

M.W. on behalf of minor child T.C., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF : DECISION
THE TOWNSHIP OF EWING,
MERCER COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner appealed her minor child, T.C.'s, 10-day suspension following a confrontational incident with another student on September 20, 2007 outside Ewing High School. Several individuals witnessed the disturbance and testified at the OAL hearing. T.C. had a history of suspension, and had been involved in an off-campus altercation with the same student the night before, to which police had responded.

The ALJ found the testimony of witnesses to the incident to be credible, and – given T.C.'s prior suspensions and the off-campus altercation on the previous night – there was a need to deter aggression among students at the high school; the ten-day suspension was therefore warranted. The ALJ affirmed the respondent's 10-day suspension of T.C.

The Assistant Commissioner, to whom the matter was delegated pursuant to N.J.S.A. 18A:4-34, concurred with the ALJ that the suspension was not arbitrary, capricious, or unreasonable, and adopted the Initial Decision as the final decision in this matter.

<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>

December 27, 2007

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed by the Assistant Commissioner, to whom this matter has been delegated, pursuant to *N.J.S.A. 18A:4-34*.¹ No exceptions were filed.

The petitioner challenged a ten-day suspension which had been imposed upon her daughter as a result of a confrontational incident which had occurred outside respondent's high school on September 20, 2007. Several individuals had witnessed the disturbance, including two teachers and an assistant principal, all of whom testified at the OAL hearing.

Among the exhibits which were entered into evidence at the hearing were two electronically submitted reports - one from each of the teacher witnesses. Both teachers had observed two groups of students yelling at each other. Both reported that a student, S.S., had told them that she anticipated that T.C. was going to wait for her 'down the road' and fight her.

¹ The record does not include transcripts of the November 1, 2007 hearing at the OAL.

According to the Administrative Law Judge's (ALJ) summary of the teachers' testimony, both testified that they found S.S. in a shaky, agitated state. One teacher described S.S. as frightened of T.C. (Initial Decision at 2)

The assistant principal who witnessed the incident – Thomas Jones – also testified that two groups of students were 'arguing.' (*Ibid*) He spoke with S.S., who advised him that T.C. had threatened her. He and the school principal pursued T.C. and the group of students she was with. Although they called to T.C. to stop, she did not respond. When they caught up with her she stated "keep that f_____ girl away from me." The testimony of Rodney Logan, the high school principal, corroborated Jones' account.

As a result of his own observations, interviews with students and the reports from the teachers, Jones concluded that T.C. had been the aggressor in the incident. He suspended T.C. for ten days, effective September 21, 2007, the day after the incident. According to Jones' testimony, there had been a prior incident in school involving physical contact between T.C. and S.S. on September 11, 2007, at which time both students had been instructed to stay away from each other. This occurrence is referenced in Respondent's Exhibit R-4 (Exhibit R-4). Jones also testified that on September 19, the day before the incident at issue here, there had been an altercation between T.C. and S.S. to which the police had responded – off school grounds.

Logan also concluded that T.C. was the aggressor and S.S. was afraid of her. He noted that S.S. was trembling when he spoke with her. He was aware of the 'fight' between the two students that had been broken up by the police the night before, Initial Decision at 3, and noted that T.C. had received prior suspensions for physical altercations.

Thus, the imposition of a ten-day suspension in the present case followed a five-day suspension that T.C. had received as the result of a fistfight she had engaged in with a

different student on March 30, 2007. *See*, Exhibit R-8 and R-9. Less than six months prior to that discipline was a longer suspension precipitated by a physical altercation between T.C. and yet another student – in October 2006. *See*, Exhibit R-7.

Petitioner did not submit any exhibits. Her evidence consisted of T.C.'s testimony, which was summarized by the ALJ as follows:

She was told by the school security officer just before leaving the building on the day in question to “watch your back”. As T.C. departed the campus S.S. and her friends began taunting her and said something like “what are you going to do now”? T.C. responded that she wasn't about to fight in front of the school and left. She saw S.S. take her jacket off and drop her books as if to fight, but she just walked away. T.C. testified that she didn't hear Principal Logan calling until he was quite near.

The ALJ found respondent's witnesses to be credible, a finding that the Commissioner generally will not disturb. *See*, N.J.S.A. 52:14b-10 (c) (The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record.) *See, also, State v. Sheika*, 337 N.J. Super. 228, 238-39 (App. Div. 2001) (We are obliged to defer to the trial judge's credibility determination to the extent that it was grounded in the court's opportunity to observe the character and demeanor of the witnesses, an opportunity that we . . . are not afforded.)

Measuring the evidence provided by those witnesses (and the documentary evidence entered at the hearing) against T.C.'s testimony, the ALJ found that respondent's decision

to suspend T.C. for ten days was not arbitrary, capricious or unreasonable. Upon review of the record before her, the Assistant Commissioner cannot disagree.

In light of the foregoing, the petition is dismissed.

IT IS SO ORDERED.²

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: December 27, 2007

Date of Mailing: December 28, 2007

² This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*