

New Jersey Commissioner of Education

Final Decision

M.M., on behalf of minor child,

Petitioner,

v.

Board of Education of the Township of
Lafayette, Sussex County,

Respondent.

Synopsis

Petitioner appealed the finding of the respondent Board's Anti-Bullying Coordinator (ABC) that petitioner's minor son was not the victim of harassment, intimidation and bullying (HIB). Petitioner also sought video evidence regarding the alleged HIB incident. Following a prior decision by the Commissioner, the Appellate Division remanded the matter for consideration of additional evidence regarding whether the Board's HIB decision was ripe for review.

On remand, the ALJ identified the narrow issue for consideration here to be whether petitioner M.M. availed herself of the right to appeal the ABC's findings via a hearing before the respondent Lafayette Board of Education (Board), and if so, whether the Board rendered a decision based on that appeal. The ALJ found, *inter alia*, that: no proofs were presented to show that petitioner ever sought or received a hearing at the Board level; an HIB hearing was never conducted before the Board and thus no corresponding decision was ever issued by the Board based on such a hearing; although petitioner alleged on appeal that she possessed proof that a decision was rendered, no proof was ever presented despite repeated requests from the ALJ that petitioner provide same. Accordingly, the ALJ concluded that petitioner had not exhausted her administrative remedies, and therefore her case remains unripe for determination. Accordingly, the ALJ dismissed the petition.

Upon comprehensive review, the Commissioner found that: no further proceedings related to the video evidence are properly before the Commissioner at this time as two previous decisions have already ordered the Board to release the video in question to the petitioner; there is no remaining dispute as to whether the Board's HIB determination is ripe for review, as two previous Commissioner's decisions have determined that it is; while this matter was proceeding before various forums, petitioner filed a second petition stemming from the same incident alleging that the Board violated the Act; since a determination on the merits of petitioner's HIB claim in connection with the same incident is currently pending before the OAL under Agency Docket No. 216-11/21, there are no outstanding disputes herein. Accordingly, the Commissioner determined that no further proceedings are required in this case.

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.

43-22

OAL Dkt. Nos. EDU 07169-21 (EDU 05225-20 on remand)
Agency Dkt. No. 94-5/20

New Jersey Commissioner of Education
Final Decision

M.M., on behalf of minor child,

Petitioner,

v.

Board of Education of the Township of
Lafayette, Sussex County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by the parties pursuant to *N.J.A.C. 1:1-18.4*, and the replies thereto, have been reviewed and considered.

The primary relief sought in the petition of appeal filed in this matter was the production of video evidence maintained by the Lafayette Board of Education (Board) related to a harassment, intimidation, and bullying (HIB) complaint made by petitioner on behalf of her minor child. In two prior decisions, the Commissioner has ordered the Board to provide a copy of the requested video to the petitioner. *See, M.M., on behalf of minor child v. Board of Education of the Township of Lafayette, Sussex County*, Commissioner Decision No. 333-21L+, decided December 20, 2021; and *M.M., on behalf of minor child v. Board of Education of the Township of Lafayette, Sussex County*, Commissioner Decision No. 10-22L, decided

January 19, 2022. Accordingly, no further proceedings related to the video evidence are properly before the Commissioner at this juncture.¹


The proceedings in this matter have also addressed the merits of the Board's HIB decision and whether that decision was ripe for review when the petition was originally filed. Again, in two prior decisions, the Commissioner has determined that the HIB decision is ripe for review and that any argument by the Board that petitioner had failed to exhaust administrative remedies is without merit. *See, M.M., on behalf of minor child v. Board of Education of the Township of Lafayette, Sussex County*, Commissioner Decisions No. 333-21L+, decided December 20, 2021; and *M.M., on behalf of minor child v. Board of Education of the Township of Lafayette, Sussex County*, Commissioner Decision No. 10-22L, decided January 19, 2022. Accordingly, there is no remaining dispute as to whether the Board's HIB determination is ripe for review.

While this matter was proceeding before various judicial forums, the petitioner filed a second petition of appeal alleging that the Board violated the Anti-Bullying Bill of Rights Act stemming from the same incident. That matter, with Agency Docket No. 216-11/21, has been transmitted to the OAL for a hearing regarding the merits of the Board's HIB decision and whether the Board violated the Act as alleged by petitioner. Accordingly, since a determination on the merits of petitioner's HIB claim in connection with the same incident is currently

¹ It is important to recognize that the Commissioner does not have the authority to enforce the order requiring the Board to provide the petitioner with the video evidence of the alleged incident. As provided in the New Jersey Court Rules, R. 4:67-6, parties seeking enforcement of agency orders are required to bring an action in New Jersey Superior Court.

pending before the OAL under Agency Docket No. 216-11/21, and there are no outstanding disputes remaining in this case, no further proceedings on this matter are required.²

IT IS SO ORDERED.³


ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 4, 2022

Date of Mailing: March 4, 2022

² All motions pending under Agency Docket No. 94-5/20, including the motions to vacate, motion for partial summary decision, motion to reopen, motions to consolidate with Agency Docket No. 216-11/21, all motions related to adjournments, all motions related to stays of hearing dates or decisions, and all motions related to discovery and sanctions, are denied.

³ This decision may be appealed to the Appellate Division of the Superior Court 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

OAL DKT. NO. EDU 07169-21
Agency Ref. No.: 94-5/20

(ON REMAND)

OAL DKT. NO. EDU 05225-20

M.M. ON BEHALF OF MINOR CHILD,

Petitioner,

v.

TOWNSHIP OF LAFAYETTE BOARD

OF EDUCATION, SUSSEX COUNTY,

Respondent.

M.M. o/b/o Minor Child, pro se

Marc H. Zitomer, Esq., for respondent (Schenck Price Smith & King, LLP, attorneys)

Record Closed: December 8, 2021

Decided: December 9, 2021

BEFORE **JUDE-ANTHONY TISCORNIA**, ALJ:

STATEMENT OF THE CASE

The forgoing matter involves a petition of appeal on remand from the Appellate

Division of the Superior Court of the State of New Jersey to the Commissioner of the New Jersey Department of Education. The factual findings and legal conclusions in the first petition, EDU 05225-20, are incorporated herein by reference.

ISSUE

The remand decision raised a narrow issue on appeal: Did petitioner, M.M., avail herself of the right to appeal the Anti-Bullying Coordinator's findings via a hearing before the Lafayette Board of Education, and if so, did the Board of Education render a decision based on that appeal?

PROCEDURAL HISTORY

The underlying matter, docketed as EDU 05225-20, was dismissed by the undersigned via an Initial Decision on Motion for Summary Decision dated August 7, 2021. In that case, M.M. appealed the Respondent School District's (the District) Anti-Bullying Coordinator's (ABC) finding that her son was not the victim of harassment, intimidation and/or bullying (HIB). In that Initial Decision, the undersigned found that M.M. failed to exhaust her administrative remedies when she refused to appear in front of the local board of education for a hearing to dispute the ABC's findings as required by statute, and thus, the local board had not issued a corresponding decision regarding M.M.'s appeal. Instead, M.M. filed an action directly with the NJ Department of Education's Office of Controversies and Disputes, which was subsequently transferred to the Office of Administrative Law.

The original Petition of Appeal was assigned to the Honorable Danielle Pasquale, ALJ, who soon withdrew due to a conflict, and the matter was then assigned to the undersigned. In the Initial Decision, the undersigned reasoned, and the Commissioner subsequently affirmed, that M.M.'s claim was not ripe and must be dismissed.

Upon appeal to the Appellate Division of the New Jersey Superior Court, M.M. sought to supplement the record with documents allegedly showing that the Board had, in fact, rendered a decision regarding her appeal. As a result, the NJ Department of Education filed a Motion for Remand to allow these documents to be considered by the undersigned, with instructions that, if it is found that the local board had, in fact, rendered such a decision, then the underlying matter would, then, be ripe for a hearing before the Commissioner of Education and Office of Administrative law, and should proceed on the merits.

The remanded petition of appeal was transmitted to the OAL August 24, 2021. The transmittal sheet provided the following specific instructions regarding the alleged documents and the focus of the hearing:

“...the DOE filed a motion for remand to allow those documents to be considered. The Commissioner is transmitting this matter for further fact-finding and a determination regarding whether the Board issued a decision. Should the ALJ determine that the Board did issue a decision, the matter may proceed for a merits determination regarding whether that decision was arbitrary, capricious, or unreasonable.

Subsequent to the matter being remanded to the OAL, M.M. immediately filed a Motion dated September 3, 2021, seeking to “disqualify Judge Tiscornia and provide an unbiased judge.” The Motion was dismissed by the undersigned by Order dated September 14, 2021. M.M. then filed a motion to appeal this denial on September 20, 2021, with the Honorable Judge Ellen Bass, Acting Director and Chief Administrative Law Judge, who ultimately denied said appeal by order dated September 23, 2021.

On October 20, 2021, a hearing in the forgoing matter was set down for November 16, 2021. Upon receipt of the hearing date via electronic mail on October 20, 2021, M.M. immediately filed a document entitled “Motion to Stay the Proceedings Pending Decision on Petition for Certification to Supreme Court”. Before the undersigned could act on the aforementioned Motion to Stay, M.M. filed an interlocutory Application for Permission to

File Emergent Motion with the Appellate Division, challenging my anticipated denial of her Motion to Stay. This application was promptly denied by the Appellate division on October 22, 2021.

On October 27, 2021, the undersigned issued an Order denying the October 20, 2021, Motion to Stay. M.M, promptly filed another interlocutory Application for Permission to File Emergent Motion, which was granted by the Appellate Division on October 28, 2021, giving leave for M.M. to make a Motion to the Appellate Division to have the matter before me scheduled for November 16, 2021, adjourned. On November 3, 2021, M.M. filed with the undersigned a Motion to Adjourn the November 16, 2021, hearing date, to which the undersigned issued an Order dated November 8, 2021, denying the aforementioned motion. On November 9, 2021, the Appellate Division issued an Order adjourning the matter until after December 7, 2021. On November 10, 2021, the undersigned set the matter down for a hearing date on December 8, 2021. The hearing was set as a preemptory date, as indicated on the face of the notice.

Aside from the above referenced Motions, M.M. has drafted and sent hundreds of correspondences via email and regular mail since this matter was transmitted to the OAL on remand. These correspondences include motions, responses to motions, discovery requests, petitions to the Appellate Division, petitions to the Supreme Court, letters to the Commissioner to the Dept of Education, letters to opposing counsel, letters to opposing counsel's client (the district), letters to the Director of the Office of Administrative Law, and letters to the undersigned, too numerous to mention here, but all of which are included in the physical case file. These correspondences continued right up to the moments before the hearing, when, approximately fifteen minutes prior to the commencement of the hearing, the undersigned received from M.M. a correspondence entitled "Petitioner's Motion to Sanction Respondent for Failure to Provide Discovery". The hearing was conducted on December 8, 2021, and the record was closed.

FINDINGS OF FACT
Petitioner's Refusal to Proceed
and Failure to Present Proofs

At the hearing conducted via Zoom on December 8, 2021, petitioner, immediately indicated, before the docket number could even be read into the record, that she refused to proceed with the hearing. She appeared agitated, and at one point she stated she was “shaking” and was going to have a “break down”. M.M. complained that I had “allowed unfair evidence into the record”. She was referencing a revised exhibit list that respondent’s counsel had circulated the morning of the hearing. I explained to M.M. that this was only an exhibits list, and that none of the exhibits had yet been entered into the record. I then noted the sole purpose of the hearing was for her to introduce the documents which she had indicated to the Commissioner and the Appellate Division that she possessed, and which tended to show a decision had been rendered at the local board level. I explained multiple times that this was the sole focus of the hearing on remand as indicated on the face of the transmittal sheet. My explanation seemed to make M.M. irate, as she would continuously begin to shout and talk over me whenever I drew her attention to the focus of the hearing.

When asked, M.M. indicated that she would not present any documents or testimony at the hearing. I asked her multiple times to reconsider and please present the documents that she had advised the Appellate Court she was precluded from presenting below, or any evidence other that she may have. My request was continually met with shouting. Mr. Zitomer expressed concern for M.M.’s behavior, noting that he was concerned that she has begun showing up to the homes of the Board Members. He also expressed great concern for the minor child, and noted that M.M. has kept her child from attending school for the entirety of the school year. Counsel then made a motion to dismiss M.M.’s appeal, which I ultimately granted at the end of the hearing after multiple unsuccessful attempts to have M.M. present her evidence.

Having received no proofs that M.M. sought or received a hearing at the Board level, I **FIND** that an HIB hearing was never conducted in front of the Board of Education, and thus, no corresponding decision was rendered by the Board based on any such hearing.

Legal Discussion and Conclusions

As noted above, the issue at the heart of the foregoing matter on remand is a narrow one: did the local board of education conduct a hearing and render a decision based M.M.'s appeal of the ABC's finding that no HIB violation occurred. Despite the fact that M.M. alleged on appeal to possess documents that purported to show such a decision was rendered, M.M. refused to provide any proofs whatsoever in support of her position. Instead, M.M. continued to be combative and argumentative on the record, both with myself and opposing counsel. The undersigned asked her repeatedly to enter any evidence at all into the record; a plea which continuously went unanswered and ignored.

Thus, based on the foregoing, and for the reasons expressed in my earlier decision, I, therefore, **CONCLUDE** that M.M. has not exhausted her administrative remedies and her case before the Office of Administrative Law remains unripe for adjudication.

ORDER

Based upon the foregoing, it is **ORDERED** M.M.'s petition of appeal be, and hereby is, **DISMISSED**.

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.

December 9, 2021
DATE


JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency: 12/9/21

Date Mailed to Parties: 12/9/21

id