municipal code or ordinance provisions. In so doing, respondent has disregarded the limitations on its authority over conduct of students away from school grounds. Moreover, respondent has no authority whatsoever to enforce, determine guilt or otherwise impose a consequence for alleged violations (or violations) of the New Jersey Code of Criminal Justice and/or applicable municipal codes or ordinance provisions. It follows that the adoption of Regulation 6145 was ultra vires. Enforcement of Regulation 6145 is therefore unlawful.

In addition, respondent disregarded parental rights protected by the Fourteenth Amendment to the United States Constitution. It seems evident that dealing with charges against a teenager unrelated to school is the proper function of the parents without interference from school authorities. This is particularly true where the student's alleged misconduct occurred in the parent's home. In short, Regulation 6145 is grossly overbroad.

Based upon the above, I **CONCLUDE** that Regulation 6145 is ultra vires, unlawful and unconstitutional in that it violates petitioners' parental rights. In view of this determination, which addresses the essence of the situation, it is unnecessary to reach petitioners' other arguments.

Accordingly, it is **ORDERED** that:

1. Petitioners' motion for summary decision is granted.
2. Respondent's motion for summary decision is denied.
3. Respondent's Regulation 6145 is null and void.
4. Respondent shall refrain from enforcing or applying its Regulation 6145.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.


June 11, 2010
DATE

Date Received at Agency: **JUN 14 2010**

DATE
cml



RICHARD MCGILL, ALJ



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE
Mailed to Parties.

OFFICE OF ADMINISTRATIVE LAW