

S.O., on behalf of minor child, L.O., :
 PETITIONERS, : COMMISSIONER OF EDUCATION
 V. : DECISION
 BOARD OF EDUCATION OF THE CITY :
 OF ORANGE :
 RESPONDENT. :
 _____ :

SYNOPSIS

The petitioning parent appealed the decision of the respondent Board to expel his daughter, L.O., after an incident that began with L.O. wearing a hat in school in violation of the established dress code, and escalated into angry words, threats and aggressive physical behavior towards the school vice principal. The Board’s disciplinary committee charged L.O. with violation of several provisions of the school district’s Code of Student Conduct, including “Insubordination/Open Defiant Behavior”, “Profanity/Inappropriate Language”, “Threat to Staff”, and “Physical Assault on Staff”. Thereafter, the disciplinary committee recommended that L.O. be expelled from school and placed in an out-of-district alternative program; the recommendation was subsequently approved by the full Board. L.O. contended that she should not have been subjected to expulsion, as she was not treated with dignity and respect, and that the vice principal provoked and insulted her when she refused to return L.O.’s hat.

The ALJ found, *inter alia*, that: the Code of Student Conduct and the Student/Parent Handbook were distributed and explained to students at an assembly at the beginning of the school year; L.O.’s assertion that she had never seen these publications and was unaware of the prohibition against headwear was not credible, given the fact that at the beginning of the incident at issue here, the vice principal verbally warned L.O. that she could not wear her hat in school; L.O. continued to wear the hat in disregard of the vice principal’s instruction to take it off inside the school building, and became increasingly belligerent after the vice principal took the hat and told her that it would be returned at the end of the school day; L.O. ultimately was restrained by a security officer, but continued to lob profanity and threats of physical harm at the vice principal; L.O.’s behavior was openly defiant of the vice principal’s authority; and L.O.’s behavior violated the above provisions of the Code of Student Conduct. The ALJ concluded that the facts of the case fully support the findings and recommendations of the disciplinary committee, and the resulting Board decision to expel L.O. for threatening and assaulting the vice principal. Accordingly, the ALJ affirmed the Board’s imposition of the penalty of expulsion.

Upon review, the Commissioner clarified that the penalty had been improperly characterized as “expulsion”, but otherwise concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision of the OAL as the final decision in this matter for the reasons expressed therein. Accordingly, 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 02763-16
AGENCY DKT. NO. 12-1/16

S.O., on behalf of minor child, L.O., :
PETITIONERS, : COMMISSIONER OF EDUCATION
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RESPONDENT. :
_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner, S.O., filed exceptions.¹

Upon such review, the Commissioner adopts the Administrative Law Judge's (ALJ) recommended decision for the reasons expressed therein.² Accordingly, the petition is dismissed with prejudice.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 6, 2017

Date of Mailing: February 7, 2017

¹ S.O.'s exceptions were not timely filed in accordance with *N.J.A.C.* 1:1-18.4. Additionally, there is no indication that S.O.'s exceptions were served upon the Board. Accordingly, the exceptions were not considered by the Commissioner.

² L.O.'s removal from Orange High School has been improperly characterized as an "expulsion." Under *N.J.A.C.* 6A:16-1.3, expulsion is defined as "discontinuance of educational services or the discontinuation of payment of educational services for a student." The record in this matter does not support a finding of expulsion, as L.O.'s educational services were not discontinued and she was placed on Home Instruction – following which, the Board proposed L.O.'s placement in an in-district alternative education program with the option of transferring back to Orange High School.

³ 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 02763-16

AGENCY REF. NO. 12-1/16

S.O. ON BEHALF OF MINOR CHILD

L.O.,

Petitioner,

v.

CITY OF ORANGE BOARD OF EDUCATION,

ESSEX COUNTY,

Respondent.

S.O. on behalf of **L.O.**, petitioner, pro se

Ronald C. Hunt, Esq., for respondent

Record Closed: August 9, 2016

Decided: December 22, 2016

BEFORE **JOHN P. SCOLLO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This case arises out of an incident at Orange High School on October 8, 2015, wherein L.O., an eleventh-grade student, and the school's vice principal engaged in a series of discussions about the student's wearing of a hat in the school building, which was prohibited by the school's Code of Student Conduct and the school's Student/Parent Handbook. The discussions allegedly escalated into angry words,

threats, and aggressive physical behavior. L.O. was charged with threatening of, disrespectful behavior towards, and attempted assault of the vice principal. On October 22, 2015, a disciplinary/expulsion hearing was held by the Orange Board of Education (BOE) disciplinary committee. Testimony was taken, and thereafter the disciplinary committee recommended that L.O. be expelled from the school and that she be placed in an out-of-district alternative program. On November 10, 2015, the BOE approved the recommendation. By letter dated November 18, 2015, the BOE notified L.O.'s parents of the decision and advised them of L.O.'s right to appeal to the Commissioner of Education. An appeal was timely filed. The Department of Education, Bureau of Controversies and Disputes, transmitted this matter on February 22, 2016, to the Office of Administrative Law (OAL), where it was filed on February 24, 2016, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

The parties engaged in formal discovery. Significant efforts were made to settle the matter over the course of several telephone conferences and face-to-face meetings at the OAL, but were unsuccessful. The hearing was held on August 9, 2016, and the record closed. The undersigned requested and was granted additional time to issue the Initial Decision.

THE ISSUES

- (1) Did L.O. commit any acts that were violative of the Code of Student Conduct?
- (2) Does the preponderance of the credible evidence support the disciplinary committee's findings and recommendations?
- (3) Was the penalty of expulsion supported by the evidence or was it imposed in an arbitrary and capricious manner?

FACTUAL DISCUSSION

The Orange Board of Education's disciplinary committee charged L.O. with disrespectful behavior towards Orange High School vice principal Stefanie Matthews in violation of the following provisions of the Code of Student Conduct: "Insubordination/Open Defiant Behavior"; "Profanity/Inappropriate Language"; "Threat to Staff"; and "Physical Assault on Staff." (R-5 at 25–26.) (Any of the above-mentioned charges would also come under the aegis of Code of Student Conduct at 24 "Disorderly Conduct".)

Vice Principal Stefanie Matthews

Vice principal Stefanie Matthews testified that Orange High School holds an annual assembly at which it distributes and explains the Code of Student Conduct ("Code") (R-5) and the Student/Parent Handbook (R-6) to all students of Orange High School, and that this assembly was held at the beginning of the school year in question. The Code includes a dress code. Matthews testified that on the morning of October 8, 2015, she saw L.O. inside, on the school's second-floor hallway, wearing a hat. She told L.O. to take off the hat, and L.O. removed her hat. A few minutes later she saw L.O. in the hallway wearing the hat, and she removed it from L.O.'s head. L.O. explained that she wanted to wear the hat because it was her birthday. Matthews said she wished L.O. a happy birthday, but reminded L.O. about the school's prohibition against the wearing of any headgear inside the school building. She also told L.O. that she would get the hat back at the end of the school day at 2:40 p.m. Matthews walked away towards a staircase, and L.O. followed her, asking for the hat because her hair was messed up. Matthews said that she helped fix L.O.'s hair twist, told her that it looked fine, and reiterated that the hat would not be given back until 2:40 p.m. Matthews then walked down to the first floor.

A few minutes later Matthews heard security officer William Starks telling someone to go to class. She rounded a corner and saw that Starks was speaking to L.O. Matthews testified that L.O. said in an angry tone, "I want my f-ing hat!" L.O. then saw her and approached her, demanding her hat. L.O. said that she had paid for the

hat, and said, "You're going to give me my hat!" as she ran towards Matthews. Matthews testified that because L.O. was running towards her she put her hands up, and L.O. ran into her hands. L.O. tried to snatch her hat away from Matthews. Matthews stated that Starks stepped between Matthews and L.O. while L.O. continued to scream that she wanted her hat. Matthews informed L.O. that she would be suspended for her conduct. Starks then led L.O. down the hall to turn her over to security guard Lisa King, while L.O. continued to scream at Matthews and threatened that she would "beat her ass" and that she was going to "f" her up.

Matthews stated that at no time did L.O. ever say that she was unaware that the school's rules prohibited the wearing of headgear.

Security Officer William Starks

Security officer William Starks was in his second year of employment at Orange High School when the subject incident occurred. His job is to promote safety at the school. He wrote a report regarding the incident that occurred on the morning of October 8, 2015. The report was dated "9/8/15," but Starks corrected the date at the hearing. He testified that on the morning of October 8, 2015, he noticed L.O. walking in the hallway and told her to go to class. L.O. responded by saying that she wanted her "f-ing" hat, in an angry, raised voice. L.O. ran towards Vice Principal Matthews in a manner that Starks characterized as "aggressive." Starks made ready to intervene. He testified that he saw Matthews put up her hands to keep L.O. out of her personal space, and saw L.O. make contact with Matthews's hands. L.O. continued to yell at Matthews. By this time Starks had positioned himself between L.O. and Matthews. He turned L.O. over to security officer Lisa King, who escorted L.O. away from Matthews.

On cross-examination, Starks answered questions about the date of his report and the time of the incident. He also was cross-examined about both actors' demeanor. He testified that Matthews was calm throughout the incident, and that L.O. became irate. Starks testified that at no time did Matthews engage in verbal abuse of L.O.

Director of Special Services Shelly Harper

Shelly Harper testified that as the director of Special Services she provides students with guidance and provides services to special education students. Regarding L.O., Harper testified that it was her duty to write to L.O.'s parents. She sent a letter dated October 16, 2015, (R-3) advising them of the disciplinary charges brought against L.O. arising out of the October 8, 2015, incident and informing them about their rights at the October 22, 2015, Board of Education expulsion hearing. Harper also wrote a November 18, 2015, letter to L.O.'s parents (R-4) informing them that on November 10, 2015, the Board of Education approved the disciplinary committee's October 22, 2015, recommendation that L.O. be expelled for her conduct. In that letter Harper also stated that L.O. would be on home instruction until placement in another school could be confirmed. She informed L.O.'s parents of their right to appeal to the Commissioner of Education within ninety days. Harper testified that she made several attempts to contact L.O.'s parents. Eventually she spoke with S.O. and explained that it was the school's duty to set up an alternative education program for L.O.

L.O.

L.O. testified that she went to school on October 8, 2015, her birthday, wearing clothes that were compliant with the school's dress code. She stated that she did not know that wearing a hat inside the school building was prohibited. She added that she had never seen copies of the Code of Student Conduct or the Student/Parent Handbook. L.O. stated that when she walked into the school building she was wearing her hat, and neither Assistant Principal Belton nor the security guard, both of whom were present at the school entrance, asked her to remove her hat. When she went to her first class the teacher did not ask her to remove her hat.

L.O. stated that after class she felt ill and was walking to the nurse's office when she encountered Vice Principal Matthews. Matthews told her to remove her hat and L.O. complied. L.O. stated that the nurse was not in her office, so she decided to go to class. L.O. put her hat back on. She encountered Matthews a second time about five to ten minutes later, and on this occasion Matthews took the hat off her head, telling her

she would get it back at 2:40 p.m. Matthews also fixed her hair. L.O. stated that she pleaded for her hat, explaining that it was her birthday, but Matthews refused and walked away. L.O. followed Matthews downstairs and said something that she could not recall. The security guard asked L.O. whom she was talking to “like that.” L.O. admitted that she used profanity, but said it was not directed towards Matthews. When speaking with the guard, who was sitting five to ten feet away, L.O. complained, raising her voice, that Matthews wouldn’t give her back her “f-ing” hat. Matthews overheard this remark and told L.O. that she was suspended for three days and would not get her hat back at all. L.O. stated that she walked towards Matthews and told her that she paid for the hat, and was going to get her hat back. She then tried to grab the hat, which Matthews was holding in her hand. Starks placed himself between L.O. and Matthews. L.O. admitted that she came into contact with Matthews. King then came over to her.

L.O. claims that she was not treated with dignity and respect, and that when Matthews told her that she would never be able to have her hat back, it was intended to provoke and insult her. She claims that this provocation caused the situation to escalate. L.O. stated that students at the school wore hats inside the building all the time, and that she felt that she was being singled out on October 8, 2015.

FINDINGS OF FACT

Based on the evidence presented at the hearing, as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** as **FACT** the following:

1. The distribution of the Code of Student Conduct (R-5) and the Student/Parent Handbook (R-6) took place at the beginning of the school year in 2015, as it annually takes place (see N.J.A.C. 6A:16-7.1(a)(3)) at Orange High School, where the contents of each are explained by school officials. This finding of fact is based on the regularity of the distribution of these publications and Vice Principal Matthews’s testimony that the assembly took place at the beginning of the school year. These factors outweigh L.O.’s assertion that she never saw these publications and was unaware of the headwear prohibition. Also, L.O.’s

failure to ask Matthews why she would not be allowed to wear her hat in school at their first meeting on October 8, 2015, indicates that L.O. was, in fact, aware of the prohibition.

2. Approximately five to ten minutes after their first meeting on October 8, 2015, a second meeting between L.O. and Matthews occurred. At their second meeting Matthews found L.O. wearing the hat in disregard of Matthews's instruction not to wear the hat inside the school building. Matthews took the hat off L.O.'s head and informed L.O. that the hat would be returned to her at 2:40 p.m., the end of the school day.

3. After the second meeting, L.O. followed Matthews; when Security Officer Starks instructed L.O. to go to class, L.O. used an angry and loud voice, demanding the return of her hat, and L.O. used profanity; and when Matthews heard these words and saw who the speaker was (the third meeting of L.O. and Matthews), she immediately, in the presence of Starks, informed L.O. that she was suspended from school and that the hat would not be returned to her.

4. L.O. approached Matthews demanding her hat and used profanity against her; Matthews put up her hands to preserve her personal space from intrusion by L.O.; and Starks intervened, placing himself between L.O. and Matthews, but not before L.O. made contact with Matthews as L.O. reached out and tried to snatch the hat, which Matthews was holding in her hand. As L.O. was escorted away by Security Officer King, L.O. continued to use profanity and uttered threats of doing physical harm to Matthews.

5. It was L.O., not Matthews, who lost her composure and temper, resulting in L.O.'s disrespectful behavior, her uttering of threats, and her rude, unprivileged, and hostile touching of Matthews. L.O. willfully disregarded the school's rule against wearing headgear inside the school building; willfully disobeyed the direct order of Matthews by putting the hat back on her head within the minutes between their first meeting and their second meeting; and failed to acknowledge the vice principal's authority over her.

LEGAL ANALYSIS AND CONCLUSIONS

The laws governing the discipline of public-school students are found in N.J.S.A. 18A:37-1 through -37. N.J.S.A. 18A:37-1 obligates students to comply with the school's rules, to pursue the prescribed course of study, and to submit to the authority of the teachers and others in authority over them.

N.J.S.A. 18A:37-2 sets forth the causes for suspension or expulsion of students. This section states that conduct that shall constitute good cause for suspension or expulsion includes, but is not limited to:

- b. Open defiance of the authority of any teacher or person, having authority over him.

N.J.S.A. 18A:37-2.1 states:

- a. Any pupil who commits an assault, as defined pursuant to N.J.S. 2C:12-1, upon a teacher, administrator, board member or other employee of a board of education, acting in the performance of his duties . . . shall be immediately suspended from school consistent with procedural due process pending suspension or expulsion proceedings before the local board of education.

The New Jersey Administrative Code defines terms relevant to this matter in N.J.A.C. 6A:16-1.3:

“Alternative Education Program” means a comprehensive educational program designed to address the individual learning, behavior, and health needs of students who are not succeeding in the general education program or who have been mandated for removal from general education, pursuant to N.J.A.C. 6A:16-5.5, 5.6 and, as appropriate, 5.7. The alternative education program shall provide a variety of approaches to meet the state-adopted standards, such as, through non-traditional programs, services and methodologies to ensure curriculum and instruction are delivered in a way that enables students to demonstrate the

knowledge and skills specified for all students in N.J.A.C. 6A:8.

“Code of Student Conduct” means standards, policies, and procedures established by district boards of education for positive student development and student behavioral expectations on school grounds, including on school buses or at school-sponsored functions, and, as appropriate, conduct away from school grounds, in accordance with N.J.A.C. 6A:16-7.1.

“Expulsion” means the discontinuance of educational services or the discontinuance of payment of educational services for a student.

“Long-term suspension” means removal of a student for more than 10 consecutive school days from the general education program, or the special education program when the appropriate procedures set forth in N.J.A.C. 6A:14-2.8 have been followed, but not the cessation of the student’s educational services.

“Short-term suspension” means removal of a student for one but not more than 10 consecutive school days from the general education program or the special education program, in accordance with N.J.A.C. 6A:14-2.8, but not the cessation of the student’s educational services.

Regulations concerning the “Code of Student Conduct” are set forth at N.J.A.C. 6A:16-7.1 in pertinent part as follows:

(a) Each district board of education shall develop, adopt, disseminate, and implement a code of student conduct that establishes standards, policies, and procedures for positive student development and student behavioral expectations on school grounds and, as appropriate, for conduct away from school grounds.

....

(3) The code of student conduct shall be disseminated annually to all school staff, students and parents.

....

(c) The code of student conduct shall include, at a minimum:

(1) A description of the students' responsibilities that includes expectations for academic achievement, behavior and attendance, pursuant to N.J.A.C. 6A:32-8 and 12.1; and

(2) A description of behaviors that result in suspension or expulsion, pursuant to N.J.S.A. 18A:37-2.

In the instant case, the Code of Student Conduct (R-5), which as found above was compiled and distributed by Orange High School in accordance with applicable laws and regulations, contained a student dress code that prohibited the wearing of headgear, including hats, inside the school building. I **CONCLUDE** that Vice Principal Matthews properly interpreted and enforced the dress code when she stopped L.O. at their first meeting on October 8, 2015, and asked her to remove her hat. L.O., minutes later, placed the hat on her head again. I **CONCLUDE** that by doing so, she violated the vice principal's direct order not to wear the hat inside the school building, and, therefore, I **CONCLUDE** that she thereby violated the Code's "Insubordination/Open Defiant Behavior" provision.

Vice Principal Matthews confiscated L.O.'s hat during their second meeting, having found that L.O. was wearing the hat in contradiction of her order not to wear the hat inside the school building. During their third meeting, L.O. used profanity and loudly and angrily demanded that Matthews return her hat. I **CONCLUDE** that L.O.'s use of profanity and her loud, angry tone violated the Code's "Insubordination/Open Defiant Behavior" provision.

I **CONCLUDE** that L.O.'s approach towards Vice Principal Matthews, her attempt to snatch the hat from the vice principal's hand, and her touching of the vice principal during this episode violated the Code's "Threat to Staff" and "Physical Assault on Staff" provisions.

I **CONCLUDE** that L.O.'s repeated verbal threats of physical harm against the vice principal, as she was being escorted away by security officer Lisa King, violated the Code's "Threat to Staff" provision.

I **CONCLUDE** that the facts fully support the findings and recommendations of the disciplinary committee, and, in turn, the decision of the BOE to expel L.O. for threatening a member of the school's staff (Matthews) so as to reasonably raise a concern for the staff member's safety, and (2) actually assaulting Vice Principal Matthews.

I **CONCLUDE** that the BOE did not act in an arbitrary and capricious manner when it imposed the penalty of expulsion against L.O. Accordingly, I **CONCLUDE** that the findings of the BOE and the penalty imposed should be affirmed.

ORDER

Based upon the foregoing, I **ORDER** that the findings of the respondent BOE should be and hereby are **AFFIRMED**, and I **ORDER** that the BOE's imposition of the penalty of expulsion against L.O. should be and hereby is **AFFIRMED**.

ORDER

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.

A handwritten signature in black ink, reading "John P. Scollo", enclosed in a thin yellow rectangular border.

December 22, 2016

DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency:

Date Mailed to Parties:

Db

APPENDIX

List of Witnesses

For Petitioner:

L.O., petitioner

For Respondent:

Vice Principal Stefanie Matthews

Security Officer William Starks

Director of Special Services Shelly Harper

List of Exhibits

For Petitioner:

- P-1 Not in evidence
- P-2 Not in evidence
- P-3 L.O.'s January 11, 2016, letter of apology
- P-4 Not in evidence
- P-5 Code of Student Conduct (partial, 14 pages)

For Respondent:

- R-1 Not in evidence
- R-2 Not in evidence
- R-3 BOE's October 16, 2015, letter to L.O.'s parents providing notice of hearing
- R-4 BOE's November 18, 2015, expulsion letter
- R-5 Code of Student Conduct (complete, 55 pages)
- R-6 Student/Parent Handbook (complete, 49 pages)