

184-18

R.N., :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

SOUTH ORANGE-MAPLEWOOD :

SCHOOL DISTRICT, ESSEX COUNTY, :

RESPONDENT. :

SYNOPSIS

Pro se petitioner challenged the determination of the respondent Board that his son, A.N., was not subjected to 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 *et seq.* (the Act). Petitioner alleged that A.N. – a student at Columbia High School during the period in question, who attained the age of eighteen prior to the filing of the petition – was subjected to HIB and retaliation by the respondent’s varsity baseball coaches. The Board previously filed a motion to dismiss for lack of standing on the part of R.N.; the motion was denied by order of the previous judge in this matter, ALJ Bedrin-Murray. Said order found that R.N. was entitled to bring a petition in his own right, and required that the petitioner: file a motion to amend his petition to name only himself as petitioner; and bring the petition on his own behalf rather than on behalf of A.N. This order was never filed, and petitioner did not file an amended petition. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there were no material facts at issue in this case, and the matter is ripe for summary decision; the Act seeks to protect students; the petition herein only named R.N. as petitioner; petitioner’s son, A.N., was never named a party to the within action, and the petition seeks relief only on behalf of A.N.; the instant petition, however, was filed after A.N. reached the age of eighteen; R.N. failed to assert claims on his own behalf, and only sought relief for alleged violations of the Act against his adult son; petitioner failed to file a motion to amend the petition and set forth a claim on his own behalf, as the previous ALJ had ordered. The ALJ concluded that the petitioner lacked standing to bring this matter. Accordingly, the ALJ granted respondent’s motion for summary decision and further vacated ALJ Bedrin-Murray’s order providing petitioner an opportunity to amend his petition.

Upon review, the Commissioner disagreed with the ALJ’s finding that petitioner lacks standing, and remanded the matter to the OAL for further proceedings. In so doing, the Commissioner found that the ALJ erred in vacating ALJ Bedrin-Murray’s order and dismissing the petition for lack of standing. The substantive issues in the underlying petition – *i.e.*, petitioner’s allegations of retaliation implicating his rights under the Act and the Board’s policy on HIB – remain unresolved, and require further exploration of the facts for proper adjudication of this matter.

<p>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.</p>

June 22, 2018

OAL DKT. NO. EDU 09346-16
AGENCY DKT. NO. 115-4/16

R.N., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
SOUTH ORANGE-MAPLEWOOD :
SCHOOL DISTRICT, ESSEX COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (“OAL”) have been reviewed. Petitioner’s exceptions, and respondent’s reply thereto, have also been reviewed and considered by the Commissioner.

The Administrative Law Judge (“ALJ”) found that petitioner lacked standing to “bring this matter in his own right.” The ALJ concluded that petitioner failed to assert claims on his behalf and only sought relief for alleged violations of the Anti-Bullying Bill of Rights Act (“the Act”) against his adult son. The ALJ further noted that petitioner never filed a motion to amend the petition of appeal and set forth a claim on his own behalf, as directed by ALJ Bedrin-Murray in her order on July 28, 2017. The ALJ, therefore, granted respondent’s motion for summary decision and further vacated ALJ Bedrin-Murray’s order of July 28, 2017, wherein – in addition to providing petitioner the opportunity to amend the petition to bring a claim solely on his behalf – ALJ Bedrin-Murray had concluded that, although petitioner could not bring a petition on behalf of his adult son, he could assert a claim for alleged violations of *his* rights under the Act.

Upon review, the Commissioner disagrees with the ALJ's finding that petitioner lacks standing, and remands the matter to the OAL for further proceedings, for the reasons set forth herein.

In the petition of appeal, petitioner claims that in August 2014 he raised concerns with the school district regarding alleged violations of the Act, and reported incidents of harassment, intimidation and bullying ("HIB") allegedly committed by the baseball coaches. Petitioner further asserts that in March 2015, his then-minor son – who was a starter on the high school baseball team the year prior – was cut from the team, which petitioner argues was in retaliation for his involvement with the prior HIB allegations. *N.J.S.A. 18A:37-16(a)* provides, "[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." Additionally, Board Policy No. 5512 states in relevant part that "a Board member, school employee, or contracted service provider who has contact with students, school volunteer, or student" is prohibited from "engaging in reprisal, retaliation, or false accusation against a victim, witness, one with reliable information, or any other person who has reliable information about an act of harassment, intimidation, or bullying or who reports an act of harassment, intimidation, or bullying." Petitioner, therefore, is within his rights to assert a claim – on his behalf – based on the allegations pertaining to retaliation in his petition. Whether the allegations possess any merit is a separate issue, and same should have been considered at the OAL.

ALJ Betancourt, therefore, erred in vacating ALJ Bedrin-Murray's order of July 28, 2017, and dismissing the petition of appeal for lack of standing. The substantive issues in the underlying petition – petitioner's allegations of retaliation implicating his rights under the

Act and the Board's policy on HIB – remain unresolved, and further exploration of the facts is required for proper adjudication of this matter.

. Accordingly, the recommended decision of the ALJ is rejected and the matter is hereby remanded to the OAL for a hearing on the remaining issues.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: June 22, 2018

Date of Mailing: June 22, 2018

¹ 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.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 09346-16

AGENCY REF. NO.115-4/16

R.N.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
SOUTH ORANGE-MAPLEWOOD SCHOOL
DISTRICT,**

Respondent.

R.N., Petitioner, pro se

Howard M. Nirenberg, Esq., for Respondent (Nirenberg & Varano, attorneys)

Record Closed: April 9, 2018

Decided: May 11, 2018

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner parent challenges the District's HIB determination.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on June 23, 2016, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A prehearing conference was held on August 8, 2016, before the Honorable Joan Bedrin-Murray, ALJ, who issued a prehearing order dated August 9, 2016.

Respondent filed a motion to dismiss the petition based on lack of standing on March 14, 2017. Petitioner filed a responsive brief on March 27, 2017. Respondent filed a sur-reply brief on April 3, 2017. By order dated July 28, 2017, Judge Bedrin-Murray denied the motion. In said order Judge Bedrin-Murray limited the petition to only those claims that R.N. could assert in his own right, and not any claims on behalf of his now adult son. Judge Bedrin-Murray further ordered that R.N. file a motion to amend the petition to name only himself as the petitioner. It appears that motion was never filed.

Respondent then filed a motion for interlocutory review with the Commissioner of the Department of Education, which was denied by letter of the Commissioner dated August 14, 2017.

Petitioner filed a motion for summary decision on February 8, 2018. Respondent filed his response in opposition to the motion on March 26, 2018. Petitioner filed its sur-reply on April 9, 2018.

The matter was transferred to the undersigned on January 17, 2018.

A status conference was conducted by the undersigned on January 18, 2018, and respondent was permitted to file a motion for summary decision on or before February 20, 2018.

Respondent filed a summary decision motion on February 20, 2018. Petitioner filed his response thereto on March 29, 2018. Respondent filed its sur-reply brief on April 25, 2018. All responses filed past times permitted by rule were with consent.

FACTUAL DISCUSSION

The following **FACTS** are not in dispute:

Petitioner filed a petition alleging violations of the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13 et seq. (ABR). Said petitioner references alleged conduct of respondent's varsity baseball coaches and retaliation against petitioner's son, A.N.

A.N. was a student in the South Orange-Maplewood School District and attended Columbia High School. R.N. is the father of A.N. A.N. is an adult, having attained the age of eighteen prior to the filing of the petition.

The petitioner herein only names R.N. as petitioner. Petitioner's son, A.N., was never named a party to the within action. The petition seeks relief only on behalf of A.N.

The previous judge in this matter, the Honorable Joan Bedrin-Murray, entered an order dated July 28, 2017, where she denied respondent's motion to dismiss for lack of standing of R.N. Said order found that R.N. had a right to bring a petition in his own right. Said order also required petitioner to file a motion to amend his petition to name only himself as petitioner and to bring the petition on his own behalf, and not on behalf of A.N. That motion was never filed. An amended petition was never filed.

The relief requested in the petition is all requested on behalf of A.N.

LEGAL ANALYSIS AND CONCLUSION

Standard for Summary Decision

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . , are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536 (citation omitted).

I have limited my review herein to the petition and Judge Bedrin-Murray’s order of July 28, 2017. I disagree with Judge Bedrin-Murray’s conclusion. R.N. did not, and does not, have standing to bring this matter in his own right.

N.J.S.A. 18A:37-14 defines “harassment, intimidation or bullying” as”

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.

Clearly the Act seeks to protect students. The petition seeks relief on behalf of a student, petitioner's son A.N. A.N. is an adult and not a party to the petition. Further, the petition was filed after the time A.N. reached his majority. R.N. cannot bring a valid claim on behalf of another adult.

N.J.A.C. 6A:3-1.2 provides the following definitions regarding contested matters, Indispensable party and Interested person(s):

"Contested case" means an adversarial proceeding in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required to be adjudicated by the Commissioner after opportunity for agency hearing pursuant to N.J.S.A. 18AL6-9, N.J.S.A. 52:14B-1 et seq. (Administrative Procedure Act) and N.J.A.C. 1:1 (New Jersey Uniform Administrative Procedure Rules).

"Indispensable party" means a person(s) without whose inclusion a matter cannot proceed or adequate judgment cannot be entered.

"Interested person(s)" means a person(s) who will be substantially, specifically, and directly affected by the outcome of a controversy before the Commissioner.

Clearly A.N. is an indispensable party and is not named in the petition. The petition asserts no claims on behalf of the petitioner, R.N. It only seeks relief for alleged HIB violations against A.N.

Further, the relief requested in the petition is beyond the authority of the undersigned to order. The relief requested includes, inter alia:

To hold respondent accountable for the travesty of events that have occurred since July 2014. The only relief that can be provided at this time is the truth. It is requested that the respondent, in public session, openly acknowledge their reasons for not following the law and the overall outcome and pain that was caused to my son and the other players and parents. In addition to accepting their responsibility, both a verbal and written apology to my son. It is requested that copies of the "confidential" report given to the Board in December 2015 and the independent investigator's report be provided to the families that were directly impacted. A letter to every family that approached the school about HIB by the coaches be sent from the President and Superintendent apologizing for their actions and acknowledging the HIB that was endured by the student athletes. A letter in the Maplewoodian.com, Village Green and News Record to the community for their role in allowing HIB to exist within the athletic department.

Further, despite the order requiring petitioner to file a motion to amend the petition to set forth a claim on his own behalf, and not on behalf of A.N., no such motion or amended petition was ever submitted.

Based upon the above I **CONCLUDE** there are no genuine issues of material facts as they relate to the petition, and respondent is entitled to prevail as a matter of law.

I further **CONCLUDE** that the respondent's motion for summary decision should be granted and that the order of Judge Joan Bedrin-Murray, dated July 28, 2017, be vacated.

ORDER

It is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED**; and

It is further **ORDERED** that petitioner's petition is **DISMISSED** with prejudice.

I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



May 11, 2018

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

APPENDIX

List of Moving Papers

For Petitioner:

Brief in opposition to motion for summary decision

For Respondent:

Motion for summary decision

Brief in support of motion for summary decision

Sur-reply brief

Other Pleadings and Filings:

Petition

Motion to dismiss for lack of standing

Brief in support of motion to dismiss for lack of standing

Brief in opposition to motion to dismiss for lack of standing

Order of Judge Joan Bedrin-Murray dated July 28, 2017

Motion by respondent for interlocutory review by the Commissioner

Brief in support of motion for interlocutory review

Brief in opposition to motion for interlocutory review