

New Jersey Commissioner of Education

Final Decision

D.H., on behalf of O.H.,

Petitioner,

v.

Board of Education of the Township of Gloucester,
Camden County,

Respondent.

Synopsis

Pro se petitioner challenged the determination of the respondent Board that three aggressive incidents against her son, O.H., by a classmate did not constitute harassment, intimidation, or bullying (HIB) under District Policy 5512 and New Jersey's Anti-Bullying Bill of Rights Act, *N.J.S.A.* 18A:37-14. O.H. was a fourth-grade student at the time of the events in question, wherein he was the victim of three separate unprovoked incidents by the same child, a classified student with recognized impulse control difficulties. The Board determined that petitioner's allegations did not constitute HIB, as a finding of HIB requires that the conduct be reasonably perceived as being motivated by an actual or perceived distinguishing characteristic, and no such motivation was found during the HIB investigation in this case. A hearing in the matter was held in the Office of Administrative Law on October 5, 2023.

The ALJ found, *inter alia*, that: the decision of a board acting within the scope of its authority is entitled to a presumption of correctness and will not be overturned unless there is an affirmative showing that such decision was arbitrary, capricious, or unreasonable; further, the action of a board which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives; in this case, none of petitioner's allegations met the legal standards of the HIB statute; for a finding of HIB, the alleged behavior must reasonably be perceived as being motivated by an actual or perceived distinguishing characteristic of the victim, a critical element that is missing in this case; although petitioner believes that the HIB policy must be revised to protect all students, nevertheless, a finding of HIB requires that the conduct be reasonably perceived as being motivated by an actual or perceived distinguishing characteristic, and no such motivation or distinguishing characteristic was identified here. The ALJ concluded that the Board's determination that the three incidents in question did not constitute harassment, intimidation, or bullying was not arbitrary, capricious, or unreasonable. Accordingly, the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that the Gloucester Township Board of Education's determination in this matter was not arbitrary, capricious, or unreasonable. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

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.

125-24
OAL Dkt. No. 05662-23
Agency Dkt. No. 141-5/23

New Jersey Commissioner of Education
Final Decision

D.H., on behalf of minor child, O.H.,

Petitioner,

v.

Board of Education of the Township of
Gloucester, Camden County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge that the Gloucester Township Board of Education's determination that O.H. was not the victim of harassment, intimidation, and bullying was not arbitrary, capricious, or unreasonable.

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

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 1, 2024
Date of Mailing: March 6, 2024

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

OAL DKT. NO. EDU 05662-23

AGENCY DKT. NO. 141-5/23

D.H. ON BEHALF OF O.H.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF GLOUCESTER,
CAMDEN COUNTY,**

Respondent.

D.H., petitioner, pro se, and on behalf of her minor child, **O.H.**

Daniel H. Long, Esq., for respondent (Wade, Long, Wood & Long, LLC, attorneys)

Record Closed: December 12, 2023

Decided: January 24, 2024

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

Petitioner, **D.H.**, challenged the decision of the respondent, the Board of Education of the Township of Gloucester (Board), that the three incidents against her son, **O.H.**, by a classmate did not constitute harassment, intimidation, or bullying (HIB) under District Policy 5512 as defined in the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-14.

PROCEDURAL HISTORY

On May 23, 2023, petitioner filed a petition of appeal with the Commissioner of Education, Office of Controversies and Disputes. On June 20, 2023, respondent filed its answer. The matter was transmitted to the Office of Administrative Law on June 22, 2023, to proceed as a contested matter under N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

The hearing was held on October 5, 2023. The record closed on December 12, 2023, after receipt of the parties' post-hearing submissions.

FACTUAL DISCUSSION AND FINDINGS

Having heard the testimony presented at the hearing, and having reviewed the documentary evidence, I **FIND**:

O.H. was a fourth-grade student at Chews Elementary School. On January 9, 2023, O.H. was the victim of three separate unprovoked incidents by the same student, A.A. The incidents were consistently described as follows:

The first incident occurred at the start of the school day. O.H. was in line when A.A. ran towards him and slapped him on his cheek. A.A.'s explanation was that he thought O.H. and another student were fighting, so he tried to break up the fight. O.H. and the other classmate admitted to "playing around" while in line. (R-2.)

The second incident occurred after recess. During recess, a group of boys, including A.A. and O.H., were playing cops and robbers. When the bell rang, ending recess, A.A. claimed he wanted to "finish the game and get another point." (R-2.) A.A. saw O.H. bending down to tie his shoe, so he ran to him and grabbed him by twisting his neck.

The third incident occurred at the lunch table. A.A. thought O.H. and his friends were talking about him. In response, A.A. stated to the group, “I’m going to kill you, you, and you.” (R-2.)

On the day of the incidents, the vice principal called D.H. to report what happened to her son, O.H. On January 10, 2023, O.H.’s parents met with the vice principal to discuss the incidents. D.H. was not satisfied with the school’s response to the incidents, so she filed a report requesting a HIB investigation into the matter. (R-2.) The investigation was assigned to Raylene Aita, the anti-bullying specialist (ABS) at Chews. Ms. Aita is also a school counselor.

As part of her investigation, Ms. Aita interviewed O.H., two other student witnesses, and A.A. (R-2.) After conducting her investigation, Ms. Aita determined that the events happened as described above. A.A. did not deny his actions. Based on the descriptions received from O.H. and the other witnesses, and considering A.A.’s explanations for his behavior, Ms. Aita determined that A.A. did not target O.H. based on any actual or perceived characteristics of O.H. identified under HIB. (R-2.)

Based on her experience, knowledge, and training, Ms. Aita determined that A.A. acted impulsively and with a misunderstanding of social cues and situations. Ms. Aita explained that A.A. thought he was breaking up a fight that he perceived as real. Likewise, his actions at recess and his verbal threat were based on an impulsive reaction to perceived events. He wanted to continue playing so he jumped on O.H. to gain another point. A.A. thought O.H. and his friends were talking negatively about him, so he threatened them. A.A.’s actions were clearly not appropriate. His aggression and threatening language violated the school’s code of conduct, for which A.A. was appropriately disciplined.

Ms. Aita further explained that A.A. is a classified student under the Individuals with Disabilities Education Act, with known struggles with impulse control.

The testimony of Ms. Aita was not controverted. She expressed a clear knowledge of her role as the ABS. Moreover, Ms. Aita has been a counselor for Glassboro schools

for over twenty years. She expressed her familiarity with the students and was confident that the students were comfortable in speaking with her during the interviews. Based on the consistency of the events as stated in her investigation report, her clear understanding of her role in a HIB investigation, and her knowledge of what constitutes a HIB violation, I accept the testimony of Ms. Aita as credible. She provided a reasonable, plausible, and sound justification why A.A.'s actions against O.H. based on the facts and circumstances did not constitute HIB.

During their initial meeting on January 10, 2023, O.H.'s parents believed that the threats against their son were downplayed by the school administration. They did not accept that the discipline imposed on A.A. reflected the magnitude of what had occurred. They also felt that these three incidents directed at their son on the same day showed that A.A. had targeted O.H. A.A. did not act impulsively towards any other student, just O.H. Therefore, under their interpretation of the plain meaning of bullying, harassment, and intimidation, they felt that O.H. was targeted and should be afforded protection under HIB. I accepted the testimony of D.H. and S.H. as being motivated by their love and concern for the safety and well-being of their son. Their testimony was both sincere and heartfelt. While petitioner expressed her dissatisfaction with the statutory language, respondent and this tribunal are required to follow the definition of HIB provided in N.J.S.A. 18A:37-14.

CONCLUSIONS OF LAW

It was the intent of the Legislature in enacting 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 of students that occur in school and off school premises. N.J.S.A. 18A:37-13.1, -13.2.

N.J.S.A. 18A:37-14 and District Policy 5512 define harassment, intimidation, or bullying in pertinent part as anything that could be "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” and “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.

O.H.’s parents believed that the focus of Glassboro’s administration, their ABS, and the Board on an actual or a perceived characteristic was too restrictive, and this focus failed to consider the impact on their son, who was the target of the aggression. As explained by Ms. Aita, the ABS, there was no distinguishing characteristic that motivated the inappropriate behavior. Ms. Aita reasonably determined that A.A.’s impulsivity and failure to understand social situations caused his misbehavior towards O.H. The Board’s finding that no HIB occurred because there was no distinguishing characteristic does not diminish what happened to O.H. The Appellate Division in K.L. v. Evesham Township Board of Education, 423 N.J. Super. 337, 350–51 (App. Div. 2011), succinctly stated:

The statutory definition of “bullying” does not include all violent or aggressive conduct against a student. The definition, both before and after adoption of the 2010 Anti-Bullying Act, refers to conduct that is “reasonably perceived as being motivated” by a “distinguishing characteristic” of the victim, such as, “race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory [disability].” N.J.S.A. 18A:37-14. The statute has not limited “distinguishing characteristic” to those specifically enumerated, but it has consistently required such a perceived motivation.

Thus, harmful or demeaning conduct motivated only by another reason, for example, a dispute about relationships or personal belongings, or aggressive conduct without

identifiable motivation, does not come within the statutory definition of bullying.

Thus, an incident may be physically, psychologically, or socially harmful, but still not meet the HIB criteria.

Petitioner argued that A.A.'s motivation for singling out her son was not known or developed through the investigation. She contended there was no valid reason for A.A. to slap, put his hands on, or threaten to kill O.H. While the petitioner did not accept the response that A.A. misunderstood social situations and reacted impulsively due to his disability as a sufficient explanation for his aggression against her son, the investigation did not reveal any other motive, or a distinguishing characteristic as legally required for a HIB violation. Petitioner questioned why the perception of O.H. was not considered. Under N.J.S.A. 18A:37-14, the required element is "how the actor's motivation is perceived and whether that perception is reasonable." Wehbeh v. Bd. of Educ. of Verona, 2020 N.J. AGEN LEXIS 50 (Feb. 4, 2020), at *8. To determine whether the perception is reasonable, "the alleged victim [need not] correctly assess the actor's motivation, as such a requirement would convert the analysis from one about reasonably perceived motivation to one about actual motivation and would inappropriately place the burden on the alleged victim to divine the intent of the actor." Ibid., n.3. The HIB investigation by Ms. Aita reasonably showed that A.A.'s behavior on January 9, 2023, towards O.H. was not motivated by any distinguishing characteristics of O.H.

After hearing D.H.'s appeal, the Board voted to affirm the decision that the conduct by A.A. did not meet the definition of HIB. Petitioner presented her arguments to the Board but was dismayed when none of the Board members had any questions for her about the incidents.

The decision of a board acting within the scope of its authority 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." Thomas v. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). Similarly, the action of a board "which lies within the area of its discretionary powers may not be upset unless patently arbitrary,

without rational basis or induced by improper motives.” Kopera v. Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). The petitioner contended that the Board did not fully explore all aspects of her arguments and did not provide a detailed basis for its decision. Petitioner believes that the HIB policy must be revised to protect all students; nevertheless, a finding of HIB requires that the conduct be reasonably perceived as being motivated by an actual or perceived characteristic. No such motivation or distinguishing characteristic or difference has been identified.

In view of the foregoing, I **CONCLUDE** that the Board’s determination that these three incidents did not constitute harassment, intimidation, or bullying was not arbitrary, capricious, or unreasonable.

ORDER

It is hereby **ORDERED** that the petitioner’s appeal is **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.



January 24, 2024
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMC/editing/tat

APPENDIX

WITNESSES

For Petitioner:

D.H.

S.H.

For Respondent:

Raylene Aita, ABS

Grant Hildebrand

EXHIBITS

For Petitioner:

P-1 Gloucester Township Public Schools—the Anti-Bullying Bill of Rights

P-2 Petition of Appeal

P-3 Typed statements

P-4 Email chain

For Respondent:

R-1 Policy 5512—HIB

R-2 HIB Report

R-3 Investigation Parental Notification Letter

R-4 Board Appeal Notification Letter