

HILLSBOROUGH TOWNSHIP :  
EDUCATION ASSOCIATION, :  
 :  
PETITIONER, :  
 :  
V. : COMMISSIONER OF EDUCATION  
 :  
BOARD OF EDUCATION OF THE : DECISION  
TOWNSHIP OF HILLSBOROUGH, :  
SOMERSET COUNTY, :  
 :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioning Education Association appealed the Board’s failure to hold expulsion hearings pursuant to *N.J.S.A.* 18A:37-2 for students who committed “assault” against one of its members when the students posted threatening messages on a web site. The Board contended the matter was untimely and that petitioner lacked standing.

The ALJ found that there was nothing in the record indicating any sort of written complaint or assault form submitted by the affected teacher pursuant to *N.J.S.A.* 18A:37-2.1(b), which would have triggered mandatory reporting by the principal or the superintendent, who must then report allegations of assault to the Board. The ALJ found that the Board did not act in an arbitrary, capricious or unreasonable manner. The Board, through its administrators, followed up quickly and diligently upon learning of the postings. The ALJ observed that when a board acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be set aside unless there is an affirmative showing that the decision was arbitrary, capricious or unreasonable. (*Thomas v. Morris*) Petition was dismissed.

The Commissioner, noting that he did not address the issue of timeliness, adopted the findings and determination in the Initial Decision as his own.

OAL DKT. NO. EDU 2834-01  
AGENCY DKT. NO. 99-4/01

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COMMISSIONER OF EDUCATION

DECISION

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon careful and independent review of the record, and assuming, *arguendo*, that petitioner has standing, that the petition was timely filed<sup>1</sup> and that this matter is not moot, the Commissioner concurs with the ALJ that petitioner has failed to demonstrate that the Board's actions taken in this matter pursuant to *N.J.S.A.* 18A:37-2, rather than *N.J.S.A.* 18A:37-2.1, were improper.

Accordingly, the Initial Decision is adopted for the reasons expressed therein.<sup>2</sup> The Petition of Appeal is dismissed.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: May 6, 2002

Date of Mailing: May 6, 2002

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<sup>1</sup> Although the ALJ finds that the petition was timely filed (Initial Decision at 13), because of the outcome herein, the Commissioner does not address this procedural issue.

<sup>2</sup> The Commissioner notes, for clarification, that the ALJ's use of the statement "The presence of a handgun as in *Jones* – whether loaded or not – is a far reach from saying 'I'm going to get a gun,' or 'if I had a gun . . .'" (Initial Decision at 14) appears to be for illustration purposes, since the record does not show that any of the students used these words.

<sup>3</sup> This decision, as the Commissioner's final determination, 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.