

New Jersey Commissioner of Education

Final Decision

Melanie Sohl,

Petitioner,

v.

Board of Education of the Town of Boonton,
Morris County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) been reviewed and considered, as have the exceptions filed by the respondent Boonton Town Board of Education (Board), pursuant to *N.J.A.C. 1:1-18.4*. The petitioner did not file a reply.

This matter concerns an allegation of harassment, intimidation, and bullying (HIB) committed by a teacher against a student. Petitioner is alleged to have told an overweight student who was walking slowly to the front of the classroom, “[i]f there was a cupcake up there, you would move faster,” in addition to other food-related comments. The student reported the alleged comment on January 15, 2020, and the following day, the school’s Principal met with petitioner, along with the District’s anti-bullying coordinator and the Boonton Education Association President. The anti-bullying coordinator then conducted an interview with petitioner on January 27, 2020, with the Board attorney, petitioner’s attorney and the Principal in attendance. Thereafter, the Superintendent informed petitioner in writing that the HIB allegation was confirmed and that she would be required to undergo sensitivity training as a remedial

measure and would be issued a letter of reprimand. The Principal issued the letter of reprimand on February 4, 2020, which recounted that petitioner had admitted making the alleged “cupcake” comment and other food-related comments to the same student. Petitioner responded by letter clarifying that she had a good relationship with the student and “did not realize that the student might have taken the comment to mean anything other than a motivating comment to get them to the board quicker.” She also explained that the student had previously asked for snacks or complained of being hungry, and while she denied making food comments toward the student, she has had many students who are motivated by snacks.

Prior to the Board hearing, the Superintendent submitted to the Board a summary of the HIB investigation and determination but did not appear to discuss discipline. Petitioner then appeared with her attorney in an executive session at the February 10, 2020 Board meeting, during which no testimony on behalf of the district was presented. The Board voted to uphold the finding of HIB, which was communicated to petitioner in a letter from the Superintendent the following day.

The Administrative Law Judge (ALJ) found that petitioner’s due process rights were violated because the Board did not comply with the procedural mandates of the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.* The ALJ remanded the matter so that petitioner could be afforded a new Board hearing, specifically finding: (1) pursuant to *N.J.S.A. 18A:37-15b(6)(d)*, the Board should provide petitioner with the opportunity to review the HIB investigatory report, as well as all witness statements and documentary evidence; (2) the Superintendent’s written summary to the Board regarding the HIB investigation should inform the Board of the contents of the HIB report and any discipline imposed, as required by *N.J.S.A. 18A:37-15b(6)(c)*; (3) the Board, not the Superintendent, should issue a detailed written decision

after the hearing, in keeping with *N.J.S.A.* 37-15b(6)(e); and (4) the February 4, 2020 letter of reprimand should be removed from petitioner’s personnel file. However, the ALJ found that there was no due process violation with respect to petitioner’s opportunity to confront and cross-examine witnesses because the Act does not require a full adversarial hearing.

By way of exceptions, the Board argues that the ALJ erred in her analysis of the due process requirements under the HIB statute. Specifically, the Board argues that *N.J.S.A.* 18A:37-15b(6)(e) does not prohibit the Superintendent – the “CEO” of the Board – from conveying the Board’s HIB determination to petitioner, and notes that this issue was not raised or briefed by either party. Additionally, the Board maintains that *N.J.S.A.* 18A:37-15b(6)(c) does not require that the Superintendent’s report to the Board on the HIB investigation be written, and since this issue was decided *sua sponte* by the ALJ, the Board did not have the opportunity to submit a certification as to the verbal summary made to the Board during the hearing. The Board also points out that the ALJ improperly required that a “detailed written decision” be issued after the Board hearing because *N.J.S.A.* 18A:37-15b(6)(e) only requires that the Board affirm, reject, or modify the Superintendent’s decision.

The Board also argues that the ALJ erred in remanding the matter back to the Board for a new hearing and removal of the reprimand because petitioner’s due process rights were not violated. According to the Board, *N.J.S.A.* 18A:37-15b(6)(d) only requires that petitioner be informed as to the nature of the investigation, whether the district found HIB, and any discipline imposed, and does not require that the Board produce the full investigatory file, such as the witness statements or the HIB report. The Board maintains that petitioner was not deprived of a life, liberty or property interest and, nevertheless, she was fully aware of the allegations and had the opportunity to be heard at the Board hearing. Additionally, the Board

contends that the reprimand was issued to petitioner as a result of her inappropriate statements to a student – and not as an outcome to the HIB investigation – so she would have had to challenge it through the locally negotiated grievance process rather than as part of her HIB petition. For these reasons, the Board urges the Commissioner to reject the Initial Decision.

Upon review, the Commissioner disagrees with the ALJ’s determination that the petitioner was not afforded due process and that the Board failed to comply with the procedural requirements of the Act. As such, the Commissioner rejects the ALJ’s decision to remand this matter for a Board hearing and will instead remand this matter to the OAL for a hearing on the merits.

The Commissioner will address the three relevant provisions of the Act in turn.

First, and most pertinent to this matter, *N.J.S.A.* 18A:37-15b(6)(d) states:

[P]arents or guardians of the students who are parties to the investigation shall be entitled to receive information about the investigation, in accordance with federal and State law and regulation, including the nature of the investigation, whether the district found evidence of harassment, intimidation, or bullying, or whether discipline was imposed or services provided to address the incident of harassment, intimidation, or bullying. This information shall be provided in writing within 5 school days after the results of the investigation are reported to the board. A parent or guardian may request a hearing before the board after receiving the information, and the hearing shall be held within 10 days of the request. The board shall meet in executive session for the hearing to protect the confidentiality of the students. At the hearing the board may hear from the school anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents[.]

The Commissioner has previously established that teachers and other staff members who are accused of HIB are entitled to the same due process protections that are provided to students under the Act. *Ruth Young-Edri v. Board of Education of the City of Elizabeth, Union County*, Commissioner’s Decision No. 174-19, decided July 8, 2019; *Stephen Gibble v. Board of*

Education of the Hunterdon Central Regional School District, Hunterdon County,
Commissioner's Decision No. 254-16, decided July 13, 2016.

Here, petitioner was provided with two written communications regarding the investigation prior to the February 10, 2020 Board hearing: a January 28, 2020 letter from the Superintendent and a February 4, 2020 letter of reprimand from the Principal. The Superintendent's letter informed petitioner that the HIB investigation into her alleged actions was confirmed, and that the Board would vote on the results at its February 10 meeting. The letter further explained that the following measures were taken to address the situation: (1) Remedial Measures – Sensitivity Training; and (2) Consequence – Letter of Reprimand. The February 4, 2020 letter of reprimand memorialized the January 16, 2020 conversation:

During our meeting, you admitted saying, "If there was a cupcake up there, you would move faster" to a student who was slowly making their way towards the front of the room to participate in answering a question. You had also mentioned that "food comments" were made, by yourself, to the same student during the study hall that you supervise. Regardless of rapport with a student, comments of this nature are improper, unprofessional, and must not be repeated. As the adult in the classroom, you are expected to act professionally at all times.

The Commissioner finds that when the two written communications are viewed in conjunction, petitioner was informed of the nature of the investigation, specifically of the cupcake comment that she was alleged to have said, along with the finding that she had admitted to making the comment. She was also informed that the district found evidence of HIB, and of the discipline being imposed in the form of sensitivity training and a letter of reprimand. Accordingly, as petitioner was provided with information about the investigation in advance of the Board hearing, the Commissioner finds that the Board met the requirements of *N.J.S.A. 18A:37-15b(6)(d)*.

The ALJ relied upon *Young-Edri, supra*, in which, among other procedural violations, the petitioner was not provided with a written summary of the HIB investigation. The written letter of reprimand that Young-Edri received only informed her that she was a perpetrator in an HIB case, but did not recount any of the factual basis for that determination. *Id.* Additionally, in another matter, the Appellate Division issued an unpublished decision remanding an HIB matter for a new Board hearing and ordered the disclosure of the full HIB record, including the underlying investigative report and any reports or summaries. *J.L., on behalf of minor child, A.L. v. Board of Education of the Bridgewater-Raritan Regional School District, Somerset County, A-2022-16T1* (App Div. Oct. 16, 2018).

Those cases are easily distinguishable from this matter. Contrary to *Young Edri*, petitioner did receive a written summary of the investigation; the letter of reprimand petitioner received explained the specific allegation against her. Additionally, the distinguishing factor in *J.L.* is that the accused child's parents were not informed about the HIB investigation until after the Board voted. Here, petitioner was aware of the HIB investigation: she participated in two meetings regarding the allegations, received two written communications, responded to the letter of reprimand acknowledging that she "did not realize that the student might have taken the comment to mean anything other than a motivating comment to get them to the board quicker," and she was represented by an attorney at the Board hearing. Petitioner was aware of the investigation and its findings, had the opportunity to be heard, and availed herself of her procedural due process rights.

The Commissioner agrees with the ALJ, however, that petitioner was not entitled to a trial-type adversarial hearing with the opportunity to cross-examine witnesses. The Act requires that a hearing be conducted in executive session and that 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.” *N.J.S.A.* 18A:37-15b(6)(d) (emphasis added). Here, petitioner had the opportunity to present her own witnesses and evidence to refute the findings against her. As such, despite petitioner’s arguments to the contrary, the Commissioner cannot find a procedural violation of *N.J.S.A.* 18A:37-15b(6)(d) that would require a new Board hearing.

Second, *N.J.S.A.* 18A:37-15b(6)(c) provides:

[T]he 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[.]

Here, following the completion of the HIB investigation, the Superintendent submitted a notice to the Board describing the allegations and the HIB determination. While the written notice does not appear to reference the discipline imposed, the statute does not specify the manner in which the Board must be informed. As it was not addressed by the parties in the briefing or certifications, it is unclear from the record what happened verbally at the Board meeting and whether the discipline imposed on petitioner was reported to the Board. As such, the Commissioner cannot find a procedural violation of *N.J.S.A.* 18A:37-15b(6)(c).

Finally, *N.J.S.A.* 18A:37-15b(6)(e) requires:

[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. 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[.]

Following the Board's vote to sustain the HIB determination on February 10, 2020, the Superintendent advised petitioner by letter the following day that "the Board upheld your incident of January 14, 2020." The Commissioner disagrees with the ALJ that the statute prohibits the Superintendent from communicating the Board's decision. Additionally, the statute does not require a detailed decision. The statute simply requires that the Board "affirm, reject, or modify the superintendent's decision." *N.J.S.A.* 18A:37-15b(6)(e). As such, there is no evidence that the Board failed to comply with the requirements of *N.J.S.A.* 18A:37-15b(6)(e)

As the Commissioner has not found procedural deficiencies with the conduct of the Board's HIB investigation, a remand to the Board for a new hearing is inappropriate. Petitioner will have the opportunity to challenge whether the Board's finding of HIB was arbitrary, capricious or unreasonable as this matter proceeds at the OAL. Additionally, the Board is not required to remove the letter of reprimand from petitioner's personnel file at this time.¹

Accordingly, the Initial Decision is rejected, and this matter is remanded to the OAL for a determination on the merits.

IT IS SO ORDERED.²


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

Date of Decision: May 18, 2021
Date of Mailing: May 18, 2021

¹ The Commissioner declines to address the Board's argument that the reprimand was not issued as an outcome of the HIB investigation, but rather as discipline subject to a challenge through the locally negotiated grievance process, as it is not necessary for this decision.

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