

#124-15R (OAL Decision: Not yet available online)

J.M., on behalf of minor child, T.M., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF : DECISION ON REMAND
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 (HIB) as those terms are defined under New Jersey's Anti-Bullying Bill of Rights, *N.J.S.A. 18A:37-13 et seq.* 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 issued an Initial Decision in the matter on December 12, 2013, finding the matter moot and granting summary decision to the Board. On January 23, 2014, the Commissioner remanded the matter to the OAL for proceedings to resolve petitioner's allegations regarding McGee's actions and whether the Board properly conducted an HIB investigation.

On remand, the ALJ found that: the Commissioner will not substitute his judgment for that of a local board, whose exercise of its discretion may not be disturbed unless shown to be arbitrary, capricious or unreasonable; the petitioner bears the burden of proof by a preponderance of the credible evidence; petitioner herein presented no credible evidence that the Board acted in an arbitrary manner; and it has not been established that McGee's actions were motivated either by any actual or perceived characteristic such as, *inter alia*, race, religion, gender, sexual orientation, or mental or physical disability. The ALJ concluded that the petitioner has not met her burden of proof that the Board acted in an arbitrary manner in determining that McGee's actions did not constitute HIB, and recommended dismissal of the petition.

Upon a comprehensive review of the record, the Commissioner concurred with the ALJ's determination that the Board was not arbitrary, capricious or unreasonable in finding that McGee's conduct did not constitute HIB. Accordingly, the Initial Decision was adopted as the final decision in this matter and the petition was dismissed.

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

April 2, 2015

OAL DKT. NO. EDU 1131-14
(EDU 7871-13 ON REMAND)
AGENCY DKT. NO. 96-5/13

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This controversy returns to the Commissioner following a remand to determine whether conduct displayed by Meredith McGee (the district’s former cheerleading coach) constituted harassment, intimidation or bullying (HIB) under the Anti-Bullying Bill of Rights Act, *N.J.S.A.* 18A:37-13 *et seq.* (Commissioner’s Decision No. 39-14, decided January 23, 2014)

In accordance with the Commissioner’s remand, a hearing was held at the Office of Administrative Law (OAL) on January 9, 2015. The Administrative Law Judge (ALJ) issued his Initial Decision on February 23, 2015. Because the exceptions submitted by J.M. lack any indication of service upon either respondent or the ALJ as required by *N.J.A.C.* 1:1-18.4, the Commissioner did not consider them in rendering his decision. *Muench v. Bd. of Examiners*, OAL Dkt. No. EDU 08369-06, Commissioner’s Decision No. 9-07, decided January 9, 2007.

Upon a comprehensive review of the record¹, the Commissioner concurs with the ALJ – for the reasons stated in his decision – that petitioner failed to sustain her burden of establishing that the Board acted arbitrarily, capriciously or unreasonably in finding that

¹ The record of this matter does not include a transcript of the January 9, 2015 hearing.

McGee's conduct did not constitute harassment, intimidation or bullying under *N.J.S.A. 18A:37-13 et seq.*

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

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: April 2, 2015

Date of Mailing: April 2, 2015

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*.