

New Jersey Commissioner of Education

Final Decision

B.B., on behalf of minor child, A.S.,

Petitioner,

v.

Board of Education of the Borough of Paulsboro,
Gloucester County,

Respondent.

Synopsis

In these consolidated matters, petitioner B.B. challenged the determination of the respondent, Board of Education of the Borough of Paulsboro (Board), in regard to a Harassment, Intimidation and Bullying (HIB) complaint made on behalf of her daughter, A.S., against the coach of the girls track team at Paulsboro High School. Petitioner alleged that incidents which occurred during the 2019 spring track season had prompted thoughts of self-harm in A.S. The Board determined that petitioner’s allegations did not constitute HIB.

The ALJ found, *inter alia*, that: petitioner was not afforded the due process required by the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.*; specifically, petitioner was not provided an opportunity to appear before the Board, was not provided a summary of the HIB investigation, and did not receive a written decision indicating the Board’s rationale for its determination that there had been no HIB; although petitioner was never afforded an opportunity to appear before the Board, the hearing in this matter at the Office of Administration Law (OAL) provided a full evidentiary hearing on the merits; there was no evidence that the coach treated A.S. in a hostile manner; further, HIB must be motivated by an actual or perceived distinguishing characteristic, a critical element that is missing in this case. The ALJ concluded that the allegations contained in the petitions of appeal do not meet the legal standards of the HIB statute; accordingly, the ALJ dismissed the consolidated petitions.

Upon comprehensive review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter. In so doing, the Commissioner agreed that the alleged conduct does not constitute HIB as there is no evidence that it was motivated by any actual or perceived characteristic of A.S. The Commissioner also agreed with the ALJ’s findings that the Board did not comply with the Act in conducting its HIB investigations, but petitioner ultimately received a full evidentiary hearing through the proceedings at the OAL. Accordingly, the consolidated petitions were 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.

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Petitioner,

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Board of Education of the Borough of
Paulsboro, Gloucester County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner and the Paulsboro Board of Education’s (Board) reply thereto.

These consolidated matters stem from a harassment, intimidation, and bullying (HIB) complaint filed by petitioner on behalf of her daughter, A.S., against the coach of Paulsboro’s girls track team. A.S. was a student at the Gloucester County Institute of Technology (GCIT) but was a member of the track team at Paulsboro. Petitioner alleged that her daughter had thoughts of self-harm as a result of incidents that occurred during the 2019 spring track season. Petitioner filed an HIB complaint on or about January 23, 2020,¹ alleging that her daughter was subjected to a hostile environment after she refused to run the 4x100 relay and opted to visit family instead of competing in the West Deptford relays. The Board’s anti-bullying specialist

¹ The Superintendent became aware of petitioner’s concerns in October 2019, and he conducted an informal “HIB-like” investigation. Upon informing petitioner on or about January 21, 2020 that his investigation did not find any evidence of HIB involving the track coach, petitioner requested a formal HIB investigation.

conducted the HIB investigation, interviewing A.S. and several students, but not the track coach or any other athletic personnel. In her statement, A.S. alleged that: she was pressured to run specific events; the coach would say bad things about her so other students would be mad at her; and the coach would be upset when she was too slow getting dressed or warming up. In a follow up interview, A.S. indicated that she runs track for a scholarship but really wants to play soccer. The HIB investigation was completed on February 21, 2020 and found that there was no HIB violation. The matter was reported to the Board on March 30, 2020, and the Board confirmed the HIB determination at its meeting on April 27, 2020. Thereafter, petitioner was informed that after a complete investigation, there was no evidence of an HIB incident.

Petitioner filed these consolidated petitions challenging the HIB determination.² At a hearing on the merits, the Administrative Law Judge (ALJ) heard testimony from the petitioner, the accused track coach, the superintendent, the athletic trainer, three assistant track coaches, the principal, the assistant principal, and the anti-bullying specialist who conducted the HIB investigation. The ALJ found that petitioner was not afforded the due process required by the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.* Specifically, the ALJ found that petitioner was not provided an opportunity to appear before the Board, was not provided a summary of the HIB investigation, and did not receive a written decision indicating the Board's rationale for its determination that there had been no HIB. Additionally, the ALJ noted that the investigation was tainted because there were no interviews with coaching staff and the accused was never advised of the investigation. However, the ALJ found that, "In this case, it makes no sense to return this matter to the Board to correct the procedural errors set forth herein.

² The first petition contained a request for emergent relief, which was denied.

Although petitioner was never afforded an opportunity to appear before the Board, she has now been afforded a full evidentiary hearing on the merits.” (Initial Decision at 19). Ultimately, the ALJ concluded that there was no evidence that the coach treated A.S. in a hostile manner. Moreover, the ALJ concluded that HIB must be motivated by a distinguishing characteristic and that critical element is missing here, so the allegations do not meet the statutory definition of HIB.

In her exceptions, petitioner alleges that the ALJ failed to include certain factual details or testimony pertaining to the Board’s failure to follow HIB policy; further, the ALJ erred in referencing specific dates and in failing to admit some exhibits into evidence. Petitioner also argues that the ALJ erred in finding that the testimony of the assistant coaches did not include any observations of improper behavior, as those coaches did not work closely with A.S. and would not have witnessed any of the incidents in question. According to petitioner, the anti-bullying specialist did not conduct a proper investigation in the way that she gathered information and conducted witness interviews; further, the anti-bullying specialist failed to contact GCIT to determine the full effect of the alleged HIB incidents on A.S.’s education at GCIT. Petitioner contends that the ALJ erred in finding that A.S. and her sisters’ statements did not contain specific incidents of mistreatment, abuse or intimidation, and that another student did not detail specific incidents of mistreatment, yelling, or being forced to compete while injured. Furthermore, petitioner points out that the ALJ found that the investigation was tainted with procedural errors; petitioner therefore argues that the hearing in this matter was to determine if the Board’s investigation was arbitrary, capricious, or unreasonable, and not for petitioner to conduct the HIB investigation for the Board and give the Board a second

opportunity. As such, the petitioner argues that the ALJ erred in finding that A.S. did not experience HIB.

In reply, the Board argues that petitioner's exceptions mainly consist of *de minimis* issues that are irrelevant to the ultimate determination on the merits. The Board agrees with the ALJ that despite the ALJ's findings regarding procedural errors in the HIB investigation, the petitioner was afforded a full evidentiary hearing in this forum. The Board points out that petitioner called nine witnesses, including herself, and none of the witnesses alleged that A.S. had a distinguishing characteristic as required for an HIB determination. Accordingly, the Board agrees with the ALJ that the petitioner allegations did not meet the legal standard of HIB.

Upon a comprehensive review of the record, the Commissioner agrees with the ALJ that the alleged conduct does not constitute HIB. In order for conduct to meet the statutory definition of HIB, it must be "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." *N.J.S.A. 18A:37-14*. The Commissioner agrees with the ALJ that the record does not demonstrate that the alleged conduct was motivated by any actual or perceived characteristic of A.S. Accordingly, the alleged conduct cannot be considered HIB.

The Commissioner also agrees with the ALJ that the Board did not comply with the Act in conducting its HIB investigations. *N.J.S.A. 18A:37-15b(6)(d)* provides:

[P]arents 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[.]

Here, petitioner was not provided with information about the investigation within five school days after the results of the investigation were reported to the Board, nor was she provided with an opportunity for a Board hearing. The Commissioner notes that, although she was not given the opportunity to appear before the Board, petitioner was afforded a full evidentiary hearing in the OAL that included her testimony, as well as testimony from the antibullying specialist, the accused, the superintendent, the principal, the assistant principal, the athletic director, and three assistant track coaches. In this circumstance, the Commissioner agrees with the ALJ that remanding this matter to the Board for a hearing is unnecessary given the full hearing on the merits that petitioner has now been afforded.

The Commissioner is not persuaded by petitioner's exceptions, many of which dispute minor details that do not have any bearing on the outcome of this matter. The Commissioner notes that any disagreement regarding the relevance of the assistant coaches' testimony lacks merit as they were petitioner's witnesses. The Commissioner also finds that exceptions regarding the ALJ's characterization of the testimony of A.S. and other students do not have an impact on this matter as they fail to demonstrate that A.S. had an actual or perceived distinguishing characteristic. Additionally, any exceptions regarding procedural errors in the HIB investigation are of no moment as the ALJ and Commissioner have already acknowledged

those defects. Finally, the Board was not provided with a second opportunity to conduct the HIB investigation because a hearing at the OAL is part of the administrative process.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the consolidated petitions are hereby dismissed.

IT IS SO ORDERED.³


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

Date of Decision: February 6, 2023

Date of Mailing: February 8, 2023

³ 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. NOS. EDU 03599-20
AND EDU 06458-20
AGENCY DKT. NOS. 64-3/20
AND 137-6/20
(CONSOLIDATED)

B.B. ON BEHALF OF A.S.,

Petitioner,

v.

**BOARD OF EDUCATION OF
THE BOROUGH OF PAULSBORO,
GLOUCESTER COUNTY,**

Respondent.

B.B., petitioner, pro se

Stephen J. Edelstein, Esq., and **Dustin F. Glass**, Esq., for respondent (Weiner
Law Group, L.L.P., attorneys)

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

Record Closed: October 3, 2022

Decided: November 15, 2022

STATEMENT OF THE CASE

Petitioning parent, B.B., challenged the respondent's, Board of Education of the Borough of Paulsboro (Board), response to her Harassment, Intimidation and Bullying (HIB) complaint, made on behalf of her daughter, A.S., against Paulsboro High School (Paulsboro) girl's track coach. The Board determined that her allegations did not constitute HIB.

PROCEDURAL HISTORY

Petitioner filed a request for emergent relief on March 7, 2020, with the New Jersey Department of Education (NJDOE). On March 10, 2020, the NJDOE transmitted the matter to the Office of Administrative Law (OAL) as a contested case, under Docket No. EDU 03599-20. The matter was heard before the Honorable Jeffery R. Wilson, ALJ, on March 17, 2020. Judge Wilson entered an Order denying the request for emergent relief on the same date. On April 24, 2020, the New Jersey Commissioner of Education adopted the Order and directed the matter be returned to the OAL.

On or about April 21, 2020, the respondent filed and served an answer to the petition. On April 25, 2020, the petitioner filed a document described as "my reply to the respondent's answer submitted." On April 27, 2020, the respondent filed a motion to strike the petitioner's April 21, 2020, reply as an impermissible pleading. By Letter Order, dated January 12, 2021, Judge Wilson granted respondent's motion.

On May 1, 2020, the respondent file a motion for summary decision, under Docket No. EDU 03599-20. The petitioner filed her opposition on May 7, 2020, and the respondent filed its reply on May 21, 2020.

On May 28, 2020, while the summary decision motion was pending, the petitioner filed a motion to compel discovery. Two days later, on June 20, 2020, the petitioner filed a request to amend her petition.

On June 29, 2020, the petitioner filed a second, related petition, under Docket No. EDU 06458-20. On January 12, 2021, the respondent filed a motion for summary decision under Docket No. EDU 06458-20. An order was entered on January 14, 2021, consolidating Dockets Nos. EDU 03599-20 and EDU 06458-20.

On January 14, 2021, the petitioner filed a motion to strike the respondent's motion for summary decision under Docket No. 06458-20. On January 18, 2021, the respondent filed its response to the petitioner's motion to strike.

On January 20, 2021, the petitioner filed her opposition to the motion for summary decision, under Docket No. EDU 06458-20. On January 22, 2021, the respondent filed its formal reply to petitioner's opposition. After hearing oral argument on March 15, 2021, by Zoom platform, Judge Wilson entered an order on September 7, 2021, denying respondent's motions for summary decision. Judge Wilson directed that the matter would proceed to a hearing, solely addressing the required elements of the Anti-Bullying Bill of Rights Act.

On September 30, 2021, Judge Wilson entered a Prehearing Order wherein he set a discovery deadline of November 30, 2021. On October 27, 2021, petitioner filed a motion to compel discovery. By Letter Order, dated November 9, 2021, Judge Wilson denied petitioner's motion to compel discovery.

On December 8, 2021, respondent filed a motion to dismiss the consolidated petitions of appeal. On December 10, 2021, petitioner filed an opposition to respondent's motion. Respondent replied on December 13, 2021. Judge Wilson converted the hearing date of January 13, 2022, to oral argument on the motion. Before oral argument was heard, Judge Wilson recused himself after petitioner filed a motion for his recusal which was opposed by respondent. Thereafter, the case was reassigned to me, and I heard oral argument on February 18, 2022. I issued an Order dated March 21, 2022, denying respondent's request for sanctions.

The hearings were held on July 7, 2022, and July 13, 2022. As an accommodation to respondent's witness, the July 7, 2022, hearing was conducted via Zoom platform.

After the last hearing, the parties requested additional time to obtain transcripts and submit written summations. After granting an extension for receipt of closing summation briefs, I closed the record on October 3, 2022.

FACTUAL DISCUSSION AND FINDINGS

The following events, derived from the testimony, the pleadings, and the documents, are not materially controverted. Thus, I **FIND** them as **FACT**:

Petitioner, B.B., is the mother of A.S. A.S. attended Gloucester County Institute of Technology (GCIT) but participated in the Paulsboro track program as a resident of the Paulsboro School District.

On or about October 22, 2019, A.S. gave her parents, B.B. and F.S., a letter, wherein A.S. expressed thoughts about self-harm. B.B. related her daughter's feelings to incidents which occurred during the 2019 spring track season. Because of the letter, F.S. contacted Marvin Hamilton, a Board member, with his concerns. Mr. Hamilton brought F.S.'s concerns about his daughter to the attention of the Superintendent, Dr. Walter Quint.

Dr. Quint conducted what he termed a "HIB-like" investigation. On or about January 21, 2020, Dr. Quint informed B.B. that his "HIB-like" investigation had not found any evidence of a HIB incident involving A.S. and her track coach. Not satisfied with this response, on January 23, 2020, the petitioner submitted a written request for a full HIB investigation.

The HIB investigation was assigned to the Anti-Bullying Specialist, Ms. Jessica Rose Johnson, for the 2019–2020 school year; after investigating, she found no evidence of a HIB violation. Ms. Johnson completed her investigation on February 21, 2020. On March 30, 2020, the HIB case was reported to the Board as "a follow-up to a "HIB-like" investigation with the determination of "Non-HIB" and "No Action Required." (R-2.) The Superintendent's recommendation was confirmed by the Board at its meeting on April 27,

2020. Id. By letter, dated April 28, 2020, Principal Paul Morina informed petitioner that after a complete investigation, there was no evidence of a HIB incident. (R-1.)

In accordance with N.J.S.A. 18A:37-15(b)(6)(d), as the parent, B.B. was entitled to receive information about the investigation and whether Paulsboro found evidence of HIB within five days of Paulsboro submitting the results of its investigation to the Board, which occurred on March 30, 2020. Upon receipt of this information, B.B. had the right to request a hearing before the Board in executive session. B.B. never received the information and was never afforded a hearing before the Board. Her only notification about the HIB investigation was set forth in the letter, dated April 28, 2022, when Principal Morina informed her that “[a]fter a complete investigation, the administration did not find evidence of a HIB incident.” This letter was sent after the Board had met and voted to uphold the recommendation.

Testimony

Respondent

Dr. Walter Quint testified on behalf of the respondent. He was the interim superintendent during the 2019–2020 school year when petitioner lodged her HIB complaint. Dr. Quint had previously served as the Superintendent of Paulsboro School District from 1990 to 2001. He returned as the interim superintendent for two years during, the 2013–2014 and 2014–2015 school years and was asked to return for the final time for the 2019–2020 school year. Before his retirement, Dr. Quint had over fifty years of service in the education field.

As Superintendent, Dr. Quint is responsible for ensuring that the school’s HIB policy is carried out correctly. He reviews the investigation report and must either confirm or deny its findings. Ultimately, he is responsible for reporting the HIB results to the Board. He has performed his role as superintendent in numerous HIB investigations throughout his career.

The investigation at issue was conducted under his watch. As the Superintendent during the 2019–2020 school year, Dr. Quint was familiar with the HIB policy. This was the same policy that was in effect during the 2018–2019 school year. (R-4.)

In October 2019, the Vice-President of the Board of Education, Mr. Hamilton, gave Dr. Quint a portion of a letter that had been purportedly written by a member of the Paulsboro track team wherein this student, A.S., expressed a desire for self-harm. Because the student did not attend Paulsboro, Dr. Quint notified the principal and the superintendent of GCIT, where the student attended. Paulsboro had not had any contact with the student since track ended in May 2019. As the letter referenced concerns which occurred during the spring 2019 track season, Dr. Quint also notified Paulsboro’s athletic director.

The student’s mother, B.B., addressed the Board at its meeting on December 16, 2019. Dr. Quint did not remember any specifics regarding B.B.’s comments to the Board but he recalled speaking with her. Because of her concerns, he asked his staff to conduct a “HIB like” investigation. “HIB-like” was Dr. Quint’s characterization of the investigation. He believed that GCIT was working with A.S. regarding her emotional well-being so he focused on whether there was a hostile situation within the track and field community at Paulsboro. Dr. Quint added that his sole concern was for A.S.’s well-being.

In an abundance of caution, Dr. Quint contacted the Division of Child Protection and Permanency (DCP&P) and requested an institutional abuse investigation. DCP&P declined to investigate.

Dr. Quint asked the Athletic Director, Mr. Giovannitti, to investigate and interview anyone who would have information or knowledge about the culture within the track program. Due to his long association with the school, Dr. Quint was personally familiar with many of the coaches. Therefore, he did his own investigating and personally spoke to coaches to see if they knew anything that would have contributed to the negativity that A.S. was feeling. Recalling that one of the allegations involved athletes being forced to compete while injured, Dr. Quint asked the trainer if A.S. had ever sought medical help.

The trainer recalled no one talking about mistreatment of any kind. None of the coaches reported seeing or hearing anything that would suggest wrongdoing by the track coach.

Dr. Quint recalled speaking to B.B. about his findings after the “HIB-like” investigation. She expressed her dissatisfaction, so he told her to formally request a HIB investigation. After B.B. requested the investigation, Dr. Quint assigned it to the HIB Coordinator, Mr. Giovannitti, who was also the school’s Athletic Director; and the HIB Specialist, Ms. Johnson, to investigate. After reviewing the investigative findings (R-3), Dr. Quint was satisfied that B.B.’s complaint did not meet the definitions or criteria for a HIB claim. He also noted that both investigations revealed the same result.

Referring to the school’s policy, there are two options for consideration when a HIB report is made. When Dr. Quint was presented with the portion of A.S.’s letter, he saw nothing in the letter that indicated the matter should be investigated as a HIB. Even though he did not view the matter as a HIB, he still felt that any suggestion of wrongdoing should be investigated. At B.B.’s request, Dr. Quint agreed to perform a thorough investigation that he termed “HIB-like” because the claims did not meet the definition of a HIB. His initial investigation did not show any wrongdoing on the part of the coach. When B.B. did not agree with his assessment, Dr. Quint agreed to perform a HIB investigation.

Dr. Quint did not document his conversations with the coaches and trainer during his “HIB-like” investigation. He recalled finding nothing to indicate that the head coach did anything that rose to the level of a HIB violation. However, he maintained that there was a full HIB investigation conducted separate and apart from his “HIB-like” investigation.

When asked if the Board receives the entire HIB investigation, Dr. Quint responded that the Board only receives the investigation results. In this instance, because the result was “no action required,” the Board only received the case number, date of incident, status of investigation, and type of discipline imposed. (R-2.)

When B.B. addressed the Board in December 2019, Dr. Quint stated there were three issues. The first issue was making sure A.S. was receiving proper services due to

her threat of self-harm. The second issue was whether there was any wrongdoing by the head coach. The third issue involved the head coaching position and whether it had been properly advertised. A.S.'s father had also applied for the position. Dr. Quint commented that in 2019, the track team won the State championship and Coach Gunter had been named coach of the year.

Petitioner

Gabrielle Prendergast was the athletic trainer for Paulsboro. She held this position from September 2017 until June 2020. During her time as athletic trainer, Ms. Prendergast did not recall being questioned or interviewed for a "HIB-like" investigation involving A.S.

David Platt was the cross-country coach from 1977 until 2009, and then the assistant distance girl's track coach from 1988 until 2020. He is currently retired from Paulsboro. Mr. Platt was never questioned by school administrators regarding any issues with the girls track team. As a distance coach, Mr. Platt did not coach or work with petitioner's children.

Anita Evans was a teacher in the elementary school in the Paulsboro School District for thirty-four years. During her last eight years, she was a paid coach for the girl's track and field team. Since her retirement, she has served as a volunteer coach for the past seven years. During the 2019 track season, Ms. Evans was a volunteer coach for field events. She did not work with the sprinters or distance runners. No member of administration ever approached her about concerns with the girl's track team during the 2019 track season.

Although she was never interviewed, she never witnessed harassment, intimidation, bullying, or any improper behavior by any coach associated with the girl's track team. She witnessed interactions between coaches and athletes but never witnessed any athlete being mistreated or treated differently.

Paulette Cwik has been an assistant volunteer track coach at Paulsboro High School since 2002. From 1976 until 2001, Coach Cwik was the head coach of the team. After her retirement, she volunteered as an assistant. She was an assistant coach during the 2019 spring track season when the conduct outlined in the HIB complaint allegedly occurred. Although Coach Cwik was also accused, she was never informed or notified about the HIB investigation. She felt that if there were allegations against her, she should have been interviewed.

Coach Cwik never saw anything improper or anything that could be considered harassment, intimidation, or bullying of any of the girls on the team. In her opinion, all the athletes were treated equally.

Coach Cwik stated that the athletes were part of a team and subject to team rules. In response to B.B.'s question, Coach Cwik recalled the situation when A.S. refused to run in the 4 x 100 relay race. On the day of the race, Coach Cwik approached A.S.'s father about why A.S. was not running in the race. She recalled that her conversation about the race was with A.S.'s father and did not recall whether A.S. was present. The coaching staff had not been informed until the day of the relay that A.S. was not going to run. This was the South Jersey Sectional Meet, and A.S. was an integral part of the four-person relay team.

Coach Cwik was also asked about Coach Gunter yelling at B.B.'s daughters for missing the West Deptford relays during the 2019 season. She did not recall anyone yelling. Coach Cwik only recalled that the coaching staff was informed the night before the track meet that the triplets would not be participating. She never witnessed Coach Gunter harass, intimidate, or bully A.S.

Euridee Gunter is a substitute teacher at Paulsboro and the head girl's track and field coach. Her employment with the school began in 1996. Coach Gunter was never notified that she was the subject of a HIB or "HIB-like" investigation for actions involving A.S. during the 2019 track season. No one interviewed her.

On cross-examination, Coach Gunter stated that she never pressured A.S. to run events against her will. She was only aware of allegations that A.S. has considered harming herself because she was present at the December 2019 Board meeting when B.B. addressed the Board.

Paul Morina has been the Principal of Paulsboro High School for the past sixteen years. He is familiar with the school policy regarding reporting and investigating HIB complaints. He sends all incidents to the HIB coordinator for investigation. The HIB coordinator conducts the investigation to determine whether the complaint constitutes a HIB violation. Mr. Morina works closely with the HIB coordinator. They do not predetermine any incident. All allegations are investigated.

Mr. Morina was not aware of any “HIB-like” investigation. As principal, Mr. Morina was required to sign the HIB investigation report. The report did not list Coach Gunter as being interviewed. Coach Gunter was listed as the aggressor, but she was never interviewed as part of the investigation. There was no written report contained in the investigation. The investigation was not completed within ten days. In reviewing the investigation report, Mr. Morina commented that it appeared as if pages were missing.

The Board does not see the investigation report. The Board receives a list of how many HIB complaints were investigated and the disposition of those complaints. Mr. Morina did not know what would happen if any Board member had questions about the investigation. After Board approval, Mr. Morina sends a letter to the parents telling them the results of the investigation. He signed the letter sent to B.B. that was dated April 28, 2022. (R-1.)

Mr. Morina did not recall the specifics of the incident involving A.S. but he stated that every incident is investigated.

John Giovannitti is the Assistant Principal for grades seven and eight and he is the Athletic Director for grades seven through twelve. He also serves as the Affirmative Action Officer and the District HIB Coordinator. He has been employed by Paulsboro for thirty-four years. Generally, when a HIB complaint is made, it is reported to the principal,

who sends it to the Anti-Bullying Specialist. The Anti-Bullying Specialist has ten days to investigate, make an initial determination, and report back to the principal. After reviewing, the principal signs the report, and gives it to the HIB Coordinator for review. The HIB coordinator signs the report, and forwards it to the Superintendent for final review. The Superintendent submits the results to the Board.

Mr. Giovannitti was clear that all complaints are investigated. There is no predetermination about whether a complaint is HIB or not.

Dr. Quint asked him to conduct a HIB-like investigation to determine if there were problems within the girls track program. His recollection was vague, but he recalled conducting some interviews with coaches. He believed he spoke to all the coaches involved with the track program.

Mr. Giovannitti has no contact with the Board. He interacts with the school principals and the superintendent on HIB issues. Acknowledging that the school has lots of policies, he expressed no knowledge of a "HIB-like" policy. He only recalled being asked by Dr. Quint to find out if there were any concerns with the track team.

As Athletic Director, Mr. Giovannitti observes practices and sporting events. He never observed any issues, so he asked some general questions about coaches raising their voices or actions that could be interpreted as mistreating a player. Based on his observations and conversations, he did not find any impropriety.

Mr. Giovannitti stated that the HIB complaint was dated January 23, 2020. He recalled speaking to A.S.'s father on February 7, 2020, at a basketball game to coordinate a time to interview his daughters about the complaint. He could provide no information why he was told to arrange the interviews through F.S. as opposed to B.B.

Mr. Giovannitti stated that it is the policy to send a letter from the superintendent after the matter is submitted to the Board. He did not know what occurred here. He was aware that as the identified aggressor in the complaint, Coach Gunter should have

received a letter, but he did not know whether that occurred. Over the years, Mr. Giovannitti spoke with and observed Coach Gunter.

Jessica Rose Johnson is a school psychologist with the Paulsboro School District, who served as the Anti-Bullying Specialist for the 2019–2020 school year. As part of her responsibilities, she investigated HIB complaints. For the HIB complaint against Coach Gunter, Ms. Johnson only interviewed students involved with the team. She understood that Dr. Quint and Mr. Giovannitti had spoken to the adult personnel involved. In a typical HIB investigation, Ms. Johnson would have conducted the full investigation. She was not privy to any interviews conducted by Dr. Quint and Mr. Giovannitti.

In her experience, when there was a report of a potential HIB, the complaint was always investigated. She received this complaint on January 23, 2020. After receiving a general overview of the complaint, Ms. Johnson recalled not being comfortable interviewing school personnel. She expressed her concerns and understood that Mr. Giovannitti and Dr. Quint would interview the school personnel involved.

Based on the information Ms. Johnson collected, she found no evidence of a HIB incident. She put the “no” on the HIB form solely based on the information that she collected. (R-3.) Her investigation did not contain any statements from personnel or coaches. Ms. Johnson does not make the final decision on whether a HIB occurred. She did not believe her decision was complete because there was no statement from the accused. However, she believed that her investigation gave her the information she needed to decide whether HIB occurred. She determined that it had not.

When conducting her investigation, Ms. Johnson looked for corroboration of the allegations in the complaint and evidence of a HIB. In asking her interview questions, Ms. Johnson tried to keep the identity of the complainant confidential by asking general questions to illicit information.

B.B. testified on her own behalf. She believed that her daughter’s expressed desire to harm herself was related to her treatment during the 2019 spring track season.

The two main incidents in the complaint stemmed from A.S.'s decision not to run the 4 x 100 relay, and her decision not to compete in the West Deptford relays so she could visit family. B.B. believed that because of these two decisions, the coaching staff subjected A.S. to a hostile environment. B.B. expressed her concerns directly to the Athletic Director, but nothing was ever done.

B.B. knew something had been bothering A.S. Eventually, A.S. put her feelings in a letter which she gave to her parents in October 2019. Dr. Quint was notified by a Board member of a portion of the letter wherein A.S. related she wanted to harm herself because of mistreatment from her track coach.

After Dr. Quint notified GCIT, A.S.'s case manager contacted B.B. and recommended a psychological evaluation. This resulted in therapy and services for A.S. to help her cope. B.B. believed it affected her education. B.B. recalled receiving an email dated May 16, 2019, from one of A.S.'s teachers notifying her that A.S. was struggling in class. B.B. attributed these struggles to what was occurring at track. Her school struggles continued into the following year.

After not hearing anything from Dr. Quint since the October notification, B.B. attended the December 16, 2019, Board meeting and addressed the Board about the problems her daughter experienced during the 2019 spring track season. Coach Gunter's contract was on the agenda, but the Board decided not to vote on it at that meeting.

On January 21, 2020, B.B. sent an email to Dr. Quint because she had not heard any results of his investigation. When Dr. Quint informed her that no action was going to be taken, B.B. requested a full HIB investigation. The only information B.B. ever received from Paulsboro was the April 28, 2020, letter with one line that stated there was no confirmation of a HIB incident.

B.B. reviewed the school's policy for conducting a HIB investigation and believes that the school did not follow its own policy in conducting the investigation of her complaint against Coach Gunter. She was never notified that the HIB investigation was sent to the Board on March 30, 2020. She follows the Board meeting calendar, so B.B. knew when

the Board met, but she never received anything about her complaint from the Superintendent. The only document she ever received was after the fact on April 28, 2020.

ADDITIONAL FINDINGS OF FACT

It is the obligation of the fact finder to weigh the credibility of the witnesses, and consider the witness's interest in the outcome, motive, or bias. Credibility is the value that a fact finder gives to a witness's testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950).

Dr. Quint was the only witness for respondent. Given his years of experience as a superintendent, his familiarity with the staff and faculty at Paulsboro, and his HIB experience, his testimony provided valuable insight. From his testimony, it was clear that when Dr. Quint was informed that a member of the track team had expressed suicidal ideations, his motivation was the welfare of the student/athlete. Although he never viewed this matter as a HIB, his actions in conducting an informal investigation, which he referred to as "HIB-like," may have been well-intentioned but clearly contributed to procedural irregularities with the HIB investigation and the corresponding mistrust expressed by B.B. Although none of petitioner's witnesses recollected being interviewed in a "HIB-like" investigation, it is impossible to confirm, based on the record, who Dr. Quint spoke to regarding his "HIB-like" investigation and what information, if any, they provided. Although Dr. Quint testified that he conducted his own investigation into the culture and atmosphere of the track team, his lack of specificity and documentation discredited his investigation. It was also clear, from the witnesses presented by petitioner, that neither the trainer nor the members of the coaching staff had any recollection of being interviewed.

Coach Cwik was a witness with first-hand knowledge. Her testimony was forthright, without bias or motivation, and sincere. Her long-standing association with the

track team and knowledge of the incidents that gave rise to petitioner's complaint made her a valuable and insightful witness. While Coach Cwik confirmed that she had not been interviewed or even informed about the HIB investigation, her testimony showed that the events involving A.S.'s decision not to compete in certain events did not constitute HIB. I accept Coach Cwik's testimony that she witnessed no yelling, intimidation, or bullying by Coach Gunter as credible.

The testimony from Principal Morina and Athletic Director/HIB Coordinator Giovannitti provided little detail about the investigation. Memories had faded after so many years and neither witness could provide much information. Principal Morina's testimony highlighted the confusion generated by the "HIB-like" investigation and missing pieces within the investigation, including a statement from the accused, Coach Gunter. Mr. Giovannitti's testimony was like Dr. Quint's in that it lacked specificity and corroboration from any of the coaching staff.

The testimony of Jessica Rose Johnson was highly persuasive. She conducted the HIB investigation of the victim, her sisters, and other members of the girls track team. She had read the entire letter written by A.S. and used that letter as the basis for formulating her questions. She investigated whether A.S. was pressured unfairly by her coach, threatened, or disparaged from the viewpoint of the victim. She candidly admitted her investigation was not complete because she did not have a statement from the accused or knowledge of any interviews with coaching staff. Despite that, Ms. Johnson had discretion to determine who to interview and what questions to ask. She testified that the questionnaires she prepared for the student/athletes, the responses she received, and the victim's sisters' written statements all provided her with the information she needed to determine that the incident was not a violation of HIB.

B.B. also offered testimony to highlight procedural irregularities with the HIB investigation and showed instances where Paulsboro deviated from its own policies.

Upon consideration of the above testimony and the documents in evidence, I **FIND**

the following as additional **FACTS**:

On January 23, 2020, the HIB investigation into allegations of harassment by Coach Gunter against A.S. was assigned to Ms. Johnson, the Anti-Bullying Specialist. The investigation was not completed within ten days and there was no statement in the Investigation Report from the accused.

The Investigation Report (R-3) was prepared by Ms. Johnson. Ms. Johnson asked A.S. a series of questions based on the information contained in the letter that B.B. shared with her. There was nothing contained in A.S.'s answers that identified specific incidents of mistreatment, abuse, or intimidation. A.S. and her two sisters submitted written statements. There was nothing in their statements that contained specific incidents identifying mistreatment, abuse, or intimidation; instead, their statements contained expressions of their own feelings and reactions to the events. A HIB Questionnaire was completed by K.R., a member of the track team. Her answers provided no specifics of mistreatment, yelling, or being forced to compete while injured. Questionnaires were also completed by two other members of the track team who recalled no issues with anyone being unkind or any athletes being forced to compete while injured. (R-3.)

Member of the coaching staff never witnessed Coach Gunter yelling, threatening, intimidating, or mistreating A.S. or any other member of the team.

A.S. may have experienced the pressure of being a star athlete on a championship team, but there is no evidence in this record that she experienced bullying, intimidation, or harassment from her head coach.

LEGAL ANALYSIS AND CONCLUSION

This appeal asks that I consider whether the conduct engaged in by Coach Gunter rose to bullying as defined by law, and whether petitioner was afforded adequate due

process during the course of the HIB investigation. N.J.S.A. 18A:37-14 defines HIB to include:

[A]ny gesture, any written, verbal or physical act . . . 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 . . . 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 a 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]

Districts are required by law to adopt policies that prohibit HIB; that outline expectations for student behavior; that set forth consequences for inappropriate behavior; and create procedures for reporting HIB related concerns. N.J.S.A. 18A:37-15. A school anti-bullying specialist must be assigned to each school, and the results of HIB investigations must be shared with the Superintendent of Schools and the Board of Education. Moreover, the law specifically requires as follows:

- (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, 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

[N.J.S.A. 18A:37-15 (emphasis supplied).]

Regulations promulgated by the Department of Education further assist local districts in complying with these statutory requirements. N.J.A.C. 6A:16-7.9. The Commissioner has recognized that these requirements have equal applicability when a bullying charge is directed against a staff member. See K.T. on behalf of K.H. and T.D. v. Deerfield Bd. of Educ., EDU 00489-13, Initial Decision (June 19, 2013), rev'd and remanded, Comm'r (July 30, 2013), <http://njlaw.rutgers.edu/collections/oal/> (where, in the context of a claim that a teacher bullied a kindergarten student, the Commissioner confirmed that the internal HIB investigation mandated by law is not discretionary).

Petitioner was not afforded the due process that was guaranteed by statute. The law provides that "parents or guardians of the students who are parties to the

investigation” must receive written information about the investigation. Here, petitioner was never afforded an opportunity to appear before the Board; never provided a written summary of the investigation; and never given a written decision from the Board in which it explained its rationale for not finding a HIB violation. How was she to trust in the investigation when she was given no information? More importantly, the failure to document any interviews with the coaching staff or to even advise the accused of the investigation tainted the investigation.

Indeed, this appeal exemplifies the harm that can flow from a failure to follow the statute and Paulsboro’s HIB policies. Dr. Quint’s “HIB-like” investigation was confusing and may have contributed to a failure to strictly follow policy. Moreover, the school administration clearly knew what its statutory responsibilities entailed; they just failed to follow them. I **CONCLUDE** that the Board failed to comply with the investigatory process contained in the statute and its own policies. I also **CONCLUDE** that the Board violated N.J.S.A. 18A:37-15(b)(6)(d) by not providing B.B. the investigation information, prior to the Board’s April 27, 2020, meeting. In failing to comply with this statute, the Board deprived B.B. of her right to a hearing.

In this case, it makes no sense to return this matter to the Board to correct the procedural errors set forth herein. Although petitioner was never afforded an opportunity to appear before the Board, she has now been afforded a full evidentiary hearing on the merits.

The record herein allows me to make a determination whether there was any evidence to support petitioner’s claim that her daughter was the target of HIB from her track coach. There is no evidence in the record or testimony from any of the witnesses to substantiate that Coach Gunter treated A.S. in a negative, demeaning, or hostile manner. Although Ms. Johnson’s investigation only focused on the victim and other members of the track team, she credibly found no evidence of any conduct that rose to the level of a HIB violation.

Critical to my analysis is the definition of HIB under N.J.S.A. 18A:37-14. The record is completely devoid of any gestures, written, verbal, or physical acts committed

by Coach Gunter that was motivated by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity, disability, of any other distinguishing characteristic of the alleged victim, A.S. HIB must be motivated by a distinguishing characteristic. Here there is none. Accordingly, I **CONCLUDE** that the allegations contained in the Due Process Petitions do not meet the statutory definition of HIB.

Through this hearing, petitioner was given full due process rights and ample opportunity to show that the Board's decision was against the weight of the evidence. She failed to do so. No one testified that Coach Gunter committed an act of harassment, bullying, or intimidation against A.S. Accordingly, I **CONCLUDE** that the allegations contained in the Petitions of Appeal do not meet the legal standards of the HIB statute.

ORDER

Based on the foregoing, I **ORDER** that the consolidated petitions be **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.

November 15, 2022

DATE



KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

Date Mailed to Parties:

KMC/jns

APPENDIX

WITNESSES

For petitioner

Gabrielle Prendergast
David Platt
Anita Evans
Paulette Cwik
Euridee Gunter
Paul Morina
John Giovannitti
Jessica Rose Johnson
B.B.

For respondent

Walter Quint

EXHIBITS

For petitioner

P-1 Letter and envelope, April 28, 2022
P-2 HIB investigation
P-3 Not admitted
P-4 Board report and confirmation
P-5 Not admitted
P-6 Not admitted
P-7 Not admitted
P-8 Not admitted
P-9 Letter to Board, December 16, 2019
P-10 Emails, January 21, 2020, and January 23, 2020
P-11 Board meeting minutes from December 16, 2019, and January 27, 2020
P-12 Not admitted

- P-13 Not admitted
- P-14 Not admitted
- P-15 Not admitted
- P-16 Not admitted
- P-17 Not admitted
- P-18 Not admitted
- P-19 Not admitted
- P-20 Not admitted
- P-21 Not admitted
- P-22 Not admitted
- P-23 Not admitted
- P-24 Not admitted
- P-25 Not admitted
- P-26 Not admitted

For respondent

- R-1 Letter, dated November 4, 2011
- R-2 Board actions, dated March 30, 2020, and April 27, 2020
- R-3 HIB Finding, dated February 21, 2020
- R-4 Board Policy No. 5131.1