

J.L., on behalf of minor child, A.L., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BRIDGEWATER-RARITAN REGIONAL :
SCHOOL DISTRICT, SOMERSET :
COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner challenged the determination of the respondent Board that his daughter, A.L., engaged in harassment, intimidation and bullying (HIB) pursuant to New Jersey's Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.* The Board alleged that A.L., who was seven years old during the period pertinent to this matter, was one of several girls who bullied a classmate on the school bus because of her speech disability. Petitioner sought an order reversing the Board's determination that A.L. committed an HIB offense, and removing any reference to the alleged incident from A.L.'s school records. Petitioner maintained that the Board violated the Act's mandatory procedural requirement and that A.L.'s conduct did not rise to the level of HIB under the statute. The Board argued that it conducted an adequate investigation and that its determination was not arbitrary or capricious. The petitioner filed a motion for summary decision.

The ALJ found, *inter alia*, that: summary decision is appropriate, as there are no material facts at issue in this case; petitioner herein asserted that the Board committed four procedural errors: 1) failed to issue a written decision as required in the Act, 2) failed to review the investigation report prior to affirming the HIB charge against A.L., 3) failed to provide the required information about the HIB investigation to petitioner in writing, and 4) incorrectly advised petitioner that there was a ten-day limitation on requesting an "appeal" before the Board, and that such request must be made in writing; the respondent Board's argument that its decision to affirm the superintendent's recommendation of HIB was memorialized in writing – in both a letter from the school principal to petitioner and in the minutes of its March 24, 2015 Board meeting – is without merit, as these documents cannot be construed as the written decision required under the Act; the Board's use of the HIB Committee to fulfill its responsibility of reviewing the investigation report was permissible under the Act; the principal's letter to petitioner did not provide information about the nature of the HIB investigation or about the discipline imposed and, accordingly, did not meet the Act's requirement to provide petitioner with this information in writing; and the Board incorrectly advised A.L.'s parents of their rights under the statute by representing that there was a ten-day limitation on requesting a hearing. The ALJ concluded that the Board did not comply with the procedural safeguards provided under the Act, and the determination of an HIB violation under these circumstances was arbitrary and capricious. Accordingly, the ALJ ordered that the HIB determination be reversed and any reference to HIB be deleted from A.L.'s school record.

Upon review, the Commissioner, *inter alia*, concurred that there were procedural errors made in this case, but found that the ALJ erred in ordering the reversal of the HIB finding and the removal of reference to HIB from A.L.'s record. Accordingly, the Commissioner ordered the Board to conduct a hearing and issue a proper written decision in this matter.

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.

December 9, 2016

OAL DKT. NO. EDU 11604-15
AGENCY DKT. NO. 167-7/15

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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 parties. In this matter, petitioner alleges that the Board’s determination that A.L. violated its harassment, intimidation and bullying (“HIB”) policy is arbitrary and capricious because the Board failed to comply with the procedural safeguards under the Anti-Bullying Bill of Rights Act (“the Act”). Petitioner also argues that A.L.’s conduct did not rise to the level of HIB under the statute, and seeks removal of any reference to the alleged incident from A.L.’s school records. Respondent contends that the Board did not violate the procedural requirements under the Act, and that it conducted a proper investigation.

The ALJ found that the Board made three of the four procedural errors alleged by petitioner. The ALJ concluded: the Board did not issue a written decision pursuant to *N.J.S.A.* 18A:37-15(b)(6)(e); the Board did not provide the parents with written information about the HIB investigation pursuant to *N.J.S.A.* 18A:37-15(b)(6)(d); the Board incorrectly advised the parents of their rights under the statute when it notified the parents of a 10-day

timeframe within which to request a hearing; and the Board's utilization of a committee to review the HIB matter and subsequently report to the Board was a procedurally acceptable practice. Although the ALJ did not make a determination as to whether A.L.'s actions constituted a violation of the HIB policy, the Initial Decision recommended that the HIB determination against A.L. be reversed and any reference to HIB be deleted from A.L.'s school records because the Board failed to comply with the procedural safeguards under the Act.

Respondent takes exception to the ALJ's conclusion that the Board violated procedural requirements of the statute because it did not issue a written decision, did not provide the parents with written information about the HIB investigation, and incorrectly advised the parents of their rights under the statute. The Board further argues that the ALJ erred in concluding that the only remedy in this matter is to reverse the decision and remove any reference to same in A.L.'s file. Respondent submits that "remand" of the matter to the Board for a hearing on the substantive HIB issues is the appropriate remedy. Petitioner has filed a reply to respondent's exceptions, arguing that the ALJ correctly found that the Respondent violated the procedural requirements of the Act, and the only appropriate remedy in this case is reversal of the HIB finding.

Upon a comprehensive review of the record, the Commissioner agrees in part and disagrees in part with the ALJ's determination. Specifically, the Commissioner agrees that the Board's utilization of an HIB committee to review the matter and report to the Board was an appropriate practice. The Commissioner further agrees that the Board failed to properly comply with the procedural requirements set forth in *N.J.S.A. 18A:37-15(b)(6)*; however, the Commissioner finds that such noncompliance did not deprive petitioner or A.L. of their due process rights under the Act. The Commissioner disagrees with the ALJ's conclusion that the

Board erroneously advised the parents of a timeframe within which to request a hearing. The Commissioner finds that although there is no time limit set forth in the statute, it was necessary for the Board to establish a deadline, as will be discussed below. Furthermore, the fact that the Board continued to provide the parents with opportunities for a hearing beyond the 10-day deadline mitigates any adverse consequence of “misinformation.” Lastly, the Commissioner finds that the appropriate remedy is to order the Board to conduct a hearing and to issue a proper decision.

N.J.S.A. 18A:37-15(b)(6)(d) provides in relevant part, “parents or guardians of the students who are parties to the investigation shall be entitled to receive information about the investigation . . . this information shall be provided in writing within 5 school days after the results of the investigation are reported to the board.” Additionally, *N.J.S.A. 18A:37-15(b)(6)(e)* provides, “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.” Here, respondent argues that the Board minutes and Principal Kerr’s March 25, 2015 letter – which followed the HIB Committee’s review of the matter on March 19, 2015 – and a reporting of the matter to the full Board’s review on March 24, 2015, satisfy the requirements under *N.J.S.A. 18A:37-15(b)(6)(e)*. Respondent also argues that phone calls and correspondence between the parents and the District, as well as the March 25, 2015 letter, meet the requirements of *N.J.S.A. 18A:37-15(b)(6)(d)*. Petitioner argues that the March 25, 2015 letter did not fully inform the parents of the nature of the investigation or the decision imposed, as required under *N.J.S.A. 18A:37-15(b)(6)(d)*, and that the same letter did not satisfy the Board’s responsibility to issue a written decision pursuant to *N.J.S.A. 18A:37-15(b)(6)(e)*.

The Commissioner finds that neither the Board minutes nor the March 25, 2016 letter constitute a written decision by the Board in accordance with *N.J.S.A. 18A:37-15(b)(6)(e)*. First, under no circumstances can any board minutes be substituted for a requirement of a written decision by a board on an HIB matter. Second, a school principal is not a proper agent to issue a HIB decision on behalf of the Board. Here, the content of the March 25, 2015 letter also does not *explicitly* set forth the Board’s consideration of the matter and its decision to affirm, reject or modify the superintendent’s determination.¹ Someone who is authorized to speak on behalf of the board must notify the parents of the Board’s decision on the superintendent’s determination/recommendation; had that been done, the March 25, 2015 letter would have constituted a Board decision meeting the requirements of *N.J.S.A. 18A:37-15(b)(6)(e)*. Absent this criteria, the Board failed to issue a proper written decision.

The Commissioner further finds that the March 25, 2015 letter – which was intended to satisfy the requirements of *N.J.S.A. 18A:37-15(b)(6)(d)* – informed the parents of the nature of the investigation and the finding of HIB, but did not set forth in writing the discipline imposed. Based on the HIB investigation report and correspondence in the record, it is evident that the parents were in frequent communication with the District and were aware of the details (and on notice) of the HIB matter and investigation, as well as the discipline imposed. Therefore, failure to include the discipline imposed in the March 25, 2015 letter is *de minimus*.

With regard to the deadline established by the District in its March 25, 2015 letter, the Commissioner finds that it was necessary for the Board to do the same. *N.J.S.A. 18A:37-15(b)(6)(c)* provides, “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

¹ Although implicit in the letter is the Board’s affirmation of the superintendent’s determination, that alone does not satisfy the written decision requirement of *N.J.S.A. 18A:37-15(b)(6)(e)*.

completion of the investigation. . . .” The parents or guardians need to be notified within five school days after the results of the investigation are reported to the board, and “a parent or guardian may request a hearing before the board after receiving the information.” *N.J.S.A. 18A:37-15(b)(6)(d)*. Significantly, *N.J.S.A. 18A:37-15(b)(6)(e)* provides, “at the next board of education meeting following receipt of the report, the board shall issue a decision. . . .” The present language of the statute does not set forth a specific number of days within which a parent should request a hearing, nor does it prohibit a board of education from setting forth a timeline within which to receive requests of a hearing, which has led to considerable disagreement between the parties in the matter. As noted in *N.J.S.A. 18A:37-15(b)(6)(d)*, the parents may request a hearing after they receive the investigation information, *e.g.*, the superintendent’s recommendation: in essence, the parents are appealing the superintendent’s decision to the board. Thus, it simply would not make sense for parents to request a hearing *after* the board has considered and affirmed the superintendent’s decision at its “next” meeting. Additionally, without any time limit on the parents’ option to request a hearing, HIB matters would remain “open” on the district level for an extensive period of time, at the detriment of the students involved. Therefore, a clear reading of the statute suggests that the request for the hearing should be made as soon as possible following the parents’ receipt of the investigation information because a board has to render a decision at the “next” board meeting *after* its receipt of the report. As such, it follows that the parents need to request a hearing *before* the “next” board meeting takes place – in the time period between receipt of the investigation information and the next board meeting. This timeframe is logical and practical based on the language of the statute, and therefore a deadline to request a hearing – set forth by a board – would not violate a parent’s procedural due process rights under the Act.

In this case, the investigation was completed on or about March 17, 2015; the results were reported to the HIB Committee on March 19, 2015 and to the full Board during its March 24, 2015 meeting. Therefore, the Board should have rendered a decision at its next meeting, on April 14, 2015;² this means that the parents needed to request a hearing in advance of the April 14, 2015 meeting. In this situation, the onus is on the school district to provide the parents with proper information: the District should have provided the parents with the date of the next Board meeting, and clarified the process for requesting a hearing. The Commissioner does not construe the deadline set forth by the District in this case to be a limit on the parents' rights, in light of the fact that the timeline coincided with the next Board meeting and would allow for both parties to prepare for a hearing. More importantly, through correspondence in May, June, and July, the Board provided petitioner multiple opportunities to appear for a hearing before the Board, which petitioner declined. In other words, petitioner was never denied a hearing before the Board and the record reflects that the petitioner was on notice throughout the duration of the HIB investigation process. Therefore, the Commissioner cannot find a deprivation of due process rights under such circumstances.

Finally, in the Initial Decision, the ALJ relied on *Edward Sadloch, et. al. v. Board of Education of the Township of Cedar Grove, Bergen County*, Commissioner Decision No. 216-15 (June 23, 2015), in determining the possible remedies to the procedural violations by the Board. The ALJ concluded that, like *Sadloch*, the Board failed to follow the procedures under the Act, and the sole remedy under the law is to reverse the HIB determination and to remove any reference of HIB from A.L.'s records. In *Sadloch*, however, the Commissioner was in accord with the ALJ's conclusions and ordered removal of reference to HIB from the records of

² The Bridgewater-Raritan School District's website indicates that the next board meeting for the 2014-2015 school year took place on April 14, 2015.

all the named petitioners because that board failed to comply with basic investigatory procedures under the Act. Additionally, the state of the record in that case was such that a fact finder could not properly determine whether an act of HIB had occurred. Here, the Board gave petitioner notice of the allegations, conducted a thorough investigation and completed a comprehensive investigation report, and also afforded the petitioner with an opportunity to appear before the Board. *See Stephen Gibble v. Board of Education of the Hunterdon Central Regional School District, Hunterdon County*, Commission Decision No. 254-16 (July 13, 2016). Therefore, the Commissioner finds that the ALJ erred in ordering that the HIB finding be reversed, and that all reference to HIB be removed from the petitioner's file; instead, the proper remedy for the procedural errors set forth herein is to return the matter to the Board to provide the petitioner with a hearing on the HIB allegations. In an HIB appeal where the record is sufficient for a fact finder to determine whether an act of HIB occurred, and where the procedural violations did not deprive the petitioner of their right to notice and a hearing, any other remedy would curtail the legislative intent behind the Act.

Accordingly, the recommended decision of the ALJ is modified as stated herein and the Board is directed to provide the petitioner with a hearing and issue a proper decision.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 9, 2016

Date of Mailing: December 9, 2016

³ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.