

New Jersey Commissioner of Education

Decision

K.P., on behalf of minor child, I.M.,

Petitioner,

v.

Board of Education of the Pascack Valley Regional
High School District, Bergen County,

Respondent.

Synopsis

Pro se petitioner asserted that her daughter had been the target of discrimination, intimidation, and retaliation during the 2022-2023 school year while a student at Pascack Valley Regional High School. However, the petition failed to state a cause of action and provided no details whatsoever in support of the allegations of discrimination, intimidation, and retaliation. The respondent Board filed a motion to dismiss in lieu of an answer, followed by a brief and affidavit seeking summary decision. There being no response from the petitioner to the Board's second motion, the record closed on November 7, 2023.

The ALJ found, *inter alia*, that: petitioner's *pro se* filing failed to claim a violation of any school laws and provided no specific allegations or supporting facts to describe the basis for the dispute; allegations must be contained in the petition itself, and cannot be assumed to be known simply because the parties have otherwise communicated about the subject of a petitioner's complaint; in this matter, the petitioner provided no factual basis whatsoever for a claim that may involve HIB, and if petitioner's concerns involve something other than HIB, she completely failed to clarify what her specific claim is and a legal basis for the claim, notwithstanding having ample opportunity to do so. The ALJ determined that the matter is ripe for summary decision and concluded that the petitioner failed to state a claim upon which relief may be granted. Accordingly, summary decision was granted to the Board and the petition was dismissed with prejudice.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter. 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.

New Jersey Commissioner of Education

Final Decision

K.P., on behalf of minor child, I.M.,

Petitioner,

v.

Board of Education of the Pascack Valley Regional
High School District, Bergen County,

Respondent.

The record of this matter and the decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge that petitioner has failed to allege any violation of the school laws.

Accordingly, the OAL decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed with prejudice.

IT IS SO ORDERED.¹


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 8, 2023
Date of Mailing: December 8, 2023

¹ 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

MOTION FOR SUMMARY DECISION

OAL DKT. NO. EDU 05035-23

AGENCY DKT. NO. 135-3/23

K.P. o/b/o MINOR CHILD I.M.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE PASCACK
VALLEY REGIONAL HIGH SCHOOL DISTRICT,
BERGEN COUNTY,**

Respondent.

K.P. on behalf of **I.M.**, petitioner pro se

Rodney T. Hara, Esq. (Fogarty and Hara, attorneys) for respondent

Record Closed: November 7, 2023

Decided: November 8, 2023

BEFORE **ERNEST M. BONGIOVANNI**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On June 6, 2023, the Department of Education Office of Controversies and Disputes forwarded to the Office of Administrative Law (OAL), a petition by Petitioner K.P. o/b/o Minor Child I.M. which the transmittal characterized as a challenge of “the

Board's harassment, intimidation and bullying (HIB) determination." The respondent, Pascack Valley Regional High School District, Board of Education, (Board/District) alleging that the petition, among other flaws fails to properly state a cause of action, filed a motion to dismiss in lieu of an answer ("motion in lieu"). As a result, on July 14, 2023, I convened a conference to discuss this motion, partly to make certain that the pro se petitioner knew that she could and should respond to the Answer in lieu of a motion. Further I advised the parties, I intended to treat the motion in lieu of a dispositive motion, whether labeled as a "motion to dismiss" or motion for summary decision, that she should petitioner must respond in writing to the motion in lieu of the requirements of the Administrative Code for proceedings at the Office of Administrative Law. Furthermore, if K.P. did file a response to the motion to dismiss, the Board would be entitled to file a further response to obtain Summary Decision. On July 41, 2014, K.P. did file a response to the Motion in Lieu, and, thereafter, as permitted, on August 14, 2023. respondent filed a brief and affidavit seeking summary decision. As of November 7, 2023, K.P. did not file any response, and so the record closed.

MOTION

The Motion in Lieu, citing N.J.A.C. 6A: 3-1.5 (G) and N.J.A.C. 6A:3-1.10 formally noticed the petitioner that it sought a dismissal of her petition that it was relying for support of its motion on an attached legal brief and a Certification of one Sarah Bilotti. After my review of it, and after conferring with K.P. and the Board's attorney, I ordered that if K.P. files a timely reply to the Motion in lieu, the Board would be given an opportunity to reply and I would treat the motion as one seeking summary decision.

First and foremost, the respondent initially argued that the petition failed to state a claim upon which relief may be granted. Further, it was argued, the petitioner failed to allege the violation of school laws. Finally, the respondent alleged the petition was fatally flawed by not setting for the factual allegations for the allegations in the petition. As will be shown, the respondent was correct on all three grounds. However, as directed by me at the conference, petitioner provided, or at least tried to provide a defense to the motion to dismiss, with an informal, but timely, "to whom it may concern" letter which contained a number of email chains (hereinafter "Letter" or "To Whom it May letter") certified by

her to be the truth and also notarized. This was received by my office on July 31, 2023. Also, as directed at the conference, on August 14, 2023, respondent filed a response to petitioner's letter, with a supplemental brief and affidavit again by Superintendent Billotti. No reply was made to this supplement which closed the record.

Addressing first the simplest argument, the respondent correctly stated that the petition fails to claim a violation of any school law or laws. The form "Pro Se Petition of Appeal" directed the petitioner to set forth "in as many itemized paragraphs as necessary" the specific allegations and supporting facts which constitute the basis the dispute." Petitioner set forth only "discriminated, intimidated and retaliated from school stuff and dancers"¹ (emphasis supplied), No school laws are specifically cited, or described. Any "identifying" of school laws that may have been violated would require speculation and guessing; however the purpose of requiring specifications in the allegation is to identify the specific laws that were violated. Respondent is entitled to know the specific laws contained in the allegations.

Turning to the To whom it May letter by petitioner, and whether petitioner, notwithstanding the defects in the petition has now set forth enough evidence to defeat a motion for summary decision, I find, that like the petition, K.P.'s To whom it May" letter, and documents attached again fail to cite specific violations of law or laws complained of by this specific respondent at any specific time or place. The 13-page (by my count, as the pages are not enumerated) document never once cites a law or laws by name of legal citation. The Letter contains hearings in boldface type, as follows: "Discrimination" "GOD IS GOOD." "Intimidation" "Retaliation" "Retaliation continued" "Retaliation purposely negligence to hurt dancer"

¹ In the Relief requested section of the form appeal, petitioner stated she sought an Order "to admit the truth, apology to my daughter, including all the suffering damage \$30,000, we both went through my daughter and I" and "not allowing NOONE to retaliate, intimidate and discriminate my daughter in her last year..." To the extent this demand for relief can be comprehended, I note there is no authority to make the respondent, or any respondent to "admit the truth" or to issue an "apology." Moreover, money damages are not available in OAL proceedings. Finally, the Court has no authority to sign prospective Orders which would overbroadly make sure that "NOONE" intimidates, retaliates her daughter as only the Board of Education is an adverse party and can't be so ordered as they don't have authority over "NOONE" (that is, everyone).

On the fourth fifth and twelfth page (again using my count in the Order the pages, stapled together were affixed) petitioner does mention OPRA and asks the Court not to decide the case until she receives a decision from the GRC. She also refers to “continuing motion complaints with the District that have been scheduled for August 16, 2023”. Finally she also recalls previous cases or a case in what must have been her daughter’s prior school District Saddle Brook which resulted in a “deal”. The petitioner provided no records regarding such a “deal” despite claiming it had a bearing on the current controversy, nor did she provide documents of previous or pending “complaints” with the District were provided. The petitioner did not provide records of the OPRA case number or any document relating to the controversy, despite her acting to delay the disposition of this matter until said OPRA case was concluded. As the petitioner claims these other proceedings have a bearing on this controversy, even requiring they be “held” until the GRC case is resolved, it was incumbent on her to provide relevant facts on that those claims or controversies mean to this one. Instead the letter only provides confusion.

Included in the near impossible to sort out train of emails, is a Gmail from Superintendent Sarah Bilotti to K.P. which at least indicates that, petitioner’s complaint at least in part concerns the School’s decision, consistent with, according to Bilotti, past practices to not allow her daughter to drop a Computer Science Class beyond the deadline (a class that she was receiving a “B-minus” in as late as May 30, 2023.) Apparently, without specifying any factual basis, K.P. claims that the refusal to let her child drop the course past the deadline is “discrimination” and or “retaliation.” I find that even if K.P. could ultimately prove some teacher or teachers or administrative staff wrongfully failed to permit her daughter to drop a class past or even before the deadline, K.P. provides no factual basis or legal argument as to how such a failure could constitute HIB or some other violation of School law.

Second, the respondent (and the fact finder) must be able to determine from the petition itself the “specific facts which constitute the basis of the dispute.” As stated aforesaid, the claim is “discriminated, intimidated, retaliated from school stuff, and dancers.” (emphasis supplied) There are literally no facts alleged to support such a claim (if that is a claim.) There is not even a bare bone claim e.g. “My daughter was discriminated against by Teacher X at the dance competition held at the school on May

1, 2023, by Teacher X excluding her for no good reason.” Such a claim might suffice for the purpose of the initial pleading, if an otherwise valid claim was made. The allegations must be contained in the petition itself, and can’t be assumed to be known simply because the parties have otherwise communicated on the subject, or because the petitioner wrote about her complaints in a letter to the Superintendent. That might be useful at an evidentiary hearing but it doesn’t meet the minimal requirements of a pleading. ²

As for the To Whom it May letter, this response to the Motion in lieu sheds no light on what she K.P. is complaining about. Her attached emails make little sense without explanation and she provides no explanation. For example, several emails involve . advising others (teachers, administrators) not to speak to her daughter. For examples an email from November 16, 2022 states “No one will speak to [I.M.]” “There is no one allowed to speak to [I.M.]” and “don’t approach [I.M.]” along with several other categorical commands on what is permitted regarding her daughter. I thought this strange considering the email is labeled “Dance.” If her complaint has anything to do a dance course or competition, how can anyone be expected to teach or conduct a dance class or competition if one is being ordered by the parent not to speak to or even “approach” the pupil her daughter? Unfortunately, I can only speculate because that is the level of communication involved. Suffice to say, that K.M. provides no factual basis whatsoever to a claim that may regard HIB, and if it involves something other than HIB, K.P. completely fails to clarify what her specific claim is and a legal basis for the claim, notwithstanding having ample opportunity to do so.

In her Certification dated June 2, 2023 provided for in the Motion in Lieu of Sarah Bilotti, the Superintendent of Schools for the Board stated that based on her review of the petition she could not respond to the petition as the “allegations are general in nature” and “do not set forth facts...to support the general allegations.” As a consequence the Superintendent was “not in a position to provide information for the Board’s attorney to file an answer.”

² The petition attached a March 14, 2023 letter to the parents of I.M. informing them that at a March 13, 2023 meeting, determined in an “harassment intimidation and bullying “ (HIB) investigation that there was insufficient evidence to conclude an act of HIB had occurred. No other facts whatsoever are stated in the letter. The letter also advises the parents can appeal to the Commissioner of Education within 90 days.

I believe that the initial Certification by Superintendent Billotti was truthful and accurate, given the basically incomprehensible nature of the Petition. Nevertheless I did permit time for K.P. to provide a response to the Boards Motion in Lieu, which she did in the To Whom it May letter and its attachments. In the Board's August 14, 2023 response to same, Superintendent Billotti provided an affidavit, which, understandably, now characterized her knowledge as being "familiar with the facts pertaining to the request for petition to appeal filed by K.P...." In clear and cogent detail the Superintendent provided the following relevant and I believe undisputed facts: I.M. is a 17-year-old student who attended Pascack Hills High School for the 2022-23 school year. I.M. is domiciled in Saddle Brook and its BOE is required to provide a free public education to her. As a result of litigation between Saddle Brook and K.P., Saddle Brook requested that The Pascack Valley School District accept I.M. as a nonresident student for the 2022-2023 school year. The District accepted the enrollment and entered into a tuition contract with Saddle Brook allocating responsibility for the payment of I.M.'S tuition to the Board. However, that agreement was for one year only. On July 26, 2023, the Board unanimously voted to not enroll I.M. for the 2023-2024 school year (Billotti affidavit, Exhibit A).

Bilotti then explained her understanding of the 2022-2023 School year's controversy with K.P. over I.M. The deadline for students to withdraw from a course for the 2022-2023 school year was the end of the marking period January 18, 2023. However, more than four months later, on May 30, 2023, K.P. sought to withdraw I.M. from an honors computer science class and the school denied that request. was Billotti noted that I.M. eventually received a B plus for the course. In a similar dispute over I.M.'s grades, I.M. received a B minus final grade for the course. According to Bilotti the teacher communicated with students on homework and text/quiz requirements for the course. Bilotti found there was sufficient support for the teacher to issue the final B minus grade. I note that I.M. had a 3.58 cumulative average and that the B minus she received was for this honors computer science class, (Billotti Affidavit Exhibit C). Also, at the time K.P. began communicating with Bilotti asking to let her drop the Computer Science Class (May 17, 2023, four months past the deadline to drop classes) I.M. was then averaging a B minus in that class.

LEGAL ANALYSIS

Summary decision may be granted when the papers and discovery that have been filed show that there is no genuine issue as to any material fact challenged and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). No evidentiary hearing need be held if there are no disputed issues of material fact. Frank v. Ivy Club, 120 N.J. 73, 98, cert. denied, 498 U.S. 1073 (1991). A motion for summary decision in the OAL is equivalent to a motion for summary judgment in procedures in New Jersey Superior Court. “When the evidence is so one-sided that one party must prevail as a matter of law, the [tribunal] should not hesitate to grant summary [decision].” Della Vella v. Bureau of Homeowner Prot., New Home Warranty Program, CAF 17020-13, Initial Decision (March 31, 2014), adopted, Comm’r (May 12, 2014), <http://njlaw.rutgers.edu/collections/oal/> (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995)).

Further, the non-moving party has the burden “to make an affirmative demonstration . . . that the facts are not as the movant alleges.” Spiotta v. William H. Wilson, Inc., 72 N.J. Super. 572, 581 (App. Div. 1962). This requirement, however, does not relieve the moving party from having to initially establish in its moving papers that there was no genuine issue of fact and that they were entitled to prevail as a matter of law. It is the “movant’s burden to exclude any reasonable doubt as to the existence of any genuine issue of fact.” Conti v. Board of Education, 286 N.J. Super. 106 (App. Div. 1995) (quoting Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 74 (1954)). Here the respondent has demonstrated there is no reasonable doubt as to the existence of any genuine issue of fact.

After reviewing Superintendent’s affidavit, its facts and background provide the necessary context to at least make K.P.’s To Whom it May letter mostly comprehensible. However, I cannot agree with K.P. that it does anything to articulate a legal claim against the school district, certainly not under HIB, and since now other law is alluded to, I have to agree that the petition fails to state any claim upon which relief can be granted.³

³ It is even possible that Petitioner did not mean to appeal the failure to find HIB. Although the petition attaches a letter denying a finding a HIB, petitioner neither cited in it nor in her response to the motion to dismiss this important Anti-Bullying law nor even used the by now well-known acronym,

K.P. is obviously upset because her daughter got a B Plus and a B minus on two apparently difficult courses while otherwise averaging an A, and upset with the lack of appreciation by the school for her daughter's dancing abilities. She calls this "retaliation" and discrimination" but these are words, not facts nor arguments about a law, a violation of one, or facts upon which to base such a claim. The only "explanation" that I can grasp is K.P. may believe those teachers are retaliating because the child is an out of the district student or because K.P. has previously complained about I.M. not being allowed in the front of a dance competition or show. She says there were only five dancers ahead of I.M. but I.M. was in the third division of the dancers. She has even made an OPRA request to get the names of the other children who were put ahead of I.M. to further show discrimination and wants to postpone court proceedings until then. There is no cause to believe this was "retaliation".

I agree with respondent who correctly analyzed the applicable law and the basis for it:

Allegations of dissatisfaction with actions of a dance coach in scheduling students to compete in events, participating in dance activities or scheduling of dance tournaments do not constitute a controversy under the School laws of the State of New Jersey. The same conclusions should be reached with regard to Petitioner's allegations that the athletic director and coach allegedly spoke to I.M. about Petitioner's concerns despite her request not to do so....[A]resolution of the factual disputes do not necessitate a hearing on the allegations since the resolution or the dispute also does not constitute a claim upon which relief can be granted. (Respondent's letter brief 8/14/23 page 2).

Likewise I concur that the dispute over the school's enforcement of its deadlines for withdrawing classes is not a cognizable claim. Even if I did, it is clear that any evidence that the school's actions were retaliation is fanciful at best.

Grades on academic course, participation on sports teams, dance teams and other extra curriculum issues cannot be subject to angry and emotional appeals by parents in the absence of showing the abuse in the Board's exercise of its discretionary powers that is "patently arbitrary, without rational basis or induced by improper motives." Kopera v

West Orange Bd. Of Educ., 60 N.J. Super 288, 296 (App. Div 1960). There is a presumption of correctness in the exercise of such discretionary powers and local board's actions will not be upset where the "controverted action is within the discretionary authority of the board absent a showing that the action is arbitrary capricious or unreasonable". Thomas v Morris Twp. Bd. Of Educ., 89 N.J. Super 327, 332 (App Div. 1965, aff'd 46N.J. 581 (1966))

Finally, even if the complained of actions bore some rational relationship to a cognizable law which somehow has been breached, the OAL has no authority to grant K.P.'s demands, damages, the issuance of prospective orders as described in the demand for relief to everyone in the school district (or beyond) as described or to issue "an apology" for the alleged ordeal K.P or I.M. went through. There has not been given an iota of proof that the Board's actions in its failure to pay "pay damages" to issue prospective Orders forbidding everyone under the Board's purview to not "discriminate" in the future or issue an apology (for not issuing better grades, for the order placement in a dance competition or by its teachers and coaches talking to I.M. despite K.P.'s wishes that they not do so) was "patently arbitrary, without rational basis, or induced by improper motives." Parsippany-Troy Hills Education Assoc. v. BOE of Parsippany-Troy Hills Twp., 188 N.J. Super, 161, 167 (App. Div. 1983). See B.K. v. Tenafly, EDU 02392-20 (Initial Decision, December 18, 2020). Further, "[v]ague allegations of disrespect, violations of the anti-Bullying law and financial damages are not cognizable in this forum". C.B. on behalf of A.J.B. and J.B. v. City of Newark Bd. Of Educ., Essex County, EDU 09183-2021 (Order of Dismissal, March 17, 2022).

The original petition probably should not have survived the initial request for dismissal, at least without a formal and substantial amendment of the pleading, which I add was not requested by petitioner. However, I **CONCLUDE** that the petitioner has failed to state a claim upon which relief can be granted. This is sufficient to hold that respondent's motion for summary decision must now be and is **GRANTED**.

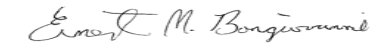
ORDER

Based upon all of the foregoing, I **CONCLUDE** that the petition fails to state a claim upon which relief can be granted. Accordingly, the motion for Summary Decision is granted and this matter is hereby **DISMISSED** with prejudice.

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.



November 8, 2023

DATE

ERNEST M. BONGIOVANNI, ALJ

Date Received at Agency:

November 8, 2023

Date Mailed to Parties:

November 8, 2023

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