

New Jersey Commissioner of Education
Final Decision

J.R., on behalf of minor child, P.R.,

Petitioner,

v.

Board of Education of the Township of
Westampton, Burlington 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.

Petitioner's child, P.R., was physically assaulted by a classmate, M.W., during the 2019-2020 school year. M.W. moved to an out-of-district school, but returned to Westampton for the 2022-2023 school year, at which time he made several comments to P.R. that she perceived as threatening. The Westampton Board of Education (Board) found that M.W.'s actions did not constitute harassment, intimidation, and bullying (HIB), and petitioner appealed.

The Administrative Law Judge (ALJ) concluded that the case was moot because petitioner could not obtain an out-of-district placement for her child under the Anti-Bullying Bill of Rights Act (Act), and all other relief that is available under the Act – such as counseling, teacher aides, monitors, supervision, and therapy – were already being provided to her. Accordingly, the ALJ dismissed the petition.

Upon review, the Commissioner disagrees with the ALJ that the matter is moot. The Commissioner has previously held that the Act entitles a petitioner to a determination of whether a district's finding that her child was not the victim of acts of HIB was arbitrary, capricious, or unreasonable. *R.S., o/b/o minor child, G.M. v. State-Operated School District of the City of Paterson, Passaic Co.*, Commissioner Decision No. 17-17 (Jan. 13, 2017). The Commissioner so held even though the alleged victim had already graduated from the district, finding that it was not relevant to the issue of whether the alleged conduct constituted HIB. *Ibid.*

However, unlike in *R.S.*, where the Commissioner remanded the matter to the OAL for further proceedings in order to resolve the underlying claim on the merits, in this matter, the parties filed cross-motions for summary decision, agreeing that there are no material facts in dispute. As such, there is no need for further fact-finding at the OAL.

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).

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, 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, there is no evidence M.W.'s conduct could be reasonably perceived as being motivated by an actual or perceived distinguishing characteristic. Petitioner argues that M.W.'s belief that P.R. was the cause of his disciplinary issues constitutes a distinguishing characteristic, but the Commissioner rejects this argument. Conduct – even harmful or demeaning conduct – that is motivated only by a personal dispute does not come within the statutory definition of bullying. *K.L. v. Evesham Twp. Bd. of Educ.*, 423 N.J. Super. 337, 351 (App. Div. 2011). In the absence of a distinguishing characteristic, the Commissioner concludes that the Board's determination that P.R. was not the victim of HIB was not arbitrary, capricious, or unreasonable.

Accordingly, the Initial Decision is modified as detailed herein, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 21, 2025
Date of Mailing: January 22, 2025

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 08997-23

AGENCY DKT. NO. 231-8/23

**J.R. ON BEHALF OF
MINOR CHILD P.R.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF WESTAMPTON,**

Respondent.

Mario J. Persiano, Esq., for petitioner (Law Office of Mario J. Persiano, attorney)

Emily E. Strawbridge, Esq., for respondent (Parker McCay, P.A., attorneys)

Record Closed: September 20, 2024

Decided: October 31, 2024

BEFORE **TRICIA M. CALIGUIRE, ALJ:**

STATEMENT OF THE CASE

Petitioner, J.R., on behalf of minor child P.R., challenges two decisions of respondent Board of Education of the Township of Westampton, Burlington County

(Board), that harassment, intimidation, and bullying (HIB) of P.R. did not occur, as HIB is defined in the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-14 (ABBRA).

PROCEDURAL HISTORY

On August 26, 2023, petitioner filed a pro se petition of appeal with the Office of Controversies and Disputes of the New Jersey Department of Education (Department). On September 11, 2023, petitioner filed a motion for emergent relief with the Department. The Acting Commissioner did not act on the motion, and, pursuant to N.J.A.C. 6A:3-1.6(c)(3), on September 12, 2023, the emergent matter and the petition of appeal were transmitted to the Office of Administrative Law (OAL). The emergent hearing was held on September 18, 2023, and an order denying emergent relief was issued on September 19, 2023, and adopted by the Acting Commissioner on October 6, 2023.

On September 20, 2023, respondent filed a motion to dismiss the petition on three separate grounds. By order dated November 16, 2023, respondent's motion to dismiss was granted in part and denied in part, pending an amendment to the due process petition by which petitioner was directed to specify all relief requested should she prevail on her HIB claim. Following an extension granted after petitioner obtained counsel, on December 11, 2023, petitioner filed a letter brief with alternate support for her request for an out-of-district placement for P.R.

On December 19, 2023, respondent renewed its motion to dismiss. Following responsive briefing, the motion to dismiss was denied by order dated March 1, 2024, and a hearing was scheduled on the issues of the validity of the Board's HIB determinations and, if HIB violations are found, whether there are programs and services that must be made available to P.R. as a victim of bullying.

On July 19, 2024, respondent filed a motion for summary decision; petitioner responded by cross-motion, filed July 29, 2024. Respondent filed a supplemental brief on September 6, 2024. Despite repeated inquiries from my chambers, petitioner

neglected to file a supplemental brief and, as petitioner was advised in advance, the record closed on September 20, 2024, and the motions are now ripe for review.

FACTUAL DISCUSSION AND FINDINGS

By their cross-motions for summary decision, the parties agree that there are no material facts in dispute. Generally, the facts recited in my earlier orders remain unchanged. Accordingly, as described in those orders and supplemented by the certifications of James DiDonato, superintendent of the School District of Westampton (District), I **FIND** as **FACTS**:

P.R. is a twelve-year-old girl in the seventh grade at Westampton Middle School (WMS), the only middle school in the District.

During the 2019–2020 school year, while in second grade in the District, P.R. was physically assaulted on the playground during school hours by a same-age male classmate. That classmate, referred to as M.W., is eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1482. Certification of James DiDonato (July 19, 2024) (DiDonato Cert.), ¶¶ 1, 3. M.W. is classified with emotional regulation impairment, which is characterized by inappropriate types of behaviors or feelings under normal circumstances. *Id.*, ¶ 3, citing N.J.A.C. 6A:14-3.5(c)(5).

Following the playground incident, the District Child Study Team decided that an out-of-district placement was appropriate for M.W. *Id.*, ¶ 5. Three years later, at the beginning of the 2022–2023 school year, M.W. returned to school in the District, at Westampton Intermediate School (WIS), without notice to J.R. P.R. was also enrolled at WIS in the 2022–2023 school year.

J.R. documents conversations she initiated with WIS staff and administration, then-superintendent Anthony Petruzzelli, and superintendent James DiDonato after he

assumed office in October 2022, to express her concerns regarding her daughter's safety and anxiety and/or fear of M.W., but there is no evidence of any direct interactions between P.R. and M.W. prior to December 19, 2022.

Respondent states that M.W. had no recollection of the 2019 playground incident. Id., ¶ 7.¹ While P.R.'s documented action in the fall of 2022 confirms that she had a strong recollection of the incident and was frightened as a result, M.W.'s first documented statement, on December 19, 2022, is evidence that his recollection was, at the least, refreshed by information provided to him by third persons: "Oh so you're [P.], you're the one saying I hurt you, now I know who you are, now I see you."

Based on information provided by P.R., J.R. documented additional statements allegedly made to P.R. by M.W. that P.R. perceived as threatening on April 17, April 18, April 24, and April 25, 2023. J.R. brought an HIB claim against M.W., which was denied by notice dated May 5, 2023, on the grounds that M.W.'s actions and/or statements in these incidents were not motivated by a distinguishing characteristic of P.R.

Most of the above incidents took place in the WIS lunchroom. WIS administrators worked with P.R. to develop an "exit plan," whereby P.R. would be seated at lunch close to the door. WIS staff were notified of the exit plan. On June 2, 2023, M.W. approached P.R. in the lunchroom; when she began to cry, a lunch aide implemented the exit plan and took P.R. to her homeroom classroom. M.W. followed, screaming, "she's gonna get it." P.R.'s teacher locked the door. P.R. was taken from this room to the main office until M.W. was removed from the school. J.R. filed a police report and a second HIB claim. The second HIB claim was denied on the grounds that M.W.'s actions and/or statements in the incident were not motivated by a distinguishing characteristic of P.R.²

¹ DiDonato offers no citation to support this statement, though hand-written transcripts of interviews with M.W., or of statements given by M.W., are included as exhibits.

² DiDonato stated that M.W. was disciplined for this incident consistent with the Student Code of Conduct. DiDonato Cert., ¶ 19.

Superintendent DiDonato stated that the June 2, 2023, incident, “while upsetting for everyone involved and undoubtedly scary for P.R., was the culmination of [the male classmate] being the topic of gossip of 5th graders all year.” DiDonato Certification in Support of Motion to Dismiss (Dec. 19, 2023), ¶ 18. DiDonato now explains that as a result of the HIB investigation he learned that “M.W. was upset because he had perceived that P.R. had seen him in his classroom and walked away [and] claimed that P.R.’s friends were telling him that P.R. said she was going to drown him at the pool party and beat him up.” DiDonato Cert., ¶ 16.

On August 14, 2023, the Board upheld the District’s decision that both HIB claims were unfounded.

P.R. began the 2023–2024 school year at WMS wearing a personal safety alarm. On the first day, M.W. made comments to her in the hall that she perceived as threatening. Between September 6 and 14, 2023, M.W. made comments to P.R. that she perceived as threatening on four separate occasions. P.R. did not attend classes between September 14, 2023, and October 23, 2023. By the later date, M.W. was again enrolled in an out-of-district placement.³

DiDonato stated that in school in September 2023, P.R. was overheard “whispering” to another classmate insults regarding M.W. and that M.W. was aware of such behavior by P.R. DiDonato Cert., ¶ 19. Further, he stated that P.R.’s allegations regarding two of the four incidents in September 2023 were not corroborated by staff. Id., ¶ 21.

On September 15, 2023, P.R.’s pediatrician, Dr. Melissa D. Labrou, diagnosed her with anxiety due to traumatic events at school and prescribed home instruction pending a Section 504⁴ classification meeting and placement at an out-of-district public school.

³ There is no evidence that M.W. was removed from WMS because of the events described above.

⁴ Dr. Labrou refers to Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

Home instruction was provided to P.R. by the District while she was not attending classes. The 504 meeting took place on October 23, 2023.

On December 4, 2023, the District proposed, and on December 5, 2023, J.R. accepted, “a 504 Accommodation Plan to support P.R.’s diagnoses of anxiety, clinical depression (borderline) and [post-traumatic stress disorder].” DiDonato Certification in Support of Motion for Summary Decision (September 6, 2024), ¶ 30 and Ex. L.

LEGAL ANALYSIS

J.R. challenges the denial of the HIB claims she brought on behalf of P.R. on the grounds that M.W.’s actions meet the criteria of an HIB act and demands that the District provide programs and services to P.R. as a victim of HIB.

Respondent seeks summary decision in its favor on the grounds that M.W.’s actions do not meet the criteria of an HIB act, specifically because M.W. was not motivated by a distinguishing characteristic of P.R., and, alternately, seeks dismissal of the petition as moot because, even if petitioner prevails on the merits of her appeal, there is no relief available to her in this forum.

Review of Mootness Claim

An action is moot when the decision sought “can have no practical effect on the existing controversy.” Redd v. Bowman, 223 N.J. 87, 104 (2015). For reasons of judicial economy and restraint, it is appropriate to refrain from decision-making when an issue presented is hypothetical, judgment cannot grant effective relief, or the parties do not have a concrete adversity of interest. Anderson v. Sills, 143 N.J. Super. 432, 437 (Ch. Div. 1976); Fox v. Twp. of E. Brunswick Bd. of Educ., EDU 10067-98, Initial Decision (March 19, 1999), aff’d, Comm’r (May 3, 1999), <https://njlaw.rutgers.edu/collections/oal/>; J.L. and K.D. ex rel. J.L. v. Harrison Twp. Bd. of Educ., OAL Dkt. No. EDS 13858-13, Final Decision (January 28, 2014).

In P.S. ex rel. I.S. v. Edgewater Park Township Board of Education, EDS 10418-04, Final Decision (October 31, 2005), <http://njlaw.rutgers.edu/collections/oal/>, a parent filed for due process due to a disagreement over the district's proposed placement of her child, and requested a different approved private school. The district had agreed to the parent's placement request and moved to dismiss the petition as moot. The parent wanted to continue the hearing to resolve other related disagreements, but the administrative law judge (ALJ) concluded that the relief sought by the parent had already been granted by the district through its agreement to place the child at the requested school. The ALJ dismissed the petition as moot and reasoned that the parents had the right to file a new due process petition regarding other issues with the district.

In a case similar to this one, student S.D. was suspended for alleged use of drugs in school; approximately one year later, after a petition had been filed challenging the board's decision to uphold the discipline, the board expunged the discipline. D.W. on behalf of S.D. v. Bridgewater-Raritan Regional School District, EDU 11438-19, Initial Decision (July 29, 2020), <https://njlaw.rutgers.edu/collections/oal/>, aff'd, Comm'r (September 11, 2020), <https://www.nj.gov/education/legal/>. The ALJ concluded that since no suspension record remained in the student's file, there was no relief that the judge could provide, and he dismissed the case as moot. On review, the Commissioner concurred "that petitioner's claim is moot because the suspension imposed by the Board on S.D. has been expunged."

By contrast, P.H. and K.G.H. on behalf of minor child L.H. v. Board of Education of Northfield, 2021 N.J. AGEN LEXIS 778 (September 22, 2021), aff'd, Acting Comm'r (October 21, 2021), involved the challenge to an HIB investigation conducted after the parents had disenrolled their son—the alleged victim—from the district. The parents claimed that the investigation was delayed, and was rife with procedural and legal flaws, making it "deficient as a matter of law." Id. at *4. The board moved for summary decision on the grounds that the matter was moot, as L.H. was no longer in the district and "no meaningful relief" had been requested. Id. at *5. The parents argued, and the ALJ

agreed, that even though the student was no longer attending school in the district, the board was “still required to carry out an HIB investigation,” and should an HIB have been found, appropriate measures should have been carried out. Id. at *8. Given that ABBRA is intended to “eliminate HIB conduct in schools,” and the petitioners claimed procedural irregularities, “withdrawal [of L.H.] is not a defense to a district’s failure to properly carry out its role in advancing the purposes of [the Act].” Id. at *12.

A review of the facts here leads to the conclusion that no issue remains as to which judgment can grant effective relief. Petitioner does not cite procedural irregularities; her dispute is with the decision of the Board after it completed the requisite process. Even if I were to find that the Board’s HIB decision was faulty, P.R. seeks no remedy beyond that of which her daughter is already the beneficiary. As stated in an earlier order in this matter, petitioner cannot obtain the relief she initially requested as ABBRA does not provide for an out-of-district transfer for the victim of bullying. ABBRA does provide for the types of services that P.R. is already receiving under her 504 Plan: counseling; teacher aides assigned to her to ensure her safety and feelings of safety; hallway and playground monitors; supervision during and after school; and therapy. A judgement in petitioner’s favor will not result in changes in the services being provided to her. For this reason, I **CONCLUDE** that a due process hearing on a challenge to the HIB decisions of the Board would be a hypothetical exercise.

Based on the foregoing, I **CONCLUDE** that the petition should be dismissed with prejudice as moot because judgment for the petitioner cannot grant effective relief.

ORDER

It is hereby **ORDERED** that the motion of respondent, the Board of Education of the Township of Westampton Public Schools, for summary decision dismissing the petition of J.R. on behalf of P.R. on the grounds that the petition is moot is **GRANTED** and the petition is **DISMISSED** with prejudice.

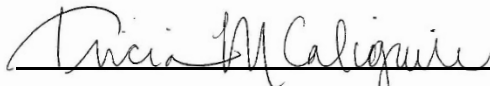
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 31, 2024

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

Date Mailed to Parties:

TMC/kl