

B.B., on behalf of minor child, B.B.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
BORDENTOWN REGIONAL SCHOOL	:	
DISTRICT, ¹ BURLINGTON COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Exceptions were submitted by the Board in accordance with *N.J.A.C.* 1:1-18.4 and were duly considered by the Commissioner in reaching his determination herein.

In its exceptions, the Board contends that, although the Administrative Law Judge (ALJ) correctly relied on *Kopera, supra*, in citing the legal standard to be applied in reviewing the actions of a local school board, he erred in applying that standard. (Board’s Exceptions at 1) The Board avers that the ALJ’s conclusion, that the penalty imposed by the Board was inappropriate, and thus, arbitrary, capricious and unreasonable because there was a lack of evidence that B.B. prevented other students from learning or presented a danger to the safety of students and staff, is not supported by case law or the evidence presented at hearing. (*Id.* at 2) In support of its contention, the Board submits that, as stated in the Student Handbook, the three-day, in-school suspension imposed on B.B. has punitive, remedial and counseling components

¹ The Bordentown Regional School District is incorrectly identified in the Initial Decision case caption as the “Burlington” Regional School District.

and allows students to both maintain their academic progress and to modify unacceptable behavior. (*Ibid.*)

The Board reasons that it is hard to imagine how the ALJ concluded that the imposition of a three-day, in-school suspension was arbitrary and capricious given his finding that B.B.: 1) was grossly disrespectful toward a member of the teaching staff; 2) violated the school's discipline plan with conduct constituting willful disobedience and open defiance of a teacher; and 3) violated the Student Code of Conduct which prohibits obscene, vulgar and profane expressions. (*Ibid.*) The Board, therefore, concludes that the ALJ exceeded his authority when he impermissibly substituted his judgment for that of the Board, and it urges that the ALJ's determination rescinding B.B.'s three-day, in-school suspension should be reversed. (*Ibid.*)

Upon careful and independent review of the record in this matter, and mindful that the ALJ's credibility determinations are entitled to the Commissioner's deference, *N.J.S.A. 52:14B-10(c)*, the Commissioner concurs with the ALJ's finding that B.B. used profane language and was disrespectful to Mr. Misselhorn, and that B.B. disobeyed Ms. Misselhorn's demand to B.B. to get away from C.D. Moreover, the Commissioner concurs with the ALJ's conclusion that B.B. demonstrated willful disobedience and open defiance of the authority of a teacher in violation of the school's discipline plan, and that she also violated the Student Code of Conduct, which prohibits vulgar and profane expressions of any kind.

The Commissioner does not agree, however, with the ALJ's conclusion that the Board acted in an arbitrary, capricious or unreasonable manner in regard to establishing the penalty for B.B.'s infractions or that the penalty assessed by the Board, three days of in-school suspension (Exhibit R-7), should be modified because "respondent's action was not based upon a finding that B.B. prevented other students from learning or that B.B. represented a danger to the safety of the students and the staff of Bordentown Regional High School – the ground the

respondent established in its Student/Parent Handbook for imposing a suspension.” (Initial Decision at 7) As fully explicated in the Initial Decision, it is well established that when a board acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable.

As set forth by the ALJ, the section of the Student/Parent Handbook entitled “Suspension” states that “[a] student excluded from the classroom has demonstrated that he/she has prevented other students from learning or represents a danger to the safety of the other students and to the staff of Bordentown Regional High School.” (Exhibit R-2, at 19) The Commissioner observes that section entitled “In-School Suspension” additionally states, however, that “[i]n-school suspension will allow students who have demonstrated behavior that disrupts the educational process of others, yet does not warrant removal from school, to have that behavior modified” (*ibid.*) and lists “[r]efusing to follow the directive of an administrator” and “[i]ntention to violate the rights and dignity of another student or staff member (for example, racial slurs)” as examples of infractions where in-school suspension may be imposed. (*Id.* at 19-20)

Given the Board’s responsibility to maintain control and to ensure an atmosphere conducive to learning for all its students, the Commissioner cannot conclude that B.B.’s physical reaction to C.D.² and her willful disobedience, open defiance of authority, and use of inappropriate, hostile language towards a teacher were not disruptive of the educational process of others, notwithstanding that the incident herein occurred in the cafeteria. Instead, the Commissioner finds the Board’s decision to impose a three-day, in-school suspension on B.B. is consistent with its obligation to create a learning environment where students and staff are not

² The Commissioner notes that B.B. claims she reacted towards C.D. as she did because he stole her purse and used some of her money, a situation which should have been taken to the supervising school official, rather than handling the situation in the manner she did.

physically accosted or subjected to profanity. Moreover, the Commissioner finds that the penalty imposed by the Board is in accordance with the grounds established in its Student/Parent Handbook for the imposition of such suspension.

Additionally, the Commissioner points out that B.B. has seven prior disciplines on her disciplinary record, five of which were for inappropriate behavior. B.B. was disciplined once for “being disruptive,” once for calling another student “bitch,” twice for being disrespectful on the school bus and once for throwing trash in the cafeteria. As set forth in the District’s Parent/Student Handbook, in-school suspension has punitive, remedial and counseling components and is designed to allow suspended students to maintain their academic progress while modifying unacceptable behavior. Given the unacceptable behavior exhibited by B.B. in this incident, as well as B.B.’s prior record of discipline for unacceptable behavior, the Commissioner concludes that the Board did not act in an arbitrary, capricious or unreasonable manner in imposing the penalty of a three-day, in-school suspension on B.B. in an effort both to punish her for her unacceptable behavior in this incident and to address her pattern of unacceptable behavior.

Accordingly, for the reasons expressed herein, the Commissioner concludes that the Board did not act in an arbitrary, capricious or unreasonable manner in imposing a three-day, in-school suspension on B.B. The Board’s action will, therefore, not be disturbed. The within petition is hereby dismissed.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 6, 2004

Date of Mailing: December 6, 2004

³ 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.*