

J.B., on behalf of minor child, M.B., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE : DECISION
 BOROUGH OF HADDONFIELD,
 CAMDEN COUNTY, :
 RESPONDENT. :

SYNOPSIS

Pro se petitioner challenged the determination of the respondent Board that M.B. 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 et seq.* (the Act). Petitioner alleged that M.B. – a seventh grade student in respondent’s school district at the time of the incident – was subjected to harassment, intimidation, or bullying when a fellow student, C.B., posted messages on M.B.’s social media page. The Board filed a motion to dismiss, asserting, *inter alia*, that the required HIB investigation was timely conducted, the results supported the conclusion that no HIB occurred, and that the petitioner’s appeal was not timely filed pursuant to *N.J.A.C. 6A:3-1.3(i)*. Petitioner opposed the motion.

The ALJ found, *inter alia*, that: the Act applies to any gesture, or any written, verbal or physical act, or any electronic communication 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 a mental, physical or sensory disability, or any other distinguishing characteristic; school districts are required to adopt a policy that prohibits HIB, follows the procedural requirements outlined in the Act, and provides for a prompt response to any alleged HIB incident; in the instant case, seventh grader M.B. was the subject of cruel social media posts by another student, C.B., including: “You’re mean. I hate you. You should die. Stop trying to be popular. You’re ugly. You’re fat. Only losers like you. I wish I could kill you. You’re annoying. No popular people like you.” and “Bitch skanky hoe bag;” while the school’s anti-bullying specialist investigated the HIB complaint and reported her findings to the principal, who then instituted some remedial measures, the record shows an absence of any further compliance with the procedures under *N.J.S.A. 18A:37-15(b)(6)*; and the Board’s contention that the petition was not timely filed is without merit, as in this case there was no Board decision issued from which to run the time for appeal. The ALJ concluded that the proper remedy here is to return the matter to the Board for compliance with the procedures set forth in *J.L. on behalf of minor child, A.L. v. Board of Education of the Bridgewater-Raritan Regional School District*, Commissioner’s Decision No. 416-16, decided December 9, 2016. Accordingly, the Board’s motion to dismiss was denied, and the Board was ordered to comply with the procedures set forth in *N.J.S.A. 18A:37-15*, and to afford petitioners the rights and remedies granted them by the statute.

Upon review, the Commissioner concurred with the ALJ that the matter must be returned to the Board to remedy non-compliance with the procedures set forth in *N.J.S.A. 18A:37-15*; the Initial Decision of the OAL was adopted as the final decision, with modification to the ALJ’s conclusion, striking consideration of the substantive issues herein – which must be deferred until the Board’s HIB investigation and determination is properly completed.

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 11464-14
AGENCY DKT. NO. 77-3/14

J.B., on behalf of minor child, M.B., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF HADDONFIELD, :
CAMDEN COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) that the matter should be returned to the Board to remedy its non-compliance with the procedures set forth in *N.J.S.A. 18A:37-15 et seq.* The Commissioner acknowledges that the basis for the underlying petition of appeal was petitioner’s disagreement with the Board’s finding that the conduct complained of did not meet the statutory definition of harassment, intimidation, and bullying (HIB). Furthermore, petitioner sought reversal of the HIB determination at the local level. Due to the clear procedural violations in this matter, however, the Commissioner deems the HIB investigation and determination process at the local level incomplete. Thus, the Commissioner will not address the underlying substantive issue: whether the finding was arbitrary, capricious or unreasonable. Likewise, the Commissioner finds dicta pertaining to the substantive issue – without the process having been completed by the Board – improper. As such, in adopting the Initial Decision in this matter, the Commissioner accepts the first and second sentences of the “Conclusion” section and strikes the remainder of the section.

Accordingly, the recommended decision of the ALJ is adopted – as modified herein – and the Board is directed to fulfill the procedural requirements of the Act, including a hearing (or opportunity for same) before the Board and issuance a final decision by the Board.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 4, 2018

Date of Mailing: June 4, 2018

* 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 ON

MOTION TO DISMISS

OAL DKT. NO. EDU 11464-14

AGENCY DKT. NO. 77-3/14

J.B., ON BEHALF OF MINOR CHILD, M.B.,

Petitioners,

v.

**BOARD OF EDUCATION OF THE BOROUGH
OF HADDONFIELD, CAMDEN COUNTY,**

Respondent.

J.B., petitioner, pro se

Sanmathi Dev., Esq., for respondent Board of Education of the Borough of
Haddonfield, Camden County (Capehart and Scatchard, PA, attorneys)

Record Closed: March 15, 2018

Decided: April 20, 2018

BEFORE **PATRICIA M. KERINS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In this matter petitioners J.B. and M.B. (petitioners) allege that respondent Haddonfield Board of Education (Board) improperly determined that electronic communications which their minor daughter, M.B., received from a classmate, C.B., did

not constitute harassment, intimidation, or bullying (HIB) under the Anti-Bullying Bill of Rights Act (Act), N.J.S.A. 18A:37-13 et seq.

PROCEDURAL HISTORY

In September 2013, petitioners filed a complaint with the Camden County Office of Education regarding the Board's determination. On March 24, 2014, petitioners filed a petition of appeal with the Commissioner of Education "ask[ing] the Commissioner to reverse the finding of the New Jersey Department of Education [of which CCOE is a part] and the Haddonfield Board of Education and find that C.B. engaged in behavior that falls under [the statutory definition of HIB]." In May 2014, the Department of Education and the Board filed answers denying petitioners' claims. Then, on September 11, 2014, the Commissioner transmitted the matter to the OAL as a contested case.¹

The Board then filed a motion to dismiss the petition of appeal. According to the Board, dismissal is appropriate because petitioners (1) failed to exhaust their administrative remedies by requesting a hearing before the Board; (2) failed to timely file their petition of appeal in accordance with the ninety-day rule, N.J.A.C. 6A:3-1.3(i), which provides that "[t]he petitioner shall file a petition no later than the ninth day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing;" (3) failed to name C.B. or her parents as an indispensable party in violation of N.J.A.C. 6A:3-1.3(b); and because, (4) the doctrines of res judicata and collateral estoppel bar the petition of appeal on the theory that the Camden County Office of Education (CCOE) already determined that the Board correctly found that C.B. did not commit an act of HIB against M.B. Petitioners oppose the motion.

¹ In May 2015, petitioners consented to the dismissal of the Department of Education as a party. Stipulation of Dismissal. Petitioners and the Department of Education agreed that CCOE's decision "addresse[d] whether the District complied with the procedural requirements of the [Act] and does not address whether the District's determination was substantively correct[.]" ibid.

After the parties addressed the motion they were provided with an opportunity to respond to the commissioner's subsequently rendered decision in J.L. ex rel. A.L. v. Bd. of Educ. of the Bridgewater-Raritan Reg'l Sch. Dist., Agency Docket No. 167-715, EDU 11604-15, Final Decision (December 9, 2016) <<http://nj.gov/education/legal/commissioner/2016/dec/416-16.pdf>>. In that decision the Commissioner clarified the procedures a board was required to follow in an HIB matter.

FACTUAL DISCUSSION

The following facts are not in dispute. On April 16, 2013, when M.B. was a seventh-grade student at Haddonfield Middle School (HMS), C.B. posted on M.B.'s social media page a message stating, "You're mean. I hate you. You should die. Stop trying to be popular. You're ugly. You're fat. Only losers like you. I wish I could kill you. You're annoying. No popular people like you," and on the following day, C.B. posted on the same website a message stating, "Bitch skanky hoe bag." Petitioners promptly alerted the HMS principal to the incidents. The school's anti-bullying specialist subsequently investigated the incidents and, on April 29, 2013, reported her findings to the principal.

In her report, the anti-bullying specialist concluded that the incidents did not meet the statutory definition of HIB, and the principal proposed such remedial measures as a "new lunch table" and "meetings with counselor." Petitioners did not receive the results of the investigation in writing, but did otherwise become aware of the results in May 2013.

In September 2013, petitioners filed with the CCOE a complaint that HMS officials did not adequately address the alleged HIB incidents. After an investigation, the CCOE concluded that "the district neglected to provide a written result of the investigation to the parents . . . and therefore is not compliant with N.J.S.A. 18A:37-15(b)(6)(d)," that "the district correctly determined the incident did not meet the statutory definition of HIB," and that "[t]he district took appropriate remedial measures for addressing this incident[.]" The CCOE ordered the Board to "[n]otify the county office if [the mother] requests the district to provide an opportunity for a hearing before the

board to appeal the district's written determination of the investigation in accordance with N.J.S.A. 18A:37-15(b)(6)(d)."

LEGAL DISCUSSION

The HIB Act is designed "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). Under the Act, HIB is defined as:

[A]ny gesture, 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 any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L. 2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:

- a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
- b. has the effect of insulting or demeaning any student or group of students; or
- c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

[N.J.S.A. 18A:37-14.²]

² N.J.S.A. 18A:37-15.3 provides that:

The policy adopted by each school district pursuant to section 3 of P.L.2002, c.83 (C.18A:37-15) shall include provisions for appropriate responses to harassment, intimidation, or bullying, as defined in section

Each school district must adopt a policy that prohibits HIB and provides for a prompt response to any alleged HIB incident. N.J.S.A. 18A:37-15. Once an alleged HIB incident is reported to the school principal, the principal must initiate an investigation within one school day of the report. N.J.S.A. 18A:37-15(b)(6). The investigation shall be conducted by a school anti-bullying specialist, and shall take no longer than ten school days to be completed.

The results of the investigation shall then be quickly reported to the superintendent of schools, who may take certain remedial action. The results shall also be reported to the board of education “no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent.”

The parents of the students involved in any alleged HIB incident are entitled to receive information about the nature of the investigation and the result of the investigation. The parents may request a hearing before the board, and the hearing must be held within ten days of the request. Any hearing shall be held in executive session to protect the identity of any students involved. The board may hear from the anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents.

The board must issue a decision at the first meeting after its receipt of the investigation report. The board may affirm, reject, or modify the superintendent’s decision. The board’s decision then may be appealed to the Commissioner of Education.

2 of P.L.2002, c.83 (C.18A:37-14), that occurs off school grounds, in cases in which a school employee is made aware of such actions. The responses to harassment, intimidation, or bullying that occurs off school grounds shall be consistent with the board of education's code of student conduct and other provisions of the board's policy on harassment, intimidation, or bullying.

In J.L., the Commissioner ruled that “the appropriate remedy” for a school board’s failure to comply with the procedural requirements of the Act was “to order the Board to conduct a hearing and issue a proper decision.” Under the facts of that case, the Bridgewater-Raritan school board received at a meeting a report finding that an elementary student had committed an act of HIB. At the same meeting, the Board affirmed the HIB finding. The next day, the school principal, and not the school board, sent the student’s parents a letter advising them of the school board’s decision and their right to a hearing.

The Commissioner concluded that the school board’s actions violated the procedural requirements of the Act in several respects. First, the school board should not have issued a decision at the same meeting at which it first received the results of the HIB investigation, but instead was required to issue its decision “at the next board of education meeting following its receipt of the report” under N.J.S.A. 18A:37-15(b)(6)(e). Second, the parents received notice of their right to a hearing *after* the school board issued its decision, but should have been given the opportunity for a hearing *before* the school board issued a decision because, as the Commissioner noted, under N.J.S.A. 18A:37-15(b)(6)(d), “in essence, the parents are appealing the superintendent’s decision to the board.”³ Finally, the Commissioner found that the school board did not issue a proper written decision because “a school principal is not a proper agent to issue a HIB decision on behalf of the Board.” However, because “the Board gave petitioner notice of the allegations, conducted a thorough investigation and completed a comprehensive investigation report, and also afforded the petitioner with an opportunity to appear before the Board,” the Commissioner determined that “the proper remedy for the procedural errors . . . is to return the matter to the Board to provide the petitioner with a hearing on the HIB allegations.”

Here, like in J.L., the Board failed to follow certain procedures for addressing HIB complaints under N.J.S.A. 18A:37-15(b)(6) and the appropriate remedy is for the Board to now afford petitioners an opportunity for a hearing and then issue a written decision

³ In this regard, the Commissioner found that “the District should have provided the parents with the date of the next Board meeting, and clarified the process for requesting a hearing.”

with respect to whether M.B. was the victim of HIB.⁴ While the anti-bullying specialist investigated the HIB complaint and reported her findings to the principal, who then instituted some remedial measures, the papers submitted in this matter show an absence of any further compliance with the procedures under N.J.S.A. 18A:37-15(b)(6).

There is no showing that the results of the investigation were reported to the superintendent within two days of the completion of the investigation, as required by N.J.S.A. 18A:37-15(b)(6)(b). Second, the Board admits that petitioners did not receive information about the HIB investigation in writing and it does not appear that the results of the investigation were ever reported to the Board, as required by N.J.S.A. 18A:37-15(b)(6)(c) and (d). Finally, if the Board never received the results of the investigation, it follows that the Board never issued a written decision, as required by N.J.S.A. 18A:37-15(e). These procedural violations by the Board warrant the denial of the Board's motion to dismiss this matter and instead necessitate a remedy in accordance with the Commissioner's decision in J.L. Thus, the Board must provide petitioners with the opportunity for a hearing and must issue a written decision in accordance with N.J.S.A. 18A:37-15(d) and (e).

While petitioners may have known about the results of the HIB investigation, the Board or some school official should have promptly provided the results to petitioners in writing and advised them of their right to a hearing before the Board. Also, the fact that the CCOE issued a decision regarding petitioners' HIB complaint does not obviate the need for a hearing before the Board. Under N.J.S.A. 18A:37-25, "the office of the executive county superintendent of schools shall investigate a complaint that documents an allegation of a violation of the [Act] by a school district located within the county, when the complaint has not been adequately addressed on the local level" and "shall report its findings, and if appropriate, issue an order for the school district to develop and implement corrective actions that are specific to the facts of the case." However, this provision does not supersede a parent's right to a hearing before a school board or the requirement that a school board must issue a substantive decision on

⁴ Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, a "judge may render any ruling or order necessary to decide any matter presented to him or her which is within the jurisdiction of the transmitting agency or the agency conducting the hearing." N.J.A.C. 1:1-14.6(h).

whether or not one of its students committed an act of HIB. This requirement reinforces the appropriateness of returning this matter to the Board, because, under N.J.S.A. 18A:37-15(b)(6)(e), “[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 the issuance of the board's decision.” Without a decision from the Board, the matter is not yet ripe for a decision by the Commissioner.

Respondent Board has raised the issue of whether petitioners have contravened the ninety-day rule for the filing of an appeal before the Commissioner from a Board's action. However, in this matter, there was no Board decision from which to run the time for appeal. Subsection (e) as set forth above allows petitioner ninety days from the issuance of the Board's decision. Here, there was no Board decision to appeal from and petitioner chose to file a complaint with the Camden County Executive Superintendent and followed by an appeal to the Commissioner. Simply put, there was no action by the Board to appeal, just its inaction in failing to follow the appropriate procedures under the HIB Act.

CONCLUSION

In this matter the proper remedy is to return the matter to the Board for compliance with the procedures set forth in the Commissioner's decision in J.L. Once there the Board can review and determine the substantive issue of whether the conduct at issue constituted an HIB violation. It should be noted however, that the position taken by respondent that the denigration of the child as “ugly” and “fat” is insufficient to meet one of the prongs for a determination of HIB does not appear to be supported by prior decisions in this area. See G.C. on behalf of the minor child, C.C., and the Bd. Of Education of the Township of Montgomery, Somerset County, OAL Docket No. EDU 12103-15 (2016).

ORDER

Respondent's Motion to Dismiss is **DENIED** and the Board of Education of the Borough of Haddonfield is **ORDERED** to comply with the procedures set forth in

N.J.S.A. 18A: 37-15 and afford petitioners the rights and remedies granted them by the statute.

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.



April 20, 2018

DATE

PATRICIA M. KERINS, ALJ

Date Received at Agency:

April 20, 2018 (emailed)

Date Mailed to Parties:

PMK/mel