

EDUCATION LAW CENTER  
By: Elizabeth Athos, Esq.  
60 Park Place Suite 300  
Newark, N.J. 07102  
(973) 624-1815; fax (973) 624-7339  
eathos@edlawcenter.org

Attorney for Petitioners

STATE OF NEW JERSEY

L.F., and her minor child, N.F.,

Petitioners,

v.

Belleville Board of Education,

Respondent.

BEFORE THE COMMISSIONER OF  
EDUCATION

OAL DOCKET NO. EDU  
Agency Ref. No.

VERIFIED PETITION

Petitioner, L.F., on her own behalf and on behalf of her minor daughter, N.F., residing at Belleville, NJ 07109, hereby requests the Commissioner of Education to consider a controversy which has arisen between Petitioners and Respondent, Belleville Board of Education, whose address is 100 Passaic Avenue, Belleville, NJ 07109, pursuant to the authority of the Commissioner to hear and determine controversies under the school law (N.J.S.A. 18A:6-9), by reason of the following facts:

1. N.F. (d.o.b. 3/10/1997) is the 14 year old daughter of

L.F. N.F. and L.F. are challenging the Belleville Board of Education's failure to remedy the harassment, intimidation, and bullying of N.F. in the Belleville Public Schools and its denial of tuition and counseling expenses for N.F.

2. The Belleville Board of Education operates a public school district in the State of New Jersey.

3. N.F. has been a student in the Belleville Public Schools since entering kindergarten and continuing through June 2011, when she graduated eighth grade.

4. Beginning in seventh grade, during the 2009-10 school year, and continuing through eighth grade, N.F. has been the victim of harassment, intimidation, and bullying by her peers.

5. During seventh grade, N.F. was taunted repeatedly about her acne and was the subject of multiple rumors among her classmates. N.F. and L.F. complained to N.F.'s guidance counselor on several occasions about the incidents that were occurring.

6. To Petitioners' knowledge, other than removing one girl from N.F.'s computer class and speaking to one boy about spreading rumors, Respondent took no action during N.F.'s seventh grade year to address ongoing harassment.

7. Starting around December 2010 of her eighth grade year, N.F. again became the subject of harassment in school. During this time other students falsely accused N.F. of having sex with

a boy she dated in the fall and of talking negatively about other students.

8. On January 5, 2011, A.M. was assaulted by student C.B. in the girls' bathroom at Belleville Middle School, with several friends of C.B. acting as bystanders to the assault. During this assault, N.F. was pushed to the ground causing her to strike her head, was slapped repeatedly, and had her hair and earrings pulled, suffering a goose egg bump on her head, bloody ear lobes and bruises over her body.

9. On January 5<sup>th</sup> prior to the assault, a cafeteria worker heard C.B. threaten that she was going to get N.F., but did not report this threat to the administration until after the assault.

10. There was a bathroom monitor sitting outside the girls' bathroom on January 5<sup>th</sup> when the assault occurred who did not take steps to prevent or stop the assault.

11. L.F. was notified by school staff about the assault and brought her daughter to the doctor for medical treatment and to the police station to file assault charges against C.B.

12. Following the assault, and made worse by subsequent events, N.F. began to experience sleeplessness, crying, vomiting, and diarrhea on a regular basis. Prior to the assault, N.F. experienced none of these symptoms.

13. In response to this incident, C.B. was suspended from school for 10 days.

14. On January 6<sup>th</sup>, L.F. left a message for the superintendent and went to his office to request a meeting, but the superintendent did not return her call or meet with her.

15. On January 7, 2011, L.F. met with the dean of students and the guidance counselor regarding the assault, and was told that the middle school girls were the worst the district has ever had.

16. On January 7, 2011, N.F., who had not returned to school since the assault, received a threatening text from student J.C., who used the phone of student J.L. to ask if N.F. wanted to get "f#\$%ed up again."

17. L.F. reported the threat to school officials, who suspended both J.C. and J.L. L.F. also filed a complaint against J.C. with the police.

18. L.F. had another meeting with school officials on January 10, 2011 in an effort to resolve the bullying of her daughter.

19. N.F. reluctantly returned to school during the week after the assault and immediately began to hear students saying that C.B. was not done with her and was threatening to beat her up again. In addition, N.F. repeatedly heard rumors that she was a whore and that she was giving "blow jobs" all around the school.

20. L.F. reported the continued harassment to the principal

and received assurances from the principal that he would keep a close eye on N.F.

21. Shortly thereafter, N.F. stayed home from school three days in a row due to illness and the school did not contact L.F. to inquire why N.F. was not in school.

22. On January 22, 2011, N.F. received text messages from student T.A., calling her a "whore" and "white trash" and accusing her of performing sexual acts for money. When L.F. reported this harassment to school officials, she was told nothing could be done since the incident did not happen on school property and she was referred to the police. L.F. then filed a complaint against T.A.

23. L.F.'s request for the school to convene a meeting of all the students who were harassing her daughter, and their parents, was denied by school officials.

24. Due to the effect of the continuing harassment on N.F., L.F. sought counseling and home instruction for her daughter. Although home instruction was provided, L.F. was informed that she could not obtain counseling because her daughter was not in school.

25. L.F. was referred by the school to an outside counseling agency, Perform Care. That agency did not offer counseling services to N.F., but instead instructed L.F. to contact her insurance company to locate counselors within her

insurance plan. Although L.F. secured counseling for her daughter through Creative Intervention and then from Wolf Mehlman Psychological Associates, both participants in her insurance plan, she was responsible for the payment of all deductible and co-pay expenses.

26. N.F. received counseling through Creative Intervention in Clifton, New Jersey from February 15 through March 9, 2011, at an out-of-pocket cost to L.F. of \$280.

27. N.F. then received counseling from Dr. Melissa Zarin of Wolf Mehlman Psychological Associates from March 15, 2011 continuing through the present, at an out-of-pocket cost of \$1054 through the end of June 2011. N.F.'s counseling with Dr. Zarin is anticipated to continue for at least another six months.

28. During the months of February and March, 2011, L.F. repeatedly initiated contact with N.F.'s guidance counselor to attempt to develop a plan for N.F.'s return to school.

29. In April 2011, the juvenile complaints that L.F. had filed against students C.B., J.C., and T.A. were referred to mediation by the court. L.F. dismissed her complaints following mediation because she became convinced that she would not obtain appropriate relief by pursuing juvenile proceedings.

30. Also in April 2011, L.F. obtained a meeting with the superintendent and other school officials. At that meeting, she disclosed that N.F. had attempted to cut herself following the

January incidents. School officials requested, and obtained, L.F.'s consent to a psychiatric evaluation of N.F. by the school district, which was conducted on May 4, 2011 by the district's chosen psychiatrist, Mark P. Faber, M.D.

31. On the evening of May 4, 2011, Belleville Middle School student T.P. initiated a Facebook exchange with N.F. and then posted the exchange for all to see. That evening, and continuing on May 5, 2011, a spate of hateful comments were posted by both middle and high school students against N.F., including references to N.F. as a "dumb b\*#%@" and a suggestion that someone "should f#\*@ her up."

32. On or around May 5, 2011, L.F. reported the posting of the Facebook exchange to school officials and student T.P. was suspended from school.

33. On May 9, 2011, L.F. was terminated from her job of five years due to time missed from work on behalf of her daughter and lost her medical coverage.

34. Because of her fear of being with the students who harassed her, and without any special arrangements having been made by the school, N.F. was forced to miss her eighth grade class trip and her eighth grade graduation.

35. Despite repeated requests, L.F. did not receive a copy of her daughter's psychiatric evaluation results until after obtaining legal representation. A copy of the evaluation report

was delivered to the office of her attorney on June 27, 2011.

36. The psychiatric evaluation conducted on May 4, 2011 (prior to the posting of the Facebook exchange) noted that N.F. "has experienced significant bullying in the school system resulting in a physical assault."

37. The psychiatrist conducting the evaluation for the school district recommended that N.F. will "benefit from appropriate structure, support and supervision in a school setting" because of she and her parent are "fearful for her to return to school within the district." He further elaborated that N.F. should participate in a school environment which is "safe, supportive" and which promotes "mutual respect."

38. On July 21, 2011, L.F. and her legal counsel participated in a meeting with school officials and the Board's legal counsel to discuss N.F.'s placement for September 2011. Through counsel, the Board expressed its unwillingness to consider N.F.'s placement outside of Belleville High School, which is the school that will be attended by the students who have harassed N.F. The only option offered by the Board to L.F. is to complete a child study team evaluation of her daughter and to classify N.F. as eligible for special education and related services based on her reaction to the bullying and assault she experienced.

39. Dissatisfied with the steps taken by the Board to



address and remedy the harassment, intimidation, and bullying experienced by her daughter in the Belleville Public Schools, L.F. has decided to unilaterally withdraw N.F. from the Belleville Public Schools and to enroll her in St. Mary's High School in Rutherford in September 2011 to provide her daughter with a safe and supportive environment.

40. Tuition at St. Mary's High School is currently \$8,050 per year exclusive of books and uniform.

41. On information and belief, at least two other girls, A. and K., were withdrawn from Belleville Middle School and enrolled in private school by their parents during the 2010-2011 school year due to harassment, intimidation, and bullying they experienced in the public school.

42. On information and belief, the harassment, intimidation, and bullying of students by other students is pervasive at Belleville Middle School.

43. On information and belief, there is pervasive harassment, intimidation, and bullying of girls at Belleville Middle School on the basis of perceived sexual activity.

44. On information and belief, the Board has failed to adequately address peer-on-peer harassment, intimidation, and bullying in its public schools.

#### COUNT ONE

45. Petitioners repeat the allegations of paragraphs one through forty-four as if set forth fully herein.

46. On information and belief, Respondent Board failed to promptly investigate each and every report that N.F. had been harassed, intimidated, or bullied by other students at Belleville Middle School.

47. On information and belief, Respondent Board failed to establish a range of ways in which Belleville Middle School would respond to incidents of harassment, intimidation, or bullying among its students, and instead relied almost exclusively on disciplinary suspensions.

48. Respondent Board failed to take appropriate remedial responses to the students who committed acts of harassment, intimidation, or bullying against N.F. while she was a student in Belleville Middle School.

49. Respondent Board failed to provide appropriate support to N.F. as a victim of harassment, intimidation, and bullying while a student in Belleville Middle School.

50. Respondent Board's actions violate N.J.S.A. 18A:37-13 et seq. and its implementing regulations.

#### COUNT TWO

51. Petitioners repeat the allegations of paragraphs one

through fifty as if set forth fully herein.

52. During all relevant times herein, Respondent Board has had a policy prohibiting acts of harassment, intimidation, or bullying of its students.

53. At all relevant times herein, the Board has failed to investigate and respond to acts of harassment, intimidation, or bullying in accordance with its policy.

54. The Board's failure to comply with its policy is arbitrary, capricious, and unreasonable.

#### **COUNT THREE**

55. Petitioners repeat the allegations of paragraphs one through fifty-four as if set forth fully herein.

56. Belleville Board of Education's failure to provide N.F. with counseling and its decision to deny N.F. counseling and tuition reimbursement is arbitrary, capricious, and unreasonable.

#### **COUNT FOUR**

57. Petitioners repeat the allegations of paragraphs one through fifty-six as if set forth fully herein.

58. At all relevant times herein, the actions of Belleville Board of Education and its employees constituted state action and were taken under color of law.

59. Belleville Board of Education's failure to remedy the harassment, intimidation, and bullying of N.F. by other students in the Belleville Public Schools, its failure to provide N.F.

with counseling, and its decision to deny N.F. counseling and tuition reimbursement violates her fundamental right to an education under Article VIII, Section IV of the New Jersey Constitution and N.J.S.A. 10:6-2.1.

**WHEREFORE,** Petitioners demand the following relief:

- A. A Declaratory Ruling that Respondent has violated N.F.'s rights as set forth above;
- B. An Order requiring Respondent to reimburse L.F. for all out-of-pocket counseling expenses for N.F. incurred since January 2011 and continuing through June 2012;
- C. An Order requiring respondent to reimburse L.F. for N.F.'s tuition at St. Mary's High School for four years of high school commencing in September 2011.
- D. An Order preserving Petitioners' claims for damages and attorney's fees for violations of constitutional and statutory rights, enforceable under N.J.S.A. 10:6-2;
- E. Such other relief as is equitable and just.

Dated: August 2, 2011

\_\_\_\_\_  
EDUCATION LAW CENTER  
By: Elizabeth Athos, Esq.  
Attorney for Petitioners

\_\_\_\_\_  
1 Petitioners hereby preserve their right to raise claims against Respondent under the New Jersey Law Against Discrimination.

VERIFICATION

I [REDACTED], of full age, being duly sworn upon her oath according to law deposes and says:

1. I am a petitioner in the foregoing matter.
2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.

---

I [REDACTED]

Sworn and subscribed to before me this  
2nd day of August, 2011

---

Elizabeth Athos  
Attorney at Law  
State of New Jersey