

New Jersey Commissioner of Education

Final Decision

L.K. and T.K., on behalf of minor child, A.K.,

Petitioner,

v.

Board of Education of the Township of Mansfield,
Burlington County,

Respondent.

Synopsis

This matter on remand from the Appellate Division concerns an alleged act of harassment, intimidation, and bullying (HIB) by A.K. The respondent Board found that A.K. had committed an act of HIB by questioning another student (N.V.) about dressing in clothing that is typically associated with females, when N.V. had previously been known to other students as a boy. The Administrative Law Judge (ALJ) overturned the Board's finding that A.K. had committed an act of HIB; however, the Commissioner reversed the ALJ's determination, concluding that the Board's decision was not arbitrary, capricious, or unreasonable. The petitioners subsequently appealed. The Appellate Division found that the Commissioner's decision had not addressed credibility findings made by the ALJ and remanded the matter to the Commissioner. On remand the Commissioner was directed to "make explicit findings as to whether the ALJ's assessment of the testimony regarding A.K.'s allegedly persistent conduct was arbitrary, capricious, or unreasonable, or was not supported by sufficient, competent, and credible evidence in the record."

Upon a comprehensive review of the record on remand, the Commissioner affirmed the Board's determination that A.K. committed an act of HIB. In so doing, the Commissioner concluded, *inter alia*, that: the distinguishing characteristic of gender identity is present when a student who was previously known as male begins to wear clothing and use a name typically associated with females; the Board was not arbitrary, capricious, or unreasonable in determining that A.K. questioned N.V. about her choice of clothing and commented on the toys that N.V. liked; nor was it arbitrary, capricious, or unreasonable for the Board to find that A.K.'s questioning and comments interfered with N.V.'s rights because they made her feel bad; further, it was not arbitrary, capricious, or unreasonable for the Board to find that questions about a student's chosen clothing or comments about the toys that she likes are insulting or demeaning; and the fact that N.V. was upset by A.K.'s actions demonstrates that A.K. created a hostile educational environment. Accordingly, the Commissioner upheld the Board's determination that A.K. committed an act of HIB.

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.

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This matter concerns an alleged act of harassment, intimidation, and bullying (HIB) by A.K. The Board found that A.K. had committed an act of HIB by questioning another student (N.V.) about dressing in clothing that is typically associated with females, when N.V. had previously been known to other students as a boy. The Administrative Law Judge (ALJ) overturned the Board’s finding that A.K. had committed an act of HIB. The Commissioner reversed the ALJ’s determination, concluding that the Board’s decision was not arbitrary, capricious, or unreasonable. Petitioners appealed, and the Appellate Division remanded the matter to the Commissioner, finding that the Commissioner’s decision did not address credibility findings made by the ALJ. Specifically, the Appellate Division found that the Commissioner’s decision was predicated on the finding that A.K. persisted in questioning N.V. about her gender identity after being counseled to stop, when the ALJ had discounted the credibility of the testimony on that topic. The Appellate Division directed the Commissioner, on remand, to “make explicit findings as to whether the ALJ’s assessment of the testimony

regarding A.K.'s allegedly persistent conduct was arbitrary, capricious, or unreasonable, or was not supported by sufficient, competent, and credible evidence in the record.¹ *L.K. v. Bd. of Educ. of Mansfield*, 2020 N.J. Super. Unpub. LEXIS 2082, *3 (App. Div. Nov. 2, 2020).

The ALJ made two credibility findings regarding A.K.'s allegedly persistent conduct. First, the ALJ found that "the Board's witnesses often contradicted each other," and while she "attribute[d] this mostly to the length of time that had passed between the incidents in question and the hearing," she nonetheless found that "the administrators could not agree on the most important fact presented to the Board, which is that the HIB continued after September 29, 2015." Initial Decision at 22. The Commissioner's review of the testimony demonstrates that while the details in the administrators' accounts of the second incident between the students were not entirely consistent – likely attributable to the passage of time, as the ALJ noted – all three administrators were clear that a second incident did occur.

The ALJ summarized the testimony of the school's principal, Stacey Cullari, as follows: "On September 30, 2015, other students brought to her attention that A.K. was continuing to bother [N.V.] in the cafeteria. They said that A.K. was threatening that if [N.V.] told on her, she would get her parents on [N.V.]. [N.V.] confirmed that she said that. A.K. denied that it happened. [N.V.]'s mother also reported that [N.V.] told her it happened." Initial Decision at 14. The ALJ's summary of the testimony of the school's anti-bullying specialist, Cheryl Strickland, included the following: "The next day there was another incident, where

¹ In its decision, the Appellate Division upheld the Commissioner's determination that the procedures used by the Board in adjudicating the HIB allegations met constitutional requirements. Petitioners filed a petition for a writ of certiorari with the New Jersey Supreme Court, which was denied on May 18, 2021.

[N.V.] said A.K. was harassing [her]² at lunch, and [N.V.] was upset. A.K. was still bothering [her], when she had agreed not to do so anymore. A.K. also accused [N.V.] of tattling on her and told other students.” Initial Decision at 16. The ALJ also noted, “[Strickland] disagrees that A.K. did not continue to bother [N.V.] after they talked on September 29. She bothered [N.V.] and teased [her]. Students reported to the teacher that A.K. was bothering [N.V.] at lunch.” Initial Decision at 17. Regarding the testimony of Superintendent Tiffany Moutis, the ALJ summarized: “A.K. exhibited HIB on the bus and on the playground. It continued after administrators told her to stop.” Initial Decision at 20.

The Commissioner’s review of the transcripts demonstrates that the ALJ accurately summarized this testimony – in other words, that the ALJ did not misrepresent or misattribute any of these statements.³ Yet despite noting that each of the administrators testified that a second incident occurred, the ALJ somehow found that they had disagreed with each other about whether such had occurred. The ALJ did not find that any of the three administrators was not credible in her own testimony about the second incident – only that there was disagreement among them. As the Commissioner’s review finds that there was no disagreement about the occurrence of a second incident, the Commissioner rejects any credibility finding based on that disagreement. Accordingly, the Commissioner finds that a second incident did occur.

² N.V. used masculine pronouns at the time of the incidents and is often referred to throughout the record in that manner. However, according to one of the district’s witnesses, by the time of the OAL hearings, N.V. used feminine pronouns. Accordingly, the Commissioner has used feminine pronouns herein.

³ See, e.g., Tr. September 26, 2017, 45:9-53:20, 127:10-128:9 (testimony of Stacey Cullari); Tr. September 26, 2017, 211:25-214:5, 254:10-256:6 (testimony of Cheryl Strickland); and Tr. November 15, 2017 (testimony of Tiffany Moutis).

Nor does the record support the ALJ's finding that the continuation of the HIB was "the most important fact presented to the Board." Initial Decision at 22. Despite the ALJ's credibility finding that "Ms. Perrone seemed to have the best recollection," *ibid.*, the ALJ failed to acknowledge critical elements of Ms. Perrone's testimony. Ms. Perrone, who was a member of the Board at the time the HIB decision was made, and who participated in all of the executive sessions in which the decision was discussed, stated, "I believe the incident that was brought to the Board to consider was the incident on the bus, but the additional information was given to us to understand the entirety of what was going on and that it was continuing and that A.K. was persisting." Tr. October 11, 2017, 73:13-17. In reviewing the elements of the Act, Ms. Perrone described the conduct at issue as the "incidents that occurred on the school bus on September 29th," *ibid.*, 103:15-16, "[t]he comments that A.K. made to [N.V.] regarding her gender, regarding her name, her dressing in clothing that was associated with a girl," *ibid.*, 103:18-20, and "telling [N.V.] that [N.V.] should not wear a dress because dresses were for girls." *ibid.* 104:7-8. It is clear from these statements that, contrary to the ALJ's conclusions, the "most important facts" presented to the Board were those about the incident on the bus, and not about A.K.'s behavior afterwards. These statements are further supported by the ABS Report presented to the Board, which contains two detailed paragraphs about the bus incident, and only one sentence at the end of the report regarding the continued behavior at lunch the following day. Accordingly, the Commissioner rejects the finding that the continued harassment was the most important fact presented to the Board, because it is not supported by sufficient, competent, and credible evidence in the record.

In the second credibility finding, the ALJ found that the principal and ABS "confused information that they received from [N.V.]'s mother with information they received from

students,” Initial Decision at 22, including that A.K. teased N.V. by saying that N.V. could not wear a dress to picture day, and that A.K. threatened N.V. The Commissioner concludes that the ALJ’s assessment of this testimony was arbitrary, capricious, and unreasonable because it improperly evaluated the procedures used by district staff during the investigation based on procedural requirements that do not appear in the Act, conflated the purported procedural failing with the substance of the allegations, and failed to recognize that the burden of proof is on petitioners to demonstrate that the Board’s decision was arbitrary, capricious, or unreasonable. Specifically, the ALJ concluded that the information provided by N.V.’s mother was not corroborated and that it was therefore insufficient to sustain the superintendent’s recommendation of HIB, and it was arbitrary, capricious, and unreasonable for the Board to rely on it. However, the Act does not define acceptable sources of information regarding HIB allegations, nor does the Act contain any requirements related to hearsay or corroboration. During the course of the investigation, district staff gathered information from multiple sources – N.V., N.V.’s mother, A.K., T.K., and other students. Making their best judgments based on their knowledge of the students, the principal and ABS determined that the evidence was sufficient to substantiate a finding that A.K. had committed an act of HIB, including by engaging in repetitive conduct. By concluding that the district’s procedures were flawed, the ALJ wrote requirements into the Act that the Legislature did not include. Moreover, the ALJ allowed her incorrect conclusion regarding the procedures to influence her conclusion about the merits of the allegations.

Furthermore, the Commissioner finds the ALJ’s credibility finding regarding corroboration unreasonable to the extent that it was based on her decision to disregard any information provided by the district’s witnesses that was not incorporated into their interview

notes. Again, the ALJ has written a requirement into the Act that does not exist. The individuals completing an HIB investigation are not required to take verbatim notes of their interviews – which would be extremely difficult⁴ – and the Commissioner finds it entirely reasonable that they might include information in their reports that is not reflected in their notes.

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was “patently arbitrary, without rational basis or induced by improper motives.” *Kopera v. W. Orange Bd. of Educ.*, 60 N.J. Super. 288, 294 (App. Div. 1960). Furthermore, “where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration[,]” and the Commissioner will not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep’t. of Env’tl. Prot.*, 122 N.J. Super. 184, 199 (Ch. Div. 1973), *aff’d*, 131 N.J. Super. 37 (App. Div. 1974). Regarding HIB determinations, this standard has been explained as requiring a petitioner to “demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it.” *G.H. and E.H. o/b/o K.H. v. Bd. of Educ. of the Borough of Franklin Lakes, Bergen Cty.*, EDU 13204-13, (Initial Decision February 24, 2014), *adopted* Commissioner Decision No. 157-14 (Apr. 10, 2014). Based on the evidence in the record, the Commissioner finds that petitioners did not meet their burden of demonstrating that the Board’s decision was arbitrary, capricious, or unreasonable.

Contrary to the ALJ’s conclusion, for the reasons detailed herein, the record contains sufficient credible evidence to support the Board’s decision that A.K. continued to make

⁴ This is consistent with the witnesses’ explanations as to why certain information was not included in their notes. *See, e.g.*, Tr. Sept. 26, 2017, 89:15-23; Tr. Feb. 14, 2018, 19:4-9, 39:19-24, 48:5-11.

comments regarding N.V.'s gender identity after she had been told to stop by administrators and her mother. The only evidence petitioner presented to demonstrate that nothing happened between the students after the bus incident was T.K.'s testimony about what her daughter told her.⁵ At best, this evidence balances the evidence that A.K. did continue to make comments to N.V. While the evidence may leave room for two opinions regarding whether A.K. continued her conduct, it is insufficient to overturn the Board's decision, because it does not demonstrate that the decision was arbitrary, capricious, or unreasonable. To overturn the Board's decision would require the Commissioner to substitute her judgment for the Board's, which is impermissible.

Even if the Commissioner accepted the ALJ's credibility findings, and thus disregarded the cafeteria incident, the Commissioner must still consider the remaining evidence regarding A.K.'s conduct. Specifically, the ALJ found that A.K. questioned N.V. about her choice of clothing, and N.V. was upset about the questions. Initial Decision at 22. The ALJ noted that when the principal and ABS interviewed N.V., N.V. stated that she asked A.K. to stop asking her questions, and A.K. would not stop; N.V. reported that the questioning made her feel bad. *Ibid.* The ALJ found that A.K. admitted that she asked N.V. about the clothing N.V. wore.⁶ Initial Decision at 23. The ALJ also found that N.V. reported that A.K. made fun of her for liking Shopkins and Monster High toys. Initial Decision at 22. The Commissioner's review of the

⁵ While the Commissioner accepts the ALJ's finding that T.K. was "mostly credible" in her testimony, that credibility finding does not dictate the weight placed on that testimony. Because T.K. was not present for the incidents at issue, her testimony is of limited value in determining what actually happened between the students. The Commissioner notes that the ALJ relied heavily on the fact that all the information provided to the investigators by N.V.'s mother was hearsay, but failed to address the same limitation in T.K.'s testimony.

⁶ A.K.'s mother also testified that "A.K. asked the student many times" about her clothing and "the student was upset because A.K. kept asking." Initial Decision at 7. Additionally, the Appellate Division confirmed that the "parties do not dispute that A.K. questioned N.V. about wearing a dress while riding together on the school bus." *L.K., supra*, 2020 N.J. Super. Unpub. LEXIS 2082, at *4.

record supports these factual findings by the ALJ. In particular, the handwritten, contemporaneous notes of the interview the principal and ABS conducted with N.V. on the date of the bus incident include this information, Exhibit J-26, and it was recounted by the principal and ABS in their testimony.⁷

The Commissioner disagrees with the ALJ that the bus incident was insufficient to sustain the Board's finding that A.K. committed an act of HIB. The Commissioner finds that it was not arbitrary, capricious, or unreasonable for the Board to conclude that N.V. reasonably perceived A.K.'s questioning regarding her choice of dress or comments about the toys she liked as being motivated by the distinguishing characteristic of gender identity and that A.K.'s conduct substantially disrupted or interfered with N.V.'s rights, was insulting or demeaning, and created a hostile educational environment.

Initially, the Commissioner concludes that the Board was not arbitrary, capricious, or unreasonable in determining that A.K. questioned N.V. about her choice of clothing and commented on the toys that N.V. liked. Regarding the questioning, A.K. admitted that it occurred when she was interviewed on the day of the bus incident, and petitioner admitted that it occurred in her testimony. As the behavior was admitted, any alleged procedural flaws in the investigation are irrelevant to the determination of whether the questioning constituted HIB. It does not matter whether the investigation notes reflect every detail about the questioning, what other students on the bus reported, or whether the bus driver or teacher were interviewed. The Board was not arbitrary, capricious, or unreasonable in finding that the questioning occurred when all parties agree that it did occur. The only necessary analysis is

⁷ See, e.g., Tr. Sept. 26, 2017, 20:7-11, 21:14-20, 22:22-23:6, 90:2-6, 199:13-200:12, 200:23-24, 252:6-25, 287:23-24; Exhibit J-26.

whether the Board was arbitrary, capricious, or unreasonable in finding that the questioning met the criteria to be HIB under the Act.

Regarding A.K.'s comments about toys, the ALJ accepted the testimony that N.V. reported A.K.'s comments about toys. Furthermore, the handwritten, contemporaneous interview notes also reflect comments about toys, so the ALJ's concerns about lack of note-taking that arise regarding other parts of the HIB report do not apply to these comments. Furthermore, the Commissioner finds that N.V.'s report is sufficient to conclude that the Board was not arbitrary, capricious, or unreasonable in finding that the comments occurred, because the Act does not require corroboration of a victim's report. Accordingly, the only necessary analysis is whether the Board was arbitrary, capricious, or unreasonable in finding that the comments met the criteria to be HIB under the Act.

The Anti-Bullying Bill of Rights Act (the Act) defines HIB as follows:

[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.

Therefore, a finding of HIB requires three elements.⁸ First, the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic and, second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. The third condition is that one of the three criteria enumerated in the Act regarding the effect of the conduct must also be satisfied. *Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex County*, Commissioner Decision No. 51-20 (decided February 4, 2020).

Regarding the first element, in defining HIB as an action “that is *reasonably perceived* as being motivated either by any actual or perceived characteristic . . .”, *N.J.S.A. 18A:37-14* (emphasis added), the statute requires an analysis of how the actor’s motivation is perceived and whether that perception is reasonable. It does not require an analysis of the actual motivation of the actor. *Wehbeh, supra*. Certainly, evidence that the actor was motivated by a distinguishing characteristic would meet the standard of this section of the Act, but evidence that the actor was not so motivated does not end the analysis.

Petitioner argued that A.K. does not even know what “gender identity” means. However, the Commissioner concludes that the distinguishing characteristic of gender identity is present when a student who was previously known as male begins to wear clothing and use a name typically associated with females. A.K.’s knowledge of gender identity as a concept, or

⁸ The statute also requires that the conduct take place on school property, at a school-sponsored function, on a school bus, or off school grounds as provided for in *N.J.S.A. 18A:37-15.3*. The parties do not contest that this requirement has been met.

lack thereof, does not change the fact that N.V. clearly had characteristics that distinguished her from other children. Furthermore, the Act does not require that A.K. be aware of the concept of gender identity or that she be specifically motivated by N.V.'s gender identity. As explained above, the focus of the Act is on the reasonable perception of the aggressor's motivation, and not on the actual motivation. While the Commissioner acknowledges the possibility that A.K.'s questions were motivated by curiosity rather than animus,⁹ the fact remains that the questions could be reasonably perceived as being motivated by N.V.'s gender identity, such that it was not arbitrary, capricious, or unreasonable for the Board to find that this element of the Act had been met.

The ALJ improperly concluded that the superintendent had misstated the law when she told the Board that A.K.'s age was not relevant to their decision. The ALJ acknowledged that A.K.'s age was not a bar to a finding of HIB, but nonetheless indicated that it was incorrect to say that her age had no bearing on the Board's decision. Here, it is the ALJ who is incorrect, not the superintendent. While a student's age should be taken into consideration in determining the consequences of an HIB finding – and it was here – age is irrelevant to whether an act of HIB was committed. The Act does not establish an age range for students who may be HIB victims or offenders. As Superintendent Moutis explained to the Board, and Board Member Perrone recounted hearing, the focus of the Act is on the impact of the action. Therefore, there was no misstatement of the law by the superintendent, and even if the Board completely

⁹ The Initial Decision correctly indicates, “There is no requirement that the Board find that A.K.’s conduct was actually motivated by the perceived characteristic.” Initial Decision at 35. However, it continues to say that “the age of A.K. was relevant to whether A.K.’s conduct was motivated by the perceived characteristic or because a seven-year-old would be curious about why a student she knew as a boy was dressing like a girl.” *Ibid.* This statement, which addresses actual motivation, is incorrect, and neither A.K.’s age nor her knowledge about gender identity is relevant in determining whether HIB occurred.

disregarded A.K.'s age in making its decision, doing so did not make its decision arbitrary, capricious, or unreasonable.

Regarding the second element – whether the conduct substantially disrupted or interfered with A.K.'s rights – the principal and the ABS testified that A.K.'s questioning on the bus made N.V. feel bad, and the ALJ accepted that testimony. Initial Decision at 22. The Commissioner has previously upheld HIB determinations when the targeted student was upset, embarrassed, or uncomfortable as a result of the conduct. *See, e.g., G.H., supra* (“Upset and embarrassed children are not fully available for learning”); *R.P., o/b/o minor child, A.P. v. Bd. of Educ. of the Twp. of Hamilton, Atlantic Cty.*, EDU 09436-17 (Initial Decision Feb. 13, 2018), *adopted* Commissioner Decision No. 100-18 (Mar. 29, 2018); *M.S. and N.S., o/b/o J.S. v. Bd. of Educ. of the Twp. of Hainesport, Burlington Cty., and J.M. and D.M., o/b/o J.M.*, EDU 08878 (Initial Decision Mar. 28, 2019), *adopted* Commissioner Decision No. 155-19 (June 18, 2019). The Commissioner concludes that it was not arbitrary, capricious, or unreasonable for the Board to find that A.K.'s questioning and comments interfered with N.V.'s rights because they made her feel bad.¹⁰

Regarding the third element, an act of HIB is one that “a reasonable person *should* know, under the circumstances, will have the effect of physically or emotionally harming a

¹⁰ The Commissioner also notes that N.V.'s mother reported that N.V. did not want to ride the bus because of the incident with A.K. The ALJ found that the Board was arbitrary, capricious, or unreasonable in relying on this information, because the Board did not know that there was another student who bothered N.V. on the bus and could have been an additional source of N.V. not wanting to ride the bus. The ALJ noted that if the Board had that information and still decided that A.K. was the source of the substantial impact, “that would have been fine.” Initial Decision at 36. The Commissioner disagrees with the ALJ that the Board needed information about another student in order for its determination to be upheld. The principal and ABS both testified that they spoke to N.V. about the other student, and N.V. reported that she was not bothered by J.T. *See, e.g., Tr. Sept. 26, 2017, 35:8-18, 85:13-14, 187:11-15, 275:11-13.* The Commissioner finds that it was reasonable for the principal and ABS, in preparing the HIB report for superintendent and the Board, to present the information they found to be credible and not to present information that they found did not have an impact on N.V. Notwithstanding the Commissioner's conclusion on this issue, the fact that N.V. was clearly upset following the bus incident with A.K. – about which there is no dispute – is sufficient to support the Board's determination.

student,” “*has the effect* of insulting or demeaning a student,” or “*creates* a hostile educational environment . . .”. *N.J.S.A. 18A:37-14(a)* (emphasis added). None of these criteria require the actor to have actual knowledge of the effect that his actions will have, or to specifically intend to bring about that effect. The first requires only that a reasonable person should know there would be a harmful effect, not that the actor knows there would be such an effect. The second two criteria address only the actual effect of the act, without any reference to what either the actor or a reasonable person does or should know. *Wehbeh, supra*. As such, a board of education can find that an individual committed an act of HIB even if the individual did not intend to cause harm. For this reason, neither A.K.’s age nor her alleged lack of knowledge about the concept of gender identity preclude a finding that the third element of the Act has been met.

While only one of these criteria about the effect of the conduct need to be met, the testimony demonstrates that at least two have been met. First, Ms. Perrone testified about the effect of A.K.’s conduct on N.V., stating, “I believe that the comment that [N.V.] should not be wearing a dress can be interpreted by a child as being critical or derogatory,” Tr. October 17, 2017, 109:18-20, and, “the comments that were made to [N.V.] it appears made [N.V.] feel challenged or that she was doing something wrong by identifying as a girl.” *Ibid.* 109:22-24. The Commissioner concludes that it was not arbitrary, capricious, or unreasonable for the Board to find that questions about a student’s chosen clothing or comments about the toys that she likes are insulting or demeaning. Second, the fact that N.V. was upset by A.K.’s actions demonstrates that A.K. created a hostile educational environment. The Commissioner disagrees with the ALJ that the fact that the relationship between A.K. and N.V. was friendly

following the incident obviates a finding of HIB. There is nothing in the Act that requires that a hostile educational environment persist for a specified period of time.

Accordingly, the Board's determination that A.K. committed an act of HIB is affirmed.

IT IS SO ORDERED.¹¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 9, 2021
Date of Mailing: December 9, 2021

¹¹ 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.