

## New Jersey Commissioner of Education

### Final Decision

R.F., on behalf of minor child, O.F.,

Petitioner,

v.

Board of Education of the Township of Montclair,  
Essex County,

Respondent.

### Synopsis

Petitioner appealed the finding of the respondent Board that his son, O.F., was not the victim 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.* Petitioner alleged, *inter alia*, that his fifth-grade child had been the target of a series of incidents in which O.F. was taunted and kicked by classmates. The Board moved for summary decision, arguing that these incidents were unsubstantiated and did not constitute HIB as defined within the Act. The parties filed a Joint Stipulation of Facts and Joint Exhibits. The petitioner opposed the motion, asserting that the Board's determination that there was no HIB was arbitrary, capricious and unreasonable; further, the petitioner claimed that the Board's HIB investigation was not conducted in a timely manner.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; none of the requisite statutory elements of HIB, codified at *N.J.S.A. 18A:37-14*, were satisfied in this matter because the alleged misconduct was unsubstantiated; the Board conducted a prompt and thorough investigation in compliance with the Act's procedural requirements; and petitioner's claims related to other HIB matters that occurred after the primary incident at issue in this case, as well as his related theories regarding retaliation by the Board, are beyond the scope of the matter herein. The ALJ concluded that the Board's determination that no HIB incident occurred was not arbitrary, capricious, or unreasonable. Accordingly, the Board's motion for summary decision was granted and the petition was dismissed with prejudice.

Upon review, the Commissioner, *inter alia*, agreed with the ALJ that the Board's determination was not arbitrary, capricious, or unreasonable. However, the Commissioner rejected the ALJ's finding that the Board fully complied with the Act's procedural requirements, as the evidence demonstrates that the statutory timeframes set forth at *N.J.S.A. 18A:37-15(b)(6)* were not strictly adhered to by the Board. But both the petitioner and the Board contributed to the delays, which alone do not render the Board's determination arbitrary, capricious, or unreasonable. Accordingly, the Initial Decision of the OAL was adopted as modified herein.

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**

R.F., on behalf of minor child, O.F.,

Petitioner,

v.

Board of Education of the Township of Montclair,  
Essex County,

Respondent.

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

Petitioner challenges the Board's determination that an alleged series of incidents during which his minor child was taunted and kicked in his private area was unsubstantiated and did not constitute harassment, intimidation, or bullying (HIB) as defined within the Anti-Bullying Bill of Rights Act (the Act), *N.J.S.A. 18A:37-13 to -32*. After the matter was transmitted to the OAL, the Board moved for summary decision. The parties filed a Joint Stipulation of Facts and Joint Exhibits. Petitioner opposed the motion for summary decision by expressing disagreement with the Board's conclusion that no HIB incident occurred and claiming that it was arbitrary and capricious. Petitioner also asserted that the Board's HIB investigation was not conducted in a timely manner. Additionally, petitioner argued that the ALJ should consider the Board's retaliatory and improper motives, raised

in a separate HIB matter then pending before a different ALJ, and should allow that ALJ to determine the issue of retaliation prior to resolution of the instant matter.

Upon finding that the material facts were undisputed, the ALJ determined that the matter was ripe for summary decision. The ALJ concluded that the Board's determination that no HIB incident occurred was not arbitrary, capricious, or unreasonable. In so doing, the ALJ agreed with the Board that none of the requisite statutory elements of HIB, codified at *N.J.S.A. 18A:37-14*, were satisfied because the alleged misconduct was unsubstantiated. The ALJ further found that the Board conducted a prompt and thorough investigation in compliance with the Act's procedural requirements. Finally, the ALJ rejected as beyond the scope of the record petitioner's claims related to other HIB matters that occurred after the incident at issue in this case and his related theories regarding retaliation by the Board.

In his exceptions, petitioner argues that all three elements of the HIB statute have been satisfied and that any credibility issues regarding the reported HIB incident should be resolved through a trial. He contends that the HIB incident in this case was motivated by O.F.'s perceived gender; that O.F.'s rights were substantially interfered with as he was physically assaulted at school, which impeded his ability to safely learn; and that a reasonable person should know that assaults on a child's genitals are physically or emotionally harmful to a student. He also asserts that the ALJ erred by ruling that the Board's determination is entitled to a presumption of correctness despite evidence demonstrating that he was subject to unlawful retaliation by the Board. In response, the Board requests that the Commissioner adopt the ALJ's Initial Decision and dismiss the petition. It argues that the ALJ's Initial Decision is supported by the appropriate record, which was agreed upon by the parties, and well-established case law.

Upon review, the Commissioner adopts the ALJ's Initial Decision as the final decision in this matter, as modified. While the Commissioner agrees that the Board's determination was not arbitrary, capricious, or unreasonable, the Commissioner rejects the ALJ's finding that the Board fully complied with the Act's procedural requirements. The evidence in the record demonstrates that the statutory timeframes set forth at *N.J.S.A. 18A:37-15(b)(6)* were not strictly adhered to by the Board. However, both petitioner and the Board contributed to the delays, and the delays alone do not render the Board's determination arbitrary, capricious, or unreasonable, for the reasons explained herein. In addition, the Commissioner finds that the ALJ properly rejected as beyond the scope of this proceeding petitioner's claims related to other HIB matters that occurred after the incident at issue in this case and his related theories regarding retaliation by the Board.

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and 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. Bd. of Educ. of W. Orange*, 60 *N.J. Super.* 288, 294 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration," and the Commissioner will not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep't of Env't Prot.*, 122 *N.J. Super.* 184, 199 (Ch. Div. 1973), *aff'd*, 131 *N.J. Super.* 37 (App. Div. 1974). Regarding HIB determinations, this standard has been explained as requiring a petitioner to "demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." *G.H. and E.H. o/b/o K.H. v. Bd. of Educ. of Borough of Franklin Lakes, Bergen Cnty.*, OAL Dkt. No. EDU 13204-13 (Initial Decision Feb. 24, 2014), *adopted*, Commissioner Decision No. 157-14 (Apr. 10, 2014).

As discussed in the ALJ's Initial Decision, the Act defines HIB 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.

In summary, once the alleged written, verbal, or physical act, or any electronic communication is substantiated, a finding of HIB requires that three elements under the Act be satisfied. First, the substantiated conduct must be reasonably perceived as being motivated by any actual or perceived characteristic expressly identified in the statute, or by any other distinguishing characteristic. *Ibid.* Second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. *Ibid.* Third, one of the three conditions set forth in subsections (a), (b), and (c) must be satisfied. *Ibid.*; *Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex Cnty.*, Commissioner Decision No. 510-20 (Feb. 4, 2020).

Here, the Board could not substantiate that any verbal or physical act occurred in the school bathroom, nor could it substantiate that O.F. was ever physically assaulted by the alleged offenders. Because the alleged acts could not be substantiated, it was not arbitrary, capricious, or unreasonable for the Board to conclude that no HIB incident occurred. The record reflects that the Board's

investigation was sufficiently thorough. The anti-bullying specialist (ABS) interviewed O.F. and the alleged offenders multiple times, and reopened the investigation after petitioner provided new information. The alleged offenders denied that they ever kicked O.F., and they denied playing a “husband and wife game” involving taunts or a song. The ABS determined that no one witnessed the alleged incidents. However, the ABS recognized that a social conflict existed between the boys—likely due to O.F. being new to the school. Administrators implemented mediation sessions and a safety plan so that O.F. could utilize a private bathroom near the nurse and main office.

Because the Board determined that the alleged acts could not be substantiated, it is not possible for any of the three requisite elements of the HIB statute to be satisfied. Even if the Commissioner would have decided the outcome differently, that is an insufficient reason to overturn the Board’s decision so long as the Board has not acted dishonestly or in bad faith. *Bayshore Sewerage Co.*, 122 N.J. Super. at 199. Here, the record fails to support the conclusion that the Board acted dishonestly or in bad faith. The Board was confronted with a difficult situation wherein the alleged offenders denied that the incidents took place and no witnesses were identified. Thus, the Commissioner finds no reason to substitute his judgment for the Board’s and concurs with the ALJ that the Board’s determination declining to find that a HIB incident occurred as defined under the Act was not arbitrary, capricious, or unreasonable.

However, the Commissioner agrees with petitioner that the Board did not strictly adhere to the statutory timeframe mandated by the Act when conducting its HIB investigation. For instance, the Act requires that HIB investigations be completed within 10 school days of the initial HIB complaint. N.J.S.A. 18A:37-15(b)(6)(a). The results of the investigation must be reported to the school superintendent within two school days thereafter, and then to the Board no later than the date of its next meeting. N.J.S.A. 18A:37-15(b)(6)(b), (c). After the results of the investigation are

reported to the Board, parents shall be notified in writing of the outcome within 5 school days. *N.J.S.A. 18A:37-15(b)(6)(d)*. If a parent requests a hearing before the Board upon receiving the results of the investigation, then that hearing must be held within 10 days of the request. *Ibid*.

In this case, petitioner reported the initial allegations to O.F.'s teacher on October 11, 2022, and the ABS began investigating the following day. Petitioner made additional reports on October 15, 2022, filed a formal HIB complaint on October 20, 2022, and the ABS continued investigating during this time. The ABS finalized the investigation on November 1, 2022, which was more than 10 school days following the initial report to O.F.'s teacher. However, the investigation was finalized within 10 school days of petitioner's filing of the formal HIB complaint. Because petitioner continued to email district staff about the allegations and criticized the nature of the Board's investigation, the Board appropriately reopened the investigation on November 22, 2022, and concluded it for the second time on November 28, 2022.

While the Board hearing was not held within 10 days of petitioner's request, both petitioner and the Board contributed to the delay. Petitioner retained counsel and requested discovery, which the Board provided. The Board retained an independent investigator and considered reopening the HIB investigation again, but ultimately declined to do so based upon petitioner's objection to same. These events resulted in adjournment of the hearing. The Commissioner finds that although the Board did not precisely adhere to the Act's mandated timeframes, it acted reasonably under the circumstances in the interest of conducting a thorough investigation and the delays did not interfere with the due process rights of O.F. or petitioner, who presented testimony and other evidence at the Board hearing. The Board is reminded to adhere to the Act's timeframes in the future.

Finally, the Commissioner agrees with the ALJ that petitioner's claims related to other HIB matters that occurred after the alleged conduct in this case, and his related theories regarding

retaliation by the Board, were beyond the scope of this proceeding and properly rejected. The subsequent petitions of appeal filed and pending before other ALJs have no bearing upon the legal issue in this case, i.e., whether the Board's determination that no HIB occurred in relation to the incidents reported on October 11, 2022, and reiterated in the formal HIB complaint filed on October 20, 2022, was arbitrary, capricious, or unreasonable. There was no need for the ALJ to delay adjudication of this matter until the other pending matters were decided.

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

IT IS SO ORDERED.<sup>1</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 10, 2024  
Date of Mailing: October 11, 2024

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<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**

**SUMMARY DECISION**

OAL DKT. NO. EDU 09352-23

AGY. DKT. NO. 150-5/23

**R.F. ON BEHALF OF O.F.,**

Petitioner

vs.

**BOARD OF EDUCATION OF THE**

**TOWNSHIP OF MONTCLAIR,**

**ESSEX COUNTY,**

Respondent.

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**R.F.**, on behalf of **O.F.** petitioner, pro se

**Alexander L. D’Jamoos**, Esq., for respondent (Flanagan, Barone & O’Brien,  
LLC., attorneys)

Record Closed: August 19, 2024

Decided: September 4, 2024

BEFORE **THOMAS R. BETANCOURT**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner filed a pro se petition of appeal with the Office of Controversies and Disputes, New Jersey Department of Education (NJDOE) challenging a Harassment, Intimidation and Bullying (HIB) determination by the respondent District regarding O.F.

Said petition was dated May 30, 2023. Said petition seeks the reversal of a non-HIB finding by the Respondent District regarding Case No. 140-101122-012(A)(B).

Petitioner then submitted a supplemental filing on July 13, 2023, regarding another HIB matter involving O.M. (Case No. 066) which is not before the undersigned.

Petitioner submitted another supplemental filing on August 7, 2023, in response to Respondent's Answer.<sup>1</sup>

Respondent filed its Amended Answer with the Commissioner on September 14, 2023. Petitioner filed a response thereto dated the same date.

The Department of Education transmitted the contested case pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14f-1 TO 13, to the Office of Administrative Law (OAL), where it was filed on September 18, 2023.

A prehearing conference was held on October 13, 2023, and a prehearing order was entered by the undersigned on October 16, 2023.

A motion to quash, dated March 20, 2024, was filed on behalf of a third party, J.K. on behalf of minor B.K. to quash a subpoena for B.K. to testify at the hearing for the within matter.

Respondent, who issued the subpoena to B.K., agreed by letter dated March 22, 2024, to accept the certification of B.K. in lieu of testimony.

Respondent, by motion dated April 12, 2024, sought to bar the testimony of Carlos Mora, M.D., or in the alternative to compel Dr. Mora to provide his medical records relative to O.F.

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<sup>1</sup> Respondent's initial Answer to the Petition of Appeal was not included in the transmittal of this matter to the OAL.

Petitioner filed a reply letter brief, dated April 2, 2024, in opposition to Respondent's motion.

The genesis of the motion by Respondent to bar Dr. Mora's testimony, or in the alternative to compel Dr. Mora to produce his records, lies in a letter by Dr. Mora to Respondent's counsel, dated March 6, 2024, that he would not comply with a subpoena to produce his records.

By Order dated July 24, 2024, the motion to bar Dr. Mora's testimony was granted, and the motion to quash was deemed moot as the Respondent agreed to accept the affidavit of B.K. in lieu of testimony.

Respondent filed a motion for summary decision on July 19, 2024. Petitioner filed his response thereto on August 9, 2024. Respondent filed its reply thereto on August 19, 2024. Petitioner then submitted a sur reply and a brief filed in another HIB matter, EDU 01408-24, before the Honorable Patrice E. Hobbs, ALJ. Petitioner was advised that these additional filings would not be considered as they are not permitted pursuant to N.J.A.C. 1:1-12.5.

### **ISSUE**

Petitioner seeks a reversal of a non-HIB finding by the Respondent Board regarding an allegation of HIB by R.F. on behalf of O.F. asserting that said decision was arbitrary, capricious or unreasonable.

### **JOINT STIPULATION OF FACTS**

Introduction to the Parties and Witnesses

1. Respondent Montclair Board of Education is the public school district for the City of Montclair, New Jersey, with its central administrative offices located at 22 Valley Rd., Montclair, NJ, 07042.

2. Montclair Board of Education operates twelve (12) Montclair Public Schools including Pre-K programs, lower elementary schools, three middle schools, and one high school. Montclair Public Schools serves a diverse community and educates more than 6,100 students attending Pre-Kindergarten through 12th Grade.
3. Montclair Board of Education established District Policy 5512 - Harassment, Intimidation, and Bullying - beginning December 2016 in accordance with the New Jersey Anti Bullying Bill of Rights.
4. During the 2022-2023 school year, Dr. Jonathan Ponds served as the Superintendent of Schools as appointed by the Montclair Board of Education in 2020.
5. Montclair Board of Education operates Northeast Elementary School.
6. During the 2022-2023 school year, Dr. David Goldblatt, served as the Director of Pupil Services for Montclair Public Schools, a District-wide position.
7. During the 2022-2023 school year, Ms. Maggie Dock, served as the Mental Health Coordinator and Anti-Bullying Coordinator for Montclair Public Schools, a District-wide position.
8. Beginning September, 2022, Dr. Terence Somerville was hired by the Montclair Board of Education and assigned to serve as the Principal of Northeast Elementary School.
9. During the 2022-2023 school year, Ms. Danielle Kupperman, served as the School Social Worker and Anti-Bullying Specialist of Northeast Elementary School.
10. During the 2022-2023 school year, Ms. Kristen McCann, served as a 5th Grade Teacher of Northeast Elementary School.
11. During the 2022-2023 school year, Ms. Christie Rule, R.N., served as Nurse of Northeast Elementary School.
12. During the 2022-2023 school year, Ms. Donna Soprano, served as a Paraprofessional of Northeast Elementary School and was assigned to supervise and assist Ms. McCann's Fifth Grade classroom.

13. During the 2022-2023 school year, Petitioner O.F. attended Northeast Elementary School as a Fifth Grade Student in Ms. McCann's home room. This was his first year attending Northeast Elementary School.

14. O.F. was home schooled during the 2020 – 2022 period. (See Joint Ex. 3: 9/9/21 letter to R.F. from Asst. Superintendent of Montclair Public Schools confirming continued home schooling of O.F. for 2021-2022 school year.)

15. Petitioners R.F. and M.H.A. are O.F.'s parents/guardians, his father and mother, respectively.

16. During the 2022-2023 school year, B.K. and B.M., were also Fifth Grade students attending Northeast Elementary School and assigned to Ms. McCann's home room.

Alleged Bullying Incident and Investigations

17. On October 11, 2022, R.F. sent an email to Ms. McCann to report that "O.F. had a problem today with Bodi and Benedict, who he said were looking at his private parts and taunting him when he was peeing in the bathroom causing him to rush to close his zipper and ended up peeing on his pants." "O.F. also said they kicked him from behind and said it was the second time this has happened." (Joint Ex. 5, 10/11/22 email exchange between R.F. and Ms. Kristen McCann.)

18. Ms. McCann forwarded this email to the school principal Dr. Somerville and responded to R.F. within 30 minutes of this report. (Joint Ex. 5).

19. On October 12, 2022, R.F. sent an email to Ms. Kupperman to follow up on the report to Ms. McCann. (Joint Ex. 6, 10/12/22 email exchange between R.F. and Ms. Danielle Kupperman re: "O.F. 5th Grade").

20. On October 12, Ms. Kupperman met with O.F. who advised her of playground incident with B.M. and bathroom incident with B.K., which he had not reported to an adult.

21. On October 14, Principal Somerville met with O.F., B.M. and B.K. to work on resolving the issue through mediation.

22. On Saturday, October 15, R.F. sent an email reporting an allegation that "these incidents with being beat up and kicked in his private parts happened, according to him, over 20 times." The allegations include other sexually explicit language, teasing and

harassment. (Joint Ex. 8, 10/12/22 – 10/18/22 R.F. email exchange between R.F., Principal Terrance Somerville and Ms. Danielle Kupperman re: “O.F. 5th Grade”).

23. On October 18 and 19, Ms. Kupperman met with O.F. to investigate the allegations made in R.F.’s October 15 email. (Ex. 9, 10/18/22 & 10/19/22 handwritten notes of Ms. Danielle Kupperman).

24. On October 19, Principal Somerville and R.F. spoke on the phone confirming that HIB procedures will be initiated and to discuss what is being done to keep O.F. safe at school. (Ex. 10, 10/19/22 R.F. email to Terence Somerville re: “Concern”; Ex. 11, 10/19/22 R.F. emails with T. Somerville & D. Kupperman re: “O.F. (bullying)”).

25. On October 19 at approximately 10 PM, R.F. advises of O.F.’s stress, request that he not be pulled out of class, and demand that the accused students apologize. (Ex. 12, 10/20/22 R.F. emails with T. Somerville & D. Kupperman re: “O.F. (bullying)”).

26. On October 20 at approximately 11:30 PM, R.F. files the HIB Form 338 on behalf of O.F. against 2-3 students alleging that O.F. has been tormented and assaulted since the first week of school because “they do not like it that he answers questions in class or is good at math and science and because they know he was National Math Kangaroo champion two years in a row.” The allegations include other sexually explicit language, teasing and harassment. (Ex. 14, HIB 338 Form completed by D.Kupperman).

27. On Friday, October 21, Ms. Kupperman met with B.K. to investigate the allegations in the HIB complaint.

28. On Friday, October 21 at approximately 11 PM, R.F. sent an email reporting that O.F. broke down in frustration, a discussion between Ms. Kupperman and M.H.A. at pick up after school, and allegations that O.F. continues to be emotionally harmed through a hostile educational environment by unidentified boys in his class. (Ex. 15, 10/20/22 – 10/21/220 emails re: O.F. HIB Form 338).

29. On October 24, R.F. sent an email providing additional detail to the allegations of bullying during the first three weeks of school. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: “O.F. HIB Form 338 O.F.”).

30. On Tuesday, October 25, Ms. Dock and Ms. Kupperman continued the investigation of the HIB complaint by interviewing B.K. and B.M. (Ex. 17, 10/21/22 – 11/22/22 Investigation Notes of D. Kupperman).

31. On October 26, R.F. sent an email demanding that the accused students apologize to O.F.. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: “O.F. HIB Form 338 O.F.”).

32. On October 27, R.F. sent an email confirming that the accused students apologized to O.F. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: “O.F. HIB Form 338 O.F.”).

33. On November 1, 2022, Ms. Kupperman had completed the HIB investigation report and it was signed by Dr. Somerville. (Ex. 19, 10/26/2022 Genesis Portal and 11/1/22 Confidential HIB Investigation Report).

34. On November 7, R.F. sent an email advising of O.F.’s limp, subjecting complaints of pain, and referral to a psychiatrist. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: “O.F. HIB Form 338 O.F.”).

35. On November 7, R.F. sent an email reported another incident in the bathroom when a 4th Grade student peeped into the stall while O.F. was urinating. R.F. demanded another HIB investigation. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: “O.F. HIB Form 338 O.F.”).

36. On November 7 and 14, R.F. and Dr. Somerville correspond to schedule an in person meeting. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: “O.F. HIB Form 338 O.F.”).

37. On November 15, R.F. and M.H.A. meet with Dr. Somerville. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: “O.F. HIB Form 338 O.F.”).

38. On November 15 at 9:24 PM, R.F. sends an email criticizing the investigation, attaching O.F.’s hand written notes, and demanding an appeal. (Ex. 20, 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: “O.F. HIB Form 338 O.F.”).

39. On November 15 and 16, R.F. exchanges emails with Ms. Dock demanding the results of the investigation. (Ex. 22, 11/15/22 email from Maggie Dock to T. Somerville re: "HIB IMPORTANT" and 11/15/22 – 11/16/22 email exchange between R.F., Maggie Dock, D. Kupperman, and T. Somerville re: "Northeast Meeting Questions.")
40. On November 17, R.F. participated in a phone call with Ms. Dock adding allegations of race and gender expression discrimination. (Ex. 23, 11/17/22 – M. Dock notes re: 012-Re-opened / phone contact to father R.F.).
41. On November 22, Ms. Kupperman and Ms. Dock interview O.F. to conduct the re-opened investigation. (Ex. 27, 11/22/22 – Investigation Notes of D. Kupperman).
42. On November 22, O.F. was seen at the Nurse's Office for evaluation of a purported injury to his wrist. (Ex 25, 11/22/22 Nurse visit, Nurse Turnstile Records, O.F. Attendance Calendar).
43. On November 22, R.F.'s email speculating about the potential discrimination theories under which O.F.'s alleged bullying could have been motivated. (Ex. 24, 11/15/22 – 11/22/22 email re: Case Reopened NE O.F.).
44. On November 28, 2022, Ms. Dock had completed the HIB Investigation Report of the re-opened allegations. The report was reviewed and signed by Dr. Somerville on November 30. (Ex. 39, Confidential HIB Investigation Report Case # 140-101122-012).
45. On December 5, 2022, Superintendent Ponds affirmed the HIB Investigation Report following the re-investigation of the re-opened allegations based on alternative theories of motivating characteristics. (Ex. 39, Confidential HIB Investigation Report Case # 140-101122- 012).
46. Ms. Dock and her supervisor Dr. David Goldblatt, Director of Pupil Services, reported the results of this investigation to the Board of Education on December 21, 2022.
47. On January 3, 2022, the district issues a letter to R.F. advising of that the investigation concluded and there was insufficient evidence to meet the criteria of HIB. (Ex. 29, 1/3/23 letter M. Dock to R.F. re: Notification of Alleged Incident Ruling NON-HIB). Petitioner's Appeal of HIB Ruling).



48. On January 10, 2023, R.F. sent an email submitting his appeal brief. (Ex. 30, 1/10/23 R.F. email to T. Somerville with O.F. handwritten notes).
49. On January 20, 2023, R.F. was sent a letter by the district scheduling the appeal hearing on January 31, 2023. (Ex. 34, 1/20/23 Dr. Jonathan Ponds letter to R.F. re: Appeal hearing).
50. On January 20, R.F. confirms attendance at the hearing and advising that O.F. and Dr. Mora may also attend. (Ex. 35, 1/20/23 R.F. email to Nina DeRosa re: "Northeast R.F. HIB hearing 2/1/23 and Mental Health Evaluation Matter").
51. R.F. advised the district of his new counsel attending the hearing, now scheduled for February 1, (Ex. 37, 1/26/22 - 1/28/23 email from R.F. to M. Dock re: O.F. (Board Appeal Meeting/Document Request/New Counsel)).
52. The hearing was then adjourned to February 22, 2023.
53. On February 28, 2023, the district's attorney issued a letter advising R.F. of the appointment of an independent investigator and adjourning the hearing scheduled on February 22. (Ex. 39, 2/28/23 letter from Christine M. Martinez, Esq.re: Independent Investigator and redacted HIB documents and Confidential HIB Investigation Report Case # 140-101122-012).
54. On March 1, 2023, during Executive Session, the Montclair Board of Education heard Petitioner's appeal affirming that an HIB did not occur. (Ex. 40, 3/7/23 letter from Board Secretary re: Board Affirmed NON-HIB incident on 3/1/23).
55. On May 30, 2023, Petitioner filed the instant Petition of Appeal. (Ex. 41, 5/30/23 Pro Se Petition of Appeal re: Addendum to Case# 10122-012(A)(B)).
56. On February 7, 2024, Petitioner served its answers to Respondent's discovery demands. (Ex 42, 2/7/24 – Petitioner's Discovery Responses).
57. On January 23, 2024, Respondent served its answers to Petitioner's discovery demands. (Ex 43, 1/23/24 – Respondent's Discovery Responses)

### **FACTUAL DISCUSSION**

The Joint Exhibits and Stipulated Facts clearly establish that the Respondent undertook an investigation into the allegations made by Petitioner that O.F. had been bullied in the bathroom on October 11, 2023. The email exchanges between Petitioner, Ms. McCann, Ms. Kuperman and Mr. Somerville during the month of October 2023 show that Respondent addressed the initial complaint set forth in the first R.F. email, and continued to follow up on the changing facts, as expressed by R.F., during the October email exchanges. (Joint Exhibits 5 through 15)

The result was that Respondent found the incident did not meet the criteria to be identified as an act of HIB. A review of Ms. Kupperman's investigative notes (Joint Exhibit 17) bear out this conclusion.

Petitioner alleged additional HIB violations, and the case was reopened in late November 2023. (Joint Exhibit 24)

Ms. Kupperman again investigated, and the matter was determined to not be a HIB violation. (Joint Exhibits 27 and 29)

Respondent responded to the allegations of R.F. on October 11, 2023, and the continued allegations set forth in the emails between the parties, in a prompt manner. Respondent reopened the matter based on more allegations in November 2023. In all instances Respondent concluded that there was not a HIB violation. Petitioner does not assert one material fact that alters the above. Petitioner merely disagrees with the finding.

There are no facts presented that would lead the undersigned to conclude that Respondent's decision was arbitrary, capricious or unreasonable.

### **LEGAL ANALYSIS AND CONCLUSION**

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) 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 fact finder 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). And 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 (citation omitted).

The parties submitted a Joint Stipulation of Facts and Joint Exhibits. Those facts, as supported by the Joint Exhibits, demonstrate that no material fact is in dispute.

Having read the briefs and certification, and having reviewed the exhibits attached thereto, it is clear that there are no issues as to material fact and that the matter is ripe for summary decision.

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.”<sup>3</sup> N.J.S.A. 18A:37-13.1(f).

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and 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). Furthermore, “where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due

consideration[,]" and 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).

The Act defines HIB as follows:

[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.

Therefore, a finding of HIB requires three elements. First, the conduct must be reasonably perceived as being 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 condition is that one of the three criteria enumerated in the Act regarding the effect of the conduct must also be satisfied. Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex County, Commissioner Decision No. 51-20 (decided February 4, 2020).

The conduct must also take place 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*.

Regarding the first element, in defining HIB as an action “that is *reasonably perceived* as being motivated either by any actual or perceived characteristic . . .”, *N.J.S.A. 18A:37-14* (emphasis added), the statute requires an analysis of how the actor’s motivation is perceived and whether that perception is reasonable. It does not require an analysis of the actual motivation of the actor. *Wehbeh, supra*. Certainly, evidence that the actor was motivated by a distinguishing characteristic would meet the standard of this section of the Act, but evidence that the actor was not so motivated does not end the analysis. Here, it was not arbitrary, capricious, or unreasonable for the Board to conclude that this element was not found.

Regarding the second element, the investigation did not demonstrated the conduct substantially disrupt or interfere with the rights of other students or the orderly operation of the school. it was not arbitrary, capricious, or unreasonable for the Board that this element also was not found.

Regarding the third element, an act of HIB 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 . . .”. *N.J.S.A. 18A:37-14(a)* (emphasis added). None of these criteria require the actor to have actual knowledge of the effect that her actions will have, or to specifically intend to bring about that effect. The first requires only that a reasonable person should know there would be a harmful effect, not that the actor knows there would be such an effect. The second two criteria address only the actual effect of the act, without any reference to what either the actor or a reasonable person does or should know. *Wehbeh, supra*. As such, a board of education can find that an individual committed an act of HIB even if the individual did not intend to cause harm.

In the instant matter the investigation did not conclude that an act of HIB occurred. Accordingly, there could be no determination that the alleged act or acts,

would have a harmful effect. It was not arbitrary, capricious, or unreasonable for the Board to reach that conclusion.

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.

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). Thus, in order to prevail, those challenging an HIB decision made by a board of education “must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it.” G.H. & E.H. ex rel. K.H. v. Bd. of Educ. of the Bor. of Franklin Lakes, EDU 13204-13, Initial Decision (February 24, 2014) (citation

omitted) <<http://njlaw.rutgers.edu/collections/oal/>>, adopted, Comm'r (April 10, 2014). Also, a board's decision may be overturned if its determination violates the legislative policies expressed or implied in the governing act. J.A.H. ex rel. C.H. v. Twp. of Pittsgrove Bd. of Educ., EDU 10826-12, Initial Decision (March 11, 2013) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556 (1963), 562 (1963)), adopted, Comm'r (April 25, 2013) <<http://njlaw.rutgers.edu/collections/oal/>>.

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., EDU 14213-12, Initial Decision (May 15, 2013) <<http://njlaw.rutgers.edu/collections/oal/>>, adopted, Comm'r (June 24, 2013), the 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. And, in G.H., supra, 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." However, in J.A.H., supra, the Board's finding that an incident in which one student stuffed a crumbled 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 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."

In the instant matter, the parties submitted a Joint Stipulation of Facts and Joint Exhibits supporting the stipulated facts. These facts are agreed upon and lead to the conclusion that the Respondent comported with the law, did a HIB investigation and concluded, twice, that an act of HIB was not substantiated.

Petitioner, in his reply brief, raises issues not before the undersigned. He refers to other HIB matters involving O.F. Indeed, most of Petitioner's argument is based upon other HIB matters. The basis of Petitioner's reference to other HIB matters involving O.F. is to raise the specter of retaliation. That argument fails as the matter before the undersigned predates the additional HIB matters. Further, there are no facts asserted by Petitioner that substantiate a claim of retaliation. None.

Petitioner asserts that Respondent's actions in the instant matter were arbitrary and capricious as it failed to conduct a prompt and thorough investigation and did not follow procedural and substantive HIB law. The Joint Stipulation of Facts and Joint Exhibits belie these assertions, as noted above.

Petitioner further argues that the undersigned should not decide this matter until a matter before ALJ Hobbs is resolved. That matter, while involving O.F., is not germane to the instant matter, notwithstanding Petitioner's repeated allegations of retaliation, none of which are supported by facts.

I agree with Respondent that Petitioner seeks to introduce matters not part of this case. Much of Petitioner's arguments, and statement of facts are not relevant to the instant matter. All that the undersigned need find is whether Respondent acted in an arbitrary, capricious or unreasonable manner. Respondent did not.

It is the obligation of Petitioner to assert a material fact in dispute that would require a hearing. This was not done.

Given the totality of the facts in the instant matter I cannot conclude that the Board acted in an arbitrary, capricious, or unreasonable manner in determining that an HIB incident did occur. See In Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965); R.G.B. v. Vill. of Ridgewood Bd. of Educ., EDU 14213-12, Initial Decision (May 15, 2013) <<http://njlaw.rutgers.edu/collections/oal/>>, adopted, Comm'r (June 24, 2013); and, J.A.H. ex rel. C.H. v. Twp. of Pittsgrove Bd. of Educ., EDU 10826-12, Initial Decision (March 11, 2013) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556



(1963), 562 (1963)), adopted, Comm'r (April 25, 2013)  
<<http://njlaw.rutgers.edu/collections/oal/>>.

While the undersigned may have come to a different conclusion than Respondent in the instant matter, that does not mean that the Board acted in an arbitrary, capricious or unreasonable manner.

Accordingly, I **CONCLUDE** that Respondent's motion for summary decision must be **GRANTED**.

### **ORDER**

Based upon the foregoing, it is **ORDERED** as follows:

Respondent's motion for summary decision is **GRANTED**; and, Petitioner's petition is dismissed, with prejudice.

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.



September 4, 2024

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

September 4, 2024

Date Mailed to Parties:

September 4, 2024

db

## **APPENDIX**

Moving papers:

For Respondent:

Motion for Summary Decision with Brief  
Certification of Alexander L. D’Jamoos, Esq., with Joint Exhibits J1 through J45  
Certification of Service  
Reply Brief

For Petitioner:

Brief in Opposition to Motion for Summary Decision with Petitioner’s  
Exhibits A through Q  
Certification of Service

Joint Exhibits:

1. September 2012 Guidance for Parents on the Anti-Bullying Bill of Rights.
2. District Policy 5512- Harassment, Intimidation, and Bullying.
3. 9/9/21 letter to R.F. from Asst. Superintendent of Montclair Public Schools re: confirming continued home schooling of O.F. for 2021-2022 school year, Montclair Local article on O.F. (p27-32), and CogAT Abilities Test, results where O.F. scored in the 98th percentile.
4. 9/29/22 Nurse Visit Summary Form and 9/30/22 Nurse Visit Summary Form.
5. email exchange between R.F. and Ms. Kristen McCann.
6. 10/12/22 email exchange between R.F. and Ms. Danielle Kupperman re: “O.F. 5th Grade.”
7. 10/11/22 – 10/13/22 email exchange between Ms. Kristen McCann and Principal Terrance Somerville and Ms. Danielle Kupperman re “O.F.”
8. 10/12/22 – 10/18/22 R.F. email exchange between R.F., Principal Terrance Somerville and Ms. Danielle Kupperman re: “O.F. 5th Grade.”
9. 10/18/22 & 10/19/22 handwritten notes of Ms. Danielle Kupperman.
10. 10/19/22 R.F. email to Terence Somerville re: “Concern.”
11. 10/19/22 R.F. emails with T. Somerville & D. Kupperman re: “O.F. (bullying).”

12. 10/20/22 R.F. emails with T. Somerville & D. Kupperman re: "O.F. (bullying)."
13. 10/19/22 - 10/20/22 R.F. emails with T. Somerville & D. Kupperman re: "O.F. (bullying)."
14. 10/20/22 R.F. email submitting HIB Form 338 O.F. dated 9/9/2022.
15. 10/20/22 – 10/21/22 emails re: O.F. HIB Form 338.
16. HIB 338 Form completed by D. Kupperman.
17. 10/21/22 – 11/22/22 Investigation Notes of D. Kupperman.
18. 10/26/22 Genesis Portal and 11/1/22 Confidential HIB Investigation Report.
19. 11/1/22 – Nurse Visit.
20. 10/20/22 – 11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: "O.F. HIB Form 338 O.F.."
21. 10/27/22 letter from Dr. Li Zhang with medical records.
22. email from Maggie Dock to T. Somerville re: "HIB IMPORTANT" and 11/15/22 – 11/16/22 email exchange between R.F., Maggie Dock, D. Kupperman, and T. Somerville re: "Northeast Meeting Questions."
23. 11/17/22 – M. Dock notes re: 012-Re-opened / phone contact to father R.F.
24. 11/15/22 – 11/22/22 email re: Case Reopened NE O.F..
25. 11/16/22 – 11/21/22 emails between J.K. & D. Kupperman re: "HIB issue."
26. 11/22/22 Nurse visit, Nurse Turnstile Records, O.F. Attendance Calendar.
27. 11/22/22 – Investigation Notes of D. Kupperman.
28. 12/23/22 Fifth Grade Report Card of O.F.
29. 1/3/23 letter M. Dock to R.F. re: Notification of Alleged Incident Ruling NON-HIB.
30. 1/11/23 – Emails re: Appeal board of education and more instances of bullying (OF) enclosing Request for Appeal.
31. 1/10/23 R.F. email to T. Somerville with O.F. handwritten notes.
32. 1/12/23-1/14/22 emails re: "OF HIB matter."

33. 1/19/23 R.F. email to T. Somerville re: "OF (Bullying)."
34. Joint Exhibit 34 is a true and accurate copy of the 1/20/23 Dr. Jonathan Ponds letter to R.F. re: Appeal hearing.
35. 1/20/23 R.F. email to Nina DeRosa re: "Northeast O.F. HIB hearing 2/1/23 and Mental Health Evaluation Matter."
36. 1/22/23 - 1/26/23 email from M. Dock to R.F. re: O.F. NE update.
37. 1/26/22 - 1/28/23 email from R.F. to M. Dock re: O.F. (Board Appeal Meeting/Document Request/New Counsel).
38. Undated letter from Dr. Mora to Superintendent Pond re: Confirming attendance at 2/1/23 HIB Appeal meeting.
39. 2/28/23 letter from Christine M. Martinez, Esq. re: Independent Investigator and redacted HIB documents.
40. 3/7/23 letter from Board Secretary re: Board Affirmed NON-HIB incident on 3/1/23.
41. 5/30/23 Pro Se Petition of Appeal re: Addendum to Case# 10122-012(A)(B).
42. 2/7/24 – Petitioner's Discovery Responses.
43. 1/23/24 – Respondent's Discovery Responses.
44. the Genesis HIB Data.
45. Program for May 4, 2023, 2022-2023 National PTA Reflections Art Program National Winner O.F., Northeast for Intermediate Visual Arts-"Stop Bullying"; Leaflet for May 21, 2023 NJ PTA Reflections Student Art and Award's Showcase; Show Your Voice! National PTA Reflections 2022-2023 Award Presented to O.F., Outstanding Interpretation-Visual Arts.

Petitioner's Exhibits:

- A. Affidavit of R.F.
- B. email dated February 16, 2023 from R.F. to Ms. Kupperman
- C. email dated February 17, 2023 from R.F. to Ms. Dock
- D. email dated March 6, 2023 from Ms. Dock to R.F.
- E. email dated March 10, 2023 from R.F. to Ms. Dock
- F. email dated March 25, 2023 from R.F. to Ms. Dock
- G. email dated March 31, 2023 from R.F. to Jonathan Irizarry, Esq.
- H. email from Jonathan Irizarry, Esq. to R.F.
- I. Initial HIB determination against O.F. dated May 22, 2023; and HIB investigation form
- J. email dated July 23, 2023 from R.F. to Ms. Dock

- K. email dated June 20, 2023 from R.F. to Ms. Dock
- L. email dated July 13, 2023 from David Goldblatt to R.F.
- M. email dated August 3, 2023 from Christine Martinez, Esq. to R.F.
- N. letter dated August 23, 2023 from Cristina Hunt to R.F.
- O. letter dated September 1, 2023 from Cristina Hunt to R.F.
- P. email dated September 1, 2023 from R.F. to Ms. Hunt
- Q. Respondent Answer to Petition in HIB matter pending before ALJ Hobbs