

#152-13 (OAL Decision: Not yet available online)

J.A.H., on behalf of minor child, C.H. :  
 PETITIONER, :  
 V. : COMMISSIONER OF EDUCATION  
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION  
 OF PITTSBGROVE, SALEM COUNTY, :  
 RESPONDENT. :  
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SYNOPSIS

The petitioner sought reversal of the Board’s finding that his child, C.H., engaged in behavior against a fellow student in his class that fell under the school district’s policy against harassment, intimidation and bullying (HIB). The charges sustained by the Board were based upon a single incident in February 2012 in which C.H. shoved a piece of crumpled paper down another student’s shirt. The parties submitted cross motions for summary decision.

The ALJ found, *inter alia*, that: pursuant to New Jersey’s Anti-Bullying Law, *N.J.S.A.* 18A:37-14, harassment, intimidation and bullying is defined as behavior that is motivated by any actual or perceived characteristic such as, *inter alia*, race, religion, gender, sexual orientation, or other distinguishing characteristic; the New Jersey Department of Education’s guidance on implementing anti-bullying legislation distinguishes characteristics of bullying from routine and minor student conflicts, which are not one-sided; the record in this matter confirmed that there was an ongoing conflict between C.H. and the other student that was not motivated by any distinguishing characteristics; both students had been involved in other clashes leading up to the February 2012 incident, some of which also included other classmates. The ALJ concluded that: there was an ongoing and unresolved conflict between C.H. and the other student, which was not addressed by the school district in its decision that sustained the bullying charge against C.H.; the conflict between these students did not contain the serious and aggravating elements necessary to a finding of bullying under *N.J.S.A.* 18A:37-14; and the factual record only supports a finding of ordinary student conflict rather than the more serious behavior of bullying. Accordingly, the ALJ ordered that the school district’s bullying determination against C.H. be reversed.

Upon review, the Commissioner concurred with the ALJ that the Board’s determination was contrary to the intendment of *N.J.S.A.* 18A:37-14 and the New Jersey Department of Education Guidance for Schools on Implementing the Anti-Bullying Act, and therefore is arbitrary, capricious and unreasonable, and must be overturned. 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.

April 25, 2013

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board's exceptions – filed in accordance with *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in reaching his determination herein.

Upon his full consideration, the Commissioner agrees with the Administrative Law Judge's conclusion that the Board's determination that C.H. engaged in an act of harassment, intimidation, or bullying ("HIB") against another student – by shoving a crumbled piece of paper down his sweatshirt – is contrary to the intendment of *N.J.S.A. 18A:37-14* and the New Jersey Department of Education Guidance for Schools on Implementing the Anti-Bullying Act (December 2011) and, therefore, is arbitrary, capricious and unreasonable and must be overturned.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: April 25, 2013

Date of Mailing: April 26, 2013

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\* 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*).