

A.F., on behalf of minor child, J.H., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
MONMOUTH REGIONAL SCHOOL :
DISTRICT, MONMOUTH COUNTY :
RESPONDENT. :

SYNOPSIS

Petitioner challenged her daughter's long-term suspension from Monmouth Regional High School, and sought reinstatement in the regular education program on the grounds that the length of the suspension was arbitrary, capricious and unreasonable, and in effect constituted an expulsion. The suspension stemmed from an incident in March 2009 in which J.H. used profanity and personal insults, and was willfully disobedient and openly defiant with the student teacher in charge of her class. The Board contends that the suspension imposed upon J.H. was for a reasonable amount of time under the circumstances, and was not arbitrary or capricious.

The ALJ found that: the student teacher was a staff member with authority over J.H., who – at a minimum – was openly defiant of that authority in violation of *N.J.S.A. 18A:37-2*; the Board was within its authority to impose a suspension upon J.H.; however, the length and terms of the suspension imposed were disproportionate to the facts in the record; and petitioner presented evidence mitigating against the imposition of such a long suspension. The ALJ concluded that the discipline imposed upon J.H. was not reasonable, and vacated the remainder of her suspension, ordering that J.H. be returned to the general education program for the 2009-2010 school year.

Upon a full and independent review, the Commissioner rejected the Initial Decision, finding that: the ALJ's disagreement with the penalty imposed does not equate to an abuse of discretion on the part of the Board, and the ALJ's substitution of her judgment for that of the Board by altering the term and conditions of the suspension imposed upon J.H. is not acceptable absent evidence of arbitrary, capricious or unreasonable action on the part of the Board. The Commissioner additionally found troubling a written account of the incident by the student teacher involved which described extreme profanity, threatening behavior, and intimidation on the part of J.H., along with her student discipline reports which evidence a series of incidents for which discipline was imposed upon her for infractions including disruption in the classroom, insubordination, use of profanity, and not reporting to detention. Consequently, there is no basis in the record for determining that the Board's handling of this matter was arbitrary, capricious, or unreasonable. Accordingly, the Commissioner ordered that the Board's discipline of J.H. shall remain as originally imposed.

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.

September 15, 2009

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of the Board – filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching her determination herein.¹

The Board objects to the Administrative Law Judge’s (ALJ) modification of the length and terms of the Board’s suspension of student, J.H, on the basis that they “appear disproportionate to the facts in the record.” (Board’s Exceptions at 4) In so concluding, the Board charges, the ALJ – who apparently disagreed with the Board’s decision in this regard – improperly substituted her judgment for that of the Board. (*Id.* at 3) Citing numerous school law cases, the Board submits that it is well-established that there is a presumption of validity that attaches to decisions of a Board of Education and such decisions cannot be overturned unless the action was arbitrary, capricious or unreasonable. (*Id.* at 3-4) The Board maintains that the

¹ Petitioner’s reply exceptions were untimely filed and, thus, were not considered by the Commissioner.

punishment it imposed on J.H. in this matter was not arbitrary, capricious or unreasonable and, therefore, it is not susceptible to modification by the ALJ. (*Id.* at 4)

In support of its position, the Board advances that it is without question that it has the responsibility to provide a safe learning environment for its students and staff and the obligation to discipline students who disrupt this environment. It cites to *N.J.S.A.* 18A:37-2

Causes for suspension or expulsion of pupils, which in pertinent part reads:

Any pupil who is guilty of continued and willful disobedience, or of open defiance of the authority of any teacher or person having authority over him, or of the habitual use of profanity or of obscene language, or who shall cut, deface or otherwise injure any school property, shall be liable to punishment and to suspension or expulsion from school.

Conduct which shall constitute good cause for suspension **or expulsion** of a pupil guilty of such conduct shall include, but not be limited to, any of the following:

- a. **Continued and willful disobedience;**
- b. **Open defiance of the authority of any teacher or person, having authority over him;...**

(Board's Exceptions at 1-2) (emphasis added)

In the incident at issue in this matter, it is without question that J.H. used profanity, was willfully disobedient, and was openly defiant to an individual who had authority over her. Additionally, as is obvious from her discipline record [Expulsion Hearing Package – R-1, Exhibit E], J.H. has had a significant number of problems at Monmouth Regional in a short period of time and her disobedience has most definitely been continuous. The Board advances that – although pursuant to *N.J.S.A.* 18A:37-2 the Board had the authority to expel J.H. – it, rather, chose a compromise position. J.H. was suspended for what the Board viewed as a reasonable amount of time, and offered an alternative educational opportunity at Monmouth Ocean Educational Services Commission, which she declined – choosing instead home instruction. This alternative

educational opportunity is still available to J.H. and, absent any further problems with her behavior, she will be allowed to return to Monmouth Regional for the second half of the 2009-10 school year. (*Id.* at 3) The Board submits that the ALJ cited no statute, regulation or case law to support her conclusion that it acted improperly – in any manner whatsoever – in its imposed discipline on J.H. and, therefore, the Board argues, she had no authority to overturn its action. (*Id.* at 5)

Upon her full review, the Commissioner is compelled to reject the ALJ's decision modifying the Board's imposed penalty on J.H. In so finding, the Commissioner is well aware – as the Board correctly notes – that it is well-settled that boards of education in New Jersey have broad discretion with regard to the operation and management of their local districts. When a local school 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 the decision was arbitrary, capricious or unreasonable. *Thomas v. Bd. of Ed. of Morris Twp.*, 89 N.J. Super. 327, 332 (App. Div. 1965), *aff'd* 46 N.J. 581 (1966). The Commissioner cannot find that it has been demonstrated on this record that the Board's handling of this matter was carried out in a manner that was arbitrary, capricious, unreasonable, or otherwise contrary to law. Notwithstanding that the ALJ may disagree with the length and conditions of suspension imposed on J.H., the Commissioner has been unable to find any tangible objective evidence which would support a finding that the Board's penalty imposition was arbitrary, capricious or unreasonable. Indeed, upon the Commissioner's review of the Expulsion Hearing Package (P-1, Exhibit E) provided to board members prior to their consideration of this matter, she finds particularly troubling the written account of the student teacher involved in the incident with J.H. who described it as one filled with profanity, threatening behavior and intimidation on the part of J.H. Also contained

in this package are J.H.'s Student Discipline Reports since her enrollment at Monmouth Regional High School, which evidence a number of instances for which discipline was imposed on her for infractions which include disruption in class/school, insubordination, use of profanity, and not reporting to detention. The Commissioner notes that the ALJ's mere disagreement with the penalty imposed by the Board for the incident involving J.H. and the student teacher does not equate to an abuse of discretion on the part of the Board. Rather,

In the law, "arbitrary" and "capricious" means having no rational basis....Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. **Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached....**Moreover, the court should not substitute its judgment for that of an administrative or legislative body if there is substantial evidence to support the ruling. (citations omitted) (emphasis added) *Bayshore Sew. Co. v. Dep't of Env., N.J.* 122 *N.J. Super.* 184, 199-200 (Ch. Div. 1973), *aff'd* 131 *N.J. Super.* 37 (App. Div. 1974).

Under these circumstances, the Commissioner cannot accept the ALJ's substitution of her judgment for that of the Board by altering the term and conditions of its suspension imposed on J.H. for the March 6, 2009 incident.

Accordingly, the recommended decision of the OAL is rejected. The Board's discipline of J.H. shall remain as originally imposed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: September 15, 2009

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