

C.G., on behalf of minor child, J.G., :
 PETITIONERS, : COMMISSIONER OF EDUCATION
 V. : DECISION
 BOARD OF EDUCATION OF THE :
 BOROUGH OF PROSPECT PARK, :
 PASSAIC COUNTY, :
 RESPONDENT. :

SYNOPSIS

Petitioner challenged the respondent Board’s disciplinary determination with respect to his son, J.G., contending that J.G.’s three-day suspension for fighting was arbitrary, capricious and unreasonable. J.G. – a fifth grader at the time of the incident – got into a fight with a fellow student on the basketball court during recess in February 2016. Any incident of fighting in the Prospect Park School District results in a three-day, in-school suspension, and J.G. was accordingly obligated to complete such a suspension. J.G. served two of the three days before his father, C.G., filed the within petition, alleging that the penalty imposed upon his son was arbitrary, capricious and unreasonable.

The ALJ found, *inter alia*, that: the petitioner’s son was involved in a fight with another fifth grade boy during recess in February 2016; a member of the school staff witnessed the fight and submitted a statement to the supervisor for lunch and playground, Dr. White, who spoke to the two boys immediately after the incident; both boys admitted that they had fought, and that the fight was “mutual”; Dr. White provided competent and credible testimony at the hearing, and asserted that J.G. was not the “victim”; rather, the fight was mutual; White also testified that the playground rules concerning fighting were explicit, and that fighting for any reason results – without exception – in the standard three-day, in-school suspension; neither boy testified at the hearing; school districts have the authority to suspend pupils for fighting; such decisions are presumed correct and will not be overturned unless the decision is shown to be arbitrary capricious or unreasonable; here, two boys engaged in a mutual fight during recess and were disciplined with the standard three-day, in-school suspension; petitioner provided no competent or credible evidence to show that the Board’s determination was arbitrary, capricious or unreasonable. Accordingly, the ALJ ordered that J.G. serve and complete the entire three-day suspension.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed with prejudice.

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.

OAL DKT. NO. EDU 13911-16
AGENCY DKT. NO. 229-8/16

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PASSAIC COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner adopts the Administrative Law Judge's (ALJ) recommended decision for the reasons expressed therein. Accordingly, J.G. must complete his three-day suspension, and the petition is hereby dismissed with prejudice.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: July 27, 2017

Date of Mailing: July 28, 2017

¹ 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*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 13911-16
AGENCY DKT. NO. 229-8/16

C.G., ON BEHALF OF MINOR CHILD, J.G.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE BOROUGH
OF PROSPECT PARK, PASSAIC COUNTY,**

Respondent.

C.G., petitioner, pro se

Jeffrey R. Merlino, Esq., for respondent (Sciarrillo, Cornell, Merlino, McKeever &
Osborne, LLC, attorneys)

Record Closed: June 1, 2017

Decided: June 19, 2017

BEFORE **BARRY E. MOSCOWITZ**, ALJ:

STATEMENT OF THE CASE

On February 29, 2016, J.G. and J.C., two fifth-grade boys, got into a fight on the basketball court during recess. The fight was “mutual,” that is, each ended up in a headlock, and neither was the “victim.” As a result, both boys received three-day suspensions. Was the determination that J.G. be suspended for three days arbitrary,

capricious, or unreasonable? No. In Prospect Park, fighting for any reason will result in a three-day suspension.

PROCEDURAL HISTORY

On February 29, 2016, J.G., a fifth-grade boy, got into a fight at school, and was obligated to serve a three-day, in-school suspension. J.G. served two of the three days, but on June 20, 2016, his father, C.G., filed a petition with the Department of Education, Bureau of Controversies and Disputes, contesting his son's obligation to serve the third. On September 15, 2016, the Department of Education transmitted the case to the Office of Administrative Law under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On May 1, 2017, I held the hearing, but held the record open for the parties to submit their post-hearing briefs by June 1, 2017.

On June 1, 2017, the parties filed their post-hearing briefs, and I closed the record.

FINDINGS OF FACT

Based upon the testimony the parties provided, and my assessment of its credibility, together with the documents the parties submitted into evidence, and my assessment of their sufficiency, I **FIND** the following as **FACT**:

On February 29, 2016, J.G., a fifth-grade boy, and his friend, J.C., another fifth-grade boy, got into a fight on the basketball court during recess. April Torres, a lunch aide, witnessed the fight. Torres submitted a statement in which she wrote that the boys were hitting each other and fighting and that she reported the incident to Dr. Arnold Jeffrey White, who was inside the cafeteria supervising the lunch period. Torres did not testify at the hearing, but White did, and he provided testimony that was both competent and credible.

At the hearing, White testified that he is the director of curriculum and instruction at Prospect Park and that he is the supervisor for lunch and playground. White explained that he spoke to the two boys immediately after the incident and that both of the boys told him that they had fought and that the fight was “mutual.” According to White, J.G. was not the “victim.” Indeed, no matter how many times J.G.’s father stated or suggested through questioning that his son was the “victim,” White retorted that the fight was “mutual.” Significantly, neither boy testified at the hearing.

More significantly, White testified that the playground rules concerning fighting are explicit, that “fighting for any reason will result in suspension,” and that the standard practice for serving such a suspension is three days in school, without exception. White explained that this standard practice is not memorialized in any formal writing, but that this standard practice has been long standing—at least for as long as he has worked in Prospect Park. Indeed, White asserted that no reason existed to make J.G. an exception to this rule because J.G., who is “passionate and competitive” about sports, had been aggressive before while playing sports during recess, and J.G. had to be counseled about it.

Finally, White testified that he advised C.G. and his wife that their son would receive the three-day, in-school suspension; that C.G. appealed the determination up the “chain of command,” to the principal and then to the superintendent; and that both the principal and the superintendent reviewed the case independently, yet both ultimately reached the same conclusion and upheld the suspension.

CONCLUSION OF LAW

School districts have the authority to suspend pupils for fighting. See N.J.S.A. 18A:37-2. In addition, when school districts exercise their authority to suspend pupils for fighting, their decisions are presumed correct and will not be overturned unless they are arbitrary, capricious, or unreasonable. See Thomas v. Bd. of Educ. of Morris Twp., 89 N.J. Super. 327, 332 (App. Div. 1965), aff’d, 46 N.J. 581 (1966). Therefore, the determination Prospect Park made in this case, to suspend J.G. for three days, will not

be overturned unless C.G., on behalf of his son, J.G., can show that the determination was arbitrary, capricious, or unreasonable.

Turning to the specific facts of this case, J.G. and J.C., two fifth-grade boys, got into a fight on the basketball court during recess. The fight was “mutual,” that is, each ended up in a headlock, and neither was the “victim.” Moreover, as White testified, the playground rules concerning fighting are explicit, “fighting for any reason will result in suspension,” and the standard practice for serving such a suspension is three days in school, without exception.

C.G. appealed the determination to the principal and then to the superintendent, both of whom upheld the suspension. At the hearing, C.G. provided no competent or credible evidence to show that the determination was arbitrary, capricious, or unreasonable. Therefore, I **CONCLUDE** that the determination to suspend J.G. for three days was not arbitrary, capricious, or unreasonable, and that J.G. should serve and complete the entire three-day suspension.

ORDER

Given my findings of fact and conclusion of law, I **ORDER** that J.G. serve and complete the entire three-day suspension.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 19, 2017

DATE



BARRY E. MOSCOWITZ, ALJ

Date Received at Agency:

June 19, 2017

Date Mailed to Parties:

dr

APPENDIX

Witnesses

For Petitioner:

C.G.

For Respondent:

Arnold Jeffrey White

Documents

For Petitioner:

P-1 Not in evidence

P-2 Letter from Board of Education to C.G. dated May 20, 2016

For Respondent:

R-1 Code of Conduct and Playground Rules

R-2 Misconduct Report dated February 29, 2016

R-3 Statement by Torres dated April 7, 2017

R-4 Notice of Suspension dated February 29, 2016