

R.A., on behalf of minor child, B.A., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF HAMILTON, :
MERCER COUNTY, :
RESPONDENT. :

SYNOPSIS

The petitioner challenged the determination of the respondent Board that B.A. 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 to -32.1 (the Act). The Board contended that the incident in question constituted student conflict and did not meet the definition of HIB pursuant to the Act. The parties filed cross-motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts in dispute, and the matter is ripe for summary decision; the main issue for resolution in this case is whether the Board's finding that there was no HIB was arbitrary, capricious or unreasonable; the Act applies to any gesture, or 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 an actual or perceived characteristic, such as, *inter alia*: race, color, religion, national origin, gender, sexual orientation, or any other distinguishing characteristic; in the instant matter, the petitioner alleged that there had been intermittent incidents involving a group of friends that B.A. perceived to be harassment, beginning in 2013 – when the girls were in sixth grade – after B.A. was invited to a birthday party when the other friends were not, and culminating in a January 2015 incident involving B.A.'s lunch bag allegedly being kicked out of a classroom and then pushed back in; the Board's investigation into the allegations was inconclusive as to the intent of the girls involved, and not all of the girls involved in the January 2015 incident had been involved in prior alleged incidents; further, there were no allegations that a distinguishing characteristic of B.A., either actual or perceived, motivated any of the conduct by the girls. The ALJ concluded that it was reasonable for the Board to conclude that the circumstances in this case – which certainly showed personal conflict between B.A. and the other girls, but not conduct based on any distinguishing characteristic of the victim – did not rise to the level of HIB. Accordingly, the Board's motion for summary decision was granted, the petitioner's cross motion was denied, and the petition was dismissed.

Upon review, the Commissioner concurred with the findings and conclusion of the ALJ; accordingly, the Initial Decision was adopted as the final 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.

June 22, 2016

OAL DKT. NO. EDU 10485-15
AGENCY DKT. NO. 143-6/15

R.A., on behalf of minor child, B.A., :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF HAMILTON, :
MERCER 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 Board's decision in connection with B.A. was not arbitrary, capricious or unreasonable. Accordingly, the recommended decision of the ALJ is adopted for the reasons expressed therein and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: June 22, 2016

Date of Mailing: June 22, 2016

* 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*).