

#325-13 (OAL Decision: Not yet available online)

R.C.F. and A.L.F, on behalf of minor child, :
S.N.F., :

PETITIONERS, :

V. :

COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE BOROUGH :
OF SOUTH PLAINFIELD, MIDDLESEX :
COUNTY, :

DECISION

RESPONDENT. :
_____ :

SYNOPSIS

The petitioning parents contended that their daughter, S.N.F., was subjected to acts of harassment, intimidation or bullying (HIB) by a classroom teacher in violation of *N.J.S.A. 18A:37-13 et seq.*, the New Jersey Anti-Bullying Bill of Rights Act (Act). Petitioners filed an HIB complaint based on the teacher’s interaction with S.N.F. relating to two incidents: a possible dress code infraction in September 2011, and alleged cheating on a math test in December 2011. The subsequent Board investigation into the matter determined that the teacher’s conduct did not constitute HIB. The petitioners sought an order reversing the Board’s determination or, in the alternative, request a reinvestigation by an independent investigator. The Board asserted that this matter and the underlying allegations consist of two student-teacher interactions, each concerning violations of school rules, and that a properly conducted investigation determined that there was no HIB involved.

The ALJ found, *inter alia*, that: the preponderance of the credible evidence leads to the conclusion that the Board responded to the petitioners’ complaints in a timely fashion and its actions were consistent with a finding of no violation of the school district’s HIB policy; petitioners failed to produce any evidence that the Board acted in an arbitrary or capricious manner; the Board presented credible evidence that the teacher interactions at issue were matters in which a teacher disciplined a student within her authority, and did not constitute HIB within the intendment of the Act since there was no indication that these interactions were motivated by any distinguishing characteristic. The ALJ concluded that the petitioners did not meet their burden of proof, and ordered the petition dismissed.

Upon careful independent review of the record before him, the Commissioner found no cause to disturb the ALJ’s findings of fact and conclusions of law. Accordingly, the Commissioner adopted the Initial Decision as the final decision in this matter. In so doing, the Commissioner noted that the record did not include transcripts from the hearing conducted at the OAL, and therefore the credibility determinations of the ALJ must be given deference and the factual findings based on those determinations cannot be overturned. The petition was 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.

September 18, 2013

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S.N.F., :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioners’ exceptions – filed in accordance with *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching his determination herein.

This matter arises out of a claim by petitioners that their daughter, S.N.F., was subject to acts of harassment, intimidation and bullying (HIB) by her in-class support teacher in violation of the Anti-Bullying Bill of Rights Act (P.L.2010, c.122) (Act). In particular, petitioners allege that the manner in which the teacher handled two alleged disciplinary infractions¹ and her related verbal interactions with S.N.F. constituted HIB. Petitioners further allege that the district’s HIB investigation was conducted improperly² and that respondent acted

¹In the first incident, having perceived that the length of S.N.F.’s skirt may be in violation of the dress code, the teacher directed S.N.F. to report to the main office to have it measured. In the second incident, the teacher observed S.N.F. communicating with another student while a test was being administered. S.N.F.’s conduct was deemed cheating, and she received a grade of “zero” on the examination.

² Petitioners argue that additional witnesses should have been interviewed.

arbitrarily and unreasonably in affirming the district's determination that the teacher's actions did not constitute HIB.

The Administrative Law Judge (ALJ) issued an Initial Decision in which she determined that the actions complained of did not constitute HIB within the intendment of the Act since, *inter alia*, there was no indication that the acts and subsequent verbal interactions were motivated by a distinguishing characteristic. Rather, the ALJ found that the teacher's actions amounted to nothing more than a teacher disciplining a student for violations of school rules. The ALJ further found that the district promptly and appropriately responded to petitioners' HIB complaints. Accordingly, the ALJ rejected petitioners' contentions that the respondent acted arbitrarily in upholding the district's conclusion that the teacher's conduct did not constitute HIB.

Upon careful and independent review of the record in this matter, the Commissioner finds no cause to disturb the findings of fact and conclusions of law contained in the Initial Decision. Although the petitioners raise exceptions to facts that were determined by the ALJ based on the testimony of the witnesses and the credence ascribed to such testimony, the Commissioner notes that the record before him does not include transcripts from the hearing conducted at the OAL. Challenges to factual findings predicated upon the credibility determinations made by an ALJ require that the challenging party supply the Commissioner with the relevant and necessary portion of the transcripts. *In re Morrison*, 216 N.J. Super. 143, 158 (App. Div. 1987). On the record before him, the Commissioner is satisfied that the ALJ considered all testimony and evidence, and weighed it according to the credibility of the witnesses and the plausibility of its content. Thus, the Commissioner concludes that the ALJ's credibility determinations in this matter must be given deference and her factual findings based

upon those determinations cannot be overturned. *Close v. Kordulak Bros.*, 44 N.J. 589, 599 (1965); N.J.S.A. 52:14B-10(c).

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter for the reasons stated therein, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: September 18, 2013

Date of Mailing: September 19, 2013

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1).