

**63 Ed Dept, Decision No. 18388 (NYCOMMED), 2024 WL 1329272**

New York State Education Department

Decisions of the Commissioner

Appeal of V.G.M. and J.M., on behalf of their child, from action of the Board of Education of the Half Hollow Hills Central School District regarding student discipline.

Decision No. 18,388

Decided: March 12, 2024

\*1 Law Offices of Donald T. Rollock, attorneys for petitioners, Donald T. Rollock, Esq., of counsel

Frazer & Feldman, LLP, attorneys for respondent, Dennis O'Brien, Esq., of counsel

ROSA., Commissioner

Petitioners appeal the decision of the Board of Education of the Half Hollow Hills Central School District (“respondent”) to impose discipline upon their child (the “student”). The appeal must be dismissed.

During the 2022-23 school year, the student attended ninth grade at one of respondent's high schools. On March 30, 2023, the student was scheduled to participate in an overnight trip with the high school robotics team. On the day of the trip, the student presented her overnight bags to the assistant principal to be searched. When school officials searched her bag, they discovered a switchblade knife therein. The record reflects that the student was thereafter suspended for five days, from March 31 through April 13, 2023.<sup>1</sup>

In a notice of charges dated April 3, 2023, respondent informed the student that it would convene a long-term suspension hearing. Respondent alleged that the student, in violation of the district code of conduct, possessed a weapon on school grounds.

Following a long-term suspension hearing held on April 13, 2023, a hearing officer recommended that the student be found guilty of the charges and suspended through the end of the fall semester of the 2023-24 school year; *i.e.*, January 2024. In a decision dated April 19, 2023, the superintendent adopted the hearing officer's findings but reduced the student's suspension so that it would end on May 26, 2023.

Petitioners appealed this determination to respondent, which denied their appeal on May 9, 2023. This appeal ensued. Petitioners' request for interim relief was denied on May 18, 2023.

Petitioners argue, among other things, that the evidence presented at the hearing did not establish that the student knowingly possessed the weapon. Petitioners also argue that respondent conducted an “unauthorized” search of the student's bag in violation of respondent's student handbook. Petitioners further argue that the punishment imposed was disproportionate to the offense.

Respondent contends that the appeal must be dismissed as moot. On the merits, respondent contends that the hearing officer's determination was supported by the evidence presented during the hearing. Respondent further contends that the discipline imposed was proportionate to the severity of the misconduct.

The appeal must be dismissed as moot. The Commissioner will only decide matters in actual controversy and will not render a decision on a state of facts that no longer exists due to the passage of time or a change in circumstances (*Appeal of Sutton*, 57 Ed Dept Rep, Decision No. 17,331; *Appeal of a Student with a Disability*, 48 *id.* 532, Decision No. 15,940; *Appeal of M.M.*, 48 *id.* 527, Decision No. 15,937; *see Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714 [1980]). Where the Commissioner can no

longer award a petitioner meaningful relief on his or her claims, no live controversy remains and the appeal must be dismissed (*Appeal of R.B.*, 57 Ed Dept Rep, Decision No. 17,394; *Appeal of N.C.*, 40 *id.* 445, Decision No. 14,522).

\*2 The student's suspension has ended and petitioners do not seek its expungement from her record. Accordingly, there is no meaningful relief that can be granted in connection therewith (*Appeal of R.C.*, 62 Ed Dept Rep, Decision No. 18,234; *Appeal of a Student with a Disability*, 60 *id.*, Decision No. 17,943; *Appeal of T.W.*, 54 *id.*, Decision No. 16,728).

While the appeal must be dismissed as moot, I will briefly address the parties' principal arguments. The decision to suspend a student from school pursuant to Education Law § 3214 must be based on competent and substantial evidence that the student participated in the objectionable conduct (*Matter of Board of Educ. of Monticello Cent. School Dist. v Commissioner of Educ.*, 91 NY2d 133, 140-141 [1997]; *Matter of Board of Educ. of City School Dist. of City of N.Y. v Mills*, 293 AD2d 37, 39 [3d Dept 2002]; *Appeal of M.J.*, 57 Ed Dept Rep, Decision No. 17,292; *Appeal of B.M.*, 48 *id.* 441, Decision No. 15,909).

The evidence presented during the hearing established that the switchblade knife was found in the student's bag immediately prior to leaving for the out-of-school robotics competition. Although petitioners contend that the bag and the switchblade knife belonged to the student's older sister, the hearing testimony established that the student knowingly brought the bag to school on the day in question. The Commissioner has previously held that possession of an item can include actual or constructive possession (*Appeal of T.F.*, 60 Ed Dept Rep, Decision No. 17,966; *Appeal of a Student with a Disability*, 57 *id.*, Decision No. 17,408; *Appeal of a Student with a Disability*, 57 *id.*, Decision No. 17,290). Thus, even if the student did not know that a switchblade was in her bag, this would not affect the hearing officer's determination of guilt.

Petitioners' challenges to respondent's search of the bag are also unpersuasive. In advance of the trip, petitioners and the student were given a permission slip that stated “[a]ll student bags are subject to search before ... leav[ing] [the high school] and/or upon arrival at the hotel ... AND at any time thereafter” (emphasis in original). Petitioner V.G.M. and the student signed and returned the permission slip. They also attended an informational meeting before the trip, during which a school employee informed them of the search policy. Thus, contrary to petitioners' argument, respondent was not required to have reasonable suspicion to search the student's bag (*Board of Educ. of Ind. Sch. Dist. No. 92 of Pottawatomie County et al. v Earls et al.*, 536 US 822 [2002]; *In re O.E.*, 2003 WL 22669014, at \*2-\*3 [Tex. App. Nov. 13, 2003]; *People v. Dukes*, 151 Misc 2d 295, 296 [Crim Ct, New York County, 1992]; see generally *Matter of Gregory M.*, 82 NY2d 588, 590 [1993]).

THE APPEAL IS DISMISSED.

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### Footnotes

1 The district observed a spring recess for the week of April 3, 2023.