

M.R., ON BEHALF OF MINOR CHILD, M.R., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
RAMAPO INDIAN HILLS REGIONAL HIGH
SCHOOL DISTRICT, BERGEN COUNTY, :
RESPONDENT. :

SYNOPSIS

Pro se petitioner challenged the determination of the respondent Board that M.R. was not the victim of harassment, intimidation or bullying (HIB) under the provisions of the New Jersey Anti-Bullying Bill of Rights Act, *N.J.S.A.* 18A:37-13 to -32.1 (the Act). M.R. – a member of the varsity cheerleading team – alleged that she and three other members of the team had been bullied by the cheerleading coach on two occasions in December of 2014. Petitioner’s allegations stem from the coach’s negative reaction to receiving a text message from M.R. on the afternoon of a scheduled basketball game, explaining that she could not attend the game because she had other plans. M.R. claimed that the coach responded with a “strong bullying tone”, and informed her that she and three other cheerleaders who missed the same game were off the team. M.R. also alleged that the coach’s behavior during half time at a basketball game on December 23, 2014 – after the cheerleaders were reinstated to the team following the launch of an HIB investigation – caused her to feel singled out and fearful that she was becoming a target; she further believed that the cheerleading team had become a hostile environment. The Board contended that the investigation did not find evidence that M.R. was the target of HIB because the coach’s actions were not motivated by any actual or perceived characteristic, as defined in the Act. The Board filed a motion for summary decision. The petitioner failed to file an answer to this motion, and did not file exceptions to the Initial Decision of the OAL.

The ALJ found that: there are no material facts at issue in this case, and the matter is ripe for summary decision; the issue for resolution in this case is whether the Board’s finding that there was no HIB was arbitrary, capricious or unreasonable, in light of the information the Board possessed when it made its determination; and the Act applies to any gesture, or 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 an actual or perceived characteristic, such as, *inter alia*: race, color, religion, national origin, gender, sexual orientation, or any other distinguishing characteristic. The ALJ concluded that consideration of the alleged actions against M.R. leads to “the inescapable conclusion...that the Board’s HIB determination was correct.” Accordingly, the ALJ granted the Board’s motion for summary decision, and dismissed the petition with prejudice.

Upon review, the Commissioner concurred with the ALJ’s conclusion in this matter, but modified his recommended decision to include a factual discussion as required by *N.J.A.C.* 1:1-18.3(c). Accordingly, the Initial Decision was adopted with modification, 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.
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

This case involves a challenge by petitioner to the Board’s determination that his daughter was not the victim of acts of Harassment, Intimidation and Bullying (HIB) pursuant to the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.* As the Administrative Law Judge (ALJ) did not include a factual discussion, the facts of this matter are summarized as follows.¹ Petitioner filed an HIB report, alleging that his daughter and three other cheerleaders were bullied by the cheerleading coach on December 19 and 23, 2014. (*Certification of Beverly MacKay*, at ¶4) On December 19, 2014, M.R. sent a text message to the cheerleading coach explaining that she could not attend that night’s basketball game due to other plans. *Id.* at ¶5. The report claimed that the coach responded with a “strong bullying tone” and informed her that she and the other cheerleaders who missed the game were off the team. *Ibid.*

¹ Although the ALJ failed to make factual findings as required by *N.J.A.C. 1:1-18.3(c)*, the Board’s statement of material facts is undisputed as the petitioner did not file opposition to the Board’s motion for summary decision, nor exceptions to the Initial Decision.

According to M.R.'s statement, she did not attend the game because her friends had planned a holiday party for that night and she did not know that there was a game until a day or two prior. *Id.* at ¶8. Following the launch of an investigation, the cheerleaders were returned to the team and cheered at the basketball game on December 23, 2014. *Id.* at ¶10. During half time, M.R. alleges that the coach singled her out – along with the other girls who missed the game – and told the team that he wants his conversations with them to be kept private and not reported to parents. *Ibid.* M.R. felt fearful that she was becoming a target, and believed the cheerleading team was a hostile environment. *Id.* at ¶11.

The HIB investigation found that the coach did not commit an act of HIB. *Id.* at ¶12. The Superintendent affirmed the findings, as the actions were not motivated by a distinguishing characteristic of M.R. *Id.* at ¶13. At a hearing before the Board, petitioner argued that the school's HIB policy did not require that the HIB action be motivated by an actual or perceived characteristic. *Id.* at ¶14. The Board found that the version of the HIB policy on the school's website that petitioner had seen was a draft policy which inadvertently omitted a line from the definition. (*Certification of Beverly MacKay*, Exhibit H) The omission made it appear as though the HIB policy only required that acts be reasonably perceived as being motivated by any actual or perceived characteristic *or* take place on school property, and substantially disrupt or interfere with the orderly operation of the school or the rights of other students – rather than requiring all of those elements. Accordingly, the Board rejected petitioner's arguments and affirmed the finding of no HIB. *Ibid.*

Upon a comprehensive review of the record, the Commissioner agrees with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering

its HIB determination.² There is no evidence in the record – nor did petitioner allege – that the cheerleading coach’s alleged actions were motivated by a distinguishing characteristic of M.R.

Instead, petitioner alleges that the HIB policy, as written, does not require that the conduct be motivated by a distinguishing characteristic. The Commissioner finds that the Board was not arbitrary, capricious, or unreasonable in determining that – regardless of the phrasing of the draft HIB policy that was inadvertently published on the Board’s website – it is a requirement that alleged conduct be motivated by a distinguishing characteristic in order to be considered HIB. Such a requirement is also set forth in the Act:

“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.

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

² Although the ALJ included a legal discussion in his Initial Decision, he failed to make conclusions of law as required by *N.J.A.C. 1:1-18.3(c)*.

As the Act clearly sets forth that an action must be motivated by an actual or perceived characteristic in order to be considered HIB, the Board was not arbitrary, capricious or unreasonable in determining that the alleged conduct here did not amount to HIB.

Accordingly, the recommended decision of the ALJ is modified as stated above and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 21, 2016

Date of Mailing: December 21, 2016

³ 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)*.