

**New Jersey Commissioner of Education**

**Decision**

G.W. and K.W., on behalf of minor child, M.W.,

Petitioners,

v.

Board of Education of the Borough of Ringwood,  
Passaic County,

Respondent.

**Synopsis**

In this case stemming from an appeal filed in September of 2020, petitioners sought to overturn the Board's determination that their child, M.W., was not the victim of harassment, intimidation, and bullying (HIB). The petitioners contended that their child had been subjected to HIB by his sixth grade teacher. Following a long and complicated procedural history, which included the withdrawal of counsel representing petitioners, the Board filed a motion for summary decision in April 2024.

The ALJ found, *inter alia*, that: there are no material facts at issue in this matter, and the case is ripe for summary decision; petitioners failed to file a response to the motion for summary decision despite multiple extensions of time to do so, and the motion was therefore unopposed; the record here was devoid of evidence supporting any of the elements of a charge of HIB. Accordingly, the ALJ concluded that the Board's HIB determination should be affirmed.

Upon review, the Commissioner, *inter alia*, rejected the Initial Decision, finding that, given the unique circumstances of this matter, wherein petitioner was no longer represented by counsel and lacked a copy of the complete case file, petitioner was unable to respond to the motion for summary decision. Accordingly, the Commissioner concluded that the matter should not have been considered unopposed and must be remanded to the OAL to be properly litigated.

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.

329-24R+  
OAL Dkt. No. 09628-20  
Agency Dkt. No. 199-9/20

## New Jersey Commissioner of Education

### Final Decision

G.W. and K.W., on behalf of M.W.,

Petitioners,

v.

Board of Education of the Borough of Ringwood,  
Passaic County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by the petitioner pursuant to *N.J.A.C. 1:1-18.4*, and the Ringwood Board of Education's (Board) reply thereto, have been reviewed and considered.

Petitioners filed an appeal of the Board's determination that their child, M.W., was not the victim of harassment, intimidation, and bullying (HIB). Petitioners were initially represented by counsel, who was subsequently permitted to withdraw. M.W.'s father, G.W., took over handling the case, but notified the OAL in February 2024 that M.W.'s mother, K.W., would be handling the case going forward.

On April 3, 2024, the Board requested the Administrative Law Judge's (ALJ) approval to file a motion to dismiss. On April 9, 2024, the ALJ denied the request but granted permission for the Board to file a motion for summary decision. On April 17, 2024, K.W. sent two emails to the OAL to advise that she did not have a copy of any filings in the case prior to April 8, 2022, and requested information

on how she could obtain a copy. The record does not contain any response from the OAL to K.W.'s emails.

The Board filed its second motion for summary decision on April 30, 2024. On June 10, 2024, K.W. again emailed the OAL, indicating that she did not have a copy of the motion or any of the case filings, and requesting copies. The OAL responded to indicate that K.W.'s request should be made directly to the Department of Education (DOE). Also on June 10, 2024, counsel for the Board emailed the OAL to provide proof that she had sent the motion for summary decision to K.W. by both email and mail. On June 14, 2024, the ALJ wrote to the parties stating that petitioners had prior legal counsel who should have given the file to them, and that a request for the file should have been directed to the former attorney. The ALJ set a deadline of June 20, 2024 for petitioners to respond to the Board's motion for summary decision.

When petitioners did not file a response to the motion for summary decision, the ALJ considered the motion unopposed. The ALJ found that the record was devoid of evidence supporting any of the elements of a charge of HIB.<sup>1</sup> As such, the ALJ concluded that there were no unresolved issues of material fact that would necessitate a plenary hearing, and that the Board's HIB determination should be affirmed.

In her exceptions, K.W. argues that she was denied access to the OAL case file and was therefore unable to respond to the Board's motion for summary decision. Petitioner requests that

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<sup>1</sup> The Board concedes that M.W. reasonably perceived that the alleged perpetrator's conduct was motivated by an actual or perceived distinguishing characteristic. The Board also concedes that the conduct occurred on school grounds. *Respondent's Brief in Support of Motion for Summary Decision*, p. 6.

the Commissioner order the OAL to provide her with a copy of the case file, as well as the opportunity to respond to the motion for summary decision after she receives the file.<sup>2</sup>

In response, the Board argues that its attorney sent the entirety of the discovery in this matter to K.W. on April 18, 2024. The Board also notes that K.W. could have sought a copy of the file from her former attorney, or from the DOE, as directed by the ALJ. As such, the Board urges the Commissioner to reject K.W.'s argument that she did not have access to the case file. Finally, the Board contends that there is no evidence that the incident at issue caused a substantial disruption to M.W. or the orderly operations of the district, and therefore its finding that there was no act of HIB should be affirmed.

Upon review, the Commissioner rejects the Initial Decision. Notwithstanding the fact that K.W. was provided with a copy of the discovery and the second motion for summary decision by the Board's attorney, she did not have access to the complete case file. In particular, the petition, answer, first motion for summary decision and briefs and exhibits related thereto, and the ALJ's Order denying that motion would have been critical to petitioner in responding to the second motion for summary decision.

The OAL referred K.W. to the DOE for a copy of her case file. The DOE did not receive any request from K.R, and although it would have provided all documents that it had in its possession in response to such a request, as K.W. correctly points out in her exceptions, the DOE would not have had access to the entire case file at that time. As of June 10, 2024, the DOE was only in possession of the filings submitted prior to the transmittal of the case to the OAL. Notably, the DOE did not have,

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<sup>2</sup> K.W. also filed a document that she characterized as a motion seeking an Order that the DOE email her a copy of the record.

and could not have provided to K.W., the pleadings related to the Board’s first motion for summary decision, or the ALJ’s December 16, 2021 Order denying that motion.

The ALJ also indicated that K.W. could obtain a copy of the file from her former counsel. While this may be true, even if she had requested a copy of the file in this way, her former counsel would not have a complete copy of the file either, having withdrawn as counsel in 2022, well before K.W. made her request.

Given the unique circumstances of this matter, the Commissioner accepts K.W.’s argument that without a copy of the complete case file, she was unable to respond to the motion for summary decision. Accordingly, the Commissioner disagrees with the ALJ that the motion should have been considered unopposed and concludes that this matter must be remanded to the OAL so that the motion may be properly litigated. The Commissioner notes that, on the same date that this decision is mailed to the parties, the Office of Controversies and Disputes will provide a complete copy of the record in this matter to K.W. If K.W. still fails to respond to the motion for summary decision within 20 days, or any extension of that due date that the ALJ may grant, the motion may then be considered unopposed. If K.W. responds, the motion should be decided in the usual course.

Accordingly, the Initial Decision is rejected. This matter is remanded to the OAL for further proceedings.

IT IS SO ORDERED.

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 6, 2024  
Date of Mailing: September 9, 2024



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO.: EDU 09628-20

**G.W. AND K.W. ON BEHALF OF M.W.,**

Petitioners,

**v.**

**BOARD OF EDUCATION OF THE  
BOROUGH OF RINGWOOD,  
PASSAIC COUNTY,**

Respondent.

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**K.R., and G.W.,** parents of M.W., petitioner, pro se

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

Record Closed: June 20, 2024

Decided: June 27, 2024

BEFORE: **JOHN P. SCOLLO, ALJ:**

**STATEMENT OF THE CASE**

Petitioners, G.W. and K.W., parents of M.W., filed for a Fair Hearing following the Ringwood Board of Education's (a/k/a the District's) determination that HIB charges

brought against Joan Bredin (“Bredin”), M.W.’s teacher, did not support a finding of HIB conduct. In the Motion at bar, the Respondent seeks Summary Decision ordering the dismissal of the Petitioner’s appeal.

### **PROCEDURAL HISTORY**

On or about December 6, 2019, Joan Bredin provided a reading assignment, a three-page story titled “An Engine Without Brakes” to M.W., then a sixth grade special education student, who had been diagnosed as Attention Deficit Hyperactivity Disorder (“ADHD”).

On December 13, 2019, G.W. and K.W. (a/k/a K.R.), M/W.’s parents, learned about the assignment and made an HIB complaint. Anti-Bullying Specialist, Eric R. Erler (the “Investigator”) investigated the allegations of the complaint by interviewing Bredin and a paraprofessional (a teacher’s aide) who worked in the same classroom with M.W. G.W. and K.W. did not give consent for M.W. to be interviewed and so he was not interviewed. On January 8, 2020, Erler filed his HIB Investigation Narrative in which he concluded that the incident (i.e., the circumstances surrounding the assignment of the story to M.W. by Bredin) did not meet the criteria for HIB. On February 24, 2020, the Ringwood Board of Education voted to adopt the Investigator’s conclusion. On May 14, 2020, counsel for G.W. and K.W. sent a letter in lieu of the appearance of G.W. and K.W. in furtherance of their appeal of the District’s determination. On May 27, 2020, the HIB/Discipline Appeal Committee met. On June 1, 2020, the Board of Education voted to take no further action, thus affirming its February 24, 2020 decision to adopt the Investigator’s conclusion that the criteria for HIB had not been met. On September 14, 2020, G.W. and K.W. filed a Petition of Appeal from the Board of Education’s June 1, 2020 decision with the Commissioner of Education. On September 21, 2020, the Board of Education filed its Answer to the Appeal. A hearing was scheduled for April 28 and 30, 2021. In March, 2021 the two sides filed their respective motions for summary decision. Settlement discussions ensued without resolution of the matter. Subsequently, Opposition papers, Replies, and various supporting papers were submitted. On December 16, 2021 both motions

were denied. On June 7, 2022, the Honorable JoAnn Candido, ALJ entered an Order Granting the motion of Robert Thurston, Esq. to be relieved as counsel for Petitioners. Subsequently, in light of related civil litigation pending in Federal District Court, the matter was held in abeyance. In September, 2023 counsel for Respondent inquired of Judge Scollo about the status of this matter and whether this matter would be given a trial date. In response, Judge Scollo requested a status report from the parties regarding the state of the related civil litigation. On February 22, 2024, Respondent's counsel supplied a status report and requested leave to file a Motion to Dismiss EDU 09628-20. Judge Scollo denied leave to file a Motion to Dismiss but granted leave for Respondent to file a Motion for Summary Decision. Counsel for Respondent filed a Motion for Summary Decision on April 30, 2024 chiefly citing as its bases the failure of the Petitioners to set forth evidence that the student (M.W.) was harmed, or that the alleged incident substantially disrupted or interfered with the orderly operation of the school or the rights of the allegedly targeted student or of other students.

On April 8, 2024, the Tribunal sent correspondence to both sides granting leave to the Respondent, Ringwood BOE to file a Motion for Summary Decision and stating that UAPR 1:1-12.5 required the party opposing a Motion for Summary Decision to submit Opposition papers within twenty (20) days. As noted above, Respondent Ringwood BOE filed its motion for summary decision on April 30, 2024. Therefore, Petitioners' Opposition papers were due on May 20, 2024. On June 10, 2024, K.R. (the mother of M.W. and formerly known as "K.W.") inquired with Judge Scollo's secretary, Diana Batista, about how to obtain papers from her file. K.R. claimed that she did not have a copy of Ringwood BOE's Summary Decision Motion; that she did not have her case filings; and that she wanted leave from the Tribunal to allow her fourteen (14) days from the date of her receipt of the Motion to file Opposition papers. Ms. Batista directed K.R. to contact the Department of Education for copies of her papers. On June 10, 2024, Attorney Kleen (counsel for the Ringwood BOE) sent emails enclosing proof that she served the Motion for Summary Decision upon the petitioners on April 30, 2024, including a copy of the envelope in which the Motion was contained. On June 14, 2024, in response to K.R.'s June 10, 2024 correspondence, Judge Scollo wrote to the parties stating that the Petitioners had prior legal counsel

who should have given the file to the Petitioners when his representation of the Petitioners concluded and from whom a copy of the file should be obtainable. Referencing his April 8, 2024 letter, Judge Scollo noted that the Opposition papers were due on May 20<sup>th</sup> and were now twenty-five (25) days overdue. Nonetheless, Judge Scollo granted the Petitioners until Thursday, June 20, 2024 at 12:30 p.m. to submit their Opposition papers. The Petitioners did not submit their Opposition papers by the 12:30 p.m. deadline on Thursday, June 20, 2024 and said Opposition papers were not submitted by the Tribunal's close of business at 4:30 p.m. on June 20, 2024. Therefore, the Motion was deemed to be unopposed.

### **ANALYSIS OF LEGAL AND FACTUAL ISSUES**

#### **Analysis of the Parties' Respective Positions**

The Petitioners' claim has been that the assigning of the story to M.W. was inherently outrageous and the evidence of its outrageous nature is so one-sided that only possible conclusion is that it constitutes bullying. Therefore, argue the Petitioners, the School District's determination that Ms. Bredin's action was not an act of HIB (bullying) is erroneous. The Tribunal notes that Petitioners' accusation is not rooted in established facts.

The Ringwood BOE's position is that the investigation team found that Ms. Bredin's rationale for assigning the story to M.W. was free from any kind of improper motive and, applying all HIB criteria, concluded that Ms. Bredin's actions did not constitute an act of HIB. The BOE maintains that the HIB investigation and the conclusion reached by the Anti-Bullying Specialist and the subsequent February 24, 2020 BOE vote adopting the conclusion of the Anti-Bullying Specialist were conducted in accordance with the procedures set forth in N.J.S.A. 18A:37-14, commonly referred to as "The Anti-Bullying Bill of Rights Act" and were therefore conducted properly. The Ringwood BOE's Motion is supported by Certifications and attachments.

Findings of Fact

Ringwood BOE's Motion for Summary Decision was filed on April 30, 2024. Under UAPR 1:1-12.5 a party has twenty days to file Opposition papers to his adversary's Motion for Summary Decision. I **FIND** that the Motion for Summary Decision was duly served by the Machado Law Firm upon the Petitioners as evidenced by Attorney Kleen's statement and by her submission of a copy of the envelope bearing the postmark of April 30, 2024. I **FIND** that the Petitioners did not file Opposition papers within the twenty-day period allowed for the filing of Opposition papers under UAPR 1:1-12.5. Although the Tribunal granted the Petitioners additional time (to Thursday, June 20, 20024 by 12:30 p.m.) to submit their Opposition papers, I **FIND** that no such papers were received by the Tribunal by 12:30 p.m. or even by the close of business at 4:30 p.m. on June 30, 2024.

I **FIND** that G.W. and K.W. did not allow the HIB investigators to interview M.W. I **FIND** that had M.W. been interviewed by the HIB investigators, then the investigators, the parents and this Tribunal would likely have obtained essential factual evidence regarding whether M.W. reasonably perceived that Ms. Bredin's assigning of the article to him was motivated by an actual or perceived characteristic or by a distinguishing characteristic of M.W. I **FIND** that had the HIB investigators been allowed to interview M.W., it would have enabled the investigators to explore whether or not M.W. was adversely affected by the assignment of the article, whether the assignment substantially disrupted or interfered with the orderly operation of the school, and whether the assignment adversely affected the rights of other students. I **FIND** that the parties were afforded sufficient time to conduct discovery. I **FIND** that the record before me is devoid of the types of factual evidence that is necessary to support any of the elements of a charge of HIB.

## **APPLICABLE LAW**

### The Standard for Summary Decision

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 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). See Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 74 (1954) and Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995).

### The HIB Statute

N.J.S.A. 18A:37-14 defines “Harassment, intimidation or bullying” as, 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:

[1] 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,

[2] that takes place on school property, at any school-sponsored function, on a school bus, or takes place off school grounds as provided for in N.J.S.A. 18A:37-15.3, [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 a student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property; or

- b. Has the effect of insulting or demeaning any student or group of students; or creates a hostile educational environment for the student by interfering with a student's education or be severely or pervasively causing physical or emotional harm to the student."

### Board of Education's HIB Decisions Are Afforded Presumption of Validity

The decision of a local board of education should not be disturbed absent 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 Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), *aff'd*, 46 N.J. 581 (1966)). In an appeal of a District's finding, with respect to an HIB investigation, the burden of proving "unreasonableness" of Board action is on Petitioners. G.M. v. Roselle Park Borough Bd. of Educ., 95 N.J.A.R.2d (EDU) 107, 109. 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., see also, W.C.L. and A.L. ex rel L.L. v. Tenafly Bd. of Educ., OAL Dkt. No. EDU 3223-12 (2013).

### Motion Practice Before the Tribunal

Under the OAL's Uniform Administrative Rules of Procedure (UAPR), a party wishing to oppose his adversary's Motion for Summary Decision must file written Opposition papers within twenty days of the filing of the Motion. UAPR 1:1-12.5.

**LEGAL ANALYSIS AND CONCLUSIONS**

Having found that the Petitioners did not submit Opposition papers to the Ringwood BOE's Motion for Summary Decision, I **CONCLUDE** that said Motion for Summary Decision is unopposed.

Having found that there is no evidence before me that would tend to support any of the elements of a charge of HIB, I **CONCLUDE** that the Petitioners have failed to raise any unresolved issues of material fact that would necessitate a plenary hearing.

I **CONCLUDE** that the Petitioners have failed to overcome their burden of demonstrating that the decision of the BOE in regard to the HIB charges against Ms. Bredin was tainted by bad faith or that the decision of the BOE was made in utter disregard of the circumstances before it. I further **CONCLUDE** that the determination of the BOE that Ms. Bredin did not commit an act of HIB should be and hereby is **AFFIRMED**.

**CONCLUSION**

For all of the above reasons, I **CONCLUDE** that Respondent Ringwood BOE's Motion for Summary decision should be and hereby is **GRANTED**.

**ORDER**

This matter having been brought before the Tribunal by counsel for the Respondent Ringwood BOE seeking Summary Decision, and the Tribunal having considered the submissions, and for good cause:

It is on this twenty-first (27<sup>h</sup>) day of June, 2024,

**ORDERED** that the Respondent Ringwood BOE's Motion for Summary Decision is hereby **GRANTED**; and it is further

**ORDERED** that the Tribunal's Order Granting Summary Decision in favor of the Ringwood BOE shall be immediately sent to the parties and / or their counsel by email; and it is further

**ORDERED** that both sides shall immediately acknowledge receipt of this **ORDER** by email.

I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to [ControversiesDisputesFilings@doe.nj.gov](mailto:ControversiesDisputesFilings@doe.nj.gov) or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

June 27, 2024



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DATE

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JOHN P. SCOLLO, ALJ

Date Received at Agency:

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Date Mailed to Parties:

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**LIST OF MOVING PAPERS**

Respondent's Motion for Summary Decision

Copy of April 30, 2024 Envelope from Attorney Kleen to Petitioners