

New Jersey Commissioner of Education**Final Decision**

C.S., on behalf of minor child, C.S.,

Petitioner,

v.

Board of Education of the Bridgewater-Raritan
Regional School District, Somerset County,

Respondent.

Synopsis

Petitioner challenged the decision of the respondent Board to conduct a code of conduct investigation rather than a harassment, intimidation, and bullying (HIB) investigation into allegations that students teased her minor son, C.S., by referring to him as a “school shooter” – a taunt that had been repeatedly directed at C.S. after he was suspended for violating the school’s code of conduct when he brought a nerf gun to school. The Board contended that its decision to conduct code of conduct investigations into C.S.’s complaints was not arbitrary, capricious, or unreasonable. Petitioner argued that the Board ignored its statutory obligation under *N.J.S.A. 18A:37-13 et seq.* by not acknowledging C.S.’s distinguishing characteristic and investigating his HIB claims. The parties filed cross motions for summary decision.

The Administrative Law Judge (ALJ) found, *inter alia*, that: there are no material facts at issue here, and the case is ripe for summary decision; an action by a board of education is entitled to a presumption of correctness and will not be undermined unless it can be shown that the decision was arbitrary, capricious or unreasonable; in the present matter, the name-calling at issue was not based upon any distinguishing characteristic of C.S. as defined in *N.J.S.A. 18A:37-13 et seq.* or in case law; the facts in the record do not substantiate that C.S.’s decision to bring a nerf gun to school was related to any mental disability or that the students taunting him as a result of his poor choice were making such a connection; as the Board did not find that the taunting C.S. experienced was based upon any distinguishing characteristic, its decision to investigate the incidents under the school’s Code of Student Conduct was appropriate. The ALJ concluded that petitioner has failed to prove that the Board’s determination was arbitrary, capricious, or unreasonable.

Upon review, the Commissioner concurred with the ALJ that the comments made to petitioner’s child were not based on a distinguishing characteristic; further, the school district’s decision to address the matter under its Code of Conduct rather than as acts of harassment, intimidation, and bullying was not arbitrary, capricious, or unreasonable. Accordingly, the Initial Decision was adopted as the final decision in this matter. The Board’s motion for summary decision was granted, 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.

New Jersey Commissioner of Education

Final Decision

C.S., on behalf of minor child, C.S.,

Petitioner,

v.

Board of Education of the Bridgewater-Raritan
Regional School District, Somerset County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that the comments made to petitioner's child were not based on a distinguishing characteristic. The Commissioner further concurs with the ALJ that the school district's decision to address the matter under its Code of Conduct rather than as acts of harassment, intimidation, and bullying was not arbitrary, capricious, or unreasonable.

Accordingly, the Initial Decision is adopted as the final decision in this matter. Respondent's motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 29, 2024

Date of Mailing: May 1, 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

SUMMARY DECISION

OAL DKT. NO. EDU 04735-23

AGENCY NO. 104-4/23

C.S., ON BEHALF OF MINOR CHILD, C.S.,

Petitioner,

v.

BOARD OF EDUCATION OF THE BRIDGEWATER-RARITAN

REGIONAL SCHOOL DISTRICT,

Respondent.

Michelle M. Schott, Esq., appearing for petitioner (Flanagan Barone O'Brien, attorneys)

Douglas M. Silvestro., Esq, and **Marc Mucciolo**, Esq., appearing for respondent (The Busch Law Group, LLC, attorneys)

Record Closed: February 5, 2024

Decided: March 25, 2024

BEFORE **KIM C. BELIN**, ALJ:

STATEMENT OF THE CASE

Petitioner, C.S., parent of minor child, C.S., challenges respondent, Board of Education of Bridgewater-Raritan Regional School District's decision to conduct a code of conduct investigation rather than a harassment, intimidation, and bullying (HIB) investigation into allegations that students teased C.S. by referring to him as a "school shooter."

PROCEDURAL HISTORY

On April 19, 2023, petitioner filed a Petition of Appeal challenging respondent's decision not to conduct a formal HIB investigation during the 2022-2023 school year. Respondent filed an Answer on May 30, 2023. The Department of Education (DOE) transmitted this matter as a contested case to the Office of Administrative Law ("OAL") where it was filed on May 31, 2023. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A pre-hearing conference call was held on August 14, 2023, where an evidentiary hearing was scheduled for November 6, 2023. On October 4, 2023, respondent filed a motion for summary decision. On October 24, 2023, petitioners filed a cross-motion for summary decision. The November 6, 2023, hearing was converted to a conference call at the parties' request. Marc Mucciolo, Esq., replaced Mr. Silvestro as the respondent's counsel. The parties discussed the possibility of settlement and requested additional time to generate and circulate an agreement. Accordingly, a status conference call was held on November 15, 2023, where the parties reached a tentative settlement agreement. A conference call scheduled for November 30, 2023, was adjourned at the parties' request, and on February 5, 2024, the parties indicated that they both wished to proceed with their respective motions.

FACTUAL DISCUSSION AND FINDINGS

The following FACTS are undisputed and I, therefore **FIND**:

1. For the 2022-2023 school year, C.S. attended middle school in the respondent's district and was a seventh-grade student. He was not a classified student under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.
2. During the 2021-2022 school year, C.S. brought a nerf gun to school and received a forty-five day suspension from school in accordance with the respondent's Code of Student Conduct. (Respondent's Motion for Summary Decision (RMSD), ¶¶4 and 5.)
3. During the 2022-2023 school year, at least one other student referred to C.S. as a "school shooter" based upon the incident from the previous year where he brought in the nerf gun to school. (RMSD, ¶6.)
4. On January 31, 2023, the petitioner filed seven separate HIB complaint forms with the principal of the Middle School. Six of those complaints referred to instances in which C.S. was called a "school shooter," while the seventh referenced an incident in which C.S. was allegedly targeted due to being Jewish. (RMSD, ¶7.)
5. Three incidents were reported on September 6, 2022. (Petition ¶9.)
6. In the first incident, the petitioner reported that a student stated to C.S. in LAL¹ class: "I'm going to beat you up, you better watch out school shooter. You're such a loser. Everyone hates you." (Petition, ¶9a.)

¹ Language arts literacy.

7. In the second incident, the petitioner reported that a student stated to C.S.: “You’re a b*tch, I’m going to beat the sh** out of [you]. Loser, go kill yourself.” This student frequently called C.S. a school shooter when they left science class. (Petition ¶9b.)
8. In the third incident, the petitioner reported that three other students randomly throughout the day called C.S. a school shooter and said: “you’re a b*tch, I’m going to f*** you up. Eww looked [sic] its C.S., the school shooter, he has a gun, he’s going to shoot everyone, you don’t belong here loser, everyone hates you go kill yourself.” (Petition, ¶9c.)
9. In the fourth complaint, dated September 20, 2022, the petitioner reported that C.S. was referenced by students as the “kid who brought a gun to school, asked why he was in school, told to kill himself, and that that [sic] they’ve heard he has the list of people he’s going to shoot, that others should watch out he’s got a gun and that he is going to get his a** kicked.” (Petition ¶9d.)
10. In the fifth incident that was reported in a complaint also dated September 20, 2022, three additional students “harass him about being a school shooter, called [sic] him a piece of garbage. They told everyone I smoke weed and vape. Had [his] locker searched.” (Petition, ¶9e.) On the bus, C.S. was poked in the back with a “broomstick or other device.” Ibid.
11. In the final incident, reported on January 5, 2020, after lunch, three additional students yelled: “watch out! That kid’s got a gun” referring to C.S. (Petition, ¶9f.)
12. Respondent investigated the incidents and determined that six of them in which C.S. was referred to as “school shooter” or words of similar effect were not instances of HIB but were violations of the respondent’s Code of Student Conduct. (RMSD, ¶15.)

13. The respondent disciplined the students involved. (RMSD, ¶16.)
14. The respondent determined that none of the six incidents reported by the petitioner identified a real or perceived distinguishing characteristic that was the basis for targeting C.S. (RMSD, ¶17.)
15. The respondent notified the petitioner via email on or about February 3, 2023, of the respondent's determination that the school would not conduct HIB investigations regarding the allegations because the complaints did not "meet the criteria for HIB as there is no distinguishing characteristic." (RMSD, ¶¶18 and 20.)
16. The petitioner filed a petition on or about April 19, 2023, appealing the respondent's decision not to investigate the six incidents as HIB. (RMSD, ¶19.)

Respondent's Motion

Respondent filed a motion for summary decision contending that C.S. made a poor and immature decision to bring a nerf gun to school, however, this decision was not a distinguishing characteristic of C.S. as a person that would trigger an HIB investigation. The decision not to conduct HIB investigations was not arbitrary, capricious, or unreasonable and therefore, need not be reversed.

Petitioner's Cross Motion

Petitioner argues that the respondent acted arbitrarily, capriciously, and unreasonably by ignoring its statutory obligation under HIB to acknowledge C.S.'s distinguishing characteristic and investigate his HIB claims.

LEGAL ANALYSIS AND CONCLUSIONS

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and that the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion 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.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). Even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536.

The Anti-Bullying Bill of Rights Act (Act), N.J.S.A. 18A:37-13 et seq., 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). Under the Act, “harassment, intimidation or bullying” (HIB) is defined as:

[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.]

Each school district must adopt a policy that prohibits HIB and provides for a prompt response to any alleged HIB incident. N.J.S.A. 18A:37-15. Once an alleged HIB incident is reported to the school principal, the principal must initiate an investigation within one school day of the report. N.J.S.A. 18A:37-15(b)(6). The investigation shall be conducted by a school anti-bullying specialist and shall take no longer than ten school days to be completed. The results of the investigation shall then be quickly reported to the superintendent of schools, who may take certain remedial action. The results shall also be reported to the board of education "no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent." Ibid.

Pursuant to the Act, the parents of the students involved in any alleged HIB incident are entitled to receive information about the nature of the investigation and the result of the investigation. The parents may request a hearing before the board, and the hearing must be held within ten days of the request. Any hearing shall be held in executive session to protect the identity of any students involved. The board may hear from the anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents. The board must issue a decision at the

first meeting after its receipt of the investigation report. The board may affirm, reject, or modify the superintendent's decision. The board's decision may be appealed to the Commissioner of Education. N.J.S.A. 18A:37-15(6)(e).

An action by a board of education "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. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). The Commissioner will not substitute their judgment for that of a board of education, whose exercise of 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). Our 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 Sewerage 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. v. Moorestown Bd. of Educ., 2008 N.J. AGEN LEXIS 67 (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)).

In the present case, the issue for resolution is whether the respondent's decision not to conduct HIB investigations was arbitrary, capricious, or unreasonable in light of the information the respondent possessed when it made its determination. The petitioner argues that the respondent's decision turned a "blind eye" to the students' perception that C.S. was a school shooter which meets the requirement of a perceived distinguishing characteristic under the Act. (Petitioner's Brief in Support of Motion for Summary Decision, at p.8.) There are reported cases in which HIB determinations by boards of education have been both affirmed and overturned. In R.G.B. v. Vill. of Ridgewood Bd. of Educ., 2013 N.J. AGEN LEXIS 130 (May 15, 2013), adopted, Comm'r, 2013 N.J. AGEN LEXIS 592 (June 24, 2013), the Administrative Law Judge (ALJ) found that the Board did not act in an arbitrary, capricious, or unreasonable manner in determining that a student engaged in HIB when he repeatedly called a female student "fat," "fat ass," and "horse."

According to the ALJ, such verbal statements satisfied all of the necessary elements under N.J.S.A. 18A:37-14. In G.H. and E.H. ex rel. K.H. v. Bd. of Educ. of the Borough of Franklin Lakes, EDU 13204-13, Initial Decision (February 24, 2014) <http://njlaw.rutgers.edu/collections/oal/>, the ALJ also upheld a Board's finding that a white student who repeatedly called a black student "Kool-Aid" engaged in HIB. The ALJ found that the "use of the word 'kool-aid' was directed at [the other student] because of his race; insulted and demeaned [the other student]; and . . . interfered with [the other student's] education" because "[u]pset and embarrassed children are not fully available for learning." These cases involved perceived distinguishing characteristics such as weight, race, gender, and/or physical features.

However, in J.A.H. o/b/o C.H. v. The Twp. of Pittsgrove BOE, 2013 N.J. AGEN LEXIS 58 (March 11, 2013), adopted, Comm'r (April 13, 2013) <http://njlaw.rutgers.edu/collections/oal/>. the Board's finding that an incident in which one student stuffed a crumpled piece of paper down the shirt of another student constituted an act of bullying was overturned as arbitrary, capricious, and unreasonable because the incident was merely a prank that was part of an ongoing, mutual conflict between the two boys and did not "contain the more serious and aggravating elements either 'expressed or implied' under [N.J.S.A. 18A:37-14.]" The ALJ in J.A.H. found that the incident was not improperly motivated by a distinguishing characteristic and that the facts "only support[ed] a finding of ordinary student conflicts rather than the more serious behavior of bullying." Ibid.

In addition, In L.B.T. o/b/o. K.T. v. Bd. of Educ. of the Freehold Reg'l Sch. Dist., EDU 07894-12, Initial Decision, (January 24, 2013), adopted, Comm'r (March 7, 2013), <http://njlaw.rutgers.edu/collections/oal/>, the ALJ determined that an act was not considered to be bullying motivated by a "distinguishing characteristic" where there was a mutual dispute between two students about their respective roles on the swim team. The judge held that if a victim was targeted because of a dispute between the two people involved—such as a relationship falling apart between former friends, a fight over a piece of property, or some form of personal vendetta of one against another—that conduct would not be based on a "distinguishing characteristic" of the victim and would not be a violation of the statute.

Here, it is undisputed that during the 2021-2022 school year, C.S. brought an imitation gun to school and served a forty-five day suspension. The following year, students began calling him a “school shooter” and encouraging him to harm himself. The respondent acknowledged that this behavior was inappropriate and violated the Code of Student Conduct, and following an investigation resulted in discipline imposed on the offending students. The statute defines HIB as “any gesture, any written, verbal or physical act, . . . that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, . . . or by any other distinguishing characteristic.” N.J.S.A. 18A:37-14 (emphasis added). As respondent points out, the students called C.S. “school shooter” because of his poor choice of bringing in the nerf gun to school. It is indisputable that the students’ conduct was wholly inappropriate and hurtful, and discipline was warranted because “cruel words will not be tolerated in a school environment.” C.C. o/b/o S.C. v. Bd. of Ed. of Jefferson, 2015 N.J. AGEN LEXIS 251 (April 6, 2015), aff’d Comm’r (May 12, 2015).

However, the name-calling in the present matter was not based upon C.S.’s distinguishing characteristics as defined in the statute or case law. The facts and inferences in the record do not substantiate a negative inference from C.S.’s decision to bring in a nerf gun with his mental facilities or that his fellow students were making such a connection.

The respondent did not find that the comments were based upon C.S.’s race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or mental, physical, or sensory disability, or another distinguishing characteristic. While the petitioner may disagree with the respondent’s determination, the petitioner presents no evidence that this determination was made in bad faith or in utter disregard of the extant information. I therefore **FIND** that the respondent properly investigated the incidents under the Code of Student Conduct.

Accordingly, based on the facts presented on the pending motions, and even giving petitioner the benefit of any reasonable inferences that could be drawn from her

papers or initial petition, I **CONCLUDE** that petitioner has not proven that the respondent's determination was arbitrary, capricious, or unreasonable.

ORDER


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 25, 2024 _____

DATE



KIM C. BELIN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KCB/vj

APPENDIX

WITNESSES

For petitioners:

None

For respondent:

None

EXHIBITS

For petitioner:

- Petition dated April 14, 2023
- Brief in Support of Cross-Motion for Summary Decision dated October 24, 2023

For respondent:

- Answer dated May 30, 2023
- Notice of Motion for Summary Decision dated October 4, 2023