

T.R. and T.R., on behalf of minor child, E.R., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BRIDGEWATER-RARITAN REGIONAL :
SCHOOL DISTRICT, SOMERSET COUNTY, :
RESPONDENT. :

SYNOPSIS

The petitioning parents challenged the finding of the respondent Board that their daughter, E.R., was not subjected to acts of harassment, intimidation or bullying (HIB) as defined under *N.J.S.A. 18A:37-13 et seq.*, the New Jersey Anti-Bullying Bill of Rights Act (Act). Petitioners filed an HIB complaint based on allegations that E.R. – a seventh grade student – had been subjected to repeated acts of sexual harassment by an eighth grade male student, P.H. School officials conducted no investigation of the alleged behavior until after E.R.’s parents contacted the district’s superintendent of schools; subsequently the school conducted an HIB investigation which concluded that there had been no bullying, and described the alleged incidents as “Adolescent Sexual Curiosity”. The petitioners filed the instant appeal following a public hearing, after which the Board reaffirmed its determination that the alleged incidents did not constitute HIB. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: the preponderance of the credible evidence leads to the inescapable conclusion that the Board’s HIB determination was arbitrary, capricious and unreasonable; the facts demonstrate that the Board disregarded the circumstances and misapplied the Act in determining that P.H.’s actions did not constitute HIB; and the relevant alleged facts meet all of the necessary components of the definition of HIB under *N.J.S.A. 18A:37-14*. The ALJ concluded that petitioners rather than respondent are entitled to summary decision because there is no genuine issue of material facts and by law the petitioners are entitled to judgment in their favor, as the Board action in determining that that E.R. was not subjected to HIB was arbitrary, capricious and unreasonable. The ALJ ordered that, since E.R. no longer attends the subject school, and the Act does not prescribe specific relief under these circumstances, the Board must promptly take all appropriate measures, including the conducting of staff in-service programs, to assure full compliance with the ACT.

Upon independent review, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision as the final decision in this matter. In so doing, the Commissioner expressly rejected the Board’s contention that, since the term “sexual harassment” is not specifically contained in the text of the Act, that acts of sexual harassment cannot form the basis for a finding of HIB within the intendment of *N.J.S.A. 18A:37-14*. On the contrary, the Commissioner found that the statutory definition of HIB encompasses sexual harassment where all other elements of the statutory definition have been satisfied. The Board was directed to comply with all reporting and other statutory and regulatory requirements applicable to the substantiation of an incident of HIB.

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.

OAL DKT. NO. EDU 10208-13
(EDU 0066-13 ON REMAND)
AGENCY DKT. NO. 355-12/12

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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 his full consideration, the Commissioner concurs with the Administrative Law Judge's conclusion that the Board's determination that E.R. was not the victim of harassment, intimidation, or bullying ("HIB") must be overturned as arbitrary, capricious, and unreasonable. The Commissioner expressly rejects the Board's contention that, since the term "sexual harassment" is not specifically contained in the Anti-Bullying Bill of Rights Act, *N.J.S.A.* 18A:37-13, *et seq.*, acts of sexual harassment cannot form the basis for a finding of HIB within the intendment of *N.J.S.A.* 18A:37-14. The Commissioner finds nothing in the language of the statute or in the legislative history of the Act to support the notion that the Legislature intended to exclude acts of sexual harassment from the definition of HIB. To the contrary, the statutory definition is broadly written to encompass "any gesture, any written,

verbal or physical act.” Thus, acts of sexual harassment constitute HIB where, as here, all other elements of the statutory definition have been satisfied.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter, and the Board’s determination that E.R. was not the subject of HIB is hereby overturned. The Board of Education of the Bridgewater-Raritan School District is hereby directed to comply with all reporting and other statutory and regulatory requirements applicable to the substantiation of an incident of HIB.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 10, 2014

Date of Mailing: November 12, 2014

* 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).