

**New Jersey Commissioner of Education****Decision**

James Mosser,

Petitioner,

v.

Board of Education of the City of Union,  
Union County,

Respondent.

**Synopsis**

Petitioner, a tenured teacher in respondent Board's school district, challenged the determination of the Board that his conduct constituted harassment, intimidation, and bullying (HIB) pursuant to the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.* Further, petitioner asserted that the Board violated the due process requirements of the Act. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; on May 11, 2018, parents of a student initiated a formal HIB investigation of petitioner's conduct through the district's HIB coordinator; around the same time, petitioner was investigated in connection with a separate matter by the New Jersey Department of Children and Families, Division of Child Protection and Permanency (DCPP); shortly thereafter, petitioner was placed on administrative leave; the Board asserted that petitioner was placed on leave as a result of the referral to DCPP; while on leave, petitioner became the subject of a second HIB investigation by the Board involving more than a dozen students; and petitioner asserted that he never received any notice from the school district informing him of either investigation or the ultimate findings that HIB had occurred. The ALJ concluded that the Board did not follow the procedural requirements of the Act and failed to provide petitioner with due process because he was not provided with sufficient information concerning the HIB investigations as required by the Act. Accordingly, the ALJ granted the petitioner's motion for summary decision and ordered the Board's decisions regarding the HIB investigations reversed; further, the ALJ ordered that any disciplinary action imposed as a result of these investigations should be rescinded and petitioner may return to work.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ's determination that the Board did not comply with the Act in conducting its HIB investigations and determinations. Accordingly, the Commissioner remanded this matter to the Board for a HIB hearing in accordance with petitioner's due process rights under *N.J.S.A. 18A:37-15*. As the matter was remanded based on procedural deficiencies, the Commissioner reached no decision as to whether the petitioner committed an act of HIB. As such, the ALJ's findings recommending the reversal of the HIB determinations, the rescinding of any disciplinary action, and the directive that petitioner can be returned to work if his leave was due to the HIB allegations, were rejected.

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**

James Mosser,

Petitioner,

v.

Board of Education of the City of Union,  
Union County,

Respondent.

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

This matter concerns two harassment, intimidation, and bullying (HIB) complaints against petitioner, a tenured teacher employed by the Board, and whether he received the due process required by the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.* In May 2018, petitioner was informed that he was the subject of a HIB investigation. The Board’s Student Assistance Counselor, Jill Hall (Hall), conducted the HIB investigation, which was completed on May 25, 2018 and found that petitioner’s conduct constituted HIB. A second HIB complaint was filed against petitioner on May 30, 2018 by at least twelve students. Hall completed the second HIB investigation on June 12, 2018, with an addendum on June 14, 2018, and again found that petitioner’s conduct constituted HIB.

The Board alleges the Superintendent sent letters to petitioner regarding each of the HIB determinations on June 25 and August 2, 2018. The letters both stated that the Superintendent had reviewed the HIB reports and that he concurred with the findings of the investigations. The results of the investigations were reported to the Board in August 2018.<sup>1</sup> Petitioner claims that he was unaware of the second HIB investigation, was never informed about the allegations or outcome in either investigation, and that he never received the Superintendent's letters. Petitioner filed the within petition of appeal in April 2019. Subsequently, on June 11, 2019, the Board held a hearing regarding the HIB investigations with petitioner and his counsel; petitioner alleges this was the first he learned about the second HIB complaint and the first time that he heard a general summary of the allegations against him, although no specifics were provided during the hearing. Petitioner denied the allegations, but the Board affirmed the HIB findings.

The petition of appeal was transmitted to the OAL, and following cross motions for summary decision, the Administrative Law Judge (ALJ) found that the Board did not follow the procedural requirements of the Act and failed to provide petitioner with due process because he was not provided with sufficient information about the investigations, even in advance of the June 2019 Board hearing. The ALJ found that the Board's decisions concerning the investigations should be reversed, and any disciplinary action imposed as a result of the HIB

---

<sup>1</sup> It does not appear that the Board imposed a penalty on petitioner as a result of the HIB determinations. Petitioner was, however, placed on administrative leave in May 2018, which appears to be due to a referral by the Board for an investigation by the New Jersey Department of Children and Families, Division of Child Protection and Permanency (DCPP). DCPP issued letters to petitioner on October 31, 2018 and February 7, 2019, finding that the allegations were "Not Established." Copies of the letters were also sent to the Superintendent on the same dates. Nevertheless, petitioner has remained on administrative leave to the present. The Board's reasoning for keeping petitioner on administrative leave is unclear, including whether the HIB investigations – which were completed by August 2018 – were part of the Board's rationale.

investigations should be rescinded. The ALJ also found that petitioner should be permitted to return to work if the District kept him on leave status due to the HIB investigations.

In its exceptions, the Board argues that the ALJ failed to apply the arbitrary, capricious and unreasonable standard to its HIB determinations. As such, the Board maintains that the ALJ exceeded her authority in reversing those determinations, and any discipline imposed as a result of the HIB findings, without applying the correct standard of review. The Board also contends that the ALJ erred in weighing in on a personnel action – petitioner’s administrative leave – which is separate from the HIB investigations.<sup>2</sup>

The Board argues that the appropriate remedy to cure procedural errors would be to remand the matter to the Board for a new Board hearing, not the reversal of the HIB determinations. The Board points out that petitioner has now been provided with the unredacted HIB reports (although it maintains that it was not required to provide them initially under the Act), the unredacted notes regarding the interviews in connection with both HIB investigations, and a letter written by a student about petitioner’s conduct. The Board argues that in light of the extensive documentation provided, petitioner would be able to have a new and fair hearing before the Board despite the time that has passed. Accordingly, the Board urges the Commissioner to reject the Initial Decision and find that the Board was not arbitrary, capricious or unreasonable in its HIB determinations; in the alternative, if procedural issues need to be cured, the Board asks the Commissioner to remand this matter for an additional Board hearing.

---

<sup>2</sup> The Board also argues that the ALJ erred in her finding that the results of the DCPD investigations were “Not Established” because there were no certifications on that topic in the record. However, the Commissioner notes that copies of the letters from DCPD containing the results of their investigations were included in the record.

In reply, petitioner argues that the ALJ correctly reversed the HIB determinations and rescinded any disciplinary action as a result of the HIB investigations; petitioner's due process rights were not protected, so any discipline as a result was arbitrary, capricious or unreasonable. Petitioner contends that this matter should not be remanded for a new Board hearing at this juncture because it would reward the Board for its continued misfeasance. Petitioner points out that it has been more than three years since any of the allegations, so petitioner would be unable to have a fair hearing now as many of the students have graduated and the notes from the investigation were lacking in dates, times, or locations. Accordingly, petitioner urges the Commissioner to adopt the Initial Decision.

Upon review, the Commissioner finds that the Board did not comply with the Act in conducting its HIB investigations, and therefore, this matter should be remanded to the Board for a new Board hearing. *N.J.S.A. 18A:37-15b(6)(d)* provides:

[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. *Melanie Sohl v. Board of Education of the Town of Boonton, Morris County*, Commissioner's Decision No. 106-21, decided May 18, 2021; *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 Gible 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 not provided with "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", as required by the Act. Petitioner certainly did not receive it in writing within five school days after the results of the investigation were reported to the Board. The only evidence in the record of communications with petitioner regarding the HIB complaints were letters from the Superintendent dated June 25 and August 2, 2018. Those letters stated:

I have reviewed the report submitted regarding the alleged incident of harassment/bullying/intimidation (HIB) that involved your child.

I concur with the findings of the investigation conducted by the Anti-Bullying Specialist.

If you have any questions, please feel free to contact me at the number below.

While petitioner claims that he did not receive these letters, regardless of whether the letters were sent, they fail to meet the requirements of *N.J.S.A. 18A:37-15b(6)(d)*. The letters give no information as to the nature of the investigations. It is also unclear from the letters whether

HIB was found or not, or whether any discipline was being imposed. Thereafter, months later when petitioner's attorney sought further information as to the investigations, the Board attorney's email on February 28, 2019 simply indicated:

. . . pursuant to N.J.S.A. 18A:37-15b(6)(d), I can share with you that Mr. Mosser was investigated during the 2017-18 School Year for alleged verbal and physical behavior which touches upon the protected categories of sexual orientation, gender, and "other distinguishing characteristics." HIB Specialist Jill Hall found that the incidents investigated met the criteria for "Harassment, Intimidation or Bullying" pursuant to the statute.

This email does not shed any light on the nature of the investigation; it is still unclear what petitioner was accused of doing. Petitioner does not appear to have heard the allegations against him until he attended the June 2019 Board hearing. Accordingly, the Commissioner finds that the Board failed to meet the procedural requirements of the Act by not providing petitioner with information regarding the investigation.

The Commissioner finds that the appropriate remedy in this matter is a remand to the Board for a hearing.<sup>3</sup> See *Ruth Young-Edri v. Board of Education of the City of Elizabeth, Union County*, Commissioner's Decision No. 174-19, decided July 8, 2019 (directing the Board to conduct further proceedings after it failed to comply with the due process provisions of the Act); *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) (remanding the matter for a Board hearing after the petitioner was not informed about the HIB investigation until after the Board voted). Further, although the petitioner is now aware of the nature of the

---

<sup>3</sup> The Commissioner notes that while the Board hearing gives petitioner the opportunity to present evidence and arguments to refute the findings against him, it is not a trial-type adversarial hearing.

allegations against him and the Board's determination based on the proceedings at the OAL, it is still unclear whether discipline was imposed on the petitioner as a result of the HIB determination. As such, the Board must clearly inform petitioner as to any discipline that was imposed on him, as required by *N.J.S.A. 18A:37-15b(6)(d)*, prior to providing a new Board hearing.

It is important to recognize that this matter is being remanded to the Board based upon the procedural deficiencies, and therefore the Commissioner reaches no decision as to whether the petitioner committed an act of HIB. Since the merits of the HIB investigation have not been determined in these proceedings, the Commissioner disagrees with the ALJ's decision to reverse the HIB determinations, rescind any disciplinary action, and direct petitioner to return to work if the leave was due to the HIB allegations.

Accordingly, the Initial Decision is adopted in part, and rejected in part, as the final decision in this matter. The Board is directed to conduct further proceedings consistent with this decision and the Act.

IT IS SO ORDERED.<sup>4</sup>

  
ANGELINA ALLEN-McMILLAN, Ed. S.  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 2, 2021  
Date of Mailing: December 3, 2021

---

<sup>4</sup> 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 09011-19

AGENCY DKT. NO. 80-4/19

**JAMES MOSSER,**

Petitioner,

v.

**CITY OF UNION BOARD OF EDUCATION,**

**UNION COUNTY,**

Respondent.

---

**Paul W. Tyshchenko, Esq.,** for petitioner (Caruso Smith Picini, attorneys)

**Caitlin Pletcher, Esq.,** for respondent (Florio, Perrucci, Steinhardt, Cappelli,  
Tipton & Taylor, attorneys)

Record Closed: June 11, 2021

Decided: September 2, 2021

BEFORE **SUSANA E. GUERRERO, ALJ:**

**STATEMENT OF THE CASE**

Petitioner James Mosser, a teacher, challenges the determination by his employer, the Union Board of Education (respondent or Board), that his conduct constituted

Harassment, Intimidation and Bullying (HIB) pursuant to the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A: 37-13.1 to -32; and he asserts that the Board violated his due process rights.

### **PROCEDURAL HISTORY**

Petitioner filed a Petition of Appeal with the Commissioner of Education on or around April 25, 2019, and the Commissioner transmitted the matter to the Office of Administrative Law, where it was filed as a contested case on July 2, 2019. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

Telephone conferences with the undersigned were held in August 2019, during which hearing dates were scheduled for January 6, 17 and February 18, 2020. An Amended Petition for Relief was filed on or around September 2019.<sup>1</sup> Respondent filed a motion to dismiss the Petition in lieu of an Answer, which was denied on October 25, 2019.

Counsel for petitioner requested an adjournment of the January 6, 17 and February 18, 2020 hearing due to incomplete discovery. The hearing was rescheduled to October 14 and 19, 2020. In March 2020, respondent filed a motion challenging discovery demands; petitioner filed an opposition; and the Board filed a reply in April 2020. I issued Orders on May 26, 2020 and July 13, 2020 addressing the discovery issues.

The October 14 and 19, 2020 hearing dates were adjourned at the request of counsel for the Board, objecting to a Zoom hearing. On or around September 23, 2020, petitioner filed a motion for summary decision that was opposed by the Board. The petitioner's motion was subsequently amended on April 22, 2021, following a status conference and after the undersigned permitted both the petitioner and the Board an

---

<sup>1</sup> In the Amended Petition for Relief, petitioner requests that the Board be ordered to rescind or reverse any and all decisions made by the Board with respect to the HIB investigation(s); to rescind or reverse any disciplinary action, if any, the Board has taken against him pursuant to the HIB investigation; to destroy all records related to the Board's decision, if any, concerning the HIB allegation(s); to notify him of the nature of the HIB allegations against him, including what specific acts or infractions he was alleged to have committed; and any additional relief that may be deemed just and equitable.

opportunity to file the required Certifications in support of, and opposition to the motion for summary decision. Petitioner's motion included affidavits signed by Mosser and his counsel. On or around May 11, 2021, the Board opposed the petitioner's motion and filed a cross-motion for summary decision. The Board included certifications of Jill Hall and counsel. On May 28, 2021, the petitioner filed a reply to respondent's opposition, and opposition to the cross-motion for summary decision. The Board's reply to the petitioner's opposition was filed on or around June 11, 2021. The June 2021 hearing dates were adjourned in light of the pending motions for summary decision, and rescheduled to September 2, 2021 and September 3, 2021.<sup>2</sup>

### **FINDINGS OF FACT**

Based on the submissions presented, and the uncontroverted background facts, I **FIND** the following:

Petitioner is a tenured teacher who has been employed by the respondent School District for over thirteen years. Petitioner had no prior disciplinary history with the Board. At a meeting in May 2018 with District officials, petitioner was informed that he was the subject of a Harassment, Intimidation, and Bullying (HIB) investigation. At around that time, petitioner was placed on administrative leave by the District.

The Board asserts that petitioner was placed on leave as a result of a referral by the District for an investigation by the New Jersey Department of Children and Families, Division of Child Protection and Permanency (DCPP). (See Cert. of Nishali Rose, Esq. at ¶ 2.) Ultimately, DCPP determined that the allegations made against Mosser were "Not Established." Petitioner, however, has remained on administrative leave since May 2018 despite the DCPP's determination.

At all relevant times, Jill Hall (Hall) was the Board's Student Assistance Counselor who conducted the HIB investigations at issue here. With respect to the HIB investigation

---

<sup>2</sup> This decision is filed in accordance with Governor Philip Murphy's Executive Order 127 issued April 14, 2020, created by the COVID-19 emergency.

that Mosser was informed about in May 2018, Hall interviewed the complainant student, G.R., and her parents. G.R.'s parents reportedly claimed that G.R. was feeling targeted by petitioner and they requested a formal HIB investigation on May 11, 2018. There is no evidence that Hall interviewed Mosser as part of her investigation. Hall completed her investigation on May 25, 2018 and provided the Superintendent with a copy of HIB Investigation Report No. 16 for the 2017–2018 school year in which she determined that petitioner's actions constituted HIB. Mosser asserts that he never received any notice from the Superintendent, nor from any other Board administrator, informing him of the investigation, the ultimate findings, and that the Superintendent agreed with Hall's HIB findings. The Board did not present any Certification, from either the Superintendent or any other District employee with direct knowledge, asserting that a letter, or any other form of notice, was sent to Mosser informing him that Hall had concluded her investigation and that the Superintendent agreed with her findings/determination.<sup>3</sup>

While Mosser was on administrative leave, he became the subject of a second HIB investigation by the Board. This investigation involved more than a dozen students. The Board asserts that this second HIB investigation was initiated on May 30, 2018 at the direction of the High School Principal in response to statements made by certain students who had attended a cast party that petitioner also attended prior to being placed on leave. (Rose Cert. at ¶¶ 14-16.) As part of Hall's HIB investigation, she interviewed several students regarding the allegations, and prepared approximately thirty-two pages of notes. Hall did not interview Mosser as part of her investigation, nor did she notify him of the investigation.

The Board asserts that on June 12, 2018, and again via addendum dated June 14, 2018, Hall finalized HIB Investigation Report No. 17 for 2017–2018, which concerned allegations of twelve Board students and three other students regarding Mosser. (Rose

---

<sup>3</sup> Hall's Certification states: "In a letter to Mr. Mosser dated June 25, 2018, Mr. Tatum indicated that he agreed with the findings set forth in the HIB investigation report. A true and correct copy of the letter dated June 25, 2018 is attached hereto . . ." (Hall Cert. at ¶ 11.) Attached to the Certification is a letter dated June 25, 2018 directed to "the Parent/Guardian of James Mosser," with no address or proof of service. The Board did not present a Certification from the Superintendent or any other appropriate Board employee with knowledge asserting that a letter was sent to Mosser informing him of the Superintendent's concurrence or disagreement with the HIB report.

Cert. at ¶¶ 6.) Again, Hall found that the alleged behavior met the criteria for HIB and she provided the Superintendent with a copy of her report, HIB Investigation Report No. 17, on the day it was finalized.

The Superintendent agreed with Hall's findings in HIB Investigation Reports No. 16 and No. 17. In June 2018, the Superintendent notified the parents of these students that he had reviewed the report submitted regarding the alleged incident of HIB involving their child and that he concurred with the findings of the investigation. Mosser asserts that he was never informed of the investigation or of the Superintendent's decision concerning the HIB allegations. The Board did not present any Certification countering Mosser's assertion, and did not produce any Certification asserting that the District provided written notice to Petitioner regarding the second HIB report.<sup>4</sup> I **FIND** that the Board/District did not inform petitioner of the results of the two HIB investigations once the investigations were completed and the Superintendent reviewed and concurred with the HIB findings.

The Board held a meeting in August 2018 in which the HIB investigation, or investigations, concerning petitioner was addressed. Petitioner was never notified of the Board meeting. The Board asserts that a "hearing" did not occur at that time, and that no disciplinary action was taken, and no written decision was issued. There is no evidence that the Board took any action in August 2018 concerning the HIB investigations involving petitioner. About seven months after the August 2018 Board meeting, Board counsel informed petitioner in writing that he believed HIB findings "were only reported to the Board" at the meeting and that no determination had been made. I **FIND** that the Board did not provide petitioner with any information concerning the HIB investigations following the August 2018 meeting in which the HIB investigations and findings were reported to and addressed by the Board.

---

<sup>4</sup> Hall's Certification states: "In a letter to Mr. Mosser dated August 2, 2018, Mr. Tatum indicated that he agreed with the findings set forth in the HIB investigation report. A true and correct copy of the letter dated August 2, 2018 is attached hereto . . . ." This letter is dated August 2, 2018, appears to be electronically signed by the Superintendent, and is addressed to "the Parent/Guardian of James Mosser." It contains no address, and there is no proof of service. No Certification was provided by the Board asserting that the letter was actually sent to Mosser. When petitioner asserts in his reply brief that he never received any letter from the Superintendent, the Board in its sur-reply did not certify that it was ever sent to Mosser by the Superintendent or his office.

On or around October 23, 2018, petitioner's counsel sent the District an Open Public Records Act (OPRA) request, seeking "any, and all, HIB Reports concerning Mr. Mosser." In its response to this request, the District denied possessing any such reports. Petitioner filed a second OPRA request in December 2018, seeking the same information. This time, the Board informed the petitioner that there were two HIB reports, however, the Board denied petitioner access to the reports. I **FIND** that months after the HIB investigation reports were completed and the District determined that Mosser committed acts of HIB, and even after the results of the investigations were reported to the Board, the District wrongly denied the existence of the HIB reports, and later improperly refused to provide them to petitioner.

Petitioner then filed a Petition for Relief in April 2019, and the Board then agreed to hold a HIB hearing concerning the petitioner. This hearing took place on June 11, 2019, and the petitioner attended the hearing with counsel.

Petitioner asserts in his Certification that prior to the June 2019 Board hearing, he was not given any evidentiary materials concerning the HIB allegations. It is undisputed that the Board did not provide petitioner with a copy of the HIB reports prior to the June 2019 hearing, however, respondent's counsel states in her brief that "sufficient information regarding the HIB investigations and findings" were provided prior to the hearing. In support of this assertion, with respect to the first HIB investigation, respondent states that petitioner was "involved in discussions" regarding G.R.'s complaints and "his conduct toward her" at least four months prior to the filing of the HIB complaint; and that a staff member arranged for petitioner's interview as part of the investigation. I **FIND**, however, that there is no evidence that petitioner was ever interviewed as part of the first HIB investigation, nor that he was provided with any information about the investigation or the basis for the District's HIB determination prior to the June 2019 hearing. In regard to the second HIB investigation, respondent asserts that petitioner was aware of the DCPD findings, and that petitioner also received information by email from counsel for

respondent, prior to the June 2019 Board meeting.<sup>5</sup> I **FIND** that prior to the June 2019 Board hearing, petitioner was not provided with any information concerning the second HIB investigation other than what was contained in the February 28, 2019 email to petitioner's counsel, which does not identify who the complainants were, what the alleged incidents of HIB were, nor any information about the investigation other than the fact that Hall found HIB and that the alleged verbal and physical behavior touched upon certain protected categories.

Petitioner asserts that at the June 2019 hearing he learned for the first time that there were two separate HIB complaints made against him that were investigated by the District, and that there were more than a dozen alleged complainants. The complainants were not identified at the hearing; none of the witnesses to the alleged incidents were identified; and the District did not inform petitioner when the alleged incidents of HIB occurred. Hall was not present at the hearing. Her supervisor appeared in her place. The petitioner maintains that at the June 2019 hearing, he was only read a summary of the allegations against him, without any specific dates on which any of the alleged incidents occurred and without identifying any of the persons allegedly involved or even where the alleged incidents occurred. Petitioner categorically denied the allegations against him, and requested that the Board dismiss the HIB complaints, at least in part because the Board hearing was being held more than one year after it was required to do so by statute and its own HIB policy. The Board denied the request to dismiss, and at its June 18, 2019 Board meeting, the Board affirmed the HIB findings with respect to both investigations and issued a written decision. The Board informed the petitioner of its decision affirming the HIB findings.

---

<sup>5</sup> The February 28, 2019 email from respondent's counsel to petitioner's counsel simply states that petitioner "was investigated during the 2017-2018 School Year for alleged verbal and physical behavior which touches upon the protected categories of sexual orientation, gender, and 'other distinguishing characteristics' [and that] Hall found that the incidents investigated met the criteria for 'Harassment, Intimidation or Bullying' pursuant to statute." With regard to the DCPD findings that were reported to petitioner, the record is entirely unclear as to how those findings relate to the HIB complaints, and whether both matters even involve the same students and allegations.

### **LEGAL ANALYSIS AND CONCLUSION**

In his motion, petitioner asserts that he is entitled to summary decision, and that the Board's determination that he committed acts that constitute HIB should be reversed, because the Board violated his due process rights. Petitioner asserts that his due process rights were violated because: the Board failed to adhere to the applicable timelines for holding a HIB hearing, and exceeded that timeline by at least a year; the Board failed to produce meaningful evidence in support of the allegations at the hearing; the Board failed to provide petitioner an opportunity to confront his accusers and the individual who investigated the HIB allegations; and the Board refused to provide petitioner with any information about the HIB investigation, including the evidence gathered during the course of the investigation and the HIB investigation reports, prior to the June 2019 hearing. Petitioner also maintains that due process was denied when the Board failed to put him on notice of the specific accusations made against him, as well as the specific acts that led to the determination that he committed HIB.

Relying largely on the Certification of Hall, the Board asserts that petitioner's due process rights were not violated and that respondent fully complied with the requirements of the Anti-Bullying Bill of Rights Act. Respondent asserts that the Board fulfilled its obligation to provide petitioner with a hearing consistent with the statutory requirements, and that if the Court determines that there were procedural errors in the HIB process, the appropriate remedy is to remand the matter back to the Board for a hearing, not to grant summary decision or reverse the HIB determination. The respondent asserts that petitioner never requested a hearing before the Board prior to the filing of the Petition in April 2019, and that the Board was not legally required to inform petitioner of his right to a hearing. The respondent also asserts generally that it complied with the requirements of the Act, and the legal requirements for conducting a hearing and providing petitioner with information concerning the investigations, and that the Act does not require a trial-type adversarial proceeding, despite petitioner's assertion that he was denied a right to confront his accusers and investigator.

Pursuant to N.J.A.C. 1:1-12.5(b), 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." This rule is substantially similar to the summary judgment rule embodied in the N.J. Court Rules, R. 4:46-2. See Judson v. Peoples bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In connection therewith, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Id. at 75. In Brill v. Guardian Life Insurance Co., 142 N.J. 520, 540 (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."

[Citation omitted.]

Having reviewed the parties' submissions in support of, and opposition to, the Petitioner's motion for summary decision, I **CONCLUDE** that this matter is ripe for summary decision. The Board presented no facts that would call into question Mosser's claim that the Board failed to provide him with the due process required under the Anti-Bullying law, and more specifically that Mosser was not provided with sufficient information concerning the investigations even in anticipation of the June 2019 hearing, and the Board did not comply with the procedures outlined in the Act.

Moreover, having reviewed and considered the respondent's submission in support of its cross-motion for summary decision, and opposition thereto, I **CONCLUDE** that the facts underlying the Board's HIB determination are unclear and disputed, and that this precludes disposing of this matter by summary decision in the Board's favor. Petitioner has denied that he committed any acts that may constitute HIB, and the record is not clear whether petitioner's actions, whatever they were, even met the criteria for HIB

pursuant to the Act. There could be no proper determination as to whether there were acts of HIB committed here given the record at this time.

Districts are required by law to adopt policies that prohibit HIB; that outline expectations for student behavior; that set forth consequences for inappropriate behavior; and that create procedures for reporting HIB-related concerns. N.J.S.A. 18A:37-14; N.J.S.A. 18A:37-15. In regard to the investigation of bullying charges, the law requires as follows:

...

(b) the results of the investigation shall be reported to the superintendent of schools within two school days of the completion of the investigation . . . ;

(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 issuance of the board's decision . . .

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

The Commissioner of Education has recognized that the due-process protections contained in the Anti-Bullying Act have equal applicability when a bullying charge is directed against a staff member. See K.T. on behalf of K.H. & T.D. v. Deerfield Bd. of Educ., OAL Dkt. No. EDU 00489-13, Initial Decision (June 19, 2013), rev'd and remanded, Comm'r (July 30, 2013), <https://www.nj.gov/education/legal/> (where, in the context of a claim that a teacher bullied a kindergarten student, the Commissioner confirmed that the internal HIB investigation mandated by law is not discretionary); see also Gible v. Hunterdon Central Bd. of Educ., EDU 02767-15, Final Decision (July 13, 2016), <http://njlaw.rutgers.edu/collections/oal/>; Sandlock v. Cedar Grove Bd. of Educ., EDU 00619-14, Initial Decision (March 26, 2015), <http://njlaw.rutgers.edu/collections/oal/>, aff'd, Comm'r (June 23, 2015), <https://www.nj.gov/education/legal/>.

**I CONCLUDE** that the due-process protections contained in the Anti-Bullying Law were ignored by the Board. The Anti-bullying statute provides a timeline for the prompt investigation and disposition of HIB complaints. Here, Hall finalized the first HIB report on May 25, 2018 and the second on June 12, 2018, with an addendum on June 14, 2018. The results of the investigations were required to be reported to the Board by the next Board meeting, per N.J.S.A. 18A:37-15(c). While the results of the investigations were reported to the Board at its August 2018 Board meeting, the statute also requires that Mosser be provided with written information concerning the investigations within five school days following the Board meeting. That did not occur. Mosser received no information from the District/Board within five days after the August Board meeting, nor did he receive any written information prior. Had Mosser received information concerning the investigations and findings following the August Board meeting, he would have had an opportunity to request a hearing before the Board, which the Board would be required to hold within ten days, pursuant to N.J.S.A. 18A:37-15(d).

While respondent faults petitioner for not requesting a hearing sooner, Mosser could not have known to do so because he was provided with no information from the District/Board concerning the investigation and the findings. He was not made aware that the first HIB investigation had concluded, and he did not know that there was a second HIB investigation. Moreover, although the results of the investigations were reported to the Board at its August 2018 meeting, the Board did not issue a written decision affirming, rejecting, or modifying the Superintendent's decision concerning the HIB investigations, contrary to N.J.S.A. 18A:37-15(e). Had the Board issued a decision, the petitioner could have at least been put on notice of the allegations and findings against him at that time, and he could have appealed any Board decision in 2018, rather than in April 2019 once Mosser became aware through an OPRA request that there was a HIB finding against him.

The Board asserts that it fulfilled its legal obligation to provide petitioner with a hearing in June 2019, only after Mosser filed the Petition, and that it provided him with sufficient information concerning the investigations prior to that hearing. I disagree. While the Anti-Bullying Law does not require a full adversarial-type hearing, consisting of an opportunity to cross-examine every complainant and witness, it does require petitioner an opportunity to fully understand the evidence against him, including the identity of those complainants and specifically what the alleged acts of HIB were, and to present testimony and documents to the Board for its consideration.<sup>6</sup> What is required is a modicum of local due process required to guard against arbitrary, capricious, or ill-informed Board action. It is undisputed that the District refused to provide the petitioner with the HIB Investigation Reports prior to the June 2019 Board hearing. There is no evidence that the Board provided petitioner with any useful information concerning the allegations made against him. The Board refused to identify the complainants, did not inform Mosser when or where the alleged incident or incidents of HIB allegedly occurred, and did not provide any documentary evidence or available statements, prior to the 2019 Board hearing. How could the petitioner understand the evidence against him, and respond to those

---

<sup>6</sup> The opportunity for a full adversarial hearing is available when a HIB matter is appealed to the Commissioner of Education. In other contexts, law and regulations make it clear when an adversarial hearing is required at the board level. See, e.g., N.J.A.C. 6A:16-7.3(a)(10), which specifies that the right to cross-examination is available in a board-level appeal of a long-term student disciplinary suspension.

allegations, when he is provided no useful information concerning the investigation—not even the identity of the complainants—prior to the hearing? The June 2019 “hearing” was not the type of hearing contemplated in the Anti-Bullying statute. I **CONCLUDE** that because the Board so grossly failed to comply with the procedures contained in the Act, and failed to provide Mosser with information concerning the investigations that the statute requires, the Board’s decision(s) concerning the investigations should be rescinded or reversed, and any disciplinary action imposed as a result of the HIB investigations or findings should also be rescinded. Mosser has remained on administrative leave since May 2018, and while the reason for this remains unclear, he should be permitted to return to work if the District has kept him on leave status due to the HIB allegations.

**ORDER**

It is hereby **ORDERED** that the motion for summary decision filed by the petitioner James Mosser is **GRANTED**, and that the Board rescind its decision with regard to the two HIB investigations involving James Mosser, and rescind any disciplinary action, if any, taken against him as a result of the HIB allegations.

It is further **ORDERED** that the cross-motion for summary decision filed by the respondent is **DENIED**.

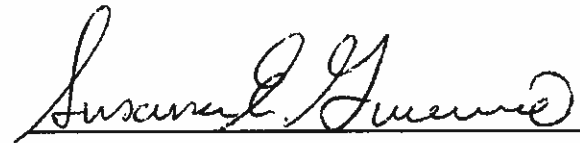
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.

September 2, 2021

DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency:

September 2, 2021

Date Mailed to Parties:

September 2, 2021

jb

**APPENDIX**

**EXHIBITS**

**For Petitioner:**

Brief and reply brief

**For Respondent:**

Brief and reply brief