

New Jersey Commissioner of Education

Decision

Melanie Sohl,

Petitioner,

v.

Board of Education of the Town of
Boonton, Morris County,

Respondent.

Synopsis

Petitioner, a tenured teacher in the respondent Board’s school district, appealed the Board’s decision to affirm the results of a harassment, intimidation, and bullying (HIB) investigation into petitioner’s conduct. The HIB investigation had concluded that the petitioner committed an act of HIB when she allegedly said to an overweight student who was walking slowly to the front of the classroom, “[i]f there was a cupcake up there, you would move faster.” Petitioner maintained that she had a good relationship with the student in question and did not commit an act of HIB. Further, she contended that the Board failed to comply with the due process requirements of the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.* Petitioner filed a motion for summary decision, which was opposed by the Board.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; petitioner’s due process rights were violated because the Board did not comply with the procedural mandates of the Act; the Board failed to provide petitioner with the opportunity to review the HIB investigatory report, as well as all witness statements and documentary evidence, as required pursuant to *N.J.S.A. 18A:37-15b(6)(d)*; the Superintendent failed to submit a written summary of the HIB investigation in order to provide information about the content of the HIB report and any discipline imposed to the Board, as required under *N.J.S.A. 18A:37-15b(6)(c)*; and after the HIB hearing, the Board – not the Superintendent – should have issued a detailed written decision in keeping with *N.J.S.A. 37-15b(6)(e)*. Accordingly, the ALJ granted petitioner’s motion for summary decision, remanded the matter to the Board for an HIB hearing in accordance with petitioner’s due process rights under *N.J.S.A. 18A:37-15* and ordered that the letter of reprimand be removed from the petitioner’s personnel file.

Upon review, the Commissioner, *inter alia*, disagreed with the ALJ’s determination that the petitioner was not afforded due process and that the Board failed to comply with the procedural requirements of the Act. As such, the Commissioner rejected the ALJ’s decision to remand this matter for a Board hearing and instead remanded it to the OAL for a hearing on the merits. Petitioner will have the opportunity to challenge whether the Board’s finding of HIB was arbitrary, capricious or unreasonable as this matter proceeds at the OAL. Additionally, the Board is not required to remove the letter of reprimand from petitioner’s personnel file at this time. Accordingly, the Initial Decision was rejected and the matter was remanded to the OAL for a determination 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.

New Jersey Commissioner of Education

Final Decision

Melanie Sohl,

Petitioner,

v.

Board of Education of the Town of Boonton,
Morris County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) been reviewed and considered, as have the exceptions filed by the respondent Boonton Town Board of Education (Board), pursuant to *N.J.A.C. 1:1-18.4*. The petitioner did not file a reply.

This matter concerns an allegation of harassment, intimidation, and bullying (HIB) committed by a teacher against a student. Petitioner is alleged to have told an overweight student who was walking slowly to the front of the classroom, “[i]f there was a cupcake up there, you would move faster,” in addition to other food-related comments. The student reported the alleged comment on January 15, 2020, and the following day, the school’s Principal met with petitioner, along with the District’s anti-bullying coordinator and the Boonton Education Association President. The anti-bullying coordinator then conducted an interview with petitioner on January 27, 2020, with the Board attorney, petitioner’s attorney and the Principal in attendance. Thereafter, the Superintendent informed petitioner in writing that the HIB allegation was confirmed and that she would be required to undergo sensitivity training as a remedial

measure and would be issued a letter of reprimand. The Principal issued the letter of reprimand on February 4, 2020, which recounted that petitioner had admitted making the alleged “cupcake” comment and other food-related comments to the same student. Petitioner responded by letter clarifying that she had a good relationship with the student and “did not realize that the student might have taken the comment to mean anything other than a motivating comment to get them to the board quicker.” She also explained that the student had previously asked for snacks or complained of being hungry, and while she denied making food comments toward the student, she has had many students who are motivated by snacks.

Prior to the Board hearing, the Superintendent submitted to the Board a summary of the HIB investigation and determination but did not appear to discuss discipline. Petitioner then appeared with her attorney in an executive session at the February 10, 2020 Board meeting, during which no testimony on behalf of the district was presented. The Board voted to uphold the finding of HIB, which was communicated to petitioner in a letter from the Superintendent the following day.

The Administrative Law Judge (ALJ) found that petitioner’s due process rights were violated because the Board did not comply with the procedural mandates of the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.* The ALJ remanded the matter so that petitioner could be afforded a new Board hearing, specifically finding: (1) pursuant to *N.J.S.A. 18A:37-15b(6)(d)*, the Board should provide petitioner with the opportunity to review the HIB investigatory report, as well as all witness statements and documentary evidence; (2) the Superintendent’s written summary to the Board regarding the HIB investigation should inform the Board of the contents of the HIB report and any discipline imposed, as required by *N.J.S.A. 18A:37-15b(6)(c)*; (3) the Board, not the Superintendent, should issue a detailed written decision

after the hearing, in keeping with *N.J.S.A.* 37-15b(6)(e); and (4) the February 4, 2020 letter of reprimand should be removed from petitioner's personnel file. However, the ALJ found that there was no due process violation with respect to petitioner's opportunity to confront and cross-examine witnesses because the Act does not require a full adversarial hearing.

By way of exceptions, the Board argues that the ALJ erred in her analysis of the due process requirements under the HIB statute. Specifically, the Board argues that *N.J.S.A.* 18A:37-15b(6)(e) does not prohibit the Superintendent – the “CEO” of the Board – from conveying the Board's HIB determination to petitioner, and notes that this issue was not raised or briefed by either party. Additionally, the Board maintains that *N.J.S.A.* 18A:37-15b(6)(c) does not require that the Superintendent's report to the Board on the HIB investigation be written, and since this issue was decided *sua sponte* by the ALJ, the Board did not have the opportunity to submit a certification as to the verbal summary made to the Board during the hearing. The Board also points out that the ALJ improperly required that a “detailed written decision” be issued after the Board hearing because *N.J.S.A.* 18A:37-15b(6)(e) only requires that the Board affirm, reject, or modify the Superintendent's decision.

The Board also argues that the ALJ erred in remanding the matter back to the Board for a new hearing and removal of the reprimand because petitioner's due process rights were not violated. According to the Board, *N.J.S.A.* 18A:37-15b(6)(d) only requires that petitioner be informed as to the nature of the investigation, whether the district found HIB, and any discipline imposed, and does not require that the Board produce the full investigatory file, such as the witness statements or the HIB report. The Board maintains that petitioner was not deprived of a life, liberty or property interest and, nevertheless, she was fully aware of the allegations and had the opportunity to be heard at the Board hearing. Additionally, the Board

contends that the reprimand was issued to petitioner as a result of her inappropriate statements to a student – and not as an outcome to the HIB investigation – so she would have had to challenge it through the locally negotiated grievance process rather than as part of her HIB petition. For these reasons, the Board urges the Commissioner to reject the Initial Decision.

Upon review, the Commissioner disagrees with the ALJ’s determination that the petitioner was not afforded due process and that the Board failed to comply with the procedural requirements of the Act. As such, the Commissioner rejects the ALJ’s decision to remand this matter for a Board hearing and will instead remand this matter to the OAL for a hearing on the merits.

The Commissioner will address the three relevant provisions of the Act in turn.

First, and most pertinent to this matter, *N.J.S.A.* 18A:37-15b(6)(d) states:

[P]arents or guardians of the students who are parties to the investigation shall be entitled to receive information about the investigation, in accordance with federal and State law and regulation, including the nature of the investigation, whether the district found evidence of harassment, intimidation, or bullying, or whether discipline was imposed or services provided to address the incident of harassment, intimidation, or bullying. This information shall be provided in writing within 5 school days after the results of the investigation are reported to the board. A parent or guardian may request a hearing before the board after receiving the information, and the hearing shall be held within 10 days of the request. The board shall meet in executive session for the hearing to protect the confidentiality of the students. At the hearing the board may hear from the school anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents[.]

The Commissioner has previously established that teachers and other staff members who are accused of HIB are entitled to the same due process protections that are provided to students under the Act. *Ruth Young-Edri v. Board of Education of the City of Elizabeth, Union County*, Commissioner’s Decision No. 174-19, decided July 8, 2019; *Stephen Gibble v. Board of*

Education of the Hunterdon Central Regional School District, Hunterdon County,
Commissioner's Decision No. 254-16, decided July 13, 2016.

Here, petitioner was provided with two written communications regarding the investigation prior to the February 10, 2020 Board hearing: a January 28, 2020 letter from the Superintendent and a February 4, 2020 letter of reprimand from the Principal. The Superintendent's letter informed petitioner that the HIB investigation into her alleged actions was confirmed, and that the Board would vote on the results at its February 10 meeting. The letter further explained that the following measures were taken to address the situation: (1) Remedial Measures – Sensitivity Training; and (2) Consequence – Letter of Reprimand. The February 4, 2020 letter of reprimand memorialized the January 16, 2020 conversation:

During our meeting, you admitted saying, "If there was a cupcake up there, you would move faster" to a student who was slowly making their way towards the front of the room to participate in answering a question. You had also mentioned that "food comments" were made, by yourself, to the same student during the study hall that you supervise. Regardless of rapport with a student, comments of this nature are improper, unprofessional, and must not be repeated. As the adult in the classroom, you are expected to act professionally at all times.

The Commissioner finds that when the two written communications are viewed in conjunction, petitioner was informed of the nature of the investigation, specifically of the cupcake comment that she was alleged to have said, along with the finding that she had admitted to making the comment. She was also informed that the district found evidence of HIB, and of the discipline being imposed in the form of sensitivity training and a letter of reprimand. Accordingly, as petitioner was provided with information about the investigation in advance of the Board hearing, the Commissioner finds that the Board met the requirements of *N.J.S.A. 18A:37-15b(6)(d)*.

The ALJ relied upon *Young-Edri, supra*, in which, among other procedural violations, the petitioner was not provided with a written summary of the HIB investigation. The written letter of reprimand that Young-Edri received only informed her that she was a perpetrator in an HIB case, but did not recount any of the factual basis for that determination. *Id.* Additionally, in another matter, the Appellate Division issued an unpublished decision remanding an HIB matter for a new Board hearing and ordered the disclosure of the full HIB record, including the underlying investigative report and any reports or summaries. *J.L., on behalf of minor child, A.L. v. Board of Education of the Bridgewater-Raritan Regional School District, Somerset County, A-2022-16T1* (App Div. Oct. 16, 2018).

Those cases are easily distinguishable from this matter. Contrary to *Young Edri*, petitioner did receive a written summary of the investigation; the letter of reprimand petitioner received explained the specific allegation against her. Additionally, the distinguishing factor in *J.L.* is that the accused child's parents were not informed about the HIB investigation until after the Board voted. Here, petitioner was aware of the HIB investigation: she participated in two meetings regarding the allegations, received two written communications, responded to the letter of reprimand acknowledging that she "did not realize that the student might have taken the comment to mean anything other than a motivating comment to get them to the board quicker," and she was represented by an attorney at the Board hearing. Petitioner was aware of the investigation and its findings, had the opportunity to be heard, and availed herself of her procedural due process rights.

The Commissioner agrees with the ALJ, however, that petitioner was not entitled to a trial-type adversarial hearing with the opportunity to cross-examine witnesses. The Act requires that a hearing be conducted in executive session and that the Board "*may* hear from the

school anti-bullying specialist about the incident, recommendations for discipline, or services, and any programs instituted to reduce such incidents.” *N.J.S.A.* 18A:37-15b(6)(d) (emphasis added). Here, petitioner had the opportunity to present her own witnesses and evidence to refute the findings against her. As such, despite petitioner’s arguments to the contrary, the Commissioner cannot find a procedural violation of *N.J.S.A.* 18A:37-15b(6)(d) that would require a new Board hearing.

Second, *N.J.S.A.* 18A:37-15b(6)(c) provides:

[T]he results of each investigation shall 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[.]

Here, following the completion of the HIB investigation, the Superintendent submitted a notice to the Board describing the allegations and the HIB determination. While the written notice does not appear to reference the discipline imposed, the statute does not specify the manner in which the Board must be informed. As it was not addressed by the parties in the briefing or certifications, it is unclear from the record what happened verbally at the Board meeting and whether the discipline imposed on petitioner was reported to the Board. As such, the Commissioner cannot find a procedural violation of *N.J.S.A.* 18A:37-15b(6)(c).

Finally, *N.J.S.A.* 18A:37-15b(6)(e) requires:

[A]t the next board of education meeting following its receipt of the report, the board shall issue a decision, in writing, to affirm, reject, or modify the superintendent’s decision. The 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[.]

Following the Board's vote to sustain the HIB determination on February 10, 2020, the Superintendent advised petitioner by letter the following day that "the Board upheld your incident of January 14, 2020." The Commissioner disagrees with the ALJ that the statute prohibits the Superintendent from communicating the Board's decision. Additionally, the statute does not require a detailed decision. The statute simply requires that the Board "affirm, reject, or modify the superintendent's decision." *N.J.S.A. 18A:37-15b(6)(e)*. As such, there is no evidence that the Board failed to comply with the requirements of *N.J.S.A. 18A:37-15b(6)(e)*

As the Commissioner has not found procedural deficiencies with the conduct of the Board's HIB investigation, a remand to the Board for a new hearing is inappropriate. Petitioner will have the opportunity to challenge whether the Board's finding of HIB was arbitrary, capricious or unreasonable as this matter proceeds at the OAL. Additionally, the Board is not required to remove the letter of reprimand from petitioner's personnel file at this time.¹

Accordingly, the Initial Decision is rejected, and this matter is remanded to the OAL for a determination on the merits.

IT IS SO ORDERED.²


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 18, 2021
Date of Mailing: May 18, 2021

¹ The Commissioner declines to address the Board's argument that the reprimand was not issued as an outcome of the HIB investigation, but rather as discipline subject to a challenge through the locally negotiated grievance process, as it is not necessary for this decision.

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 05070-20

AGENCY DKT. NO. 102-5/20

MELANIE SOHL,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWN
OF BOONTON, MORRIS COUNTY,**

Respondent.

Joshua M. Forsman, Esq., for petitioner (Caruso Smith Picini, attorneys)

James L. Plosia Jr., Esq., for respondent (Plosia Cohen, attorneys)

Record Closed: February 3, 2021

Decided: February 24, 2021

BEFORE **SARAH H. SURGENT, ALJ:**

STATEMENT OF THE CASE

Petitioner Melanie Sohl (Sohl), a tenured teacher employed by respondent, the Board of Education of the Township of Boonton, Morris County (Board), appeals from its determination that she committed an alleged hate, intimidation, bullying (HIB) act against

an overweight student by referencing a “cupcake” as he walked toward the classroom chalkboard, along with making other “food comments” in his study hall. Sohl maintains her innocence and contends that the Board failed to comply with the due process requirements of the Anti-Bullying Bill of Rights Act (ABRA), N.J.S.A. 18A:37-13, et seq., and that its determination must therefore be reversed with prejudice. Sohl also maintains that in the alternative, if the matter is remanded, the Board must be ordered to comply with the ABRA at a subsequent Board hearing. The Board maintains that it did not violate Sohl’s ABRA due process rights and that Sohl’s motion for summary decision should be denied.

PROCEDURAL HISTORY

Sohl’s petition of appeal with exhibits was filed by Crystal A. Alonso, Esq., (Alonso) of Caruso Smith Picini, P.C., with the Commissioner of Education (Commissioner) on or about April 30, 2020. (P-1). The Board’s answer was filed with the Commissioner on or about May 19, 2020. (R-1). The matter was transmitted to the Office of Administrative Law (OAL) on May 20, 2020, where it was filed on June 2, 2020, to be heard as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. (C-1).

On a July 23, 2020 telephone conference, the parties indicated they would be cross-moving for summary decision, a briefing schedule was set, and Alonso represented that Sohl did not deny referencing a “cupcake,” but asserted there were due process issues regarding discovery and the Board’s February 10, 2020 hearing. The parties were directed to submit a joint exhibit list and joint stipulation of facts by August 14, 2020. On August 14, 2020, the Board sent a letter requesting a telephone conference and indicating that Alonso responded on August 13, 2020 via email to the Board’s proposed joint submissions stating “I cannot agree to a Joint Exhibit List at this time as there are documents on your proposed list that have never been provided to me.” (R-2). The Board indicated that Alonso failed to address its proposed joint statement of facts and the Board requested that the matter be set down for a plenary hearing.

On August 19, 2020, Alonso filed a motion for summary decision with supporting exhibits and certifications by Alonso and Sohl, pursuant to N.J.A.C. 1:1-12.5, denying Sohl's alleged HIB conduct and asserting due process issues. (P-2). The Board's opposition brief was filed on August 28, 2020, (R-3), along with a supporting certification by Judy Sorochnykyj, the District's anti-bullying coordinator (ABC), (R-4). The Board did not cross-move for summary decision, as there were no joint exhibits or stipulations to material facts.

Alonso filed Sohl's reply brief and exhibit on September 10, 2020. (P-3). On October 14, 2020, Joshua M. Forsman, Esq., (Forsman) represented Sohl on a telephone conference, and indicated that Alonso had left his law firm. Forsman indicated that the parties were trying to settle the case. On December 14, 2020, another telephone conference was held with the parties, who did not reach a settlement. Oral arguments on Sohl's motion were heard on January 13, 2021. On that date, the parties agreed that a genuine issue of material fact exists as to whether Sohl committed and/or admitted to the alleged HIB conduct, precluding summary decision on that issue. Thus, the issue of this summary decision is limited to whether Sohl received ABRA due process prior to and at the Board hearing.

The record was left open for ten days, so that the Board could forward the HIB investigation discovery it provided to Alonso on August 4, 2020, (R-7), fifteen days before Alonso filed Sohl's motion. The Board also volunteered to send letters exchanged between the Board and Alonso prior to the February 10, 2020 Board hearing, but Forsman wanted to pre-screen them, with an opportunity to object. Not having heard about the disposition of those letters, I held the record open and contacted the parties about their status on January 27, 2021.

A telephone conference was held on that issue on February 2, 2021. The Board had produced to Forsman all correspondence in its file related to this case, but conceded it was not sure why any of that correspondence was relevant to the due process issues

at hand. After hearing Forsman's objections to the relevance of the letters, the parties agreed that the Board would only submit to this forum a February 6, 2020 letter from the Superintendent to Alonso, and that Sohl would be estopped from arguing any due process issues about the letters Forsman urged to be excluded, should the matter be remanded to the Board. The February 6, 2020 letter was received from the Board on February 3, 2021, (R-5), and the record closed.

FACTUAL DISCUSSION AND FINDINGS

These salient facts are undisputed. I therefore **FIND**:

Sohl is a tenured mathematics teacher who has been employed by the Board for eleven years. Aside from the subject of this decision, there is no evidence that she has any prior disciplinary history as a teacher for the District. She was Boonton High School student G.T.'s mathematics teacher during the 2019–2020 school year and also supervised G.T.'s study hall. G.T. was at that time an overweight adolescent in the ninth grade.

On January 15, 2020, G.T. spoke with Jason Klebez, the school Principal (Principal), and alleged that on January 14, 2020, as he was walking to the chalkboard to do a math problem, Sohl said, in front of the entire class, "I bet if there was a cupcake up here you'd move a lot faster." G.T. reported that he was upset and embarrassed by the alleged comment. On January 16, 2020, the District's ABC interviewed G.T. about the alleged incident, with the Principal in attendance. G.T. confirmed the "cupcake" comment he had reported to the Principal, and further alleged that on several occasions in study hall, Sohl had made other food-related comments, such as "what are you doing over here; there's no food here." G.T. reported that he was embarrassed and humiliated by such comments, particularly because they were heard by other students, and he believed they disparaged his "physique."

On January 16, 2020, the Principal held a meeting with Sohl, the District's ABC, and Bob Davis, the Boonton Education Association President. The Principal questioned Sohl about the alleged "cupcake" comment. The parties now disagree as to whether during that interview Sohl "recalled" making that specific comment or any other alleged comments about food to G.T., and whether or not she volunteered that she had made other "food" comments to G.T. during study hall. At the conclusion of the meeting, the Principal advised Sohl that she would be contacted by the ABC for further investigation of the alleged HIB violation.

On January 16, 2020, the Board's attorney received a letter from Alonso stating that "[g]iven the nature of the underlying allegations, Ms. Sohl is more than willing to cooperate with the District by participating in an interview." (R-4 Ex. A). On January 27, 2020, Sohl was interviewed by the ABC, with Alonso, the Board's attorney, and the Principal in attendance. The parties now disagree as to whether during that interview Sohl admitted, denied, or did not recall making the alleged comments.

By letter dated January 28, 2020, Robert Presuto, the Boonton Superintendent of Schools (Superintendent) advised Sohl:

In accordance with the provisions of the New Jersey Anti-Bullying Bill of Rights Act and the Boonton Board of Education Policy #5512, parents or guardians of the student who are parties of a HIB investigation shall receive information about the outcome of the investigation.

You were reported to have committed an act of . . . (HIB) on January 14, 2020. The complaint was investigated by our staff and determined to be a **Confirmed Incident** of HIB. At its February 10th meeting, the Boonton Board of Education will vote on the results of the investigation.

All acts of HIB are taken very seriously and we have taken every measure to ensure that the situation was addressed appropriately, which had included but not limited to [sic] the following:

Remedial Measures – Sensitivity Training
Consequence – Letter of Reprimand

We continue to be committed to providing a safe and productive educational environment.

If you acknowledge the result, no further action is necessary. If you are not in agreement with this result, you may request and receive a hearing with the Board of Education. This request must be received in writing within 45 days of this notice. This hearing shall be held within ten days of the request.

Please do not hesitate to contact my office with any questions or concerns you may have regarding this matter.

[(P-2 Ex. A) (bold and emphasis in original).]

By letter dated February 4, 2020, the Principal advised Sohl:

This letter confirms and memorializes our conversation on January 16, 2020 regarding the concern of inappropriate comments towards a student.

During our meeting, you admitted saying, “If there was a cupcake up there, you would move faster” to a student who was slowly making their way towards the front of the room to participate in answering a question. You had also mentioned that “food comments” were made, by yourself, to the same student during the study hall that you supervise. Regardless of rapport with a student, comments of this nature are improper, unprofessional, and must not be repeated. As the adult in the classroom, you are expected to act professionally at all times.

I have reviewed your personnel file and determined what disciplinary consequences are warranted. After much consideration I have decided that a positive approach to discipline would be beneficial for you and your classroom environment. The attached improvement plan must be completed by Friday, February 21, 2020.

Please review and sign this letter prior to February 5, 2020. You may choose to provide a written explanation of your behavior, and I would be happy to attach it to this letter. If you

refuse or fail to sign the copy of this letter by February 5, 2020, the letter will still be placed in your personnel file.

I, Melanie Sohl have met with administration and had an opportunity to review this reprimand. I have received a copy and have been given the opportunity to provide a written response.

[(P-2 Ex. C).]

The Superintendent was copied on that letter, which was signed by the Principal and Sohl, who wrote under her signature, "IN RECEIPT ONLY." By letter dated February 4, 2020, Sohl wrote and signed a lengthy written response stating, in relevant part, that during the January 16, 2020 meeting,

I did not recall the exact wording of such made comment, I did however confirm there was a reference to food made to serve as a motivating factor.

I proceeded to explain my relationship with the student and that I did not realize that the student might have taken the comment to mean anything other than a motivating comment to get them to the board quicker.

.....

I had asked the Principal if I was allowed to apologize to the student as my words were never intended to be hurtful in anyway [sic].

[(P-2 Ex. C).]

By letter also dated February 4, 2020, Alonso wrote to the Board's attorney, confirming that she had received the Superintendent's January 28, 2020 letter to Sohl, and requesting that a Board hearing be scheduled "at your earliest convenience," so that Sohl could "present her appeal." (P-2 Ex. D). Sohl and Alonso appeared before the Board in an executive session on February 10, 2020.

Sohl now alleges that prior to and during the Board hearing,

[n]o evidentiary materials or discovery from the investigation were ever provided to me. I never received witness statements. I never received a findings report from the HIB investigator. At the “hearing,” no evidence was presented against me by neither [sic] the Board nor [sic] Superintendent. The Superintendent was present at the “hearing” and remained silent throughout. My attorney and I were permitted to make brief statements to the Board.

[(P-2 Sohl Certif. ¶¶ 13-14).]

By letter dated February 11, 2020, the Superintendent advised Sohl that at the February 10, 2020 Board meeting, “the Board upheld your incident of January 14, 2020. The incident will remain confirmed.” (R-6). That was the entirety of the communique.

The HIB file discovery which the Board provided to Ms. Alonso on August 4, 2020 and to this Tribunal on January 13, 2021 includes Sohl’s February 4, 2020 above-described response letter to the Principal’s February 4, 2020 letter, and a three-page “Harassment, Intimidation, & Bullying Incident Report Form” dated January 15, 2020, which contains no new information. (R-7). However, it also includes an undated, unsigned two-page summary of G.T.’s January 16, 2020 interview and Sohl’s January 27, 2020 interview, along with a conclusion that the alleged incident was “a confirmed HIB.” (R-7).

The summary of G.T.’s interview contains information that was not conveyed to Sohl by the Principal’s February 4, 2020 letter, including that some of G.T.’s peers laughed at the alleged “cupcake” comment, while others told G.T., “[t]his is messed up.” (R-7). It also states that G.T.’s friend, whose name was redacted, encouraged G.T. to report the incident to a Mrs. Soni (Soni), which G.T. did, that Soni referred it to a Mr. Nash, and that G.T. also reported the incident to his mother. (R-7). It describes G.T.’s feelings in much greater detail, including that he felt Sohl frequently belittled him, made him “look dumb,” and that he wanted to switch to another math class to get away from Sohl. (R-7).

The Board's August 4, 2020 discovery production also includes a one-page Investigation Report Form, an Investigation Flowchart and Timelines, and an unsigned document entitled "BHS HIB #7 Confirmed # 036854," which summarizes the investigation and findings. (R-7). "Exec 1/27/20" and "Affirm 2/10/20" are handwritten on that document, which corresponds with the Board's January 27, 2020 meeting at which the Superintendent was to present a summary of the allegations and factual findings, and Sohl's February 10, 2020 hearing before the Board. (R-7).

The Parties' Written and Oral Arguments

By way of Alonso's moving and reply briefs, Sohl argues that the Board violated her due process rights under N.J.S.A. 18A:37-15b(6)(d) because "she never received crucial information about the HIB investigation, including, but not limited to, the evidence gathered during the course of the investigation," and because "[d]uring the hearing, the Board failed to produce any evidence in support of [the Superintendent's] determination that Ms. Sohl was guilty of violating the [ABRA]." She complains that the Superintendent did not testify or speak at the hearing, and that she had no opportunity "to face her accuser, cross-examine witnesses or challenge whatever evidence was gathered during the HIB investigation," because "[n]o one testified to their alleged statements and accusations at the 'hearing.'"

Sohl argues that those alleged violations of her due process rights "severely prejudiced her ability to defend against the [HIB] allegation." She relies upon an unpublished Appellate Division decision, J.L. v. Bd. of Educ., No. A-2022-16T1 (App. Div. Oct. 16, 2018), <https://njlaw.rutgers.edu/collections/courts/appellate/a2022-16.opn.html>, (C-2), and Young-Edri v. Bd. of Educ. of City of Elizabeth, 2019 N.J. AGEN LEXIS 403 (May 30, 2019), adopted Comm'r, 2019 N.J. AGEN LEXIS 845 (July 8, 2019), (P-3 Ex. A), for the proposition that she was denied due process because she did not receive the entire HIB investigation file and a "full and proper hearing" before the Board.

At oral arguments on Sohl's motion, the parties agreed that the HIB investigation file was not provided to Sohl prior to the Board hearing, that it was provided to Alonso on August 4, 2020,¹ fifteen days prior to Alonso's filing of Sohl's motion, and that there are no other documented witness statements aside from G.T.'s and Sohl's.

Forsman maintained that all HIB discovery was required to be provided under the ABRA prior to the hearing, whether or not Alonso requested it. However, he conceded that Alonso was an experienced attorney at the time of the Board hearing, that she did not request any discovery prior to the hearing, and that he did not know why she proceeded to the hearing without it, because Sohl's law firm was well aware of N.J.S.A. 18A:37-15. Forsman asserted that although there were no other witness statements, full discovery may have improved Sohl's defense by triggering further investigation and potential interviews with other students who may have witnessed the alleged incident.

The Board's opposition brief asserts that Sohl's due process rights were not violated, as she "was fully apprised of the nature of the allegations against her," and "she acknowledged making the offending statements to the student." The Board relies upon L.K. v. Mansfield Twp. Bd. of Educ., 2019 N.J. AGEN LEXIS 62 (Jan. 16, 2019), rejected on other grounds Comm'r, 2019 N.J. AGEN LEXIS 345 (April 22, 2019), for the proposition that the Board was not required to produce testimonial evidence at the hearing. It also relies upon DeFalco v. Hamilton Twp. Bd. of Educ., 2019 N.J. AGEN LEXIS 515 (June 25, 2019), adopted Comm'r, 2019 N.J. AGEN LEXIS 732 (July 26, 2019), for the proposition that the ABRA does not mandate a judicialized discovery and trial process, and merely requires that an accused staff member be apprised of the alleged HIB charge, the evidence upon which it is based, and the opportunity to present evidence, witness testimony, and oral arguments to the Board.

¹ On January 28, 2021, I inquired about what appeared to be missing pages 2-3 of the Board's Investigation Report Form, which was supplied by the Board to Alonso on August 4, 2020. (R-7). On February 4, 2021, the Board responded by supplying a three-page SSDS Incident Report Form, (R-8), which was not previously produced to this Forum or, according to Forsman, Alonso. The Board has not produced any additional pages of its Investigation Report Form, which contains the redacted names of two witnesses.

At the OAL oral arguments, the Board maintained that it was not required to produce HIB discovery sua sponte, and that Sohl had adequate notice of the charge against her, as outlined in the Principal's February 4, 2020 letter to Sohl. The Board accused Sohl's law firm of "playing a gotcha game," in essence, by inviting the alleged due process error. The Board argued that N.J.S.A. 18A:37-15(d) contemplates, at most, that only Loudermill² due process was arguably required – that is, notice of the allegations and an opportunity to be heard, because no property rights were lost – Sohl was merely reprimanded, not suspended or dismissed.

The Board explained that there were no other witness statements because G.T.'s allegation was investigated by interviewing Sohl first, and she allegedly admitted to the allegation, obviating the need to cause further disruption by interviewing other potential witnesses. For the same reason, the Board felt no need to call witnesses for what it believed to be an undisputed statement, and reiterated that it was not obliged to present witnesses in any event. The Board represented that it did not believe the HIB investigative report was provided to the Board prior to the hearing, and that the District's procedure is to provide that report to the Superintendent, who then renders a decision which is conveyed to the parent, teacher, and the Board before the hearing.

LEGAL ANALYSIS AND CONCLUSIONS

Summary Decision Standard

A summary decision "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). That rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules. See R. 4:46-2; Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954).

² Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985).

In Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

“[A] determination whether there exists a ‘genuine issue’ of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. The ‘judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”

[Id. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986)).]

In evaluating the merits of the motion, “[a]ll inferences of doubt are drawn against the movant and in favor of the opponent of the motion.” Judson, 17 N.J. at 75. “When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” N.J.A.C. 1:1-12.5(b). “If the opposing party offers no affidavits or matter in opposition, or only facts which are immaterial or of an insubstantial nature, a mere scintilla, fanciful, frivolous, gauzy or merely suspicious, he/[she] will not be heard to complain if the court grants summary judgment.” Judson, 17 N.J. at 75 (internal quotation marks and citations omitted). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 252.

Having reviewed the parties’ submissions and heard their oral arguments, I **CONCLUDE** that no genuine issues of material fact exist which require an evidentiary hearing, and that this matter is therefore ripe for summary decision as to the alleged due process issues.

ABRA Due Process Requirements

The purpose of the ABRA is to promote “a safe and civil environment in school” by preventing “conduct that disrupts both a student's ability to learn and a school’s ability to educate its students in a safe environment.” N.J.S.A. 18A:37-13. It was promulgated “to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of [HIB] of students that occur in school and off school premises.” N.J.S.A. 18A:37-13.1f. It requires all school districts to adopt policies “prohibiting harassment, intimidation or bullying,” N.J.S.A. 18A:37-15a, and procedures for reporting and investigating complaints of HIB, N.J.S.A. 18A:37-15b(5)-b(6).

[A] procedure for prompt investigation of reports of violations and complaints . . . shall at a minimum provide that:

(a) 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. The principal may appoint additional personnel who are not school anti-bullying specialists to assist in the investigation. The investigation shall be completed as soon as possible, but not later than 10 school days from the date of the written report of the incident of harassment, intimidation, or bullying. In the event that there is information relative to the investigation that is anticipated but not yet received by the end of the 10-day period, the school anti-bullying specialist may amend the original report of the results of the investigation to reflect the information;

(b) the results of the investigation shall be reported to the superintendent of schools within two school days of the completion of the investigation, and in accordance with regulations promulgated by the State Board of Education pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), the superintendent may decide to provide intervention services, establish training programs to reduce harassment, intimidation, or bullying and enhance school climate, impose discipline, order counseling as a result of the findings of the investigation, or take or recommend other appropriate action;

(c) the results of each investigation shall 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;

(d) parents or guardians of the students who are parties to the investigation shall be entitled to receive information about the investigation, in accordance with federal and State law and regulation, including the nature of the investigation, whether the district found evidence of harassment, intimidation, or bullying, or whether discipline was imposed or services provided to address the incident of harassment, intimidation, or bullying. This information shall be provided in writing within 5 school days after the results of the investigation are reported to the board. A parent or guardian may request a hearing before the board after receiving the information, and the hearing shall be held within 10 days of the request. The board shall meet in executive session for the hearing to protect the confidentiality of the students. At the hearing the board may hear from the school anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents;

(e) at the next board of education meeting following its receipt of the report, the board shall issue a decision, in writing, to affirm, reject, or modify the superintendent's decision. The 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.

[(N.J.S.A. 18A:37-15b(6)(a)-(e)) (emphasis added).]

N.J.A.C. 6A:16-7.7 provides further instruction to aid school districts in complying with statutory HIB requirements. The due process protections embodied in the law have equal applicability where, as here, a teacher is a target of a HIB investigation. Young-Edri, 2019 N.J. AGEN LEXIS 403 at 6; Gibble v. Bd. of Educ. of Hunterdon Cent. Reg'l Sch. Dist., 2016 N.J. AGEN LEXIS 1108 at 8 (July13, 2016).

The parties disagree about the import of N.J.S.A. 18A:37-15b(6)(d), with respect to what discovery must be provided to a HIB investigation target prior to a board hearing. That provision has been interpreted in two relatively recent decisions. In Young-Edri, which was adopted by the Commissioner, a teacher accused of HIB conduct against a student was not provided with the district AB[C]'s written report about the investigation, which included information the teacher was unaware of, and was not conveyed in the principal's subsequent letter of reprimand. Young-Edri, 2019 N.J. AGEN LEXIS 403 at 3. There was no evidence that the ABC's findings were shared with either the superintendent or the board, or that any investigatory materials were shared with Young-Edri prior to her OAL appeal of the board's determination that she had bullied the student. Ibid. The superintendent did not render a decision about the bullying allegations and investigation, even though the board was required to issue a written decision affirming, rejecting, or modifying the superintendent's decision. Id. at 6.

Persuaded by those facts and a similar fact pattern in J.L., No. A-2022-16T1, the ALJ concluded that the board had violated Young-Edri's due process rights embodied in N.J.S.A. 18A:37-15b(6)(d)-(e), and remanded the matter to the board, ordering the board to have the superintendent review the ABC's determination, ordering that the results of the ABC's investigation be shared with the board, ordering that Young-Edri be supplied with the investigatory file, including witness statements and the ABC's written report, and ordering that Young-Edri be permitted to present witnesses and documentary evidence to the board at a subsequent hearing. Young-Edri, 2019 N.J. AGEN LEXIS 403 at 6-8.

In this case, a written summary of the ABC's investigation was not provided to Sohl until almost six months after the Board hearing, and that investigation report contains information which was not conveyed in the Superintendent's January 28, 2020 letter or the Principal's February 4, 2020 letter to Sohl, including the extent of G.T.'s statements, how the alleged incident was initially reported to the Principal, by whom, and the names and roles of other individuals involved in the process and potential student witnesses who are alleged to have laughed at or frowned upon the alleged "cupcake" comment. (R-7). Moreover, contrary to N.J.S.A. 18A:37-15b(6)(e), the Superintendent's February 11, 2020

letter simply notified Sohl that “the Board upheld your incident,” (R-6), when the Board itself should have issued a written decision detailing with specificity the conduct it determined to be HIB, based upon the Superintendent’s January 28, 2020 letter, which does not describe the alleged conduct at all, (P-2 Ex. A). See Young-Edri, 2019 N.J. AGEN LEXIS 403 at 3-4 (finding that Board’s letter notifying teacher that it upheld a HIB determination “did not detail with specificity the conduct or incidents that were perceived to have risen to a violation of law”).

Under these circumstances, I **CONCLUDE** that Sohl’s ABRA due process rights were violated with respect to the mandates of N.J.S.A. 18A:37-15b(6), that this matter should be remanded to the Board, and that Sohl should be given an opportunity to review the ABC investigatory report and any and all available statements and other documentary evidence within five school days after the results of the investigation are reported to the Board. N.J.S.A. 18A:37-15b(6)(d). I further **CONCLUDE** that what appears to be the Superintendent’s written summary to the Board, entitled “BHS HIB #7 Confirmed,” (R-7), does not adequately inform the Board of the discipline imposed or the contents of the HIB investigation report, and that the written investigation report “along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent” is required to be provided to the Board pursuant to N.J.S.A. 18A:37-15b(6)(c).

As to procedure at the Board hearing, I **CONCLUDE** there was no due process violation with respect to an opportunity to confront and cross-examine G.T. or any other witness. The ABRA does not require a full adversarial hearing, and only requires that it be conducted in executive session and that “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.” N.J.S.A. 18A:37-15b(6)(d) (emphasis added); Young-Edri, 2019 N.J. AGEN LEXIS 403 at 7-8. Thus, the ABC’s testimony is not required by the ABRA, nor is the Superintendent’s. The purpose of the Board hearing is to allow Sohl the opportunity to present her own witnesses, evidence, and arguments in her defense against the charge and the discipline imposed. The Board need not

present testimony by the accuser or any other witness, and Sohl would have no right to confront or cross-examine such witnesses in any event. DeFalco, 2019 N.J. AGEN LEXIS 515 at 7-8, 11-12, 26-27; L.K., 2019 N.J. AGEN LEXIS 62 at 59.

Should Sohl receive an unfavorable result after the Board hears this matter on remand, she will then have an opportunity for a full adversarial hearing if she wishes to appeal from the Board's determination to the Commissioner. Young-Edri, 2019 N.J. AGEN LEXIS 403 at 7 n.1.

ORDER

Based on the foregoing, it is **ORDERED** that Sohl's motion for summary decision is hereby **GRANTED**, and this matter is **REMANDED** to the Board to afford Sohl a HIB hearing in keeping with her due process rights under N.J.S.A. 18A:37-15. This requires that the February 4, 2020 letter of reprimand be removed from Sohl's personnel file, that the Superintendent comply with the mandates of N.J.S.A. 18A:37-15b(6)(c), that the Board provide Sohl with the investigatory file, including all witness statements, the ABC report, and all other documentary evidence, in keeping with N.J.S.A. 18A:37-15b(6)(d) and J.L., No. A-2022-16T1, that Sohl be permitted to present witnesses and evidence at the hearing, and that the Board, not the Superintendent, issue a detailed written decision after the hearing, in keeping with N.J.S.A. 18A:37-15b(6)(e) and Young-Edri, 2019 N.J. AGEN LEXIS 403 at 3-4.

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.

February 24, 2021

DATE



SARAH H. SURGENT, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

APPENDIX

EXHIBITS

For the Judge:

- C-1 EDU 05070-20 May 20, 2020 Transmittal from Department of Education Office of Controversies and Disputes
- C-2 J.L. v. Bd. of Educ., No. A-2022-16T1 (App. Div. Oct. 16, 2018), <https://njlaw.rutgers.edu/collections/courts/appellate/a2022-16.opn.html>

For Petitioner:

- P-1 Petitioner's Petition of Appeal and Exhibits A-D dated April 30, 2020
- P-2 Petitioner's motion brief, Exhibits A-D, and certifications of Alonso and Sohl dated August 14, 2020
- P-3 Petitioner's reply brief and Exhibit A dated September 4, 2020

For Respondent:

- R-1 Respondent's Answer to Petition of Appeal dated May 19, 2020
- R-2 Respondent's letter to this Tribunal dated August 14, 2020
- R-3 Respondent's opposition brief dated August 28, 2020
- R-4 Certification of Judy Sorochynskyj and Exhibit A in support of Respondent's opposition dated August 28, 2020
- R-5 Letter from Superintendent to Alonso dated February 6, 2020
- R-6 Letter from Superintendent to Sohl dated February 11, 2020
- R-7 Documents produced by Board to Alonso on August 4, 2020
- R-8 Email from Board dated February 4, 2020 with attached Student Safety Data System (SSDS) Incident Report Form dated January 27, 2020