132-22

New Jersey Commissioner of Education

Final Decision

R.C. and B.C., on behalf of A.C.,

Petitioner,

v.

Board of Education of the Township of Galloway, Atlantic County,

Respondent.

Synopsis

Petitioners filed an appeal challenging the respondent Board's actions regarding a Harassment, Intimidation and Bullying (HIB) complaint filed on behalf of their minor child, A.C. The Board filed a motion to dismiss the petition as premature, arguing that petitioners failed to exhaust their administrative remedies under New Jersey's Anti-Bullying Bill of Rights Act (Act), *N.J.S.A.* 18A:37-13.2.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; petitioners requested a hearing before the matter had been presented to the Board and before they received written information on the HIB investigation; and petitioners' appeal rights to the Commissioner did not accrue until after the Board had made a final determination on the HIB complaint. The ALJ concluded that petitioners sought a hearing and filed their appeal prematurely, thereby failing to exhaust the remedies afforded them under the Act. Accordingly, the ALJ granted summary decision to the respondent Board and dismissed the petition but remanded the matter to the Galloway Township Board of Education for a hearing in accordance with the Act.

Upon consideration, the Commissioner found that: a party challenging a board of education's HIB decision is not required to request and participate in a hearing before the board of education prior to filing a petition of appeal with the Commissioner; *N.J.S.A.* 18A:37-15(6)(d) provides that a parent may request a hearing, but nothing in the Anti-Bullying Bill of Rights Act requires a board hearing. The Commissioner concluded that the ALJ was incorrect in determining that petitioners failed to exhaust their administrative remedies. Since petitioners indicated in their pleadings that they wish to have a hearing before the Board, the Commissioner remanded the matter and ordered the Board to hold such hearing within ten days of the mailing of the Commissioner's decision herein.

132-22

OAL Dkt. No. EDU 00815-22
Agency Dkt. No. 3-1/22

New Jersey Commissioner of Education

Final Decision

R.C. and B.C., on behalf of minor child, A.C.,

Petitioner,

v.

Board of Education of the Township of Galloway, Atlantic 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.

This matter involves a harassment, intimidation, and bullying (HIB) complaint filed by petitioners on behalf of their child. Following a motion to dismiss by the Board, the Administrative Law Judge (ALJ) found that petitioners had failed to exhaust their administrative remedies and remanded the matter to the Board for a hearing.

Upon review, the Commissioner notes that a party challenging a board of education's HIB decision is not required to request and participate in a hearing before the board of education prior to filing a petition of appeal with the Commissioner. *N.J.S.A.* 18A:37-15(6)(d) provides that a parent *may* request a hearing, but nothing in the Anti-Bullying Bill of Rights Act

requires a board hearing.[1] Accordingly, the ALJ's conclusion that petitioners failed to exhaust administrative remedies is incorrect.

Nonetheless, as the pleadings indicate that petitioners do wish to have such a hearing, the Commissioner concludes that it is appropriate to allow that hearing to occur. The Board is ordered to hold a hearing within ten days of the mailing date of this decision, unless petitioners agree to a later date. Should the Board affirm its HIB decision at or after that hearing, petitioners may file a new petition of appeal.

Accordingly, this matter is remanded to the Board.

IT IS SO ORDERED.

Angelica Allen-McMillan, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 23, 2022
Date of Mailing: June 23, 2022

[1] However, the board of education must have issued a decision affirming, rejecting, or modifying the superintendent's decision for the matter to be ripe for review by the Commissioner, as it is the board's decision – not the superintendent's decision – that is appealable to the Commissioner. *N.J.S.A.* 18A:37-15(b)(6)(e). This requirement had been met when the petition of appeal dated January 7, 2022 was filed.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 00815-22

AGENCY DKT. NO. 3-1/22

R.C. AND B.C. ON BEHALF OF A.C.,

Petitioners,

v.

TOWNSHIP OF GALLOWAY

BOARD OF EDUCATION,

Respondent.

R.C.[1] and **B.C.**, petitioners on behalf of A.C., pro se

Amy Houck Elco, Esq., for respondent (Cooper Levenson, attorneys)

Record Closed: April 25, 2022 Decided: May 9, 2022

BEFORE **TAMA B. HUGHES**, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

R.C. and B.C. (collectively "petitioners") filed an appeal challenging the Galloway Township Board of Education (respondent) actions regarding a Harassment, Intimidation and Bullying (HIB) complaint filed on behalf of their child A.C.

[1] R.C. is a licensed attorney in Pennsylvania however is appearing in his personal capacity as the parent of A.C.

On February 1, 2022, in Lieu of an Answer, respondent filed a Notice of Motion to Dismiss pursuant to N.J.A.C. 6A:3-1.5(g).

On February 1, 2022, the matter was transmitted to the Office of Administrative Law (OAL), where it was filed as a contested case on February 1, 2022. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

Petitioners' opposition to the motion was filed on April 11, 2022, and Respondents' reply was received on April 25, 2022.

FACTUAL SUMMARY AND FINDINGS

In October 2019, the respondent adopted a HIB policy in accordance with Anti-Bullying Bill of Rights Act (Act). N.J.S.A. 18A:37-13.2. (Respondent's brief, Exhibit A.) The respondent's HIB policy mirrors N.J.S.A. 18A:37-15 and N.J.A.C. 6A:16-7.7 as it relates to reporting procedures, investigation, and the appeal process.

On November 18, 2021, petitioners reported, via email, an alleged instance of HIB against A.C. which was acknowledged by the superintendent of schools for Galloway Township Board of Education, Dr. Annette Giaquinto. (Petitioners' brief, ¶62; Respondent's brief, certification of Dr. Annette Giaquinto (Giaquinto's certification), ¶3.)

On November 30, 2021, petitioners sent an amended HIB complaint to Dr. Giaquinto with additional information for use in the investigation. The complaint named two administrators and additional staff members as the aggressors. (Petitioners' brief, ¶65; Giaquinto's certification, ¶4.)

Dr. Giaquinto conducted the HIB investigation.

On December 6, 2021, Dr. Giaquinto spoke with R.C. and advised that the investigation was complete and the outcome. (Petitioners' brief, ¶72; Giaquinto's certification, ¶6.) Dr. Giaquinto also advised R.C. of the next steps in the HIB process,

including how and when to appeal. (Petitioners' brief, ¶74 – 76; Giaquinto's certification, ¶6.) R.C. was also informed that the next scheduled Board meeting was slated for December 20, 2021, at which time the results of the investigation were scheduled to be reported to the Board. (Giaquinto's certification, ¶7.)

The following day, on December 7, 2021, R.C. sent correspondence to the Board president requesting an appeal of A.C.'s HIB case.

On December 16, 2021, Dr. Giaquinto emailed R.C. informing him that his appeal was premature, and that a formal notification would be provided to him five days after the investigation results were reported to the Board. (Initial appeal, page 2; Amended appeal, page 123; Petitioners' brief, ¶77; Giaquinto's certification, ¶9)

On this same date of December 16, 2021, petitioners filed an appeal with the Commissioner of Education.[2] (Initial Appeal, page 5.) The appeal challenged, among other things: Dr. Giaquinto's authority to deny R.C.'s request for a hearing; raised questions and/or discrepancies that were allegedly not taken into consideration in the underlying HIB investigation; and closed by stating that petitioners would be prepared to have their appeal heard during the December 20, 2021, Board meeting. (Initial Appeal, page 5.)

On December 20, 2021, the results of the HIB investigation were submitted to the Board. Thereafter by letter, dated December 23, 2021, petitioners were formally notified that the matter had been presented to the Board. The letter provided information on how to request a hearing before the Board on the HIB determination. (Amended Appeal, page 196.)

Thereafter, on January 7, 2022, petitioners filed an Amended Appeal. Through this appeal, petitioners again appealed the December 16, 2021, denial of their request for a Board hearing and a ruling on their HIB/amended HIB complaint. (Amended Appeal,

[2] The appeal was improperly filed having been sent directly to the commissioner's email address and not ControversiesDisputesFilings@doe.nj.gov which is the correct portal for filing. Additionally, petitioners failed to include a proof of service.

page 3.) Petitioners asserted, among other things, that: school personnel created a hostile educational environment for A.C.; the superintendent's investigation into the matter was biased and inappropriate given the targets of the investigation; the December 7, 2021, request for a hearing before the Board was proper and refused on December 16, 2021, by a non-voting Board member (Dr. Giaquinto); the December 16, 2021, appeal to the Commissioner of Education (Commissioner) was correct with the exception of minor formatting issues which had since been cured. (Amended Appeal, pages 9-16.)

LEGAL ANALYSIS AND CONCLUSIONS

Through this motion, respondent asserts that petitioners' appeal was premature for failure to exhaust the remedies afforded to them under N.J.A.C. 6A:16-7.7 and N.J.S.A. 18A:37-15. More specifically, petitioners improperly deemed Dr. Giaquinto's courtesy call on December 6, 2021, to be formal notification/action by the Board. On December 7, 2021, the day after the call, petitioners requested a hearing before the Board. On December 16, 2021, via email, Dr. Giaquinto responded to their request and informed them that their request was premature as the matter had yet to be presented to the Board. That same day, petitioners filed their Initial Appeal - the springboard being Dr. Giaquinto's call on December 6, 2021.

Respondent further contends that petitioners Amended Appeal, again reiterated the same flawed arguments. It is respondent's position that petitioners' failure to follow the timelines established by the district in accordance with N.J.S.A. 18A:37-15 and N.J.A.C. 6A:16-7.7 as it relates to when a hearing can be requested and the filing of an appeal to the Commissioner, requires dismissal of their Amended Appeal.

Petitioners on the other hand, argue that respondent is not entitled to summary decision as they had in fact exhausted their administrative remedies.[3] It is their contention

[3] Notably, petitioners in their opposition, went through each paragraph of the Amended Appeal and inserted in bold lettering "**Respondent Has Not Specifically Disputed This**" the inference being that there was no factual dispute by the respondent as to the allegations put forth in each of the paragraphs. No answer is required by the respondents at this time because they have chosen to file a Motion to Dismiss of Lieu of an Answer to the petition in accordance with N.J.A.C. 6A:3-1.5 (g).

that the law is silent on whether parents must wait for written notice of a HIB investigation finding. Therefore, such notice can be provided in writing or verbally. In this case, verbal notification was provided on December 6, 2021, by Dr. Giaquinto, a nonvoting member of the Board. On December 7, 2021, they exercised their rights to request a hearing before the Board. The Board's lack of action by not hearing the matter within ten days of the request, and Dr. Giaquinto's email on December 16, 2021, effectively denied their hearing request, and triggered their appeal rights. On this last point, petitioners assert that the Board's scheduled meeting date, which in this case was thirteen days after they submitted a request for a hearing, does not supersede the law. It is petitioners' contention that by failing to hold a hearing within ten days of their request, the Board violated both the District's HIB policy and N.J.S.A. 18A:37-15(b)(6)(d) and therefore, respondents' motion should be dismissed.

N.J.A.C. 1:1-12.5 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 "the judgment or order sought shall be rendered 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 allegedly 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 (1995) (citing Judson v. Peoples Bank and 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 at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed.2d 202, 212 (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 at 252, 106 S. Ct. at 2512, 91 L. Ed.2d at 214.

In the instant matter, the issue before the tribunal is procedural in nature – a question of law and interpretation. For the reasons set forth more fully below, I **FIND** that this matter is appropriate for summary decision.

New Jersey enacted the Act to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying (HIB) of students that occur in school and off school premises. N.J.S.A. 18A:37-13.1(f).

Under the Act, HIB is defined as:

> [A]ny 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.
>
> [N.J.S.A. 18A:37-14.]

Each school district must adopt a policy that prohibits HIB and provides for a prompt response to any alleged HIB incident. N.J.S.A. 18A:37-15. Once an alleged HIB incident is reported to the school principal, the principal must initiate an investigation within one school day of the report. N.J.S.A. 18A:37-15(b)(6). The investigation shall be conducted by a school anti-bullying specialist and shall take no longer than ten school days to be completed. N.J.S.A. 18A:37-15(b)(6)(a).

The results of the investigation must be reported to the superintendent of schools within two school days of the completion of the investigation. N.J.S.A. 18A:37-15(b)(6)(b) The results shall also 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." N.J.S.A. 18A:37-15(b)(6)(c).

Parents of the students involved in any alleged HIB incident are entitled to receive information about the nature of the investigation and the result of the investigation. The information is required to be provided in writing within five school days after the results of the investigation are reported to the board. N.J.S.A. 18A:37-15(b)(6)(d). The parents may request a hearing before the board, and the hearing must be held within ten days of the request. Id. Any hearing shall be held in executive session to protect the identity of any students involved. The board may hear from the anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents. Id.

The board must issue a decision at the first meeting after its receipt of the investigation report. N.J.S.A. 18A:37-15(b)(6)(e). The board may affirm, reject, or modify the superintendent's decision. Id. The board's decision may be appealed to the Commissioner. Id.

As noted above, the origin of petitioners' Amended Appeal stems from a call with Dr. Giaquinto on December 6, 2021, wherein petitioners were informed of the status of the HIB investigation and process going forward. Petitioners appear to rely upon the language provided in the New Jersey Department of Education's Guidance for Parents on the Anti-Bullying Bill of Rights Act (Guidance), for the proposition that the conversation with Dr. Giaquinto triggered the appeal hearing timeline. Such interpretation is misguided; takes the procedural requirements under the Act out of context; and ignores both the plain language and the mandates of N.J.S.A. 18A:37-15 and N.J.A.C. 6A:16-7.7.

N.J.S.A. 18A:37-15(6)(d) and (e) state in relevant part that:

> (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 . . . [emphasis added]

Petitioners in this case requested a hearing before the matter had been presented to the Board and before they received the written information on the HIB investigation. Thereafter, petitioners filed the Initial Appeal with the Commissioner before the matter had been presented to the Board and a decision rendered. Thereafter, petitioners filed

an Amended Appeal with the same procedural defects as the Initial Appeal. While it was filed after the Board had rendered a decision and after they had received the written information on the HIB investigation, the foundation of the appeal that the board had denied their request for a hearing continued to be flawed as were the procedural defects.

The issue of exhaustion of remedies was addressed in Abbott v. Burke, 100 N.J. 269, 299, 495 A.2d 376 (1985) (holding that even when a case implicates constitutional issues, a court may require a party to exhaust its administrative remedies, when doing so "will serve to develop a fully informed factual record and maximize the soundness of determinations through the agency's expertise.) Quoting Heritage at Independence, LLC v. State, 2010 N.J. Super. Unpub. LEXIS 2025.

The underlying challenge in Abbott centered on school funding. Petitioner had brought suit, claiming that the Public-School Education Act of 1975 was unconstitutional as funded. The defendants, the board of education and state officials, moved to dismiss the claim on the grounds that the plaintiffs had failed to exhaust their administrative remedies. The issue considered by the court was narrow – specifically, whether the OAL should consider the evidence relevant to the parties' contentions and the facts at the heart of the controversy.

In concluding that the matter should be remanded to the appropriate administrative agency, the court stated:

> Given the confluence of complex legal and factual issues in this case, we must decide whether the controversy, in the first instance, can and should be resolved in whole or in part before an administrative tribunal, or whether it must immediately be considered by the judiciary. In general, available and appropriate "administrative remedies should be fully explored before judicial action is sanctioned." Garrow v. Elizabeth General Hospital and Dispensary, 79 N.J. 549, 558 (1979); see Board of Education of East Brunswick Township v. Township Council of East Brunswick, 48 N.J. 94, 102 (1966.) The State argues for such a requirement because the litigation focuses on subjects that are particularly amenable to specialized consideration and clearly related to areas of administrative regulatory concern. Plaintiffs, however, assert that a constitutional issue invokes solely the jurisdiction of the courts and that an administrative proceeding will

deny them the opportunity to make a timely presentation and secure final resolution of their constitutional contentions. All litigants agree that the procedural desideratum in this case is the rapid, thorough, complete, and impartial determination of all the relevant issues that have been properly and fairly presented. Toward this end, we are satisfied that the presence of constitutional issues and claims for ultimate constitutional relief does not, in the context of this litigation, preclude resort in the first instance to administrative adjudication.

We note that the preference for exhaustion of administrative remedies is one "of convenience, not an indispensable pre-condition." Swede v. City of Clifton, 22 N.J. 303, 315 (1956.) Thus, except in those cases where the legislature vests exclusive primary jurisdiction in an agency, a plaintiff may seek relief in our trial courts. Borough of Matawan v. Monmouth County Board of Taxation, 51 N.J. 291, 296 (1968) (administrative exhaustion not an absolute jurisdictional requirement.) In any case amenable to administrative review, however, upon a defendant's timely petition, the trial court should consider whether exhaustion of remedies will serve the interests of justice.

The interests that may be furthered by an exhaustion requirement were identified in City of Atlantic City v. Laezza, 80 N.J. 255, 265 (1979):

> (1) the rule ensures that claims will be heard, as a preliminary matter, by a body possessing expertise in the area; (2) administrative exhaustion allows the parties to create a factual record necessary for meaningful appellate review; and (3) the agency decision may satisfy the parties and thus obviate resort to the courts.

However, as explained in Garrow, 79 N.J. at 561,

> [t]he exhaustion doctrine is not an absolute. Exceptions exist when only a question of law need be resolved, Nolan v. Fitzpatrick, 9 N.J. 477, 487 (1952); when the administrative remedies would be futile, Naylor v. Harkins, 11 N.J. 435, 444 (1953); when irreparable harm would result, Roadway Express, Inc. v. Kingsley, 37 N.J. 136, 142 (1962); when jurisdiction of the agency is doubtful, Ward v. Keenan, 3 N.J. 298, 308-309 (1949); or when an overriding public interest calls for a prompt judicial decision, Baldwin Const. Co. v. Essex Cty. Bd. of Taxation, 24 N.J. Super. 252, 274 (Law Div.1952), aff'd 27 N.J. Super. 240 (App.Div.1953). The assertion of a constitutional right may be one factor to be considered in determining whether judicial intervention is justified -- but it is only one of many relevant considerations. * * * Brunetti v. Borough of New Milford, 68 N.J. 576 [, 590-91] (1975)

Clearly, there will be cases, as here, where the considerations that are relevant to the exhaustion requirement are in near-equipoise, and the court must weigh them carefully to find the proper balance. See Hinfey v. Matawan Regional Board of Education, 77 N.J. 514, 532 (1978); Roadway Express, 37 N.J. at 141; see generally K. Davis, 4 Administrative Law Treatise § 26:1 (1983) ("The Exhaustion Problem.")

While factually dissimilar, the appropriateness of the level of due process was discussed in Ruth Young-Edri v. Board of Education of the City of Elizabeth, 2019 N.J. AGEN LEXIS 403, wherein the Honorable Ellen S. Bass, ALJ determined that:

> [T]he 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. . . .
>
> 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). The statute only demands that

> the hearing be conducted in executive session, and that "the board 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.

Here, contrary to Young-Endri, the Board followed all procedural requirements under the Act with regard to its investigation of the HIB complaint and reporting of the findings to the Board at its next scheduled meeting date of December 20, 2021. There is no dispute that petitioners were entitled to a hearing however, such rights did not accrue by law until after the matter had been presented to the board. Thereafter, petitioners' appeal rights to the Commissioner did not accrue until after the Board had made a final determination.

I **CONCLUDE** that none of that occurred as petitioners sought a hearing and filed their appeals prematurely. Petitioners completely circumvented the HIB process and therefore failed to exhaust the remedies afforded to them under the Act.

ORDER

Based on the foregoing, it is **ORDERED** that respondents' motion for summary decision is **GRANTED** and petitioners' appeal is **DISMISSED**. It is further **ORDERED** that the matter be **REMANDED** to the Galloway Township Board of Education for a hearing in accordance with the Act which will allow the parties the opportunity to create a factual record necessary for a meaningful review by both the Board and the Commission should the matter thereafter be appealed.

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 9, 2022
DATE

TAMA B. HUGHES, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

TBH/gd/tat