

R.S., ON BEHALF OF MINOR CHILD, G.M., :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

STATE-OPERATED SCHOOL DISTRICT : DECISION  
OF THE CITY OF PATERSON,  
PASSAIC COUNTY, :

RESPONDENT. :

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SYNOPSIS

The petitioning parent, R.S., appealed the decision of the respondent District that her daughter, G.M., was not the victim of acts 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.* Petitioner alleged that G.M. was bullied on the basis of her diagnosis of Autism Spectrum Disorder and Selective Mutism, and was the target of several specific incidents in April 2015 and June 2015 which caused G.M. emotional distress. The petitioner sought a proper full investigation of the matter. The District asserted that the alleged incidents did not constitute HIB under the Act, and further claimed that the matter has now been mooted by the graduation of all of the students involved, including G.M. The District filed a motion to dismiss.

The ALJ found, *inter alia*, that: petitioner R.S. reported several incidents of alleged HIB to the bullying specialist at her daughter's high school; petitioner sent numerous emails to the bullying specialist, a guidance counselor, and the school principal; petitioner's email correspondence was timely answered and informed R.S. of the process and provided her with timely updates; the emails also reveal the preventative measures the school took to prevent future incidents of bullying; the District's anti-bullying specialist informed petitioner by letter that the investigation had been completed pursuant to the Act, and determined that there was no evidence of HIB; petitioner timely filed her petition challenging these results; the respondent's motion sought the dismissal of the within case for mootness based on the graduation of all of the individuals implicated in the alleged HIB incidents; there is no compelling reason set forth in the case as to why petitioner needs to seek relief in this matter, given that the school disciplined the children involved and gave a seminar regarding bullying prevention during the pendency of the case; and none of the students have any reason to be involved with the school District going forward. Accordingly, the ALJ concluded that the case is now moot, and dismissed the petition.

Upon review, the Commissioner disagreed with the ALJ's conclusion that the controversy is now moot. In so determining, the Commissioner found, *inter alia*, that: petitioner sought and was entitled to a determination of whether or not the District's finding that G.M. was not the victim of HIB was arbitrary, capricious or unreasonable; whether petitioner's daughter has graduated from the District is not relevant to whether the alleged conduct constituted HIB; and the challenge to the District's finding that the alleged conduct did not rise to the level of HIB has not yet been addressed. Accordingly, the case was remanded to the OAL for proceedings to resolve the underlying claim on the merits.

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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OAL DKT. NO. EDU 14769-15  
AGENCY DKT. NO. 205-8/15

R.S., ON BEHALF OF MINOR CHILD, G.M., :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
STATE-OPERATED SCHOOL DISTRICT : DECISION  
OF THE CITY OF PATERSON, :  
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RESPONDENT. :

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner and the Board's reply thereto.

This case involves a challenge by petitioner to the District's determination that her daughter was not the victim of acts 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.* Petitioner alleges that her daughter was bullied based upon her diagnosis of Autism Spectrum Disorder and Selective Mutism. Specifically, in April 2015, petitioner contends that a student grabbed her daughter by her shoulder and when she did not respond, the student grabbed the phone out of her hands. Petitioner also alleges that the same student stopped her from entering gym class, resulting in G.M. spending the class in the bathroom. Petitioner further alleges that in June 2015, the same student told four students in gym class – including G.M. – to get up from their seats, resulting in a fight between two of the students. G.M. consequently had a panic attack and was excused from school for a week. Finally, petitioner alleges that in June 2015, the same student and a friend

blocked G.M. from going in her locker.<sup>1</sup> As all of the students involved have since graduated, the Administrative Law Judge (ALJ) dismissed the petition as moot.

In her exceptions, petitioner argues that the ALJ erred by not considering all of the incidents of alleged harassment. Further, petitioner contends that this matter is not moot because her daughter experiences severe anxiety and emotional concerns as a result of the incidents, and she must be heard. Petitioner argues that this matter is justiciable because the procedure followed in the HIB investigation was unclear and the District failed to complete investigations without prompting from her. Finally, petitioner asserts that this matter was held in abeyance until the students graduated in order to avoid further issues between her daughter and the alleged bully. As such, it should not be considered moot; petitioner allowed the matter to be held in abeyance for the well-being of the students involved, with the expectation that it would move forward upon their graduation.

In reply, the District argues that petitioner's exceptions do not comply with *N.J.A.C. 1:1-18.4* because they do not refer to specific paragraphs or findings in the Initial Decision. Further, some of petitioner's arguments were not part of her opposition to the District's Motion to Dismiss, and she should not be permitted to make additional arguments by way of exceptions.

The Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.*, was enacted "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises." *N.J.S.A. 18A:37-13.1(f)*. Pursuant to *N.J.S.A. 18A:37-15(b)(5)*, all

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<sup>1</sup> Although the Administrative Law Judge found that only the first incident in April 2015 could be considered in this case, it is clear that petitioner alleged all four of these incidents in her August 2015 petition. To the extent that the HIB investigation may not have been completed at the time of the complaint, it appears that these investigations should be completed. Indeed, petitioner requested that her petition be amended in order to include the District's latest HIB determinations.

school districts are required to adopt a policy that outlines a procedure for reporting an act of harassment, intimidation, or bullying. At a minimum, after a potential violation of the school district's HIB policy is reported, "the investigation shall be initiated by the principal or the principal's designee within one school day of the report of the incident and shall be conducted by a school anti-bullying specialist." *N.J.S.A. 18A:37-15(b)(6)(a)*. Thereafter, the results of the investigation shall be reported to the superintendent and then to the board of education. *N.J.S.A. 18A:37-15(b)(6)(b)* and *(b)(6)(c)*. Parents or guardians are entitled to receive information about the investigation within five school days after the results of the investigation are reported to the board. *N.J.S.A. 18A:37-15(b)(6)(d)*. The parent or guardian may then request a hearing before the board, which shall be held within ten days of the request. *Id.* After the board determines whether to affirm, reject or modify the superintendent's decision, "[t]he board's decision may be appealed to the Commissioner of Education, in accordance with the procedures set forth in law and regulation, no later than 90 days after issuance of the board's decision." *N.J.S.A. 18A:37-15(b)(6)(e)*.

After consideration and review of the record in this matter, the Commissioner finds that the ALJ erroneously granted the District's motion to dismiss the petition of appeal as moot. Pursuant to the Act, petitioner had the right to appeal the District's HIB determination to the Commissioner. *N.J.S.A. 18A:37-15(b)(6)(e)*. Petitioner sought – and was entitled by the Act – to a determination of whether the District's finding that her daughter was not the victim of acts of HIB was arbitrary, capricious, or unreasonable. Whether petitioner's daughter has graduated from the District is not relevant to the issue of whether the alleged conduct constituted HIB. *See J.M., on behalf of minor child, T.M. v. Board of Education of the Town of Tinton Falls, Monmouth County*, Commissioner Decision No. 39-14, decided January 23, 2014 (finding that

even though the coach alleged to have committed acts of HIB was no longer working in a coaching position, petitioner's requested relief of a finding that the coach had engaged in acts of HIB had not been rendered moot).

A matter becomes moot when an issue becomes hypothetical in nature, a judgment cannot grant effective relief, or the parties do not have concrete adversity of interest. *Anderson v. Sills*, 143 N.J. Super. 432, 437 (Ch. Div. 1976). Here, the issue is not hypothetical; petitioner challenged the HIB investigation and sought to reverse the District's finding. The challenge to the District's finding that the alleged conduct did not rise to the level of harassment or bullying has not yet been addressed. As such, the remedy that petitioner sought is still available.

Accordingly, for the reasons expressed herein, the Commissioner hereby remands this matter to the OAL for further proceedings in order to resolve the underlying claim on the merits.

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 13, 2017

Date of Mailing: January 13, 2017

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<sup>2</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)*.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**GRANTING MOTION TO DISMISS**

OAL DKT. NO. EDU 14769-15

AGENCY DKT. NO. 205-8/15

**R.S. o/b/o G.M. ,**

Petitioner,

v.

**STATE-OPERATED SCHOOL DIST.**

**OF THE CITY OF PATERSON,**

Respondent.

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**Farrah Irving, Esq.** for Petitioner (Law Office of Farrah Irving, attorney)

**Joanne Butler, Esq.,** for respondent (Schenck, Price, Smith & King, LLP,  
attorneys)

Record Closed: October 28, 2016

Decided: December 2, 2016

BEFORE **DANIELLE PASQUALE, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner G.M. filed an appeal which appears to challenge the City of Paterson Board of Education's ("Board") Harassment Intimidation & Bullying ("HIB")

determination. The Board based the denial on its determination that G.M. was not bullied under the auspices of HIB. On August 4, 2015, G.M.'s mother filed a petition with the Commissioner, and on September 22, 2015, the Bureau transmitted the matter to the Office of Administrative Law (OAL) as a contested case. The case was assigned to me on September 29, 2015. Petitioner's mother originally represented her daughter's interests pro se, then asked for additional time to consider offers as proposed by the school district then she sought counsel from the Volunteer Lawyers for Justice in January 13, 2016 when negotiations fell through. On February 12, 2016 mom R.S. hired Ms. Irving and I conducted additional prehearing conferences in an effort to resolve the matter as counseling and programming was taking place at the school. On October 28, 2016 Ms. Irving notified this Tribunal and established a schedule for additional submissions by the parties. To that end, I closed the record on October 28, 2016 when Ms. Irving notified this tribunal that her clients opted not to withdraw the matter as originally contemplated.

### **FACTUAL DISCUSSION**

Respondent's motion seeks the dismissal of R.S.'s case due to mootness as the individuals involved have all graduated the school in question. In order to decide this motion, I am relying on the following **FINDINGS OF FACT:**

In April 2015, Petitioner notified Rosa Parks High School in Paterson N.J., regarding several bullying incidents concerning her daughter and the same individual. She claims that this student grabbed her daughter G.M. by the shoulder and when her daughter did not respond, she grabbed her phone out of her hands.

The second alleged incident involved the same student preventing G.M. from entering her gym class. As a result, G.M. spent the class in the bathroom. This incident is not at issue in the present case as at the time of the answer that investigation was underway and this court is not aware of a result.

G.M. suffers from selective mutism and her mother reported these alleged incidents to Ms. Van Hoven, the bullying specialist at Rosa Parks High School. G.M.'s mother reports that Ms. Van Hoven stated that the individual that confronted her daughter did, in fact, get loud and admitted grabbing G.M.'s phone and touching her shoulder. She also admitted telling G.M. that she was not allowed to enter the gym class. But after her investigation, Ms. Van Hoven found that the child was "only playing."

In June of 2015, there was an alleged incident with the same student in gym class where she told four students including G.M. to get up from their seats. When one of the students refused to get up, it led to an argument which involved the principal in order to break up a fight with two of the students. This incident caused G.M. to be scared and anxious and her mother kept her out of school for a week due to her daughter's panic attacks.

In June of 2015, apparently the same student blocked G.M. from her locker. Again, these June incidents are not to be formally considered in the case at bar, but are included for completeness and will not affect the outcome of this motion.

Bullying specialist Van Hoven along with Ms. Stephens of the guidance department, and Jalyn Lyde of Paterson School District timely answered R.S.'s numerous emails informing her of the process and giving her timely updates of said procedure. The email correspondence also reveals preventative measures the school took to prevent future incidents of bullying.

G.M. is diagnosed with Autistic Spectrum Disorder and Selective Mutism and as a result, as her Psychologist reveals, struggles with expressing feelings and experiences feelings of inadequacy or helplessness.

In June of 2015, Theodore Best, Jr., Anti-bullying coordinator for the Paterson Public School District informed G.M.'s mother that the investigation was completed pursuant to the laws of Harassment, Intimidation and Bullying ("HIB") and N.J.S.A. 18A:37-13. To that end, Mr. Best revealed the determination that there was no



evidence of HIB but that “consequences were imposed for the student(s) who committed the act(s) along with remedial measures to eliminate this behavior in the future. Additional resources have been provided to your child as a result of the incident.” See Best Letter dated June 15, 2015, HIB report.

As a result of the aforementioned investigation, Donnie W. Evans, Superintendent of Schools and the Board of Education reviewed and accepted said findings in the HIB report.

On July 20, 2015 petitioner R.S. challenged the aforementioned HIB report in a timely fashion.

The Paterson School District had a working HIB policy and the appropriate personnel to conduct appropriate investigations to determine whether the alleged acts rose to the level of the HIB laws.

Currently, neither G.M. nor the other students involved attend Rosa Parks High School as they graduated in June of 2016.

### **LEGAL DISCUSSION AND ANALYSIS**

The Board argues that its motion to dismiss should be granted due to mootness due to the graduation of all students involved in the alleged incidents.

An action is moot when it no longer presents a justiciable controversy because the issues raised have become academic. For reasons of judicial economy and restraint it is appropriate to refrain from decision-making when an issue presented is hypothetical, judgment cannot grant effective relief, or the parties do not have a concrete adversity of interest. Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976); Fox v. Twp. of E. Brunswick Bd. of Educ., EDU 10067-98, Initial Decision (March 19, 1999), aff'd, Comm’r (May 3, 1999) <<http://lawlibrary.rutgers.edu/oal/search.html>>; S.J. v. Bd. of Educ. of Mountain Lakes, EDU 07081-03, Initial Decision (October 7,

2003), aff'd, Comm'r (Nov. 17, 2003), aff'd, St. Bd. (Feb. 3, 2004) <<http://lawlibrary.rutgers.edu/oal/search.html>>.

When a decision being sought in a particular matter will have no practical effect on the existing controversy, it is considered moot. M.D. o/b/o E.D. v. Moorestown Bd. Of Educ., supra at 2. “Therefore, when there has been a change in circumstances that raises doubt concerning the immediacy of the controversy, courts will ordinarily dismiss cases as moot, regardless of the stage to which litigation has progressed.” Id., citing Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976).

In the instant matter, none of the individuals involved attend the high school in question. In fact, as this is a high school graduation, this Tribunal takes judicial notice that none of the individuals should have reason to even be involved with the Paterson School District going forward. To that end, I am unable to find any compelling reason set forth in the record before me why R.S. needs to seek this relief as the school disciplined the children involved and gave a seminar regarding bullying prevention during the pendency of this matter. Therefore, I **CONCLUDE** that the petition is moot because G.M. has graduated from the District Schools as have the other students involved in giving rise to the investigations. The alleged offenders can no longer be counseled or disciplined and the students were already disciplined and programs were proactively established in an effort for the district to be proactive and prevent even a future perceived problem. As such, the alleged incident(s) constituting harassment, intimidation or bullying is no longer a “present, live controversy.” S.U. o/b/o M.U. v. Roxbury Bd. Of Educ., supra.

Petitioner’s contention that her claims before the Commissioner require resolution to overcome “an attempt to prevent judicial review of the State Operated School District of Paterson’s widespread, unlawful practice of ignoring the New Jersey mandated Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13 et seq” is unpersuasive. Dismissal of this action does not preclude petitioner from later bringing other claims before the appropriate court. Indeed, the administrative forum exists to afford concrete relief to litigants, not simply to create a record for use in a subsequent proceeding. For this matter to be justiciable here, petitioner must have suffered a distinct injury or harm that can be remedied by the Commissioner. See e.g. :New Jersey Turnpike Auth. v

Parsons, 3 N.J. 235, 240 (1949). It is not the role of the Commissioner to function in the abstract or to enter rulings that are advisory. See: N.J. Civil Serv. Ass'n v. State of New Jersey, 88 N.J. 605, 611 (1982); Crescent Park Tenants Assoc. v Realty Eq. Corp. of New York, 58 N.J. 98,107.

Nor does this case prove any widespread practice compelling a definitive resolution of the issues raised despite their mootness. Id. at 303. As a result, and because there is no effective relief that could be granted to G.M. in this forum, I **CONCLUDE** that the claims raised by the petition should be dismissed.

### **DECISION AND ORDER**

Based on the foregoing, respondent's motion to dismiss petitioner's petition of appeal as moot is **GRANTED**, and petitioner's petition is hereby **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five 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.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

December 2, 2016 \_\_\_\_\_  
DATE

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**DANIELLE PASQUALE, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

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**APPENDIX:**  
**LIST OF EXHIBITS:**

**For petitioner:**

**For respondent:**