

#468-14 (OAL Decision: Not yet available online)

D.M., on behalf of minor child, K.B., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF WEST MILFORD,
PASSAIC COUNTY, :
RESPONDENT. :

SYNOPSIS

The petitioner contended that the respondent Board failed to respond in accordance with the requirements of New Jersey's Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.*, when her daughter was the victim of bullying in one of the school district's elementary schools. Petitioner alleged that K.B., a fifth grade student, was harassed by classmates in October 2013 and again in January 2014 – to the point that petitioner felt K.B. could not continue to attend the school – and that the Board did not investigate her claims, in violation of the Act. The Petitioner sought an order compelling the school district to conduct the mandated investigation, as well as tuition from the Board to enroll her daughter in another school district. The Board denied that K.B. was subject to bullying, and contended that neither the petitioner nor her daughter ever filed a report concerning an incident of Harassment, Intimidation and Bullying (HIB) that would have provided the details necessary for the Board to conduct an investigation into the charges. The Board filed a motion to dismiss the petition.

The ALJ found, *inter alia*, that: there are no material facts in dispute, and the matter is ripe for summary decision; the burden of proof in this matter is on the petitioner; local boards of education have reasonable discretion for various managerial matters; petitioner has not alleged any facts constituting a violation of the Anti-Bullying Act; the Board certified that all of its staff members have been trained in New Jersey's anti-bullying procedures; the Board's motion for summary decision was unopposed by the petitioner; and even if the motion had been timely opposed, petitioner's claims are without merit. The ALJ concluded that the Board exercised reasonable managerial discretion, and petitioner failed to meet her burden of proof as she did not file opposition to the Board's motion for summary decision. Accordingly, the ALJ granted the Board's motion and ordered the petition dismissed.

Upon review, the Commissioner rejected the Initial Decision of the OAL, finding, *inter alia*, that: the ALJ was in error when he applied a "default" standard of review to the Board's motion for summary decision, whereby the unopposed motion was automatically granted; pursuant to New Jersey's Anti-Bullying Bill of Rights Act, all alleged acts of harassment, intimidation and bullying (HIB) require an internal investigation by a school anti-bullying specialist; it is clear from the record that the respondent Board failed to undertake this required internal investigation. The Commissioner also rejected the ALJ's finding that the petition was untimely pursuant to *N.J.A.C. 6A:3-1.3(i)*. Accordingly, the Commissioner directed the Board to conduct the required investigation and issue a report in compliance with *N.J.S.A. 18A:37-13 et seq.* Determination regarding petitioner's other requests must await the completion of the investigation report.

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.

November 24, 2014

D.M., on behalf of minor child, K.B., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
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RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed.¹ This case involves a claim by the petitioner, D.M., that the West Milford School District (District) did not properly investigate an allegation of bullying against her child, K.B. The Administrative Law Judge (ALJ) granted the District’s motion to dismiss the petition of appeal, finding that the petitioner failed to provide the District with the information necessary to enable it to start and conclude an investigation pursuant to the Harassment, Intimidation and Bullying Act, and that the District exercised its managerial discretion in a reasonable and practical manner.

The Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.*, was enacted “to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises.” *N.J.S.A. 18A:37-13.1.f.* Pursuant to *N.J.S.A. 18A:37-15(b)(5)*, all

¹ The parties did not file exceptions to the Initial Decision.

school districts are required to adopt a policy that outlines a procedure for reporting an act of harassment, intimidation, or bullying (HIB). At a minimum, after a potential violation of the school district's HIB policy is reported, "the investigation shall be initiated by the principal or the principal's designee within one school day of the report of the incident and shall be conducted by a school anti-bullying specialist." *N.J.S.A.* 18A:37-15(b)(6)(a). Additionally, "[t]he investigation shall be completed as soon as possible, but not later than 10 school days from the date of the written report of the incident of harassment, intimidation, or bullying." *Id.*

After consideration and review of the record in this matter, the Commissioner finds that the ALJ erroneously granted the District's motion to dismiss the petition of appeal. The Commissioner further finds that the District had an obligation to conduct a HIB investigation in accordance with requirements outlined in *N.J.S.A.* 18A:37-15(b)(6)(a), despite the fact that the petitioner did not fill out the District's HIB form.²

Although it appears from the record that the parties disagree on certain facts surrounding the events that occurred beginning in January 2014, it is undisputed that in a correspondence dated February 1, 2014 – as well as in a follow-up correspondence – the petitioner set forth her belief that K.B. was being subjected to bullying at the Maple Road School.³ *See*, Certification of Dr. James McLaughlin, Superintendent, in Support of the

² In the Initial Decision, the ALJ found that the petitioner failed to exhaust her administrative remedies, i.e. following the procedures outlined in *N.J.S.A.* 18A:37-15(b)(6)(d) and (e) which require a parent to request a hearing before the board of education if the parent wishes to challenge the superintendent's HIB findings. In this case, the District never conducted the required HIB investigation; therefore, there were no findings that the petitioner could appeal before the board of education. Additionally, the 90-day limitation period under *N.J.A.C.* 6A:3-1.3(i) is triggered after the board of education makes a final HIB determination or – as in this case – when it becomes clear that the board of education has decided not to conduct an HIB investigation. In the Initial Decision, the ALJ found that the petition was untimely filed with respect to allegations of bullying that may have occurred in October 2013. To the extent that the alleged bullying was pervasive conduct that occurred throughout the school year, the petition – which was filed in April, 2014 – was not time barred.

³ There is also a reference to potential bullying at the school on the discharge note dated January 31, 2014 from the Chilton Hospital's Crises Intervention Program, where K.B. was evaluated because she was at risk for self-harm.

District's Motion to Dismiss. Therefore, as soon as the petitioner made a claim of HIB, the statutory requirements were triggered and the District had an affirmative obligation to conduct an investigation, and to follow the protocol outlined in *N.J.S.A. 18A:37-15(b)6*. Importantly, the Board's obligation was not nullified by the fact that the petitioner did not subsequently fill out the District's HIB form. Although it may have been helpful for the District to have access to the information that would be routinely provided on the HIB form, petitioner's failure to fill out the form did not excuse the District from the statutorily-mandated investigation.

Moreover, there is nothing in the statute that states that a parent must submit a written form before an HIB investigation shall be initiated. In the Initial Decision, the ALJ states: "[w]here this case fails is the failure of the petitioner to supply a written report of the alleged HIB incident in order to permit the District to identify an incident of HIB." The ALJ mistakenly determined that the "written report" referenced in *N.J.S.A. 18A:37-15(b)(6)(a)* is a written form that must be filled out by a parent who has alleged incidents of bullying against his or her child. *N.J.S.A. 18A:37-15(b)(5)* only contains reporting requirements for school employees and service providers.

All acts of harassment, intimidation, or bullying shall be reported verbally to the school principal on the same day when the school employee or contracted service provider witnessed or received reliable information regarding any such incident. The principal shall inform the parents or guardians of all students involved in the alleged incident, and may discuss, as appropriate, the availability of counseling and other intervention. All acts of harassment, intimidation, or bullying shall be reported in writing to the school principal within two school days of when the school employee or contracted service provider witnessed or received reliable information that a student had been subject to harassment, intimidation, or bullying. [*N.J.S.A. 18A:37-15(b)(5)*].

Therefore, the Act does not require a parent to fill out a written report before a District's obligation to conduct an HIB investigation is triggered. *See also*, New Jersey Department of

Education, *Guidance for Parents on the Anti-Bullying Bill of Rights Act*, dated September 2012, at 17-19.

Additionally, the District's contention that the matter was appropriately resolved through the peer mediation process does not satisfy the investigative requirements contained in *N.J.S.A. 18A:37-15(b)6*.⁴ Peer mediation may follow the completion of an investigation but may not precede or preempt the investigation. Even if the District did not have enough information to determine whether an incident of HIB actually occurred, the District was still required under the Act to conduct an investigation and issue a report containing the results of the investigation.

The Commissioner is also not persuaded by the District's argument that it was not required to initiate an HIB investigation because the petitioner withdrew K.B. from the District.⁵ Any allegation of HIB committed against one of its students must be investigated by the school district, regardless of whether the student is disenrolled after the allegation is reported. It is important to recognize that the Act was implemented to provide clarity to school districts regarding how better to combat "the chronic persistence of school bullying". *N.J.S.A. 18A:37-13.1.c*. The arguments advanced by the District in this case as to why it did not conduct an investigation following D.M.'s assertions that her daughter was the target of bullying are unpersuasive.

Accordingly, the recommended decision of the ALJ is rejected. The Board is directed to conduct an investigation and issue a report in compliance with *N.J.S.A. 18A:37-13*

⁴ It should be noted that the District's HIB policy contains the same language concerning the investigatory obligations found in *N.J.S.A. 18A:37-15(b)6*.

⁵ The parties are in dispute as to whether or not K.B. was actually disenrolled from the District; however, it appears from the record that – at least as of April 2014 – K.B. was enrolled in the District and was receiving home instruction.

et seq. Any determination with respect to petitioner's other requests must await the results of the investigation.

IT IS SO ORDERED.⁶

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 24, 2014

Date of Mailing: November 25, 2014

⁶ 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*).