

#10-13 (OAL Decision: Not yet available online)

J.M.C. on behalf of minor child A.C., :  
PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF THE :  
TOWNSHIP OF EAST BRUNSWICK,  
MIDDLESEX COUNTY, :

RESPONDENT. :

SYNOPSIS

The petitioner challenged the determination of the respondent Board that his son, A.C., 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 November 2011, wherein A.C. – a sixth grader at the time – insulted and demeaned a fellow classmate by saying that he “danced like a girl” and by calling him “gay”. In his appeal, the petitioner asked that all charges be “dropped”; that punitive damages and legal expenses be awarded; and that the classmate who accused A.C. of harassment be given the same punishment – a three day detention – that A.C. had received. The Board contended that its actions had at all times been compliant with applicable statutes and regulations governing student conduct.

The ALJ found, *inter alia*, that: pursuant to New Jersey’s Anti-Bullying Law, *N.J.S.A.* 18A:37-14, A.C.’s actions in November 2011 were verbal acts motivated by distinguishing characteristics, i.e., gender and sexual orientation; A.C.’s conduct accordingly constituted HIB as that term is defined by law; A.C. was not a chronic troublemaker, but his actions were hurtful and unkind; the school district’s response of assigning him to detention was designed to redirect A.C.’s behavior in a manner that was consistent with his age and that recognized that this was his first offense; the actions of school personnel relative to this incident were consistent with the letter and spirit of *N.J.S.A.* 18A:37-14 and *N.J.A.C.* 6A:16-7.9; petitioner failed to carry his burden to prove that the actions of the Board or any of its personnel were taken in bad faith or in disregard of the circumstances; and petitioner failed to prove that the Board, through its administration, had been procedurally non-compliant with *N.J.S.A.* 18A:37-15, which requires school districts to adopt comprehensive policies prohibiting HIB, outlining expectations for student behavior, setting forth consequences for inappropriate behavior, and creating procedures for reporting HIB-related concerns. Accordingly, the ALJ ordered the petition dismissed.

Upon review, the Commissioner concurred with the ALJ that the petitioners failed to sustain their burden to show that the Board’s actions regarding A.C.’s conduct in November 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 9, 2012

OAL DKT. NO. EDU 4144-12  
AGENCY DKT. NO. 62-3/12

J.M.C. on behalf of minor child A.C., :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
BOARD OF EDUCATION OF THE :  
TOWNSHIP OF EAST BRUNSWICK, :  
MIDDLESEX COUNTY, :  
RESPONDENT. :

---

Before the Commissioner is a challenge to the respondent Board of Education's determination that petitioner's minor child had committed an act of bullying or harassment. The Commissioner has carefully reviewed the record<sup>1</sup> and the Initial Decision of the Office of Administrative Law (OAL), and has considered petitioner's exceptions and respondent's replies thereto.

Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) that respondent's determination that A.C. had committed an act of bullying or harassment was reasonably grounded in the facts and applicable law. More specifically, it was harmonious with the documentary record, including Counselor Danielle Blalock's initial report and notes (Respondent's Exhibits R-1 and R-2), Specialist Margaret Haas's report (Respondent's Exhibit R-3), and written witness statements by six other students (Respondent's Exhibits R-10 through R-15).<sup>2</sup> It was also consonant with the accounts of Principal Michael Gaskell and

---

<sup>1</sup> No transcripts of the October 22, 2012 hearing are present in the record.

<sup>2</sup> Respondent's Exhibit R-9 is a later statement by A.C. which contradicts his early account of the incident and is at odds with everyone else's statements.

Counselor Blalock, who had testified that A.C. – on the day of the incident – had admitted that he had insulted a student in his gym class, Initial Decision at 3, and with the testimony of Specialist Haas, who explained that she had concluded that A.C. had violated the school anti-bullying policy after interviewing both A.C. and other students who had been present during the incident which precipitated this controversy. (*Ibid.*)

Given the foregoing evidence, respondent correctly determined that an act of harassment, intimidation or bullying (HIB) had occurred as defined by *N.J.S.A. 18A:37-14*:

[A]ny gesture, any written, verbal or physical act . . . whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic such as race, color . . . or by any other distinguishing characteristic . . . that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:

- a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging a student’s property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
- b. has the effect of insulting or demeaning any student or group of students; or
- c. creates a hostile educational environment for the student by interfering with a student’s education or be severely or pervasively causing physical or emotional harm to the student.

As *N.J.S.A. 18A: 37-15(b)(4)* directs that each school district’s anti-bullying policy shall contain “consequences and appropriate remedial action for a person who commits an act of harassment, intimidation or bullying,” respondent did not act arbitrarily, capriciously or unreasonably in imposing upon A.C. three days of detention as discipline for his conduct.

Accordingly, the Initial Decision is adopted as the final decision in this case, and the petition is dismissed.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: January 9, 2013

Date of Mailing: January 9, 2013

---

<sup>3</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).