

#15-13 (OAL Decision not yet available online)

W.C.L. and A.L., on behalf of minor child, L.L., :
PETITIONERS, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF TENAFLY,
BERGEN COUNTY, :
RESPONDENT. :

SYNOPSIS

The petitioners – on behalf of their minor child – challenged the determination of the Board that L.L. had engaged in behavior that fell under the school district’s policy against harassment, intimidation and bullying (HIB). This case stems from a single incident in September 2011 wherein L.L. – a fourth grader at the time – embarrassed and offended a fellow classmate, J.L., by explaining to others in their class group that J.L. had dyed her hair because she had head lice. L.L. was found to have violated the district’s HIB policy adopted pursuant to *N.J.S.A. 18A:37-15*, and was given a learning assignment to encourage greater sensitivity to the feelings of others; L.L.’s parents were informed of the incident in writing. No other discipline was imposed, and the incident did not appear in L.L.’s school record. In the instant petition, the parents of L.L. sought: a written apology to L.L. from school personnel; removal of any reference of the incident from L.L.’s student records; compensation from the Board to L.L. in the amount of \$50,000 as damages for emotional distress; and reimbursement of counsel fees. The Board contended that its actions were at all times in compliance with applicable law and regulations governing student conduct. The Board filed a motion to dismiss.

The ALJ found, *inter alia*, that: L.L.’s action in revealing to other classmates which one among them had head lice constituted HIB as defined by law, and interfered with the rights of another student – who had been the anonymous subject of a memo sent home by the school nurse to inform parents that there was a reported case of head lice in the school; L.L., following questioning from A.L., had correctly deduced that J.L. was the child referenced by the school nurse; L.L. defended his conduct in revealing J.L.’s affliction by stating that he was simply telling the truth when another student inquired why J.L. had dyed her hair, and he had not intended to hurt J.L.’s feelings; L.L. should have realized that pointing out his classmate’s problem would hurt her feelings; school districts are required by law to adopt comprehensive policies that prohibit HIB, outline expectations for student behavior, set forth consequences for inappropriate behavior, and create procedures for reporting HIB concerns; and these policies are intended to commence at the earliest ages so that children will know that mutual respect is the expectation and that cruel words will not be tolerated in New Jersey public schools. The ALJ concluded that the Board’s actions were consistent with the letter and spirit of the law, and were not taken in bad faith or in disregard of the circumstances. Accordingly, the ALJ granted the Board’s motion to dismiss.

Upon review, the Commissioner concurred with the ALJ that the petitioners failed to sustain their burden to show that the Board’s actions regarding L.L.’s conduct on September 27, 2011 were arbitrary, capricious or unreasonable. Accordingly, the Commissioner adopted the Initial Decision as the final decision in this matter.

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.

January 10, 2013

OAL DKT. NO. EDU 3223-12
AGENCY DKT. NO. 33-2/12

W.C.L. and A.L., on behalf of minor child, L.L., :
PETITIONERS, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioners' exceptions and the Board's reply thereto – submitted in accordance with the provisions of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching his determination herein. By submission dated December 18, 2012 – received at the agency on December 27, 2012 – petitioners attempted to supplement their exceptions submitted in this matter. As *N.J.A.C.* 1.1-18.4 provides no authorization for such a submission, it was not considered here.

Petitioners' exceptions essentially recast and reiterate their arguments made before the Administrative Law Judge (ALJ) below. In that it is determined that the ALJ's comprehensive decision considered and addressed these arguments – both relevant and irrelevant in nature – they will not be revisited here.

The Commissioner observes that this case may stretch the definition of HIB to the outer edge of legislative intent. He recognizes, however, that districts are struggling to find the right balance between common sense and the highly prescriptive provisions of the law. In this

case, the Board's sensitive response to the event clearly cannot be characterized as unreasonable, arbitrary or capricious. Accordingly, the Commissioner concurs with the ALJ that the Board's Motion to Dismiss is appropriately granted, and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: January 10, 2013

Date of Mailing: January 11, 2013

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).