



New Jersey School Boards Association

413 West State Street • P.O. Box 909 • Trenton, NJ 08605-0909 • Telephone: 609.695.7600 • Toll-Free: 888.88NJSBA • Fax: 609.695.0413

LEHIGH UNIVERSITY'S 41st SPECIAL EDUCATION LAW CONFERENCE: THE CONTINUING PURSUIT OF A GOOD IDEA

**Lehigh University's Mountaintop Campus
Bethlehem, Pennsylvania
May 10, 2013**

Bullying Of and By the Student with Special Needs

***Michael F. Kaelber, Esq., Director
Legal, Policy and Labor Relations Services, NJSBA***

New Jersey Anti-Bullying Case Law

1. L.B.T. o/b/o K.T. v. Board of Education of the Freehold Regional School District, EDU 7894-12, Initial Decision (January 2013), aff'd Commissioner (March 7, 2013)
<<http://njlaw.rutgers.edu/collection/oal>>

Commissioner determined that board of education acted properly when it found that incidents between two swim team members at swim team competitions, swim team parties and events and online did not constitute HIB as defined by the Anti-Bullying Bill of Rights Act and applicable board policy. Disagreement reflected a dispute between the girls regarding their respective roles on the swim team and was more of a personal vendetta; no acts of HIB as defined in the law occurred. Board responded to all complaints in a timely manner, seriously evaluated the merits of petitioner's concerns and took extraordinary measures to address the disagreement.

2. W.C.L. and A.L. o/b/o L.L. v. Board of Education of the Borough of Tenafly, EDU 3223-12, Initial Decision (November 26, 2012), aff'd Commissioner (January 10, 2013)
<<http://njlaw.rutgers.edu/collection/oal>>

Board of education determination that student's conduct constituted an incidence of HIB pursuant to N.J.S.A. 18A:37-14 and consequence imposed for such action was not arbitrary, capricious or unreasonable. Board's actions were consistent with the letter and spirit of the Anti-Bullying Bill of Rights Act. Fourth grade student embarrassed and offended a classmate by explaining to others in the class that she had dyed her hair

because she had head lice. Student was given a learning assignment, reading and discussing a book entitled “Just Kidding” at lunch with anti-bullying specialist. No other discipline was imposed.

3. J.M.C. o/b/o A.C. v. Board of Education of the Township of East Brunswick, EDU 4144-12, Initial Decision (November 27, 2012), aff’d Commissioner January 9, 2013
<<http://njlaw.rutgers.edu/collection/oal>>

Board of education’s determination that student’s conduct constituted an incidence of HIB pursuant to N.J.S.A. 18A:37-14 and the school district’s HIB policy and consequence imposed for such action was not arbitrary, capricious or unreasonable. Sixth grade student insulted and demeaned a fellow classmate in gym class by saying that he “danced like a girl” and called him “gay.” Comments pertained to student’s gender and sexual orientation, were verbal acts motivated by distinguishing characteristics and substantially interfered with the rights of another student. Student was given a three day detention, consistent with the student’s age and the fact that this was a first offense under the code of student conduct.

4. L.H. and M.H. o/b/o J.H. v. Deerfield Township Board of Education, EDS 9879-11 (October 12, 2012)

Student’s IEP was appropriate and provided FAPE. In-district program provided an appropriate program and placement and enabled student to achieve meaningful educational progress. District is encouraged to consider appropriate modifications to student’s goals and objectives. Parent’s request for out-of-district program and placement denied. Allegations that student was bullied in school turned out to be the reverse. Student was more of an instigator, or at a minimum, a teaser, in the single reported incident. No evidence to suggest that behavior had been repetitive.

5. C.P. o/b/o D.V. v. Fair Lawn Board of Education, EDS 11788-11 (August 21, 2012)

Student’s IEP, proposed by the district, was reasonably designed to confer a meaningful educational benefit and provide FAPE in the least-restrictive environment. Parent’s request for tuition and expenses for unilaterally placed private school setting and continued placement at school district expense denied. Bullying alleged, not proven. Parent complained that student was being bullied in the middle school environment. Student would not identify alleged bullies for fear of retaliation. Investigation by principal and teachers did not identify any incidents of bullying. Student did not appear to be victimized in any way by teasing or bullying and appeared to have a good relationship with fellow students.

6. F.F. and L.F. o/b/o N.F. v. Matawan-Aberdeen Board of Education and Matawan-Aberdeen Board of Education v. F.F. and L.F. o/b/o N.F., EDS 2287-12 (July 26, 2012) EDS 3765-12 (July 26, 2012) (Consolidated)

Student's program and placement, proposed by the Board through the current IEP, were reasonably calculated to provide student with a meaningful educational benefit in the least restrictive environment, providing FAPE. Parent's request for home instruction through online courses denied. Eleventh grade student who suffered from situational and anxiety had been on home instruction since the eighth grade due to anxiety associated with a fear of bullying. Student had been bullied in the middle school and experienced bullying and harassment incidents near the end of her ninth grade year. The current school environment, includes a new superintendent, deputy superintendent, and special education director, and implementation of the district's new comprehensive HIB policy under the Anti-Bullying Bill of Rights Act. The current school environment under the protection of the Anti-Bullying Bill of Rights Act and the district's HIB policy would provide FAPE in the least restrictive environment.

7. In the Matter of the Tenure Hearing of Steven E. Roth, EDS 15145-115, Initial Decision (May 11, 2012), aff'd Commissioner June 25, 2012
<<http://njlaw.rutgers.edu/collection/oal>>

Special Education teacher disparaged, confronted and intimidated special education student in geometry classroom setting. Remarks included that no one in the public would care that the student was "special" and chastised the student for objecting to the use of the term. Teacher referred to the Special Services School District name and the fact that the student would never make it back to "regular ed." Teacher's actions were surreptitiously recorded on a cell phone; resulting video was used in evidence. ALJ found that teacher's conduct violated school district's HIB policy and constituted unbecoming conduct. Given teacher's successful teaching history, his honest concern for student and severe remorse, ALJ recommended 120 days forfeiture of pay, suspension without pay for the rest of the 2011-2012 school year, withholding of salary increment for the 2012-2013 and 2013-2014 school years, completion of anger management training at teacher's expense and written apologies to student, his parents and all other student present. Commissioner of Education found that penalty of dismissal was warranted; use of intimidation, ridicule and disparagement has no place in the school environment.

8. J.K. o/b/o P.B. v. Board of Education of the Township of Springfield, EDU 09972-09, Initial Decision (October 13, 2011), aff'd Commissioner February 9, 2012

Parent sought reimbursement for student's senior year tuition at out-of-district high school. Parent had unilaterally withdrawn son from board's high school, alleging that Board failed to address persistent issues of HIB during student's junior year. ALJ concluded that actions of the board to investigate and the measures to remediate the alleged bullying were insufficient, found the unilateral placement of the student was appropriate and recommended that parent be granted tuition reimbursement. Commissioner disagreed finding no credible evidence that the bullying actually took place, that no proof was shown to indicate that the board failed to take actions reasonably calculated to end the conduct and that parent failed to exhaust available administrative remedies. District responded to all incidents, met with the parties, counseled against repetitive interaction within the school environment and school activities. Mediation was

offered and rejected. Transfer to a neighboring choice school was rejected. The board's attempt at remediation and prevention were reasonable in light of the totality of the circumstances.

9. L.T. and L.T. o/b/o K.T. v. Neptune Township Bd. of Ed., EDS 11709-11 (March 1, 2012)

Student found eligible for special education and related services. Board of education ordered to develop an IEP for fourteen year old eighth grader that provides FAPE through a program individualized to the student's unique needs and designed to give her meaningful educational benefit. Student was sexually molested at school during her sixth grade year and was bullied, harassed and indirectly threatened during her seventh grade year. Student has PTSD and depressive disorder as well as fear and anxiety associated with school problems.

10. K.L. v. Evesham Twp. Bd. of Ed., A-1771-10T3, December 12, 2011

Parent had sought access to school records regarding alleged incidents of bullying against his children. Appellate Division affirmed trial court in part, reversed in part and remanded for a determination of attorney fees. School personnel notes in question were privileged from disclosure under the attorney work product doctrine. Parent partially prevailed as, after plaintiff filed this lawsuit, the Board released one redacted document to plaintiff that reported the disciplining of another student for violent conduct against plaintiff's son. No determination made as to whether the incidents report advised that the notes were accurately described as "bullying." Disputes about relationships or personal belongings or aggressive conduct without identifiable motivation, do not come within the statutory definition of bullying.

11. Howell Township Board of Education v. J.D. and T.D. o/b/o A.D., EDS 02772-11 (March 17, 2011)

Emergency relief granted for placement of student in CHANGE program based on pattern of inappropriate and dangerous behavior. Student behavior included physical altercations, sexual harassment and bullying of female students and use of racist and threatening language.

12. Mentor v. Hillside Board of Education, 428 Fed. Appx. 222 (3d. Cr. 2011) (May 23, 2011)

Court of Appeals affirmed District Court's dismissal of bus and cafeteria aide's claim of racial discrimination and retaliation under Title VII. Aide was transferred because, despite the school's intervention and remediation regarding her daughter being bullied in class by another student, the aide confronted the parent of the alleged bully. Termination was based on budgetary constraints.

13. F.J. o/b/o A.J. v. Fairfield Township Board of Education, EDS 806-10, Initial Decision (May 28, 2010), aff'd Commissioner (July 12, 2010)

Parent's request to transfer son, an eleven year old, sixth grade student to another school district denied. Student was assaulted on the school bus by another student. Assaulting student was disciplined in accordance with school district policy, suspended. The two students have not had any additional altercations since the incident, either in or out of school; no further violence, harassment, cyberbullying, belittling or other offensive conduct. No evidence of bullying was found. District has an anti-bullying policy and its staff is trained in bullying prevention. Petitioner may go to a charter or choice school or seek a different bus.

14. H.S. and N.S. o/b/o A.S. v. Moorestown Township Board of Education, EDS 10210-07 (March 20, 2008)

Student deemed eligible for special education and related services. Student believed he had been bullied at school including being pushed by a student, suffering a concussion and post-traumatic stress disorder. Student has an inability to attend school due to his fear of bullying. Student's fear to attend school in Moorestown is real and would be traumatic. IEP team ordered to develop an IEP as soon as possible.

15. L.S. o/b/o C.S. v. Central Jersey Arts Community School Board of Education, EDS 09573-07 (October 11, 2007)

Parents sought out of district placement for twelve year old, sixth grade special education student. Parent alleged, but could not prove, that because of the bullying that the student experienced, he was exposed to a hostile educational environment and denied FAPE. Parent failed to demonstrate that resource room services, the one-on-one aide, together with educational strategies, modification and goals set forth in the IEP were not appropriate. Principal represented that an anti-bullying program with zero tolerance was in effect.

16. Shore Regional High School v. P.S. o/b/o P.N., 381 F.3d 194 (3d Cir. 2004)

Court of Appeals reverses District Court finding that school district offered FAPE. District Court did not give due weight to the ALJ decision. Student had been bullied in elementary and middle school and was the victim of relentless physical and verbal harassment as well as social isolation by classmates. Despite repeated complaints the school administration failed to remedy the situation. While a psychiatrist diagnosed student with depression, student was identified as eligible for special education services due to perceptual impairment. CST Manager believed that bullying was a primary factor in student's poor work. In eighth grade the harassment had been so severe that student attempted suicide. The school district changed the student's classification to emotionally disturbed. After a request for a transfer to a neighboring high school was denied, parents unilaterally placed student in the requested high school. ALJ concluded that school district could not provide FAPE because of the legitimate and real fear that the same harassers that followed the student in elementary and middle school would continue to bully him in high school. ALJ ordered Shore Regional to reimburse for out of district tuition, costs and attorney fees.