

New Jersey Commissioner of Education

Decision

B.M., on behalf of minor child, C.M.,

Petitioner,

v.

Board of Education of the Bergen County
Vocational Schools, Bergen County,

Respondent.

Synopsis

Pro se petitioner disputed the respondent Board's finding that her son, C.M., committed an act of harassment, intimidation or bullying (HIB) against a fellow student pursuant to New Jersey's Anti-Bullying Bill of Rights Act, *N.J.S.A.* 18A:37-13.2 et seq (the Act). After an investigation by the school's anti-bullying specialist, the Board determined that C.M. had committed an act of HIB when he approached a female classmate from behind and grabbed her buttocks. Petitioner claimed, *inter alia*, that C.M. was "discriminated against" in the course of the HIB investigation, causing him academic and emotional harm. The Board filed a motion for summary decision, contending that the HIB investigation was properly conducted and that the Board was not arbitrary, capricious or unreasonable in making the determination that C.M.'s conduct constituted HIB.

The ALJ found, *inter alia*, that: an action by a board of education is entitled to a presumption of correctness unless it is proven to be arbitrary, capricious or unreasonable; under the Act, "harassment, intimidation, or bullying" is broadly defined as any gesture, any written, verbal, or physical act, or any electronic communication that is reasonably perceived as motivated by any actual or perceived distinguishing characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical, or sensory disability, that takes place on school property and substantially disrupts the orderly operation of the school; in the instant case, the record reflects that C.M. did not deny touching his classmate's buttocks, but characterized the physical contact as a "poke" rather than a "grab"; petitioner does not dispute that C.M. committed the act, nor that the school district was required under the HIB statute to report, investigate, make findings, and decide consequences based upon C.M.'s conduct; and petitioner has neither alleged nor shown that the district's handling of the HIB complaint against C.M. was arbitrary, capricious, or unreasonable. The ALJ concluded that the Board's determination of HIB was appropriate as C.M.'s uninvited touching of a fellow student violated the Act; further, petitioner presented no genuine issue of material fact, and the overwhelming weight of the evidence in this case has been presented by the Board. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination pursuant to the Act. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

<p>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.</p>

New Jersey Commissioner of Education
Final Decision

B.M., on behalf of minor child, C.M.,

Petitioner,

v.

Board of Education of the Bergen County
Vocational Schools, Bergen County,

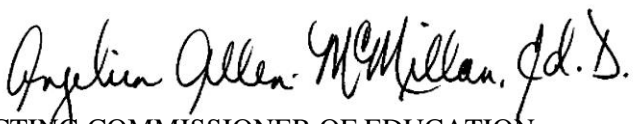
Respondent.

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

In this matter, the Bergen County Vocational Schools Board of Education determined that C.M. committed an act of harassment, intimidation and bullying (HIB) when he grabbed a female student's buttocks. Upon review, the Commissioner agrees with the Administrative Law Judge that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination, pursuant to the Anti-Bullying Bill of Rights Act, *N.J.S.A. 18A:37-13 et seq.*

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition is hereby dismissed.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 2, 2021

Date of Mailing: August 3, 2021

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



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 06600-20

AGENCY DKT. NO. 83-4/20

B.M. ON BEHALF OF C.M.,

Petitioner,

v.

BERGEN COUNTY VOCATIONAL SCHOOLS

BOARD OF EDUCATION,

Respondent.

B.M., petitioner, pro se

William C. Soukas, Esq., for respondent (Nowell, P.A., attorneys)

Record Closed: April 5, 2021

Decided: June 17, 2021

BEFORE **LESLIE Z. CELENTANO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, B.M. on behalf of C.M., filed a Petition of Appeal to the Commissioner of Education in which B.M. disputes the finding of respondent Bergen County Vocational Schools Board of Education that her son C.M. committed an act of harassment, intimidation, or bullying (HIB) pursuant to N.J.S.A. 18A:37-13.2 et seq.

The Department of Education transmitted the matter to the Office of Administrative Law (OAL), where it was filed on July 7, 2020. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Respondent filed a motion for summary decision and petitioner made multiple submissions thereafter.¹ The record remained open for respondent to submit a reply once petitioner filed her final submission.²

FACTUAL DISCUSSION

At an off-school-grounds Halloween gathering in 2019, C.M., a male junior at the Bergen County Academy for Visual and Performing Arts (AVPA), approached a female classmate and acquaintance, N.L., from behind, and without invitation “grabbed her buttocks with both of his hands,” she reported later to a school counselor. (Sheridan Cert. at ¶ 5.) The report was corroborated by another student, who told the school’s anti-bullying specialist (ABS) that she saw “C.M. come up behind N.L. and touch and ‘jiggle’ N.L.’s buttocks with two hands.” (Resp’t’s Letter Br. at 5.) As N.L. described the incident, “[C.M.] grabbed my arm and waist and pulled me around harshly, . . . made sex noises in my ear and rubbed his front side up against mine in the middle of us speaking. He came up to me from behind and jiggled my butt. He followed this action by calling me ‘thicc’ [sic] and cornering me with his body invading my space” (Resp’t’s Ex. A at 23.)

N.L. also reported that two days prior to Halloween, after she and C.M. were dropped off at his house after a play rehearsal and he told her his parents were not home, he tried to force her to touch his genitals, “pinned her down and mounted her, and sexually harassed her the entire evening despite her repeatedly telling him to stop.” (Sheridan Cert. at ¶ 5.) N.L. alleged a two-year history including disturbing and unwelcome physical and verbal acts by C.M. against her and others, including several incidents of C.M. touching her breasts without permission, at least once in school. (Resp’t’s Ex. A at 17–18.) She also said C.M. often made racial, anti-Semitic, and anti-gay remarks and called

¹ None of petitioner’s submissions included the reply affidavit required pursuant to N.J.A.C. 1:1-12.5(b).

² This decision is filed in accordance with Governor Phillip Murphy’s Executive Order 127 issued April 14, 2020, created by the COVID-19 emergency.

people “fat.” (Id. at 20.) N.L. reported “that she is frightened of C.M. and doesn’t feel safe or comfortable in his presence.” (Sheridan Cert. at ¶ 5.)

School officials reacted quickly to N.L.’s HIB complaint. On November 4, 2019, the day of her report, the counselor verbally reported her complaint to the vice principal of the Bergen County Academies, a magnet high school housing the AVPA program that is overseen by the Board of Education of the vocational schools in the County of Bergen. The complaint was also reported to the district’s ABS. The parents of N.L. and C.M. were notified that day that N.L. had filed an HIB report against C.M. (Resp’t’s Cert., Ex. A, at 2.) Meetings were held with each student, their parents, the Academies’ vice principal, and the ABS, who initiated an HIB investigation. (Resp’t’s Ex. A at 3.) N.L.’s allegations were also transmitted by the district to the school resource officer with the Bergen County Sheriff’s Department, which later reported that the report was investigated but no juvenile or criminal charges would be brought. (Id. at 4.)

On November 6, 2019, a written HIB report was signed by the vice principal. (Id. at 1B.) Ten school days after N.L.’s initial report, on November 18, the ABS’s investigation, including interviews with N.L., C.M., and eight witnesses, was completed. (Id. at 3.)

In his interview with the ABS on November 13, 2019, C.M. said he never intended to “harass, intimidate, or bully anyone and does not believe any of his actions had this impact.” (Resp’t’s Ex. A at 9–10.) The student acknowledged that he touched N.L. at the Halloween gathering, but stated that he was “just trying to get [N.L.] to turn around” as the group stood together at an overlook, and the touch was not “in the way he is being accused of.” (Ibid.) He stated that N.L. turned around and asked him, “Did you poke me?” C.M. said he responded “yes,” and N.L. replied, “oh, ok.” (Ibid.)

In the interview, C.M. “admitted that at the beginning of sophomore year, he did ‘flip’ the breast of his friend/classmate,” and said “it only happened 2–3 times” (Ibid.) C.M. also stated that starting with freshman year, “joking and comments about each other were part of the culture of their group,” and “it was their way of responding/dealing with” hatred, “to give it less power[.]” (Resp’t’s Ex. A at 9.) C.M. expressed a belief that no

one was offended by his behavior, and said, “other people have engaged in the same conduct and comments and that it is the culture among his friend and peers,” although he told the ABS that in freshman year, classmates told him his jokes went “too far” and they bothered them. (*Ibid.*)

The ABS’s Final Report and HIB Intervention Plan were completed on November 21, 2019. (Sheridan Cert. at ¶ 11.) The report found that C.M.’s actions met the elements of an HIB violation. The ABS concluded that C.M.’s behavior was motivated by a “distinguishing characteristic” of N.L.—in this case, race, sexual orientation, and weight of the victim, categories enumerated in N.J.S.A. 18A:37. (Resp’t’s Ex. A at 2.) The ABS determined that the incident “substantially disrupted or interfered with the orderly operation of the school or rights of other students and insulted or demeaned a student or group of students,” which are also elements of HIB. (Resp’t’s Br. at 3–4.) She noted, “C.M. did not seem remorseful nor wrong [*sic*] for any of the comments or actions he has made.” (Resp’t’s Ex. A at 2.)

As a result of the HIB determination, consequences were imposed on C.M. aimed at separating N.L. and him and preventing contact between them, “to ensure that N.L. felt safe while at school.” (Sheridan Cert. at ¶ 14.) C.M. was excluded from that fall’s school play to avoid interaction with N.L., who also was in the play. He was removed from classes shared with N.L., including his theater classes, and given individualized theater instruction by the same teacher. His schedule was changed to eliminate potential contact with N.L., and he was excluded from the spring play and a class trip to London. (*Ibid.*)³ He was suspended for five days as “a matter of student discipline relating to C.M.’s conduct with other students[.]” (Sheridan Cert. at ¶ 15.) The suspension was later removed from C.M.’s records at his and his parents’ request. (*Ibid.*)

The vice principal notified C.M.’s parents about the consequences on November 26, 2019. (Resp’t’s Ex. B.) On December 10, 2019, the district superintendent reported the HIB case to the Board of Education at its scheduled public meeting. (Resp’t’s Ex. C.)

³ None of these consequences were actually suffered by C.M., as the shutdown of the district due to COVID-19 resulted in the cancelation of the class trips and spring play and all other in-person activities.

The next day the superintendent wrote to both students' parents regarding the HIB investigation results and his report to the Board. (Ibid.) He told the families they had a right to a hearing before the Board. (Resp't's Ex. D.)

C.M.'s parents requested the Board hearing to appeal the HIB finding against their son, and on January 28, 2020, the hearing was conducted in executive session. (Resp't's Ex. E.) There, Board attorney William Soukas explained that the family had a right to appeal to the Board, and that the hearing was "not to be adversarial," and informed the Board that it would hear from district witnesses and the family, according to the meeting minutes. (Ibid.)

B.M. told the Board that her son "advised her that he had merely poked [N.L.], rather than grabbed her buttocks." She stated that "there is a culture in (the school) that is 'touchy feely' and that this incident is nothing more than an extension of that conduct" (Ibid.) She stated that C.M. and N.L. were close friends prior to the incident, and she described her son as "the victim of a 'me-too' movement which resulted in harsher treatment because of his male gender." (Ibid.)

Petitioner was informed on February 10, 2020, that the Board had affirmed the HIB finding against C.M. (Resp't's Ex. F), and of certain consequences the district had imposed on C.M. for the remainder of the school year, including his removal from performing arts classes, and rescheduling to reduce contact with N.L. (Ibid.) C.M. was to continue to receive individualized study for theater. The Board affirmed that he would not be permitted to participate in the spring play or the London trip. (Ibid.)

The Board also determined that C.M. could participate in certain extracurricular and curricular activities during junior year with appropriate district measures to minimize or eliminate interaction with N.L. (Resp't's Ex. F.) Fall-play auditions were rescheduled from spring to fall in order to accommodate C.M. (Ibid.)

The petitioner expressed her displeasure with the Board's decision to school officials (Ibid.), and on or about March 18, 2020, filed a petition of appeal with the

Commissioner of Education, alleging that C.M. was “discriminated against” in the course of the district’s HIB investigation, causing him academic and emotional harm.

THE PARTIES’ ARGUMENTS

While the touching that triggered the HIB allegation against C.M. is acknowledged and undisputed by the pro se petitioner, petitioner takes issue with the district’s determination that C.M.’s behavior constituted HIB, and with the consequences imposed on C.M. In correspondence submitted, petitioner B.M. argues that C.M.’s physical behavior with N.L., and the language he used with her and others, should be viewed within the context of what petitioner claims is a school culture of permissive physical and verbal expression, and of the long, friend/classmate relationship of N.L. and C.M.

Petitioner contends that the consequences were “grossly unjust,” and that C.M. was “disciplined on unproven allegations” by school officials, whose actions isolated him and made him a “target to be . . . abused,” and who “did nothing to intervene when we raised the concerns of abuse toward him.” B.M. states that she and C.M. were never “told by the school that there was a problem” with his behavior, and that C.M. “was never given a chance to correct this and in fact had no ability to understand that this was wrong since how he communicated was demonstrated by most of the students in the program.”

Petitioner B.M. acknowledges that the Board “removed some of the disciplinary actions” initially imposed, but claims that her son was “denied the education he deserved” and was traumatized by his treatment. In one letter she writes, “We know that we can’t undo the damage but given our experiences we felt it necessary to pursue appeals.” In another, apparently referring to the Board’s summary-decision motion, B.M. states, “We remain concerned that there are efforts to dismiss this case and silence us.” B.M., who appeals pro se, acknowledges administrative deficiencies in her filings with the OAL, but pleads lack of knowledge of the legal system and procedures.

The Board argues that summary decision should be granted on several counts: 1) Petitioner has failed to show any genuine issue of material fact that would preclude summary decision and dismissal of the petition, and instead has expressed

“dissatisfaction with, and continued disbelief that C.M.’s behavior towards N.L. was found to constitute HIB or merited consequences of any sort.” (Resp’t’s Br. at 3.) The Board contends that petitioner’s “dissatisfaction” was “always clear and undisputed,” and “does not constitute any material issue of fact precluding summary decision.” (Ibid.) 2) Petitioner failed to follow administrative procedure under N.J.A.C. 1:1-12.5(b) by submitting the typewritten letters in response to the Board’s summary-decision motion instead of the statutorily required affidavit setting forth “specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” The court can grant summary decision “where appropriate” for failure to submit the affidavit, the Board notes. 3) The Board’s HIB finding against C.M. and imposition of consequences were “correct and proper,” and “[n]othing . . . reflects” that its “handling of the matter was arbitrary, capricious or unreasonable.” (Resp’t’s Br. at 2.)

Citing the case record, including N.L.’s statement (Resp’t’s Ex. A) reflecting that she “feared being in C.M.’s presence” and that there was “a history of this type of improper, sexually charged behavior by C.M. towards N.L.,” the Board contends that “allegations of HIB filed by student N.L. against C.M. were promptly acted upon, being reported and investigated as required by the Anti-Bullying Bill of Rights Act” (Resp’t’s Br. at 3.)

The Board states that the district properly found that C.M.’s uninvited touching of N.L. on Halloween of 2019 met the elements of HIB and violated the Act. The Board argues that “there is no credible dispute” that the consequences imposed on C.M. “were proper and narrowly tailored to address this particular situation, namely, to avoid interaction between N.L. and C.M., in interests of protecting each student.” (Resp’t’s Br. at 4.)

The Board also notes, in its letter brief of January 13, 2021, that, “Ultimately, C.M. was unaffected by these consequences” because of the COVID-19 pandemic and resulting shutdown of the school district in March 2020. “No students went on any class trips and no Spring Plays or other in-person activities were conducted.” The Board rejects petitioner’s claim that the District did not intervene to assist C.M., noting that “supportive

action,” including parent contact, follow up, individual counseling, and other assistance, was provided or recommended. (Resp’t’s Br. at 6.)

The Board argues that the District conducted a prompt, thorough investigation adhering to the procedural requirements of the HIB statute, that it imposed appropriate consequences that were intended to keep C.M. and N.L. from interacting at school, and that there is no credible question that the Board here acted properly and in good faith, not in any arbitrary way. For these reasons, the Board argues, summary decision should be granted and the district’s HIB findings should be affirmed.

LEGAL DISCUSSION

The summary-decision analysis is essentially the same as that of summary judgment, and under the New Jersey Rules of Court a party may move for and be granted summary judgment if “the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” R. 4:46-2(c). “An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences . . . favoring the non-moving party, would require submission of the issue to the trier of fact.” Ibid.

Under the Uniform Administrative Procedure Rules, summary decision may be granted “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). “When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. . . . If the adverse party does not so respond, a summary decision, if appropriate, shall be entered.” Ibid.

In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995), the New Jersey Supreme Court clarified the framework for deciding a summary-judgment motion. The judge must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Summary judgment must be granted if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Ibid.

Here, the Board has filed a motion for summary decision, supporting it with letter briefs and certifications, including the victim’s written statement, the school counselor’s report of what N.L. told her, the anti-bullying specialist’s report on her investigation of N.L.’s allegation and her interview notes, the minutes of the Board’s executive-session hearing at which C.M.’s parents presented their concerns, and other documentation.

Petitioner has not filed the reply affidavit that is required under N.J.A.C. 1:1-12.5(b) as the vehicle for setting out “specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” But the critical issue here is not whether petitioner filed an affidavit, but whether petitioner has shown any genuine issue of material fact that, in light of the evidence and with legitimate inferences favoring petitioner as the non-moving party, require that issue to be heard by the factfinder.

Petitioner’s submissions consist of several letters reiterating petitioner’s displeasure at the Board’s findings and the consequences imposed on C.M., along with allegations of abuse and isolation allegedly inflicted on C.M. by the district. The submissions repeat the family’s view of C.M.’s behavior, contending that his actions should be understood in the context of student and school culture and the long friendship between C.M. and N.L. “This is a program that deals with mature themes,” B.M. says of the theater program. “There is a physicality to their performance work. The group often laid around on the floor with each other and blankets during class and they demonstrated a lot of affection for each other (hugging, etc.), which . . . we have photos to show. The photographic evidence clearly disputed the accounts and fears that N.L. expressed. It was ignored.”

It is also irrelevant. Photographs of teenaged theater students dramatizing social issues and hugging each other are unrelated to the district's determination—unchallenged by C.M.'s petition of appeal—that on Halloween of 2019 C.M. violated the Anti-Bullying Bill of Rights Act by touching N.L. in a sexually charged manner, in front of at least one witness, without N.L.'s consent. Photographs of students hugging and text messages between C.M. and N.L. that petitioner submitted to indicate a friendship are irrelevant to whether C.M.'s behavior was improper, and whether it disturbed and frightened N.L.

Petitioner clearly is aggrieved by the HIB finding against C.M., and by the consequences the district imposed. The letters from B.M. repeated petitioner's desire to appeal and be "heard." But petitioner does not dispute that C.M. committed the act for which the district was required, under the HIB statute, to report, investigate, make findings, and decide consequences. Importantly, petitioner has neither alleged nor shown that the district's handling of N.L.'s complaint was arbitrary, capricious, or unreasonable. That is the standard, established by the Commissioner of Education, that must be met by a party seeking to overturn a school board's decision. In fact, petitioner's submissions do not make clear exactly what she is appealing or what remedy she seeks.

The petitioner accuses the district of treating C.M. harshly and unfairly, despite the evidence showing that the Board attempted to protect both students, accommodated C.M.'s academic and extracurricular needs, and offered other assistance. Petitioner does not allege that the Board failed to follow the law or acted improperly. There has been no showing that based on competent evidentiary materials viewed in a light most favorable to petitioner, a reasonable factfinder could resolve the disputed issue in petitioner's favor. No genuine issue of material fact has been presented here, and the overwhelming weight of the evidence in this case has been presented by the Board. Logically, its summary decision motion must prevail.

The Anti-Bullying Bill of Rights Act (ABR Act), N.J.S.A. 18A:37-13 to -47, 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). The Act defines HIB as

any 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 *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 (emphasis added).]

Respondent’s Board of Education Policy 5512.1, Harassment, Intimidation and Bullying, also defines HIB as “unwarranted, aggressive behavior” that may involve “a real or perceived power imbalance.” (Resp’t’s Br. of January 13, 2021, at 10.)

The framework for addressing school bullying and responding to HIB allegations is set forth in the ABR Act and in the New Jersey Administrative Code, N.J.S.A. 52:14B-1 et seq. Each school district is required under the statute to adopt its own policy prohibiting HIB. N.J.S.A. 18A:37-15(a). District policies must include (1) a statement prohibiting HIB; (2) a definition of harassment, intimidation, or bullying that at least meets

that of N.J.S.A 18A:37-14; and (3) consequences and appropriate remedial action for the HIB offender. N.J.S.A. 18A:37-15(b); N.J.A.C. 6A:16-7.7.

The policy must also detail procedures for quick investigation of HIB allegations, informing parents, and reporting results of the school's inquiry to the district superintendent and local board of education. N.J.S.A. 18A:37-15(b)(5)–(6). The board then decides whether to affirm, reject, or modify the superintendent's decision. Parties can appeal the board's finding, by petition, to the Commissioner of Education. N.J.S.A. 18A:37-5(b)(6). The Commissioner is empowered to "hear and determine, without cost to the parties, all controversies and disputes arising under the school laws." N.J.S.A. 18A:6-9.

The filing of the petition, which must state the basis for appeal and the relief sought, N.J.A.C. 6A:3-1.4(a), initiates a contested case, as noted in a New Jersey Department of Education publication available on the agency's website, *Guidance for Parents on the Anti-Bullying Bill of Rights Act*, at 42. Under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the parties must have an opportunity "to respond, appear and present evidence and argument on all issues involved." N.J.S.A. 52:14B-9(c).

The Commissioner of Education has established the "arbitrary, capricious and unreasonable" standard as central to ALJ fact-finding in contested cases. An ALJ's determination of whether the school officials properly followed the anti-bullying statute is made under the "arbitrary, capricious" standard, and the Commissioner will not overturn a school-board decision unless its actions are found to meet it. T.B.-M. v. Moorestown Bd. of Educ., EDU 02780-07, Initial Decision (February 6, 2008) (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581 (1966)), adopted, Comm'r (April 7, 2008), <https://njlaw.rutgers.edu/collections/oal/>.

Agency determinations are generally presumed to be correct. In Thomas, the Appellate Division upheld a school-board decision in an employment dispute. Citing Education Department decisions dating to 1960, the court noted:

We are here concerned with a determination made by an administrative agency duly created and empowered by legislative fiat. When such a body acts within its authority, its decision is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable. The agency's factual determinations must be accepted if supported by substantial credible evidence.

[Thomas, 89 N.J. Super. at 332.]

In 2015, a school board found by an ALJ to have acted in an arbitrary, capricious, and unreasonable manner in not finding HIB in a sexual-harassment case argued that “its determination was entitled to deference and the ALJ had no authority to modify it by granting summary decision to the petitioners *sua sponte*.” T.R & T.R. ex rel. Minor Child E.R. v. Bd. of Educ. of the Bridgewater-Raritan Reg'l Sch. Dist., Somerset Cty., EDU 10208-13, Comm'r's Amended Decision (May 6, 2015), <https://www.nj.gov/education/legal/>. The Commissioner reiterated, “It is well established that when a local school board acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that the decision was arbitrary, capricious or unreasonable.” Ibid. (citing Thomas, 89 N.J. Super. at 332). “The fact that the substance of this case involves a challenge to the Board's HIB determination and the application of the Act does not impact the customary standard of review.” Ibid.

To prevail in a challenge to an HIB decision, a petitioner “must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it.” G.H. & E.H. ex rel. K.H. v. Bd. of Educ. of Franklin Lakes, EDU 13204-13, Initial Decision (February 24, 2014) (citation omitted), adopted, Comm'r (April 10, 2014), <http://njlaw.rutgers.edu/collections/oal/>. A school board's decision may also be overturned if it violates the legislative policies expressed or implied in the governing act. J.A.H. ex rel. C.H. v. Pittsgrove Bd. of Educ., EDU 10826-12, Initial Decision (March 11, 2013) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)), adopted, Comm'r (April 25, 2013), <http://njlaw.rutgers.edu/collections/oal/>.

A review of the record in this matter shows that the Board followed the protocols set out by the ABR Act in promptly responding to N.L.'s complaint and launching an investigation, and implemented a plan reasonably aimed at reducing or eliminating interaction between C.M. and N.L. The fact that the Board modified some of the original consequences it imposed on C.M., removed his suspension from his school record, and accommodated him by moving the fall-play auditions to fall 2020, when he would be permitted to participate, reflects an effort to work with his family and listen to their concerns. The Board's intervention plan included discussions with his parents, and offers and recommendations that he receive counseling.

The Board properly found that C.M.'s uninvited touching of N.L. on Halloween violated the ABR Act, as it was "reasonably perceived as being motivated either by any actual or perceived characteristic," and because "a reasonable person should know" that the behavior would "have the effect of physically or emotionally harming" N.L. or placing her "in reasonable fear of physical or emotional harm," and had "the effect of insulting or demeaning" her.

Petitioner has provided no legitimate evidence that the Board's actions in this matter were arbitrary, capricious, or unreasonable, and as such petitioner cannot meet the standard established by the Commissioner for disturbing the Board's HIB finding or consequences.

CONCLUSION AND ORDER

Based upon all of the foregoing, I **CONCLUDE** that the Board's motion for summary decision should be granted, and petitioner's appeal dismissed, because petitioner has failed to show that there is any genuine issue of material fact that can only be determined in an evidentiary proceeding, and because the Board adhered to the requirements of the Anti-Bullying Bill of Rights Act in its reporting and investigation of N.L.'s complaint and in imposing consequences, and its actions were not arbitrary, capricious, or unreasonable. Without such a showing, and based on the record made by the parties, the Board's motion for summary decision is **GRANTED** and the petition is hereby dismissed in its entirety.

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.

June 17, 2021
DATE


LESLIE Z. CELENTANO, ALJ

Date Received at Agency: June 17, 2021

Date Mailed to Parties: June 17, 2021
dr