

J.D. AND E.D., on behalf of minor daughter, B.D.,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE TOMS RIVER REGIONAL SCHOOL DISTRICT, OCEAN COUNTY,	:	DECISION
	:	
RESPONDENT.	:	
	:	
_____	:	

SYNOPSIS

Petitioning parents contested suspension of minor daughter, B.D., alleging that the Board violated its own policy and acted arbitrarily when it imposed a one day out-of-school suspension instead of an in-school suspension against B.D. for her use of profanity during a verbal altercation with another student.

ALJ granted summary decision to the Board as there were no contested facts between the parties. B.D. admitted violating the well-documented Board policy. ALJ concluded that the Board demonstrated that there were no genuine issues of fact and that it was entitled to prevail as a matter of law. Petition was dismissed.

Commissioner adopted determination of ALJ as his own, noting that petitioners failed to show that there was a genuine issue which could only be determined in an evidentiary proceeding.

February 17, 1998

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Petitioners' exceptions were submitted in accordance with *N.J.A.C.* 1:1-18.4.

Petitioners' exceptions recast their arguments as raised before the Administrative Law Judge (ALJ), essentially contending that the Board violated its own policy by requiring that B.D. serve an out-of-school suspension, rather than an in-school suspension, when respondent's policy provides, *inter alia*, that, "[t]he Board directs the administration to arrange facilities for in-school suspension whenever possible.\*\*\*" (Board's Reply to Petitioners' Opposition to Respondent's Motion for Summary Judgment, Exhibit A at p. 3) Petitioners assert that the Board's "violation" of its policy without justification, and the ALJ's tolerance of such, constitutes a "double standard." (Petitioners' Exceptions at p. 3) Petitioners further argue that

The inaction of the school to protect B.D. should not be glazed over. A safe environment must be provided by the schools when it is within their power; in this case they were given verbal and written warning of the situation, yet failed to act upon it. (*Id.* at p. 1)

Thus, petitioners conclude that a hearing in this matter is due, “[i]n view of the lack of evidence to support the modification of [the Board’s] own policy, and the inaction of the schools to provide a safe environment for the Petitioners[’] daughter \*\*\*.” (*Id.* at p. 5)

Upon careful and independent review, the Commissioner concurs with the ALJ that the Board’s motion for summary decision may properly be granted. Even accepting as true the facts alleged by petitioners, the Commissioner finds that they have failed to meet their burden of proving that the Board’s decision to suspend B.D. for one day, out of school, is arbitrary, capricious or unreasonable. In this regard, the Commissioner underscores the ALJ’s observation that B.D.’s use of profanity was the result of her own exercise of free will in her choice of words, and may not be viewed as an act of “self-defense,” deserving of a lesser penalty. (Initial Decision at p. 4)

As for petitioners’ contention that the Board violated its own policy by issuing an out-of-school suspension, rather than an in-school suspension, the Commissioner notes that the Board policy provides for such in-school suspension, *whenever possible*. (Board’s Reply to Petitioners’ Opposition to Respondent’s Motion for Summary Judgment, Exhibit A at p. 3) As the Board states

\*\*\*Due to the complications involved in arranging an in-school suspension, which include the necessity of obtaining lesson plans and school assignment[s] from the student’s teachers, the minimum in-school suspension which will be imposed is three (3) days. This three (3) day minimum in-school suspension is a uniform practice used throughout the Toms River Regional School system. \*\*\*Mr. Kohl, therefore, did not violate school policy by not imposing an in-school suspension, as a one-day in-school suspension is not possible to arrange.\*\*\* (*Id.* at p. 3)

Notwithstanding petitioners’ plea that a hearing is due, the Commissioner recognizes “[i]t is well-established that where no disputed issues of material fact exist, an administrative agency need not hold an evidential hearing in a contested case.” *Frank v. Ivy Club*, 120 N.J. 73, 98, citing *Cunningham v. Dept. of Civil Service*, 69 N.J. 13, 24-25 (1975). “Moreover, disputes as to the *conclusions to be drawn from the facts, as opposed to the facts themselves, will not defeat a motion*

*for summary judgment.” (emphasis added) Contini v. Board of Education of Newark, 96 N.J.A.R. 2d (EDU) 196, 215, citing Lima & Sons, Inc. v. Borough of Ramsey, 269 N.J. Super. 469, 478 (App. Div. 1994). Summary disposition in favor of the Board is, therefore, appropriate, inasmuch as petitioners have failed to show “that there is a genuine issue which can only be determined in an evidentiary proceeding.”\* (emphasis added) (N.J.A.C. 1:1-12.5(b)) Although petitioners no doubt disagree with the Board’s action in this matter, the Board has the authority to establish a policy which prohibits the use of profanity, as well as a procedure for limiting in-school suspensions to periods of three days or more, and there has been no showing that the suspension issued in this matter was inappropriate, particularly where petitioners admit to their daughter’s involvement in a “verbal altercation.” (Petitioners’ Brief in Reply to Respondent’s Motion for Summary Judgment at p. 1, paragraph 3)*

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein, and amplified above. The Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

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\* It is herein noted that petitioners’ affidavit and brief filed in response to the Board’s motion for summary judgment do not allege any specific facts which would indicate that there is a genuine issue sufficient to preclude a motion for summary judgment. N.J.A.C. 1:1-12.5(b)