

New Jersey Commissioner of Education

Final Decision

J.W., on behalf of minor child, J.W.,

Petitioner,

v.

Board of Education of the Borough of Upper
Saddle River, Bergen County, Brad Siegal,
and Dana Imbasciani,

Respondents.

Synopsis

Petitioner appealed the finding of the respondent Board that his son 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 that J.W. was bullied on March 30, 2023 when classmate, I.T., told J.W. that his “skin looks like poop because of the color of it.” Petitioner further alleged that J.W. has been a target of ongoing HIB by I.T., contending, *inter alia*, that I.T. had: rammed J.W., knocking him to the ground; tackled him without provocation; stabbed J.W. in the ribs with pencils; threatened to stab him in the eye with a sharpened pencil; and made a colorist comment to J.W. about having a black eye. The Board’s HIB investigation yielded an inconclusive finding, as I.T. was absent from school on the date of the alleged incident and witnesses could not corroborate that J.W. was the victim of HIB on March 30, 2023. The Board filed a motion for summary decision. Petitioner filed a motion to dismiss.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; petitioner’s claims that the Board did not comply with the Act in regard to alleged HIB acts by I.T. against J.W. that predate the March 30, 2023 incident are precluded herein, since the Board did not investigate these earlier allegations, nor rule on them in the June 26, 2023 decision that forms the basis of the within appeal; the Board’s argument that J.W. is precluded from alleging HIB acts by I.T. towards J.W. that predate March 30, 2023, is limited solely to the within petition and does not extend to other petitions petitioner may file; further, school attendance records show that I.T. was absent on March 30 and March 31, 2023. The ALJ concluded that it was not arbitrary, capricious or unreasonable for the Board to determine that the March 30th incident could not be considered an HIB qualifying event. Accordingly, the ALJ granted the Board’s motion for summary decision and dismissed the petition.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination, but found that the Board was not entitled to summary decision regarding the uninvestigated HIB allegations predating March 30, 2023, as disputed issues of fact remain about what occurred regarding the other alleged HIB incidents. Accordingly, the Commissioner remanded this matter to the OAL for additional proceedings to bring this matter to closure.

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
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Board of Education of the Borough of Upper
Saddle River, Bergen County, Brad Siegal, and
Dana Imbasciani,

Respondents.

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

Petitioner alleged that his child, J.W.,¹ was bullied when, on March 30, 2023, a fellow third grader, I.T., told J.W. that his “skin looks like poop because of the color of it.” Petitioner further alleged that J.W. has been a target of ongoing harassment, intimidation, and bullying (HIB) by I.T., with incidents going back to 2019. Specifically, petitioner alleges that I.T.: lowered his shoulder and rammed into J.W., knocking him to the ground on his back; tackled J.W. without provocation; stabbed J.W. in the ribs with pencils; threatened to stab J.W. in the eye while holding a sharpened pencil near J.W.’s eye; verbally harassed J.W. during the after-school

¹ Because petitioner and his child share the same initials, petitioner will be referred to herein as “petitioner,” and his child will be referred to herein as “J.W.” However, the Commissioner notes that J.W. is referred to as “J.J.” by parents and in the submitted exhibits.

program; and made a colorist comment to J.W. about having a black eye. Respondent (Board) commenced an HIB investigation regarding the March 30 incident and referred the matter to the District's Anti-Bullying Specialist, Sara Senger.

In her investigative report, Senger notes that she met with and interviewed J.W. and I.T., as well as six staff witnesses and three student witnesses. The student witnesses were chosen because they were in J.W.'s After Care Experience (ACE) group; in addition, J.W. said that two of these students were present at his table after the alleged incident occurred. None of the student witnesses recalled the alleged incident. Further, the adult witnesses noted that no incident between J.W. and I.T. was reported, either by J.W. or by others, on March 30 or on the days prior or after. Upon reviewing attendance records, I.T. was shown to be absent on March 30, and Senger confirmed that I.T. was absent from school from March 29 to March 31, 2023. Senger's final investigation report notes that there have been documented reports from the victim's family since 2022 through ACE. The final report also lists the factors Senger considered in reaching her recommendation, such as J.W.'s report, I.T.'s report, petitioner's email, reports from the staff witnesses, the ACE attendance reports, and the social histories of I.T. and J.W.

Senger presented her final investigation report to the Superintendent, and the Board affirmed the Superintendent's determination that the incident is not an HIB qualifying event. Petitioner appealed to the Board, and a hearing was held on June 12, 2023. Both J.W.'s and I.T.'s families appeared. Petitioner explained his understanding of the Anti-Bullying Bill of Rights Act (the Act), discussed I.T.'s alleged HIB towards J.W., and shared how the alleged HIB is affecting J.W. I.T.'s family stated that the date of the alleged conduct occurred when I.T. was absent from school and out of the country from March 29 through April 10, 2023. The Board issued a

determination on June 26, 2023, in a letter affirming the district's decision that the investigation yielded an inconclusive finding. Further, the letter notes that the decision came down to a review of the students' statements, as there was no direct evidence of I.T. making the statement to J.W., directly or in passing, on or near the supposed date of the alleged conduct.

On September 21, 2023, petitioner appealed the Board's decision to the Commissioner, claiming that the Board's determination regarding the alleged March 30 incident is incorrect and that the Board's reliance on I.T.'s absence on specific dates does not accurately reflect the broader context of persistent bullying and harassment J.W. has endured. The Board filed a response on October 6, 2023. After the matter was transmitted to the OAL, the Board filed a Motion for Summary Decision, and the petitioner filed opposition. The Board then filed its reply brief.

After reviewing the written submissions, the ALJ found that the Board's June 26, 2023 determination only addresses the March 30 incident. Accordingly, the ALJ concluded that petitioner is precluded from making any claims regarding earlier incidents as a part of this matter. However, the ALJ noted that this conclusion did not extend to other petitions petitioner may file. The ALJ rejected the Board's argument that claims regarding any earlier incidents are untimely, reasoning that the 90-day period to file a petition is triggered only after the Board issues a written decision; since the Board has not issued a written decision on the alleged HIB claims predating March 30, the 90-day countdown has not begun.

Next, the ALJ determined that the evidence² the Board submitted in support of its motion for summary decision dispels any factual dispute that J.W. has raised in support of its motion to

² I.T.'s March 2023 attendance record and Senger's final investigation report.

dismiss regarding the March 30 incident. In addition, the ALJ concluded that the final investigation report contained sufficient evidence to support a finding that the Board's decision on the March 30 incident was not arbitrary, capricious, or unreasonable. Lastly, the ALJ determined that the Board did not improperly rely on Senger's final investigation report and granted the Board's motion for summary decision.

Upon a comprehensive review of the record, the Commissioner agrees with the ALJ that petitioner did not establish that the Board's decision regarding the March 30 incident was arbitrary, capricious, or unreasonable. 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:

[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 commenced an HIB investigation regarding I.T.'s alleged comment on March 30, 2023, following petitioner's complaint on April 17, 2023. Senger's final investigation report indicates the methodology utilized in reaching her decision, including (1) listing her interview questions; (2) meeting with and interviewing J.W. twice and I.T. once; (3) meeting with and interviewing six adult witnesses and three student witnesses from J.W.'s ACE group, two of whom J.W. said were at his table after the alleged incident; and (4) considering petitioner's email, the social histories of I.T. and J.W., the ACE attendance reports, and the reports of J.W., I.T., and

the adult witnesses. None of the witnesses recalled the incident, and the adult witnesses noted that no one made reports regarding I.T. on March 30, or in the days prior or after. Further, Senger's review of the attendance records showed that I.T. was absent from school from March 29 to March 31. Given the witness statements and the attendance report, the Commissioner concurs with the ALJ that the final investigation report contains sufficient evidence to support a finding that the Board's decision regarding the March 30 incident was not arbitrary, capricious, and unreasonable.

Petitioner argues that the Board failed to consider that although J.W. might have provided the incorrect date, J.W. and I.T. were both at school on March 27 and March 28 and, given I.T.'s past behavior towards J.W., the incident could have easily taken place on either of those dates. In addition, petitioner contends that the Board failed to consider the possibility that I.T. may have been in aftercare on March 30, despite being absent from school. However, these possibilities would – at most – balance the other evidence on the record that neither J.W., nor others, made reports regarding I.T. on March 30, or on the days prior. While the evidence may leave room for two opinions regarding whether I.T. made the statement, it is insufficient to overturn the Board's decision, since it does not demonstrate that the Board's decision was arbitrary, capricious, or unreasonable.

Petitioner also contends that the Board's investigation was inadequate because they had access to video camera footage, which, if used, could have either captured more witnesses or captured the exchange between I.T. and J.W. Petitioner further argues that based on the seriousness of the HIB activity, the Board's failure to utilize information they had sole control over and access to led them to reach a decision that is arbitrary, capricious, and unreasonable.

However, for the Commissioner to hold that a review of the video evidence is more reasonable than the investigative steps the Board has taken would require the Commissioner to substitute his judgment for that of the Board's, which is impermissible. Thus, the Commissioner agrees with the ALJ that the Board did not improperly rely on Senger's final investigation report in reaching its decision regarding the March 30 incident. Accordingly, the ALJ correctly granted the Board's motion for summary decision with regard to the March 30, 2023 incident.

The Commissioner concurs with the ALJ in rejecting the Board's argument that J.W. is time-barred from making any HIB claims concerning incidents that predate March 30, 2023. A written board decision triggers the 90-day limit to file a petition under *N.J.S.A. 18A:37-15(b)(6)(e)*. The record indicates that the Board has not issued a written decision on petitioner's other HIB allegations. With no event triggering the start of the 90-day limit, any argument made by the Board as to lack of timeliness of these claims must fail.³

In contrast, however, the Commissioner disagrees with the ALJ that petitioner is precluded from making claims in this matter regarding the Board's handling of alleged HIB acts by I.T. against J.W. on dates other than March 30, 2023. The petition of appeal argues that the Board has ignored and failed to investigate prior complaints. Accordingly, the Commissioner concludes that the earlier incidents are within the scope of the petition filed in this matter, and petitioner is not precluded from making these additional HIB claims as part of the current petition.

³ Alternatively, the Commissioner finds that the Board's June 26, 2023 letter would appropriately be considered as the triggering event for petitioner's time to appeal the Board's inaction regarding the other HIB complaints, as the letter functioned as the Board's notice to petitioner that no decision was being made regarding the other incidents. Accordingly, petitioner's appeal on September 21, 2023 was within 90 days of the decision and therefore timely.

The Commissioner concludes that the Board is not entitled to summary decision on petitioner's claims regarding the HIB allegations on dates other than March 30, 2023. Disputed issues of fact remain about what occurred regarding the other HIB incidents, and the record does not contain sufficient information to determine whether the Board's actions with regard to these complaints violate the Act as alleged by petitioner.

Accordingly, the Initial Decision is adopted in part and modified in part. This matter is remanded to the OAL for further proceedings consistent with this decision.

IT IS SO ORDERED.



ACTING COMMISSIONER OF EDUCATION

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



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

MOTION SUMMARY DECISION

OAL DKT. NO. EDU 10912-23

AGENCY DKT. NO. 255-9/33

J.W. ON BEHALF OF MINOR CHILD J.W.,

Petitioners,

v.

**BOARD OF EDUCATION OF THE BOROUGH
OF UPPER SADDLE RIVER, BERGEN COUNTY,**

BRAD SIEGAL, Ed. D AND DANA IMBASCIANI,

Respondents.

Jorge Luis Vasquez, Jr. Esq., for petitioners, (Vasquez Segarra, LLP, attorneys)

Arsen Zartarian, Esq., for respondents (Cleary Giacobbe Alfieri Jacobs, LLC,
attorneys)

BEFORE **JULIO C. MOREJON**, ALJ:

Record Closed: July 15, 2024

Decided: August 27, 2024

STATEMENT OF THE CASE

The matter was referred to the school's Anti-Bullying Specialist after petitioner J.W. reported an incident of harassment, intimidation, and bullying (HIB) by student, I.T., who on March 30, 2023, allegedly told the minor child J.W. that his "skin looks like poop

because of the color of it". Said incident prompted an HIB investigation by the Anti-Bullying Specialist, pursuant to N.J.S.A. 18A:37-15 and N.J.A.C. 6A:16-7.7, resulting in an inconclusive finding by the Board of Education. Did the Anti-Bullying Specialist properly investigate the HIB allegations in accordance with the procedural safeguards laid out in the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13 et seq., that resulted in the Board's determination that the incident not be considered an HIB qualifying event? Yes.

PROCEDURAL HISTORY

Petitioner, J.W. on behalf of the minor child, J.W., (referred to by the parents and in the submitted exhibits as "J.J.") a third grade student at Edith A. Bogert Elementary School (the School), which is part of Respondent Upper Saddle River Board of Education (the Board), reported an incident of harassment, intimidation, and bullying (HIB) to the School that allegedly occurred during the 2022-2023 school year. Specifically, J.W. alleges that on or about March 30, 2023, I.T. another student in J.J.'s third-grade class allegedly told J.J. that his "skin looks like poop because of the color of it." During the School's spring recess from April 3-April 7, 2023, the student told his parents what I.T. had told him about the color of his skin. On April 10, 2023, the School resumed classes.

On or about April 17, 2023, J.W. reported the incident to the School. Sara Senger (Senger) the School's Anti-Bullying Specialist, investigated the incident, pursuant to N.J.S.A. 18A:37-15 and N.J.A.C. 6A:16-7.7. Senger's Final Investigation Report was presented to Superintendent Brad Siegel, Ed. D., (Superintendent), on May 1, 2023, and the Board affirmed the Superintendent's recommendation that this incident not be considered an HIB qualifying event.

Thereafter, this matter was appealed to the Board for a hearing pursuant to N.J.S.A. 18A:37-15 and N.J.A.C. 6A:16-7.7, which was held on June 12, 2023. Following the hearing, the Board affirmed that the alleged incident not be considered an HIB qualifying event and notified the parents of this action by way of letter from the Board Secretary/School Business Administrator dated June 26, 2023. In the June 26, 2023, letter, the Board concluded:

After a careful and thorough deliberation, and application of the HIB definition to the information presented, [the Board] determined to affirm the district's determination that the investigation yielded an inconclusive finding. The decision came down to a review of the [students'] statements, as there was no direct evidence of the accused student making the statement to [J.W.], directly or in passing, on the date or near the dates surrounding the alleged conduct. . . a finding of HIB solely applies where the conduct matches the precise definition of HIB that the State created.

On September 21, 2023, J.W. filed an appeal of the Board's June 26, 2023 determinations of an "inconclusive" finding of HIB to the Commissioner of Education (Commissioner). In their appeal, petitioner requested the Commissioner (1) to perform "a comprehensive review of all incidents of harassment, intimidation, and bullying involving [J.W.]; (2) to reconsider HIB classification of the "skin looks like poop because of the color of it" verbal insult; (3) to hold accountable the Board's administrators for their failure to appropriately address petitioners' complaints; (4) to implement corrective measures to prevent future incidents of HIB; (5) to provide protection and support for [J.J.]; and (6) to implement a monitoring and reporting system to track respondent's progress in addressing HIB complaints.

The Board filed its response on October 6, 2023. This matter was then transmitted to the Office of Administrative Law as a contested matter on or about October 17, 2023.

On March 8, 202, the Board filed the within motion for summary decision. On April 8, 2024, petitioners filed its opposition to the MSD. On April 14, 2023, respondent filed its reply brief. I closed the record on July 15, 2024.

Issue

The issue before this tribunal is whether, based on the available evidence, the Board's reliance on the investigation into the alleged verbal incident on March 30, 2023,

between J.J. and I.T. and the Board's determination that the investigation yielded a finding that there was no HIB violation was arbitrary, capricious, or unreasonable.

Arguments

The Board:

The Board argues that as a board of education, its actions are "entitled to a presumption of correctness" and should not be upset unless there is an affirmative showing that the decision was arbitrary, capricious, or unreasonable. The Board contends that this matter is limited to the appeal of the Board's June 26, 2023 determination. The Board further argues that its investigation of the incident between J.J. and I.T. was prompt and "appropriate." In that regard, the Board contends that Senger "identified all appropriate student and adult witnesses and none of [those] individuals were aware of any. . . incident." The Board also reiterates that I.T. was out of the country on the date of the alleged incident with J.J.

As for petitioners' allegations that the Board failed to address all the allegations of HIB between I.T. and J.J., the Board argues that J.W. is "conflating prior complaints/investigations" and those matters are time-barred pursuant to N.J.S.A. 18A:37-15(e).

J.W.

J.W. contends that the Board failed to investigate all the allegations of HIB they raised against I.T. J.W. asserts that the Board improperly conducted its investigation into the "skin looks like poop because of the color of it" verbal insult. First, J.W. argues that Senger failed to identify and interview all appropriate student and staff witnesses. Second, J.W. asserts the Board improperly relied "on a single date", ignoring a seven-year-old's limited grasp of time and days of the week. Third, J.W. states that the Board ignored all of J.W.'s other allegations of HIB by I.T. toward J.J. over the course of four years. Finally, J.W. argues the Board failed to access all available evidence, like video recordings. Based on the foregoing, J.W. posits that the Board's failure to investigate

thoroughly all the HIB claims against I.T., is arbitrary, capricious, and unreasonable, and creates a genuine issue of material fact.

FINDINGS OF FACT

Based upon the documents submitted in support of and in opposition to the motion for summary decision, I **FIND** the following as **FACT**:

J.J., was a third-grade student attending the School in the Board's school system in the spring of the 2022-23 school year when he claimed to have been involved in an HIB incident. Specifically, that I.T. told J.J. that his "skin looks like poop because of the color of it." Although the incident allegedly occurred on March 30, 2023, it was not reported to school officials until on or about April 18, 2023, which prompted an HIB investigation, pursuant to N.J.S.A. 18A:37-15. The matter was referred to Senger, the District's Anti-Bullying Specialist, to conduct an investigation in accordance with N.J.A.C. 6A:16-7.7.

As part of her HIB investigation, Senger's investigation shows that she met with and interviewed J.J., I.T., six (6) staff witnesses and three (3) student witnesses. The student witnesses, including two students whom J.J. said were present at his table after the alleged incident occurred, were chosen because they were in the same After Care Experience group as J.J. Senger's investigation reveals that none of the student witnesses recalled the alleged incident. Further, the adult witnesses noted that neither J.J., nor others, made reports regarding I.T. on March 30, 2023, the date of the alleged incident, or the days prior or after. The adult witnesses also noted that an incident between J.J. and I.T. was never reported. Upon reviewing attendance records, I.T. was shown to be absent on March 30, 2023. Senger confirmed that I.T. was absent from school from March 29, 2023 to March 31, 2023.

Senger's final investigation discloses factors that she considered in considering the circumstances. Including prior documented reports, J.J. and I.T.'s prior relationship, and the facts that were relevant to her determination. See, Exhibit B, Certification of Sara Senger. Further at the HIB hearing before the Board, I.T.'s family appeared and stated

that the date of the alleged conduct occurred when I.T. was absent from school, and also out of the country with the family from March 29 through April 10, 2023.

LEGAL ANALYSIS AND CONCLUSIONS

A party may move for summary decision upon any or all substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion for summary decision shall be served with briefs and may be served with supporting affidavits. Ibid. "The decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). As set forth more fully below, the Board's motion for summary decision establishes that there is no genuine issue of any material fact as to the Board's decision concerning the March 30, 2023 incident, and the Board is entitled to prevail as a matter of law because its investigation discloses that no violation of the Anti-Bullying Bill of Rights Act occurred on the date of the alleged incident on March 30, 2023.

In their petition of appeal, J.W. asks for a comprehensive review of all incidents of harassment, intimidation, and bullying involving J.J. and I.T. since 2022 through and including March 30, 2023, the date of the alleged incident herein. The record reveals that Senger's Final Investigation Report indicates that there were documented reports from J.J.'s family since 2022 through March 2023, regarding alleged HIB conduct by I.T. towards J.J., and that no prior actions were taken by the School. However, the record also reveals that the Board's decision of June 26, 2023, only addressed J.W.'s complaint made on April 18, 2023, concerning the March 2023 incident, which petitioner now appeals.

In response to J.W.'s petition and his arguments in defense of the underlying motion, the Board asserts that J.W. is precluded from making these additional claims herein as they have not complied with the ninety-day rule for filing an appeal before the Commissioner from a Board's action as set forth in N.J.S.A. 18A:37-15(b)(6)(e). N.J.S.A. 18A:37-15(b)(6)(e) provides, in relevant part, "the board's decision may be appealed to the Commissioner of Education, in accordance with the procedures set forth in law and

regulation, no later than 90 days after the issuance of the board's decision. (emphasis added).

To the extent that J.W. argues that the Board is not in compliance with the requirements of the Anti-Bullying Act concerning any alleged HIB acts by I.T. toward J.J., that pre-date the March 30, 2023, incident, which were not investigated, I **CONCLUDE** that J.W. is precluded from making these additional claims herein, as they are claims that the Board did not rule upon on June 26, 2023, pursuant to N.J.S.A. 18A:37-15(b)(6)(e) which forms the basis of J.W.'s petition herein.

I **CONCLUDE** that the Board's argument that J.W. is precluded from making any alleged HIB complaints by I.T. toward J.J. that predate March 30, 2023, under N.J.S.A. 18A:37-15(e), is solely limited to the petition filed herein and no other petitions that maybe filed by J.W., as the ninety-day rule to file a petition under said statute is triggered after the Board has issued a written decision, which did not occur herein for the reasons stated.¹

The Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13 to -32.1 and N.J.S.A. 37-37.1 to -37.5 (Anti-Bullying Act), is designed "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises." N.J.S.A. 18A:37-13.1(f). Under the act, 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,

¹ If J.W. believes that the Board did not comply with the Anti-Bullying Act's provision regarding an investigation of an HIB allegation, they may consider filing their complaint(s) with the Executive County Superintendent of Schools, who is responsible for ensuring that districts within its county abide by the mandates of the Anti-Bullying Act under N.J.S.A. 18A:37-25.

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].²

Under the Anti-Bullying Act, parents or guardians of a student who is the subject of a HIB investigation are “entitled to receive information about the investigation . . . including the nature of the investigation, whether the district found evidence of [HIB], or whether discipline was imposed or services provided to address the incident of [HIB]” and “may request a hearing before the [school] board after receiving the information, and the hearing shall be held within 10 days of the request.” N.J.S.A. 18A:37-15(b)(6)(d).

School administrators must investigate HIB allegations in accordance with the procedural safeguards laid out the Anti-Bullying Act. See N.J.S.A. 18A:37-15(b)(6)(a) through (f) and 16.d. Under the 2022 amendments, school districts were permitted the use of a “preliminary determination” for reports of HIB. N.J.A.C. 6A:16-7.7(a)(2)(ix)(1).

It is well settled that an action by a local board of education “is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing

² Although a school district has “local control over the content” of their HIB policy, the definition of HIB shall be “no less inclusive” than that set forth in N.J.S.A. 18A:37-15. Respondent’s HIB policy, which was recently amended in January 2023 and appears on respondent’s website, mirrors the language of the Anti-Bullying Act.

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, to prevail, those challenging a 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), adopted, Comm’r (April 10, 2014), <http://njlaw.rutgers.edu/collections/oal/>. 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, 562 (1963)), adopted, Comm’r (April 25, 2013), <http://njlaw.rutgers.edu/collections/oal/>.

In the within matter, the Board determined that the comment to J.J. on March 30, 2023, that his “skin looks like poop because of the color of it” was not an HIB because there was not sufficient evidence, based on the investigation, to confirm whether incident occurred. The Board disqualified finding the incident occurred based on the required elements for an HIB. Currently, the issue before this tribunal is whether, based on the available evidence, the Board’s reliance on the investigation into the verbal incident between J.J. and I.T. on or about March 30, 2023, was arbitrary, capricious, or unreasonable. In support of its motion, the Board attached (1) The School’s attendance calendar for the month of March 2023 for I.T., (2) Senger’s final investigation report, and (3) a copy of the June 26, 2023, letter which determined that the HIB investigation yielded an inconclusive finding.

I **CONCLUDE** that the evidence the Board submitted in support of its motion dispels any factual disputes that J.W. has raised in support of its motion to dismiss the motion for summary decision as to the March 30, 2023, incident, in accordance with N.J.A.C. 1:1-12.5(b). First, the attendance record of I.T., shows when I.T. was present, absent, or tardy from school on the date of the incident. Moreover, the Board’s submission of the attendance document further strengthens its decision. Second, Senger’s final investigation report provides a methodology as to how she would conduct her investigation and the results of the same after she considered the documentary proofs and witness statements- essential information necessary for her to render a decision.

As a result, I **CONCLUDE** that the final investigation report contains sufficient evidence to support a finding that the board's determination of the March 30, 2023, incident, was not arbitrary, capricious, or unreasonable. Further, I **CONCLUDE** that the Board did not improperly rely upon the Anti-Bullying Specialist's final investigation which did not find that an allegation of harassment, intimidation, or bullying occurred on March 30, 2023, in violation of the Anti-Bullying Act, and that the Board is entitled to summary decision as a matter of law.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the Board's motion for summary decision is **GRANTED**, and J.W.'s petition be **DISMISSED**.

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

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this case. 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 under 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.

August 27, 2024

DATE



JULIO C. MOREJON, ALJ

Date Received at Agency:

August 27, 2024

Date E-Mailed to Parties:

August 27, 2024

lr

APPENDIX

WITNESSES

For Petitioner:

None

For Respondent:

None

EXHIBITS

For Petitioner:

Notice of Motion for Summary Decision; Letter Memorandum in Support of Motion for Summary Decision; Certification of Sara Senger in Support of Respondent's Motion for Summary Decision; Certification of Service, and Sur-reply.

For Respondent:

Notice of Opposition of Motion for Summary Decision; Letter Memorandum in Support of Petitioner's Opposition of Respondent's Motion for Summary Decision; Certification of Jason Wallace, Sr. in Support of Petitioners' Opposition of Respondent's Motion for Summary Decision; and Certification of Service.