

**New Jersey Commissioner of Education
Decision**

R.Z. and L.D., on behalf of minor child, L.Z.,

Petitioners,

v.

Board of Education of the Northern Valley
Regional High School District, Bergen County,

Respondent.

Synopsis

Petitioners sought to appeal the findings of a harassment, intimidation, and bullying (HIB) investigation conducted by the anti-bullying specialist (ABS) at their child's school. The petition was filed prior to the Board's issuance of its decision in the HIB matter. The Board filed a motion to dismiss the petition as premature.

The ALJ found that, pursuant to *N.J.S.A. 18A:37-15(b)(6)(e)*, only the Board's final decision may be appealed to the Commissioner; therefore, the ALJ concluded that the matter was not yet ripe for review by the Commissioner when the petitioners initiated the within action. Accordingly, the ALJ granted the Board's motion to dismiss.

Upon review, the Commissioner adopted the ALJ's Initial Decision as the final decision in this matter. Accordingly, the Board's motion to dismiss was granted and the petition of appeal was dismissed.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

295-23

OAL Dkt. No. EDU 05870-23

Agency Dkt. No. 143-5/23

New Jersey Commissioner of Education

Final Decision

R.Z. and L.D., on behalf of minor child, L.Z.,

Petitioners,

v.

Board of Education of the Northern Valley
Regional High School District, Bergen 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.

Petitioners sought to appeal the findings of a harassment, intimidation, and bullying (HIB) investigation conducted by the anti-bullying specialist (ABS) at their child's school. At the time of filing of petitioners' appeal to the Commissioner, the findings at issue had been reported to the superintendent but had not yet been affirmed, rejected, or modified by the Board. It is uncontested that the Board did not render its final decision until after petitioners filed their appeal with the Commissioner. For these reasons, the Board moved to dismiss the petition as premature.


Citing *N.J.S.A. 18A:37-15(b)(6)*, the Administrative Law Judge (ALJ) granted the Board's motion upon concluding that the petition was filed prematurely. The ALJ found that, per *N.J.S.A. 18A:37-15(b)(6)(e)*, only the Board's final decision may be appealed to the Commissioner.

Thus, the matter was not yet ripe for review by the Commissioner when petitioners initiated this action by filing their petition of appeal.

Upon review, the Commissioner adopts the ALJ's Initial Decision as the final decision in this matter. The Commissioner concurs with the ALJ that petitioners' premature attempt to appeal to the Commissioner before the Board had an opportunity to render its decision was inconsistent with the statutory scheme. *See M.M., on behalf of minor child v. Board of Education of the Township of Lafayette, Sussex County*, Commissioner Decision No. 253-20 (Nov. 5, 2020), at 5 ("Only after the final decision by the board of education did the Legislature create a right of appeal to the Commissioner, and for good reason – it is not in the interest of judicial economy to adjudicate HIB matters in a piecemeal fashion.").

Accordingly, the Board's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 29, 2023
Date of Mailing: October 2, 2023

¹ 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 05870-23

AGENCY DKT. 143-5/23

R.Z. & L.D. ON BEHALF OF MINOR CHILD L.Z.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE NORTHERN
VALLEY REGIONAL HIGH SCHOOL
DISTRICT,**

Respondent.

Avram E. Frisch, Esq., for petitioner (Law Offices of Avram E. Frisch, LLC
attorneys)

Christine Martinez, Esq., for respondent, (Machado Law Group, attorney)

BEFORE: **KIMBERLY A. MOSS**, ALJ

Record Closed: July 27, 2023

Decided: August 22, 2023

Petitioners filed an appeal of a Harassment, Intimidation and Bullying (HIB) matter. The petition was filed at the Office of Administrative Law on July 3, 2023. Included in the filing was a motion to dismiss from respondent dated June 26, 2023. Petitioner filed opposition to the motion on July 24, 2023. Respondent filed a reply to the opposition on July 27, 2023. Petitioner filed a reply via email on July 31, 2023, on which date the record closed.

FACTUAL DISCUSSION

I **FIND** the following **FACTS**:

On or about January 13, 2023, petitioners informed the Board of an alleged HIB. The HIB investigation was done within ten school days on January 30, 2023. The findings were reported to the Board on February 13, 2023. On April 13, 2023, petitioner requested a hearing before the Board. On April 17, 2023, petitioner requested that the meeting be scheduled on a Monday. The Board initially offered May 22, 2023. It then offered May 8, 2023, for the hearing before the Board. The meeting was scheduled for May 8, 2023. On May 5, 2023, the Superintendent, after reviewing the investigation, determined that further investigation was necessary. The results of the additional investigation were reported to the Board on May 22, 2023.

On May 23, 2023, petitioners filed a petition of appeal stating that they disagreed with the HIB findings and that they were denied the opportunity to have their appeal heard within ten days. On June 2, 2023, petitioners were offered a hearing before the Board on June 26, 2023, which petitioners rejected. The petition of appeal was served on the Board on June 6, 2023. On June 8, 2023, the Board scheduled a special meeting on June 12, 2023, where petitioners were provided with a hearing before the Board.

LEGAL ANALYSIS AND DISCUSSION

R.4:6-2 provides:

Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint, counterclaim, cross-claim, or third-party complaint shall be asserted in the answer thereto, except that the following defenses, unless otherwise provided by R. 4:6-3, may at the option of the pleader be made by motion, with briefs: (a) lack of jurisdiction over the subject matter, (b) lack of jurisdiction over the person, (c) insufficiency of process, (d) insufficiency of service of process, (e) failure to state a claim upon which relief can be granted, (f) failure to join a party without whom the action cannot proceed, as provided by R. 4:28-1. If a motion is made raising any of these defenses, it shall be made before pleading if a further pleading is to be made. No defense or objection is waived by being joined with one or more other defenses in an answer or motion. Special appearances are superseded. A motion to dismiss based on defense (e), and any opposition thereto, shall be filed and served in accordance with the time frames set forth in R. 4:46-1. If, on a motion to dismiss based on defense

(e), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46, and all parties shall be given reasonable notice of the court's intention to treat the motion as one for summary judgment and a reasonable opportunity to present all material pertinent to such a motion.

N.J.A.C. 6A: 3-1.5 (g) provides:

Nothing in this section precludes the filing of a motion to dismiss in lieu of an answer to a petition, provided that such motion is filed within the time allotted for the filing of an answer. Briefing on such motions shall be in the manner and within the time fixed by the Commissioner, or by the ALJ if the motion is to be briefed following transmittal to the OAL.

N.J.A.C. 6A: 3-1.10 provides:

At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.

Board of Education v Repollet 2021 N.J. Super. Unpub. LEXIS 1955 provides:

The standards governing the grant or denial of a motion to dismiss for failure to state a claim in the administrative context are identical to those governing a similar motion in the Superior Court. Compare N.J.A.C. 6A:3-1.10 with Rule 4:6-2(e); see also Sloan ex rel. Sloan v. Klagholtz, 342 N.J. Super. 385, 393-94, 776 A.2d 894 (App. Div. 2001). When reviewing a motion to dismiss pursuant to Rule 4:6-2(e), the inquiry is "limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746, 563 A.2d 31 (1989)

N.J.S.A. 18A:37-15(b)(6) provides:

(a) Each school district shall adopt a policy prohibiting harassment, intimidation or bullying on school property, at a school-sponsored function or on a school bus. The school district shall adopt the policy through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators, and community representatives.

(b) A school district shall have local control over the content of the policy, except that the policy shall contain, at a minimum, the following components:

(6) a procedure for prompt investigation of reports of violations and complaints, which procedure shall at a minimum provide that:

(a) the investigation shall be initiated by the principal or the principal's designee within one school day of the report of the incident and shall be

conducted by a school anti-bullying specialist. The principal may appoint additional personnel who are not school anti-bullying specialists to assist in the investigation. The investigation shall be completed as soon as possible, but not later than 10 school days from the date of the written report of the incident of harassment, intimidation, or bullying or from the date of the written notification from the superintendent to the principal to initiate an investigation pursuant to paragraph (5) of this subsection. In the event that there is information relative to the investigation that is anticipated but not yet received by the end of the 10-day period, the school anti-bullying specialist may amend the original report of the results of the investigation to reflect the information;

(b) the results of the investigation shall be reported to the superintendent of schools within two school days of the completion of the investigation, and in accordance with regulations promulgated by the State Board of Education pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the superintendent may decide to provide intervention services, establish training programs to reduce harassment, intimidation, or bullying and enhance school climate, impose discipline, order counseling as a result of the findings of the investigation, or take or recommend other appropriate action including seeking further information;

(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 pursuant to subparagraph (c) of paragraph (6) of this subsection, 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; and

(f) a parent, student, guardian, or organization may file a complaint with the Division on Civil Rights within 180 days of the occurrence of any incident of harassment, intimidation, or bullying based on membership in a

protected group as enumerated in the “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.);

In M.M. obo minor child v. Board of Education of the Township of Lafayette 2020 N.J. AGEN LEXIS 374, 6,7 the Commissioner stated:

There is no dispute that the Board has not issued a decision regarding petitioner's HIB claim; in fact, petitioner admits as much in the petition of appeal. 7 The district's ABC has made findings, and the superintendent has reported those findings to the Board, but the Act requires those findings to be affirmed, rejected, or modified by the Board, and it is the Board's decision that is appealable to the Commissioner. N.J.S.A. 18A:37-15(b)(6)(e). The Legislature explicitly created a multi-step process for the investigation and determination of HIB allegations. Only after the final decision by the board of education did the Legislature create a right of appeal to the Commissioner, and for good reason - it is not in the interest of judicial economy to adjudicate HIB matters in a piecemeal fashion. To allow an appeal following the ABC's written report, as petitioner sought to do here, would result in the expenditure of time and money to dispute findings that could have been rejected by the Board if the matter had proceeded to a vote. Moreover, the standard of review applicable to the Commissioner's decision in HIB matters necessitates that the process be concluded prior to coming before the Commissioner.

In this matter, the Board did not render a decision on the HIB hearing until after petitioner filed the appeal with the Commissioner. The Superintendent determined that further investigation was needed. The Board did not issue a decision prior to petitioners filing the appeal to the Commissioner. The petitioner's right to appeal does not accrue until after the Board makes a final determination. Petitioners appeal to the Commissioner in this matter was premature.

The petitioners were given a hearing before the Board on June 8, 2023, after they filed the current petition. The petitioner states that its petition is the Board's failure to follow statutory process. However, petitioner's right to appeal does not accrue until after the Board has decided. Petitioners filed the petition prior to the Board deciding on the HIB matter.

I **CONCLUDE** that the petition was filed prematurely since it was filed prior to the Board's decision on the HIB since petitioners' right to appeal begins after the Board has

made a decision on the HIB case. In addition, petitioners have had a hearing on the merits by the Board subsequent to filing the petition.

ORDER

Accordingly, It is **ORDERED** that respondents motions for to dismiss the petition be and is hereby **GRANTED**.

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.

August 22, 2023



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

August 22, 2023

Date Mailed to Parties:

August 22, 2023

ljb

APPENDIX

- Petitioner and Respondent's, motions, briefs and exhibits.

