

New Jersey Commissioner of Education
Final Decision

K.P., on behalf of minor child, I.M.,

Petitioner,

v.

Board of Education of the Township of
Saddle Brook, Bergen County, and
Danielle Shanley, Superintendent,

Respondent.

Synopsis

Petitioner submitted a harassment, intimidation and bullying (HIB) complaint to the respondent Board pursuant to the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A.* 18A:37-13 *et seq.*, in which she alleged that a student told her daughter that she was “ugly and [a] bad dancer.” When the Board failed to carry out an investigation into the matter, petitioner filed the within appeal, asserting that her daughter had been the victim of HIB and alleging that the Board failed to conduct the investigation required under the Act. The Board contended that no investigation was conducted because the allegations, even if true, did not constitute a violation of the Act. The Board filed a motion for summary judgement.

The ALJ found, *inter alia*, that: there are no genuine issues of material fact here, and the Board is entitled to prevail as a matter of law because petitioner failed to allege a violation of the Act that would require an investigation; under the Act, “harassment, intimidation, or bullying” means any gesture, any written, verbal, or physical act, or any electronic communication that is reasonably perceived as motivated by any actual or perceived distinguishing characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical, or sensory disability, that takes place on school property and substantially disrupts the orderly operation of the school; in the instant case, petitioner has not asserted, let alone offered any proof, that the statement allegedly made to her daughter by a fellow student – i.e., that I.M. is “ugly and [a] bad dancer” – was motivated by any distinguishing characteristic, or that the alleged statement substantially disrupted or interfered with the orderly operation of the school. The ALJ concluded that the respondent Board did not fail to investigate this allegation of HIB in violation of the Act. Accordingly, the ALJ granted summary decision to the Board as a matter of law and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ that the Board was not arbitrary, capricious or unreasonable in making a preliminary determination that the alleged conduct did not meet the statutory definition of HIB, as – pursuant to *N.J.A.C.* 6A:16-7.7(a)(2)(ix)(1) – its HIB policy set forth a process by which to make such a determination prior to launching a full HIB investigation, which process was followed in this case. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, 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.

September 5, 2019

New Jersey Commissioner of Education

Final Decision

K.P., on behalf of minor child, I.M.,

Petitioner,

v.

Board of Education of the Township of
Saddle Brook, Bergen County, and
Danielle Shanley, Superintendent,

Respondents.

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.

In this matter, petitioner submitted a harassment, intimidation and bullying (HIB) complaint to the Board pursuant to the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A.* 18A:37-13 *et seq.*, in which she alleged that a student told her daughter that she was “ugly and [a] bad dancer.” The Board did not conduct a HIB investigation, and instead determined that the allegation, if true, did not constitute HIB. Petitioner challenged that determination and the Administrative Law Judge (ALJ) found the alleged conduct did not meet the statutory definition of HIB because petitioner did not allege that the comment about her daughter’s dancing was motivated by an actual or perceived distinguishing characteristic, in accordance with *N.J.S.A.* 18A: 37-14.

Upon review, the Commissioner agrees with the ALJ that the Board was not arbitrary, capricious, or unreasonable in making a preliminary determination that the alleged

conduct did not meet the definition of HIB. Pursuant to *N.J.A.C. 6A:16-7.7(a)(2)(ix)(1)*, a Board’s HIB policy may include a “process prior to initiating an investigation by which the principal, or his or her designee, in consultation with the anti-bullying specialist, makes a preliminary determination as to whether the reported incident or complaint, assuming all facts presented are true, is a report within the scope of *N.J.S.A. 18A:37-14*.” In this matter, the Board utilized this procedure and determined that, if true, the alleged conduct did not constitute HIB. The Commissioner agrees with the ALJ that petitioner did not allege that I.M. had a distinguishing characteristic, or that the comments regarding her dancing were in any way motivated by a distinguishing characteristic. As such, petitioner has failed to demonstrate that the alleged conduct meets the definition of HIB. *N.J.S.A. 18A: 37-14*.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: September 5, 2019
Date of Mailing: September 9, 2019

¹ 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)*.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 04624-19

AGENCY DKT. NO. 17-01/19

K.P. ON BEHALF OF I.M.,

Petitioner,

v.

**SADDLE BROOK BOARD OF EDUCATION,
BERGEN COUNTY, AND DANIELLE
SHANLEY, SUPERINTENDENT,**

Respondents.

K.P., petitioner, pro se

Jessika Kleen, Esq., for respondents (Machado Law Group, attorneys)

Record Closed: July 19, 2019

Decided: July 24, 2019

BEFORE **BARRY E. MOSCOWITZ**, ALJ:

STATEMENT OF THE CASE

Petitioner alleges that a student told her daughter that her daughter is an “ugly and bad dancer” in violation of the Anti-Bullying Bill of Rights Act (ABRA), N.J.S.A. 18A:37-13 et seq. Respondents, however, conducted no investigation. Did

respondents violate the ABRA? No. To violate the ABRA, the statement must be motivated by any actual or perceived distinguishing characteristic—such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical, or sensory disability. See N.J.S.A. 18A:37-14.

PROCEDURAL HISTORY

On November 15, 2018, petitioner notified respondents that a student had allegedly told her daughter that her daughter is an “ugly and bad dancer” in violation of the ABRA. Respondents, however, conducted no investigation. As a result, petitioner filed an appeal with the Department of Education.

On January 23, 2019, petitioner filed her appeal with the Department of Education, Bureau of Controversies and Disputes, alleging that respondents had failed to conduct an investigation in violation of the ABRA. On March 12, 2019, respondents filed their answer. Ostensibly, respondents assert that they conducted no investigation because the allegations, even if true, do not constitute a violation of the ABRA.

On April 3, 2019, the Bureau of Controversies and Disputes transmitted this case to the Office of Administrative Law as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On June 27, 2019, respondents filed a motion a motion for summary decision. Under N.J.A.C. 1:1-12.5(b), petitioner had until July 17, 2019, to file her response. On July 18, 2019, petitioner emailed this tribunal claiming that she had never received service of the motion. This claim, however, is rejected. On June 27, 2019, respondent served petitioner by certified mail, return receipt requested, and by ordinary mail. Then, on July 8, 2019, respondent served petitioner in person, placing the motion in her mailbox. Since the ordinary mail was never returned, and the motion was later placed

in her mailbox, the service is deemed to be good service under N.J.A.C. 1:1-7.1. In other words, these methods provided actual notice to petitioner. As a result, the date by which petitioner had to submit her response will be enforced, not relaxed, and this motion will remain unopposed, so as to achieve just results for all parties, which includes respondents, given the merits of the motion, and to eliminate unjustifiable delay under N.J.A.C. 1:1-1.3(a).

FINDINGS OF FACT

Based upon the documents submitted in support of and in opposition to the motion for summary decision, I **FIND** the following as **FACT**:

On November 15, 2018, petitioner, K.P., sent an email to respondents stating, among other things, that a student told her daughter, I.M., that her daughter is an “ugly and bad dancer”:

Today an ignorant student J. (black kid) or whatever his name is if I don't spell it correctly had told my [I.] how ugly, and bad dancer she is and all school feels the same. I don't know if this kid has a life or knows anything about dance. Instead he will shut up his dirty mouth and will be charge with HIB. He is lucky that my daughter didn't say anything to him but I will make sure he gets charge with HIB and shut up his dirty mouth forever.

NOT APOLOGY IS ACCEPTABLE. ONLY HIB. This is the only way and example for any ignorant and ugly like him and many to STOP at least torch my baby girl.

[Ex. A to the Certification of Danielle Shanley, Superintendent, dated July 2, 2019.]

Respondents conducted no investigation because they determined that the allegation, even if true, did not constitute HIB.

Meanwhile, respondents were more concerned about K.P. because of the demands she placed on staff through her daily emails, oftentimes more than several emails a day, and the threats she made against staff in those emails. In particular, respondents were concerned about K.P.'s description of the student whom she alleged had told her daughter that she is a bad dancer, and K.P.'s threat that she would make sure that student got "charge[d]" with HIB to "shut up his dirty mouth forever." In fact, respondents, to underscore the seriousness with which they take these threats, filed a criminal complaint against K.P. for having made terroristic threats against staff.

The criminal complaint is pending.

CONCLUSIONS OF LAW

A party may move for summary decision upon any or all substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion for summary decision shall be served with briefs and may be served with supporting affidavits. Ibid. "The decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b).

In this case, no genuine issue of any material fact exists and respondents are entitled to prevail as a matter of law because petitioner has not alleged a violation of the ABRA for respondents to investigate.

Under the ABRA, "harassment, intimidation, or bullying" means any gesture, any written, verbal, or physical act, or any electronic communication that is reasonably perceived as being motivated by any actual or perceived distinguishing characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical, or sensory disability, that takes place on school property. See N.J.S.A. 18A:37-14. It must also substantially disrupt or

interfere with, among other things, with the orderly operation of the school. Ibid. Although the ABRA does not limit “distinguishing characteristic” to those specified in the statute, it has consistently required such a perceived motivation. See K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337, 351 (App. Div. 2011). “Thus, harmful or demeaning conduct motivated only by another reason, for example, a dispute about relationships or personal belongings, or aggressive conduct without identifiable motivation, does not come within the statutory definition of bullying.” Ibid.

The definition of “harassment, intimidation, or bullying” is reproduced below in full:

§ 18A:37-14. Definitions relative to adoption of harassment and bullying prevention policies

As used in this act:

“Electronic communication” means a communication transmitted by means of an electronic device, including, but not limited to, a telephone, cellular phone, computer, or pager;

“Harassment, intimidation or bullying” means any 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.

In this case, petitioner has not even alleged, let alone offered any proof, that the statement the student allegedly made to her daughter, that I.M. is an "ugly and bad dancer," was motivated by an actual or perceived distinguishing characteristic such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical, or sensory disability. In addition, one cannot reasonably argue that being an "ugly and bad dancer," or expressing oneself as an "ugly and bad dancer," even if understood, and even if understood as true, constitutes such a distinguishing characteristic. Likewise, petitioner has not even alleged, let alone offered any proof, that the statement the student made to her daughter substantially disrupted or interfered with the orderly operation of the school. Therefore, I **CONCLUDE** that respondents did not fail to investigate this allegation of harassment, intimidation, or bullying in violation of the ABRA, and that respondents are entitled to summary decision as a matter of law.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that this case be **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 case. 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 under 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.

July 24, 2019

DATE



BARRY E. MOSCOWITZ, ALJ

Date Received at Agency:

July 24, 2019

Date Mailed to Parties:
dr
