

New Jersey Commissioner of Education

Final Decision

S.G., on behalf of B.H.,

Petitioner,

v.

Board of Education of the Township of Montville,
Morris County,

Respondent.

Synopsis

Pro se petitioner S.G. challenged the determination of the respondent, Board of Education of the Township of Montville (Board), regarding a Harassment, Intimidation and Bullying (HIB) complaint filed on behalf of her daughter, B.H., who had been a member of the Montville High School cheerleading team during the 2022-2023 school year. The petition expressed general complaints about supposed misconduct by other team members and their parents and made allegations that B.H. was excluded by team members during a trip to a cheer competition; further, the petition requested that the cheerleading coach be fired for allowing such behavior. The Board determined that petitioner’s allegations did not constitute HIB. As B.H. had turned eighteen and was no longer a minor when petitioner appealed the Board’s decision, the petition of appeal form included a signed statement from B.H. that she gave petitioner full authorization to represent her in this matter. The Board filed a motion to dismiss.

The ALJ found, *inter alia*, that: the handwritten note on the appeal form was not dated or notarized; the note was not sufficient to transfer B.H.’s rights to her mother; even if an adjournment had been permitted to allow B.H. to provide additional documentation regarding her authorization, the petition did not show that the cheerleading coach committed an act of HIB against B.H. as none of the allegations met the legal standards of the HIB statute; for a finding of HIB, the alleged behavior must reasonably be perceived as being motivated by an actual or perceived distinguishing characteristic, and must have substantially disrupted or interfered with the orderly operation of the school or the rights of students; further, one of the three criteria regarding the effect of the conduct, as enumerated in the Act, must also be satisfied. The ALJ concluded that the factual allegations in the petition were insufficient to support a claim upon which relief could be granted. Accordingly, the ALJ granted the Board’s motion to dismiss the petition.

Upon review, the Commissioner concurred with the ALJ that the petition must be dismissed. In so determining, the Commissioner found, *inter alia*, that in the absence of any distinguishing characteristic, any conduct by the coach did not meet the definition of HIB, and therefore the Board’s decision was not arbitrary, capricious, or unreasonable. Accordingly, Board’s motion to dismiss was granted. The petition was dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

85-24
OAL Dkt. No. 12591-23
Agency Dkt. No. 286-10/23

New Jersey Commissioner of Education
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S.G., on behalf of B.H.,

Petitioner,

v.

Board of Education of the Township of
Montville, Morris County,

Respondent.

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

Petitioner's daughter, B.H., was a member of the Montville Township High School cheerleading team when she was a senior during the 2022-2023 school year. In June of 2023, petitioner filed a harassment, intimidation, and bullying (HIB) complaint alleging – in addition to general complaints about alleged misconduct by other team members and their parents – that B.H. was excluded by team members during a trip to a competition and requesting that the cheerleading coach be fired for allowing such behavior. The Board determined that there was no act of HIB committed against B.H. When petitioner appealed, because B.H. was eighteen years old and no longer a minor, the petition of appeal form included a signed statement from B.H. that she gave petitioner full authorization to represent her in this matter.

Following the Board's motion to dismiss, the Administrative Law Judge concluded that the handwritten note on the petition was not sufficient to transfer B.H.'s rights to S.G. Additionally, the ALJ found that even if an adjournment had been permitted to allow B.H. to provide additional documentation regarding her authorization, the petition does not show that the cheerleading coach committed an act of HIB against B.H. The ALJ found that the petition did not allege that the coach's actions: would reasonably be perceived as being motivated by an actual or perceived distinguishing characteristic; substantially disrupted or interfered with the orderly operation of the school or the rights of students; had the effect of physically or emotionally harming a student or damaging the student's property; had the effect of insulting or demeaning any student or group of students; or created a hostile education environment.

In her exceptions, petitioner repeats the allegations in her petition that the coach engaged in abusive behavior or condoned such behavior committed by the parents of other cheerleading team members. Petitioner also indicates that B.H. is willing to provide a notarized statement authorizing petitioner to proceed with the case, and that B.H. wants to be heard.

In reply, the Board argues that the Initial Decision was correct and should be adopted.

Upon review, the Commissioner concurs with the ALJ that the petition must be dismissed. When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." *Kopera v. W. Orange Bd. of Educ.*, 60 N.J. Super. 288, 294 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration[,]" and the Commissioner will

not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep't. of Env'tl. Prot.*, 122 N.J. Super. 184, 199 (Ch. Div. 1973), *aff'd*, 131 N.J. Super. 37 (App. Div. 1974).

The Act defines HIB as follows:

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

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

N.J.S.A. 18A:37-14.

Therefore, a finding of HIB requires three elements. First, the conduct must be reasonably perceived as being motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic and, second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school.¹ The third condition requires that one of the three criteria enumerated in the Act, regarding the effect of the

¹ The conduct must also take place on school property, at a school-sponsored function, on a school bus, or off school grounds as provided for in *N.J.S.A. 18A:37-15.3*.

conduct, must also be satisfied. *Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex County*, Commissioner Decision No. 51-20 (decided February 4, 2020).

Petitioner does not identify any distinguishing characteristic of B.H. that she believes motivated, or could reasonably be perceived to have motivated, the cheerleading coach's actions. In the absence of any distinguishing characteristic, any conduct by the coach does not meet the definition of HIB, and therefore the Board's decision was not arbitrary, capricious, or unreasonable.²

Although the Commissioner concludes that dismissal is appropriate because petitioner has failed to demonstrate that an act of HIB occurred, in light of petitioner's exceptions, the Commissioner finds that clarification regarding the issue of standing is appropriate. Here, petitioner included a signed statement from B.H. on her petition of appeal, whereby B.H. authorized petitioner to represent her in this matter. This statement was sufficient for the Office of Controversies and Disputes to accept the petition for filing and to transmit the matter to the OAL. However, such a determination does not preclude the ALJ from finding that a petitioner lacks standing to pursue the matter further, as occurred here.

Additionally, the Commissioner notes that there are circumstances under which a parent may pursue a petition of appeal on behalf of an adult child even though the parent lacks standing to pursue the matter on their own behalf. For example, in *I.C.W., on behalf of minor child, J.W. v. Bd. of Educ. of the Borough of Mountain Lakes, Morris County*, Commissioner Decision No. 432-11 (decided Oct. 14, 2011), the petitioner, I.C.W., submitted a signed

² Additionally, to the extent that petitioner's allegations relate to a meeting that occurred in June 2022, any claims related to that incident are untimely pursuant to *N.J.A.C. 6A:3-1.3(i)*, which requires petitions to be filed no later than 90 days from the order, ruling, or other action that is the subject of the requested contested case hearing.

statement from his adult child, J.W., similar to the one at issue here. The ALJ afforded J.W. the option of filing a Certificate of Substitution or appearing before the ALJ to demonstrate that J.W. wished to have his parent proceed on his behalf. However, J.W. did not exercise either option, and the matter was dismissed. Here, petitioner requested an adjournment to allow B.H. to provide additional documentation regarding her authorization. The ALJ correctly concluded that an adjournment was unnecessary because even if B.H. provided the proper document to allow petitioner to proceed on her behalf, there was no evidence of an act of HIB, for the reasons described above.

Accordingly, the Board's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.³


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

Date of Decision: January 26, 2024

Date of Mailing: January 31, 2024

³ 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

OAL DKT. NO. EDU 12591-23

AGENCY DKT. NO. 286-10/23

S.G. ON BEHALF OF B.H.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF MONTVILLE, MORRIS
COUNTY,**

Respondent.

S.G., petitioner, pro se

Stephen J. Edelstein, Esq. for respondent (Weiner Law Group, LLP)

Record Closed: December 1, 2023

Decided: December 8, 2023

BEFORE **KIMBERLY A. MOSS**, ALJ:

On November 7, 2023 the Board of Education of the Township of Montville (Board or respondent) filed a Motion to Dismiss in lieu of its answer to the petition filed by petitioner S.G. on behalf of her daughter B.H. On November 14, 2023, the matter was transmitted to the Office of Administrative Law. On November 16, 2023, an email was sent to the parties stating that pursuant to the rule, petitioner's response was due

on November 17, 2023, however, additional time would be allowed for petitioner to respond.

Petitioner filed opposition to the motion on December 1, 2023. Petitioner, S.G. requested the motion be adjourned to allow her daughter, B.H., to sign a consent transferring B.H. rights to proceed in this matter to her. I have declined to grant the adjournment.

FACTUAL DISCUSSION

B.H. is over the age of eighteen. On the appeal form is a note written by B.H, which states that she authorizes her mother to represent her. This note is signed but not dated or notarized. When B.H. was in Montville High School, she was a member of the cheer team. S.G. states that in June 2022, she and four other senior mothers of the cheer team met. This meeting was arranged by the Coach Gentile and held in front of the cheer team. During the meeting while they were discussing a fund raiser, three of the senior mothers yelled at S.G. that no one wanted to fundraise, and they were not going to listen to her. According to S.G., these three mothers also began to lie. After this meeting these mothers continued to scream at S.G. B.H. came home crying and had an anxiety attack.

S.G was given the Code of Conduct from R.B. and told that if the conduct between S.G. and three other mothers continues, they would not be allowed to watch the students perform at the high school games.

The cheer team was going to the Nationals competition in Florida. Initially S.G. did not sign the permission slip. Gentile told some of the other mothers this. Gentile told B.H. in her office that S.G. had not signed the permission slip. S.G. told the coach that since the three other senior mothers destroyed the fundraiser, those mothers could pay for B.H. to go to the Nationals, then she would sign the permission slip. Apparently, this matter was resolved and B.H. went to the Nationals with the cheer team.

One of the mothers who had previously screamed at S.G. was preparing the event. Once they were on the plane, three senior members of the cheer program sat together and B.H. sat with the juniors and sophomores in the back of the plane. Gentile did not require B.H. to sit with the other seniors. While at the Nationals, one of the senior mothers attacked S.G. on social media.

S.G. asked coach Gentile to act against the other senior mothers. Coach Gentile did not act.

On May 22, 2023, S.G. met with the school to discuss bullying and abuse on the cheer team. On May 23, 2023, S.G. requested a harassment, intimidation and bullying (HIB) investigation into the cheer coach and staff. The investigator wanted to meet with B.H. but S.G. stated they could only meet with B.H. if she was present. The meeting took place on June 6, 2023. B.H. stated that she felt excluded by not sitting with the other seniors on the flight to the Nationals in Florida. She also stated that Gentile did not do anything to make her feel uncomfortable. The Board found that the allegations in the investigation report did not constitute an HIB violation.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 6A:3-1.5(g) provides:

Nothing in this section precludes the filing of a motion to dismiss in lieu of an answer to a petition, provided that such motion is filed within the time allotted for the filing of an answer. Briefing on such motions shall be in the manner and within the time fixed by the Commissioner, or by the ALJ if the motion is to be briefed following transmittal to the OAL.

N.J.A.C. 6a:3-1.10 provides:

At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.

On a motion made pursuant to R. 4:6-2(e) "the inquiry is confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim." P. & J. Auto Body v. Miller, 72 N.J. Super. 207, 211 (App.Div.1962). The court may not consider anything other than whether the complaint states a cognizable cause of action. Ibid. For this purpose, "all facts alleged in the complaint and legitimate inferences drawn therefrom are deemed admitted." Smith v. City of Newark, 136 N.J. Super. 107, 112 (App.Div.1975). See also Heavner v. Uniroyal, Inc., 63 N.J. 130, 133 (1973); Polk v. Schwartz, 166 N.J. Super. 292, 299 (App.Div.1979). A complaint should not be dismissed under this rule where a cause of action is suggested by the facts and a theory of actionability may be articulated by way of amendment. Muniz v. United Hsps. Med. Ctr. Pres. Hsp., 153 N.J. Super. 79, 82-83 (App.Div.1977). However, a dismissal is mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted. Reider v. State Department of Transportation 221 N.J. Super. 547,522 (App. Div. 1987)

A party must have standing to have the "ability or entitlement to maintain an action before the court." In re Baby T., 160 N.J. 332, 340 (N.J.,1999). Standing is "a threshold justiciability determination whether the litigant is entitled to initiate and maintain an action before a court or other tribunal." In re Six Month Extension of N.J.A.C. 5:91-1 et seq., 372 N.J. Super 61, 85 (App. Div. 2004).

In this matter B.H. is an adult. A handwritten note written on a page of the appeal notice that is not dated or notarized is not enough to transfer from B.H.'s rights to S.G. in this matter.

N.J.S.A. 18A:37-14 defines harassment, intimidation or bullying as:

"Harassment, intimidation or bullying" means any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:

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

Here, the petition did not allege that any action of Gentile would be reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic. There was no distinguishing characteristic of B.H. noted in the petition.

The petition did not allege that Gentile's actions substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property, has the effect of insulting or demeaning any student or group of students; or create a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

S.G. wanted Gentile to reprimand the three senior mothers that she had problems with. B.H. stated that Gentile never made her feel uncomfortable.

S.G. requested an adjournment for B.H. to sign an authorization for S.G. to proceed for her. I decline to grant the adjournment because even if B.H. signed the proper document to allow S.G. to proceed on her behalf, the petition does not show that an HIB was committed against B.H. by Gentile.

I **CONCLUDE** that the factual allegations of the complaint are palpably insufficient to support a claim upon which relief can be granted.

ORDER

Based on the foregoing, it is **ORDERED** that the request for the petition to be dismissed be and is hereby **GRANTED**.

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

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

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

December 8, 2023



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

December 8, 2023

Date Mailed to Parties:
ljb

December 8, 2023