

N.J. Stat. § 18A:37-15

Current through New Jersey 221st First Annual Session, L. 2024, c. 16 and J.R. 1

LexisNexis® New Jersey Annotated Statutes > Title 18A. Education (Subts. 1 — 16) > Subtitle 6. Conduct of Schools (Pts. 1 — 4) > Part 2. Facilities and Conduct of Schools (Chs. 33 — 43) > Chapter 37. Discipline of Pupils (§§ 18A:37-1 — 18A:37-47)

§ 18A:37-15. Adoption of policy concerning harassment, intimidating or bullying by each school district

- 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:
 - (1) a statement prohibiting harassment, intimidation or bullying of a student;
 - (2) a definition of harassment, intimidation or bullying no less inclusive than that set forth in section 2 of P.L.2002, c.83 (C.18A:37-14);
 - (3) a description of the type of behavior expected from each student;
 - (4) consequences and appropriate remedial action for a person who commits an act of harassment, intimidation or bullying. The consequences for a student who commits an act of harassment, intimidation, or bullying may include: for the first act of harassment, intimidation, or bullying committed by a student, a copy of the results of the investigation shall be placed in the student's record and the student may be subject to remedial actions, including the provision of counseling or behavioral intervention services, or discipline, or both, as determined by the principal in consultation with appropriate school staff; for the second act, a copy of the results of the investigation shall be placed in the student's record and the student may be subject to remedial actions, including the provision of counseling or behavioral intervention services, or discipline, or both, as determined by the principal, in consultation with appropriate school staff; and for the third and each subsequent act, a copy of the results of the investigation shall be placed in the student's record, and the principal, in consultation with appropriate school staff, shall develop an individual student intervention plan which shall be approved by the superintendent of schools or the superintendent's designee, and may include remedial actions including counseling or behavioral intervention services, or progressive discipline, or both, and may require the student, accompanied by a parent or guardian, to complete in a satisfactory

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manner a class or training program to reduce harassment, intimidation or bullying behavior.

The superintendent of schools or the superintendent's designee and the principal shall consult law enforcement, as appropriate, pursuant to the provisions of the Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials, if the student's behavior may constitute a possible violation of the New Jersey Code of Criminal Justice;

(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;

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(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

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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.);
- (7) the range of ways in which a school will respond once an incident of harassment, intimidation or bullying is identified, which shall be defined by the principal in conjunction with the school anti-bullying specialist, but shall include an appropriate combination of services that are available within the district such as counseling, support services, intervention services, and other programs, as defined by the commissioner. In the event that the necessary programs and services are not available within the district, the district may apply to the Department of Education for a grant from the "Bullying Prevention Fund" established pursuant to section 25 of P.L.2010, c.122 (C.18A:37-28) to support the provision of out-of-district programs and services;
- (8) a statement that prohibits reprisal or retaliation against any person who reports an act of harassment, intimidation or bullying and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation;
- (9) consequences and appropriate remedial action for a person found to have falsely accused another as a means of retaliation or as a means of harassment, intimidation or bullying;
- (10) a statement of how the policy is to be publicized, including notice that the policy applies to participation in school-sponsored functions;
- (11) a requirement that a link to the policy be prominently posted on the home page of the school district's website and distributed annually to parents and guardians who have children enrolled in a school in the school district;
- (12) a requirement that the name, school phone number, school address and school email address of the district anti-bullying coordinator be listed on the home page of the school district's website and that on the home page of each school's website the name, school phone number, school address and school email address of the school anti-bullying specialist and the district anti-bullying coordinator be listed. The information concerning the district anti-bullying coordinator and the school anti-bullying specialists shall also be maintained on the department's website; and
- (13) a requirement that the school district and each school in the district with a website post on its homepage the current version of the document, Guidance for Parents on the Anti-Bullying Bill of Rights Act, developed by the Department of Education. The School Climate State Coordinator shall ensure that this document is updated as needed and then promptly disseminated to all school districts.

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c. A school district shall adopt a policy and transmit a copy of its policy to the appropriate executive county superintendent of schools by September 1, 2003. A school district shall annually conduct a re-evaluation, reassessment, and review of its policy, making any necessary revisions and additions. The board shall include input from the school anti-bullying specialists in conducting its re-evaluation, reassessment, and review. The district shall transmit a copy of the revised policy to the appropriate executive county superintendent of schools within 30 school days of the revision. The first revised policy following the effective date of P.L.2010, c.122 (C.18A:37-13.1 et al.) shall be transmitted to the executive county superintendent of schools by September 1, 2011.

d.

(1) To assist school districts in developing policies for the prevention of harassment, intimidation, or bullying, the Commissioner of Education shall develop a model policy applicable to grades kindergarten through 12. This model policy shall be issued no later than December 1, 2002.

(2) The commissioner shall adopt amendments to the model policy which reflect the provisions of P.L.2010, c.122 (C.18A:37-13.1 et al.) no later than 90 days after the effective date of that act and shall subsequently update the model policy as the commissioner deems necessary.

e. Notice of the school district's policy shall appear in any publication of the school district that sets forth the comprehensive rules, procedures and standards of conduct for schools within the school district, and in any student handbook.

f. Nothing in this section shall prohibit a school district from adopting a policy that includes components that are more stringent than the components set forth in this section.

History

L. 2002, c. 83, § 3, eff. Sept. 6, 2002; amended 2007, c. 303, § 7, eff. Mar. 13, 2008; 2010, c. 122, § 12; 2012, c. 1, § 1, eff. Mar. 26, 2012; 2021, c. 338, § 3, effective January 10, 2022.

Annotations

Notes

OLS Corrections:

Pursuant to R.S.1:3-1, the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, corrected technical errors in L. 2007, c. 303, § 7.

Pursuant to R.S.1:3-1, the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, corrected technical errors in L. 2010, c. 122, § 12.

Editor's Notes

N.J.A.C. 6A:16-7.7

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 56 No. 17, September 3, 2024

NJ - New Jersey Administrative Code > TITLE 6A. EDUCATION > CHAPTER 16. PROGRAMS TO SUPPORT STUDENT DEVELOPMENT > SUBCHAPTER 7. STUDENT CONDUCT

§ 6A:16-7.7 Harassment, intimidation, and bullying

(a) Each district board of education shall develop, adopt, and implement a policy prohibiting harassment, intimidation, or bullying on school grounds, pursuant to N.J.S.A. 18A:37-15.

1. Each district board of education shall develop the policy in consultation with, at a minimum, parents and other community members, school employees, school volunteers, students, and school administrators.
2. Each district board of education shall have control over the content of the policy, except that the policy shall contain, at a minimum, the following components:
 - i. A statement prohibiting harassment, intimidation, or bullying of a student;
 - ii. A definition of harassment, intimidation, or bullying no less inclusive than that set forth in the definition at N.J.S.A. 18A:37-14 and N.J.A.C. 6A:16-1.3;
 - iii. A statement that bullying is unwanted, aggressive behavior that may involve a real or perceived power imbalance;
 - iv. A description of the type of behavior expected from each student;
 - v. Appropriate remedial action for a student who commits an act of harassment, intimidation, or bullying that takes into account the nature of the behavior; the nature of the student's disability, if any, and to the extent relevant; the developmental age of the student; and the student's history of problem behaviors and performance. The appropriate remedial action also may include the following:
 - (1) A behavioral assessment or evaluation, including, but not limited to, a referral to the child study team, as appropriate; and
 - (2) Supportive interventions and referral services, including those at N.J.A.C. 6A:16-8;
 - vi. Consequences for a student who commits an act of harassment, intimidation, or bullying that are:
 - (1) Varied and graded according to the nature of the behavior; the nature of the student's disability, if any, and to the extent relevant; the developmental

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age of the student; and the student's history of problem behaviors and performance; and

(2) Consistent with the provisions of N.J.A.C. 6A:16-7, as appropriate;

vii. Appropriate consequences and remedial action for a staff member who commits an act of harassment, intimidation, or bullying;

viii. A procedure that allows for reporting, verbally and in writing, an act of harassment, intimidation, or bullying committed by an adult or youth against a student. The procedure also shall include a provision that permits a person to report anonymously consistent with N.J.S.A. 18A:37-15.b(5).

(1) The district board of education shall not take formal disciplinary action based solely on the anonymous report.

(2) The school district official shall take into account the circumstances of the incident when providing notification to parents and guardians of all students involved in the reported harassment, intimidation, or bullying incident and when conveying the nature of the incident, including the actual or perceived protected category motivating the alleged offense;

ix. A procedure for prompt investigation of violation and complaint reports consistent with N.J.S.A. 18A:37-15.b(6)(a) through (f) and 16.d.

(1) The procedure set forth in the district board of education policy may include a process prior to initiating an investigation by which the principal, or the principal's designee, in consultation with the anti-bullying specialist, makes a preliminary determination as to whether a reported incident or complaint, assuming all facts presented are true, is a report within the scope of N.J.S.A. 18A:37-14.

(A) If a preliminary determination finds the incident or complaint is a report outside the scope of N.J.S.A. 18A:37-14, the determination may be appealed to the district board of education, pursuant to district board of education policies and procedures governing pupil grievances, and thereafter to the Commissioner in accordance with N.J.A.C. 6A:3.

(2) The procedure also shall include a process by which the district board of education will investigate a complaint or report of harassment, intimidation, or bullying, pursuant to (a)2ix above, occurring on district board of education school buses, at district board of education school-sponsored functions, and off school grounds involving a student who attends an APSSD.

(A) The investigation conducted by the district board of education's anti-bullying specialist shall be in consultation with the APSSD.

(3) To protect the victim, the procedure also shall take into account the circumstances of the incident when communicating with parents and when following the provisions of N.J.S.A. 18A:37-15.

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- (4) Investigations of complaints concerning adult conduct shall not be investigated by a member of the same bargaining unit as the individual who is the subject of the investigation;
- x. A requirement for the principal, in conjunction with the school anti-bullying specialist, to define the range of ways in which a school will respond once an incident of harassment, intimidation, or bullying is identified, consistent with the range of responses adopted by the board of education, pursuant to N.J.S.A. 18A:37-15.b(7);
- (1) The school district official shall take into account the circumstances of the incident when responding and, at a minimum, include support for victims of harassment, intimidation, or bullying and corrective actions for documented systemic problems related to harassment, intimidation, or bullying;
- xi. A requirement that within five school days after the results of the harassment, intimidation, or bullying investigation are reported to the district board of education, information about the investigation shall be provided in writing to the parents or guardians of students who are party to a harassment, intimidation, or bullying investigation.
- (1) Any request by the parents or guardians for a hearing before the district board of education concerning the written information about a harassment, intimidation, or bullying investigation, pursuant to N.J.S.A. 18A:37-15.b(6)(d), shall be filed with the district board of education secretary no later than 60 calendar days after the written information is received by the parents or guardians.
- (2) The hearing shall be held within 10 business days of receipt of the request.
- xii. A statement that prohibits a district board of education member, school employee, student, or volunteer from engaging in reprisal, retaliation, or false accusation against a victim, witness, or any person who reports or has reliable information about an act of harassment, intimidation, or bullying.
- (1) The statement shall include the consequence(s) and appropriate remedial action(s) for a person who engages in reprisal or retaliation;
- xiii. Consequences and appropriate remedial action for a person found to have falsely accused another as a means of retaliation or harassment, intimidation, or bullying;
- xiv. A statement of how the harassment, intimidation, and bullying policy is to be publicized, including notice that the policy applies to participation in school-sponsored functions and on school buses.
- (1) Notice of the district board of education's policy shall appear in any publication of the school district that sets forth the code of student conduct, pursuant to N.J.A.C. 6A:16-7.1, for schools within the school district;

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- xv.** A requirement that a link to the harassment, intimidation, and bullying policy be posted prominently on the home page of the school district's and each school's website;
- xvi.** A requirement that the harassment, intimidation, and bullying policy be distributed annually to all school staff, students, and parents;
- xvii.** A requirement that the name of the school district's anti-bullying coordinator and the anti-bullying coordinator's school phone number, school address, and school e-mail address be listed on the home page of the school district's website;
- xviii.** A requirement that the name of the school's anti-bullying specialist and the anti-bullying specialist's phone number, school address, and school e-mail address be listed on the home page of the school's website; and
- xix.** Provisions for appropriate responses to harassment, intimidation, or bullying, as defined in N.J.S.A. 18A:37-14 and N.J.A.C. 6A:16-1.3, that occurs off school grounds in cases in which a school employee is made aware of the actions or a school administrator should have known of an incident of harassment, intimidation, or bullying.

(1) Responses to harassment, intimidation, or bullying that occurs off school grounds shall be consistent with N.J.A.C. 6A:16-7.1 and 7.5 and this section.

(b) A district board of education shall not be prohibited from adopting a harassment, intimidation, and bullying policy that includes components more stringent than components set forth in N.J.S.A. 18A:37-15 and (a) above.

(c) A district board of education member, school employee, contracted service provider, student, or volunteer who has witnessed an incident of harassment, intimidation, or bullying, or has reliable information that a student has been subject to harassment, intimidation, or bullying shall report the incident to the appropriate school official designated by the district board of education's policy, pursuant to N.J.S.A. 18A:37-15 and (a)2viii above, or to any school administrator or safe schools resource officer, who shall immediately initiate the school district's procedures concerning harassment, intimidation, and bullying.

1. A district board of education member or school employee who promptly reports an incident of harassment, intimidation, or bullying to the appropriate school official designated by the district board of education's policy, or to any school administrator or safe schools resource officer, and who makes the report in compliance with the district board of education's policy, is immune from a cause of action for damages arising from a failure to remedy the reported incident, as set forth in N.J.S.A. 18A:37-16.c.

(d) A school administrator who receives a report of harassment, intimidation, or bullying, or who determines a reported incident or complaint, assuming all facts presented are true, is a report within the scope of N.J.S.A. 18A:37-14, pursuant to (a)2ix(1) above, and fails to initiate or conduct an investigation, or who should have known of an incident of harassment, intimidation, or bullying and fails to take sufficient action to minimize or eliminate the harassment, intimidation, or bullying, may be subject to disciplinary action.

(e) The district board of education shall:

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1. Annually examine the training needs of school employees and volunteers who have significant contact with students for the effective implementation of the harassment, intimidation, or bullying policies, procedures, programs, and initiatives of the district board of education and implement training programs for school employees and volunteers who have significant contact with students, consistent with N.J.S.A. 18A:37-17.b.

i. The annual examination of training needs shall take into consideration the findings of the annual review and update of the code of student conduct, pursuant to N.J.A.C. 6A:16-7.1(a)2.

ii. Information regarding the district board of education's policy against harassment, intimidation, and bullying shall be incorporated into the school district's employee training program.

(1) The program shall be provided to full- and part-time staff, volunteers who have significant contact with students, and persons contracted by the school district to provide services to students;

2. Develop a process for annually discussing with students the school district's harassment, intimidation, and bullying policy;

3. Annually conduct a re-evaluation, reassessment, and review of its harassment, intimidation, and bullying policy, and any report(s) and/or finding(s) of the school safety/school climate team(s). The district board of education also shall make any necessary revision(s) to its policy, consistent with N.J.S.A. 18A:37-15.c.

i. The programs or other responses shall be planned in consultation with, at a minimum, parents and other community members, school employees, law enforcement, school volunteers, students, and school administrators;

4. Annually establish, implement, document, and assess bullying prevention programs or approaches and other initiatives designed to create schoolwide conditions to prevent or intervene in harassment, intimidation, and bullying in schools of the school district.

i. Programs, approaches, and initiatives shall be planned in consultation with, at a minimum, parents and other community members, school employees, law enforcement, school volunteers, students, and school administrators; and

5. Submit to the executive county superintendent a copy of its approved harassment, intimidation, and bullying policy within 30 days of its adoption or revision.

(f) The principal of each school in the school district shall appoint a school anti-bullying specialist to perform the functions established in N.J.S.A. 18A:37-20.a and c.

(g) The chief school administrator of the school district shall appoint a district anti-bullying coordinator to perform the functions established in N.J.S.A. 18A:37-20.b and c.

(h) The district board of education shall form a school safety/school climate team in each school in the school district to achieve the purposes and perform the functions established at N.J.S.A. 18A:37-21.

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1. Pursuant to N.J.S.A. 18A:37-21.b, the school safety/school climate team shall consist of the principal or the principal's designee and the following members appointed by the principal: a teacher in the school, the school anti-bullying specialist, a parent of a student in the school, and other members determined by the principal. The team shall be chaired by the school anti-bullying specialist.

i. A parent shall be on the school safety/school climate team only in regard to general school climate issues and shall not participate in activities that may compromise a student's confidentiality, pursuant to N.J.S.A. 18A:37-21.e.

ii. Other members of the school safety/school climate team who are not authorized to access student records pursuant to N.J.A.C. 6A:32-7.5 shall be on the team only in regard to general school climate issues and shall not participate in activities that may compromise a student's confidentiality.

(i) The requirements of this section are promulgated pursuant to N.J.S.A. 18A:37-13 through 32 and shall not be interpreted to prevent a victim of harassment, intimidation, or bullying from seeking redress under any other available civil or criminal law.

History

HISTORY:

Amended by R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

In introductory paragraph of (a), inserted "develop," and "and implement"; in (a)2ix, substituted a period for a semicolon at the end; added (a)2ix(1); in (d)1, inserted "school", and in (d)1i, deleted comma following "intimidation".

Amended by R.2007 d.184, effective June 4, 2007.

See: 39 N.J.R. 294(a), 39 N.J.R. 2243(a).

Rewrote (a)2x.

Recodified from N.J.A.C. 6A:16-7.9 and amended by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Section was "Intimidation, harassment and bullying". Rewrote the section. Former N.J.A.C. 6A:16-7.7, Staff responsibilities, repealed.

Amended by R.2017 d.215, effective January 2, 2018 (operative July 1, 2018).

See: 48 N.J.R. 1743(a), 49 N.J.R. 1285(a), 50 N.J.R. 155(b).

Rewrote the section.

Amended by R.2021 d.073, effective July 19, 2021.

See: 53 N.J.R. 197(a), 53 N.J.R. 1216(a).

In (a)2i and (a)2ii, inserted a comma following "intimidation"; in the introductory paragraph of (a)2v, inserted a comma following "any"; in (a)2v(1), inserted a comma following "evaluation"; in

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the introductory paragraph of (a)2ix(1) and the introductory paragraph of (h)1, substituted "the principal's" for "his or her"; in the introductory paragraph of (a)2ix(2) and (a)2ix(2)(A), substituted "APPSD" for "approved PSSD"; in (a)2xvii, substituted "the anti-bullying coordinator's" for "his or her"; in (a)2xviii, substituted "the anti-bullying specialist's" for "his or her school"; in (e)1ii(1), inserted a comma following the first occurrence of "students"; and in the introductory paragraph of (h), substituted "at" for "in".

NEW JERSEY ADMINISTRATIVE CODE

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End of Document

J.B., on behalf of minor child, M.B., :
 PETITIONER, :
 V. : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE : DECISION
 BOROUGH OF HADDONFIELD,
 CAMDEN COUNTY, :
 RESPONDENT. :

SYNOPSIS

Pro se petitioner challenged the determination of the respondent Board that M.B. was not the victim of harassment, intimidation or bullying (HIB) under the provisions of the New Jersey Anti-Bullying Bill of Rights Act, *N.J.S.A.* 18A:37-13 *et seq.* (the Act). Petitioner alleged that M.B. – a seventh grade student in respondent’s school district at the time of the incident – was subjected to harassment, intimidation, or bullying when a fellow student, C.B., posted messages on M.B.’s social media page. The Board filed a motion to dismiss, asserting, *inter alia*, that the required HIB investigation was timely conducted, the results supported the conclusion that no HIB occurred, and that the petitioner’s appeal was not timely filed pursuant to *N.J.A.C.* 6A:3-1.3(i). Petitioner opposed the motion.

The ALJ found, *inter alia*, that: the Act applies to any gesture, or any written, verbal or physical act, or any electronic communication that is reasonably perceived as being motivated either by an actual or perceived characteristic, such as, *inter alia*: race, color, religion, national origin, gender, sexual orientation, or a mental, physical or sensory disability, or any other distinguishing characteristic; school districts are required to adopt a policy that prohibits HIB, follows the procedural requirements outlined in the Act, and provides for a prompt response to any alleged HIB incident; in the instant case, seventh grader M.B. was the subject of cruel social media posts by another student, C.B., including: “You’re mean. I hate you. You should die. Stop trying to be popular. You’re ugly. You’re fat. Only losers like you. I wish I could kill you. You’re annoying. No popular people like you.” and “Bitch skanky hoe bag;” while the school’s anti-bullying specialist investigated the HIB complaint and reported her findings to the principal, who then instituted some remedial measures, the record shows an absence of any further compliance with the procedures under *N.J.S.A.* 18A:37-15(b)(6); and the Board’s contention that the petition was not timely filed is without merit, as in this case there was no Board decision issued from which to run the time for appeal. The ALJ concluded that the proper remedy here is to return the matter to the Board for compliance with the procedures set forth in *J.L. on behalf of minor child, A.L. v. Board of Education of the Bridgewater-Raritan Regional School District*, Commissioner’s Decision No. 416-16, decided December 9, 2016. Accordingly, the Board’s motion to dismiss was denied, and the Board was ordered to comply with the procedures set forth in *N.J.S.A.* 18A:37-15, and to afford petitioners the rights and remedies granted them by the statute.

Upon review, the Commissioner concurred with the ALJ that the matter must be returned to the Board to remedy non-compliance with the procedures set forth in *N.J.S.A.* 18A:37-15; the Initial Decision of the OAL was adopted as the final decision, with modification to the ALJ’s conclusion, striking consideration of the substantive issues herein – which must be deferred until the Board’s HIB investigation and determination is properly completed.

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.

June 4, 2018

OAL DKT. NO. EDU 11464-14
AGENCY DKT. NO. 77-3/14

J.B., on behalf of minor child, M.B., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF HADDONFIELD,
CAMDEN COUNTY, :
RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) that the matter should be returned to the Board to remedy its non-compliance with the procedures set forth in *N.J.S.A. 18A:37-15 et seq.* The Commissioner acknowledges that the basis for the underlying petition of appeal was petitioner's disagreement with the Board's finding that the conduct complained of did not meet the statutory definition of harassment, intimidation, and bullying (HIB). Furthermore, petitioner sought reversal of the HIB determination at the local level. ~~Due to the clear procedural violations in this matter, however, the Commissioner deems the HIB investigation and determination process at the local level incomplete.~~ Thus, the Commissioner will not address the underlying substantive issue: whether the finding was arbitrary, capricious or unreasonable. Likewise, the Commissioner finds dicta pertaining to the substantive issue – without the process having been completed by the Board – improper. As such, in adopting the Initial Decision in this matter, the Commissioner accepts the first and second sentences of the "Conclusion" section and strikes the remainder of the section.

Accordingly, the recommended decision of the ALJ is adopted – as modified herein – and the Board is directed to fulfill the procedural requirements of the Act, including a hearing (or opportunity for same) before the Board and issuance a final decision by the Board.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 4, 2018

Date of Mailing: June 4, 2018

* This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION ON
MOTION TO DISMISS

OAL DKT. NO. EDU 11464-14

AGENCY DKT. NO. 77-3/14

J.B., ON BEHALF OF MINOR CHILD, M.B.,

Petitioners,

v.

**BOARD OF EDUCATION OF THE BOROUGH
OF HADDONFIELD, CAMDEN COUNTY,**

Respondent.

J.B., petitioner, pro se

Sanmathi Dev., Esq., for respondent Board of Education of the Borough of
Haddonfield, Camden County (Capehart and Scatchard, PA, attorneys)

Record Closed: March 15, 2018

Decided: April 20, 2018

BEFORE **PATRICIA M. KERINS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In this matter petitioners J.B. and M.B. (petitioners) allege that respondent Haddonfield Board of Education (Board) improperly determined that electronic communications which their minor daughter, M.B., received from a classmate, C.B., did

not constitute harassment, intimidation, or bullying (HIB) under the Anti-Bullying Bill of Rights Act (Act), N.J.S.A. 18A:37-13 et seq.

PROCEDURAL HISTORY

In September 2013, petitioners filed a complaint with the Camden County Office of Education regarding the Board's determination. On March 24, 2014, petitioners filed a petition of appeal with the Commissioner of Education "ask[ing] the Commissioner to reverse the finding of the New Jersey Department of Education [of which CCOE is a part] and the Haddonfield Board of Education and find that C.B. engaged in behavior that falls under [the statutory definition of HIB]." In May 2014, the Department of Education and the Board filed answers denying petitioners' claims. Then, on September 11, 2014, the Commissioner transmitted the matter to the OAL as a contested case.¹

The Board then filed a motion to dismiss the petition of appeal. According to the Board, dismissal is appropriate because petitioners (1) failed to exhaust their administrative remedies by requesting a hearing before the Board; (2) failed to timely file their petition of appeal in accordance with the ninety-day rule, N.J.A.C. 6A:3-1.3(i), which provides that "[t]he petitioner shall file a petition no later than the ninth day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing;" (3) failed to name C.B. or her parents as an indispensable party in violation of N.J.A.C. 6A:3-1.3(b); and because, (4) the doctrines of res judicata and collateral estoppel bar the petition of appeal on the theory that the Camden County Office of Education (CCOE) already determined that the Board correctly found that C.B. did not commit an act of HIB against M.B. Petitioners oppose the motion.

¹ In May 2015, petitioners consented to the dismissal of the Department of Education as a party. Stipulation of Dismissal. Petitioners and the Department of Education agreed that CCOE's decision "addresse[d] whether the District complied with the procedural requirements of the [Act] and does not address whether the District's determination was substantively correct[.]" Ibid.

After the parties addressed the motion they were provided with an opportunity to respond to the commissioner's subsequently rendered decision in J.L. ex rel. A.L. v. Bd. of Educ. of the Bridgewater-Raritan Reg'l Sch. Dist., Agency Docket No. 167-715, EDU 11604-15, Final Decision (December 9, 2016) <<http://nj.gov/education/legal/commissioner/2016/dec/416-16.pdf>>. In that decision the Commissioner clarified the procedures a board was required to follow in an HIB matter.

FACTUAL DISCUSSION

The following facts are not in dispute. On April 16, 2013, when M.B. was a seventh-grade student at Haddonfield Middle School (HMS), C.B. posted on M.B.'s social media page a message stating, "You're mean. I hate you. You should die. Stop trying to be popular. You're ugly. You're fat. Only losers like you. I wish I could kill you. You're annoying. No popular people like you," and on the following day, C.B. posted on the same website a message stating, "Bitch skanky hoe bag." Petitioners promptly alerted the HMS principal to the incidents. The school's anti-bullying specialist subsequently investigated the incidents and, on April 29, 2013, reported her findings to the principal.

In her report, the anti-bullying specialist concluded that the incidents did not meet the statutory definition of HIB, and the principal proposed such remedial measures as a "new lunch table" and "meetings with counselor." Petitioners did not receive the results of the investigation in writing, but did otherwise become aware of the results in May 2013.

In September 2013, petitioners filed with the CCOE a complaint that HMS officials did not adequately address the alleged HIB incidents. After an investigation, the CCOE concluded that "the district neglected to provide a written result of the investigation to the parents . . . and therefore is not compliant with N.J.S.A. 18A:37-15(b)(6)(d)," that "the district correctly determined the incident did not meet the statutory definition of HIB," and that "[t]he district took appropriate remedial measures for addressing this incident[.]" The CCOE ordered the Board to "[n]otify the county office if [the mother] requests the district to provide an opportunity for a hearing before the

board to appeal the district's written determination of the investigation in accordance with N.J.S.A. 18A:37-15(b)(6)(d)."

LEGAL DISCUSSION

The HIB Act is designed "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises." N.J.S.A. 18A:37-13.1(f). Under the Act, HIB is defined as:

[A]ny 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:37-14.²]

² N.J.S.A. 18A:37-15.3 provides that:

The policy adopted by each school district pursuant to section 3 of P.L.2002, c.83 (C.18A:37-15) shall include provisions for appropriate responses to harassment, intimidation, or bullying, as defined in section

Each school district must adopt a policy that prohibits HIB and provides for a prompt response to any alleged HIB incident. N.J.S.A. 18A:37-15. Once an alleged HIB incident is reported to the school principal, the principal must initiate an investigation within one school day of the report. N.J.S.A. 18A:37-15(b)(6). The investigation shall be conducted by a school anti-bullying specialist, and shall take no longer than ten school days to be completed.

The results of the investigation shall then be quickly reported to the superintendent of schools, who may take certain remedial action. The results shall also 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."

The parents of the students involved in any alleged HIB incident are entitled to receive information about the nature of the investigation and the result of the investigation. The parents may request a hearing before the board, and the hearing must be held within ten days of the request. Any hearing shall be held in executive session to protect the identity of any students involved. The board may hear from the anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents.

The board must issue a decision at the first meeting after its receipt of the investigation report. The board may affirm, reject, or modify the superintendent's decision. The board's decision then may be appealed to the Commissioner of Education.

2 of P.L.2002, c.83 (C.18A:37-14), that occurs off school grounds, in cases in which a school employee is made aware of such actions. The responses to harassment, intimidation, or bullying that occurs off school grounds shall be consistent with the board of education's code of student conduct and other provisions of the board's policy on harassment, intimidation, or bullying.

In J.L., the Commissioner ruled that “the appropriate remedy” for a school board’s failure to comply with the procedural requirements of the Act was “to order the Board to conduct a hearing and issue a proper decision.” Under the facts of that case, the Bridgewater-Raritan school board received at a meeting a report finding that an elementary student had committed an act of HIB. At the same meeting, the Board affirmed the HIB finding. The next day, the school principal, and not the school board, sent the student’s parents a letter advising them of the school board’s decision and their right to a hearing.

The Commissioner concluded that the school board’s actions violated the procedural requirements of the Act in several respects. First, the school board should not have issued a decision at the same meeting at which it first received the results of the HIB investigation, but instead was required to issue its decision “at the next board of education meeting following its receipt of the report” under N.J.S.A. 18A:37-15(b)(6)(e). Second, the parents received notice of their right to a hearing *after* the school board issued its decision, but should have been given the opportunity for a hearing *before* the school board issued a decision because, as the Commissioner noted, under N.J.S.A. 18A:37-15(b)(6)(d), “in essence, the parents are appealing the superintendent’s decision to the board.”³ Finally, the Commissioner found that the school board did not issue a proper written decision because “a school principal is not a proper agent to issue a HIB decision on behalf of the Board.” However, because “the Board gave petitioner notice of the allegations, conducted a thorough investigation and completed a comprehensive investigation report, and also afforded the petitioner with an opportunity to appear before the Board,” the Commissioner determined that “the proper remedy for the procedural errors . . . is to return the matter to the Board to provide the petitioner with a hearing on the HIB allegations.”

Here, like in J.L., the Board failed to follow certain procedures for addressing HIB complaints under N.J.S.A. 18A:37-15(b)(6) and the appropriate remedy is for the Board to now afford petitioners an opportunity for a hearing and then issue a written decision

³ In this regard, the Commissioner found that “the District should have provided the parents with the date of the next Board meeting, and clarified the process for requesting a hearing.”

with respect to whether M.B. was the victim of HIB.⁴ While the anti-bullying specialist investigated the HIB complaint and reported her findings to the principal, who then instituted some remedial measures, the papers submitted in this matter show an absence of any further compliance with the procedures under N.J.S.A. 18A:37-15(b)(6).

There is no showing that the results of the investigation were reported to the superintendent within two days of the completion of the investigation, as required by N.J.S.A. 18A:37-15(b)(6)(b). Second, the Board admits that petitioners did not receive information about the HIB investigation in writing and it does not appear that the results of the investigation were ever reported to the Board, as required by N.J.S.A. 18A:37-15(b)(6)(c) and (d). Finally, if the Board never received the results of the investigation, it follows that the Board never issued a written decision, as required by N.J.S.A. 18A:37-15(e). These procedural violations by the Board warrant the denial of the Board's motion to dismiss this matter and instead necessitate a remedy in accordance with the Commissioner's decision in J.L. Thus, the Board must provide petitioners with the opportunity for a hearing and must issue a written decision in accordance with N.J.S.A. 18A:37-15(d) and (e).

While petitioners may have known about the results of the HIB investigation, the Board or some school official should have promptly provided the results to petitioners in writing and advised them of their right to a hearing before the Board. Also, the fact that the CCOE issued a decision regarding petitioners' HIB complaint does not obviate the need for a hearing before the Board. Under N.J.S.A. 18A:37-25, "the office of the executive county superintendent of schools shall investigate a complaint that documents an allegation of a violation of the [Act] by a school district located within the county, when the complaint has not been adequately addressed on the local level" and "shall report its findings, and if appropriate, issue an order for the school district to develop and implement corrective actions that are specific to the facts of the case." However, this provision does not supersede a parent's right to a hearing before a school board or the requirement that a school board must issue a substantive decision on

⁴ Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, a "judge may render any ruling or order necessary to decide any matter presented to him or her which is within the jurisdiction of the transmitting agency or the agency conducting the hearing." N.J.A.C. 1:1-14.6(h).

whether or not one of its students committed an act of HIB. This requirement reinforces the appropriateness of returning this matter to the Board, because, under N.J.S.A. 18A:37-15(b)(6)(e), “[t]he 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.” Without a decision from the Board, the matter is not yet ripe for a decision by the Commissioner.

Respondent Board has raised the issue of whether petitioners have contravened the ninety-day rule for the filing of an appeal before the Commissioner from a Board’s action. However, in this matter, there was no Board decision from which to run the time for appeal. Subsection (e) as set forth above allows petitioner ninety days from the issuance of the Board’s decision. Here, there was no Board decision to appeal from and petitioner chose to file a complaint with the Camden County Executive Superintendent and followed by an appeal to the Commissioner. Simply put, there was no action by the Board to appeal, just its inaction in failing to follow the appropriate procedures under the HIB Act.

CONCLUSION

In this matter the proper remedy is to return the matter to the Board for compliance with the procedures set forth in the Commissioner’s decision in J.L. Once there the Board can review and determine the substantive issue of whether the conduct at issue constituted an HIB violation. It should be noted however, that the position taken by respondent that the denigration of the child as “ugly” and “fat” is insufficient to meet one of the prongs for a determination of HIB does not appear to be supported by prior decisions in this area. See G.C. on behalf of the minor child, C.C., and the Bd. Of Education of the Township of Montgomery, Somerset County; OAL Docket No. EDU 12103-15 (2016).

ORDER

Respondent’s Motion to Dismiss is **DENIED** and the Board of Education of the Borough of Haddonfield is **ORDERED** to comply with the procedures set forth in

N.J.S.A. 18A: 37-15 and afford petitioners the rights and remedies granted them by the statute.

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.



April 20, 2018
DATE

PATRICIA M. KERINS, ALJ

Date Received at Agency:

April 20, 2018 (emailed)

Date Mailed to Parties:

PMK/mel

J.L., on behalf of minor child, A.L., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BRIDGEWATER-RARITAN REGIONAL :
SCHOOL DISTRICT, SOMERSET :
COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner challenged the determination of the respondent Board that his daughter, A.L., engaged in harassment, intimidation and bullying (HIB) pursuant to New Jersey's Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.* The Board alleged that A.L., who was seven years old during the period pertinent to this matter, was one of several girls who bullied a classmate on the school bus because of her speech disability. Petitioner sought an order reversing the Board's determination that A.L. committed an HIB offense, and removing any reference to the alleged incident from A.L.'s school records. Petitioner maintained that the Board violated the Act's mandatory procedural requirement and that A.L.'s conduct did not rise to the level of HIB under the statute. The Board argued that it conducted an adequate investigation and that its determination was not arbitrary or capricious. The petitioner filed a motion for summary decision.

The ALJ found, *inter alia*, that: summary decision is appropriate, as there are no material facts at issue in this case; petitioner herein asserted that the Board committed four procedural errors: 1) failed to issue a written decision as required in the Act, 2) failed to review the investigation report prior to affirming the HIB charge against A.L., 3) failed to provide the required information about the HIB investigation to petitioner in writing, and 4) incorrectly advised petitioner that there was a ten-day limitation on requesting an "appeal" before the Board, and that such request must be made in writing; the respondent Board's argument that its decision to affirm the superintendent's recommendation of HIB was memorialized in writing – in both a letter from the school principal to petitioner and in the minutes of its March 24, 2015 Board meeting – is without merit, as these documents cannot be construed as the written decision required under the Act; the Board's use of the HIB Committee to fulfill its responsibility of reviewing the investigation report was permissible under the Act; the principal's letter to petitioner did not provide information about the nature of the HIB investigation or about the discipline imposed and, accordingly, did not meet the Act's requirement to provide petitioner with this information in writing; and the Board incorrectly advised A.L.'s parents of their rights under the statute by representing that there was a ten-day limitation on requesting a hearing. The ALJ concluded that the Board did not comply with the procedural safeguards provided under the Act, and the determination of an HIB violation under these circumstances was arbitrary and capricious. Accordingly, the ALJ ordered that the HIB determination be reversed and any reference to HIB be deleted from A.L.'s school record.

Upon review, the Commissioner, *inter alia*, concurred that there were procedural errors made in this case, but found that the ALJ erred in ordering the reversal of the HIB finding and the removal of reference to HIB from A.L.'s record. Accordingly, the Commissioner ordered the Board to conduct a hearing and issue a proper written decision in this matter.

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.

December 9, 2016

OAL DKT. NO. EDU 11604-15
AGENCY DKT. NO. 167-7/15

J.L., on behalf of minor child, A.L., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BRIDGEWATER-RARITAN REGIONAL :
SCHOOL DISTRICT, SOMERSET :
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 parties. In this matter, petitioner alleges that the Board’s determination that A.L. violated its harassment, intimidation and bullying (“HIB”) policy is arbitrary and capricious because the Board failed to comply with the procedural safeguards under the Anti-Bullying Bill of Rights Act (“the Act”). Petitioner also argues that A.L.’s conduct did not rise to the level of HIB under the statute, and seeks removal of any reference to the alleged incident from A.L.’s school records. Respondent contends that the Board did not violate the procedural requirements under the Act, and that it conducted a proper investigation.

The ALJ found that the Board made three of the four procedural errors alleged by petitioner. The ALJ concluded: the Board did not issue a written decision pursuant to *N.J.S.A.* 18A:37-15(b)(6)(e); the Board did not provide the parents with written information about the HIB investigation pursuant to *N.J.S.A.* 18A:37-15(b)(6)(d); the Board incorrectly advised the parents of their rights under the statute when it notified the parents of a 10-day

timeframe within which to request a hearing; and the Board's utilization of a committee to review the HIB matter and subsequently report to the Board was a procedurally acceptable practice. Although the ALJ did not make a determination as to whether A.L.'s actions constituted a violation of the HIB policy, the Initial Decision recommended that the HIB determination against A.L. be reversed and any reference to HIB be deleted from A.L.'s school records because the Board failed to comply with the procedural safeguards under the Act.

Respondent takes exception to the ALJ's conclusion that the Board violated procedural requirements of the statute because it did not issue a written decision, did not provide the parents with written information about the HIB investigation, and incorrectly advised the parents of their rights under the statute. The Board further argues that the ALJ erred in concluding that the only remedy in this matter is to reverse the decision and remove any reference to same in A.L.'s file. Respondent submits that "remand" of the matter to the Board for a hearing on the substantive HIB issues is the appropriate remedy. Petitioner has filed a reply to respondent's exceptions, arguing that the ALJ correctly found that the Respondent violated the procedural requirements of the Act, and the only appropriate remedy in this case is reversal of the HIB finding.

Upon a comprehensive review of the record, the Commissioner agrees in part and disagrees in part with the ALJ's determination. Specifically, the Commissioner agrees that the Board's utilization of an HIB committee to review the matter and report to the Board was an appropriate practice. The Commissioner further agrees that the Board failed to properly comply with the procedural requirements set forth in *N.J.S.A. 18A:37-15(b)(6)*; however, the Commissioner finds that such noncompliance did not deprive petitioner or A.L. of their due process rights under the Act. The Commissioner disagrees with the ALJ's conclusion that the

Board erroneously advised the parents of a timeframe within which to request a hearing. The Commissioner finds that although there is no time limit set forth in the statute, it was necessary for the Board to establish a deadline, as will be discussed below. Furthermore, the fact that the Board continued to provide the parents with opportunities for a hearing beyond the 10-day deadline mitigates any adverse consequence of “misinformation.” Lastly, the Commissioner finds that the appropriate remedy is to order the Board to conduct a hearing and to issue a proper decision.

N.J.S.A. 18A:37-15(b)(6)(d) provides in relevant part, “parents or guardians of the students who are parties to the investigation shall be entitled to receive information about the investigation . . . this information shall be provided in writing within 5 school days after the results of the investigation are reported to the board.” Additionally, *N.J.S.A. 18A:37-15(b)(6)(e)* provides, “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.” Here, respondent argues that the Board minutes and Principal Kerr’s March 25, 2015 letter – which followed the HIB Committee’s review of the matter on March 19, 2015 – and a reporting of the matter to the full Board’s review on March 24, 2015, satisfy the requirements under *N.J.S.A. 18A:37-15(b)(6)(e)*. Respondent also argues that phone calls and correspondence between the parents and the District, as well as the March 25, 2015 letter, meet the requirements of *N.J.S.A. 18A:37-15(b)(6)(d)*. Petitioner argues that the March 25, 2015 letter did not fully inform the parents of the nature of the investigation or the decision imposed, as required under *N.J.S.A. 18A:37-15(b)(6)(d)*, and that the same letter did not satisfy the Board’s responsibility to issue a written decision pursuant to *N.J.S.A. 18A:37-15(b)(6)(e)*.

The Commissioner finds that neither the Board minutes nor the March 25, 2016 letter constitute a written decision by the Board in accordance with *N.J.S.A. 18A:37-15(b)(6)(e)*. First, under no circumstances can any board minutes be substituted for a requirement of a written decision by a board on an HIB matter. Second, a school principal is not a proper agent to issue a HIB decision on behalf of the Board. Here, the content of the March 25, 2015 letter also does not *explicitly* set forth the Board's consideration of the matter and its decision to affirm, reject or modify the superintendent's determination.¹ Someone who is authorized to speak on behalf of the board must notify the parents of the Board's decision on the superintendent's determination/recommendation; had that been done, the March 25, 2015 letter would have constituted a Board decision meeting the requirements of *N.J.S.A. 18A:37-15(b)(6)(e)*. Absent this criteria, the Board failed to issue a proper written decision.

The Commissioner further finds that the March 25, 2015 letter – which was intended to satisfy the requirements of *N.J.S.A. 18A:37-15(b)(6)(d)* – informed the parents of the nature of the investigation and the finding of HIB, but did not set forth in writing the discipline imposed. Based on the HIB investigation report and correspondence in the record, it is evident that the parents were in frequent communication with the District and were aware of the details (and on notice) of the HIB matter and investigation, as well as the discipline imposed. Therefore, failure to include the discipline imposed in the March 25, 2015 letter is *de minimis*.

With regard to the deadline established by the District in its March 25, 2015 letter, the Commissioner finds that it was necessary for the Board to do the same. *N.J.S.A. 18A:37-15(b)(6)(c)* provides, “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

¹ Although implicit in the letter is the Board's affirmation of the superintendent's determination, that alone does not satisfy the written decision requirement of *N.J.S.A. 18A:37-15(b)(6)(e)*.

completion of the investigation. . . .” The parents or guardians need to be notified within five school days after the results of the investigation are reported to the board, and “a parent or guardian may request a hearing before the board after receiving the information.” *N.J.S.A.* 18A:37-15(b)(6)(d). Significantly, *N.J.S.A.* 18A:37-15(b)(6)(e) provides, “at the next board of education meeting following receipt of the report, the board shall issue a decision. . . .” The present language of the statute does not set forth a specific number of days within which a parent should request a hearing, nor does it prohibit a board of education from setting forth a timeline within which to receive requests of a hearing, which has led to considerable disagreement between the parties in the matter. As noted in *N.J.S.A.* 18A:37-15(b)(6)(d), the parents may request a hearing after they receive the investigation information, e.g. the superintendent’s recommendation: in essence, the parents are appealing the superintendent’s decision to the board. Thus, it simply would not make sense for parents to request a hearing *after* the board has considered and affirmed the superintendent’s decision at its “next” meeting. Additionally, without any time limit on the parents’ option to request a hearing, HIB matters would remain “open” on the district level for an extensive period of time, at the detriment of the students involved. Therefore, a clear reading of the statute suggests that the request for the hearing should be made as soon as possible following the parents’ receipt of the investigation information because a board has to render a decision at the “next” board meeting *after* its receipt of the report. As such, it follows that the parents need to request a hearing *before* the “next” board meeting takes place – in the time period between receipt of the investigation information and the next board meeting. This timeframe is logical and practical based on the language of the statute, and therefore a deadline to request a hearing – set forth by a board – would not violate a parent’s procedural due process rights under the Act.

In this case, the investigation was completed on or about March 17, 2015; the results were reported to the HIB Committee on March 19, 2015 and to the full Board during its March 24, 2015 meeting. Therefore, the Board should have rendered a decision at its next meeting, on April 14, 2015;² this means that the parents needed to request a hearing in advance of the April 14, 2015 meeting. In this situation, the onus is on the school district to provide the parents with proper information: the District should have provided the parents with the date of the next Board meeting, and clarified the process for requesting a hearing. The Commissioner does not construe the deadline set forth by the District in this case to be a limit on the parents' rights, in light of the fact that the timeline coincided with the next Board meeting and would allow for both parties to prepare for a hearing. More importantly, through correspondence in May, June, and July, the Board provided petitioner multiple opportunities to appear for a hearing before the Board, which petitioner declined. In other words, petitioner was never denied a hearing before the Board and the record reflects that the petitioner was on notice throughout the duration of the HIB investigation process. Therefore, the Commissioner cannot find a deprivation of due process rights under such circumstances.

Finally, in the Initial Decision, the ALJ relied on *Edward Sadloch, et. al. v. Board of Education of the Township of Cedar Grove, Bergen County*, Commissioner Decision No. 216-15 (June 23, 2015), in determining the possible remedies to the procedural violations by the Board. The ALJ concluded that, like *Sadloch*, the Board failed to follow the procedures under the Act, and the sole remedy under the law is to reverse the HIB determination and to remove any reference of HIB from A.L.'s records. In *Sadloch*, however, the Commissioner was in accord with the ALJ's conclusions and ordered removal of reference to HIB from the records of

² The Bridgewater-Raritan School District's website indicates that the next board meeting for the 2014-2015 school year took place on April 14, 2015.

all the named petitioners because that board failed to comply with basic investigatory procedures under the Act. Additionally, the state of the record in that case was such that a fact finder could not properly determine whether an act of HIB had occurred. Here, the Board gave petitioner notice of the allegations, conducted a thorough investigation and completed a comprehensive investigation report, and also afforded the petitioner with an opportunity to appear before the Board. *See Stephen Gible v. Board of Education of the Hunterdon Central Regional School District, Hunterdon County, Commission Decision No. 254-16 (July 13, 2016)*. Therefore, the Commissioner finds that the ALJ erred in ordering that the HIB finding be reversed, and that all reference to HIB be removed from the petitioner's file; instead, the proper remedy for the procedural errors set forth herein is to return the matter to the Board to provide the petitioner with a hearing on the HIB allegations. In an HIB appeal where the record is sufficient for a fact finder to determine whether an act of HIB occurred, and where the procedural violations did not deprive the petitioner of their right to notice and a hearing, any other remedy would curtail the legislative intent behind the Act.

Accordingly, the recommended decision of the ALJ is modified as stated herein and the Board is directed to provide the petitioner with a hearing and issue a proper decision.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 9, 2016

Date of Mailing: December 9, 2016

³ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.

2016 N.J. AGEN LEXIS 874

State of New Jersey Office of Administrative Law

October 24, 2016, Decided; September 15, 2016, Record Closed

OAL DKT. NO. EDU 11604-15; AGENCY DKT. NO. 1267-7/15

Reporter

2016 N.J. AGEN LEXIS 874 *

J.L. ON BEHALF OF MINOR CHILD, A.L., Petitioner,

v.

**BOARD OF EDUCATION OF THE BRIDGEWATER-RARITAN REGIONAL
SCHOOL DISTRICT, SOMERSET COUNTY, Respondent.**

Core Terms

recommend, material fact, bully, written decision, discipline, result of the investigation, school day, capricious, harassment, procedural requirements, investigation report, board of education, superintendent's, intimidate, girl

Counsel

[*1] Randall J. Peach, Esq., for petitioner (Bruce C. LiCausi, attorney)

John Geppert, Jr., Esq., for respondent (Schwartz, Simon Edelstein & Celso, LLC, attorneys)

Initial Decision:

INITIAL DECISION GRANTING

APPLICATION FOR SUMMARY

DECISION

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In this matter, petitioner, J.L., the father of A.L., a seven-year-old during the period pertinent to this matter, challenges the determination of respondent Bridgewater-Raritan Regional School District Board of Education ("Board" or "District") that his daughter engaged in harassment intimidation bullying (HIB) under N.J.S.A. 18A:37-14 while a student at the Crim Primary School. J.L. petitioned the New Jersey Commissioner of Education seeking an order reversing Respondent's determination that A.L. committed a HIB offense and removing any reference to the alleged incident from A.L.'s school records. Petitioner maintains that that the Board's determination of a violation of HIB policy against A.L. is arbitrary and capricious ¹, as a result of A.L.'s young age, and the Board's failure to perform an appropriate [*2] review or keep any record of the review process.

¹ Petitioner argues that the review should not be based upon whether the Board's actions were arbitrary or capricious. A determination of the scope of the review is not yet determined. Initial indications and respondent's position are that the scope of the OAL review of the Board's action is subject to a limited arbitrary and capricious analysis.

Respondent argues that it conducted an adequate investigation of A.L.'s actions and the Board's determination is not arbitrary and capricious.

On August 3, 2015, the New Jersey State Department of Education, Bureau of Controversies and Disputes, transmitted the matter to the Office of Administrative Law (OAL) pursuant to N.J.A.C. 1:1-8.2. On July 15, 2016, the petitioner moved for summary judgment (sic), seeking to reverse the HIB determination and removing the determination from A.L.'s school record. Respondent opposed said motion, petitioner received time to submit a reply to [*3] respondent's opposition. Petitioner submitted a reply brief on August 11, 2016. The record closed on September 15, 2016 after an initial review of the documents submitted.

FACTS

On March 4, 2015, Margaret Kerr, Principal of the Board's Crim Primary School, received an email from C.D., father of E.D. Respondent's Brief (RB), 7; Geppert Cert., Exh. B. In this email, C.D. indicated that, for about one month, his daughter had been coming home crying because some girls on the bus were "being very mean to her." Id. C.D. mentioned that his daughter had a problem pronouncing certain words and letters and that the girls on the bus were bullying her because of her speech disability. Id. E.D. named four girls as alleged perpetrators, one of whom was A.L. Id. at 7-8.

Principal Kerr referred the HIB report to the Crim School's Anti-Bullying Specialist, Jacquelyn Spagnolo, and an investigation began on March 6, 2015 (after a snow day on March 5, 2015). Id. at 8. On that day, Ms. Spagnolo spoke with E.D. regarding the alleged bullying. Id. During the conversation, E.D. identified A.L. as one of the girls who was making fun of her. Id.; Geppert Cert., Exh. C at BWRL 0059. [*4] Later, after indicating that the comments were mostly coming from another student, E.D. stated that A.L. was "not really" saying anything to her. Id.

On that same day, Ms. Spagnolo spoke with E.G., one of the alleged HIB aggressors. Id. E.G. indicated that A.L. was among the group of students who would talk about how "[E.D.] has trouble saying some words." Id.; Geppert Cert., Exh. C at BWRL 0060. Ms. Spagnolo also spoke to A.M., another alleged aggressor, who identified A.L. as one of the students "talking about [E.D.'s] voice because she had a weird accent." Id. at 9; Geppert Cert., Exh. C at BWRL 0061. Additionally, on March 6, 2015, Principal Kerr spoke with R.L., petitioner's wife, about the HIB investigation. Id. R.L. also called the Superintendent's office and spoke with Dr. Hayek's secretary. Id.

On March 9, 2015, Ms. Spagnolo spoke with A.L. Id. During that conversation, A.L. stated, "Like [E.D.] has a speech problem and the girls were making fun of her and since they were doing it and I was bored, I did it also, I made fun of her speech." Id.; Geppert Cert., Exh. C at BWRL 0063. On March 11, 2015, Ms. Spagnolo again spoke to R.L., petitioner's wife, [*5] about the HIB investigation. Id. The following day, Ms. Spagnolo forwarded a separate voicemail received from R.L. to Principal Kerr's office. Id. at 10.

On March 17, 2015, Ms. Spagnolo completed the HIB Investigation Report and forwarded it to Principal Kerr for review. Id. at 10. The report concluded that A.L.'s conduct constituted HIB based on the distinguishing characteristic of E.D.'s "speech error." Id. The recommended action consisted of: 1) a verbal reprimand; 2) telephoned parents; and 3) changed bus seating. Id.; Geppert Cert., Exh. C at BWRL 0065-66.

On March 18, 2015, petitioner and his wife submitted correspondence to Superintendent Hayek acknowledging that there was an HIB investigation that involved their daughter. Id. Among other things, the petitioner wrote, "The incident on the bus was an isolated incident; if it was an ongoing problem we should have been notified." Id. at 11; Geppert Cert., Exh. D.

The results of the investigation were set forth in a report, which was received by the Superintendent on March 18, 2015. Petitioner's Brief (PB), 3. The next day, the results of the HIB investigation were considered by the Board's HIB Committee (Committee), [*6] which consists of three Board members. Id. at 3, 5-6. The Committee rendered a report, dated March 19, 2015, recommending that the HIB finding involving A.L. be affirmed. Id. at 3-4.

On March 24, 2015, the results of the investigation were unanimously affirmed at a meeting of the full Board. Id. at 4. Petitioner contends that, at this time, the Board members did not possess the actual investigation report. Id. at 5. Rather, they possessed only a summary of the HIB finding, as contained in the HIB Committee report dated March 19, 2015, stating "Target's [name redacted] father reported that aggressors are making fun of target's speech disability." Id.; Doc. 22-24.

Respondent asserts that the Board possessed information beyond this summary, including the information obtained by Committee members during the HIB Committee meeting. See RB, 14.

The Board's meeting minutes reflect that a motion was made and seconded to approve a series of action items, including Item E: "Approval of the Superintendent's report of alleged HIB incidents and investigations for March 19, 2015, as well as the recommendation of the Committee to affirm the determinations and actions specified. [*7]" See RB, 12; Geppert Cert., Exh. F at 0018. The minutes subsequently record the Board's vote on all action items. *Id.* at 12-13. However, no formal written decision was issued to affirm the HIB finding involving A.L. See PB, at 4-5.

The following day, March 25, 2015, Principal Kerr wrote to petitioner and his wife, informing them that "it was determined that your child did commit an act of harassment, intimidation, or bullying." See PB, 6; Doc. 25. The letter did not provide A.L.'s parents with information about the nature of the investigation or about the discipline, which was imposed for the HIB violation. *Id.* Respondents note that, prior to this date, petitioner and his wife had multiple conversations with Principal Kerr regarding the HIB investigation and that they were fully aware of the nature of the investigation and the action taken as a result. See RB, 17-18.

Additionally, Principal Kerr's letter advised A.L.'s parents that "[i]f you do not agree with the [HIB] finding(s), you have a right to appeal this decision by written request to the Superintendent within 10 days of receipt of this letter." See PB, 7; Doc. 25. Respondents point out that the parents of the three [*8] other alleged aggressors appeared before the Board at its April 14, 2015 meeting, while A.L.'s parents did not. See RB, 20. According to Respondents, A.L.'s parents never requested a hearing before the Board. *Id.* at 45.

LEGAL DISCUSSION

Summary decision, or as it is known in judicial matters, summary judgment, is a well-recognized procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute and the application to that set of material facts of the applicable law and standard of proof lead to a determination of the case without the necessity of a hearing at which evidence and testimony need be taken. The procedure is equally applicable in judicial and executive-branch administrative cases. N.J.A.C. 1:1-12.5. The standards for deciding motions for summary decision are contained in *Judson v. People's Bank and Trust Co. of Westfield*, 17 N.J. 67, 74-75 (1954). The Supreme Court later elaborated on the motion and its standard in *Brill v. Guardian Life Insurance Co. of America*, 142 N.J. 520 (1995). Under the Brill standard, [*9] as in Judson, a motion for summary decision may only be granted where there is no "genuine issue" of "material fact." The determination as to whether genuine issues of material fact exist is made after a "discriminating search" of the record, consisting as it may of affidavits, certifications, documentary exhibits and any other evidence filed by the movant and any such evidence filed in response to the motion, with all reasonable inferences arising from the evidence being accorded to the opponent of the motion. In order to defeat the motion, the opposing party must establish the existence of "genuine" issues of material fact. The facts upon which the party opposing the motion relies to defeat the motion must be something more than "facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful, frivolous, gauzy or merely suspicious.'" *Judson*, supra, 17 N.J. at 75 (citations omitted). The Brill decision focuses on the analytical procedure for determining whether a purported issue of material fact is "genuine" or is of an "insubstantial nature." *Brill*, supra, 142 N.J. at 530. Brill concludes that the [*10] same analytical process used to decide motions for a directed verdict is used to resolve summary-decision motions. "[T]he essence of the inquiry in each is the same: 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Id.* at 536 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214 (1986)). In searching the proffered evidence to decide the motion, the judge must be guided by the applicable substantive evidentiary standard of proof, that is, the "burden of persuasion" that would apply at trial on the merits, whether that is the preponderance-of-the-evidence standard or the clear-and-convincing-evidence standard. If a careful review under this standard establishes that no reasonable fact finder could resolve the disputed facts in favor of the party opposing the motion, then the uncontracted facts thus established can be examined in the light of the applicable substantive law to determine whether or not the movant is clearly entitled to judgment as a matter of law. However, [*11] where the proofs in the record are such that "reasonable minds could differ" as to the material facts, then the motion must be denied and a full evidentiary hearing held. *Id.* at 535 (citation omitted).

Petitioner's two main arguments are that respondent violated the Anti-Bullying Bill of Rights Act's mandatory procedural requirements and that, in any event, A.L.'s conduct did not rise to the level of HIB under the statute. See PB, 2. Respondent

contends that petitioner is not entitled to prevail as a matter of law on any of his legal arguments, as proper procedures were followed, and that the Board did not act arbitrarily, capriciously, or unreasonably in finding that A.L.'s conduct constituted HIB. See RB, 21, 51.

Whether A.L.'s conduct amounted to HIB is not an appropriate issue to be decided at this time. Rather, the alleged procedural errors and the possible remedies for these procedural errors must be addressed.

Under the New Jersey Anti-Bullying Bill of Rights Act, each school district must adopt a policy that prohibits HIB and provides for a prompt response to any alleged HIB incident. N.J.S.A. 18A:37-15. Once an alleged HIB incident is [*12] reported to the school principal, the principal must initiate an investigation within one school day of the report. N.J.S.A. 18A:37-15(b)(6)(a). The investigation must be conducted by a school anti-bullying specialist and must be completed no later than ten school days from the date of the written report of the incident. Id.

Within two school days of the completion of the investigation, the results must be reported to the superintendent of schools, who may take certain remedial action. N.J.S.A. 18A:37-15(b)(6)(b). The results shall also 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." N.J.S.A. 18A:37-15(b)(6)(c).

The parents of the students involved in any alleged HIB incident are entitled to receive information about the nature of the investigation, whether the district found evidence of HIB, and whether discipline was imposed. N.J.S.A. 18A:37-15(b)(6)(d) [*13]. This information must be provided in writing within five school days after the results of the investigation are reported to the board. Id. The parents may request a hearing before the board, and the hearing must be held within ten days of the request. Id. Any hearing shall be held in executive session to protect the identity of any students involved. Id. The board may hear from the anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents. Id.

The board must issue a decision, in writing, at the first meeting after its receipt of the investigation report. N.J.S.A. 18A:37-15(b)(6)(e). The board may affirm, reject, or modify the superintendent's decision. Id. The board's decision may be appealed to the Commissioner of Education within ninety days. Id.

Petitioner's main contention is that respondent violated the Anti-Bullying Bill of Rights Act's mandatory procedural requirements. See PB, 7. In essence, petitioner asserts that respondent committed four procedural errors: 1) Respondent failed to issue a written decision; 2) respondent failed to review the investigation [*14] report prior to affirming the HIB violation against A.L.; 3) respondent failed to provide the required information about the HIB investigation to petitioner in writing; and 4) respondent incorrectly advised petitioner that there was a ten-day limitation on requesting an "appeal" before the Board and that such a request had to be in writing.

A. Whether the Board issued a written decision

Petitioner first argues that respondent never issued a decision in writing to affirm the HIB violation against A.L. The HIB statute requires that:

[A]t 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. N.J.S.A. 18A:37-15b(6)(e) (emphasis added). Respondent contends that this procedural requirement was met when Principal Kerr wrote a letter to Petitioner and his wife on March 25, 2015, informing them of the Board's determination that E.D. had committed an act of HIB. See RB, 13. According to Respondent, "Principal Kerr was an appropriate Board agent to be delegated the responsibility of communicating the Board's decision in writing [*15] . . ." Id. at 31. However, this correspondence was not "a decision" issued by "the board," as required by the statute. As discussed further below, Principal Kerr's letter provided no information about the investigation and failed to explain the Board's rationale for its determination.

Additionally, according to respondent, "[t]he Board's decision to affirm the superintendent's recommendation in the A.L. HIB matter was also memorialized in writing by the Board Secretary, Peter Starrs, who kept the minutes of the March 24, 2015 Board meeting reflecting the Board's vote to affirm the HIB determination regarding A.L." See RB, 32. However, a record of a

vote is not the same as "a decision." Again, this "writing" falls short of the statute's procedural requirements. Thus, the Board did not issue "a decision, in writing" as required by the HIB statute. Respondent has failed to meet the procedural requirements of the Act in this respect.

B. Whether the Board reviewed the investigation report prior to affirming the HIB violation

As previously stated, the HIB statute requires that the Board issue a decision "at the next board of education meeting following its receipt of the [*16] report[.]" N.J.S.A. 18A:37-15b(6)(e). Petitioner argues that this wording indicates that 1) the Board members must actually receive "the report" before rendering a decision, and 2) the Board members must have reviewed and considered the report prior to deciding whether HIB occurred. See PB, 11-12. Respondent argues that the plain language of the statute suggests, "It is not a physical copy of the report which the Board members must be provided. Instead, the Board members must have been informed about the results of the investigation along with the information regarding the services provided, training established, discipline imposed, or other action taken or recommended by the superintendent." See RB, 28.

On March 19, 2015 the Board's HIB Committee met and discussed the recommendation of the Board's Superintendent. See RB, 13-14. According to respondent, "the Board established a HIB Committee to meet with the Superintendent and receive information about the investigation and make a recommendation regarding all HIB investigations" in order "[t]o ensure adequate attention and full and meaningful review of each HIB determination in the District." *Id.* [*17] at 29-30. The HIB regulations do not specifically allow or prohibit school boards from setting up committees to review HIB investigation reports and make recommendations. Districts are explicitly allowed to use such a system in other contexts. For example, regulations addressing the removal of currently enrolled students state: If district board of education policy allows, a board committee shall conduct hearings required pursuant to this subchapter and then shall make a recommendation to the full board. However, no student shall be removed except by vote of the district board of education taken at a meeting duly convened and conducted pursuant to N.J.S.A. 10:4-6 et seq., the Open Public Meetings Act, N.J.A.C. 6A:22-4.3(e). Thus, in the context of removals, a committee of the board is permitted to conduct a hearing and make a recommendation to the full board, as long as the full board is responsible for the ultimate vote. Although the HIB statute and regulations are silent regarding the use of such a committee system, this procedure is not unheard of in other areas of school board decision-making and is likely permissible. [*18]

C. Whether the Board provided the required information about the HIB investigation to A.L.'s parents in writing

The HIB statute states in relevant part:

[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. N.J.S.A. 18A:37-15b(6)(d) (emphasis added).

Here, following the Board's meeting on March 24, 2015, Principal Kerr sent a letter to A.L.'s parents dated March 25, 2015. Geppert Cert., Exh. G. In this document, Principal Kerr informed petitioner and his wife that A.L. "did commit an act of harassment, intimidation or bullying." *Id.* Petitioner argues that the letter did not provide him and his wife with information [*19] about the nature of the investigation or about the discipline imposed. See PB, 6. These assertions are not without merit, as the letter contains no such information.

Respondent argues that petitioner and his wife already had all of the necessary information about the investigation because of previous correspondence with Principal Kerr, Anti-Bullying Specialist Spagnolo, and the Superintendent's office. See RB, 17. Even if this is true, the statute clearly states that the information about the investigation must be provided to the child's parents or guardians **in writing** within five school days after the results of the investigation are reported to the board. N.J.S.A. 18A:37-15b(6)(d). The respondent did not meet this requirement.

D. Whether the Board incorrectly advised A.L.'s parents that there was a ten-day limitation on requesting an "appeal" before the Board and that such a request had to be in writing

Finally, petitioner argues that respondent communicated inaccurate information about the investigation process to petitioner in violation of petitioner's due process rights as guaranteed by the statute. See PB, 15. Pertinently, the statute [*20] provides, "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." N.J.S.A. 18A:37-15b(6)(d).

In her March 25, 2015 letter to petitioner, Principal Kerr wrote, "If you do not agree with the finding(s), you have a right to appeal this decision by written request to the Superintendent within 10 days of receipt of this letter." Geppert Cert., Exhibit G. Respondent argues that the reason for this deadline is to ensure that the parent "make the request for a hearing prior to the next Board meeting when the Board is statutorily required to issue its decision." See RB, 41. However, this argument is contrary to the Commissioner of Education's guidance on the matter, which explicitly states, "There is no time limit on requesting a hearing; however, parents may want to take action as close to the investigation as possible." Petitioner's Reply Brief, 10-11; Exh. A, Doc. 187. Thus, the Board incorrectly advised A.L.'s parents of their rights under the statute.

In Sadloch, et. al v. Bd. of Educ. of the Twp. of Cedar Grove, OAL Dkt. No. EDU 00619-14, initial [*21] decision, (March 26, 2015), adopted Comm'r (June 23, 2015), <http://njlaw.rutgers.edu/collections/oal/>, <http://www.nj.gov/education/legal/commissioner/2015/jun/216-15.pdf> a HIB investigation was initiated when a student athlete complained that the school's football coaches were engaging in a pattern of conduct that made the football program uncomfortable for him. Id. at 2. The school board determined that the coaches had violated the HIB policy, and the coaches appealed this finding. Id. at 1, 4. Importantly, the court found that the school board failed to issue a written decision about the HIB and that the board's meeting minutes were insufficient to qualify as a "written decision by the Board." Id. at 5. Further, the Board's written communications to the parents failed to explain the rationale for the superintendent's findings, and they lacked both a description of the precise conduct at issue and the "distinguishing characteristic" that met the statutory definition of HIB. Id. at 8.

When considering the possible remedies for these procedural violations, the ALJ noted, "In theory, a remand to the Board, or allowing a hearing before me to serve as a substitute for the [*22] required local investigatory steps, are possible remedies." Id. at 19. The ALJ reasoned that such remedies would unfairly prejudice the alleged harassers because the events in question had taken place well over a year earlier. Id. The ALJ concluded, "the law permits no other remedy but the removal of any reference to HIB from these coaches' files." Id. The coaches also asserted that their conduct did not rise to HIB as defined by the law. Id. at 18. However, the ALJ noted, "the record created via the Board's internal investigation does not permit me to properly make a determination relative to this critical issue." Id. The Commissioner of Education adopted the reasons expressed in the ALJ's opinion.

Here, like in Sadloch, supra, the Board failed to follow the procedures required by the HIB statute, such as issuing a written decision and providing A.L.'s parents with a written explanation of the nature of the alleged conduct and the rationale for the superintendent's findings.

Respondent's misguided reliance on R.A. v. Bd. Of Educ., Twp. of Hamilton, EDU 10485-15, Initial Decision (May 12, 2016) adopted Comm'r. (June 22, 2016) <http://njlaw.rutgers.edu/collections/oal/>, [*23] <http://www.nj.gov/education/legal/commissioner/2016/jun/223-16.pdf> provides no support for its position that a decision issued, in that case the Board conducted a hearing, and issued a decision finding no HIB violation, the principal delivered the decision. Here neither the principal nor the Board's attorney can deliver a written decision issued by the Board in compliance with theregulations. Petitioner's counsel promptly questioned the procedural safeguards early on in the process on April 6, 2015. Respondent disregarded the procedural concerns raised at that time, they were in the best position to timely address same.

This tribunal makes no determination regarding whether petitioner's actions constituted an HIB violation as the respondent's violations of procedure makes determination of that issue moot. Note that the allegations are serious. A.L.'s parent(s), if they have not already done so, should discuss the consequences to the mental well-being of a student suffering from a disability, and the cruelty of those who fail to contemplate how one's words can harm.

CONCLUSION

I **CONCLUDE** the respondent did not comply with the procedural safeguards provided under the [*24] New Jersey Anti-Bullying Bill of Rights Act.

I **CONCLUDE** the determination of an HIB violation under these circumstances is arbitrary and capricious.

I **CONCLUDE** that the law permits no other remedy but the reversal of the HIB determination and the removal of any reference to HIB from this student's file. The Anti-Bullying statute is quite specific regarding the sort of investigation required, and it includes tight timelines for completing the steps needed to properly investigate a claim that bullying took place. These timelines are in place for several reasons; first and foremost, to ensure that victim's concerns are promptly addressed, but also because charges of this nature are best explored promptly, when memories are fresh. Here, the events at issue took place well over a year ago. In theory a remand to the Board, or allowing a hearing before me to serve as a substitute for the required local investigatory steps, are possible remedies. I **CONCLUDE** that such remedies would unfairly prejudice this student.

ORDER

Base on the foregoing, it is **ORDERED** that the HIB determination against A.L. be **REVERSED**, and any reference to HIB be deleted from [*25] the school record of A.L.

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.

APPENDIX

LIST OF WITNESSES

For Petitioner:

None

For Respondent:

None

[*26] **LIST OF EXHIBITS**

For Petitioner:

P-1 Summary Decision Motion and attachments

P-2 Reply Brief

For Respondent:

R-1 Opposition to Summary Decision

Initial Decision By: JOSEPH A. ASCIONE, ALJ

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