

R.H., ON BEHALF OF MINOR CHILD, G.H., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
SOUTH ORANGE – MAPLEWOOD SCHOOL :
DISTRICT, ELIZABETH AARON, KATHERINE :
GILFILLAN, SIDNEY SAYOVITZ, AND :
MATTHEW ENDLICH. :
RESPONDENT. :

SYNOPSIS

Pro se petitioner contended that the respondent Board’s harassment, intimidation or bullying (HIB) appeal decision in this matter, which was rendered in petitioner’s favor, contained inaccuracies and failed to mention that her daughter, G.H., was attacked or bullied by a “mob.” The Board’s HIB Appeal Decision concluded that the January 2017 incident at issue herein constituted HIB, and the female who physically assaulted G.H. was disciplined as a result. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this matter, and the case is ripe for summary decision; to initiate a contested case under New Jersey’s school laws, a petitioner must file a petition of appeal with the Commissioner that states the allegations and facts giving rise to the appeal, and the specific relief sought, *N.J.A.C.* 6A:3-1.4(a); in the instant case, petitioner failed to assert a cognizable cause of action against the respondents; R.H. stated in her appeal that she is in full agreement with the Board’s HIB decision regarding the January 2017 incident wherein her daughter was victimized, but was dissatisfied with certain wording within the decision and claimed that there were certain inaccuracies and omissions in the report. The ALJ concluded that, while it is understandable that petitioner is rightly troubled by the attack on her daughter, the claims raised in the petition are not actionable; further, petitioner failed to present any facts showing that the Board acted in an arbitrary, capricious or unreasonable manner with respect to the wording of the Board’s HIB Appeal Decision. Accordingly, the ALJ granted the Board’s motion for summary decision.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision as the final decision in this matter, for the reasons expressed therein. 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.

OAL DKT. NO. EDU 17492-17
AGENCY DKT. NO. 253-11/17

R.H., ON BEHALF OF MINOR CHILD, G.H., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
SOUTH ORANGE – MAPLEWOOD SCHOOL :
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MATTHEW ENDLICH. :
RESPONDENT. :

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.

Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner fails to state a cause of action as the Board’s Harassment, Intimidation and Bullying (HIB) determination was rendered in petitioner’s favor, and petitioner does not have a legal right to compel the Board to alter the wording of the report. Additionally, the Commissioner agrees with the ALJ that the Board acted on the HIB complaint in a timely manner, in accordance with *N.J.S.A.* 18A:37-15(b)(5).

Accordingly, the Initial Decision of the OAL is adopted – for the reasons thoroughly expressed therein – as the final decision in this matter, and the petition is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: June 28, 2018

Date of Mailing: June 29, 2018

* 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).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 17492-17

AGENCY DKT. NO. 253-11/17

R.H., ON BEHALF OF G.H.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE SOUTH
ORANGE-MAPLEWOOD SCHOOL DISTRICT,
ELIZABETH AARON, KATHERINE A. GILFILLAN,
SIDNEY A. SAYOVITZ, MATTHEW ENDLICH,**

Respondents.

R.H., petitioner, pro se

Alyssa K. Weinstein, Esq., for respondents (Purcell Mulcahy Flanagan,
attorneys)

Record Closed: April 4, 2018

Decided: May 24, 2018

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On October 23, 2017, G.H.'s mother, R.H., filed a Petition of Appeal with the Commissioner of Education. Petitioner's mother represents her daughter's interests pro se. The Petition asserts that the Respondents' HIB[†] Appeal Decision contains inaccuracies and fails to mention that G.H. was attacked or bullied by a "mob." The HIB Appeal Decision concluded that the incident of January 18, 2017 where G.H. was physically assaulted constituted HIB and that the female who assaulted G.H. was disciplined as a result. The Bureau of Controversies and Disputes transmitted the matter to the Office of Administrative Law as a contested case on November 27, 2017.

Respondents, the Board of Education of the South Orange-Maplewood School District ("Board"), Elizabeth Aaron, Katherine A. Gilfillan, Sidney A. Sayovitz and Matthew Endlich (collectively "respondents") filed a motion seeking summary decision. Petitioner opposes the motion.

FACTUAL DISCUSSION

Based on the submissions presented, I rely on the following **FINDINGS of FACT** in deciding this motion:

G.H. is a student at Columbia High School (CHS), a school operated by the Board. On January 18, 2017, G.H. was injured by another student outside CHS, and a HIB investigation was conducted. It is undisputed that the school district's investigation included interviews of students and a review of video footage of the January 18, 2017 incident. Petitioner was in communication with respondent Aarons, and other school officials, immediately following the incident. An initial determination was made that the incident did not constitute HIB, but constituted a violation of the school's code of conduct, and petitioner appealed this determination to the Board.

The Board overturned the initial determination and issued a HIB Appeal Decision concluding that the January 18, 2017 incident did in fact constitute HIB. The Board

[†] Harassment, Intimidation and Bullying, as codified in N.J.S.A. 18A:37-13 et seq.

found, in part, that G.H. was physically assaulted on January 18, 2017 on the sidewalk in front of CHS after school hours; a female aggressor struck G.H.; G.H. was an active participant in the fight; the aggressor was appropriately disciplined; the assault interfered with G.H.'s education and the school provided her with appropriate supports; and G.H. later returned to school and successfully completed the school year without further incident. The Board concluded that the fight was motivated, at least in part, by the victim's race or gender, and that the incident caused a substantial disruption to school operations and interfered with G.H.'s educative progress (for which she received home instruction and additional supports when she returned to school, including oversight, point person contact and accommodations and modifications to her assignments and coursework). The Board concluded that the matter constituted HIB.

Petitioner filed this appeal because she seeks to modify the language contained in the HIB Appeal Decision. The six-page Petition asserts in relevant part that: "The incident report filed by the school attorney, Katherine Gilfillan, the school Board and the school principal are [sic] not accurate....They omitted the fact that a MOB participated in this attack...They omitted they [sic] fact that 2 of the children that assaulted [G.H.]...had charges pressed against them by Maplewood Police department. ...They omitted the fact that these children are repeat offenders of harassment intimidation bullying and assault. ...They omitted the fact that I had to email Ms. Elizabeth Aaron to make sure [G.H.] was safe when she returned to school....They omitted the fact that [G.H.] was out of school with PTSD caused by [the] attack. They omitted that we have had to pay for all her medical care...They omitted the fact that we had to beg the school to provide proper tutor and teachers to assist her. Petitioner also asserts that "the Incident occurred on January 18, 2017, [and] the report should have been file[d] within 48 hours of [the] incident, and Ms. Aaron agreed to do this on January 23, 2017. (5 days after incident)."

Petitioner continues: "My problem with the HIB [A]ppeal Decision is the incident report is not factual. We are in full agreement with the HIB decision incident of January 18, 2017. Our problem with [the] decision is the incident report as completed by the School Attorney Katherine Gilfillan is not factual based on evidence and information

provided. It omits the evidence we provided during our appeal hearing, such as [sic] police reports, emails to [the] school principal and superintendent [sic], and the actual Video of [the] attack. The Attorney, school principal, HIB coordinator and board name one participant in [the] attack, [but] video clearly shows a MOB. Video also clearly show[s] at least two people punching [G.H.]”

The Petition specifically addresses each alleged inconsistency in the HIB Appeal Decision and concludes by indicating that: “We want the school to acknowledge and confirm that the attack against [G.H] was HIB initiated by a MOB...We want all [of] the children involved in [the] attack identified and punished according to the LAW. They must pay the consequences for their bad behavior. We want Columbia High [S]chool to accept they have a problem and fix it.”

Respondent Elizabeth Aaron (Respondent Aaron) is the CHS Principal. Respondent Matthew Endlich (Respondent Endlich) is a CHS teacher who serves as the school’s HIB Specialist. Respondents Sidney A. Sayovitz and Katherine A. Gilfillan are attorneys for the Board.

Respondents’ Motion for Summary Decision

Respondents filed a motion for summary decision on February 27, 2018 on the basis that petitioner is not entitled, under any governing statute or regulation, to seek or obtain administrative relief for her dissatisfaction with the wording or contents of the Board’s HIB Appeal Decision. Respondents argue that they are entitled to summary decision because petitioner has no cognizable cause of action; petitioner failed to set forth any facts indicating that respondents acted in an unlawful, arbitrary, capricious, or unreasonable manner with respect to the wording used in the Board’s HIB Appeal Decision; and that respondents Aaron, Endlich, Sayovitz and Gilfillan may not be held responsible for petitioner’s dissatisfaction with the wording of the Board’s HIB Appeal Decision as they lack the authority to even alter the wording of the Board’s HIB Appeal Decision.

Petitioner's Response to the Motion for Summary Decision

Petitioner opposed respondents' motion for summary decision arguing that the HIB Appeal Decision should have named J.M., M.F. "and the other boys that are still attending" CHS, not only T.A., a female student. Petitioner alleges that M.F. punched G.H in the face. She later mentions that three of the children who attacked G.H., including T.A., J.M., and M.F. are no longer students at CHS, however at least three other students who were involved G.H.'s attack still attend CHS. Petitioner does not identify these students.

Petitioner also appears to argue that a HIB report should have been filed within 48 hours of the January 18, 2017 incident, yet it was filed on Monday, January 23, 2017 by Elizabeth Aaron.

Petitioner asserts that the HIB report submitted by Respondents Gilfillan, Aaron, Endlich and Sayovitz is not accurate and that the school refused to indicate in the report that "a large group of children [came] together to attack one child." Petitioner also raises an issue with the fact that G.H. was referred to as an active participant in the altercation. She also recounts her experience meeting with the Maplewood Police Department, as well as her communications with District employees after the January 18 incident. Petitioner also raised new complaints in her opposition papers concerning supports provided, or not provided to her daughter by the District, however these will not be considered here as the new claims go beyond the scope of her petition.

Respondents' Reply

Respondents filed a reply to petitioner's opposition, stressing that petitioner has presented no genuine issue of material fact to dispute that: "(1) respondents provided her with the HIB-related information required by N.J.S.A. 18A:37-15(b)(6)(d); (2) upon appeal by petitioner, the Board reversed the initial no-HIB determination; and (3)

petitioner is in 'full agreement with the HIB decision' but has a gripe with certain wording used in the decision." The governing statute here does not entitle petitioner to her preferred choice of wording in the HIB Appeal Decision, and the statute does not permit a cause of action allowing one to challenge such wording.

In response to petitioner's assertion that the HIB report form should have been filled out within 48 hours of the assault, respondents respond that the assault undeniably occurred after school hours on a Wednesday, January 18, 2017. The school then closed for the week less than 48 hours later on Friday, and the HIB reporting form was filled out first thing in the morning when school re-convened on Monday. Respondents also deny petitioner's allegations that Ms. Aaron and Superintendent Ramos did not respond to her emails, and they referenced copies of emails and provided responses to petitioner dated January 19 and 20 that dispute petitioner's assertions.

Respondent's reply also addresses various allegations asserted in petitioner's response to the motion, and concludes that petitioner's failure to set forth essential facts giving rise to a dispute under the school law, per N.J.A.C. 6:24-1.3, was not cured by the opposition submissions.

ANALYSIS

Summary decision may be granted "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). To survive a summary decision, the opposing party must show that "there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid. Failure to do so entitles the moving party to summary judgment/decision. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995). An issue of fact is genuine only if, considering the burden of persuasion at the hearing, the evidence submitted by the parties on the motion, together with all legitimate inferences

favoring the non-moving party, would require submission of the issue to the trier of fact. N.J.A.C. 1:1-12.5(b).

The Commissioner of Education has jurisdiction to hear and determine all controversies arising under the school laws. N.J.S.A. 18A:6-9. N.J.A.C. 6A:3-1.1 to -1.17 sets forth the rules of procedure established by the Department of Education for the filing of petitions with the Commissioner of Education to hear and decide controversies and disputes arising under school laws. N.J.A.C. 6A:3-1.1. To initiate a contested case pursuant to these rules, petitioner must prepare a petition of appeal and serve such petition upon each respondent. N.J.A.C. 6A:3-1.3(a). The petition must state the allegations and facts giving rise to the appeal, and the specific relief sought. N.J.A.C. 6A:3-1.4(a).

Here, petitioner fails to assert a cognizable cause of action against respondents. N.J.S.A. 18A:37-15(b)(6)(e) permits the appeal of a school board's decision affirming, rejecting or modifying the superintendent's HIB decision, and here, the Board's decision itself is not contested. R.H. states in her appeal that she is "in full agreement with the HIB decision incident of January 18, 2017." She does not look to reverse the Board's decision, which was decided in G.H.'s favor and specifically found that the acts of January 18 constituted a HIB violation. The nature of this appeal is petitioner's dissatisfaction with certain wording in the five-page HIB Appeal Decision. More specifically, petitioner claims that there are certain inaccuracies in the report, and that certain information should not have been omitted. While one may appeal the Board's final decision, or determination, R.H. does not seek to disturb the Board's final decision here and no legal cause of action exists to compel the Board to alter the wording in its report.

Petitioner's greatest grievance is the HIB Appeal Report's references to only one female student as being the aggressor, rather than describing the incident as having been initiated by a "mob." R.H. demands that the respondents identify and punish all those who formed part of this "mob." However, petitioner acknowledges that, despite

having a videotaped recording of the incident, neither she nor G.H. could identify any current CHS male students who took part in this “mob.” The District reviewed the video and conducted several interviews as part of its investigation, and petitioner has not provided any indication that the District’s investigation itself was conducted improperly. In her opposition, R.H. identifies two male students, J.M. and M.F., who she claims were aggressors in the January 18 incident against her daughter and who should have been named in the HIB Incident Report. These two individuals no longer attend CHS according to petitioner, and therefore, any HIB-related claims against these individuals are also moot. An action is moot when it no longer presents a justiciable controversy because the issues raised have become academic. For reasons of judicial economy and restraint it is appropriate to refrain from decision-making when an issue presented is hypothetical, judgment cannot grant effective relief, or the parties do not have a concrete adversity of interest. Anderson v. Sills, 143 N.J. Super 432, 437 (Ch. Div. 1976); Fox v. Twp. Of E. Brunswick Bd. of Educ. EDU 10067-98, Initial Decision (March 19, 1999), aff’d Comm’r (May 3, 1999) <http://lawlibrary.rutgers.edu/oal/search.html>; S.J. v. Bd. of Educ. Of Mountain Lakes, EDU 07081-03, Initial Decision (October 7, 2003), aff’d, Comm’r (Nov. 17, 2003), aff’d, St. Bd. (Feb. 3, 2004) <http://lawlibrary.rutgers.edu/oal/search.html>. Here, since J.M. and M.F. no longer attend CHS, the respondent Board is precluded from asserting any disciplinary action against them and any HIB-related claims that may be raised against them are, therefore, moot.

Finally, petitioners claim that there was failure to file an HIB report within 48 hours from the July 18, 2017 incident. N.J.S.A. 18A:37-15(b)(5) requires that all acts of HIB be reported verbally to the school principal on the day the incident occurs and that it be reported in writing within two school days. Since G.H.’s HIB incident occurred and was reported to the principal after schools hours on Wednesday, and weekends are not counted toward the 48 hours, the HIB report was properly made on Monday morning once school resumed.

While petitioner is clearly, and understandably, troubled by the attack her daughter sustained and the effects she has had to endure, the claims raised by R.H. as

part of this appeal are simply not actionable and petitioner has failed to present any facts indicating that respondent acted in an unlawful, arbitrary, capricious or unreasonable manner with respect to the wording used in the Board's HIB Appeal Decision. As there is no genuine issue as to any material facts challenged, summary decision must be granted.

CONCLUSION AND ORDER

As the moving party, respondents carry the burden of proof to demonstrate, by a preponderance of the credible evidence, that summary decision should be entered in favor of respondents, and specifically that summary decision is appropriate because petitioner has no cognizable cause of action, and petitioner failed to raise any genuine issue of material fact that respondents acted in an unlawful, arbitrary, capricious or unreasonable manner with respect to the wording used in the HIB Appeal Decision. After considering all proofs submitted relative to the motion, I **CONCLUDE** that respondents have met their burden.

Based on the foregoing, I **CONCLUDE** that the respondents' motion for summary decision should be **GRANTED**.

It is, therefore, **ORDERED** that the motion for summary decision filed by respondents is **GRANTED** for the reasons stated herein.

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, PO 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.

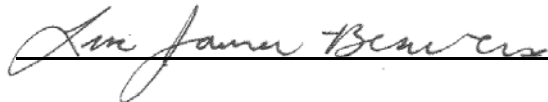
May 24, 2018
DATE


SUSANA E. GUERERO, ALJ

Date Received at Agency:

May 24, 2018

Date Mailed to Parties:
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LIST OF EXHIBITS

For petitioner:

- P-1 Petitioner's Petition and supporting documents
- P-2 Petitioner's Opposition to Motion for Summary Decision

For respondents:

- R-1 Respondents' Answer
- R-2 Respondent's Motion for Summary Decision
- R-3 Respondent's Reply to petitioner's response