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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5199-15T3

S.G.,

Petitioner-Appellant,

v.

BOARD OF EDUCATION OF THE
HUNTERDON CENTRAL REGIONAL
SCHOOL DISTRICT, HUNTERDON
COUNTY,

Respondent-Respondent.

Argued January 23, 2018 – Decided March 1, 2018

Before Judges Reisner, Gilson, and Mayer.

On appeal from the New Jersey Department of
Education, Docket No. 20-2/15.

Steven D. Farsiou argued the cause for
appellant (Trinity & Farsiou, LLC, attorneys;
Steven D. Farsiou, on the briefs).

Brandon R. Croker argued the cause for
respondent Board of Education of the Hunterdon
Central Regional School District (Comegno Law
Group, PC, attorneys; John B. Comegno, II, and
Brandon R. Croker, on the brief).

Gurbir S. Grewal, Attorney General, attorney
for respondent New Jersey Commissioner of

Education (Jennifer L. Cavin, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Petitioner is a teacher and former wrestling coach employed by the Board of Education of the Hunterdon Central Regional School District (Board). He appeals from a July 13, 2016 final agency decision of the Commissioner of Education (Commissioner), which remanded charges of bullying for a hearing before the Board. We affirm because the Commissioner's decision is consistent with the governing statute and is not arbitrary, capricious, or unreasonable.

I.

For over twenty years petitioner held a stipend position as the head coach of the high school wrestling team. In the summer of 2014, petitioner, together with approximately fifteen current or prospective members of the wrestling team, attended a camp run by the head coach of the Rutgers University wrestling team. R.F., who was an incoming high school freshman and prospective member of the wrestling team, attended the camp.

On two occasions during the camp, petitioner stated to R.F., in the presence of others, that he hoped R.F. did not have access to any weapons or keys to the gun closet. R.F., who is a classified special education student, was embarrassed and felt that

petitioner thought he was crazy. As a result, R.F. called his parents and left the wrestling camp early.

R.F.'s parents complained to the principal of the high school, and the school conducted an investigation to determine whether petitioner's comments constituted acts of harassment, intimidation, or bullying (HIB) in violation of the Anti-Bullying Bill of Rights Act (the Anti-Bullying Act), N.J.S.A. 18A:37-13 to -32. The school's investigation concluded that petitioner's comments were acts of HIB. That finding was reported to the Board and, consistent with the superintendent's recommendation, the Board voted to suspend petitioner from all coaching activities.

Notice of the HIB finding and the Board's actions were provided to the parents of R.F. and to petitioner. Petitioner requested a hearing before the Board, but the Board denied his request. The Board did inform petitioner and his attorney that they could appear at the next Board meeting and make a statement. Petitioner objected to the lack of a hearing and did not attend the Board's meeting. At its next meeting, the Board voted to affirm the finding that petitioner committed acts of HIB, and it adopted the recommendation to terminate petitioner from all coaching activities.

Petitioner administratively appealed the Board's decision to the Commissioner, and the matter was referred to the Office of

Administrative Law. After exchanging discovery, the Board and petitioner cross-moved for a summary decision. The administrative law judge (ALJ) found that the issue was appropriate for summary decision and that the material facts were not in dispute. Based on stipulated facts, the ALJ found that on two occasions during the wrestling camp, petitioner stated to R.F. that he hoped he did not have access to any weapons or keys to the gun closet. Those statements were made in front of other members of the wrestling team, and R.F. was embarrassed and felt petitioner thought he was crazy and did not like him.

The ALJ also found that the Board had not given petitioner a hearing as required by the Anti-Bullying Act. The ALJ then concluded that because petitioner was not afforded due process, the appropriate remedy was to expunge any reference to a finding of HIB from his personnel file maintained by the Board. Accordingly, on April 12, 2016, the ALJ issued an initial decision granting petitioner's motion for summary decision, denying the Board's cross-motion, and dismissing the matter.

The Board filed exceptions with the Commissioner. On July 13, 2016, the Commissioner issued a final decision modifying the ALJ's initial decision. The Commissioner agreed with and adopted the ALJ's determination that staff members, such as petitioner, accused of committing acts of HIB are entitled to due process,

which includes a hearing before the Board. The Commissioner, however, disagreed with the ALJ's determination that petitioner was entitled to summary decision. Instead, the Commissioner found that the Board had given petitioner notice of the allegations and it had conducted an HIB investigation. In making those findings, the Commissioner distinguished petitioner's case from a decision he had made in E.S. v. Bd. of Educ., Twp. of Cedar Grove, EDU 0216-15, final decision, (June 23, 2015). Thus, the Commissioner reasoned that the appropriate remedy was to remand the matter for a hearing before the Board.

Petitioner appealed from the Commissioner's July 13, 2016 final agency decision and also filed a motion for leave to appeal in case the Commissioner's decision was deemed interlocutory. We held that the Commissioner's decision was a final agency decision and allowed the appeal.

II.

On this appeal, petitioner makes four arguments: (1) the Commissioner's decision to remand the matter to the Board was arbitrary, capricious, and unreasonable; (2) petitioner will not receive due process because the Board is hostile to his position and the hearing would be conducted years after the incident; (3) the Commissioner's determination contradicts previous determinations made by the Commissioner; and (4) the Commissioner

had established due process rights for staff members, such as petitioner, well before his situation arose and, therefore, he should have been afforded a hearing before the Board when he first requested that hearing. We are not persuaded by any of petitioner's arguments and we affirm the Commissioner's final decision.

Our role in reviewing an administrative agency's final decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). To reverse an agency's decision, we must find that the agency's decision was "arbitrary, capricious, or unreasonable, or [] not supported by substantial credible evidence in the record as a whole." Ibid. (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). Accordingly, "our scope of review is guided by three major inquiries: (1) whether the agency's decision conforms with relevant law; (2) whether the decision is supported by substantial credible evidence in the record; and (3) whether, in applying the law to the facts, the administrative agency clearly erred in reaching its conclusion." Twp. Pharmacy v. Div. of Med. Assistance & Health Servs., 432 N.J. Super. 273, 283-84 (App. Div. 2013) (citing In re Stallworth, 208 N.J. at 194).

We "defer to an agency's interpretation of . . . [a] regulation, within the sphere of [its] authority, unless the interpretation is 'plainly unreasonable.'" U.S. Bank, N.A. v.

Hough, 210 N.J. 187, 200 (2012) (alterations in original) (quoting In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010)). An appellate court, however, is "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue." In re Taylor, 158 N.J. 644, 658 (1999) (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)). Applying these well-established standards, we discern no basis for disturbing the Commissioner's final decision in this matter.

The principal issue on this appeal is whether the Commissioner properly remanded petitioner's matter for a hearing before the Board on the HIB allegations. The Anti-Bullying Act was enacted "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of [HIB] of students that occur in school and off school premises[.]" N.J.S.A. 18A:37-13.1(f). All school districts are required to adopt policies that outline procedures for reporting and investigating complaints of HIB. N.J.S.A. 18A:37-15. The Act goes on to state that the procedures shall, "at a minimum[,]" provide that the investigation will be initiated within one school day of the report of an HIB incident and the investigation will be "completed as soon as possible, but not later than 10 school days from the date of the written report of the incident of [HIB]." N.J.S.A. 18A:37-

15(b)(6)(a). The results of an investigation then are reported to the superintendent and the Board of Education. N.J.S.A. 18A:37-15(b)(6)(b) and (c). Parents or guardians are entitled to receive information about the investigation and can request a hearing before the Board, which must be held within ten days of the request. N.J.S.A. 18A:37-15(b)(6)(d). After the Board determines whether to affirm, reject, or modify the superintendent's decision, "[t]he [B]oard'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 issuance of the [B]oard's decision[.]" N.J.S.A. 18A:37-15(b)(6)(e).

The Commissioner had previously determined that staff members are subject to the Anti-Bullying Act and are entitled to its procedural protections. See K.T. ex rel. K.H. & T.D. v. Bd. of Educ., Twp. of Deerfield, EDU 0278-13, final decision, (July 30, 2013). Accordingly, a staff member should be afforded the same procedural rights as students. The Act expressly states that a student or a student's guardian can request a hearing before the Board. Consequently, the Commissioner has construed the Act to mean that a staff member accused of committing acts of HIB is also entitled to a hearing before the Board. We discern no error in the Commissioner's construction of the Anti-Bullying Act to apply

to staff members and to require certain due process, including a hearing before the Board.

Here, petitioner argues that the Commissioner's determination to remand the matter for a hearing before the Board was arbitrary, capricious, and unreasonable. He also argues that it was inconsistent with prior decisions by the Commissioner.

The Commissioner agreed with the ALJ's determination that petitioner was entitled to due process, which included a hearing before the Board. The Commissioner, however, disagreed with the ALJ's determination that petitioner was entitled to a summary decision. The ALJ concluded "that because the Board failed to comply with the investigatory process contained in [the Anti-Bullying Act]," the appropriate remedy was to expunge any reference to HIB from petitioner's personnel files maintained by the Board. Significantly, the ALJ did not find that the passage of time would undermine the ability of the Board to afford petitioner a hearing on a remand.

In rejecting the ALJ's decision to grant petitioner a summary decision, the Commissioner reasoned that petitioner should be afforded a hearing before the Board. In that regard, the Commissioner distinguished this case from the facts in E.S. The Commissioner explained that E.S. was based on "a unique set of circumstances, and the facts and the state of the record in that

case made it impossible for a determination to ever be reached." In contrast, the Commissioner pointed out that here the Board gave petitioner notice of the HIB allegations, conducted an investigation, and completed an investigation report. We discern nothing arbitrary, capricious, or unreasonable with the Commissioner's determination to remand the matter for a hearing before the Board. Moreover, we find nothing unreasonable in the Commissioner's determination that the facts of this case are distinguishable from the facts in E.S.

We also reject defendant's arguments that he cannot receive due process because the Board is hostile to his position and that the hearing would take place years after the incident. On the current record, petitioner has made no showing that the passage of time would undermine his due process rights nor has he demonstrated that the Board cannot be an impartial decision maker. Indeed, petitioner's arguments in that regard are based on speculation.

Finally, we reject petitioner's arguments that the Board should have recognized his established due process rights to a hearing. In essence, petitioner is arguing that the Board ignored existing decisions by the Commissioner at the time the Board refused to grant him a hearing. The relevant issue is whether defendant should get that hearing, and the Commissioner has already

determined that the matter will be remanded for a hearing before the Board.

We note that the Board has made certain arguments concerning the scope of a hearing. That issue is not before us. Nevertheless, we point out that the hearing should be meaningful and should be consistent with the procedures for hearings involving students.

See N.J.S.A. 18A:37-15(b)(6)(d).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



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