

New Jersey Commissioner of Education
Final Decision

B.J., on behalf of minor child, L.J.,

Petitioner,

v.

Board of Education of the Borough of Carteret,
Middlesex County, and James Bevere,

Respondents.

Synopsis

Pro se petitioner filed an appeal in July 2016 challenging the disciplinary action taken by the respondent Board against her daughter, L.J.; L.J. received a four-day out-of-school suspension as consequence for her involvement in an altercation with another student in the school cafeteria on March 24, 2016. Both students received the same suspension for their involvement in the fight.

The ALJ found, *inter alia*, that: it is widely recognized that local school boards are charged with the orderly conduct of the public schools, and are vested with broad discretion in matters involving pupil discipline; a school board's actions carry a presumption of validity and will not generally be disturbed absent an affirmative showing that its judgment was arbitrary, capricious or unreasonable; the scope of the Commissioner's review here is limited to a determination regarding whether the Board had a reasonable basis for the actions taken; in the instant matter, it is undisputed that L.J. was involved in a fight on March 24, 2019 and remained physically and verbally aggressive after the fight was over; both students received a four-day suspension; there was video documenting the altercation at issue here, which L.J. has viewed, and petitioner's due process rights were not violated. The ALJ concluded that the Board's decision to suspend L.J. for her conduct on March 24, 2019 was not arbitrary, capricious or unreasonable and the Board followed its procedures for dealing with the situation.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and 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.

December 17, 2019

New Jersey Commissioner of Education
Final Decision on Remand

B.J., on behalf of minor child, L.J.,

Petitioner,

v.

Board of Education of the Borough of Carteret,
Middlesex County, and James Bevere,

Respondents.

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

Upon such review, the Commissioner agrees with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner when it imposed a four-day suspension on L.J. following a physical altercation in the cafeteria with another student on March 24, 2016. The Commissioner notes that both students involved received the same discipline, despite the fact that L.J. remained physically and verbally aggressive after the fight was over. Additionally, the Commissioner further concurs with the ALJ that petitioner's due process rights were not violated as she was permitted to view the video footage of the fight in the cafeteria, which is the only video of the incident.

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

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: December 17, 2019
Date of Mailing: December 19, 2019

¹ 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).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

MOTION TO DISMISS

OAL DKT. NO. EDU 14210-18

AGENCY DKT. NO. 182-7/16

ON REMAND

OAL DKT. NO. EDU 12095-16

B.J. ON BEHALF OF MINOR CHILD L.J.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE BOROUGH
OF CARTERET, MIDDLESEX COUNTY,
AND JAMES BEVERE,**

Respondents.

B.J. on behalf of **L.J.**, appearing pro se

Gabrielle Pettineo, Esq., for Respondents (Kenny, Gross, Kovats, & Parton
attorneys)

Record Closed: June 7, 2019

Decided: November 15, 2019

BEFORE **LELAND S. McGEE**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On June 7, 2016, Petitioner filed a Petition of Appeal with the Department of Education, Bureau of Controversies and Disputes (BCD), challenging disciplinary action

taken by Respondents against her daughter, L.J. On June 14, 2016, BCD issued a notice to Petitioner advising that the Petition was deficient. On July 6, 2016, Petitioner filed a second Petition of Appeal with BCD which was accepted and on August 8, 2016, Respondents filed an Answer to the Petition. On August 10, 2016, the BCD transmitted the matter to the Office of Administrative Law as a contested case and the matter was assigned to the Honorable Leland McGee, ALJ. Prehearing Conferences were held on October 5, 2016, November 30, 2016, and December 14, 2016. Hearings were scheduled for May 1, 8, and 10, 2017.

On October 17, 2016, Petitioner filed a Request for Due Process Hearing with the Department of Education, Office of Special Education Programs, which was forwarded to the OAL bearing Docket No. EDS-18509-16. On November 3, 2016, Respondent filed an Answer to the Due Process Petition. A Prehearing Conference was held on December 15, 2016, and a Prehearing Order was issued thereafter. Hearings in this matter were scheduled for September 20, 22, 25, and 27, 2017.

On January 30, 2017, Respondents filed a Motion for Partial Dismissal of the Petition for Due Process. On February 21, 2017, Respondents filed an Amended Motion for Partial Dismissal of the Petition for Due Process. On February 28, 2017, Petitioner filed an Answer to the Motion and on March 16, 2017, Respondents filed a Reply to the Answer.

On February 20, 2017, Petitioner filed a Motion to Consolidate the Petition of Appeal and the Petition for Due Process proceedings. On February 28, 2017, Respondents filed its Answer to the Motion for Consolidation and on March 10, 2017, Petitioner filed a Reply to the Answer. The two matters were never consolidated.

On April 17, 2017, Respondents filed a Motion to Dismiss the Petition of Appeal for Docket No. EDU 12095-16. On April 21, 2017, and again on April 25, 2017, counsel for Petitioner submitted a letter requesting to be relieved as Counsel. Following a series of telephone calls from both parties' attorneys and Petitioner herself, the undersigned converted the Hearing scheduled for May 1, 2017, to an in-person conference. The matter was then scheduled for a Hearing on May 8, 2017, which was adjourned.

On May 10, 2017, a hearing was held on the Motion to Dismiss the Petition of Appeal. Since Petitioner's counsel withdrew as counsel; she proceeded pro se at the hearing. The hearing was held solely for the purpose of addressing when Petitioner received notice of the adverse action taken against her daughter, L.J. The parties were given thirty days after receipt of the transcripts to submit post-hearing briefs.

On April 23, 2018, this matter regarding the Motion to Dismiss the Appeal bearing Docket No. EDU 12095-16, was reassigned to Honorable Elissa Testa, ALJ, due to the retirement of Judge McGee, ALJ. The matter of the Due Process petition bearing Docket No. EDS 18509-16 was transferred to the Honorable Jude Tiscornia, ALJ.

A decision on the Motion to Dismiss the Appeal had not yet been made because the recording of the hearing on May 10, 2017, before Judge McGee, could not be located. On May 1, 2018, the recording of the hearing from May 10, 2017, was located and a telephone conference was held by Judge Testa, counsel for Respondents and the Petitioner, pro se. It was decided that the parties would request a copy of the transcript and post-hearing briefs would be submitted by July 2, 2018. It was further decided that in the interest of judicial economy, Judge Testa would review the initial Motion papers and any response to same; listen to the May 10, 2017, hearing; consider the post-hearing briefs; and render a decision on the Motion to Dismiss the Appeal. There was no objection by the parties.

The time to file the post-hearing briefs was extended to July 27, 2018, due to continuing problems with obtaining the transcript. On July 27, 2018, the last of the post-hearing briefs were received, and the record was closed. It should be noted that the post-hearing briefs submitted by Petitioner on July 27, 2018, included additional Exhibits that did not address the testimony introduced before Judge McGee on May 10, 2017; nor were the Exhibits presented at the Hearing. Rather, they related to the Due Process Petition which is pending before Judge Tiscornia bearing Docket No. EDS 18509-16. Thus, the additional Exhibits were not considered.

On August 13, 2018, Judge Testa, granted Respondents' Motion to Dismiss. A copy of Judge Testa's decision was mailed to the parties on August 14, 2018. On September 20, 2018, Commissioner of Education remanded Judge Testa's ruling granting Respondent's Motion to Dismiss under OAL DKT. No. EDU 14210-18.

On December 18, 2018, Petitioner filed a Motion for Recusal of Judge Testa. On January 15, 2019, the case was reassigned from Judge Testa to Judge McGee and a Notice of the Hearing was issued on January 16, 2019, scheduling a hearing for February 14, 2019.

A hearing was held on February 14, 2019, limited to the issue involving the March 24, 2016, incident. On or about May 28, 2019, Petitioner filed a document called "closing arguments." On June 5, 2019, Respondents submitted a letter brief requesting the Petition of Appeal be dismissed in full with prejudice.

FINDINGS OF FACT

The following facts are undisputed and I therefore **FIND** them to be the **FACTS** of the case:

L.J. was born on August 23, 2002, and was initially classified as eligible for special education and related services on or about March 14, 2007. Specifically, she was classified under the category of "specific learning disability." On or about December 11, 2015, Petitioner withdrew her consent for special education and related services.

On March 24, 2016, L.J. was a fourteen-year-old student involved in an altercation in the Carteret Middle School cafeteria with another student. Security guards restrained L.J. while the other student was removed from the cafeteria. Respondents determined that it was necessary to summon the local police to diffuse the situation. The officers who arrived determined that L.J. would be placed under arrest and she was removed from the school building.

B.J. (hereinafter Petitioner) filed a pro se Petition of Appeal, on behalf of L.J., against the Carteret Board of Education in July 2016 based on the four-day suspension L.J. received because of the March 24, 2016, incident. On February 14, 2019, a hearing took place at the Office of Administrative Law.

TESTIMONY

Testimony of L.J.

L.J. testified on her behalf. She has attended the Carteret school district since kindergarten. L.J. had qualified for special education and related services on or about March 14, 2007. On or about December 11, 2015, Petitioner withdrew her consent for special education and Related Services. When questioned by the Court, L.J. stated that she felt like she was learning more after being removed from special education services. However, she expressed that she was being treated differently by the administration after being removed from special education classes, pointing to specific examples where she was called to the principal's office for different disciplinary matters. Although she was suspended once while still receiving special education services, she received about four to five detentions while out of special education services, along with two suspensions.

L.J. testified that she got into a fight with another student in the cafeteria of Carteret Middle School on March 24, 2016. L.J. testified that she was being bullied by the other student. She testified that she told her mother about the bullying, and her mother reported the bullying to Tara Romero, the Assistant Principal, via email correspondence. When questioned by the Court, L.J. stated that she did not report the bullying incidences to the school directly for fear that the situation would worsen. She testified that the student was a lot bigger than her. Additionally, she testified that Vice Principal James Bevere called the police after the fight was over.

Upon cross-examination, L.J. testified that she hit the other student during the March 24, 2016, incident in the cafeteria.

Testimony of Mary Spiga

Mary Spiga (Spiga) testified on behalf of Respondents. In March of 2016, Spiga was employed by the Carteret Board of Education as the Principal of Carteret Middle School. As Principal, she oversaw multiple facets of Carteret Middle School, including enforcement of school policies and writing budgets. She has since retired, effective January 1, 2019.

Upon direct examination, Spiga referred to a log entry in Power School, a student information system created by the District. The log contained a record of L.J.'s discipline while attending Carteret Middle School. Spiga read the following from an entry in L.J.'s discipline log from March 24, 2016:

[L.J.] and another student, [T.P.] were involved in an altercation in the cafeteria and it continued into the hallway. [L.J.] was pushing staff out of her way. Police were contacted and [L.J.] was taken to Carteret Police Department. Four Days OSS (out-of-school-suspension) on 4/4/16, 4/5/16, 4/6/16, 4/7/16. Mandatory re-entry meeting.

Spiga testified that she was not present in the cafeteria when the fight occurred, but she was notified through security radio in her office. She also saw video footage of the fight. Spiga testified that the video showed a verbal altercation between L.J. and T.P., and then L.J. proceeded to hit T.P. T.P. then hit L.J. back and a fight ensued.

When Spiga arrived at the cafeteria, L.J. appeared agitated. As Spiga and a security guard were escorting L.J. to the in-school-suspension room, in accordance with procedure, L.J. broke away and started cursing, and stated that she was going to "fuck up" T.P. When L.J. was ushered into the in-school-suspension room, she continued to threaten T.P. Ms. Heim, the school guidance counselor, was in the room with L.J. and concluded, along with Mr. Bever, that the police should be called. Spiga credibly testified that in this situation, calling the police was justified. Spiga testified that typically, the police are called when a student cannot be calmed down and the situation has the potential to affect the safety of other student and staff in the building. Spiga testified that the police then come to the school to assess the situation to see if the

student needs to be taken into custody. When the police arrived at the school on March 24, 2016, they were informed that there was a fight and that both parties were in separate rooms. The police took L.J. into custody. Spiga testified that she did not request that L.J. be taken into custody or handcuffed. She testified that she does not have the ability to make a demand on a police officer to arrest a student.

Spiga then testified regarding Carteret's Policy on Pupil Discipline and Code of Conduct (R-2). The policy reflected that "physical assault upon another student" was a behavior that may result in suspension or expulsion.

Spiga testified concerning the Carteret Middle School Code of Conduct (R-3), which lists various student infractions and their consequences. The consequences for fighting include "an out of school suspension and a parent conference upon return. Administration may file a police complaint with Carteret Police Department on the third offense. Recommendation for outside counseling services." As a result of the March 24, 2016, incident in the cafeteria, both L.J. and T.P. were given a four-day suspension.

After L.J. served her four-day suspension, Spiga and the Superintendent met with her parents prior to returning to school for "re-entry" purposes.

Spiga testified that besides the March 24, 2016, incident, L.J.'s discipline record was "substantial." The dates of discipline ranged from October 10, 2008, to June 1, 2016.

On cross-examination, Spiga testified that the other student involved in the incident, T.P., was not arrested. She also testified that she was not sure if the March 2016 incident was L.J.'s second or third code of conduct offense. Upon questioning from the Court, Spiga testified about the investigative procedure in the normal course of a fight. She stated that the administration talks to witnesses and looks at videotape if possible. There was no question as to whether there was a fight that day or who was engaged in that fight.

Testimony of James Bevere

James Bevere (Bevere) testified on behalf of the Respondents. Bevere is employed by Carteret Public Schools as the Vice Principal of Carteret Middle School. As Vice Principal, Bevere's role included disciplining students.

Bevere was at the middle school on the day of the March 24, 2016, incident. He was made aware of the incident via his security radio and entered the cafeteria after the fight was already broken up. A security guard was restraining L.J. When he got to the cafeteria, he was unable to calm L.J. down after repeated attempts. He left the cafeteria and went to his office, where T.P. was being placed. While in his office with T.P., Bevere testified that he could hear L.J. in the in-school-suspension room. She was yelling that she wanted to continue to fight. She said she wanted to "fucking kill" T.P.

Allison Heim (Heim), the school guidance counselor, asked Bevere whether she should call the police. Bevere testified that he advised Heim that the police should be called if L.J. was out of control. Bevere did not call the police or speak to them when they arrived. He testified that the police were not called because of the fight in the cafeteria, but because of L.J.'s behavior after the fight.

Bevere was able to subsequently review the incident on tape via the school security footage. He testified that L.J. hit T.P., and T.P. hit L.J. in return. He testified that both students received a four-day suspension as a result of the incident. Bevere also testified that there is typically no discretion in terms of punishment when students put their hands on each other, no matter who started it. Bevere signed a complaint by the Carteret Police Department outlining the incident and the charges.

On cross-examination, Bevere testified that Spiga was responsible for trying to diffuse the situation with L.J. He testified that he was limited in his contact with L.J. because he handled a lot of her discipline matters earlier in the year, and it would be

best for other administrators to handle L.J. He testified that Spiga was the best option to diffuse the situation.

Testimony of Donald Dekolf

Donald Dekolf (Dekolf) testified on behalf of the Respondents. Dekolf has been employed by the Carteret Board of Education as the Manager of Information Technology for fifteen years. Specifically, he handles servers and security cameras for the District. The District uses Aimetis security cameras. This system was used in March 2016.

The security cameras are motion activated. Cameras are located throughout the district and the recorded footage is saved onto a server on a hard drive. The hard drive typically fills after thirty days and overwrites the previous data on the drive. If there is an incident, a copy of the tape is requested, but that request must be made within a specific time frame. That footage is then put on a disc. If the request is not made, the footage just gets continuously overwritten on the hard drive. He testified that recordings from 2016 would not currently be on the server.

Dekolf testified that he has seen the video footage of the March 2016 incident. It shows “two ladies getting into a fight” in the cafeteria. He testified that to his knowledge, that is the only video that exists from March 24, 2016.

Upon cross-examination, Dekolf testified that there was no request made for a tape of footage from the hallway. Upon questioning from the Court, he testified that parents do not have the authority to request a tape because it is not district policy.

DISCUSSION

The issue to be determined is whether the respondent school board’s decision was arbitrary, capricious and/or unreasonable. It is widely recognized that local school boards have been charged by the Legislature with the orderly conduct of public schools and are vested with broad discretion in matters involving pupil discipline. K.O.H. ex rel.

R.H. v. Edison Twp. Bd. of Educ., , 276. When a local board has acted within its authority, its actions carry a presumption of validity and will not generally be disturbed absent an affirmative showing that its judgment was arbitrary, capricious or unreasonable. Thomas v. Morris Twp. Bd. of Educ., , 332 (App. Div. 1965), aff'd, (1966). In matters involving the exercise of a local board of education's discretion, the scope of the Commissioner's review is not to substitute his/her judgment for that of those who made the evaluation but to determine whether they had a reasonable basis for making the conclusions and decisions they made.

FINDINGS

I **FIND** that Respondents' determination to suspend L.J. was appropriate. L.J. engaged in a physical altercation in the Carteret Middle School cafeteria on March 24, 2016. There is no dispute as to whether the fight occurred. L.J. continued to be physically and verbally aggressive after the fight was over and the police were called. Both students were given the same discipline of a four-day suspension.

I further **FIND** that Petitioner's due process rights were not violated regarding the video footage in the hallway. L.J. was suspended for the physical altercation in the cafeteria, of which Petitioner has seen the video footage. Carteret followed procedure, confirmed by the testimony of Donald Dekolf, in making a physical copy of the incident in the cafeteria from the security camera hard drive. A tape was made to allow the Petitioner to view the actions for which she was suspended.

CONCLUSION

For the foregoing reasons, I **CONCLUDE** that Respondents' action was supported by evidence properly adduced and presented and was not arbitrary, capricious or unreasonable.

ORDER

It is hereby **ORDERED** that Respondents' Motion to Dismiss be **GRANTED** and Petitioner's claim be, and hereby is dismissed.

I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 15, 2019
DATE



LELAND S. MCGEE, ALJ

Date Received at Agency:

November 15, 2019

Date Mailed to Parties:
lr
