

From: NJ School Law Decisions 1985 Vol. II

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State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 3446-85

AGENCY DKT. NO. 122-5/85

M.P. and G.P.,
Parents of R.P.,
Petitioner,

v.

BOARD OF EDUCATION OF
THE TOWNSHIP OF DELRAN,
BURLINGTON COUNTY,
Respondent.

John A. Sweeney, Esq., for petitioner (Sweeney & Sweeney, attorneys)

Stephen J. Mushinski, Esq., for respondent (Parker, McCay & Criscuolo, attorneys)

Record Closed: October 4, 1985

Decided: November 18, 1985

BEFORE JOSEPH LAVERY, ALJ:

This is an appeal by M.P. and G.P., the parents of R.P., on behalf of their daughter, seeking certain relief from the Commissioner of Education. They ask that R.P. be placed in a different school district, specifically that of Cinnaminson. They also ask that the Delran Board of Education asorb the cost of her past and future placement there.

Petitioners base these demands on their allegations that R.P. has been subjected to verbal and physical assaults, threats of violence and harassment by an identifiable group of students in the Delran Township Middle School. Petitioners charge that the Delran Board of Education has been unable and unwilling to prevent these injuries

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to their daughter, or to punish those responsible. As a consequence, they ask that the Commissioner provide the foregoing relief as well as any other remedy which he may deem appropriate, within his statutory and regulatory discretion.

PROCEDURAL HISTORY

This appeal was initiated by timely petition filed with the Commissioner on May 7, 1985. Answer was submitted on June 4, 1985 by respondent Board. Thereafter, the Commissioner of Education declared the dispute a contested case filing it with the Office of Administrative Law on June 6, 1985. Following a prehearing conference on July 1, 1985, the proceedings convened on September 9, 1985 in the Delran Municipal Court. After receipt of briefs on October 4, 1985, the record closed.

ISSUES

The issues in this case may be phrased as follows:

1. Whether respondent Board failed to protect R.P. from verbal and physical assaults, threats of violence, and harassment by an identifiable group of students in Delran Township Middle School, and, if so,
2. Whether this failure deprived R.P. of the thorough and efficient education which the Board is obligated to provide, and, if so,
3. Whether M.P. and G.P., as parents of R.P., are entitled to reimbursement for the costs of unilaterally placing R.P. in another school district.

Burden of Proof:

Petitioner must carry the burden of proof by a preponderance of the credible evidence.

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Undisputed Facts:

A number of facts are disputed here. However, some of the material background is not in contention:

R.P. has, from kindergarten through the first semester of eighth grade, attended schools in the Delran school district. Apart from an initial concern over learning speed which caused her placement in a "pre" first grade, petitioner has proceeded through the system without incident until October of the 1983-84 school year. At that time she was in seventh grade. She then became involved in a verbal dispute with S.R., which ended in a fist-fight. S.R. suffered a swollen lip. Both R.P. and S.R. were given one day in-school detention. The penalty was imposed by the vice-principal, L. Bruce Smith. For the remainder of the year, R.P.'s schooling was uneventful.

When R.P. reached eighth grade, during the 1984-85 school year, her difficulties began again. Antagonism had developed between herself and a collection of former girl friends at Delran Middle School. Friction increased between R.P. and these girls, who were approximately her age. Eventually, these girls were known by school administrators as "the Group". The girls involved in the group were S.R., G.W., J.W., N.P. and V.F. Occasionally, non "Group" members drifted in and out, participating in the adversary relationship with R.P. The hostility between the group and R.P. surfaced both in school and out. Salient examples of in-school confrontations during 8th grade included a "booing" incident at a December dance and a shouting match followed by a physical altercation on January 30, 1985. The latter followed a school-sponsored basketball game held on school property. This incident was the culmination of continuing verbal clashes between R.P. and the Group during the 1984-85 school year. Afterward, petitioners kept their daughter at home, refusing to return her to Delran Middle School.

Board officials had been aware of problems between R.P. and the Group. In December 1984, petitioner and the Group had been counselled by Charlene Nathans (now Burd). Eventually, during that same month, Mr. Gallucci, Principal of the Delran Middle School, was also drawn into the controversy. Following the final January 30 fight, G.P. met with Mr. Gallucci, the superintendent of schools, Mr. Chinnici, and eventually a committee from the Board of Education. Stanley Halpern, school psychologist and

coordinator of the CST, was also called upon. These meetings were prompted by the decision of R.P.'s parents to keep her at home until what they perceived to be a physical threat to their daughter was removed. The Board and its administrators eventually proposed 4 "plans" to resolve this impasse (R-1, R-2). These "plans" were designed to remove R.P. from her normal scheduling to avoid confrontation, or promote her up and out of Delran Middle School to the High School.

Dissatisfied with the "plans" and their discussions with the foregoing Board officials, M.P. and G.P. removed their daughter from Delran Middle School. Around February of 1985, they unilaterally placed her in the Cinnaminson school district. This placement necessarily involved payment of monies to that district approximating \$1,000 for the remainder of the 1984-85 school year and \$3,000 for the current 1985-86 academic year.

It is from these circumstances that the present appeal has arisen.

ARGUMENTS OF THE PARTIES:

The parties in their testimony and legal arguments focused on who was responsible for R.P.'s current dilemma, and whether any financial liability may be ascribed to the Board.

Petitioners' Argument:

Petitioners argue that the Board failed to provide a safe environment for R.P. The Board also suggested solutions which were biased and prejudicial to the interest of R.P. Its failure to meet its responsibilities compelled petitioners unilaterally to remove R.P. from Delran Middle School and to absorb costs which should be borne instead by the Delran Board of Education.

Recalling her experiences with the Group, R.P. testified that her relationship with these girls was friendly prior to the initial October 1983 incident. However, shortly after leaving the Group, she was attacked by S.R., who was more than a foot taller. In self-defense, she punched S.R., inflicting a swollen lip. After this, the Group harassed her constantly despite R.P.'s attempts to stay away from them. They would force her aside in hallways, and verbally abuse her with threats using vile and often anti-semitic epithets, such as "scum" and "Jew". During one out-of-school incident on Halloween 1984, the Group came to R.P.'s house. The girls asked for and received candy. When they left, they nevertheless proceeded to scribble graffiti over her fence and sidewalk. Some names scrawled on those surfaces were "scum", "slut", "Jew", "bitch", "leave town", "fucking Jew whore", "R. fucks", and "Jew bitch". Mrs. P. confirmed the episode, adding that she had much later informed school officials of this conduct during the course of her many meetings with them in 1984-85.

R.P. and her mother stated that the conceded "booing" occurrence followed an announcement during the December 1984 dance that R.P. had won the door prize. The negative reaction was initiated by the Group. Despite the presence of Assistant Principal Smith, and the building principal, Mr. Gallucci, nothing was done. R.P. left the event after being reduced to tears.

Recounting details of the January 30, 1985 fight, R.P. recalled that it took place on school property. After a basketball game sponsored by the school, J.W. and V.F. of the Group began shouting at her in a teachers' room where R.P. had gone. R. was attending as a cheerleader, but had forgotten her shirt. Four janitors who were present told them to "get out of here if you're going to fight". Some girls called her "Jew", "whore", and "scum". When R.P. escaped through a side door she was told by a teacher that her mother had left. In tears, R.P. sought to call her mother from a phone located well away from the scene of her confrontation. However, the girls of the Group followed her down the hall punching her and pushing her from behind. A fight ensued. R.P. eventually found a ride home. Shortly after, her mother arrived and was told her daughter had been seen in a distraught state. Calling home, G.P. was answered by R.P. who was hysterical. R.P. never returned to the Delran Middle School. She remembered that her subsequent mental condition was bleak. G.P. testified that R.P. threatened to kill herself or run away from home if she were forced to return to Delran Middle School.

Retracing her own participation in her daughter's ordeals, G.P. stated that telephone calls and off-school harassment began as early as September 1984. From October 1984 onward, the girls of the Group followed R.P. to cheerleading practice. They harassed her there and in the locker room. They pushed her and called her names. This forced Ms. Holt, the cheerleading coach, ultimately to threaten disbandment of the cheerleading team if these attacks continued. The steady stream of abusive phone calls forced petitioners to apply a "tracer" through the phone company. By August 16, 1984, it was discovered that S.R. of the group had been making calls. This information is currently the subject of municipal court proceedings.

G.P. stated that she and her husband cautioned R.P. to avoid the Group, and R.P. obeyed, but to no avail. The harassment continued and culminated in the basketball game attack of January 30, 1985. At this point, G.P. called the superintendent of schools, Mr. Chinnici. She outlined R.P.'s entire history of abuse, and told the superintendent they would keep their child at home until her safety was assured. Homebound instruction followed after a two-week hiatus. Eventually, the school, through Dr. Halpern, sought to have R.P. referred for classification through the Child Study Team. Eventually the "plans" suggested in Exhibits R-1 and R-2 were presented as an alternative to homebound tutoring. Mrs. P. recalled that she never agreed to do more than consider the plans. At no time did she accept them. She resented that her child was being singled out while the remaining members of the Group were left unpunished. Their conduct, in her opinion, was clearly deserving of discipline. Relying on the advice of her own psychologist, Dr. Fox, she continued to keep R.P. at home in order to avoid further victimization. Assessing her contacts with school officials, Mrs. P. believed that in her conversations with Ms. Nathans she was told that R. should not be returned to school. Moreover, Mr. Gallucci's response included suggestions as to what other non-public schools were available to R.P.

Mrs. P. also described her active participation in school programs. She was president of the PTA, and often found herself on school premises as a helping mother. Mrs. P. was certain she did not call and complain to any of the mothers of the Group, with the exception of S.R.'s mother. She called her once in an attempt to make peace, without success. She also discussed the Halloween incident with J.W.'s mother, instead of calling the police. Any other contacts with Group mothers were in the course of her role as helping mother. R.P. was not discussed on those occasions.

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Finally, Mrs. P. testified that after meeting with the Board's committee, she knew she could not accept the Board's last offer. Specifically, the Board and its officials suggested that a meeting be called at school with school administrators, R.P. and the Group. Mrs. P. would be excluded. All the girls would be told that further conflict would result in discipline. Mrs. P., lacking confidence that the school would look to her daughter's safety, refused this offer because her presence was not permitted. R.P. did not return to school, and petitioners, on their own, arranged placement in the Cinnaminson Township school district.

Board's Argument:

The Board, through testimony by its district officials and Board president, insists that it made all possible efforts to alleviate R.P.'s distress. Despite every attempt, including numerous alternative proposals, R.P.'s parents unilaterally withdrew their child from the district. Effectively, the parents thus ended the possibility of resolution and terminated any liability on the part of the Board.

Ms. Nathans, the school guidance counsellor, remembered that she viewed R.P.'s problem as arising from typical developing attitudes characteristic among preadolescent girls. From mid-January 1984, she met with the Group and R.P. The five or six girls who were members of the Group said their difficulties with R.P. stemmed from (a) negative verbal action between them and her and (b) their anger over R.P.'s mother's intervention. The Group conceded that they had engaged in name-calling and other epithets against R.P. However, they believed the conflict between the group and R.P. would not end until Mrs. P. removed herself from any intrusion. They also charged that R.P. was "two-faced". She presented one personality to adults and another, less praiseworthy, personality to her schoolmates. The Group agreed that the antagonism had been ongoing for a long time. So informed, Ms. Nathans concluded that these meetings with the girls and R.P. should not be disciplinary. Ms. Nathans viewed the matter as a "peer" problem, stemming from behavior which was not unnatural. She did not believe meeting with other parents was appropriate. It would only exacerbate the conflict. She recalled that the parent of one Group member was angry that her daughter missed class because of discussions relating to R.P.

Ms. Nathans remembered participating in preparation of the alternative "plans" which would temporarily remove R.P. from the mainstream, and in this way avoid confrontation with the Group. Ms. Nathans "accepted R.'s perception" of the Group's pattern of harassment. As a consequence, she believed that an abbreviated schedule under "Plan C" would probably best serve R.P. It permitted her gradual reentry from homebound study back into the Middle School environment.

L. Bruce Smith, the assistant principal at Delran Middle School, also believed that the pattern of behavior described by R.P. and her mother emerged from typical preadolescent conduct. He recalled that in October 1984 he knew of the Halloween incident at R.P.'s home. He also was present in the building at the time of the December dance "booing". Mr. Smith imposed no discipline at the time because of the confusing crowd circumstances and uncertainty over whether he had authority to impose discipline for booing.

The principal of Delran Middle School, Michael Gallucci, knew in December 1984 that R.P.'s mother had complained of neighborhood and school harassment, abusive telephone calls, and scurrilous name-calling which was in part anti-semitic. He investigated, and met with the girls involved in order to find facts. The girls of the Group told him, as they had Ms. Burd, that the problem was not R.P. They insisted that R.P.'s mother was the root cause. She constantly telephoned their mothers with untrue complaints. The Group reaffirmed to Mr. Gallucci their consistent position that the conflict would continue until Mrs. P. removed herself from the situation. The Group also resented Mrs. P.'s frequent presence on the school premises.

Mr. Gallucci recalled that Mrs. P. was almost in daily contact with the school over R.P. She seemed most interested in having her "pound of flesh" through discipline of the Group. He himself believed that R.P. should be left to "suffer the normal vicissitudes" of her age group. Then, perhaps, the friction between R.P. and the group would die a "natural death." The approach taken by school officials centered on attempts to "heal the wounds" between the girls. The "plans" suggested were only temporary expedients and were not meant to be exclusive methods.

Turning to Mrs. P.'s and R.P.'s conduct, Mr. Gallucci recalled that the mother of J.W. was certain that R.P. was making crank calls. J.W.'s mother also told him G.P. had called her five or six times over the ongoing problems of their children. G.P. had

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even stated to him personally that the conflict in part may have arisen because R.P. was better dressed and more affluent. Mr. Gallucci did not recall suggesting placement at other schools. He did agree during conversations with Mrs. P. that the Friends School in Moorestown was "good". His own children were in attendance. Mr. Gallucci never thought that discipline was appropriate under the circumstances. He also felt the problem emanated in good measure from Mrs. P.'s intrusions. He conceded that her deliberate absence from the scene during December 1984 was followed by the alleged January attack after R.P.'s return from the winter break.

Superintendent Joseph A. Chinnici remembered his involvement after this latter occurrence. He met with the parents of R.P. the following day, on January 31, 1985. They disclosed to him the entire history of R.P.'s embroilment with the Group. Consequently, he asked for suggestions from Dr. Halpern, the school psychologist. These were embodied in Dr. Halpern's report of February 13, 1985 (R-2). Assessing the psychological state of R.P., Dr. Stanley Halpern believed that keeping R.P. out of school would enhance her present depression and cause "school phobia". He felt there was a need for the Child Study Team to evaluate R.P. for possible classification. A special education rule required such referral, he thought. He did not believe that similar evaluation of the girls in the Group was permitted by law. (The Board stipulated through counsel that this was not a special education dispute). Mr. Halpern remembered that Mr. Gallucci said he did not have sufficient evidence to discipline, yet all the officials were certain that "something was happening." He agreed that a child's threats of suicide, such as R.P.'s, should never be taken lightly.

Mr. Chinnici also did not believe that discipline was appropriate in the absence of clear proof against the other girls. He emphasized the overriding importance of due process for all. At no point did Mr. Chinnici think it necessary to call in the parents of the Group. He noted his April 3, 1985 letter of response to Mrs. P.'s inquiry about what discipline was imposed after the January altercation (P-1). He had replied therein that it would not be possible to discipline one girl involved with R.P. when R.P. herself was not in school to share that penalty. Due process would not be served if a penalty was imposed in that fashion. Moreover, the Board did not specifically direct the superintendent to suspend the other girl involved in the January 30, 1985 incident. Dorothy Oppman, Board president, corroborated this, and stated that the Board did not demand discipline in this instance since the January 30 conflict was after normal school hours. Moreover, Mrs. P. had not returned R.P. to school on February 19, violating her verbal agreement to do so, reached after meeting with the Board committee.

FINDINGS OF FACT

Therefore, after considering the testimony previously set forth, and independently assessing the credibility of witnesses and parties, as well as reviewing the record as a whole, I make the following FINDINGS OF FACT:

As to UNDISPUTED facts, I FIND those designated on pages 3 and 4 of this opinion.

As to matters which are disputed or CONTESTED, pursuant to N.J.A.C. 1:1-16.3(c)7, I FIND:

1. In addition to the school-centered incidents undisputed by the parties, R.P. was verbally harrassed and threatened by the Group sporadically, while attending Delran Middle School from September 1984 through January 1985.
2. The "Halloween incident" took place as described by R.P. and her mother G.P. at pp. 4 and 5 of this Initial Decision.
3. By no later than December 1984, Delran Middle School officials, including the Guidance Counsellor, Ms. Nathans and the Principal, Michael Gallucio, knew of the Halloween incident and ongoing friction between R.P. and the Group.
4. School janitors were present at the outset of the January 30, 1985 altercation between R.P. and the Group. The janitors ejected the pupils from the room in which it started, without intervening. The Group followed R.P. to the telephone, where R.P. attempted to have her mother come and transport her from school grounds. R.P. was involved in a physical fight with at least one member of the Group in the course of this confrontation, and was pushed by others. This incident occurred following a school-sponsored basketball game, attended by R.P. as a cheerleader, on school grounds.
5. R.P.'s mother G.P. continually pressed Delran Middle School officials to resolve the physical and verbal contacts between R.P. and the Group.

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6. G.P. was present often in school in her capacity as president of the PTA and helping mother. G.P.'s only contact with mothers of the Group were in relation to school business with two exceptions: the first was a telephone call during the 1983-84 year during which G.P. attempted unsuccessfully to reach some kind of accord with S.R.'s mother. The second contacts were with S.R.'s mother and J.W.'s mother after the Halloween incident, in lieu of involving the police.
7. R.P. and her parents were subjected to crank telephone calls throughout the time frames at issue here. Eventually, a tracer through the telephone company identified S.R.'s phone number as the source of one such call. That matter is pending in the Municipal Court.

ANALYSIS

An analysis of this matter can be best understood by adhering to the issues outlined on page 2 of this opinion.

Whether Respondent Board Failed to Protect R.P. on School Premises:

It is important to remember that the administrative burden of proof falls on petitioners. They must show by a preponderance of the evidence that the facts are as they have propounded. Stated another way, the standard is reasonable probability, so that the evidence must be such as to "generate the belief that the tenured hypothesis is in all human likelihood the fact. Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), cert. den. 31 N.J. 75 (1959), overruled on other grounds, 36 N.J. 487 (1962). The findings in this case have in large measure turned on the question of credibility. Credible testimony must not only proceed from the mouth of a credible witness, but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances, in Re Perrone, 5 N.J. 514, 522 (1950). Hearsay is admissible, but some legally competent evidence must be present to support each ultimate Finding of Fact. N.J.A.C. 1:1-15.8(b).

On this record, the credible testimony of petitioners and R.P. amounts to the preponderating evidence. They have outlined a lengthy history of circumstances in which R.P. has been subjected to physical and verbal abuse, both in school and out. That information has been available to school officials from the beginning of the pattern of

conflict between R.P. and the Group. The other children have admitted both their antagonism and much of their actions, according to the guidance counsellor and school principal. The Board did not rebut testimony that the final incident on January 30, 1985 was observed by four school maintenance employees. According to Mr. Chinnici the Board itself, without hearing, apparently made a judgment concerning this latter incident that both R.P. and at least one member of the group participated and bore equal responsibility. None of the Group members testified before the Board nor did any of their parents. None appeared at the instant hearing. The evidence adduced on their behalf by administrative officials of the Board was hearsay lacking any residuum of competent evidence. Weston v. State, 60 N.J. 36 (1972).

Whether R.P. was Deprived of a Thorough and Efficient Education:

These proceedings cannot resolve what individual culpability exists among the children involved. That was not the purpose of this hearing. Nevertheless, it would be difficult to defeat the conclusion that R.P.'s thorough and efficient education, which the Board must provide, was halted on January 31, 1985, after petitioners removed their daughter from school. Homebound education made available two weeks later, with no sure end in sight, cannot be thought to satisfy this constitutional right. In rebuttal to petitioners' charges, the Board attests through its officials that it did what it could. These efforts included attempts by the guidance counsellor to assist the Group and R.P. in exploring their feelings. Eventually, school action expanded to discussions with the school principal, Mr. Gallucci, and the superintendent, Mr. Chinnici. Neither the principal nor the superintendent believed that discipline was appropriate. Mr. Gallucci thought that R.P. should be left to "suffer the normal vicissitudes" which are inescapable in a school setting for children her age. Mr. Chinnici saw no possibility of intrusion by the school that went beyond the "plans" of R-1 and R-2. The need for "due process" to the Group stood as a bar. Additionally, the school psychologist had persuaded officials that an answer might lay in referral of R.P. for evaluation under the special education regulations (only partially because of the length of her absence). The Group, on the other hand, was not viewed as sharing the need for discipline or referral.

The Board's response to petitioners' charges is puzzling. Whatever the good intentions of these experienced school administrators, it is obvious they failed in their efforts to assure that a thorough and efficient education was available to R.P. Board

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officials, in all the incidents reported, put too fine a point on how far they might involve themselves. The child was plainly traumatized to a degree requiring psychological care by her experience. Moreover, there was, throughout, a danger that she would be physically harmed by the Group (or even, to a lesser extent, the reverse). According to the Board's own witnesses, no one involved, including the Group itself, disavowed the continuing hostilities involving R.P. The school had an obligation to intervene and end this state of affairs. Instead of assisting the Group to get in touch with its feelings, thorough and efficient education would have been better served if the school had gotten in touch with all the girls' parents. Due process does not mean that selected participants in harmful and improper behavior be freed from inconvenience. The school had an obligation to alert the parents of all the children involved, as opposed to fending off the persistent, and undoubtedly irritating complaints of R.P.'s mother. At that point, both any contributory behavior of R.P. and that of the Group could be gauged. Firm and forthright action by the school thereafter could have been subject to challenge by any or all of the parents through an informal hearing before Administrators, and upward. Thus would the needs of due process have been satisfied, Goss v. Lopez, 419 U.S. 565 (1975). These needs would not have been met by isolating R.P., in full or in part, as the school's "plans" would have done.

There is a real danger to second-guessing school administrators with decades of experience. The circumstances of this intense dispute are removed in time and memory. However, the evidence of record is wholly persuasive that the school, and eventually the Board, gave way to a group of children who disliked R.P. and her mother. They resented the official presence of R.P.'s mother on school grounds for school-related activities which she had a right to pursue. School administrators adopted a conciliatory approach apparently on the theory that these unfortunate circumstances were a predictable by-product of normal pre-adolescent female development. R.P. was obliged to endure and to profit from these "viscissitudes". It is at least arguable whether such a defense can withstand the application of common sense, much less legal doctrine. In any event, it is virtually certain that the law is inconsistent with such a theory.

The Board had an obligation to provide for the safety of R.P. and, for that matter, the Group. All the children involved were exposed to physical as well as emotional hazard in the course of their recurring, often violent clashes. R.P. herself was under the care of a doctor who counselled her to avoid the Middle School altogether. There is no doubt that in New Jersey, school personnel have a duty to exercise reasonable

supervisory care for the safety of students entrusted to them. Their accountability for injuries resulting from failure to discharge that duty is firmly established. Caltavuturo v. Passaic, 124 N.J. Super., 361, 366 (App. Div. 1973), Jackson v. Hankinson and Bd. of Ed., New Shrewsbury, 51 N.J. 230, 235, 236 (1968); Titus v. Lindberg, 489 N.J. 66, 73 (1967). The "plans" proffered by the Board and its administrators do not amount to supervision. They are palliatives which place the onus on R.P. and her mother to adapt quiescently in the face of physical and mental abuse emerging from her relationship with a group of schoolmates. The Board had a duty to impose a firm control over the environment of their school. Instead, the school administrators adopted what was, at least in part, a "hands-off" policy with respect to the Group and their parents. The nearest step toward firm control was the last offer following petitioners' meeting with the Board. R.P. was to be dropped at the school without her mother. School officials, at that late date, would then have cautioned all involved that discipline would follow if friction continued. This exclusionary approach was hardly an enticing gesture, to a mother and child already frantic from anxiety over lack of protection.

Whether Petitioner Should be Reimbursed for Unilateral Placement of R.P. outside the Delran district:

The Commissioner of Education has authority to direct the Board to reimburse petitioners. His constitutional duty is to assure the maintenance and support of a "thorough and efficient system of public schools," N.J. Const., Art. VIII, Sec. 4, par. 1. Following Robinson, et al., v. Cahill, 62 N.J. 473 (1973) and its sequelae, the Public School Education Act of 1975 particularized the Commissioner's affirmative obligation to see to it that the statutory objectives are met L., 1975, c. 212 (N.J.S.A. 18A:7A-1 et seq.), Robinson, et al., v. Cahill, 62 N.J. at 509n. The Act at N.J.S.A. 18A:7A-5 demands that a thorough and efficient system of free public schools include a number of elements. One among them is:

- F. Adequately equipped, sanitary and secure physical facilities and adequate materials and supplies; [emphasis added]

The broad-ranging power of the Commissioner and the State Board of Education (as head of the Department of Education) to inquire into the thoroughness and efficiency of the operation of local public schools, has been made clear by the Supreme

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Nevertheless, although compensation for past schooling is appropriate, this subsistence should not be indefinite. All the girls are older, and apparently in High School. New efforts should be made by the Board to resolve this impasse between R.P. and the Group. These steps should include a meeting of school administrators with the parents of all involved. The administrators should outline what has occurred and express those cautions which seem appropriate concerning future discipline for verbal or physical assaults. Clearly specified guidelines concerning conduct and penalties should be provided all the parents and all the children. Once done, R.P. should then return to the next level of schooling in the Delran school district.

CONCLUSION

I **CONCLUDE**, based on my review of the record, including the credibility of witnesses, and for the reasons expressed in the ANALYSIS portion of this decision that:

1. Petitioners should be reimbursed for the cost of placement of R.P. in the Cinnaminson school district from February 1985 through her return to the Delran High School.
2. The parents of all the children involved in this long history of antagonism, including petitioners, should be asked to meet with the appropriate board and school officials. These officials should outline the history of what has occurred. They should also set guidelines and provide safeguards to assure proper deportment in the future. Clear penalties for violations should be made known to the Group, R.P., and all the parents..
3. Compensation for attendance at Cinnaminson High School should terminate upon completion of these steps, and R.P. should then return to Delran High School.

ORDER

I **ORDER**, therefore, that petitioners be compensated for past and current expenses incurred by placement in the Cinnaminson school district, and

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I ORDER further that the Board now take those steps which are consistent with the foregoing initial decision.

This recommended decision may be affirmed, modified or rejected by the COMMISSIONER OF THE DEPARTMENT OF EDUCATION, SAUL COOPERMAN, who by law is empowered to make a final decision in this matter. However, if Saul Cooperman does not so act in forty-five (45) 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.

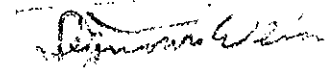
I hereby FILE my Initial Decision with SAUL COOPERMAN for consideration.

November 18, 1985
DATE


JOSEPH LAVERY, ALJ

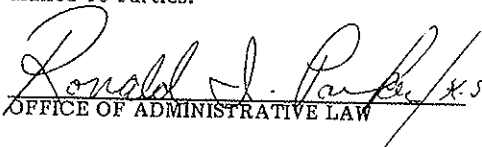
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DEPARTMENT OF EDUCATION

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OFFICE OF ADMINISTRATIVE LAW

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M.P. AND G.P., parents of R.P., :
 PETITIONERS, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE TOWN- : DECISION
 SHIP OF DELRAN, BURLINGTON :
 COUNTY, :
 RESPONDENT. :

The Commissioner has reviewed the record of this matter including the initial decision rendered by the Office of Administrative Law.

It is observed that no timely exceptions to the initial decision were filed with the Commissioner pursuant to the applicable provisions of N.J.A.C. 1:1-16.4a, b and c.

The Commissioner has previously held that parents are generally not entitled to tuition reimbursement if they unilaterally withdraw their children from the school district of residence and send them to another school district. See Magdalene Lichtenberger v. Board of Education of the Borough of Maywood, 1966 S.L.D. 163, aff'd State Board 1970 S.L.D. 458; William Potter v. Board of Education of the Township of Holmdel, 1971 S.L.D. 384, aff'd State Board 1972 S.L.D. 689.

The factual circumstances of the instant matter warrant a different conclusion. It is clear that the Board herein failed to take the appropriate action deemed necessary to guarantee R.P.'s safe access to attend the public school in Delran without fear of intimidation and possible physical harm from a certain group of pupils whose behavior was not subject to the imposition of disciplinary action.

Instead the Board offered R.P. home instruction or, in the alternative, a modified shortened school day. Consequently, the alternatives left open to R.P. accorded her disparate treatment from all other pupils with regard to her right to access and attendance at school during regular school hours. It can only be concluded therefore that it was R.P. who was being unjustly disciplined for the unacceptable behavior engaged in by a group of her peers.

The Commissioner cannot condone the Board's decision in this regard which in effect excluded R.P. from regular daily attendance in the Delran School District.

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Although the remedy granted herein by the Commissioner which accords petitioner tuition reimbursement is exceptional, it is nevertheless appropriate given the specific circumstances which prevail in this matter wherein the Delran Board of Education and its officials by their inaction and avoidance of responsibility gave petitioners no option but to either accept an inferior educational status or withdraw the child from school and seek alternate relief through the Commissioner. The record clearly establishes that petitioners exhausted all available avenues of redress short of formal appeal with no success. When all such avenues for redress had been exhausted, petitioners were left with no choice other than to remove their daughter from an intolerable situation and to seek the due process relief granted herein by the ALJ and affirmed by the Commissioner. Such remedy clearly is, as indicated by the ALJ, consistent with the Commissioner's broad authority pursuant to Robinson v. Cahill, supra.

The Commissioner upon review of the record hereby affirms those findings in the initial decision as his own.

Accordingly, as concluded by the ALJ the Board is directed to compensate petitioners for the past and current expenses incurred by the placement of R.P. in the Cinnaminson School District. However, the Board in effecting R.P.'s immediate return to Delran High School is directed to adopt its own remedial plan in order to take those appropriate measures deemed reasonable and equitable in providing an atmosphere within the Delran School District which promotes the safety and well-being of R.P.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

December 30, 1985