

P.J. AND K.J., on behalf of D.J., :
AND C.J. AND G.J., on behalf of :
A.J., :

PETITIONERS, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF EGG HARBOR, :
ATLANTIC COUNTY, AND LEONARD :
KELPSH, :

RESPONDENTS. :
:
:

SYNOPSIS

Petitioning parents challenged as unreasonable the 10-day suspensions of their minor daughters for allegedly fighting.

ALJ determined that petitioners failed to establish that Board's Policy of a 10-day suspension for fighting a first time is improper. Moreover, students were notified that the Board had changed its suspension period from three days to ten days. Suspensions were upheld and petition was dismissed.

Commissioner concurred that petitioners failed to establish that the Board's actions suspending their children for 10 days were arbitrary, capricious or unreasonable. Petition was dismissed.

MAY 4, 1998

OAL DKT. NO. EDU 2387-98
AGENCY DKT. NO. 60-3/98

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Petitioners' exceptions and the Board's reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record in this matter, the Commissioner concurs that petitioners have failed to establish that the Board's actions to suspend D.J. and A.J. for a period of ten days for fighting in school were arbitrary, capricious and unreasonable, or otherwise unlawful.

To the extent that petitioners challenge the ALJ's finding that D.J. was, indeed, involved in a "fight," the Commissioner notes that the record before him does not include transcripts or an audiocassette tape recording of the hearing conducted at the OAL in this matter.

In the absence of transcripts or tape from the hearing, due regard should be given to the person who heard the live testimony and assessed the witnesses' behavior at the hearing. *Close v. Kordulak Bros.*, 44 N.J. 589, 599 (1965). Thus, the Commissioner finds no cause to disturb the ALJ's findings of fact.

Additionally, the Commissioner observes that petitioners' assertion that the students should have been permitted to remain in school during the pendency of the proceedings, as established by *N.J.S.A. 18A:38-1 et seq.*, is misplaced. The cited provision pertains to appeals of decisions made by a local board which concern a student's residency, but does not in any way prohibit the Board herein from precluding the students from attending school during the pendency of these proceedings.

Further, although petitioners object to the Board's failure to provide the students with a hearing prior to their suspension, the Commissioner recognizes that, since the students were not being suspended for a longer period than ten days, a formal hearing was not required. *Goss v. Lopez*, 419 U.S. 565 (1975).

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

MAY 4, 1998

* This decision, as the Commissioner's final determination in the instant matter, 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. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.