

W.C., on behalf of minor child, M.C., :  
PETITIONERS, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
TOWNSHIP OF JACKSON, OCEAN :  
COUNTY, :  
RESPONDENT. :

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SYNOPSIS

Petitioner appealed as excessive a one-day out-of-school suspension imposed upon M.C., a high school student, for violation of its written policy against misconduct. School officials alleged that M.C. was complicit when another student inquired whether he could ask M.C.'s girlfriend if she performed certain sexual acts. The Board contended that M.C., by failing to discourage the other student from asking the harassing question, committed an act of misconduct.

The ALJ found, *inter alia*, that: the Board charged M.C. with misconduct for his failure to discourage the other student from making inappropriate comments to his girlfriend; the Board has an affirmative right to require that all students understand the severity of harassing language between students, and appropriately used its discretionary powers in making the finding that M.C.'s behavior constituted misconduct; as such, the Board's action was not arbitrary, capricious, or unreasonable; the penalty of a one-day out-of-school suspension was not, however, appropriate for a first offense of misconduct; and the Board did act in an arbitrary, capricious, and unreasonable manner in assigning the penalty as it disregarded the circumstances and the chart of offenses and their corresponding disciplinary actions which is included in the Board's Code of Discipline; the appropriate penalty for a first offense for misconduct should have been teacher detention. Accordingly, the ALJ concluded that the Board's imposition of a one-day out-of-school suspension for M.C.'s misconduct should be reversed, and a penalty of teacher detention should be imposed upon M.C. in consequence for his role in this incident.

Upon consideration and review, the Commissioner adopted the Initial Decision as the final decision in this matter, noting that under the Board's disciplinary guide, even a fifth offense of misconduct does not result in discipline at the level of an out-of-school suspension.

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.

March 21, 2011

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the Jackson Township Board of Education (Board).<sup>1</sup> This case involves a student, M.C., who received a one-day out-of- school suspension based upon an incident that resulted in a charge of misconduct. The Board found that M.C. was complicit when another student asked him if he could ask M.C.'s girlfriend whether she performed certain sexual acts. The Administrative Law Judge (ALJ) found that the Board was not arbitrary, capricious or unreasonable in finding that M.C.'s role in the incident constituted misconduct. The ALJ, however, found that the Board acted in an arbitrary, capricious and unreasonable manner when it imposed a one-day out of school suspension instead of a teacher detention, which is the penalty listed in the student code of discipline for a first or second misconduct offense.

The Board takes exception to the ALJ's determination that the Board was arbitrary and capricious in assessing a one-day suspension to M.C. based on his involvement in the incident. In its exceptions, the Board contends that the ALJ disregarded the Board's responsibility to maintain order and discipline in the schools, and that it is the discretion of the administrators to assess disciplinary penalties. The Board contends that, in this instance, the individuals tasked with responding to improper student behavior believed that due to the totality of M.C.'s conduct, a higher penalty was warranted. The Board

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<sup>1</sup> The record contains no transcripts from the hearing conducted at the OAL on November 12, 2010.

points out that the Assistant Principal testified that she felt that the one-day suspension was appropriate in this case because M.C. was aware that A.K. had intentions to ask C.L. a sexually inappropriate question, he did not attempt to prevent A.K. from asking the question, he did not report the situation to administrators and, in fact, M.C. actually agreed that A.K. could ask the question.

In its exceptions the Board also argues that although misconduct is a disciplinary offense that does not carry a corresponding penalty of suspension, the student handbook and the code of discipline indicate that the administration may modify disciplinary penalties on a case by case basis. The Board claims that the ALJ ignored the preamble of the code of discipline that specifically states, “[t]he following is a general guide for disciplinary action. All disciplinary actions are subject to determination by the administration and are not limited to the rules in this book.” The Board maintains that this language clearly gives the administrators the authority to assign whatever discipline is appropriate in light of the circumstances of the alleged infraction. Finally, the Board argues that the ALJ erred when he found that M.C. had no obligation to discourage another student from engaging in harassing behavior or to inform an administrator of the circumstances.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ that the Board was not arbitrary, capricious or unreasonable in finding that M.C.’s role in the incident constituted misconduct. The Commissioner is also in accord with the ALJ – for the reasons fully detailed on pages 14-15 of his decision – that the Board acted in an arbitrary, capricious and unreasonable manner when it imposed a one-day out-of-school suspension instead of a penalty that corresponds to a misconduct offense in the student code of discipline.

The student handbook contains a code of discipline which provides detailed guidelines for the level of discipline a student will be subject to based on the nature and severity of a student’s conduct. Pursuant to the code of discipline, students who are found to have committed misconduct are subject to the following discipline:

1<sup>st</sup>/2<sup>nd</sup> offense – teacher detention

3<sup>rd</sup>/4<sup>th</sup> offense – 2 after school detentions

5<sup>th</sup> offense – 1 in school suspension

In this case, M.C. was found to have committed misconduct,<sup>2</sup> yet he received a one-day out-of-school suspension, which is a significant deviation from the penalty listed in the disciplinary code for a student's first misconduct offense. It is without question that the disciplinary decisions of school administrators are afforded a presumption of reasonableness, and the Commissioner is mindful of the language in the preamble which provides notice that the disciplinary code is only a general guideline. However, in this case the considerable degree of deviation from the penalty for misconduct listed in the code, and the penalty that M.C. received, was not reasonable. In finding that the discipline imposed was arbitrary and capricious, the Commissioner further notes that under the disciplinary guide, even a 5<sup>th</sup> offense of misconduct does not result in discipline at the level of an out-of-school suspension. Accordingly the Initial Decision is adopted as the final decision in this matter.

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

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 21, 2011

Date of Mailing: March 21, 2011

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<sup>2</sup> The facts surrounding M.C.'s involvement in the incident are thoroughly detailed in the Initial Decision and will not be repeated here.

<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*).