

STEPHEN GIBBLE, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
HUNTERDON CENTRAL REGIONAL :  
SCHOOL DISTRICT, HUNTERDON COUNTY, :  
RESPONDENT. :

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### SYNOPSIS

Petitioner herein is a teacher employed by the respondent Board, and formerly a wrestling coach for the school district. Petitioner appealed the Board's finding that he committed an act of Harassment, Intimidation or Bullying (HIB) pursuant to New Jersey's Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.* The Board alleged that on two occasions during a summer wrestling camp, petitioner stated to one of the student wrestlers – a special education student – that he hoped the student “did not have access to any weapons or keys to the gun closet.” Petitioner contended that the Board's determination was arbitrary, capricious and unreasonable, and that the HIB investigation was improperly conducted. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; the issues presented here are whether the conduct engaged in by the petitioner rose to the level of HIB as defined by law, and whether petitioner was afforded adequate due process during the course of the Board's investigation of the charges filed against him; an HIB investigation was conducted after the student's parents contacted the school principal to complain about the incident involving the petitioner; petitioner admitted making the alleged comments; the HIB investigation report concluded that the petitioner's conduct met the statutory definition of HIB, as petitioner was deemed to have made insulting or demeaning comments that publicly humiliated a student; petitioner requested a Board-level hearing in accordance with *N.J.S.A. 18A:37-15b(6)(d)*; the Board advised petitioner that neither Board policy nor regulation provided a procedure for anyone other than a parent or guardian of students to request a hearing, however the Board did – as a courtesy – extend an invitation to petitioner to appear before the Board for a twenty minute period to make a statement, but with no opportunity to offer witnesses; the Commissioner has recognized that the HIB investigatory requirements outlined in regulations have equal applicability when a bullying charge is directed against a staff member; petitioner had a right to defend the charges against him, but was not afforded the due process rights guaranteed by statute. Accordingly, the ALJ concluded that because the Board failed to comply with the required investigatory process, any reference to HIB should be expunged from petitioner's personnel files. The ALJ granted petitioner's motion for summary decision.

Upon comprehensive review, the Commissioner concurred with the ALJ's determination that staff members accused of committing an act of HIB are entitled to the due process guaranteed by the Act, including the right to a hearing before the board of education. However, the Commissioner found that the ALJ erred in ordering that all references to HIB be removed from petitioner's file, and instead remanded the matter to the respondent with orders to provide the petitioner with a hearing before the Board.

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.
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July 13, 2016

OAL DKT. NO. EDU 2767-15  
AGENCY DKT. NO. 20-2/15

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the Board of Education of the Hunterdon Central Regional School District (Board), and Petitioner Stephen Gibble’s reply thereto. This case involves a challenge by the petitioner, a former wrestling coach, to the Board’s determination that he committed an act of Harassment, Intimidation and Bullying (HIB) pursuant to the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.* The Board alleges that on two occasions during a summer wrestling camp, in the presence of others, the petitioner stated to R.F. – a special education student – that he hoped that R.F. did not have access to any weapons or keys to the gun closet. The Administrative Law Judge (ALJ) found that the Board failed to comply with the investigatory process outlined in the Act, and therefore, granted summary decision in favor of the petitioner.

In its exceptions the Board contends that the ALJ improperly granted summary decision in favor of the petitioner, and that the ALJ’s conclusions of law are contrary to the express terms found in the Act. The Board maintains that under *N.J.S.A. 18A:37-15(b)(6)(d)*, only a parent or a guardian may request a hearing before the board of education in connection

with an HIB investigation and there is no provision giving a wrestling coach who is accused of committing an act of HIB a right to hearing before the board of education. In fact, neither the Act nor the associated regulation, *N.J.A.C. 6A:16-7.7(1)(2)(viii)*, include any mention whatsoever of anyone other than a parent or guardian having a right to request a board hearing. The Board also maintains that, at the time of the incident in this matter, the Department of Education's Guidance for Schools in Implementing the Anti-bullying Bill of Rights Act made it clear that staff can commit acts of HIB against students, but it made no mention of anyone other than a parent or guardian having a right to a hearing. *See*, New Jersey Department of Education, *Guidance for Parents on the Anti-Bullying Bill of Rights Act*, dated September 2012, pgs. 17-19.<sup>1</sup> Accordingly, the Board contends that the documentation cited in the Initial Decision does not make it clear that the Act "must ... apply to [petitioner] for every aspect of the HIB investigation process, including his right to a hearing before the local board."

The Board also argues that the Initial Decision is incorrect and should be reversed, because – despite the language in the Act – the petitioner was provided with the entire investigatory file and was offered the opportunity to appear before the Board, which he declined. Although the Commissioner recently commented in *Edward Sadloch, et al. v. Board of Education of the Township of Cedar Grove, Bergen County*, Commissioner Decision No. 216-15, decided June 23, 2015, that coaches accused of HIB should be given an opportunity to appear before the Board, nowhere in the final decision or the OAL's Initial Decision does it

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<sup>1</sup> The Board acknowledges that in November 2015, the Department revised the "Questions and Answers" concerning the Act. Without directly addressing whether a staff member had a right to a hearing before the board, the Department commented that "[a]ll of the procedural requirements in the ABR apply regardless of whether the alleged offender is an adult or youth." *See* New Jersey Department of Education, *Anti-Bullying Bill of Rights Act (N.J.S.A. 18A:37-13 et seq.)*, *Questions and Answers*, dated November 2015, pg. 12.

state that this opportunity includes a full adversarial hearing, including the right to call witnesses. As such, the Initial Decision is inappropriately extending the terms of the Act to require an adversarial hearing, which was not the Legislature's intent. Although the Initial Decision implied that the 20 minute appearance offered to the petitioner was insufficient, there is again no legal support for this holding.

Alternatively, the Board contends that even if the petitioner was entitled to a hearing, the ALJ should have remanded the matter to the Board. In the Initial Decision, the ALJ wrongfully concluded "that because the Board failed to comply with the investigatory process contained in statute, any reference to HIB should be expunged from petitioner's personnel files maintained by the Board." The Board maintains that the Commissioner's decision to remove any reference of HIB from the coaches' files in *Sadloch, supra*, without remanding the matter for a proper investigation is not applicable in this case. In *Sadloch, supra*, at page 1-2, the Commissioner stated that he was in accord with the ALJ's conclusions that, in light of the lack of documentation and the state of the record, there could not be a proper determination as to whether there was an act of HIB committed. The Board argues that the facts in this matter are extremely different because – as opposed to the inaction of the Cedar Grove Board – in this matter, a thorough investigation was conducted in compliance with the procedural requirements of the Act. Notably, the petitioner was sent numerous letters concerning the HIB allegations and investigation; the Board provided the petitioner an opportunity to respond to the charges; the petitioner was provided with the entire investigatory file; the Board discussed petitioner's HIB investigation at three board meetings where petitioner received *Rice* notices of such; and the Board promptly advised the petitioner of the disposition of the allegations against him. Thus, the

record is extensive in this case and all of the steps in the investigation have been memorialized in writing and are well documented; therefore, a remand in this matter is appropriate.

In reply, the petitioner argues that the Initial Decision should be adopted because the ALJ correctly held that the HIB charges should be dismissed in light of the fact that the petitioner was not afforded the due process guaranteed by the Act. The petitioner contends that staff members and students have the same rights and obligations under the Act. The ALJ properly reasoned that if the petitioner can be found to have violated the Act, then the Act “must apply to him for every aspect of the HIB investigation process, including his right to a hearing before the local board.” The petitioner also notes that the Board’s assertion to the contrary is inconsistent with its letter to the petitioner, dated September 8, 2014, where it stated that the petitioner was entitled to the investigation information and a hearing. The petitioner further argues that the Commissioner’s decision in *K.T., on behalf of minor children K.H. and T.D. v. Board of Education of the Township of Deerfield, Cumberland County*, Commissioner Decision No. 278-13, decided July 30, 2013, expressly confirmed that the manifest intent of the Legislature was that the Act and school HIB policies would apply equally to adults. Further, “Based on the established case law since at least 2013, and the overwhelming evidence of congressional intent, anyone accused of an HIB violation is entitled to the Act’s due process protections,” which includes a hearing before the Board. (Petitioner’s Reply Exceptions at 9)

The petitioner also argues that the Board’s assertion that this matter should be remanded for a hearing is inappropriate and would be highly prejudicial to the petitioner. The petitioner contends that the Board’s failure to provide the petitioner with a hearing during the relevant time period irrevocably tainted and effectively nullified the investigation. The petitioner argues that if the remedy in these types of cases is to give boards of education a “do-over” then

there will be no incentive to get it right the first time. Further, approximately two years have passed since the incident in question and the petitioner continues to spend attorney's fees defending his reputation from this reckless attack. Finally, the petitioner reiterated the arguments advanced below to suggest that he did not commit an act of HIB against R.F.

Upon a comprehensive review of the record, the Commissioner is in accord with the ALJ's determination that staff members who are accused of committing an act of HIB are entitled to the due process guaranteed by the Act, including the right to a hearing before the board of education. In *Sadloch, supra*, the Commissioner adopted the ALJ's determination that while *N.J.S.A. 18A:37-15(b)(6)(d)* provides that "parents or guardians of the students who are parties to the investigation" must receive written information about that investigation, this requirement must be held to extend to staff members and volunteers whose conduct is implicated by a bullying allegation. It is only reasonable that this due process protection also includes the same right to a hearing before the Board that is provided under *N.J.S.A. 18A:37-15(b)(6)(d)* to parents or guardians of students involved in HIB investigations.

Although the Board failed to provide the petitioner with a hearing, the Commissioner disagrees with the ALJ's determination that the petitioner is entitled to summary decision and all references of HIB should be expunged from his personnel file. Instead, this matter shall be remanded to the Board to give the petitioner a hearing. *See also, D.M., on behalf of minor child, K.B. v. Board of Education of the Township of West Milford, Passaic County, Commissioner Decision No. 468-14, decided November 24, 2014* (The matter was remanded to the Board to conduct the required investigation and to issue a report in compliance with *N.J.S.A. 18A:37-13 et seq.*).

It is important to recognize that the decision not to remand the matter for a determination as to whether an act of HIB was committed in *Sadloch, supra*, was based on a unique set of circumstances, and the fact that the state of the record in that case made it impossible for a determination to ever be reached. Remarkably, in *Sadloch, supra*, the coaches could not even parse out the basis for the determination that they engaged in HIB and the ALJ was similarly left perplexed as to the basis of the charges. The procedures followed by the Board here are not analogous to the lack of any meaningful investigation conducted in *Sadloch, supra*. Unlike in *Sadloch, supra*, the Board gave the petitioner notice of the allegations; it conducted an investigation and completed an investigation report; and it also afforded the petitioner with an opportunity to appear before the board.<sup>2</sup> Therefore, the Commissioner finds that the ALJ erroneously ordered that all references to HIB be removed from the petitioner's file and instead that the appropriate disposition in this case is to order the Board to provide the petitioner with a hearing on the HIB allegations.

Accordingly, the recommended decision of the ALJ is modified as stated above and the Board is directed to provide the petitioner with a hearing before the Board.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: July 13, 2016  
Date of Mailing: July 13, 2016

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<sup>2</sup> Further, at the time of the investigation in this matter in 2014 it was not abundantly clear from the statutory and regulatory provisions and the guidance documents as to whether local boards of education were required to provide a staff member accused of HIB with a hearing before the board. However, as boards of education began implementing the provisions in the Act and the case law evolved, it became apparent that denying a staff member the same due process opportunities that are provided to parents and guardian of students faced with bullying allegations would be inconsistent with the spirit of the Act's investigatory requirements.

<sup>3</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).