

## New Jersey Commissioner of Education

### Decision

L.G., on behalf of minor child, J.A.,

Petitioner,

v.

Board of Education of the Borough of Metuchen,  
Middlesex County,

Respondent.

### Synopsis

Petitioner disputed the respondent Board's finding that her son, J.A., committed an act of harassment, intimidation or bullying (HIB) against a fellow student at Metuchen High School pursuant to the Anti-Bullying Bill of Rights Act, *N.J.S.A. 18A:37-13.2 et seq.* After an investigation by the school's anti-bullying specialist, the Board determined that J.A. had committed an act of HIB when he called an African American student the "N-word." Petitioner claimed that the Board's determination of HIB was arbitrary, capricious and unreasonable as it was based upon an investigation that was improperly limited in scope, and upon the confession of J.A., which petitioner suggests was coerced. The Board contended that the HIB investigation was properly conducted and that the Board was not arbitrary, capricious or unreasonable in making the determination that J.A.'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 New Jersey's Anti-Bullying Bill of Rights 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 J.A. admitted using a racial epithet and that the Board's HIB investigation showed that the epithet was directed at an African American student; J.A.'s comments and actions were reasonably perceived as being motivated by a distinguishing characteristic; and the petitioner has failed to prove that the Board acted in an arbitrary, capricious or unreasonable manner in determining that J.A.'s behavior constituted HIB. Accordingly, the ALJ ordered that the petition be dismissed.

Upon review, the Commissioner concurred 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 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>
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**New Jersey Commissioner of Education**  
**Final Decision**

L.G., on behalf of minor child, J.A.,

Petitioner,

v.

Board of Education of the Borough of Metuchen,  
Middlesex 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 Metuchen Board of Education determined that J.A. committed an act of harassment, intimidation and bullying (HIB) when he called an African American student the “N-word.” 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.<sup>1</sup>



ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 29, 2021  
Date of Mailing: May 4, 2021

<sup>1</sup> 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**

OAL DKT. NO. EDU 05388-19

AGENCY DKT. NO. 41-2-19

**L.G. ON BEHALF OF J.A.,**

Petitioners,

v.

**BOARD OF EDUCATION OF  
THE BOROUGH OF METUCHEN,  
MIDDLESEX COUNTY,**

Respondent.

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**L.G.**, petitioner, pro se

**Jessika Kleen**, Esq., for respondents (Machado Law Group, attorneys)

Record Closed: May 1, 2020

Decided: March 15, 2021

BEFORE **ELIA A. PELIOS**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, L.G. on behalf of J.A., filed a Petition of Appeal to the Commissioner of Education, in which they dispute respondent's finding that J.A. committed an act of harassment, intimidation or bullying (HIB) pursuant to N.J.S.A. 18A:37-13.2 et seq.

## **PROCEDURAL HISTORY**

The Department of Education transmitted the matter to the Office of Administrative Law (OAL), where it was filed on April 22, 2019. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Hearings were held on December 10, 2019. The record was left open for parties to submit closing briefs, and the record closed on May 1, 2020.

## **FACTUAL DISCUSSION**

Susan Paredes testified on behalf of the Board of Education. She is employed as the assistant principal of Metuchen high school. She discussed her education and professional background. At the time of her testimony she was in her eleventh year as assistant principal. She oversees student affairs. She is the school's anti-bullying specialist she is also the affirmative-action officer and testing coordinator. She is responsible for investigating HIB and identifying patterns of behavior. She has been trained in how to conduct investigations. She had three to five training sessions per year for the first five years that the HIB law was in place and one to two training sessions per year since then. She is familiar with the current matter.

Paredes investigated student J.A. J.A.'s mother, L.G. had called stating that another student, R.S., had airdropped a photograph of J.A. to kids in the cafeteria. J.A. was flexing for the camera. He was very embarrassed by the picture being circulated and he stayed home. J.A.'s mother wanted an HIB investigation of R.S. Paredes explained that airdrop is a wireless transmission to nearby devices without using email or text. Paredes investigated the matter. She started with a phone call with L.G. She then interviewed J.A. She interviewed members of a PS4 chat group who had received the image initially. She interviewed kids at the lunch table and kids in a cooking class. She created a report. (R-1.)

Each interviewed student was called individually. Paredes tried to be general with her questions to hear what witnesses saw or had to say and she would get more specific if she needed to. She described her process - she takes as many notes as possible and

completed as many interviews as possible on the first day. She reviewed her notes (R-3) and notes not all interviews were done on the same day. She asked R.S. why the picture was sent. He admitted that he sent the picture. He told her that he did it because he was angry at J.A. because J.A. called him a “fat ‘N-word’.” Paredes determined the matter of sending the picture was not an act of HIB and the case against R.S. was closed. Based upon what she found out Paredes then opened an HIB investigation of J.A. (R-2) for his use of the “N-word,” noting that R.S. is an African-American student. She made a finding that J.A. did in fact use the word. J.A. admitted to using the word in the eighth grade. At the time of the investigation he was in ninth grade. While in eighth grade he attended a different school in the District.

Paredes explained that the first case, the one against R.S., did not meet the definition of HIB. It was a code of conduct violation but did not go to a characteristic as contemplated by the HIB law and policy. She noted that she interviewed J.A. three times. The first time was as the victim in the first incident. The second time was after she spoke to R.S. She interviewed five kids who heard J.A. use the word at different times. Once she concluded the interviews, she called J.A. back in to explain the findings and results.

Other students and R.S. said that J.A. had used the word in fact in ninth grade. Paredes did not feel that the students seemed rehearsed in their responses to interview. At that time J.A. changed his story from never using the word to saying it occurred in eighth grade. Paredes then contacted J.A.’s mother, petitioner L.G. She wrote up a report and sent the report to the Board of Education. L.G. appealed the matter to the Board of Education. The Board of Education upheld its decision. L.G. then appealed the Board of Education decision. Paredes did not ask leading questions of the students she interviewed. She has been trained in how to avoid doing so. She interviewed students who J.A. or R.S. indicated to her may have seen the incident.

On cross-examination Paredes was asked why more kids from the cooking class were not interviewed if that is where the “N-word” was allegedly used. Her response was that it did not just occur in cooking class. She was asked why student C.S. was interviewed as C.S. was neither in the cooking class nor at the lunch table. She

responded that C.S. is a cousin of R.S. and the name had been given to her. C.S. came to see her for the interview and told her that he had heard the epithet used.

Paredes had been suspicious of C.S. but C.S. was not the sole determinant. He had not indicated when he had heard it but indicated that he heard it himself. Student A.A. was the first interview of the first case, occurring before R.S. was interviewed so there were no questions about the "N-word" only about the airdropped picture. A.A. was called back for a second interview. A.A. did hear the word used in eighth grade and ninth grade but did not say where or when. A.A. is not in the cooking class. K.S. acknowledged hearing the word but not say where or when. D.C. said that word was thrown around a lot as a joke.

L.G., the petitioner, testified on her own behalf. She states that she only knows what J.A. told her - that he only admitted to saying the word after being badgered for fifteen minutes. She states that J.A. claims he was told by Paredes that others had told him he said it so that he should just admit it. J.A. tells L.G. that he said that he said the word just to get out of her office. L.G. believes her son. She believes there's too many holes in the District's story. J.A. has no history of problems with any other students. In eighth grade he was often bullied he was trying to find a group in the ninth grade - just looking for a group that he could sit with.

J.A. told petitioner that another student, A.W., spoke to Paredes and told her about group chats where R.S. had used the "N-word."

Credibility is best described as that quality of testimony or evidence which makes it worthy of belief. The Supreme Court of New Jersey considered the issue of credibility in In Re Estate of Perrone, 5 N.J. 514 (1950). The Court pronounced:

Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances.

[ibid. at 522]

See also Spagnuolo v. Bonnet, 16 N.J. 546, (1954), State v. Taylor, 38 N.J. Super. 6 (App. Div.1955).

In order to assess credibility, the witness' interest in the outcome, motive or bias should be considered. Furthermore, a trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura- Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

In the present matter, both witnesses have testified credibly. Paredes's description of the events leading up to the investigation of the present mater, and her handling of the investigation are essentially unchallenged from a factual basis and were detailed clear and direct. Her testimony is adopted in its entirety and **FOUND** as **FACT**.

L.G. also testified credibly. She truthfully testified to what J.A. told her and there is no reason to doubt that he told her exactly what she reported. Notably J.A. admitted to L.G. that he had confessed to Paredes as to using the epithet. There is no reason to disbelieve that he further told his mother that he really had not used the epithet and only admitted so under duress. Unfortunately, there is also no way to assess the truth of J.A.'s statement to his mother based solely upon her re-telling of a hearsay statement. While I **FIND**, and it is not in dispute, that he did confess to Paredes, and that he did tell L.G. that he did so only under duress, there is insufficient evidence to make a finding that his confession was untrue. It is not unusual that a student in trouble may tell one account to a school authority and a different account to a parent, nor is it unusual or inappropriate that a parent will believe the account of their child. Nothing is inherently unbelievable, but the evidence constrains the findings.

I further **FIND** that Paredes reasonably relied on J.A.'s confession, but that it was not the sole determinant in reaching her conclusions. She was also informed by the interviews she conducted with other students and the totality of her investigation consistent with her training and applicable policies in doing so.

## **CONCLUSIONS OF LAW**

New Jersey enacted the Anti-Bullying Bill of Rights Act to “strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying” occurring both on and off of school grounds. N.J.S.A. 18A:37-13.1(f). Definitions relative to adoption of harassment and bullying prevention policies are found in N.J.S.A. 18A:37-14, which states in part:

“Harassment, intimidation or bullying” means 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 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.

It has not been placed in dispute whether the use of the “N-Word” by one student against another constitutes HIB, within the meaning of the Act, as HIB is defined at N.J.S.A. 18A:37-14. In this case, the record reflects that J.A. admitted using the epithet and that Paredes was convinced by her interviews with several other students that J.A.



had directed it at R.S. I **CONCLUDE** that those comments and actions are reasonably perceived to be motivated by the distinguishing characteristic of R.S being an African-American student. In K.L. v. Evesham Twp. Bd. of Ed. 423 N.J. Super. 337 the Appellate Division stated that the definition of bullying does not include harmful or demeaning conduct motivated by other reason, for example a dispute about relationships or personal belongings, or aggressive conduct without identifiable motivation. The fact that R.S. felt angered by this action so as to transmit the photo by airdrop demonstrates that the conduct had an effect of insulting or demeaning R.S. Therefore, I **CONCLUDE** that J.A.'s comments constitute a violation of HIB.

Respondent urges this tribunal to conclude that the Board was not arbitrary, capricious or unreasonable in its determination that the HIB investigation was conducted properly and that J.A.'s conduct did constitute HIB. Therefore, the Petition of Appeal should be dismissed. Petitioner asserts that the Board limited the scope of its investigation and essentially coerced a confession out of J.A. and the Board's decision was arbitrary, capricious, and unreasonable.

The Commissioner of Education will not overturn the decision of a local board in the absence of a finding that the action below was arbitrary, capricious or unreasonable. T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07, 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), <<http://njlaw.rutgers.edu/collections/oal/>>. Further, the Commissioner will not substitute his judgment for that of the board of education, whose exercise of its discretion may not be disturbed unless shown to be "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). New Jersey courts have held that "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." Bayshore Sewage Co. v. Dep't of Env'tl. Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974). Thus, in order to prevail, the petitioner must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances

before it. T.B.M., EDU 2780-07, Initial Decision (February 6, 2008), <<http://njlaw.rutgers.edu/collections/oal/>>; see W.C.L. and A.L. ex rel L.L. v. Tenafly Bd. of Educ., OAL Dkt. No. EDU 3223-12 (2013) (The petitioner challenged the school board's decision that a student committed an act of HIB. The administrative law judge, (ALJ) found that the Board's actions were consistent with the letter and spirit of the law and were not taken in bad faith or in disregard of the circumstances. The ALJ concluded that the petitioner failed to establish that the Board's actions were arbitrary, capricious, or unreasonable. The Commissioner affirmed the ALJ's decision to dismiss the petition of appeal.); J.M.C. ex rel A.C. v. E. Brunswick Bd. of Educ., OAL Dkt. No. EDU 4144-12 (2013) (The petitioner challenged the Board's determination that the actions of the petitioner's son constituted HIB. The Board found that the student called another student "gay" and said he "danced like a girl." The demeaning remarks constituted HIB.). In both cases, the petitioners failed to satisfy their burden to show that the Board's actions were arbitrary, capricious, or unreasonable.

I have carefully reviewed the record. Petitioner has presented no credible evidence that the Board acted in an arbitrary manner. As I have previously concluded that J.A.'s comments and actions are reasonably perceived to be motivated by the distinguishing characteristic of R.S. being African-American, I **CONCLUDE** that petitioner has not met the burden of proof that the Board acted in an arbitrary manner in concluding that J.A.'s conduct constituted harassment, intimidation or bullying under the New Jersey Anti-Bullying Bill of Rights Act. Paredes could have interviewed more students. Perhaps some of them would have confirmed seeing the incident. Others may not have seen the incident in question. The record reflects that Paredes interviewed a substantial number of students and at the conclusion felt comfortable determining that the alleged conduct had in fact occurred. Merely suggesting that more witnesses could have been interviewed and that such interviews could have possibly revealed evidence leading to a different conclusion is not sufficient to deem the action arbitrary, especially when petitioner has only alleged the possibility that other interviews could have gone differently and not presented any evidence or testimony showing that it would have.

**ORDER**

Based on the foregoing, I **ORDER** that the petition be **DISMISSED**.

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.

March 15, 2021 \_\_\_\_\_

DATE



\_\_\_\_\_  
**ELIA A. PELIOS, ALJ**

Date Received at Agency:

March 15, 2021 (emailed) \_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

EAP/mel

**APPENDIX**

**WITNESSES**

**For Petitioner:**

L.G.

**For Respondent:**

Susan Paredes

**EXHIBITS**

**For Petitioner:**

None

**For Respondent:**

- R-1 Report by Susan Paredes
- R-2 HIB Investigation
- R-3 Investigation Notes
- R-4 October 22, 2018 Letter to Parent regarding HIB
- R-5 November 13, 2018 Parent HIB appeal to Board
- R-6 November 27, 2018 Parent HIB Appeal to Board
- R-7 December 17, 2018 Board Determination
- R-8 February 8, 2019 Petition of Appeal
- R-9 April 11, 2019 Answer to Petition of Appeal