

223-23

OAL Dkt. No. 00065-23

Agency Dkt. No. 376-12/22

## New Jersey Commissioner of Education

### Final Decision

W.M. and M.M., on behalf of minor child,

Petitioners,

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), and the exceptions filed by petitioners pursuant to *N.J.A.C. 1:1-18.4* have been reviewed and considered.<sup>1</sup>

By way of background, petitioners<sup>2</sup> alleged that their minor child was the victim of harassment, intimidation, and bullying (HIB). On or about December 27, 2021, the Lafayette Board of Education (Board) issued a decision that petitioners' child was not the victim of HIB. On January 19, 2022, the Commissioner transmitted a case captioned *M.M., on behalf of minor child v. Board of Education of the Township of Lafayette, Sussex County, and*

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<sup>1</sup> The Board did not file a reply to petitioners' exceptions.

<sup>2</sup> Throughout the course of the events related to this case, some actions have been undertaken by petitioners jointly, while others were done by M.M. individually. For ease of reference, all actions taken by W.M. and/or M.M. on behalf of their child, whether jointly or individually, will be referred to as actions taken by "petitioners."

*Jennifer Cenatiempo, former Superintendent*, Agency Dkt. No. 216-11/21,<sup>3</sup> to the OAL for a hearing regarding the merits of the Board’s HIB decision and alleged violations of the Anti-Bullying Bill of Rights Act.

On December 30, 2022, petitioners filed the petition of appeal and motion for emergent relief in the instant matter (the “2022 case”). The 2022 case was transmitted to the OAL on January 3, 2023. The relief requested included home instruction for petitioners’ child, an order requiring the Board to comply with a previous Commissioner decision regarding copies of video evidence, and the scheduling of a HIB appeal with a “new and impartial” judge. Petitioners’ motion for emergent relief was denied. *W.M. and M.M., on behalf of minor child v. Board of Education of the Township of Lafayette, Sussex County*, Commissioner Decision No. 33-23E (February 3, 2023).

Thereafter, the Board filed a motion for summary decision. The Hon. Nanci G. Stokes, ALJ, found that petitioners had previously filed a motion to disqualify Judge Bongiovanni from the 2021 case; the motion was denied by the Acting Director of the OAL, and Judge Stokes concluded that she had no authority to disturb that Order. Judge Stokes further concluded that the issue of the video evidence was moot because Judge Bongiovanni had addressed it in a discovery order, which Judge Stokes determined she had no authority to disturb.

Regarding petitioners’ request for home instruction, Judge Stokes determined that the 2022 case essentially replicates the issues raised in the 2021 case. Judge Stokes noted that, if petitioners prevailed on their 2021 case and demonstrated that HIB occurred and the Board’s

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<sup>3</sup> This case will be referred to as the “2021 case.” It bears OAL Docket Number EDU 00546-22 and was assigned to the Hon. Ernest Bongiovanni, ALJ. There is a typographical error on page 6 of the Initial Decision that identifies the OAL Docket Number for the 2021 case as EDU 00456-22. All other references to the 2021 case in the Initial Decision identify the correct OAL Docket Number of EDU 00546-22.

decision to the contrary was arbitrary, capricious, or unreasonable, the relief ordered by Judge Bongiovanni might include home instruction. Judge Stokes rejected petitioners' argument that they had not requested home instruction as part of the 2021 case, citing to the entire controversy doctrine and to the OAL rules that provide for liberal amendments to pleadings.

In their exceptions, petitioners argue that the 2022 case is not duplicative of the 2021 case, because they did not request home instruction in the 2021 case. Petitioners also contend that they are not re-arguing discovery issues, but rather are seeking enforcement of the Commissioner's decision ordering the Board to produce video evidence. Finally, petitioners contend that Judge Bongiovanni is biased and therefore should not be permitted to handle the 2021 case.<sup>4</sup>

Upon review, the Commissioner concurs with Judge Stokes' decision granting the Board's motion for summary decision. As Judge Stokes noted, pursuant to *N.J.A.C. 1:1-14.10(j)*, the Director of the OAL is the agency head for purposes of motions to disqualify. Therefore, neither Judge Stokes nor the Commissioner have the authority to overturn the Director's decision regarding petitioners' motion to disqualify Judge Bongiovanni. Furthermore, as the

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<sup>4</sup> Petitioners also contend that Judge Bongiovanni denied them the discovery they requested and refused to allow them to appear virtually for the proceedings regarding the above-noted 2021 case. Those allegations are not addressed herein, as this decision is limited to a review of Judge Stokes' Initial Decision regarding the 2022 case. Petitioners may present any and all arguments regarding Judge Bongiovanni's orders, or the way in which he handled proceedings, for the Commissioner's review when she considers and decides the 2021 case. Petitioner also makes allegations regarding a petition filed in 2020, which are not addressed herein, as the Commissioner has already issued a decision in that matter. *M.M., on behalf of minor child v. Board of Education of the Township of Lafayette*, Agency Dkt. 94-5/20, EDU 05225-20, Commissioner Decision No. 43-22 (March 4, 2022). There is a typographical error on page 6 of the Initial Decision that identifies the OAL Docket Number for the 2020 matter as EDU 07225-20. All other references to the 2020 matter in the Initial Decision identify the correct OAL Docket Number of 05225-20.

Commissioner's decision regarding the video evidence was issued in the 2021 case, any issues related to that evidence must be addressed in those proceedings to avoid piecemeal litigation.

Finally, regarding the request for home instruction, the Commissioner finds that petitioners are not precluded from seeking that relief in the proceedings related to the 2021 case. As the request for home instruction is based entirely on petitioners' allegations that their child is unsafe at school because he has been the victim of HIB, it is in the interests of judicial economy to determine whether home instruction is an appropriate remedy in the 2021 case, which was transmitted to address petitioners' HIB claims.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>5</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 1, 2023  
Date of Mailing: August 1, 2023

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<sup>5</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. EDU 00065-23

AGENCY DKT. 376-12/22

**W.M. & M.M. ON BEHALF OF MINOR CHILD,**

Petitioner,

v.

**BOARD OF EDUCATION OF TOWNSHIP OF**

**LAFAYETTE, SUSSEX COUNTY,**

Respondents.

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**M.M. and W.M.**, pro se, o/b/o their minor child

**Eric L. Harrison**, Esq., for respondents (Methfessel & Werbel, attorneys)

Record Closed: June 09, 2023

Decided: June 19, 2023

BEFORE **NANCI G. STOKES**, ALJ:

**STATEMENT OF THE CASE**

Through another case, petitioners are challenging the respondent's 2020 finding that no harassment, intimidation, or bullying (HIB) occurred against their child, in which the Judge ordered discovery and scheduled a hearing. Are petitioners entitled to home instruction, a new judge, or relief from the order through a new petition? No. Consideration

of moot issues and duplicative cases is improper and impairs judicial economy. Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 15 (1989).

### **PROCEDURAL HISTORY**

Following the alleged events in the petitioners' HIB complaint between January 10 and 17, 2020, the petitioners removed their minor child from school. In this case, petitioners seek home instruction for their minor child, an order requiring compliance with the Commissioner of Education's (Commissioner) orders regarding video evidence they sought in earlier cases for the same HIB dispute, and a hearing before another judge on the HIB denial appeal.

On January 3, 2023, the Department of Education, Office of Controversies and Disputes, transmitted this case to the Office of Administrative Law (OAL) for hearing as a contested case and resolution of petitioners' motion for emergency relief.

The Lafayette Township School District's Board of Education (Lafayette or Board) provided the OAL with multiple documents regarding the videos on January 5, 2023, which the Clerk supplied to me after the case's reassignment.<sup>1</sup> On January 5, 2023, petitioners also supplemented their application.

I requested the Board submit a reply to the emergent application, which I received on January 6, 2023.

On January 9, 2023, petitioner M.M. advised that she and her son had COVID and requested time to recover. I adjourned the argument on petitioners' emergent relief and permitted additional submissions from the parties.

On January 12, 2023, the Board submitted additional materials.

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<sup>1</sup> The OAL's clerk initially assigned the case to Judge Bongiovanni whom the OAL long ago scheduled as an emergent judge for January 9, 2023. After the petitioners requested case reassignment, the Acting Director assigned the emergent relief motion to me, and the OAL scheduled an oral argument for January 11, 2023.

On January 13, 2023, petitioners filed three submissions, including a response to Lafayette's opposition with attachments, a brief regarding Judge Bongiovanni's order, and exhibits about the request to disqualify Judge Bongiovanni. On January 17, 2023, I heard oral argument on the emergent application via Zoom.

On January 18, 2023, I issued an order denying petitioners' request for emergent relief, concluding that petitioners did not meet the requirements under N.J.A.C. 6A:3-1.6. The Commissioner upheld my determination.

On March 27, 2023, petitioners advised the OAL that the audio of the emergent argument was impaired, and portions appeared missing. The OAL's IT department determined that the connectivity was skipped briefly during Zoom, leaving short audio gaps. I directed petitioners to identify the missing recording segments and offer statements they believe were not recorded to supplement the record. On April 20, 2023, petitioners submitted corrections to the transcript and record. On April 21, 2023, respondent's counsel advised that he had no objection to petitioners' proposed modifications to the record, and I ordered supplementation of the record with petitioners' corrections enumerated one to twenty-four.<sup>2</sup>

On May 2, 2023, I scheduled a telephone conference for June 12, 2023, to which petitioners objected and requested I render an Initial Decision instead. This tribunal advised that a dispositive motion or a hearing precedes an Initial Decision.

On May 18, 2023, Lafayette filed a motion for summary decision. I rescheduled the telephone conference for August 10, 2023, and set a motion response schedule.

Petitioners filed their objection to Lafayette's motion on June 8, 2023, and Lafayette replied on June 9, 2023. I permitted an additional reply by petitioners, which I received on June 9, 2023. Lafayette waived any further reply that day, and I closed the record.

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<sup>2</sup> The petitioners sought interlocutory review of the emergent relief denial from the Appellate Division, but did not complete that application. Although I ordered supplementation of the record per petitioners' request, they opted not to proceed with that review.

## **FINDINGS OF FACTS**

Based on the documents submitted in support of and in opposition to the motions for summary decision, when viewed in the light most favorable to the non-moving party, I **FIND** the following as **FACT** for purposes of this motion:

On February 20, 2020, the Lafayette's anti-bullying coordinator issued a report, concluding that the complaint's alleged conduct did not meet the statutory definition of HIB, but did violate the Student Code of Conduct. Further, Lafayette would take remedial measures to ensure that M.M.'s son felt comfortable in school, including seat changes in physical education and classrooms, and monitoring by teachers and the school's social worker. Petitioners challenge that Lafayette initiated these remedial steps.

Petitioners filed several petitions regarding respondent's actions, disagreeing with its HIB determination and asserting that the HIB investigation leading to Lafayette's HIB denial was inaccurate.

### Video Discovery and the Scope of OAL DOCKET NO. EDU 00546-22

Specifically, M.M. filed an appeal with the Commissioner to which the OAL assigned a docket number, EDU 05225-20. On August 7, 2020, Administrative Law Judge (ALJ) Jude Tiscornia granted summary decision in favor of Lafayette under EDU 05225-20, finding that petitioners did not request a hearing before the Board making their claim procedurally deficient and denying copies of security camera video recordings of M.M. minor child's gym class in January 2020. Previously, M.M. reviewed videos of the gym class at the school while accompanied by a school employee.

On November 5, 2020, the Commissioner adopted the decision, agreeing that the claim was not ripe, and that Lafayette need not produce the videos. The Commissioner also noted that it only had jurisdiction over New Jersey's school laws, not federal ones. M.M. asserted, in part, that she should receive copies of the videos under the Family



Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, outside the Commissioner's jurisdiction. N.J.S.A. 18A:6-9. Yet, addressing the New Jersey's Pupil Records Act, N.J.S.A. 18A:36-19, the Commissioner highlighted that the Act only required Lafayette to provide M.M. access to her child's records, not copies. N.J.A.C. 6A:37-2.5. Lafayette previously agreed to let petitioner come to school and watch the videos. In other words, Lafayette granted petitioner "access." Notably, on September 18, 2020, the United States Department of Education also denied petitioner's request for the videos under FERPA.

M.M. appealed from the Commissioner's Final Decision and the Appellate Division remanded the case to the Commissioner. On December 20, 2021, the Commissioner denied the Board's summary decision request on remand and ordered the Board to issue a written HIB determination regarding HIB Coordinator's February 20, 2020, report. Indeed, the Anti-Bullying Rights Act (ABRA), N.J.S.A. 18A:37-13 to -37, necessitates Board action concerning HIB complaints and investigations. Although the Board accepted the decision at its March 18, 2020, meeting, the Board had yet to issue a written decision upholding the determination; it did so on December 27, 2021. The December 20, 2021, order also required the Board to provide the videos petitioner requested.

The Board filed a motion to reconsider the December 20, 2021, Final Decision, which the Commissioner denied on January 19, 2022. Because the Board issued its decision on the HIB February 20, 2020, determination, the Commissioner concluded that petitioner M.M.'s challenge to that decision was now ripe, permitting transmittal to the OAL for adjudication of that determination and "any other violations of the [ABRA]." Further, as with any transmitted case, the Commissioner highlighted that petitioner is "entitled to discovery, including the video evidence." That case is pending before the Hon. Ernest Bongiovanni, ALJ, under OAL DKT. NO. EDU 00546-22, Agency Dkt, 216-11/21. Judge Bongiovanni scheduled the case for a hearing on June 30, 2023, and Lafayette maintains it is ready to proceed in that case.

Like the petition here, M.M. also sought video evidence she asserts the Commissioner ordered from Judge Bongiovanni. Indeed, petitioners view the January 19, 2022, order transmitting the case to the OAL as ordering copies of the videos

petitioners previously sought. Yet, Lafayette opposed that discovery, believing that the Commissioner's Orders conflicted; one denied the request, and the other granted the request. Further, petitioners were unsuccessful under FERPA.

On January 21, 2022, M.M. forwarded the same discovery demands in EDU 00456-22 that she sought in EDU 07225-20, more than her first request and her earlier review of videos at the school after the 2020 HIB allegations.

Lafayette sought to prevent the release of considerable security footage that necessarily includes images of staff and many other minor students, potentially compromising the privacy interests of hundreds of individuals. Still, on February 8, 2022, Lafayette provided nearly six hours of footage to M.M. relevant to its HIB investigation of the January 17, 2020, complaint. Further, Lafayette offered M.M. an opportunity to review the other videos she requested at the school, followed by submitting a list of video clips she thought relevant to the case. M.M. did not accept that proposal.

Unable to resolve Lafayette's offer, M.M. filed a motion with Judge Bongiovanni seeking sanctions for non-compliance with the Commissioner's January 19, 2022, order. Significantly, on January 9, 2023, Judge Bongiovanni entered an order regarding the video evidence and converted petitioners' motion for sanctions to one seeking to compel discovery. See N.J.A.C. 1:1-14.6(d) (permitting the ALJ to convert any form of proceeding into another); and N.J.A.C. 1:1-14.6(n) (allowing an ALJ to compel the production of materials to allow a "full and true disclosure of the facts".) Judge Bongiovanni's order discussed the long history of the video requests and ordered the parties to complete discovery regarding those videos within sixty days. Petitioners disagree with this order but did not seek interlocutory review of that determination. Still, Lafayette maintains that it disposes of the video discovery issues in that case and here.

### Disqualification

Petitioners sought to disqualify Judge Bongiovanni. Generally, M.M. asserts that Judge Bongiovanni is biased and favors Lafayette, having disagreed with M.M. during oral argument on her discovery motion for the videos. However, the Office of

Administrative Law's (OAL) Acting Director denied M.M.'s disqualification request by letter order on November 7, 2022. To be sure, the earlier case involving the same HIB complaint continues with Judge Bongiovanni, and the Acting Director did not reassign the case.

### Home Instruction

When all students received home instruction because of the COVID emergency, so did petitioners' minor child. However, petitioners did not permit their child to return once students returned to Lafayette's schools for in-person instruction.

The petitioners believe that the school is hostile and unsafe for their child because of the school's alleged failures regarding the HIB investigation, allowing bullying to continue, not providing discovery ordered by the Commissioner, obstructing justice, and in delaying a hearing. They maintain that their child fears returning to the school's hostile, unsafe environment, and that Lafayette's actions "caused extensive damage to their child's trust in adults." Thus, petitioners assert that Lafayette must provide their child with homebound instruction. Undeniably, no judge ordered this form of education for petitioners' minor child, and petitioners did not identify this relief before. Still, petitioners have yet to demonstrate that Lafayette's denial of HIB against their child was arbitrary, capricious, or unreasonable, that Lafayette's investigation was inaccurate, or that the school environment is unsafe.

Lafayette brought truancy proceedings and disputes that the school is an unsafe or hostile environment or that its HIB denial was inaccurate. Notwithstanding, Lafayette asserts the case before Judge Bongiovanni can address all petitioners' issues related to the HIB and that the filing of this case was duplicative. Indeed, petitioners argue the same HIB complaint failures and discovery disputes here as in the case before Judge Bongiovanni.

Notably, Lafayette also highlights that petitioners can request home instruction for health or psychological reasons, such as the fears petitioners claim their child has about attending school or other medical issues necessitating home instruction. Petitioners can

support such a request with medical documentation recommending homebound instruction, but they supplied none.

## **DISCUSSION AND CONCLUSIONS OF LAW**

### Summary-Decision Standard

A party may move for summary decision upon all or any substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion must include briefs, with or without affidavits. When the filed papers and discovery and any affidavits show that no genuine issue of material fact exists and that the moving party is entitled to prevail as a matter of law, the judge may grant the motion. N.J.A.C. 1:1-12.5(b). When such a motion is made and supported, an adverse party, to prevail, must submit an affidavit setting forth specific facts showing that a genuine issue of material fact exists that can only be determined in an evidentiary proceeding. Ibid.

Even though a statute calls for a “hearing,” where a motion for summary decision is made and supported by documentary evidence and where the objector submits no evidence to demonstrate that a genuine issue of material fact exists, the motion procedure constitutes the hearing, and no trial-type hearing is necessary. Contini v. Newark Bd. of Educ., 286 N.J. Super. 106, 120–21 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996).

To determine whether a genuine issue of material fact exists that precludes summary judgment, the motion judge must consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to demonstrate that the moving party is entitled to a judgment as a matter of law. Brill v. Guardian Life Ins., 142 N.J. 520, 540 (1995).

Moreover, even if the non-movant comes forward with some evidence, the court must grant summary judgment if the evidence is “so one-sided that [the movant] must prevail as a matter of law.” Ibid. at 536 (citation omitted). If the non-moving party’s evidence is “merely colorable or is not significantly probative,” the judge should not deny summary judgment. Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998).

Petitioners' motion response predominantly highlights their disputes regarding the HIB report, the investigation, the videos, and the school's actions regarding the HIB. Further, petitioners express frustration in Lafayette's litigation posture taken in earlier cases. Yet, those disputes do not require resolution here or prevent summary decision on the legal grounds Lafayette presents to support its motion. Indeed, those disputes are before Judge Bongiovanni, and Lafayette does not seek summary decision on whether the petitioners' child was the victim of a HIB or whether its investigation or actions were proper.

Instead, the question is whether petitioners can seek home instruction, a new judge, or discovery related to a HIB determination and alleged failures regarding the HIB investigation when those disputed issues remain pending before another judge. Indisputably, petitioners presented no medical evidence to support home instruction for their minor child. Further, Judge Bongiovanni issued a discovery order addressing the same videos the petitioners seek here. Additionally, the OAL's Acting Director denied Judge Bongiovanni's disqualification. Since these facts are clear and undisputed, I **CONCLUDE** that this case is ripe for summary decision.

### Orders

Petitioners seek a review of Judge Bongiovanni's discovery order and enforcement of the Commissioner's orders regarding the videos through this petition. Additionally, they seek a judge other than Judge Bongiovanni to decide their HIB disputes despite the OAL's Acting Director's order denying his disqualification.

As Lafayette points out, petitioners can still seek further review from the Commissioner or the Appellate Division for this case or in Judge Bongiovanni's case once the proceedings end. See N.J.A.C. 1:1-14.10 (providing that the agency head reviews orders through interlocutory review); N.J.A.C. 1:1-18.6 (noting agency review after the ALJ issues an initial decision); N.J.A.C. 6A:4-1.3 (stating that the Commissioner's Final Decisions are appealable to the Appellate Division.)

Although administrative law judges have independence in executing “certain important responsibilities . . . to conduct hearings, make factual findings, and recommend decisions in contested cases for the various State agencies,” final decision authority rests with the agency subject to judicial review by the Appellate Division. In re Appeal of Certain Sections of Unif. Admin. Procedure Rules, 90 N.J. 85, 94 (1982); N.J.S.A. 52:14B-10(c). Significantly, the OAL Director is the agency head for interlocutory review regarding judge disqualification under N.J.A.C. 1:1-14.10(j). M.M. did not seek interlocutory review of Judge Bongiovanni’s discovery order. Further, under N.J.A.C. 1:1-14.14, an administrative law judge only has the authority to issue sanctions for a party’s unreasonable failure to comply with any order of that judge or non-compliance with the OAL rules. (Emphasis added.) Thus, I **CONCLUDE** that I have no authority to disturb Judge Bongiovanni’s discovery order, or those orders or determinations issued by an agency head.

Notably, an action is moot when it no longer presents a justiciable controversy because the issues raised have become academic. For 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 concrete adversity of interest. Anderson v. Sills, 143 N.J. Super 432, 437 (Ch. Div. 1976); Greenfield v. New Jersey Dep’t of Corrections, 382 N.J. Super. 254, 257-58 (App. Div. 2006); 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). <https://njlaw.rutgers.edu/collections/oal/>. Indeed, petitioners acknowledge that they filed this case because Judge Bongiovanni had yet to decide their motion regarding the videos. However, because Judge Bongiovanni addressed the discovery issue, I **CONCLUDE** that the issue is moot here.

### Entire Controversy

Petitioners maintain the Commissioner’s January 19, 2022, transmittal of multiple issues to Judge Bongiovanni was inappropriate. Further, they maintain that the request for home instruction remains in this case because they did not include that relief in their earlier petitions. Therefore, petitioners argue that I should not grant summary decision.

However, the Commissioner's transmittal determination in the earlier case is not before me. Regardless, the Commissioner followed the well-established entire controversy doctrine designed to avoid piecemeal litigation of issues raised by a single cause of action. Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 15 (1989). Duplicative filings are discouraged. See N.J.A.C. 6A:3-1.4(c) (discussing duplicative filings).

The objectives behind the entire controversy doctrine are threefold:

- 1) To encourage the comprehensive and conclusive determination of a legal controversy.
- 2) To achieve party fairness, including both parties before the court as well as prospective parties.
- 3) To promote judicial economy and efficiency by avoiding fragmented, multiple, and duplicative litigation.

[DiTrollo v Antiles, 142 N.J. 253, 267 (1995); Cogdell, 116 N.J. at 22-24.]

Further, the "determinative consideration is whether distinct claims are aspects of a single larger controversy because they arise from interrelated facts," even where different causes of action could provide other relief. DiTrollo, 142 N.J. at 271.

Undeniably, the request for home instruction relates to the HIB incident in the case before Judge Bongiovanni. Should petitioners prevail in demonstrating that a HIB occurred and that Lafayette's determination or investigation to the contrary was arbitrary, capricious, or unreasonable, relief might include home instruction to a victim. See N.J.S.A. 18A:37-15(b)(7) (noting that a school has a range of ways it can respond once identifying an incident of HIB). Notably, under N.J.A.C. 1:1-6.2, the OAL rules provide for liberal amendments to pleadings. Further, petitioners can still provide medical documentation to support a medical basis for home instruction without the need for litigation or order. Regardless, I **CONCLUDE** that this petition essentially duplicates the issues in the earlier petition and that the entire controversy doctrine requires petitioners to raise all relief in the pending interrelated case.

In sum, I **CONCLUDE** that summary judgment should be **GRANTED** in favor of Lafayette as a matter of law.

**ORDER**

Given my findings of fact and conclusions of law, I **ORDER** that Lafayette be **GRANTED** summary decision, and I further **ORDER** that the petition be **DISMISSED WITH PREJUDICE**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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



Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, 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.



June 19, 2023

\_\_\_\_\_  
DATE

\_\_\_\_\_  
**NANCI G. STOKES, ALJ**

Date Received at Agency:

June 19, 2023

Date Mailed to Parties:  
ljb

June 19, 2023

## DOCUMENTS SUBMITTED

### For petitioners:

- P-1 Commissioner's Decision dated January 19, 2022
- P-2 Appendix Motion for Leave to Appeal Interlocutory Review
- P-3 Department of Education's OAL transmittal docketed under EDU 00065-23
- P-4 Department of Education's response to M.M.'s appeal and order granting dismissal.
- P-5 Undated Board Minutes and incident report
- P-6 Email exchanges
- P-7 Additional email exchanges regarding videos
- P-8 Materials submitted to Judge Tiscornia
- P-9 Recent HIB complaint
- P-10 Truancy materials

### For respondent:

- R-1 Respondent's June 2022 submission to Judge Bongiovanni, with all exhibits in EDU 00546-22, Agency Dkt, 216-11/21
- R-2 Order denying emergent relief
- R-3 Commissioner's Decision affirming denial of the motion for emergent relief.
- R-4 Judge Bongiovanni's Order denying petitioners' motion for sanctions in EDU 00546-22, Agency Dkt, 216-11/21