

New Jersey Commissioner of Education

Final Decision

D.M., on behalf of minor child, C.M.,

Petitioner,

v.

Board of Education of the Township of Hamilton,
Mercer County,

Respondent.

Synopsis

Petitioner appealed the determination of the respondent Board suspending his daughter, C.M., for possession and distribution of THC edibles in violation of the school district's Code of Conduct. This case involves an incident that occurred in January 2022 wherein C.M. and another student, L.P., reportedly purchased a "Rice Krispie Treat edible with THC" from an unknown man off school grounds; the following day, C.M. was reported to have eaten a piece of the edible treat in the gymnasium of her middle school; C.M. claimed, *inter alia*, that L.P. "forced" her to eat the treat and distribute it to other students at lunch; afterwards, C.M. became ill and went to the nurse's office; C.M. maintained that she did not know what was in the treat and voluntarily took a drug test arranged by her parent four days after the incident, which was negative for cannabis. The Board contended that C.M.'s actions warranted the maximum code of conduct penalty for possession and distribution of a controlled dangerous substance, and that her one month suspension from school was appropriate. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; it was reasonable to infer that C.M. did not believe she purchased an ordinary Rice Krispies treat from the man behind the Dollar Tree Store; the Board conceded that neither the school nor the Board was able to determine what dangerous substance, if any, the edible treat contained; the Board acknowledged that that C.M. did not know what was in the Rice Krispies treat; there was no knowledge or proof in this case that a controlled dangerous substance was in the edible as none of it was recovered or tested; the absence of substantial, credible evidence in this case renders the Board's suspension decision unreasonable. The ALJ concluded that the respondent acted in an arbitrary, capricious, and unreasonable manner in suspending C.M. for possession and distribution of THC edibles. Accordingly, petitioner's motion for summary decision was granted; petitioner is entitled to expungement and removal of disciplinary action related to this matter from C.M.'s school records.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter. Respondent was directed to expunge the disciplinary action taken against C.M. from her student records.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader and has been neither reviewed nor approved by the Commissioner.

353-23

OAL Dkt. No. EDU 03782-22

Agency Dkt. No. 73-4/22

New Jersey Commissioner of Education

Final Decision

D.M., on behalf of minor child, C.M.,

Petitioner,

v.

Board of Education of the Township of
Hamilton, Mercer County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by the respondent Board of Education pursuant to *N.J.A.C.* 1:1-18.4, as well as petitioner’s reply thereto, have been reviewed and considered.

This matter involves petitioner’s appeal of the Board’s decision to suspend C.M. for “possession and distribution of an illegal substance,” described in the record as a “Rice Krispie Treat edible with THC” or simply an “edible,” on January 19, 2022.¹ *N.J.S.A.* 18A:37-2(j) – incorporated into District Policy 5600, upon which the Board relies – provides that conduct constituting good cause for suspension includes “[k]nowing possession or knowing consumption without legal authority of . . . controlled dangerous substances on school premises.”

¹ According to the petition, C.M. was suspended from school for a period of one month, which constitutes a long-term suspension. See *N.J.A.C.* 6A:16-7.3(a) (explaining that long-term suspensions occur when students are suspended for more than ten consecutive school days).

Following a physical altercation at school during which C.M. was attacked by another student, L.P., C.M. disclosed that several days earlier, she and L.P. had purchased a Rice Krispie treat edible from an unknown male off school grounds. C.M. said that L.P. “forced” her to eat the treat and distribute it to other students. She felt “weird” after eating it, became ill, and went to the nurse’s office. L.P. claimed that C.M. brought the treat to school and ate it willingly. Video footage showed the students sitting together at lunch without evidence of any conflict or struggle. C.M. later accused L.P. of putting something in the treat that made her sick and getting her in trouble, which led to the physical altercation. C.M. maintained that she did not know what was in the treat. C.M. voluntarily took a drug test arranged by her parent four days after the incident which yielded a negative result for cannabis.

The school principal informed the Board via letter dated January 24, 2022, that the suspension stemmed from C.M.’s admission that she consumed a “‘Rice Krispie Treat edible’ with THC” and distributed it to other students while on school grounds. However, during the Board hearing at which she testified, the principal made no mention of THC. When asked how she knew “that there was an illegal substance in the[] edibles,” she replied that she knew based upon “the interviewing [she] did with [C.M.]” who told her that she and L.P. “bought an edible.” The Board’s decision, issued March 1, 2022, concluded that C.M. “believed she was in possession of what she thought to be a dangerous substance” and “distributed same to other students.” At the same time, the Board acknowledged that no lab test was performed to “confirm whether the edible was actually laced with a dangerous substance” because the treat was not available for testing.

Once the petition of appeal was transmitted to the OAL, the parties cross-moved for summary decision. After making findings of fact, the Administrative Law Judge (ALJ) concluded that the Board's decision was arbitrary, capricious, and unreasonable as the charge of possession and distribution was unsupported by credible evidence. In her analysis, the ALJ cited the fact that the Board never determined through lab testing what dangerous substance, if any, the treat contained. Furthermore, the ALJ cited the Board's acknowledgment of C.M.'s statement that she did not know what was in the treat. Ultimately, the ALJ found "no knowledge here or proof that a controlled dangerous substance was involved." Initial Decision, at 12. Accordingly, the ALJ granted petitioner's motion for summary decision.

In their exceptions, respondent argues that the ALJ erred because: (1) the Initial Decision misstates the burden of proof and applicable legal standard; (2) C.M. "was not suspended for possessing or distributing THC edibles" but was instead suspended for "consumption and distribution of a controlled dangerous substance"; (3) the discipline was justified based upon C.M.'s belief that the treat was "laced" and her admission that she shared it with other students; (4) the dictionary definition of "edible," which states that it is a food item containing THC, supports the Board's decision because C.M. believed that the treat was an edible; (5) the Initial Decision "ignores the District's obligation to maintain the safe and orderly operation of the schools and to keep students from harm"; and (6) the Initial Decision "creates a dangerous precedent by prohibiting a District from disciplining a student when the student believes they possess contraband, consumes and distributes it to other students, but there is no contraband remaining to have tested by a third party for dangerous substances."

In reply, the petitioner urges the Commissioner to adopt the ALJ's Initial Decision in its entirety. Overall, the petitioner reiterates that the Board's decision to suspend C.M. was patently arbitrary and lacked a rational basis as the record is devoid of evidence to establish that the treat contained THC or any controlled dangerous substances. The petitioner also asserts that the record fails to show that C.M. knowingly possessed and/or distributed THC. Moreover, the petitioner argues that the long-term suspension violated C.M.'s right to a public education and the discipline imposed constituted arbitrary, capricious, and unreasonable board action.

Upon review, the Commissioner adopts the ALJ's Initial Decision as the final decision in this matter for the reasons stated therein. The Legislature granted local boards of education sweeping authority to enact rules regarding operation of their public schools. *N.J.S.A. 18A:11-1(c), (d)*; *Bd. of Educ. of City of Plainfield v. Cooperman*, 105 N.J. 587, 596 (1987). Board action conducted within the ambit of its broad discretionary authority "may not be upset unless patently arbitrary, without rational basis or induced by improper motives." *Kopera v. W. Orange Bd. of Educ.*, 60 N.J. Super. 288, 294 (App. Div. 1960). Board determinations are "entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious, or unreasonable." *Thomas v. Bd. of Educ. of Twp. of Morris*, 89 N.J. Super. 327, 332 (App. Div. 1965), *aff'd*, 46 N.J. 581 (1966). The Commissioner may not substitute her judgment for that of the Board. *Schinck v. Bd. of Educ. of Westwood Consol. Sch. Dist.*, 60 N.J. Super. 448, 476 (App. Div. 1960).

In this case, the petitioner has demonstrated that the long-term suspension imposed upon C.M. by the Board was arbitrary, capricious, and unreasonable and lacked a rational basis.

Board decisions pertaining to student discipline resulting in a long-term suspension “shall be based, at a minimum, on the preponderance of competent and credible evidence.” *N.J.A.C. 6A:16-7.3(a)(10)(iv)*. As the ALJ correctly concluded, the record does not contain any credible evidence to establish that the treat contained THC or any other controlled dangerous substance. Thus, the record fails to establish that C.M. knowingly possessed or knowingly consumed a controlled dangerous substance on school premises in violation of *N.J.S.A. 18A:37-2(j)* and District Policy 5600.

The Board’s exceptions are unavailing. At the outset, the ALJ stated and applied the correct legal standard. Furthermore, the Board’s attempt in its exceptions to reframe the suspension as one for “possession and distribution of an illegal substance,” and not concerning an edible alleged to have contained THC, is disingenuous. Page 5 of the Board hearing transcript reflects that the Board’s own attorney stated that “[t]he charges here are possession and distribution of THC edibles, occurring on January 19, 2022.” Additionally, the January 24, 2022, letter from the school principal to the Board describing the code of conduct violation references C.M.’s possession and consumption of a “‘Rice Krispie Treat edible’ with THC” as the basis for the suspension.

According to the testimony given at the Board hearing, the principal apparently assumed the treat contained THC because C.M. referred to it as an “edible” purchased from an unknown person. However, C.M. maintained that she did not know what the treat contained. Neither she nor anyone else involved ever stated that the treat contained THC, and the treat was never evaluated to determine what, if anything, it contained. Contrary to the Board’s contention, the dictionary definition of “edible” fails to support the conclusion that the treat at

issue in this case actually contained THC or any other controlled dangerous substance. Neither does C.M.'s belief that L.P. might have put "something" in the treat.

Furthermore, the Commissioner rejects the Board's assertion that the Initial Decision "creates a dangerous precedent" and ignores the Board's obligation to maintain the safe and orderly operation of the schools and protect students. While the Commissioner does not condone C.M.'s actions, the ALJ correctly found and concluded under the applicable legal standard that the Board's disciplinary charges against C.M. were unsupported by credible evidence. The holding in this case is limited to the unique facts described herein and in no way ignores a Board's obligation to maintain the safe and orderly operation of schools and to keep students from harm, nor does it prevent Boards from disciplining students in accordance with applicable law and regulations.

Accordingly, the Board's motion for summary decision is denied, and the petitioner's motion for summary decision is granted. Respondent is directed to expunge the disciplinary action taken against C.M. from her student record.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 30, 2023
Date of Mailing: December 1, 2023

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 03782-22

AGENCY DKT. NO. 73-4/22

D.M. ON BEHALF OF MINOR CHILD, C.M.,

Petitioner,

v.

BOARD OF EDUCATION OF THE

TOWNSHIP OF HAMILTON,

MERCER COUNTY,

Respondent.

Williams R. Burns, Esq., for petitioner (Kalavruzos, Mumola, Hartman, Lento & Duff, LLC., attorneys)

Michael A. Pattanite, Esq., for respondent (Lenox, Socey, Formidoni, Giordano, Cooley, Lang & Casey, PLC, attorneys)

Record Closed: July 27, 2023

Decided: October 24, 2023

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE

Petitioner, D.M., appeals the determination of the respondent, the Board of Education for the Township of Hamilton (the “Board”), suspending his daughter C.M. for possession and distribution of THC edibles on January 19, 2022, in violation of District Regulation 5600.

PROCEDURAL HISTORY

On March 1, 2022, the petitioner was notified of the Board’s findings and that C.M. could return to school with a suspension in her discipline record consistent with the code of conduct for possession and distribution. On April 4, 2022, the petitioner filed a timely appeal. On May 16, 2022, the New Jersey State Department of Education, Bureau of Controversies and Disputes, transmitted the matter to the Office of Administrative Law (OAL) pursuant to N.J.A.C. 1:1-8.2. On August 15, 2022, notification was received that the petitioner had retained counsel. A status conference was held on October 4, 2022. The parties believed that they could resolve the issue and was given an opportunity to do so. On November 4, 2022, a status conference was held and the petitioner informed the tribunal that he would be filing a motion to compel discovery. A motion schedule to compel discovery was issued. After several requests for extensions to file the motion (January 5, 2023; February 10, 2023; March 14, 2023) by the parties the tribunal was notified on May 3, 2023, that a motion to compel discovery was no longer necessary. On May 11, 2023, pursuant to a telephone conference held with the undersigned and the parties, leave was given to file Cross-Motions for Summary Decision. On June 13, 2023, petitioner filed his Motion for Summary Decision. On June 14, 2023, respondent filed its Motion for Summary Decision. On June 20, 2023, petitioner filed its reply brief, however same was not received by the OAL until July 27, 2023. The record closed then. The Acting Director and Chief Administrative Law Judge granted an extension of time for the Initial Decision on September 11, 2023.

Respondent's Position

This matter involves a disciplinary suspension administered by respondent Hamilton Township School District. (Respondent's Brief at para 1.) The incident that gave rise to the discipline occurred on Wednesday January 19, 2022. C.M., at the time, was an eighth grade student attending the Reynolds Middle School. (Respondent's Brief at Exhibit A.) On January 18, 2022, C.M. and another student¹ walked behind the Dollar Tree Store located at the shopping center at Yardville-Hamilton Square Road and Route 33. (Respondent's Brief at para 3.) A purchase was made of a Rice Krispy treat edible or treat from an unidentified man. (ibid at para 4.) Both C.M. and the other student blame each other.

On January 19, 2022, CM. was reported to have eaten a piece of the edible treat while in the gymnasium's bleachers. An investigation was conducted by respondent. In the investigation, C.M. stated that another student gave her the "edible and or treat to eat and after she "felt weird" and did not know there was something in it." (Id. at para. 5-6.) At lunch C.M claimed the other student provided her with the edible or treat and "forced" her to eat it and distribute it to other students. ibid. The other student claimed C.M. brought the edible or treat to school and ate it willingly. (Id. at para. 7-8.) A video was taken of the incident. The video showed that the students were sitting together during lunch, neither appeared to be forced. The video revealed both C.M. and the other student eating the edible and distributing it to other students. (Id. at para 11.) It was not clear which students received the edibles from C.M. and C.M. was not clear or could not remember who she gave the edibles. (ibid.)

On January 19, 2022, after lunch, C.M. became ill and went to the nurse's office. (Id. at para 13.) Later that evening C.M. texted the other student stating she "got her in trouble" because the other student put something in the Rice Krispy treat she gave her. On January 21, 2023, C.M. and the other student were involved in a fight. The other

¹ The other student is referenced as L.P

student claimed that C.M. was spreading rumors that she laced the Rice Krispy treat and was trying to send her to jail. (Id. at para 14.)

The District believing that C.M. possessed the Rice Krispy edible and distributed it to other students, and that it contained an illegal substance, suspended C.M. pending an administrative hearing. (Respondent's Brief at para 16.) An administrative hearing was held by a Board committee on February 15, 2022. The Board was provided with documentary evidence to support the administration's position that C.M. violated the code of conduct. (Respondent's Brief at Exhibit B, Transcript.)

At the hearing, Principal Patricia Landolfi-Collins (Principal Landolfi-Collins) testified on behalf of the Board. (TR at 6:17-14:18) Principal Landolfi-Collins testified that she first learned of the issue in this matter after the fight that broke out on January 21, 2022, when the other student attacked C.M. (TR at 8:2-6). Principal Landolfi-Collins testified that after questioning both girls and other students they found out that the fight stemmed from an incident that occurred on Tuesday, January 18 and Wednesday, January 19, 2022. The girls were behind the Dollar Tree Store on Tuesday, January 18 and purchased edibles from an unidentified man. On Wednesday when they got to school, they went to the gym because that is where eighth graders sit for the morning program. After speaking with both girls, C.M did take part of the edible. At lunchtime C.M. had the baggie of edible and she was being forced by the other student to distribute it to other students. (TR at 8:5-25, TR 9 at 1-2.)

Principal Landolfi-Collins testified that they viewed a video, and it showed both girls sitting together at lunch side-by-side. There was a bag in C.M.'s lap but they were unable to identify exactly what it was. C.M. was not sure how many students she gave the edible to. After lunch that day C.M. got sick, went to the bathroom, vomited. "Later that evening, I think there was some type of dispute or conflict between C.M. and the other student feeling as though, one might have put something in the treat and one was at blame for what happened." (TR at 9:3-23) The parent had a discussion with Principal Landolfi-Collins on February 21, 2022. The parent had reported that "something a little off" with C.M. on Tuesday. (TR at 10:13-14.)

On cross-examination, Principal Landolfi-Collins admitted that the fight that was shown on the video really was not a fight between C.M. and the other student L.M. (TR at 12: 7-19.) C.M. “was submissive and got punched in the head and hair pulled.” (TR at 13: 2-3.) Principal Landolfi-Collins admitted that she did not do a drug test and it would only be done “if there was suspicion on the day of.” (TR at 13:11-14.)

Principal Landolfi-Collins testified that the edibles were never found. While C.M. is charged with possession and distribution of an illegal substance, Principal Landolfi-Collins testified that she only knew of an illegal substance in the edibles based on her interview with C.M. and the answers C.M. provided. (TR at 13: 21-22.) According to Principal Landolfi-Collins, C.M. could not identify what was in the edibles. In addition, C.M. told Principal Landolfi-Collins that “L.P. probably laced whatever she gave her” because C.M. became sick from it. (TR at 14: 6-17.)

C.M. did not testify at the hearing. However, petitioner presented evidence of a drug screening that was negative for cannabis in her biological system four days after the incident. (Respondent’s Brief at 39.) On February 22, 2022, the full Board considered the full recommendation from the Board Committee who presided over the hearing. (Respondent’s Brief at para 42.)

On March 1, 2022, the Board sent a letter to D.M. In that letter the Board finds the following:

that C.M. believed she was in possession of what she thought to be a dangerous substance and distributed same to other students, which warrants a finding of a violation of the code of conduct and suspension. C.M.’s admissions to Ms. Landolfi-Collins were unrebutted and support this finding. The circumstances of how she acquired the edible are highly concerning in that she purchased it from an unidentified man behind a store. If C.M. believed this to be a regular Rice Krispies treat, then the purchase would have been routine in a regular store and the series of events that occurred after would not have occurred. C.M brought the edible to school thereby bringing her conduct that occurred off school grounds

to the school. C.M. admitted to consuming edible on school grounds and to feeling sick after causing her to vomit. C.M. admitted to distributing the edible to other students. Again, if C.M. thought she was handing out a regular store-bought Rice Krispies treat, then all this would have been unremarkable and would not have led to the issue with LP.

[Respondent's Exhibit C.]

The Board further found "C.M. should return to Reynolds henceforth with a suspension in her discipline record consistent with the code of conduct maximum for possession and distribution and that the administration use its judgment with regard to ensuring C.M.'s safety upon reentry". Ibid. Respondent argues that pursuant to the District Policy 5600-Pupil Discipline/Code of Conduct, "knowing possession or consumption of a controlled dangerous substance as a basis for suspension from school." (Respondent's Brief at para.49.) And that the Board's discipline was appropriate. (Respondent's Brief at para 55.)

Petitioner's Position

Petitioner filed a Motion for Summary Decision and a reply in opposition to Respondent's motion for summary decision in which he seeks reversal of respondent's decision and expungement of the imposed discipline.

Petitioner argues that neither "Respondent's Undisputed Material Facts nor the Transcript indicate that C.M. knowingly possessed and/or distributed THC." (Petitioner's Brief at 1.) In petitioner's "Counterstatement of Facts," it contends at lunchtime on January 19, 2022, "L..P gave her a baggie containing the rest of the Rice Krispie treat 'forced her to eat and distribute it.'" (Petitioner's Brief, June 20, 2023, at 3.) There was no evidence that C.M. was under the influence of a controlled dangerous substance while on school premises and the "Rice Krispie treat was not recovered" by the Board. (Ibid.)

Petitioner states that "the incident report (Exhibit A) indicates that in the evening of January 19, 2022, C.M. texted L.P. and told L.P. she got in trouble because she [LP.] put 'something' in the Rice Krispie treat she gave her. (Petitioner's Brief, June 20, 2023,

at 3.) “L.P. was suspended per the code of conduct for five days, and negative drug test..” C.M. was not subjected to drug testing by respondent; however L.P. was subjected to a drug test and received a short-term suspension while C.M. received no drug test but long-term suspension. Ibid. Four days after the incident, C.M. had a voluntary drug test that showed there were no drugs in her system including no cannabis. Ibid.

According to the transcript C.M. was charged with “possession and distribution of THC edibles, occurring on January 19, 2022.” (Petitioner’s Brief, June 20, 2023, at 3.) According to petitioner, there is no shred of evidence that “CM was in possession of or distributed THC.” Ibid. Petitioner argues that C.M. was specifically charged with possession and distribution of a specific controlled dangerous substance “to wit THC.” Furthermore, “C.M. was found guilty and disciplined for possessing, consuming, and distributing THC, even though the record is completely devoid of any evidence proving the same.” (Id. at 5.)

FINDINGS OF FACT

Based on the undisputed documents presented by the parties, I **FIND** the following **FACTS**:

The incident that gave rise to C.M.’s suspension occurred between January 18 and January 19, 2022. See Respondent Exhibit A at 6–7 (incident report). The facts became known to administrators on January 21, 2022, after another student, L.P., assaulted C.M. for allegedly spreading rumors about L.P.’s role in the incident.

At all times relevant, C.M. was a student in the eighth grade at Reynolds Middle School. On January 18, 2022, C.M. and L.P. purchased a Rice Krispies treat, alleged to be an edible infused with THC, from an unidentified man behind the Dollar Tree Store at the Hamilton Square Shopping Center. Ibid. The Dollar Tree is about a half mile from the school. Both students blamed the other for purchasing the treat. Ibid.

On January 19, 2022, C.M. and L.P. came to school and reported to the gym bleachers, where eighth graders sit for the morning program. (TR at. 8:16–19) One of the girls took the Rice Krispies treat out of a bag, and C.M. ate a piece while sitting in the bleachers. See Respondent’s Exhibit A. C.M. says that L.P. gave her the rest of the Rice Krispies treat and made her share it with other students at lunch. Ibid. It is not clear to whom, or to how many students, C.M. gave pieces of the Rice Krispies treat. Ibid. See TR at. 9:9–13. Video footage of the girls at lunch did not show any signs of “struggle or anything uncomfortable” between them. (TR at 9:3–9.)

After lunch, C.M. felt sick. She vomited in the lavatory, went to the nurse’s office, and texted her dad. She was absent from school the next day, January 20, 2022. Ex. A. Other students told L.P. that C.M. blamed L.P. for putting something in the Rice Krispies treat that made her sick. Ibid. When C.M. returned to school on January 21, 2022, L.P. attacked her from behind. Ibid. Administrators intervened and spoke to C.M., L.P., and other students, gleaning the facts summarized herein. L.P. was suspended for five days for fighting, while C.M. was suspended pending a Board hearing. C.M. had no prior history of discipline or misbehavior.

Administrators searched both girls’ lockers and contacted their parents, who came to the school. Officer Tobolski, the school resource officer, was also informed of what happened. Ibid. No edibles or other intoxicating substances were ever recovered. (TR at 13:6–15). Consistent with what C.M. told administrators, testimony from the disciplinary hearing revealed that she did not know what substance, if any, was in the Rice Krispies treat. (TR at 14:2–8.) Indeed, the letter from the Board communicating its discipline decision, dated March 1, 2022, notes “that there was no determination that the rice krispies treat actually contained a dangerous substance by way of lab test.”See Respondent’s Exhibit C. Four days after the incident, C.M. voluntarily submitted to a drug test, which came back negative, though it is unclear if the type of test she took would have detected illicit substances that long after ingestion.

At the hearing held on February 22, 2022, the charges noted in the transcript are “possession and distribution of THC edibles , occurring on January 19, 2022. (TR at 5:10-12.)

There was no testing done for THC, and no evidence that supports a finding that THC was in the Rice Krispies treat.

ANALYSIS AND LEGAL CONCLUSIONS

The underlying issue in this matter is whether the respondent Hamilton Township School District acted appropriately in suspending C.M. for possession and distribution of THC edibles.

The standard for granting summary judgment (decision) is found in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995). In Brill, the Court looked at the precedents established in Matsushita Electric Industrial Company v. Zenith Radio Corporation, 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986); Anderson v. Liberty Lobby, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); and Celotex Corporation v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986), wherein the Supreme Court adopted a standard that “requires the motion judge to engage in an analytical process essentially the same as that necessary to rule on a motion for a directed verdict, i.e. ‘whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.’” Brill, 142 N.J. at 533 (quoting Liberty Lobby, 477 U.S. at 251-252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214). The Court stated that under the new standard:

A determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of the non-moving party. The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.

[Id. at 540 (quoting Liberty Lobby, 477 U.S. at 251-252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214).]

The Brill standard contemplates that the analysis performed by the trial judge in determining whether to grant summary judgment should comprehend the evidentiary standard to be applied to the case or issue if it went to trial. “To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed worthless and will serve no useful purpose.” Id. at 541.

In addressing whether the Brill standard has been met in this case, further guidance is found in R. 4:46-2:

An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issues to the trier of fact.

As the material facts are undisputed, summary decision is appropriate.

Standard of Review and Applicable Law

The Commissioner of Education will not overturn the decision of a local school board in the absence of a finding that the board’s decision was arbitrary, capricious, or unreasonable. T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07, Initial Decision (February 6, 2008) (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff’d, 46 N.J. 581(1966)), adopted, Comm’r (April 7, 2008), <<http://njlaw.rutgers.edu/collections/oal/>>. Further, the Commissioner will not substitute his judgment for that of the board of education, whose exercise of its discretion may not be disturbed unless shown to be “patently arbitrary, without rational basis or induced by improper motives.” Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). New Jersey courts have held that “[w]here 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.”

Bayshore Sewage Co. v. Dep't of Env'tl. Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974). Thus, in order to prevail, the petitioner must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it. T.B.M., EDU 2780-07, Initial Decision (February 6, 2008), <<http://njlaw.rutgers.edu/collections/oal>>.

N.J.S.A. 18A:37-2 and District Regulation 5600 provide, in pertinent part, that:

Conduct which shall constitute good cause for suspension or expulsion of a pupil guilty of such conduct shall include, but not be limited to . . . [k]nowing possession or knowing consumption without legal authority of alcoholic beverages or controlled dangerous substances on school premises, or being under the influence of intoxicating liquor or controlled dangerous substances while on school premises.

[N.J.S.A. 18A:37-2(j); Hamilton Township School District Regulation 5600(C).]

Petitioner argues that the Board's decision was arbitrary, capricious, and unreasonable because it was not supported by credible evidence. More specifically, petitioner claims "[t]he District failed to prove by a preponderance of competent and credible evidence that C.M. knowingly possessed, consumed, or distributed a controlled dangerous substance while on school premises." Petitioner also argues that the imposition of a long-term suspension was not narrowly tailored to achieve the school's interests.

Respondent argues that the Board's decision was based on unrefuted, competent, credible evidence. Respondent further avers that "the attempted distribution of a substance the student believes to be contraband must be disciplined." Emphasizing the deference given to the Board of Education's actions, respondent insists that the Board's decision to suspend the student must be upheld as a matter of law. However, in her testimony, Principal Landolfi-Collins was asked how she knew that there was illegal substance in the Rice Krispies. She responded, "Just the interviewing that I did with C.M. and the answers she provided me." (T 13:16-21.) In addition, that C.M. "mentioned that

L.P. possibly laced whatever she gave her.” while Vice -Principal Hart stated that “[I] don’t think that she knew what it was. My recollection is that she didn’t know what was in it.” See T14: 2-14. Respondent did not perform a test for TCH and did not see the edible. In fact, Principal Landolfi-Collins testified that “[w]e noticed something in C.M.’s lap from the video. We could not identify exactly what it was. At lunch recess we were told that C.M. had handed a piece of it to another student or possibly a few students. We don’t have exactly how many students that she gave it to. She was telling us that she was having a hard time remembering.” (T 9:7-14.) However, the respondent has determined based on this sketchy evidence that C.M. possessed and distributed THC edibles.

Petitioner has demonstrated that respondent acted in disregard of the circumstances before it, and that its decision was not supported by credible evidence. While it is reasonable to infer that C.M. did not believe she purchased an ordinary Rice Krispies treat from the man behind the Dollar Tree Store, respondent concedes that neither the school nor the Board was able to determine what dangerous substance, if any, the Rice Krispies treat contained. Respondent likewise acknowledges that C.M. did not know what was in the Rice Krispies treat. Contrary to respondent’s assertion that C.M.’s mere belief that she possessed contraband is sufficient to justify the suspension, the District Code of Conduct specifically penalizes “[k]nowing possession or knowing consumption without legal authority of . . . controlled dangerous substances on school premises” and “being under the influence of . . . controlled dangerous substances while on school premises.” There was no knowledge here or proof that a controlled dangerous substance was involved, and the Board offered scant details about the alleged distribution. The absence of substantial, credible evidence in this case renders the Board’s decision unreasonable. Accordingly, I **CONCLUDE** that respondent acted in a manner that is arbitrary, capricious, and unreasonable and the charge of possession and distribution of TCH is unfounded.

Based upon the foregoing, I **CONCLUDE** that the respondent’s actions in suspending C.M. for possession and distribution of THC edibles was improper. Accordingly, respondent’s Motion for Summary Decision is **DENIED**.

I further **CONCLUDE** that the petitioner has met his burden and is entitled to expungement and removal of disciplinary action in C.M.'s record on the basis of possession and distribution of THC edibles. For the foregoing reasons, petitioner's Motion for Summary Decision is **GRANTED**.


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.

October 24, 2023 _____

DATE



JOAN M. BURKE

Date Received at Agency: _____

Date Mailed to Parties: _____

JMB/jm/mp

APPENDIX
EXHIBITS

For Petitioner

- 1) Petitioner's Brief in Support of Petitioner's Motion for Summary Decision, June 13, 2023
- 2) Petitioner's Reply Brief to Respondent's Motion for Summary Decision and in support of Petitioner's Motion for Summary Decision, June 20, 2023

For Respondent

- 1) Respondent's Brief in support of Respondent's Motion for Summary Decision – Exhibits A through E