

New Jersey Commissioner of Education

Decision

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

Petitioner,

v.

Board of Education of the Camden County
Technical Schools, Camden County,

Respondent.

Synopsis

Petitioner challenged the decision of the respondent Board which concluded that an unfounded harassment, intimidation, or bullying (HIB) complaint naming S.P. as the perpetrator was not filed for retaliatory reasons. The Board maintained that although it ultimately determined that S.P.'s actions did not meet the statutory definition of HIB, the HIB complaint at issue was legitimate, warranted investigation, and was not retaliatory. As background, S.P. was involved in an incident in November 2022 wherein he asserted that he was the victim of ridicule and bullying when A.W., a fellow student, threw food at him in the school cafeteria. Subsequently, an investigation determined that the incident constituted HIB against S.P. by A.W., and consequences were issued to A.W. In January 2023, A.W.'s mother filed a complaint against S.P., alleging an HIB incident involving threatening gestures and name calling against A.W. An investigation followed which failed to establish that S.P. had committed HIB against A.W. Following this second HIB investigation, petitioner filed a complaint on S.P.'s behalf alleging that A.W. had retaliated against S.P. for filing the original HIB complaint against her son. A hearing was held in this contested matter on May 22, 2024 at the Office of Administrative Law (OAL).

The ALJ found, *inter alia*, that: an action by a board of education is entitled to a presumption of correctness unless it is proven to be arbitrary, capricious, or unreasonable; under the Act, "harassment, intimidation, or bullying" is broadly defined as any gesture, any written, verbal, or physical act, or any electronic communication that is reasonably perceived as motivated by any actual or perceived distinguishing characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical, or sensory disability, that takes place on school property and substantially disrupts the orderly operation of the school; in the instant case, the testimony of the school principal and member of the HIB investigation team provided reasonable and sound justification as to why the HIB complaint filed by A.W.'s parents did not constitute retaliation against S.P. The ALJ concluded that the Board's decision was not arbitrary, capricious or unreasonable; accordingly, the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its determination. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

New Jersey Commissioner of Education
Final Decision

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

Petitioner,

v.

Board of Education of the Camden County
Technical Schools, Camden County,

Respondent.

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

In this matter, petitioner P.P. appeals a May 18, 2023, decision by respondent, Board of Education of the Camden County Technical Schools (Board), which concluded that an unfounded harassment, intimidation, or bullying (HIB) complaint naming S.P. as the perpetrator was not filed for retaliatory reasons.

The Anti-Bullying Bill of Rights Act (the Act), *N.J.S.A. 18A:37-13 to -32*, prohibits students from engaging in “retaliation or false accusation” against victims of HIB. *N.J.S.A. 18A:37-16*. Petitioner asserted that the HIB complaint filed by the parents of another student, A.W., was initiated in retaliation for a prior substantiated HIB complaint wherein the Board found that A.W. had committed an act of HIB against S.P. The Board maintained that although it ultimately

determined that S.P.'s actions did not meet the statutory definition of HIB, the HIB complaint at issue was legitimate, warranted investigation, and was not retaliatory.

Following a contested hearing at the OAL, the Administrative Law Judge (ALJ) concluded that the Board's decision was not arbitrary, capricious, or unreasonable. In support of that conclusion, the ALJ cited the testimony of Chantell Green, school principal and member of the HIB investigation team, who provided "a reasonable, plausible, and sound justification why" the HIB complaint filed by A.W.'s parents did not constitute retaliation against S.P. Initial Decision, at 4.¹

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).

Upon review, the Commissioner concurs with the ALJ that the Board's decision was not arbitrary, capricious, or unreasonable. The record lacks evidence to support petitioner's contention that the HIB complaint filed against S.P. was an act of retaliation. Thus, N.J.S.A. 18A:37-16 was not violated. Moreover, there is no indication that the Board's decision

¹ The record does not contain hearing transcripts.

lacked a rational basis or was induced by improper motives. The Commissioner finds no reason to substitute his judgment for that of the Board of Education.

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

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 13, 2024
Date of Mailing: November 13, 2024

² 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

OAL DKT. NO. EDU 07418-23

AGENCY DKT. NO. 193-7/23

P.P. ON BEHALF OF S.P.,

Petitioner,

v.

CAMDEN COUNTY TECHNICAL SCHOOLS

BOARD OF EDUCATION, CAMDEN COUNTY,

Respondent.

P.P., on behalf of his minor child, **S.P.**, petitioner, pro se

David C. Patterson, Esq., for respondent (Maressa Patterson, LLC, attorneys)

Record Closed: May 28, 2024

Decided: October 10, 2024

BEFORE **CARL V. BUCK III**, ALJ:

STATEMENT OF THE CASE

Petitioner, P.P. on behalf of S.P, challenged the decision of the respondent Camden County Technical Schools Board of Education, Camden County (Camden or Board) that an incident filed against S.P. by a classmate (Student A or A.W.) did not constitute harassment, intimidation, or bullying (HIB) under District Policy 5512 as defined in the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-14 and was, in fact, retaliation regarding against S.P. regarding another matter.

PROCEDURAL HISTORY

On July 21, 2023, petitioner filed a pro se petition of appeal with the State of New Jersey, Department of Education, Commissioner of Education, Office of Controversies and Disputes. On August 9, 2023, respondent filed its answer. The matter was transmitted to the Office of Administrative Law on August 14, 2023, to proceed as a contested matter under N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

A hearing was held on May 22, 2024. The record closed on May 28, 2024, after receipt of the parties' post-hearing submissions. A request for an extension for issuance of this Initial Decision was requested and granted.

FACTUAL DISCUSSION AND FINDINGS

Having heard the testimony presented at the hearing, and having reviewed the documentary evidence, I **FIND**:

At all relevant times to this action S.P. was a student at the Camden County Technical School, Gloucester Township Campus (School). On or about November 7, 2022, S.P. was involved in an event at the school cafeteria where S.P. asserts he was a victim or ridicule, was bullied and had food thrown at him by A.W., another student.

After reporting this to the School by P.P., the School conducted an investigation of the event of November 7, 2023, determining that S.P. was the victim of a HIB incident instigated by A.W. The results of the investigation were sent to P.P. and consequences were issued to A.W.

In January 2023 the mother of A.W. filed a complaint against P.P. alleging HIB incident relating to threatening gestures and name calling. An investigation was conducted, and it was found that a HIB by S.P. as against A.W. did not occur. Shortly after the result of this investigation was issued, P.P. filed a second HIB on S.P.'s behalf against A.W. alleging that the immediate prior allegation (of the filing of a HIB of A.W. by P.P.) constituted retaliation against S.P. An investigation by the school was conducted

and it was determined that this filing (of A.W. against S.P.) was not a HIB but it was not a retaliation against S.P. Both parents were informed. P.P. filed an appeal to the Board of Education challenging the decision by the HIB team that this was not HIB. The appeal was heard on May 17, 2023. The parents of S.P. and HIB team presented their respective positions to the board. No recording of that meeting exists. Subsequent to presentations the board agreed with the HIB team and advised the parents. The parents appealed.

Issue: Was the action taken by A.W.'s parent a retaliatory action against S.P.

Chantell Green is the principal of the School. She is part of the HIB investigation team and has been for approximately four years. She was also a HIB team member at her prior school and has had approximately fifteen years of experience with HIB. She described the HIB process and the investigation process and how the investigation progresses. If the investigation determines HIB occurred there are a variety of recommendations for the perpetrator. If parents notified the school of a suspected HIB, they are notified of the investigation's findings. However, no action is taken until the matter is reviewed by the Board. (R-8.)

She expressed a clear knowledge of her role as the principal in the HIB investigation process. Based on the consistency of the events as stated in the investigation report, her clear understanding of her role in a HIB investigation, and her knowledge of what constitutes a HIB violation, I accept the testimony of Ms. Green as credible.

Regarding the first investigation (R-2) wherein P.P. notified the school regarding the actions of A.W. Ms. Green testified to the process, notification of the parties and related activities. She provided a reasonable, plausible, and sound justification why A.W.'s actions against S.P., based on the facts and circumstances did constitute HIB. The parents of S.P. expressed a desire to meet with administrators but due to family events this did not occur. No appeal of this action was made.

Regarding the second investigation (R-3) wherein the mother of A.W. filed HIB against S.P., Ms. Green provided a reasonable, plausible, and sound justification why S.P.'s actions against A.W., based on the facts and circumstances did NOT constitute HIB.

Regarding the third investigation (R-4) wherein P.P. filed an action alleging that A.W.'s action against S.P. was retaliation for the initial complaint, Ms. Green provided a reasonable, plausible, and sound justification why S.P.'s actions against A.W., based on the facts and circumstances did NOT constitute a retaliation. Specifically in order to find HIB, there needs to be a distinguishing characteristic and disruption in the education of the student present. None could be found.

P.P. then filed an appeal of that action, contending that the action of A.W. DID constitute a retaliatory act. The appeal of P.P. was heard by the Board who did not agree with P.P. and stated that the filing of A.W. against S.P. did NOT constitute a retaliatory action. On May 18, 2023, the Board notified P.P. of the Board's decision of May 17, 2023, denying P.P.'s contention that the act of A.W. was retaliatory.

P.P. expressed concerns regarding his ability to record the interviews during the investigation process. P.P. alleged a number of HIB's against his son, notwithstanding that they are not the subject of this matter. A partial recording of a November 18, 2023, meeting was submitted by P.P. over the objection of the Board. The Board correctly noted that this was for the first investigation which was found to have been a HIB against S.P. and was not appealed.

P.P. expressed that physical evidence in S.P.'s clothing and other factors led to their existing a HIB against S.P. Further a retaliatory act by A.W. is also present.

I accepted the testimony of P.P. as being motivated by his concern for S.P. and S.P.'s safety and well-being.

While petitioner expressed his dissatisfaction with the process of discovery and the statutory language, respondent and this tribunal are required to follow the definition of HIB provided in N.J.S.A. 18A:37-14.

CONCLUSIONS OF LAW

It was the intent of the Legislature in enacting the “Anti-Bullying Bill of Rights Act” 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, -13.2.

N.J.S.A. 18A:37-14 and District Policy 5512 define harassment, intimidation, or bullying in pertinent part as anything that could be “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” and “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.

S.P.’s parents believed that the focus of the school’s administration, their HIB investigation team and the Board was not accurate in their consideration of P.P.’s contention that the filing by A.W. against S.P. constituted a retaliatory HIB. P.P.’s position dealt with underlying considerations of racism and other invidious concerns.

As explained by Ms. Green, there was no distinguishing characteristic found in the investigation of A.W.'s action. The Board's finding that no HIB occurred because there was no distinguishing characteristic does not diminish what happened to S.P. The Appellate Division in K.L. v. Evesham Township Board of Education, 423 N.J. Super. 337, 350–51 (App. Div. 2011), succinctly stated:

The statutory definition of “bullying” does not include all violent or aggressive conduct against a student. The definition, both before and after adoption of the 2010 Anti-Bullying Act, refers to conduct that is “reasonably perceived as being motivated” by a “distinguishing characteristic” of the victim, such as, “race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory [disability].” N.J.S.A. 18A:37-14. The statute has not limited “distinguishing characteristic” to those specifically enumerated, but it has consistently required such a perceived motivation.

Thus, harmful or demeaning conduct motivated only by another reason, for example, a dispute about relationships or personal belongings, or aggressive conduct without identifiable motivation, does not come within the statutory definition of bullying.

Thus, an incident may be physically, psychologically, or socially harmful, but still not meet the HIB criteria.

Petitioner questioned why other factors as to the investigation process; specifically, the interview process, were not considered. Under N.J.S.A. 18A:37-14, the required element is “how the actor’s motivation is perceived and whether that perception is reasonable.” Wehbeh v. Bd. of Educ. of Verona, 2020 N.J. AGEN LEXIS 50 (Feb. 4, 2020), at *8. To determine whether the perception is reasonable, “the alleged victim [need not] correctly assess the actor’s motivation, as such a requirement would convert the analysis from one about reasonably perceived motivation to one about actual motivation and would inappropriately place the burden on the alleged victim to divine the intent of the actor.” Ibid., n.3. The HIB investigation by Ms. Green reasonably showed that A.W.’s allegation against S.P. did not meet the burden of HIB.

After hearing P.P.'s appeal, the Board voted to affirm the decision that the A.W.'s complaint did not constitute a retaliatory HIB. Petitioner presented his arguments to the Board, but the Board was not persuaded that their prior decision was incorrect.

The decision of a board acting within the scope of its authority 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. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). Similarly, the action of a board "which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives." Kopera v. Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). The petitioner contended that the Board was wrong in not finding that A.W.'s HIB did not constitute a retaliatory filing. Petitioner believes that the HIB policy must be revised to protect all students; nevertheless, a finding of HIB requires that the conduct be reasonably perceived as being motivated by an actual or perceived characteristic. No such motivation or distinguishing characteristic or difference has been identified.

In view of the foregoing, I **CONCLUDE** that the Board's determination that the filing of A.W. against S.P. did not constitute HIB – and further, did not constitute retaliatory HIB was not arbitrary, capricious, or unreasonable.

ORDER

It is hereby **ORDERED** that the petitioner's appeal is **DISMISSED**.

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 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.

October 10, 2024
DATE



CARL V. BUCK, III., ALJ

Date Received at Agency:

Date Mailed to Parties:

CVB/tat

APPENDIX

WITNESSES

For Petitioner:

P.P.

For Respondent:

Chantell Green, Principal

EXHIBITS

For Petitioner:

- 1a Email reporting HIB1#9159, November 7 to November 14, 2022
- 1b Recording of HIB1#9159 interview, November 18, 2022
- 1c HIB1 #9159 - Investigation report, November 15, 2022
- 1d Photo of stain on pants, November 7, 2022
- 2a Letter requesting to be present during interviews, June 7, 2022
- 2b Response letter from school, June 17, 2022
- 2c Recording of Initial call HIB2#9452, January 19, 2023
- 2d Search for term "in loco parentis" currently on website
- 2e Recording of interview HIB2#9452, January 20, 2023
- 2f HIB2 #9452 - Investigation report, January 19, 2023
- 2g Certified statement provided by Ms. Green, August 9, 2023
- 2h Recording of HIB2 # 9452 results, January 26, 2023
- 3a Email reporting HIB3# 9523 & follow up email, January 31, 2023 and February 2, 2023
- 3b Recording of HIB3#9523 conversation, February 1, 2023
- 3c HIB3 #9523 - Investigation report, February 2, 2023
- 3d Email asking for update HIB3#9523, March 6, 2023

- 3e Recording of HIB3#9523 results, March 7, 2023
- 4a Email previous counsel - HIB appeal, April 17, 2023
- 4b Letter from previous counsel - Appeal questions, April 21, 2023
- 4c Respondents' answers to appeal questions, April 25, 2023
- 4d Letter regarding rules of appeal hearing, April 26, 2023
- 4e Recording of HIB appeal hearing, May 17, 2023
- 4f HIB appeal hearing denial letter, May 18, 2023
- 5a Board minutes - HIB reports, December 2022, January 2023, and February 2023
- 5b Discovery/Interrogatories, March 13, 2023
- 5c Board minutes - roll call, May 17, 2023
- 5d Board minutes - votes casted for denial, May 17, 2023

For Respondent:

- R-1 November 16, 2022, HIB Incident Report (9 pages)
- R-2 January 19, 2023, HIB Incident Report (5 pages)
- R-3 January 31, 2023, HIB Incident Report (5 pages)
- R-4 May 17, 2023, Redacted CCTS BOE Closed Session Minutes (3 pages)
- R-5 May 18, 2023, CCTS Letter to Mr. and Mrs. Prashant Patel
- R-8 CCTS Board of Education Harassment, Intimidation and Bullying Policy (Pages 1-3)