

RANDALL MC CANN, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF SOUTH PLAINFIELD,
MIDDLESEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Following an incident in July 2003 in which petitioner entered and used a boy's bathroom at South Plainfield High School – allegedly before a female employee of a summer camp program could finish cleaning the lavatory – respondent imposed a requirement on the petitioner that if a school facility does not have a sign in/out procedure, he must notify a school administrator when he is on school premises. Petitioner – a South Plainfield parent – seeks monetary damages, attorney fees, and reversal of respondent's determination.

The ALJ determined, *inter alia*, that: petitioner's conduct was disrespectful and demonstrated bad judgment; petitioner failed to appreciate that his actions were inappropriate; petitioner did not meet his burden of proof to show that the actions of respondent were unlawful, arbitrary, capricious or unreasonable; respondent acted in a reasonable way in imposing a minor restriction on petitioner; and respondent was within its authority to impose such a restriction given its responsibility to maintain order, ensure the safety of its students and regulate its property. The ALJ ordered that the petition be dismissed, and affirmed the actions of the respondent Board.

The Commissioner concurs with the ALJ. The Commissioner also notes that there is no authority under the school laws for grants of the type of money damages and attorney fees that the petitioner seeks. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition is dismissed.

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.

February 10, 2006

OAL DKT. NO. EDU 8243-04
AGENCY DKT. NO. 226-6/04

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The Commissioner has reviewed the record of this matter and the Initial Decision of the Office of Administrative Law (OAL). Neither party submitted exceptions.

This controversy was precipitated by an incident that took place in South Plainfield High School on July 11, 2003. It is undisputed that during the summer of 2003, two groups were using the high school facility. The South Plainfield Recreation Department was running a sports camp, for which Tammy Zurka – a high school teacher and coach – served as director; a community theater group was using the high school stage and auditorium to present a play. The theater group’s producer had hired petitioner, who lives in South Plainfield and has two children in respondent’s schools, to build a set for the play.

It is further undisputed that in the morning of July 11, 2003, petitioner was working on the high school stage and Zurka was supervising the sports camp. After two boys told her that some campers had made a mess in the boys’ bathroom, she entered the empty bathroom to tend to the mess. She testified that she left two boys outside the room to warn her if anyone came to use the facilities.

The boys apparently failed to follow those instructions, because petitioner entered the room while Zurka was still cleaning up. The respective parties' accounts of what happened in the bathroom diverge. At the OAL hearing Zurka testified that she had told petitioner that she was the camp director cleaning up after her charges, would be finished in a minute, and asked petitioner to wait. Instead of waiting, petitioner told her that he had to use the bathroom right away, and proceeded to unzip his fly. She hastened to leave, but heard petitioner urinating before she reached the door. Petitioner's testimony at the hearing was that Zurka did not identify herself,¹ that he had not unzipped his fly within Zurka's range of vision, and that Zurka had exited the room before he started urinating.

There appears to be no dispute that the incident occurred shortly before the close of camp hours, that Zurka supervised the pick-up of the campers by their parents, and that she subsequently reported the incident to the then assistant principal of the high school, Kenneth May. May was apparently unaware of petitioner's presence in the building, identity, or purpose in being on the premises. Fearing that there was a stranger on school grounds who had behaved inappropriately toward staff and whose presence could be detrimental to students, May notified the district superintendent, Dr. Rosado, and the police, and went to look for the individual, accompanied by Zurka.

They found petitioner working on the stage. While there was conflicting testimony about what May said to petitioner, it is undisputed that petitioner acknowledged that it was he who entered the boys' bathroom while Zurka was there. May testified that petitioner's response to questioning about the bathroom incident was: "When you got to go, you got to go." May ordered petitioner to gather his things and leave the auditorium.

¹ At the OAL hearing petitioner's counsel stated that petitioner has a 60% hearing loss in both ears.

Rosado and the police arrived at about the same time. The police interviewed Zurka and petitioner. McCann conceded at the hearing that he told the police that ‘even if Zurka’s account of the incident had been true, what was the big deal.’ The police conveyed petitioner’s attitude to Rosado and May. Because of the attitude petitioner displayed, May recommended to Rosado that petitioner not be allowed to continue working on the school premises. Rosado agreed, relying on paragraph F of the district’s policy about visitors:

- F. Any visitor to the school whose presence or conduct is disruptive, or whose behavior, past or present suggests that he/she intends or is likely to become disruptive, may be requested to leave the school premises. If the visitor so addressed does not withdraw, the superintendent may summon assistance from the local law enforcement agency.

Since that time, petitioner has been required to sign in and out of any school building that he enters (this is not required if he is just dropping off or picking up his children outside the facility), and advise a school administrator of his presence if there is no mechanism for signing in and out. The requirement to sign in and out is applicable to all parents or other persons who are not employees of the South Plainfield Board of Education, pursuant to paragraph B of the district’s policy:

- B. Upon their arrival at school, visitors must register at the main office where they will receive instructions, permission, and/or a pass.

Rosado testified that if petitioner were willing to acknowledge the inappropriateness of his July 11, 2003 behavior, he was willing to rescind the requirement that in the absence of sign-in procedures petitioner advise an administrator of his presence in a school facility. However, petitioner was apparently not willing to so acknowledge.

Instead of filing a standard appeal with the Commissioner, petitioner submitted papers that he had previously filed in Superior Court. Among those papers was a notice of motion requesting an order:

1. Allowing [petitioner] to participate in school activities.
2. Allowing [petitioner] to enter South Plainfield schools without having to sign in and out.
3. Compelling [respondent] to treat [petitioner] as they would any parent of any child in the school system.

The Administrative Law Judge (ALJ) correctly found that, in view of section B. of respondent's visitor policy (set forth above), petitioner was not being treated differently from other parents by having to sign in and out when entering school facilities. The ALJ also found, and the Commissioner agrees, that there was no evidence at the hearing that would support a claim that petitioner had been prevented from participating in school activities relating to his children. Consequently, the ALJ correctly concluded that:

The only action taken by Respondent that puts a requirement on petitioner that does not apply to other parents is the following: If petitioner is entering a school building and that building does not have a sign in/out procedure in place, then Petitioner must notify a school administrator that he is on the premises. Such a situation would typically occur after hours when the staff at the main office (where signing in and out occurs) has left for the day. That requirement is the issue in this case; namely, whether the Board acted arbitrary [sic] and capricious [sic] in imposing this requirement on Petitioner.

In articulating the facts of this case, the ALJ found that Zurka was a very credible witness, and her testimony was harmonious with other evidence offered at the OAL hearing. By way of contrast, petitioner was arrogant, and his testimony was often vague and inconsistent. The Commissioner cannot find differently. The ALJ's determinations about credibility must be given deference. *S.D. v. Div. Med. Assistance and Health Services*, 349 N.J. Super. 480, 485

(App. Div. 2002) (Credibility findings of an ALJ concerning a lay witness may not be modified or rejected unless it is explained why they are arbitrary and capricious or unsupported in the record). Having reviewed the hearing transcript and accompanying exhibits, the Commissioner finds no reason not to adopt the ALJ's credibility determinations.

The Commissioner further adopts the ALJ's findings that the petitioner did disrespect Zurka by unzipping his trousers within a few feet of her, and urinating before she left the room. Not only was Zurka credible, but there was also no indication in the record that the petitioner, at the time he was interviewed by the police, had denied that the incident – as described by Zurka – had occurred. And the Commissioner adopts the ALJ's finding that at the hearing in this matter, the petitioner still did not appreciate that his actions as alleged by Zurka, if true, would reasonably cause “Zurka or any other woman to be upset.”

Based upon his findings that petitioner did conduct himself on July 11, 2003, in the manner described by Zurka – and that petitioner continued to show bad judgment in not appreciating how disrespectful and offensive his actions were – the ALJ concluded that petitioner, who has the burden of proving that respondent's actions were arbitrary or capricious in imposing the “minor” restriction of notifying administrators of his presence when no sign-in procedure is available, had not met that burden. The ALJ further expressed regret that a teacher, principal and superintendent had to miss most of the first day of school to respond to a frivolous case, which could have been resolved by a simple apology by petitioner.

The Commissioner agrees. Where board or administrative actions are challenged, the challenger bears the burden of proving that such actions were unlawful, arbitrary, capricious or unreasonable. *Shuster v. Board of Education of Montgomery Tp.*, 96 N.J.A.R. 2d (EDU) 670, 676. In other words, actions of local boards [of education] which lie within the area of their

discretionary powers may not be upset unless patently without rational basis or induced by improper motives. *Kopera v. Bd. of Educ. of West Orange*, 60 N.J. Super. 288, 294 (App. Div. 1960).

Regulation of visitors to school property is clearly action which lies within respondent's discretionary powers. N.J.S.A. 18A:20-20. There is nothing in the record to suggest that respondent – through its representatives Rosado and May – had any improper motives for imposing the reporting restrictions upon petitioner, and the Commissioner cannot say that it was irrational to ask petitioner – who has continued to show bad judgment in evaluating his conduct – to advise school administrators when he is on school premises.

Accordingly, the Commissioner adopts the Initial Decision dismissing the petition.²

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 10, 2006

Date of Mailing: February 10, 2006

² In the complaint that petitioner filed in New Jersey Superior Court and submitted to the Commissioner in lieu of the standard petition of appeal, petitioner asked for monetary damages and attorney fees. The Commissioner cannot grant monetary damages, absent specific statutory authority. *Spivak v. Clark*, 97 N.J.A.R. 2d (EDU) 270.; *Balsley v. North Hunterdon Board of Education*, 117 N.J. 434, 442-43 (1990); *Board of Education of the Township of Livingston v. E.J.B. and J.H.B.*, 96 N.J.A.R. 2d (EDU) 536. Petitioner has cited no authority, nor is there any, that allows the Commissioner to award the type of damages petitioner seeks.

³ This decision may be appealed to the State Board of Education pursuant to N.J.S.A. 18A:6-27 *et seq.* and N.J.A.C. 6A:4-1.1 *et seq.*