

D.H., on behalf of minor child, D.H., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
TOWNSHIP OF EAST BRUNSWICK,  
MIDDLESEX COUNTY, AND :  
MICHAEL GASKELL, :  
RESPONDENTS. :  
\_\_\_\_\_ :

SYNOPSIS

Pro se petitioner challenged the respondent Board's imposition of discipline upon her child, and sought rescission of the one-day in-school suspension as well as expungement of the discipline from D.H.'s educational records. Petitioner contended that the District violated D.H.'s procedural due process rights and imposed discipline that was "too harsh, not justified, and induced by improper motive." A settlement conference failed to resolve the controversy, and the matter proceeded to a hearing at the OAL in May 2017.

The ALJ found, *inter alia*, that: the issue to be determined was whether the respondent Board disciplinary decision was arbitrary, capricious or unreasonable; local school boards have broad discretion in matters involving pupil discipline, and actions taken by local school boards that are within the board's authority carry a presumption of validity and will generally not be disturbed unless there is an affirmative showing that the action taken was arbitrary, capricious or unreasonable; the scope of the Commissioner's review is not to substitute his judgment for that of the Board, but to determine whether there was a reasonable basis for the Board's decision and actions; in the instant case, there is no dispute that D.H. hit a male student as least twice after he attempted to frighten her in a school corridor; the male student never struck D.H.; and there is no dispute that D.H. deserved to be disciplined for her conduct. The ALJ concluded that the Board's disciplinary action was not arbitrary, capricious or unreasonable as there was a reasonable basis for making the decision, based on evidence and testimony presented. Additionally, the ALJ found no merit in petitioner's allegations that D.H.'s due process rights were violated, and further dismissed petitioner's claims against respondent Gaskell.

Upon review and consideration, the Commissioner concurred with the ALJ's determinations for the reasons thoroughly set forth in the Initial Decision. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

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.

February 16, 2018

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed, as have petitioner’s exceptions and respondents’ reply thereto.<sup>1</sup> In this matter, petitioner challenges the Board’s disciplinary determination pertaining to D.H. Specifically, petitioner contends that the Board’s imposition of a one-day, in-school suspension on D.H. was “too harsh, not justified, and induced by improper motive.” Petitioner also asserts that the Board violated D.H.’s procedural due process rights. Petitioner seeks rescission of the discipline, and expungement of the discipline from D.H.’s educational records.

The Administrative Law Judge (ALJ) found that the Board’s disciplinary decision was not arbitrary, capricious or unreasonable, as the Board’s action was supported by “evidence properly adduced and presented” and the Board had “a reasonable basis for making the decision that they made,” based on evidence and testimony presented to the ALJ. The ALJ also found no

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<sup>1</sup> The Commissioner has also reviewed additional submissions made by petitioner on February 14, 2018.

merit in petitioner's allegations that D.H.'s due process rights were violated, and further dismissed petitioner's claims against respondent Gaskell.

Petitioner's exceptions substantially recast and reiterate the arguments made below. Petitioner asserts "arbitrary, capricious, intentional misconduct, and bad faith" as bases for her exceptions to Initial Decision. Petitioner argues that "Fight or Flight instinctive reaction" and "prima facie retaliation, with an open complaint against Gaskell" were not taken into account in considering this matter. Petitioner further argues that evidence, *i.e.*, the video, was "altered," and that necessary witnesses were not presented for the hearing. In reply, the Board argues that there is no legal basis for petitioner's assertion that the video was altered, and respondent acted within its discretion in presenting witnesses at the hearing.

Upon consideration and review, the Commissioner is in accord with the ALJ's determination – for the reasons thoroughly set forth in the Initial Decision. The Commissioner finds that the Board did not act in an arbitrary, capricious or unreasonable manner in imposing the subject disciplinary action on D.H., as the undisputed findings of fact reflect that D.H. struck another student and was disciplined in accordance with the Board's policies pertaining to Pupil Discipline and the Student Code of Conduct. Furthermore, the Commissioner finds that the record does not reflect that D.H.'s procedural due process rights were violated. The Commissioner also finds that petitioner's accusations of retaliation are without merit; therefore, the claims against respondent Gaskell were properly dismissed. With regard to the remainder of the arguments reiterated in petitioner's exceptions, the Commissioner finds that her claims that the video was altered are unsubstantiated, and there is no evidence in the record transmitted to the Commissioner by the OAL that respondent was directed to present specific witnesses at the hearing and failed to do so.

Accordingly, the recommended decision of the ALJ is adopted as the final decision in this matter, and the petition is hereby dismissed.

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 16, 2018

Date of Mailing: February 16, 2018

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<sup>2</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.