174-19

New Jersey Commissioner of Education

Final Decision

Ruth Young-Edri,

Petitioner,

v.

Board of Education of the City of Elizabeth, Union County,

Respondent.

Synopsis

Petitioner, a tenured teacher employed by the Elizabeth Board of Education (Board), alleged that the Board failed to comply with the due process requirements of the New Jersey Anti-Bullying Bill of Rights Act (the Act), *N.J.S.A.* 18A:37-13 *et seq.*, when it determined that she had harassed, intimidated, or bullied a student in her class. Petitioner requested that the charges against her be dismissed, or – in the alternative – remanded to the Board with the directive that she be afforded the due process to which she is entitled by law. The 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; school districts are required by law to adopt policies that prohibit harassment, intimidation and bullying (HIB) of students, outline expectations for student behavior, and create procedures for reporting HIB-related concerns; the Commissioner has recognized that the due process protections contained in law have equal applicability when an HIB charge is directed against a staff member; in this case, the due process protections enumerated in the Act were largely ignored by the Board; petitioner was not given an opportunity to review the report produced by the Board's anti-bullying specialist, nor any statements or documentary evidence upon which the report was based; there is no evidence that the report was ever shared with the superintendent of schools as required by the Act; and petitioner was not given the opportunity to fully understand the evidence against her and to present testimony in her defense. Accordingly, the ALJ granted petitioner's motion for summary decision and remanded the matter to the local board of education with a directive that petitioner be afforded the due process required under *N.J.S.A.* 18A:37-15.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter, for the reasons well stated therein. Summary decision was granted in favor of petitioner, and the Board was directed to conduct further proceedings consistent with the requirements of the Act.

July 8, 2019

OAL Dkt. No. EDU 17812-18
Agency Dkt. No. 263-10/18

New Jersey Commissioner of Education

Final Decision

Ruth Young-Edri,

Petitioner,

v.

Board of Education of the City of Elizabeth, Union County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) – for the reasons thoroughly stated in the Initial Decision – that the Elizabeth Board of Education (Board) failed to comply with the due process requirements of the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A.* 18A:37-13 *et seq.*, related to an allegation of harassment, intimidation, and bullying (HIB) made against petitioner by a student in her class. Staff members accused of committing an act of HIB are entitled to the same due process guaranteed to students under the Act. *Gibble v. Hunterdon Central Board of Education*, Commissioner Decision 254-16 (July 13, 2016). The record is clear, and the Board did not refute, that: the petitioner was not provided with a written summary of the HIB investigation, *N.J.S.A.* 18A:37-15(b)(6)(d); the results of the investigation were not reported to the superintendent, *N.J.S.A.* 18A:37-15(b)(6)(b); and the superintendent did not render a decision regarding the allegations, *N.J.S.A.* 18A:37-15(b)(6)(e).

Accordingly, the Initial Decision is hereby adopted as the final decision in this matter, and summary decision is granted in favor of petitioner. The Board is directed to conduct further proceedings consistent with the Act.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: July 8, 2019
Date of Mailing: July 8, 2019

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SUMMARY DECISION
OAL DKT. NO. EDU 17812-18
AGENCY DKT. NO. 263-10/18

RUTH YOUNG-EDRI,
Petitioner,
v.
BOARD OF EDUCATION OF THE CITY OF ELIZABETH, UNION COUNTY,
Respondent.

Nicholas Poberezhesky, Esq., for petitioner (Caruso Smith Picini, attorneys)

Heather Ford-Savage, Esq., for respondent

Record Closed: May 9, 2019 Decided: May 30, 2019

BEFORE **ELLEN S. BASS**, ALJ:

STATEMENT OF THE CASE

Petitioner, Ruth Young-Edri, a tenured teacher employed by respondent, the Elizabeth Board of Education (the Board), alleges that the Board failed to comply with the due-process requirements of the Anti-Bullying Bill of Rights Act (the Act), N.J.S.A.

18A:37-13, et seq., when it determined that she had harassed, intimidated, and bullied a student in her class. Young-Edri asks that the charges against her be dismissed, or, in the alternative, remanded to the Board with the direction that it afford her the due process to which she is entitled by law.

PROCEDURAL HISTORY

Young-Edri filed her petition of appeal on October 25, 2018. An answer was filed by the Board on December 7, 2018, and the matter was transmitted to the Office of Administrative Law (OAL) on December 10, 2018. Young-Edri filed a motion for summary decision on March 1, 2019. The Board opposed the motion on April 1, 2019. Young-Edri replied to the opposition on April 8, 2019.

On April 12, 2019, I conferred with counsel via telephone conference. I advised both attorneys that I would like to offer them an opportunity to supply additional information via supplemental certifications. The Board had opposed the motion, but not in certification form. And the Board's submission focused on the truth of the allegations against Young-Edri, rather than the issue in the case, which is whether the Board had afforded Young-Edri an adequate measure of due process. Counsel for Young-Edri had not supplied a certification from his client, and I afforded him an opportunity to do so. These additional submissions were filed on May 9, 2019, at which time the record closed.

FINDINGS OF FACT

It is uncontroverted, and I **FIND**, that Young-Edri is a tenured teacher who has been employed by the Board for over twenty-six years. In or around April 2018, she became the subject of a harassment, intimidation, or bullying (HIB) investigation, conducted in accordance with N.J.S.A. 18A:37-13. She was removed from her active teaching duties and placed on administrative leave.

Anti-bullying specialist Peter Vosseler investigated the charges, and interviewed both teachers and students between April 24, 2018, and May 3, 2018. Young-Edri was interviewed on April 26, 2018. I **FIND** that a written report was generated by Vosseler, but that report was not shared with Young-Edri. The report reveals that Young-Edri was told which child had alleged mistreatment. Young-Edri recounted that the child at issue was a behavioral problem. The summary of her interview reveals that she did not feel fully supported in dealing with this child; for example, she notes that she was not made aware that he had a behavioral intervention plan in place. She was asked about several incidents, to include one involving a mess made at lunch, another about a confiscated laptop, and yet another involving the child's personal cell phone. The author of the report shares that Young-Edri denied any wrongdoing.

A letter of reprimand dated May 9, 2018, was issued to Young-Edri by her building principal, indicating that she was a "perpetrator" in the HIB case, and that she had created a "hostile educational environment." But I **FIND** that the letter did not provide any information about the investigation, or in any way recount the factual support for the letter's conclusion that Young-Edri had violated the Anti-Bullying Law. Despite being afforded two opportunities to do so, counsel for the Board, in her opposition to the pending motion, shared no evidence that the findings of the anti-bullying specialist were shared with either the superintendent of schools or with the Board itself. The Board offered no evidence that any investigatory materials were shared with Young-Edri at any time prior to this litigation.

Young-Edri appealed the HIB determination on May 16, 2018, and requested a hearing before the Board. Pending that hearing, she was transferred involuntarily to another school building. Young-Edri and her attorney appeared before the Board in executive session on or about July 19, 2018. Young-Edri asserts that she and her attorney were given an opportunity to make brief statements to the Board; Vosseler, who was at the meeting, did not speak. The Board does not disagree. On July 25, 2018, Young-Edri received a letter from the Board attorney notifying her that it had upheld the determination of the anti-bullying specialist. But I **FIND** that this letter again

did not detail with specificity the conduct or incidents that were perceived to have risen to a violation of law.

ANALYSIS AND CONCLUSIONS OF LAW

N.J.A.C. 1:1-12.5(b) provides that summary decision should be rendered "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." Our regulation mirrors R. 4:46-2(c), which provides that "[t]he judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, 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 a judgment or order as a matter of law."

A determination whether a genuine issue of material fact exists that precludes summary decision requires the judge to 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. Our courts have long held that "if the opposing party . . . offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, 'Fanciful, frivolous, gauzy or merely suspicious,' he will not be heard to complain if the court grants summary judgment." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (citing Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 75 (1954)).

The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Brill, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)). When the evidence "is so one-sided that one party must prevail as a matter of law," the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 252. I **CONCLUDE** that this matter is ripe for summary decision. The Board has offered no facts that would call into question, much less defeat, Young-Edri's claim that the Board failed to provide her with the due process required under N.J.S.A. 18A:37-15.

Districts are required by law to adopt policies that prohibit HIB; that outline expectations for student behavior; that set forth consequences for inappropriate behavior; and that create procedures for reporting HIB-related concerns. N.J.S.A. 18A:37-14; N.J.S.A. 18A:37-15. In regard to the investigation of bullying charges, the law requires as follows:

> (b) the results of the investigation shall be reported to the superintendent of schools within two school days of the completion of the investigation . . . ;
>
> (c) the results of each investigation shall be reported to the board of education no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent;
>
> (d) parents or guardians of the students who are parties to the investigation shall be entitled to receive information about the investigation, in accordance with federal and State law and regulation, including the nature of the investigation, whether the district found evidence of harassment, intimidation, or bullying, or whether discipline was imposed, or services provided to address the incident of harassment, intimidation, or bullying. This information shall be provided in writing within 5 school days after the results of the investigation are reported to the board. A parent or guardian may request a hearing before the board after receiving the information, and the hearing shall be held within 10 days of the request. The board shall meet in executive session for the hearing to protect the confidentiality of the students. At the hearing the board may hear from the school anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents;
>
> (e) at the next board of education meeting following its receipt of the report, the board shall issue a decision, in writing, to affirm, reject, or modify the superintendent's decision. The board's decision may be appealed to the Commissioner of Education, in accordance with the

> procedures set forth in law and regulation, no later than 90 days after the issuance of the board's decision . . . .
>
> [N.J.S.A. 18A:37-15 (emphasis supplied).]

Regulations promulgated by the Department of Education further assist local districts in complying with these statutory requirements. N.J.A.C. 6A:16-7.7.

The Commissioner has recognized that the due-process protections contained in law have equal applicability when a bullying charge is directed against a staff member. See K.T. on behalf of K.H. & T.D. v. Deerfield Bd. of Educ., OAL Dkt. No. EDU 00489-13, Initial Decision (June 19, 2013), rev'd and remanded, Comm'r (July 30, 2013), https://www.nj.gov/education/legal/ (where, in the context of a claim that a teacher bullied a kindergarten student, the Commissioner confirmed that the internal HIB investigation mandated by law is not discretionary); see also Gibble v. Hunterdon Central Bd. of Educ., EDU 02767-15, Final Decision (July 13, 2016), http://njlaw.rutgers.edu/collections/oal/; Sadloch v. Cedar Grove Bd. of Educ., EDU 00619-14, Initial Decision (March 26, 2015), http://njlaw.rutgers.edu/collections/oal/, aff'd, Comm'r (June 23, 2015), https://www.nj.gov/education/legal/.

I **CONCLUDE** that the due-process protections contained in the Anti-Bullying Law were largely ignored by this board. A written summary of the investigation was not provided to Young-Edri within five days of the issuance of the anti-bullying specialist's report. The results of the investigation were not shared with the superintendent of schools. The superintendent rendered no decision relative to the bullying allegations and investigation, although, ultimately, the Board was required to "issue a decision, in writing, to affirm, reject, or modify the superintendent's decision." N.J.S.A. 18A:37-15(b)(6)(e) (emphasis supplied). Relative to the scope of the information that should have been shared with Young-Edri, the recent unpublished Appellate Division decision in J.L. v. Bridgewater Board of Education, No. A-2022-16 (App. Div. October 16, 2018), https://njlaw.rutgers.edu/collections/courts/, is instructive. There, the local board did not supply the parents of an alleged bully with investigative reports completed by the anti-

bullying specialist and an HIB committee. The matter was remanded to the local board, which was directed to provide the parents with the full record of the HIB allegations, "including the underlying investigative report, [and] any additional written reports or summaries." Ibid. Only with this completeness of information, the court determined, would the hearing contemplated by law afford the family its rightful measure of due process, and satisfy the requirements of N.J.S.A. 18A:37-15(b)(6).

The proper remedy under the totality of the circumstances is a remand to the Board so that it may afford Young-Edri a proper measure of due process. This case is readily distinguishable from Sadloch v. Cedar Grove Board of Education, where the Commissioner determined that violations of due process warranted dismissal of charges against petitioning football coaches. As noted in Gibble v. Hunterdon Central Board of Education, the relief fashioned in Sadloch was based on a unique set of circumstances, and a "state of the record in that case [that] made it impossible for a determination to ever be reached." Gibble, EDU 02767-15, Final Decision (July 13, 2016), at *9, http://njlaw.rutgers.edu/collections/oal/. Not so here. The investigatory report shared here reveals that the anti-bullying specialist conducted a comprehensive investigation and interviewed numerous witnesses. I **CONCLUDE** that due process requires that Young-Edri be given an opportunity to review that report, and any available statements or other documentary evidence, and be permitted to appear again before the Board for the hearing contemplated by law. And Young-Edri is moreover entitled to evidence that her situation was properly shared with the superintendent and the Board.

As for what the board-level hearing should look like, the plain language of the statute does not require a full adversarial hearing, and it is well established that statutory language should be given its ordinary meaning. Klumb v. Bd. of Educ. of Manalapan-Englishtown Reg'l High Sch. Dist., 199 N.J. 14, 23–24 (2009).[1] The statute only demands that the hearing be conducted in executive session, and that "the board

[1] The opportunity for a full adversarial hearing is available if and when the matter is appealed to the Commissioner of Education. In other contexts, law and regulations make it clear when an adversarial hearing is required at the board level. See, e.g., N.J.A.C. 6A:16-7.3(a)(10), which specifies that the right to cross-examination is available in a board-level appeal of a long-term student disciplinary suspension.

may hear from the school anti-bullying specialist about the incident." N.J.S.A. 18A:37-15. But what is surely required is an opportunity for Young-Edri to fully understand the evidence against her and to present testimony and documents to the Board for its consideration; or, put another way, what is required is the modicum of local due process needed to guard against arbitrary, capricious, or ill-informed Board action.

ORDER

Based on the foregoing, it is **ORDERED** that petitioner's motion for summary decision is **GRANTED**. This matter is **REMANDED** to the local board of education so that it can afford petitioner the due process required under N.J.S.A. 18A:37-15. This requires that the Board have its superintendent review the determination of the anti-bullying specialist; that the results of the investigation be shared with the Board; that Young-Edri be supplied with the investigatory file to include witness statements and the report of the anti-bullying specialist; and that she be permitted to present witnesses and documentary evidence to the Board at a hearing.

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 30, 2019

DATE

ELLEN S. BASS, ALJ

Date Received at Agency: May 30, 2019

Date Mailed to Parties: