

New Jersey Commissioner of Education

Final Decision

E.H. and B.H., on behalf of minor child, J.H.,

Petitioner,

v.

Board of Education of the Township of Jefferson,
Morris County,

Respondent.

Synopsis

Petitioners challenged the determination of the respondent Board that their son, a fifth grade student during the 2022-2023 school year, committed an act of harassment, intimidation, and bullying (HIB), pursuant to the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq*, against a female classmate when he placed his hands in her lap. Petitioners contended that their son did not fully understand his conduct because he suffers from behavioral dysregulation and other disabilities. They sought to set aside the Board’s decision and have the HIB finding removed from J.H.’s school record.

The ALJ found, *inter alia*, that: 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; under the Act, an HIB finding requires the demonstration of three elements: 1) the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic, 2) the behavior must substantially disrupt or interfere with the rights of other students or the orderly operation of the school, and 3) the conduct must satisfy one of the three criteria enumerated in the Act regarding the effect of the conduct; in this case, the incident undeniably took place on school grounds as it was recorded on a video camera in the school hallway; the female victim could reasonably perceive J.H.’s actions, i.e. touching the area of her “private parts”, to be motivated by her gender; the victim reported being scared and uncomfortable because of J.H.’s physical contact; she was reluctant to attend school the next day and requested to be excused from a group activity, which interfered with her rights and education; there is no doubt that a reasonable person should know that touching a student in a private area would result in emotional harm or insult, and J.H.’s reactions upon observing his conduct on video demonstrated that he recognized the nature of his behavior, as he apologized. The ALJ concluded that the Board’s HIB conclusion had a rational basis and that evidentiary support existed to support its conclusion. Accordingly, the Board’s motion for summary decision was granted and the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination in this case. 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.

212-24
OAL Dkt. No. EDU 00642-24
Agency Dkt. No. 344-12/23

New Jersey Commissioner of Education
Final Decision

E.H. and B.H., on behalf of minor child, J.H.,

Petitioners,

v.

Board of Education of the Township of Jefferson,
Morris 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 concludes that petitioners failed to demonstrate that respondent Board of Education's determination that J.H. committed an act of harassment, intimidation, or bullying (HIB) was arbitrary, capricious, or unreasonable.

Accordingly, the Commissioner adopts the Initial Decision 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: May 30, 2024

Date of Mailing: May 31, 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 00642-24

AGENCY DKT. NO. 344-12/23

E.H. AND B.H.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF JEFFERSON, MORRIS
COUNTY,**

Respondent.

E.H. and B.H., petitioners appearing pro se

Patrick Carrigg, Esq. for Respondent (Lenox, Socey, Formidoni, Giordano,
Carrigg, Lang & Casey, LLC, attorneys)

Record Closed: April 18, 2024

Decided: April 22, 2024

BEFORE: **NANCI G. STOKES**, ALJ

STATEMENT OF THE CASE

Petitioners challenge a determination that J.H., their minor child, engaged in Harassment, Intimidation, and Bullying (HIB) against a female classmate on June 19,

2023, when he placed his hands in her lap twice. Should the HIB conclusion stand, even though J.H. suffers from behavioral dysregulation and other disabilities? Yes. Students with disabilities remain subject to HIB prohibitions, and a Board of Education's decision will stand unless it is arbitrary, capricious, or unreasonable.

PROCEDURAL HISTORY

On December 18, 2023, E.H. and B.H. filed a Petition of Appeal with the Commissioner of Education (Commissioner) challenging the Jefferson Board of Education's (Board) HIB determination against J.H. Petitioners largely dispute that J.H. knew that his behavior could harm the other student given his disabilities and maintain that the Board never explained what it considered to be the victim's perceived distinguishing characteristic. Further, petitioners contend that J.H. did not target the victim because she was female and that J.H.'s disabilities prevent him from forming the necessary intent to support an act of HIB. Thus, petitioners seek to set aside the Board's decision and remove the HIB finding from J.H.'s record.

On January 9, 2024, the Board answered the petition denying the petitioners' allegations, maintaining it followed all required procedures and that its decision met the HIB criteria. The Board requests that this tribunal and the Commissioner uphold the Board's HIB determination.

The Department of Education (DOE) transmitted this case to the Office of Administrative Law (OAL) as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to-15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to-13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On January 9, 2024, the OAL received and filed the transmittal.

On March 18, 2024, the Board filed a motion for a summary decision as the parties did not dispute the events of June 19, 2023. Petitioners filed no response. On April 17, 2024, the Board submitted the video of the June 19, 2023, event. On that date, I closed the record.

FINDINGS OF FACT

Viewing the facts in the most favorable light to the non-movants, I **FIND** the following as **FACT** after considering the sufficiency of the documents:

In June 2023, J.H. attended Jefferson Township's (Jefferson) Arthur Stanlick Elementary School as a fifth-grade student. On June 19, 2023, J.H. was ten years old and under a 504 plan to accommodate the following disabling conditions: (1) attention deficit hyperactivity disorder (ADHD); (2) Central auditory processing disorder, (3) autism, and (4) sensory processing disorder. In an assessment in July 2023, Jefferson also noted that J.H. suffered from childhood emotional disorder and disruptive mood dysregulation disorder. The Board does not dispute that J.H. has disabilities, is classified, or that J.H.'s disabilities may have impacted his ability to fully appreciate his conduct.

On June 19, 2023, J.H. attended school. At drop-off, B.H. alerted the school's principal and his teachers that J.H. was exhibiting mood swings and sensory dysregulation because of a medication issue. J.H. had behavioral problems during the day.

At dismissal, J.H. sat on the school's hallway floor, waiting to be picked up. A female student sat next to him in the hallway. Soon after, J.H. placed his hands in her lap twice, touching her private area. Jefferson supplies a forty-seven-second video of these events. In the upper left part of the video, J.H. is sitting cross-legged on the blue carpet on the floor, facing the camera. At the twelve-second mark, a girl with brown hair and a tan backpack walks over and sits next to J.H. at the fourteen-second point, with her back facing the camera. Between the seventeen and twenty-second points in the video, J.H. reaches his right hand over her leg into her lap area twice. Immediately after, the girl moves slightly away from J.H. on his right and turns her back to him.

Jefferson's anti-bullying specialist, Gina Santini, investigated the incident and interviewed the alleged victim and J.H. On the day of the incident, Santini interviewed the alleged victim, who was crying and relayed that someone touched her "private part" twice while next to her. The alleged victim told Santini that she tried to tell an adult but

was not sure what to do, reporting that she was scared and uncomfortable. Someone observed the incident and reported it, leading to Santini's investigation. Notably, petitioners do not dispute J.H.'s actions.

The female student was reluctant to attend school the next day, and her parent asked the principal to excuse her from a group activity.

On June 21, 2023, Santini interviewed J.H. Initially, J.H. did not recall his actions but acknowledged that he touched the girl after seeing the video. J.H. apologized after realizing that he did, expressing remorse and a desire to make things right.

On July 18, 2023, Jefferson completed its HIB investigation, concluding that a gender-based physical contact HIB was confirmed. Jefferson previously reported the incident to the police department, which concluded that no crime occurred, and that the administration could address the behavior. The incident report highlights that J.H.'s actions made the victim fearful of physical or emotional harm.

On that same date, the principal notified petitioners of the school's HIB determination, and the school reported its findings to the Board.

J.H.'s discipline for the HIB action was student counseling and a one-day suspension.

On August 24, 2023, the Board wrote to petitioners advising that it affirmed its conclusion that J.H. committed an act of HIB.

Subsequently, J.H.'s parents requested a hearing and appeared before the Board on September 18, 2023. They maintain that their son did not fully understand his conduct because of his disabilities and blame the school for not appropriately addressing his behavioral problems. Still, the only issue before this tribunal is whether the Board's HIB determination should stand.

Yet, on September 20, 2023, the Board confirmed that J.H.'s actions constituted an act of HIB that caused emotional harm to the victim, leading to a substantial disruption to the school and the victim's rights. This appeal followed.

J.H.'s parents maintain that the HIB finding caused significant distress to J.H., a student already struggling with the school environment, and urging compassion for his circumstances. They placed J.H. in therapy to help him self-reflect and have a better understanding of his disabilities.

DISCUSSION AND CONCLUSIONS OF LAW

The Legislature designed the Anti-Bullying Rights Act (ABRA), N.J.S.A. 18A:37-13 to -37, "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). Each school district must adopt a policy that prohibits HIB and provides "a procedure for prompt investigation of reports of violations and complaints." N.J.S.A. 18A:37-15(b)(6).

Under the ABRA, "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]

Thus, a HIB finding requires demonstrating three elements, assuming the alleged incident or incidents occurs 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. 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 element requires satisfaction of one of the three criteria enumerated in the Act regarding the effect of the conduct. Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex County, EDU 10981-18, Initial Decision (December 29, 2019), <http://njlaw.rutgers.edu/collections/oal>, rejected and remanded Comm'r Decision No. 51-20 (February 4, 2020), 2020 N.J. AGEN. LEXIS 50.

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness that 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). To overcome that presumption, the petitioner must prove by a preponderance of the evidence that the board "acted in either bad faith or in disregard to the circumstances." T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07 (February 6, 2008), aff'd, Comm'r (April 25, 2013) (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 other words, the burden is a heavy one. Indeed, the Commissioner recognizes that Boards should "have the discretion to operate their schools in a manner that best serves their unique communities," the Commissioner will not interfere with that discretion concerning HIB matters unless the Board acted arbitrarily, capriciously, or unreasonably. G.H. & E.H. o/b/o K.H. v. Franklin Lakes Bd. of Educ., EDU 13204-13 (Feb. 24, 2014), aff'd, Comm'r (Apr. 10, 2014), n.4. Further, "where there is room for two opinions, action is

not arbitrary or capricious when exercised honestly and upon due consideration[.]” 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).

Still, the Board’s factual determinations require such deference only when supported by substantial credible evidence, e.g., having a rational basis. Quinlan v. Board of Ed. of North Bergen Tp., 73 N.J. Super. 40 (App. Div. 1962); Schinck v. Board of Ed. of Westwood Consol. School Dist., 60 N.J. Super. 448 (App. Div. 1960). Additionally, the reviewing tribunal may reject the findings of fact if the evidentiary record does not support them. In re Suspension of License of Silberman, 169 N.J. Super. 243, 255-56 (App. Div. 1979), aff’d, 84 N.J. 303 (1980).

Undeniably, the incident took place on school grounds and is subject to the HIB statutory directives. Regarding the first element, the statute defines HIB is an action “that is reasonably perceived as being motivated either by any actual or perceived characteristic.” N.J.S.A. 18A:37-14. Here, the statute requires an analysis of the victim's perception of the actor's motivation and whether that perception is reasonable. Yet, an analysis of the actual motivation of the actor is not required. Webbeh, at *8. Here, I **CONCLUDE** it was not arbitrary, capricious, or unreasonable for the Board to conclude that the female victim could reasonably consider J.H.’s actions, touching her “private part” area, motivated by her gender.

The second element is similarly clear because the victim reported being scared and uncomfortable because of J.H.’s physical contact. She was also reluctant to attend school the next day and requested she be excused from a group activity, interfering with her rights and education. The incident was limited, but the victim was crying during her interview with Santini, reported being scared, and was afraid of returning to school. Further, the victim did not report the incident due to fear, but another individual alerted the school after observing the interaction.

In D.D.K. o/b/o D.K v. Board of Education of the Township of Readington, Hunterdon County, EDU 07682-15 (October 6, 2016), adopted, Comm’r Decision (November 11, 2016), <https://njlaw.rutgers.edu/collections/oal/>, the Commissioner

discussed those situations where the Board's HIB determination satisfied the second prong, explaining that:

[C]onduct has been determined to substantially disrupt the orderly operation of the school when students are so upset or embarrassed that they are "not fully available for learning." G.H. and E.H. on behalf of K.H. v. Board of Education of the Borough of Franklin Lakes, Bergen County, OAL Dkt. No. EDU 13204-13, decided February 24, 2014, adopted Commissioner Decision No. 157-14, April 10, 2014. Additionally, when other students are "so affected" by behavior that they report it, the orderly operation of the school may be substantially disrupted. T.R. and T.R. on behalf of E.R. v. Bridgewater-Raritan Regional Board of Education, OAL Dkt. No. EDU 10208-13, decided September 25, 2014, adopted Commissioner Decision No. 450-14, November 10, 2014.

Id.

Thus, I **CONCLUDE** that the Board satisfied the second requirement necessary to conclude that J.H. committed a HIB.

The third element under N.J.S.A. 18A:37-14(a) requires a conclusion that the HIB act is one that "a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student," "has the effect of insulting or demeaning a student," or "creates a hostile educational environment." In Wehbeh, the Commissioner highlighted that "none of these criteria require the actor to have actual knowledge of the effect that their actions will have, or to specifically intend to bring about that effect." Id. Further, any one of the three criteria satisfies the third element. Here, the Board found that J.H.'s actions made the victim fearful of school. While the Board accepts that J.H. did not fully appreciate his actions or intend to harm the victim, J.H.'s disabilities do not excuse his inappropriate actions. Every student is bound by the District's HIB policy, and the District is required to investigate HIB complaints and enforce its HIB policies. N.J.S.A. 18A:37-15(b)(6).

Although petitioners feel the school, aware of J.H.'s struggles, could have done more to help J.H. avoid such behavior, that does not change what J.H. did, even if J.H.'s actions were careless. In other words, there is no doubt that a reasonable person

should know that touching a student in a private area would result in emotional harm or insult.

Notably, once J.H. observed his conduct on video, he apologized, recognizing the nature of his behavior. Hence, I **CONCLUDE** the Board was not arbitrary, capricious, or unreasonable in reaching the conclusion that the third prong of the HIB analysis was met.

Notably, N.J.A.C. 6A:16-7.7(a)2 requires that the consequences stemming from a HIB reflect the nature of the actions and the perpetrator's disabilities, if any. Here, the discipline imposed was only a one day suspension and counseling. While the HIB report could arguably better reflect J.H.'s disabilities, the Board certainly considered J.H.'s circumstances raised by his parents at the hearing.

Here, petitioners present no credible evidence that the Board acted arbitrarily or that its decision was unreasonable. I appreciate that petitioners wish to protect their son from a determination with which they disagree and took laudable steps to help their son better understand his disabilities. Still, I found that the Board's HIB conclusion had a rational basis and that evidentiary support existed to support its conclusion. Thus, I **CONCLUDE** that the Board's decision that J.H. committed a HIB should stand.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the Board's motion for summary decision be **GRANTED** and **DISMISS** the petitioners' appeal.

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.



April 22, 2024

DATE

NANCI G. STOKES, ALJ

Date Received at Agency:

April 22, 2024

Date Mailed to Parties:

April 22, 2024

ljb

APPENDIX

Submissions Considered

For Petitioner

Petition

For Respondent

Motion, brief, and supporting certification with exhibits

Video and certification