

J.M. on behalf of minor child T.M., :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
TOWN OF TINTON FALLS, :
MONMOUTH COUNTY, :
RESPONDENT. :

SYNOPSIS

The petitioning parent, J.M., appealed the decision of the respondent Board that certain acts of the head cheerleader coach, Meredith McGee, did not constitute harassment, intimidation or bullying as those terms are defined under New Jersey's Anti-Bullying Bill of Rights, *N.J.S.A. 18A:37-13.1*. The petitioner sought a finding that McGee did engage in acts of harassment, intimidation, bullying and retaliation, and that the coach be relieved of her coaching duties. During the pendency of the appeal, the Board notified the Office of Administrative Law and the petitioner that McGee had been relieved of her coaching duties effective September 25, 2013. The Board subsequently moved for summary decision, contending that the case had been mooted by the removal of McGee as a coach.

The ALJ found that: there are no material facts at issue in this matter, and the case is ripe for summary decision; and the relief J.M. sought has already occurred with the removal of McGee from her position as head cheerleader coach. Accordingly, the ALJ concluded that the case is now moot, and dismissed the petition.

Upon review, the Commissioner disagreed with the ALJ's conclusion that the controversy is now moot as a result of McGee's exit from the coaching position. Petitioner's appeal clearly included the request for a finding that McGee engaged in harassment, bullying, intimidation and/or retaliation; this request for relief has not been addressed, nor has it been mooted by McGee's departure from the coaching position, and there are conflicting accounts of the facts in the record. Accordingly, the case was remanded to the OAL for proceedings to determine whether McGee's conduct constituted harassment, bullying or intimidation.

<p>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.</p>

OAL DKT. NO. EDU 7871-13
AGENCY DKT. NO. 96-5/13

J.M. on behalf of minor child T.M., :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
TOWN OF TINTON FALLS, :
MONMOUTH COUNTY, :
RESPONDENT. :

The instant appeal flows from the petitioner’s allegations that one of respondent’s employees – who served as a cheerleading coach – bullied certain of the students who were or wished to be cheerleaders. Petitioner asked for 1) the removal of the cheerleading coach – Meredith McGee – from her position, and 2) a finding that McGee had engaged in acts of harassment, intimidation, bullying and/or retaliation. The petition was filed on May 13, 2013, answered on June 6, 2013, and transmitted to the Office of Administrative Law (OAL) for proceedings on June 7, 2013.

On or about September 25, 2013, during the pendency of the appeal proceedings, McGee was relieved of her coaching duties. Subsequently, respondent moved for summary dismissal of the appeal, contending that McGee’s removal rendered the petition moot. The Administrative Law Judge (ALJ) found 1) that the parties’ papers presented no material issues of fact, thereby allowing summary disposition, and 2) that the controversy was moot as a result of McGee’s exit from the coaching position. The Commissioner disagrees.

It is undisputed that petitioner’s requests for relief included both the termination of McGee’s coaching privileges and a finding that she had engaged in harassment, bullying,

intimidation and/or retaliation. Thus, the former request has been rendered moot. However, the latter request for relief has not.

The challenge to respondent's finding that McGee's conduct did not rise to the level of harassment or bullying has not been addressed, and the record includes conflicting accounts of the facts. Since it appears that McGee is still employed by respondent in its schools, resolution of petitioner's challenge is needed – for the sake of all of the parties. If the ALJ's fact findings support petitioner's allegations, a finding of HIB should be entered into McGee's personnel file and reported to the Department of Education, and corrective measures should be taken so that students are not exposed to inappropriate behavior by McGee or other coaches and teaching staff. If the ALJ's weighing of all the facts does not support an HIB determination, there should be an express finding of same in an Initial Decision.

Accordingly, this case is remanded to the OAL for proceedings in keeping with this decision.

IT IS SO ORDERED.^o

COMMISSIONER OF EDUCATION

Date of Decision: March 17, 2014

Date of Mailing: March 18, 2014

^o This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).