65 Ed Dept, Decision No. 18639 (NYCOMMED), 2025 WL 2977128

New York State Education Department

Decisions of the Commissioner

Appeal of J.C. and C.C., on behalf of their child, from action of the Board of Education of the Cold Spring Harbor Central School District regarding student discipline.

Decision No. 18,639
Decided: September 29, 2025

***1** Frazer & Feldman, LLP, attorneys for respondent, Amanda Hickey, Esq., of counsel

ROSA., Commissioner

Petitioners challenge the determination of the Board of Education of the Cold Spring Harbor Central School District ("board" or "respondent") to suspend their child ("student A"). The appeal must be dismissed.

On May 31, 2024, student A and a classmate ("student B") were involved in a physical altercation. A security guard intervened and escorted both students to the principal's office. Soon thereafter, student A, stated, unprompted that he had "just beat the s*** out of" student B and "couldn't be happier" about it. The principal proceeded to interview student B, who stated that student A began "swinging" at him as he left the cafeteria. The principal also reviewed security footage showing that student A confronted, and initiated an altercation with, student B. Student A declined to speak to the principal about the incident unless petitioners were present. Although petitioners arrived soon thereafter, Student A did not provide any further information regarding his role in the altercation.

In a letter dated May 31, 2024, the principal concluded that student A's presence in school represented a continuing danger and/or an ongoing threat of disruption to the academic process and suspended him for five days. This letter was hand-delivered to petitioners' home that same day. Appeals to the superintendent and board were denied, and this appeal ensued.

Petitioners argue that respondent failed to amend student A's educational plan pursuant to Section 504 of the Rehabilitation Act ("Section 504") to protect him from ongoing harassment from student B. Petitioners further assert that student A, who they claim was the victim of longstanding bullying by student B, acted in self-defense. Petitioners also allege, among other due process violations, that respondent wrongfully withheld security footage of the altercation. For relief, petitioners seek expungement of the short-term suspension from student A's record.

Respondent argues that the Commissioner lacks jurisdiction to review petitioners' Section 504 claims. On the merits, respondent denies that it violated student A's due process rights or that he acted in self-defense. Respondent further contends that its decision to suspend student A was based on competent and substantial evidence.

I must first address three preliminary matters. I lack jurisdiction over those portions of petitioners' appeal claiming that respondent failed to amend student A's Section 504 plan to protect against student B's alleged bullying. Section 504 prohibits discrimination against individuals with disabilities who are "excluded from ... participation in, ... denied the benefits of, or ... subjected to discrimination under any program or activity receiving Federal financial assistance," which includes public schools (29 USC § 794 [a]). The Commissioner of Education has no authority to review Section 504 claims in an appeal under Education Law § 310 (*Appeal of J.B.*, 62 Ed Dept Rep., Decision No. 18,245; *Appeal of K.V.*, 61 *id.*, Decision No. 18,067). [1]

***2** Next, I must address the scope of petitioners' reply. The purpose of a reply is to respond to new material or affirmative defenses set forth in an answer (8 NYCRR 275.3, 275.14). A reply is not meant to buttress allegations in the petition or belatedly

add assertions that should have been raised in the petition (*Appeal of Nappi*, 57 Ed Dept Rep, Decision No. 17,300; *Appeal of Caswell*, 48 *id.* 472, Decision No. 15,920; *Appeal of Hinson*, 48 *id.* 437, Decision No. 15,908). Therefore, while I have reviewed the reply, I have not considered those portions containing new allegations or exhibits that are not responsive to new material or affirmative defenses set forth in the answer.

Third, petitioners request that I accept numerous submissions into the record pursuant to 8 NYCRR 276.5. That provision authorizes the acceptance of additional evidence submitted by a party if the Commissioner deems it necessary to render a decision. Here, petitioners seek to bolster their contention that the student was bullied and acted in self-defense. This evidence, however, should have been submitted with the petition or reply (*Appeal of R.H. and S.H.*, 60 Ed Dept Rep, Decision No. 17,869; *Appeal of Nappi*, 57 *id*., Decision No. 17,300). To the extent that these submissions also contain evidence that post-dates the pleadings, such evidence is not relevant to the claims presented herein. Accordingly, I decline to accept the additional evidence submitted by petitioners.

Turning to the merits, 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 Court of Appeals has described the substantial evidence standard as "proof within the whole record of such quality and quantity as to generate conviction in and persuade a fair and detached fact finder that, from that proof as a premise, a conclusion or ultimate fact may be extracted reasonably probatively and logically" (*300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 181 [1978]; *see Appeal of J.J.*, 46 Ed Dept Rep 270, Decision No. 15,505; *Appeal of Wallen*, 33 *id*. 313, Decision No. 13,060).

In an appeal to the Commissioner, a petitioner has the burden of demonstrating a clear legal right to the relief requested and establishing the facts upon which he or she seeks relief (8 NYCRR 275.10; *Appeal of P.C. and K.C.*, 57 Ed Dept Rep, Decision No. 17,337; *Appeal of Aversa*, 48 *id.* 523, Decision No. 15,936; *Appeal of Hansen*, 48 *id.* 354, Decision No. 15,884).

***3** Turning first to petitioners' due process claims, petitioners contend that respondent denied their district-level appeal "without explanation," in an untimely manner, and without adequate investigation. The record establishes that respondent complied with its own policy in issuing written determinations to petitioners after each level of review. Moreover, respondent's policy does not require that the board meet with petitioners, interview witnesses, or provide a written determination to petitioners within a certain timeframe. Accordingly, petitioners' procedural challenges to respondent's internal review process are without merit.

Petitioners have also failed to establish that respondent lacked competent and substantial evidence of the student's guilt. During its investigation, respondent obtained a witness statement from student B, reviewed security footage of the altercation, and spoke to the security guard who broke up the altercation. Most notably, respondent relied upon student A's unprompted utterance that he "beat the s*** out of" student B. Where a student admits the charged conduct, the admission is sufficient proof of guilt (*Appeal of N.S.*, 57 Ed Dept Rep, Decision No. 17,268; *Appeal of S.U.*, 57 *id.*, Decision No. 17,159; *Appeal of M.K.*, 48 *id.* 462, Decision No. 15,916). Based on this evidence, I find that respondent's determination was based upon competent and substantial evidence (*Appeal of F.P.*, 64 Ed Dept Rep, Decision No. 18,525).

Petitioners further contend that student A's actions were justified on the ground of self-defense. Students may not be disciplined for engaging in conduct necessary to protect themselves from attack, including proportionate force if necessary (*See e.g. Appeal of A.C.*, 59 Ed Dept Rep, Decision No. 17,799; *Appeal of G.J.-F.*, 58 *id*., Decision No. 17,608; *Appeal of J.M.*, 57 *id*., Decision No. 17,335). Petitioners have not submitted any direct evidence from student A, or any other persuasive evidence, demonstrating that the student acted in self-defense (*Appeal of G.J.-F.*, 58 Ed Dept Rep, Decision No. 17,608; *Appeal of a Student with a Disability*, 49 *id*. 452, Decision No. 16,079). While petitioners' appeal to the board contained a lengthy narrative attributed to student A, this statement is uncorroborated hearsay entitled to minimal probative value. Additionally, while petitioners claim

to possess "dispositive student video footage of the brawl," they have not submitted any such evidence on appeal.[2] Thus, petitioners have failed to meet their burden of proving that student B initiated the altercation or that student A acted in self-defense (*Appeal of G.J.-F.*, 58 Ed Dept Rep, Decision No. 17,608).[3]

Petitioners also argue that student A's conduct was justified as he had been previously bullied and harassed by student B. The Commissioner has previously held that bullying or harassment does not affect a student's guilt in a disciplinary matter (*Appeal of J.M.*, 60 Ed Dept Rep, Decision No. 18,002). However, "respondent has an ongoing obligation to address all incidents of bullying and harassment" (*Appeal of M.C. and T.H.*, 64 Ed Dept Rep, Decision No. 18,550). Thus, if it has not already, respondent must investigate petitioners' claims presented herein pursuant to the Dignity for all Students Act. If respondent concludes that student A was bullied or harassed, "nothing would preclude respondent ... from expunging [the instant] suspension ... as a remedy 'reasonably calculated to end the harassment, bullying, and/or discrimination, eliminate any hostile environment, create a more positive school culture and climate [or] prevent recurrence of the behavior"' (*Appeal of J.M.*, 60 Ed Dept Rep, Decision No. 18,002, *quoting* Education Law § 13 [1] [e]).

4** Finally, even assuming that respondent wrongfully refused to allow petitioners to view the district's surveillance footage of the altercation, this constitutes harmless error under the circumstances. As indicated above, respondent possessed competent and substantial evidence of the student's guilt, including student A's unprompted admission that he "beat the s" out of student B. Moreover, the surveillance video, which I have obtained and reviewed *in camera*, does not support petitioners' claim of self-defense. Thus, even if petitioners had a right to view the footage, it would not affect the outcome of this appeal.[4]

To the extent they are not addressed herein, I have considered petitioners' remaining contentions and find them to be without merit.

THE APPEAL IS DISMISSED.

Footnotes

1 I note that Section 504 claims alleging a denial of a free appropriate public education are subject to the Individual with Disabilities Education Act ("IDEA") exhaustion procedures (20 USC § 1415 [l]; *see L.K. v Sewanhaka Cent. High Sch. Dist.*, 641 Fed Appx 56 [2d Cir 2016]).

2 In their reply, petitioner submitted social media and text message conversations from students as well as still images of the confrontation from an unidentified videographer. While I have not accepted this evidence into the record for the reasons articulated above, it would not, if accepted, prove that student A acted in self-defense.

3 I further note that student A did not allege that he acted in self-defense when he met with the principal.

4 The United States Department of Education has opined that a video recording maintained by a school district for disciplinary purposes constitutes an education record under the Family Education Rights & Privacy Act (U.S. Dept. of Education, "FAQs on Photos and Videos under FERPA," https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa(link is external) [last accessed Aug. 27, 2025]; *see also* U.S. Dept. of Education, Student Privacy Policy Office, Letter to Wachter, Dec. 7, 2017, *available at* https://studentprivacy.ed.gov/resources/letter-wachter-regarding-surveillance-video-multiple-students(link is external) [last accessed Sept. 18, 2025] *and* N.Y. State Educ. Dept. Privacy Office, *Matter of a Privacy Complaint filed against the Shenendehowa Cent. Sch. Dist*, Jul. 28 2022, https://www.nysed.gov/sites/default/files/final-determination-7.28.22-_redacted.pdf [last accessed Sept. 18, 2025]). Therefore,

if parents request access to such a video, they must be provided with the opportunity to inspect and review, or be informed of the contents of, the video (20 USC § 1232g [a] [1] [A]; 34 CFR 99.12 [a]).

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