

New Jersey Commissioner of Education**Final Decision**

L.R., on behalf of minor child, M.R.,

Petitioner,

v.

Board of Education of the Borough of Paramus,
Bergen County,

Respondent.

Synopsis

Pro se petitioner appealed the finding of the respondent Board that her daughter committed an act of harassment, intimidation, and bullying (HIB) pursuant to the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.* On November 4, 2022, the victim, one of M.R.'s classmates, received a text message with a picture of the character Stewie Griffin from Family Guy and a picture of the victim stating "Hey Stewie, what do you call someone with a big head?" M.R. admitted to posting the TikTok video but denied that it referred to the victim and stated that the message was simply an inside joke between her and another student. The petitioner argued, *inter alia*, that the HIB statute is unreasonable but failed to allege that the Board's determination regarding M.R. was arbitrary, capricious, or unreasonable. The Board filed a motion for summary decision, to which petitioner responded that she believes the HIB statute is too broad.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; M.R. admitted posting the TikTok image of Stewie Griffin which the HIB investigation found referred to the victim in a derogatory manner; petitioner did not allege that the Board's decision was arbitrary, capricious, or unreasonable; the investigation revealed that M.R. and two other girls used "Stewie Griffin" as a code name for the victim due to the size of her forehead; and the hurtful social media messages caused the victim to miss several days of school and necessitated her transfer to other classes to avoid being in the same classroom with M.R. The ALJ concluded that the Board's decision was not arbitrary, capricious, or unreasonable. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination in this case. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition 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.

306-23

OAL Dkt. No. EDU 04391-23

Agency Dkt. No. 109-4/23

New Jersey Commissioner of Education

Final Decision

L.R., on behalf of minor child, M.R.,

Petitioner,

v.

Board of Education of the Borough of Paramus,
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.

Upon review, and for the reasons stated therein, the Commissioner hereby adopts the Initial Decision as the Final Decision in this matter. The Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner failed to demonstrate, pursuant to *N.J.A.C. 1:1-12.5(b)*, that there existed any genuine issue of material fact warranting an evidentiary hearing. Therefore, it was appropriate for the ALJ to decide the matter summarily. In addition, the Commissioner concurs with the ALJ that the Board's decision that M.R. committed an act of harassment, intimidation, and bullying was not arbitrary, capricious, or unreasonable.

Accordingly, the Board's motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 13, 2023

Date of Mailing: October 18, 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

OAL DKT. NO. EDU 04391-23

AGENCY DKT. NO. 109-4/23

L.R. ON BEHALF OF MINOR CHILD M.R.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
BOROUGH OF PARAMUS,**

Respondent.

L.R., petitioner, pro se,

Sean Fogarty, Esq., appearing on behalf of respondent (Fogarty & O'Hara,
attorneys)

Record Closed: August 30, 2023

Decided: September 7, 2023

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

PROCEDURAL HISTORY

Petitioner, L.R., challenges the respondent's finding that her child M.R. committed acts of harassment, intimidation, or bullying (HIB). On May 18, 2023, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case. The matter was assigned to the undersigned and a telephone

prehearing was conducted on June 7, 2023, wherein the parties agreed on a hearing date of August 24, 2023. A status conference was also conducted on July 20, 2023. During the pendency of the conference, the parties agreed that the August hearing date would be adjourned, and a new hearing date was scheduled for September 22, 2023. A discover deadline was given as well as a motion schedule.

Respondent filed a motion for summary decision on August 18, 2023. Petitioner filed a letter dated August 17, 2023, stating among other things that she did believe that the HIB law was too broad. On August 29, 2023, petitioner was asked if she would be responding to respondent's motion. She declined to further respond to the motion.

FACTUAL DISCUSSION

Having reviewed the submissions from the parties, I **FIND** the following **FACTS**:

On or about November 4, 2022, the District received a report of a HIB incident alleging that the victim was subjected to HIB over a series of messaging and social media incidents. On November 4, 2022, the victim received a text message with a picture of the character Stewie Griffin from Family Guy and a picture of the victim stating "Hey Stewie, what do you call someone with a big head?"

M.R. and other students confirmed the existence of a TikTok account. M.R. admitted posting the image of Stewie Griffen with the caption "If you know, you know." The victim, because of these incidents did not want to come to school. An investigation ensued. On November 4, 2022, Andrew J. Bianco, the principal of East Brook Middle school called the parents of the students to advise that there was an HIB allegation. The District's investigation began on November 7, 2022. M.R., the victim and another student were interviewed and gave statements. M.R. admitted posting the TikTok video but denied it referred to the victim. She stated that it was an inside joke between her and another student.

One of the other students involved in the incident was “Aggressor one.” The victim asked Aggressor one what the Stewie thing was about. Aggressor one gave her hints based on body type and hair. Aggressor one also told the victim it was someone she hangs out with a lot.

In the investigation, Aggressor one stated that she called the victim Stewie Griffin, and it became a joke between Aggressor one, Aggressor three and M.R. Another witness stated that Stewie Griffin was a code name M.R. and Aggressor’s one and three called the victim. Aggressor one stated that the victim had a big forehead and was nosy. Other students knew that Stewie Griffin was a reference to the victim. As a result of this, the victim was hurt, sad, crying a lot and did not want to come to school.

After the investigation was completed on November 22, 2022, it was determined that M.R. committed an act of HIB. The victim ‘s class schedule was changed but no discipline was opposed. The Superintendent, Sean Adams, affirmed the findings of HIB because the HIB behavior was motivated by a distinguishing characteristic of the victim. The results of the investigation were reported to the Board on December 12, 2022.

The results of the HIB were sent to petitioner on December 13, 2022. Petitioner requested a hearing before the Board which was held on January 23, 2023. Petitioner requested that the determination of HIB be reversed, and that the timeline of the investigation was improperly conducted at the Board meeting. The Board affirmed Superintendent Adams decision.

Petitioner argues that the HIB definition includes anything a child does and believes that the HIB law is unreasonable. Petitioner argues that the investigation did not fairly interview three children, the investigation exceeded the ten-day requirement, there was no documentation of a post from M.R. and case notes were distributed by the Board’s attorneys.

LEGAL ANALYSIS AND DISCUSSION

The rules governing motions for summary decision in an OAL matter are embodied N.J.A.C. 1:1-12.5. These provisions mirror the language of Rule 4:46-2 and the New Jersey Supreme Court's decision in Judson v. Peoples Bank and Trust Company of Westfield, 17 N.J. 67 (1954). Under N.J.A.C. 1:1-12.5(b), the determination to grant summary judgment should be based on the papers presented as well as any affidavits which may have been filed with the application. In order for the adverse, i.e., the non-moving party to prevail in such an application, responding affidavits must be submitted showing that there is indeed a genuine issue of fact, which can only be determined in an evidentiary proceeding. The Court in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 523 (1995), set the standard to be applied when deciding a motion for summary judgment. Therein the Court stated:

The determination whether there exists a genuine issue with respect to a material fact challenged requires the Motion Judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.

There is no material issue of fact in this matter.

N.J.S.A. 18A:37-14

“Harassment, intimidation or bullying” means any 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: 37-15(b) (5) provides:

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:

5. a procedure for reporting an act of harassment, intimidation or bullying, including a provision that permits a person to report an act of harassment, intimidation or bullying anonymously; however, this shall not be construed to permit formal disciplinary action solely on the basis of an anonymous report.

All acts of harassment, intimidation, or bullying shall be reported verbally to the school principal on the same day when the school employee or contracted service provider witnessed or received reliable information regarding any such incident. The principal shall inform the parents or guardians of all students involved in the alleged incident, and may discuss, as appropriate, the availability of counseling and other intervention services. The principal shall keep a written record of the date, time, and manner of notification to the parents or guardians. All acts of harassment, intimidation, or bullying shall be reported in writing to the school principal within two school days of when the school employee or contracted service provider witnessed or received reliable information that a student had been subject to harassment, intimidation, or bullying. The written report shall be on a numbered form developed by the Department of Education. A copy of the form shall be submitted promptly by the principal to the superintendent of schools. The form shall be completed even if a preliminary determination is made under the school district's policy that the reported incident or complaint is a report outside the scope of the definition of harassment, intimidation, or bullying pursuant to section 2 of P.L.2002, c.83 (C.18A:37-14), and shall be kept on file at the school but shall not be included in any student record, unless the incident results in disciplinary action or is otherwise required to be contained in a student's record under State or federal law. A redacted copy of the form that removes all student identification information shall be confidentially shared with the board of education after the conclusion of the investigation if a hearing is requested by a parent or guardian pursuant to subparagraph (d) of paragraph (6) of this subsection.

The school district shall provide a means for a parent or guardian to complete an online numbered form developed by the Department of

Education to confidentially report an incident of harassment, intimidation, or bullying.

The principal shall report to the superintendent if a preliminary determination is made under the school district's policy that the reported incident or complaint is a report outside the scope of the definition of harassment, intimidation, or bullying, and the superintendent may require the principal to conduct an investigation of the incident, if the superintendent determines that an investigation is necessary because the incident is within the scope of the definition of harassment, intimidation, or bullying. The superintendent shall notify the principal of this determination in writing;

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 this matter M.R. admitted posting the TikTok image of Stewie Griffin which the investigation found referred to the victim in a derogatory manner. Petitioner did not allege that the Board's decision was arbitrary, capricious, or unreasonable. The investigation revealed that Aggressor one, Aggressor three and M.R. used Stewie Griffin as a code name for the victim due to the size of her forehead. As a result of this the victim became upset and refused to return to school, missed several days of school and did not want to be in the same class as M.R.

I **CONCLUDE** that the board ruling that M.R. committed an act of HIB was **NOT** arbitrary, capricious, or unreasonable.

ORDER

Based on the foregoing, it is **ORDERED** that respondents motion for summary decision 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.

September 7, 2023



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

September 7, 2023

Date Mailed to Parties:
ljb

September 7, 2023