

L.P. and H.P., on behalf of minor child, L.P., :
PETITIONERS, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE WEST : DECISION
MORRIS REGIONAL SCHOOL DISTRICT,
MORRIS COUNTY, :
RESPONDENT. :

SYNOPSIS

The petitioners challenged the determination of the respondent Board that L.P. was not the victim of harassment, intimidation or bullying (HIB) under the provisions of the New Jersey Anti-Bullying Bill of Rights Act, *N.J.S.A. 18A:37-13 to -32.1* (the Act). L.P. – a member of the high school fencing team – alleged that she had been a victim of HIB by B.S. – another student member of the fencing team – during the 2014-2015 school year, and asserted that the alleged bullying stemmed from L.P.’s status as a new and younger member of the team who possessed superior skills in comparison to B.S. The Board contended that the incident in question constituted student conflict and did not meet the definition of HIB pursuant to the Act. The Board filed a motion to dismiss the appeal.

The ALJ found, *inter alia*, that: the granting of a motion to dismiss a petition is warranted where there is no relief upon which the Office of Administrative Law (OAL) or the Department can act, or no relief to which petitioners are entitled as a matter of law, even when viewing the pleadings in the most favorable light; the main issue for resolution in this case is whether the Board’s finding that there was no HIB was arbitrary, capricious or unreasonable, in light of the information the Board possessed when it made its determination; the Act applies to any gesture, or any written, verbal or physical act, or any electronic communication – whether it be a single incident or a series of incidents – that is reasonably perceived as being motivated either by an actual or perceived characteristic, such as, *inter alia*: race, color, religion, national origin, gender, sexual orientation, or any other distinguishing characteristic; petitioners allege various incidents of HIB by B.S. during the 2014-2015 school year, beginning with a November 2014 incident during fencing practice in which L.P. accidentally injured a teammate – who sustained a concussion; L.P. argued, *inter alia*, that this accident was held over her head all season by B.S., who repeatedly reminded L.P. that she was lucky she didn’t get kicked off the team after she caused her teammate’s concussion; the Board herein contends that the HIB investigation into the fencing team incidents was inconclusive as to their occurrence or intent; and there were no allegations that a distinguishing characteristic of L.P. – either actual or perceived – motivated any of the conduct complained of herein. The ALJ concluded that it was reasonable for the Board to conclude that the circumstances in this case – which showed personal conflict between L.P. and other girls on the fencing team, but not conduct based on any distinguishing characteristic of the victim – did not rise to the level of HIB. Accordingly, the Board’s motion to dismiss was granted.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ in this matter. Accordingly, the Initial Decision was adopted as the final decision, and the petition was dismissed

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.

July 25, 2016

OAL DKT. NO. EDU 4462-16
AGENCY DKT. NO. 80-3/16

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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 petitioners and the West Morris Regional Board of Education's (Board) reply thereto. This case involves a challenge by the petitioners to the Board's determination that certain conduct directed at L.P. by another student, B.S., did not constitute 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 Administrative Law Judge (ALJ) found that the Board's determination that the conduct did not meet the definition of HIB was not arbitrary, capricious or unreasonable, and granted the Board's motion to dismiss.

In their exceptions, the petitioners maintain that the ALJ erroneously granted the Board's motion to dismiss because the Board's HIB determination was arbitrary, capricious and unreasonable. The petitioners initially allege that the Board's anti-bullying specialist lied under oath and falsified evidence throughout the entire HIB investigation; and the tainted investigation was ultimately the basis of the Board's decision. Additionally, the petitioners assert that they have demonstrated every element necessary under the Act to prove that an act of HIB was

committed by B.S. Specifically, the petitioners contend that the ALJ's finding that B.S.'s conduct was not motivated by a distinguishing characteristic is incorrect. The petitioners argue that L.P.'s feeling of persecution based on being young and vulnerable and a more skilled fencer than B.S. was a distinguishing characteristic. Therefore, the petitioners contend that B.S. used the team pecking order and the power conferred by her status as a captain to harass, intimidate and bully L.P.

Upon a comprehensive review of the record, the Commissioner concurs with the ALJ's conclusion – for the reason stated in the Initial Decision – that the Board's HIB determination was not arbitrary, capricious, or unreasonable. Although the ALJ determined that there may have been a conflict among the members of the fencing team, the Commissioner agrees that B.S.'s alleged conduct toward L.P. was not based on a distinguishing characteristic of L.P., actual or perceived.

It is well established that conduct that is motivated by a personal dispute such as specific roles on a sports team, albeit potentially harmful, does not fall within the definition of bullying under the Act. *See, K.L. v. Evesham Township Board of Education*, 423 N.J. Super 337, 350-351 (App. Div. 2011); *R.A., on behalf of minor child, B.A. v. Board of Education of the Township of Hamilton, Mercer County*, EDU 10485-15 (May 12, 2016) adopted Comm'r June 22, 2016; *L.B.T., on behalf of minor child, K.T. v. Board of Education of the Freehold Regional School District, Monmouth County*, EDU 7894-12 (January 24, 2013) adopted, Comm'r (March 7, 2013). Based on the circumstances in this case, it was reasonable for the Board to determine that the conduct of B.S. was motivated by the relationship between the two team members and the dynamics of the fencing team, not a distinguishing characteristic protected by the Act. Additionally, despite the petitioners' assertions to the contrary, there is no

evidence in the record to suggest that the Board's decision was induced by improper motives or based on doctored evidence.

Accordingly, the recommended decision of the ALJ is adopted for the reasons stated therein, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: July 25, 2016

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* 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*).