

332-17 (OAL Decision: Not yet available online)

COLUMBIA HIGH SCHOOL BASEBALL BOOSTERS, INC.	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE SOUTH ORANGE-MAPLEWOOD SCHOOL DISTRICT, ESSEX COUNTY,	:	DECISION
	:	
RESPONDENT.	:	
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SYNOPSIS

Petitioning 501(c)3 organization – the Columbia High School Baseball Boosters (Booster Club) sought a ruling from the Commissioner that the provisions of New Jersey’s Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.*, and its accompanying statutes and regulations prohibiting harassment, intimidation and bullying (HIB), do not apply to them. This case involves a challenge by the Booster Club to the respondent Board’s determination that it committed an act of HIB when it disinvited one of the baseball team members to the end of the year banquet in retaliation for the student’s complaints of HIB against the baseball coaches. Petitioner filed a motion for summary decision, which was opposed by the Board.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; petitioning parent-run private non-profit organization provides fundraising to benefit the Columbia High School baseball team; the trustees of the Booster Club have not been recognized or appointed by the respondent Board as volunteers within the school district; the within case stems from an HIB allegation against the Booster Club by a student athlete who, with his family, was disinvited from the annual year-end banquet, allegedly in retaliation for the student’s complaints of HIB against the baseball coaches; the issue in this matter is whether the Act and its accompanying statutes, regulations and policies apply to the Booster Club. The ALJ concluded that Act and its accompanying statutes and regulations do not apply to the Booster Club because its members are not staff, school employees, students or school volunteers. Accordingly, the petitioner’s motion for summary decision was granted.

Upon comprehensive review, the Commissioner determined that the Booster Club itself cannot violate the Act and therefore it is entitled to summary decision. In so deciding, the Commissioner pointed out that booster club members themselves are not exempt from the purview of the Act. Instead there must be a determination on a case-by-case basis as to whether the member falls into one of the categories of individuals that have certain responsibilities under the Act. Based on the circumstances in this case, the Commissioner finds that it is not appropriate at this juncture to remand this matter to the OAL to determine whether any of the individual Booster Club members violated the Act. Conducting a hearing now at the OAL concerning the conduct of the individual Booster Club members would be beyond the scope of the HIB investigation that was conducted and decided at the Board level.

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.

OAL DKT. NO. EDU 4046-17
AGENCY DKT. NO. 42-3/17

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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 South Orange-Maplewood Board of Education (Board), and the reply thereto filed by the Columbia High School Baseball Boosters, Inc. (Booster Club). This case involves a challenge by the Booster Club to the Board’s determination that it committed an act 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.* The Board found that the Booster Club committed an act of HIB when it disinvited one of the baseball team members to the end of the year banquet in retaliation for the student’s complaints of HIB against the baseball coaches. In so doing, the Board found that the Booster Club was a volunteer in the District by virtue of its involvement with the District, and with the baseball team in particular.

The Administrative Law Judge (ALJ) found that the Act and the implementing regulations do not apply to the Booster Club. Specifically, the ALJ concluded that *N.J.A.C.* 6A:16-7.7 and *N.J.S.A.* 18A:37-15 do not apply to the Booster Club because they are not “staff,

school employees, students or volunteers.” Therefore, the ALJ granted summary decision in favor of the Booster Club.

Upon a comprehensive review of the record in this matter, the Commissioner finds that the Booster Club is entitled to summary decision because the club itself cannot be found to have violated the Act. The Act 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. In order to achieve those goals, school districts are required to adopt a policy prohibiting HIB, and the Act identifies the minimum components that shall be included in every policy. Notably, HIB policies must include “consequences and appropriate remedial action for a **person** who commits an act of harassment, intimidation or bullying.” *N.J.S.A.* 18A:37-15b(4) (emphasis added). Therefore, *N.J.S.A.* 18A:37-15b(4) “clearly establishes that responses to a person (not only a student) who commits an act of HIB must include both the consequences and appropriate remedial action.”¹ See, New Jersey Department of Education, *Model Policy and Guidance for Prohibiting Harassment, Intimidation and Bullying on School Property, at School-Sponsored Functions and On School Buses*, revised April 13, 2011, at 16. However, there is nothing in the Act to suggest that it intended to lump a group of individuals together when there is an allegation of HIB; instead it is more appropriate to evaluate the actions of each individual.

Although a booster club itself cannot be found to have violated the Act, it is important to recognize that individual booster club members are not exempt from the purview of

¹ The Commissioner is mindful that a school district’s response to HIB that occurs off school grounds is only appropriate when the conduct substantially disrupts or interferes with the orderly operation of the school or the rights of other students. *N.J.A.C.* 6A:16-7.7(b); *N.J.A.C.* 6A:7.1 and 7.5.

the Act.² Instead there must be a determination, on a case-by-case basis, as to whether the member falls into one of the categories of individuals that have certain responsibilities under the Act. The specific statutory and regulatory provisions impose additional responsibilities for reporting and initiating a school district's HIB policy and procedures on certain individuals. For example, there are distinctions among the reporting requirements of specific individuals, as well as a school district's obligation to provide HIB training to certain individuals. Under *N.J.S.A. 18A:37-16b* and *N.J.A.C. 6A:7.7(c)*, “[a] member of a board of education, school employee, contracted service provider, student or volunteer who has witnessed, or has reliable information that a student has been subject to harassment, intimidation or bullying shall *report* the incident to the appropriate school official...” (*emphasis added*). With respect to training requirements, school districts must provide training on its HIB policy to “school employees and volunteers who have significant contact with students” and information regarding the policy shall be provided to “full-time and part-time staff, volunteers who have significant contact with students, and those persons contracted by the district to provide services to students.” *N.J.S.A. 18A:37-17(b)* and (c); see also, *N.J.A.C. 6A:7.7(e)1*.

Additionally, under *N.J.S.A. 18A:37-16a*, “[a] member of a board of education, school employee, student or volunteer shall not engage in reprisal, retaliation or false accusation against a victim, witness or one with reliable information about an act of harassment intimidation or bullying.” In this case, the Board found that the Booster Club is a volunteer and that it violated *N.J.S.A. 18A:37-16* and Board Policy 5512 when it disinvited one of the baseball team members to the end of the year banquet in retaliation for the student's complaints of HIB against the baseball coaches. Instead of making a finding of HIB against the Booster Club itself, the

² School districts have the option of including a statement in their HIB policy expressly stating that booster club members are covered under the district's HIB policy.

Board should have initiated an HIB investigation to determine whether any of the Booster Club members violated the Act, including whether any of the members constituted a volunteer under *N.J.S.A. 18A:37-16a*, and if so, whether any of the members engaged in retaliation against the student athlete in violation of the Act.

Based on the circumstances in this case, the Commissioner finds that it is not appropriate at this juncture to remand this matter to the OAL to determine whether any of the individual Booster Club members violated the Act. Certainly if any individual members were accused of violating the Act, they would have been given notice of the allegations and entitled to the due process guaranteed by the Act, including a right to a hearing before the Board. *See, Edward Sadloch et al. v. Board of Education of the Township of Cedar Grove, Bergen County*, Commissioner Decision No. 216-15, decided June 23, 2015. Conducting a hearing now at the OAL concerning the conduct of the individual Booster Club members would be beyond the scope of the HIB investigation that was conducted and decided at the Board level.

Accordingly, the recommended decision of the ALJ is modified as discussed above and the Booster Club's motion for summary decision is granted.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: November 13, 2017

Date of Mailing: November 15, 2017

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.