

S.C., on behalf of minor child, K.C., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF MONTGOMERY,
SOMERSET COUNTY, :
RESPONDENT. :

SYNOPSIS

The petitioner challenged the determination of the respondent Board that his daughter, K.C., engaged in behavior that fell under the school district's policy against harassment, intimidation and bullying (HIB). This case stems from an incident between three female students, K.C., G.T., and M.M., during lunch at Montgomery High School in June 2015. In accordance with the provisions of the New Jersey Anti-Bullying Bill of Rights Act, *N.J.S.A. 18A:37-13.2 et seq.* (the Act), an investigation was conducted by the school's anti-bullying specialist. The investigation determined that K.C. had committed acts of HIB stemming from verbal communications she made that were reasonably perceived as being motivated by a distinguishing characteristic – namely, M.M.'s eating habits, which her friends labeled as anorexic – which substantially interfered with the rights of M.M., and had the effect of insulting or demeaning her. The HIB investigation report concluded that K.C.'s conduct met the statutory definition of HIB, as set forth in *N.J.S.A. 18A:37-14*. A Board-level hearing took place in July 2015 at the request of K.C.'s parents, after which the Board affirmed the initial finding of HIB. Thereafter, S.C. filed the within petition. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts in dispute, and the matter is ripe for determination on cross-motions for summary decision depending on the resolution of the sole legal issue in dispute herein: namely whether conduct reasonably perceived as being motivated by a student's apparent eating disorder can be found to constitute HIB within the meaning of the Act; in this case, K.C. admitted making comments to M.M. about the fact that K.C. felt her friend was anorexic because her eating habits had changed; K.C. also admitted taking M.M.'s iPod to text M.M.'s boyfriend about the issue; M.M. herself stated that she felt hurt by her friends and cried in the bathroom; these comments are reasonably perceived to be motivated by the distinguishing characteristic of M.M. having a perceived eating disorder. The ALJ concluded that K.C.'s comments constituted a violation of HIB, and petitioner has not met the burden of proof that the Board acted in an arbitrary, capricious, or unreasonable manner in concluding that C.C.'s conduct constituted HIB under the New Jersey Anti-Bullying Bill of Rights Act. Accordingly, the Board's motion for summary decision was granted, the petitioner's cross motion was denied, and the petition was dismissed.

Upon review, the Assistant Commissioner – to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-34* – concurred with the ALJ that the petitioner failed to sustain his burden to show that the Board's actions regarding K.C.'s conduct in June 2015 were arbitrary, capricious or unreasonable. Accordingly, the Assistant Commissioner adopted the Initial Decision as the final decision in this matter.

<p>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.</p>

August 11, 2016

OAL DKT. NO. EDU 18290-15
AGENCY DKT. NO. 325-10/15

S.C., on behalf of minor child, K.C., :
PETITIONER, :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner and the Board of Education’s (Board) reply thereto. In this matter, the petitioner is challenging the Board’s determination that K.C. committed an act of Harassment, Intimidation and Bullying (HIB) pursuant to the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.*

Upon a comprehensive review of the record in this matter, the Assistant Commissioner¹ concurs with the ALJ – for the reasons stated in the Initial Decision – that the Board’s determination that K.C. committed an act of HIB was not arbitrary, capricious or unreasonable. When a local school board acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that the decision was arbitrary, capricious or unreasonable. *Thomas v. Bd. of Ed. of Morris Twp.*, 89 *N.J. Super.* 327, 332 (App. Div. 1965), *aff’d* 46 *N.J.* 581 (1966). The Commissioner cannot find that it has been demonstrated that the Board’s handling of this matter

¹ This matter has been delegated to the Assistant Commissioner pursuant to *N.J.S.A. 18A:4-34*.

was carried out in a manner that was arbitrary, capricious, unreasonable, or otherwise contrary to the Act. Moreover, the Commissioner finds the exceptions submitted by the petitioner to be unpersuasive. The petitioner's exceptions largely replicate the arguments advanced at the OAL, which were fully considered and appropriately addressed by the ALJ in the Initial Decision.

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

IT IS SO ORDERED.²

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: August 11, 2016

Date of Mailing: August 12, 2016

² 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*).