

New Jersey Commissioner of Education
Final Decision

R.Z. and L.D., on behalf of minor child, L.Z.,

Petitioners,

v.

Board of Education of the Northern Valley Regional
High School District, Bergen 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.

Upon review, and for the reasons thoroughly detailed in the Initial Decision, the Commissioner agrees with the Administrative Law Judge (ALJ) that petitioners did not establish that the Board acted in an arbitrary, capricious, or unreasonable manner in determining that Coach Gabriele's actions were not motivated by L.Z.'s learning disability. The Commissioner further agrees with the ALJ that the purported procedural violations of *N.J.S.A. 18A:37-15(b)(6)* did not substantively impact the case and therefore do not warrant a reversal of the Board's decision.

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.¹


COMMISSIONER OF EDUCATION

Date of Decision: April 28, 2025
Date of Mailing: April 28, 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 10029-23

AGENCY DKT NO. 237-9/23

**R.Z. AND L.D. ON BEHALF OF MINOR
CHILD, L.Z.,**

Petitioners,

v.

**NORTHERN VALLEY REGIONAL HIGH
SCHOOL DISTRICT BOARD OF
EDUCATION, BERGEN COUNTY,**

Respondent.

Avram E. Frisch, Esq., for petitioners (The Law Office of Avram E. Frisch, LLC,
attorneys)

Isabel Machado, Esq., for respondent (Machado Law Group, attorneys)

Record Closed: February 5, 2025

Decided: February 12, 2025

BEFORE **MATTHEW G. MILLER**, ALJ:

STATEMENT OF THE CASE

Petitioners, R.Z. and L.D., the parents of minor child L.Z., have challenged the determination made by the respondent, Northern Valley Regional High School District

Board of Education, Bergen County, et al. (respondent or District), that a harassment, intimidation, and bullying (HIB) complaint made against the non-party head coach of the Northern Valley Regional High School at Demarest (NVD) varsity boys basketball team that was brought per N.J.S.A. 18A:37-13.2 et seq. (the Anti-Bullying Bill of Rights Act) was unfounded.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

During the 2021–22 school year, Patrick Gabriele, the varsity boys’ basketball coach at NVD, was accused of commencing a pattern and practice of abusive and retaliatory behavior against L.Z. (and other players in the basketball program). It is alleged that L.Z. was specifically targeted based upon his status as a special education student.¹ This behavior is alleged to have continued during the 2022–23 basketball season.

During a Zoom meeting on January 13, 2023, R.Z. and L.D. reported Coach Gabriele’s behavior to school officials, teachers and staff and an HIB investigation was instituted by the District. It is alleged that during the investigation, the District’s Athletic Director, Michael Oppido, allegedly a personal friend of Coach Gabriele, attempted to improperly influence its outcome.

It is alleged that despite the ongoing investigation, Coach Gabriele continued to be abusive to L.Z. and that the administration enabled that abuse and mistreated L.Z.’s parents as well.

On February 13, 2023, the District advised petitioners that an HIB violation had not been found, although a number of the allegations were found to be credible and that the evidence “did reasonably substantiate that there was evidence of a substantial disruption, hostile/harmful environment or an interference to the rights of the alleged victim.” As a result of those findings, Coach Gabriele was subjected to undisclosed disciplinary action. However, it was concluded that “the investigation did not reasonably

¹ L.Z. has been diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD).

substantiate a distinguishing characteristic served as the motivating factor in this case.” On April 13, 2023, petitioners filed a petition of appeal with the District, and a hearing before the Board of Education (BOE) was scheduled for May 8, 2023.

However, on May 5, 2023, the District superintendent, James Santana, decided to re-open the investigation. A revised report was issued on June 2, 2023, with nominal changes and the petitioners were offered a hearing before the Board to take place on June 26, 2023. Petitioners declined that opportunity and on June 6, 2023, they filed a petition of appeal. On June 6, 2023, petitioners were offered and accepted a hearing that was held before the BOE on June 12, 2023. The Board subsequently upheld the report’s findings.

In the interim, the Hon. Kimberly A. Moss, ALJ granted respondent’s Motion for Summary Decision on the original appeal, declaring that it had been filed prematurely. (R-B.) This appeal of the June 12, 2023 BOE determination was then filed with the Department of Education’s Office of Controversies and Disputes on or about September 5, 2023. Respondent filed an Answer to the Appeal on September 25, 2023, and the Department transmitted this matter to the Office of Administrative Law (OAL) on September 27, 2023, for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

An initial conference was held on October 17, 2023, and was followed by conferences on November 21, 2023, January 2, 2024, and February 27, 2024. On or about March 27, 2024, petitioners filed a Motion to Compel discovery, which was followed by respondent filing a Motion for Summary Decision on April 1, 2024, and opposition to the discovery motion on April 5, 2024. The Motions and discovery issues were discussed during an April 8, 2024 conference and the parties were advised that the Motion for Summary Decision was not going to be entertained given the ongoing discovery issues. The parties were given time to attempt to resolve the discovery dispute but were unsuccessful and petitioners filed a reply brief on May 3, 2024.

Following compliance with a May 28, 2024 discovery Order, the respondent's Motion for Summary Decision was renewed. After extensive briefing, oral argument on the Motion was held on February 5, 2025 and the record closed that day.

THE LINEUP

There are a lot of players on the roster, and for the sake of clarity, it is much easier to list the key personnel involved.

L.Z. – petitioner

R.Z. – L.Z.'s mother

L.D. – L.Z.'s father

A.Z. – L.Z.'s older brother

Patrick Gabriele – Varsity basketball (and baseball coach), NVD

Dwight Wilbur – Assistant varsity basketball coach, NVD

Robert Petrella – Assistant varsity basketball coach and one of L.Z.'s teachers, NVD

Michael Oppido – Athletic Director (A.D.), NVD

Michael O'Malley – ABS²/Lead Counselor

James Santana – Superintendent, Northern Valley Regional High School District (NVRHSD)

Joseph Argenziano – President, NVRHSD Board of Education

Dr. Tim Gouraige – Principal, NVD

Keith Johnson – Assistant Principal, NVD

² Anti-bullying specialist.

TIMELINE

In order to fully understand the dynamics of this case, a limited timeline is helpful.

Fall, 2021 – Michael Oppido hired as NVD Athletic Director, taking over from Greg Butler³

Fall, 2021 – Patrick Gabriele hired as NVD varsity basketball coach, taking over from Kevin Grimes⁴

Fall, 2021 – L.Z. enters his freshman year at NVD

Fall, 2021 – A.Z. enters his senior year at NVD

Fall, 2022 – L.Z. enters his sophomore year at NVD

Fall, 2022 – Winter, 2023 – Patrick Gabriele hired as NVD varsity baseball coach

November 15, 2022 – L.Z. provided with playbook by Coach Gabriele

January 13, 2023 – Zoom meeting between L.Z.'s parents and NVD staff concerning Coach Gabriele's behavior and HIB report initiated

January 26, 2023 – NVD v. Lyndhurst Bergen County Jamboree game

January 30, 2023 – Initial HIB report completed

February 7, 2023 – NVD – Pascack Valley post-game incident

February 15, 2023 – Mr. Santana signs off on HIB report

March 14, 2023 – Respondent affirms HIB investigation findings

April 17, 2023 – Petitioners request hearing before the Board

May 5, 2023 – Scheduled May 8, 2023 appeal canceled and investigation reopened at the behest of Mr. Santana

May 13, 2023 – Coach Gabriele interviewed

May 22, 2023 – Reopened HIB investigation completed

May 23, 2023 – Petitioners request a hearing before the Board

³ <http://northjerseysports.com/sports/features/2021/082921ADShuffle.htm> (last accessed Dec. 31, 2024)

⁴ <https://www.northjersey.com/story/news/passaic/wayne/2021/07/15/kevin-grimes-wayne-hills-boys-basketball-rob-carcich-westwood/7975415002/> (last accessed Jan. 1, 2025)

June 2, 2023 – Mr. Santana signs off on reopened HIB report and petitioners offered a hearing before the Board on June 26

June 3, 2023 – Initial OAL matter filed

June 8, 2023 – Awards ceremony incident

June 8, 2023 - Special Board meeting scheduled for June 12

June 12, 2023 – HIB appeal heard by Board of Education

June 13, 2023 – Petitioners advised of appeal denial

August 22, 2023 – Initial OAL matter dismissed

September 5, 2023 – Current OAL matter filed

THE REPORTS

The initial HIB report was completed on January 30, 2023. (R-A.) It was prepared by Michael O'Malley, the ABS/Lead Counselor and the investigation was assisted by Assistant Principal Keith Johnson. It listed the basic information about both the four alleged victims and the alleged perpetrator, as well as the specific allegations made against Coach Gabriele. Multiple people were interviewed in conjunction with the investigation. Those include L.Z., Coach Gabriele, two assistant coaches and although their names are redacted, multiple students.

As the report continues, it is noted that in concluding that no HIB violation had occurred, Mr. O'Malley reviewed “[w]ritten statements and emails from all interviewed during the investigation.” Also reviewed were “Emails, in-person, virtual and phone conversations with parents of the alleged victims and witnesses.” While some of the allegations were substantiated,

The ABS found that the allegations regarding the alleged victim #1 did not meet the requisite key component standards to qualify as an HIB violation. The evidence from this investigation did not reasonably substantiate a distinguishing characteristic that served as a motivating factor in this case. However, there was evidence to support

a substantial disruption, hostile/harmful environment or an interference to the rights of the alleged victim.

Although it is unclear what information was shared with petitioners originally, in its Motion for Summary Decision, the following items were supplied:

- a. Written summary of a May 13, 2023 interview with Coach Gabriele;
- b. Written Statements from:
 1. Assistant Coach Dwight Wilbur
 2. Assistant Coach Robert Petrella
 3. L.Z. (2)
 4. Fifteen players⁵

From all appearances, the revised June 2, 2023 report (which was signed by the superintendent) was issued in order to include the May 13, 2023 interview with Coach Gabriele. Its conclusions were unchanged.

THE MOTION

Respondent has filed a Motion for Summary Decision, first pointing out that “[t]he only issue to be resolved in this matter is whether the District’s (lack of a) finding of a Harassment, Intimidation or Bullying (“HIB”) violation was arbitrary, capricious or unreasonable.”

It is then argued that the District is entitled to summary decision “as Petitioners cannot meet the burden of proving that the District’s findings were arbitrary, capricious or unreasonable.” It points out that a District “is entitled to a presumption of correctness” and that without “an affirmative showing that such decision was arbitrary, capricious and unreasonable,” it must prevail. Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965).

⁵ Fifteen non-coach written statements were supplied. They were dated from January 17, 2023 through January 26, 2023. While most of these are clearly authored by different students, it is unclear whether the January 26 statements (which address a unique incident) were written by students who had previously supplied statements or not.

In addition to clear evidence that a thorough investigation was performed, it was noted that some of the allegations made by petitioner were unfounded and that there is no credible evidence that any of Coach Gabriele's actions could have been reasonably perceived to have been motivated by L.Z.'s learning disability. Without any evidence of an improper motivation, it is argued that Summary Decision must be granted.

The petitioner claims that there are material facts in dispute and that there is clear evidence that "the District conducted an 'investigation' that was entirely pre-determined to obtain the desired outcome, which was the clearance of Coach Gabrielle [sic]." During oral argument, it was re-emphasized that the investigation was "compromised".

Reviewing petitioner's opposition brief, it appears that he is often arguing against himself. First, there is an argument that Coach Gabriele fostered an unhealthy ("intolerable") environment on the basketball team by acting in ways that were clearly inappropriate and that these actions "demonstrate the environment in which L.Z. and the rest of the basketball team was expected to tolerate." It further noted that "[t]he fact that you had a generally abusive coach was notable for the environment it created."

It was then emphasized that the coach was aware of L.Z.'s learning disabilities and that by treating him as poorly as he did the rest of the team and allegedly retaliating against players who filed HIB complaints, he was guilty of HIB in the first place.

Petitioner then pointed to other HIB complaints that had been made against the coach and inferred that procedural violations had occurred that were solely made to benefit him. This includes the "suspect reopening of the matter on the eve of the Board hearing" (which was rather obviously done so as to include the summary of the interview with Coach Gabriele).

CERTIFICATIONS

Both L.Z. and his mother, R.Z., supplied certifications in opposition to the motion in which they detail their respective experiences with Coach Gabriele.

L.Z.

L.Z. explained that as a freshman in the Fall of 2021, his brother was a senior. He described a “threatening environment” that would continue throughout his tenure at NVD. He noted:

In the beginning, I didn’t think the threats were directed at me specifically, but as time went on, I realized that he used those kinds of threats to keep everyone in line because he didn’t know how to coach a team to earn their respect.

[P-1 at ¶5.]

He explained that his mother had explained to the coach that he had a learning disability and asked for help. The coach sent him a 121-page playbook “mostly of plays we didn’t use,” and since he was so intimidated, L.Z. “just tried my best in practices to learn each play on my own without asking for help.”

L.Z. then complained that despite recommendations from both the freshman and J.V. coaches, on game days, he was rostered on all three boy’s teams and “was at the school from 8:30 AM to 9:30 PM either doing my homework when I got home, or in the morning before school.” He then certified that “after the freshman season ended, in January of 2022,” he started getting some varsity minutes. His brother was a starter, “and Coach began bullying him too,” as well as another senior.

Progressing to his sophomore year, L.Z. certified that the first few weeks of pre-season were uneventful, but then, when he started making mistakes on the court, Coach Gabriele would start “making fun” of him and calling him a “jackass” and “would regularly try to embarrass me in front of the rest of the team when I confused a play

instead of helping me to understand it.” L.Z. also criticized an assistant coach, who was one of his special education teachers, for not helping him.

Moving on to his junior year, L.Z. was criticized by a teammate for allegedly being unable to run a play. Coach Gabriele is alleged to have agreed with the player and changed the play, rather than encouraging him to learn how to run it. He certified that “Coach Gabriele never treated me like I had ability,” and while “[l]ots of kids didn’t remember the plays and made mistakes . . . he knew I had a learning difference so he made fun of me for not remembering them and encouraged everyone to think I was stupid and couldn’t learn.”

The certification continued to criticize Coach Gabriele for encouraging and rewarding what he felt to be “violent” play, noting that he was “a finesse player,” despite being “big for my team.” L.Z. certified that “[h]e didn’t like that about me and used my learning differences whenever he could to beat me down and try to get me to play violently.” (P-1 at ¶13.)

L.Z. then addressed an issue where Coach Gabriele made a comment during practice asking a teammate (who had lost his father to suicide) to make sure that L.Z. did not commit suicide “after a stressful practice where he was making fun of me.” Given a history of suicides in Demarest, he felt that this was “especially disgusting” and complained that “[t]he administration knew about all four suicides but never even made sure I was okay, and they never made the coach apologize to me for the comment either.” (P-1 at ¶14.)

Eventually, L.Z. became a starter, but filed the HIB complaint the next day. He then claimed that Mr. Oppido tweeted praise for Coach Gabriele over the next few days.

Finally, L.Z. certified that there were times as the season progressed when Coach Gabriele referenced (by inference) that he was disliked by L.Z. and that he did not want to tolerate two more years of this. L.Z. also certified that Coach Gabriele had removed him from a group text following a Bergen County Jamboree win where L.Z.

had led a second-half comeback. He then related the incident involving the post-game confrontation between Coach Gabriele and his mother.

I would note that the timing of some aspects of the certification seem a little off. There is no question that L.Z. began his freshman year at NVD in September, 2021. While he claims that the playbook was emailed to him during his freshman year, the emails between his mother and Coach Gabriele reflect that it was sent in November, 2022, which would be L.Z.'s sophomore year. There is also some confusion concerning incidents that clearly occurred during L.Z.'s sophomore year that are interspersed with events that are alleged to have occurred during his junior year (which began in September 2023, well after the HIB decision was finalized in June 2023).⁶

In the grand scheme of things, these discrepancies are effectively inconsequential and do not impact L.Z.'s credibility but reviewing them does help explain the above timeline.

R.Z.

R.Z. certified as to the incident involving the post-Zoom email from the Athletic Director and alleged that Mr. Oppido is a close friend of Coach Gabriele who tried to downplay the conflict by alleging that the problem was a difference of opinion over coaching styles. She also alleged that "there were plenty of parents both on the baseball team and the basketball team who abhorred Gabriele's behavior, and it was no secret." She claimed, "[w]hat I later learned through my son's experiences was that some kids were being abused while others were being praised as a way of manipulating and grooming them to participate in the culture of abuse." (P-2 at ¶8.)

After Mr. Oppido's tweeting incident as well as the congratulatory text incident, R.Z. alleges that the only supportive member of the NVD administration, Dr. Gouraige, was transferred to Northern Valley Regional High School at Old Tappan (NVOT) and

⁶ It is unclear when L.Z. left NVD, but there is no question that he was enrolled in out-of-state private school for the 2024-25 school year.

“replaced by a veteran Northern Valley administrator, Dr. Bruce Sabatini.” R.Z. interpreted that as “a clear message” that L.Z. “was never going to be safe” at NVD.

R.Z. also recounted the appellate Board meeting, alleging that her older son heard the BOE president “emphatically yelling at [the other Board members] trying to convince them we were just parents who were upset about playing time.”

R.Z.’s certification continued on to recount the “cheering incident” and its aftermath at the Pascack Valley game as well as the renewal of the contracts of both Mr. Oppido and Coach Gabriele.

LAW AND ANALYSIS

Summary decision may be granted “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). The OAL summary decision rule is essentially the same as the summary judgment rule under the New Jersey Court Rules, which states:

The judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, 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 a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

[R. 4:46-2(c).]

The New Jersey Supreme Court has modified and clarified the analysis required when considering a motion for summary decision/judgment. In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995), the Court adopted the summary judgment standard utilized by federal courts:

Under this new standard, a determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to 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 factfinder to resolve the alleged disputed issue in favor of the non-moving party. The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” [Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 212 (1986).] . . . If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a “genuine” issue of material fact for purposes of R. 4:46-2. Liberty Lobby, *supra*, 477 U.S. at 250, 106 S. Ct. at 2511, 91 L. Ed. 2d at 213. The import of our holding is that when the evidence “is so one-sided that one party must prevail as a matter of law,” Liberty Lobby, *supra*, 477 U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214, the trial court should not hesitate to grant summary judgment.

[*Id.* at 540.]

The burden is on the moving party to exclude all reasonable doubt as to the existence of any genuine issue of material fact, and all inferences of doubt are drawn against the moving party and in favor of the non-moving party. Saldana v. DiMedio, 275 N.J. Super. 488, 494 (App. Div. 1994). The critical question therefore is “whether the evidence presents a sufficient disagreement to require [a hearing] or whether it is so one-sided that one party must prevail as a matter of law.” Brill, 142 N.J. at 533 (citation omitted). If the non-moving party’s evidence is merely colorable, or is not significantly probative, summary judgment should not be denied. *See* Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998).

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 that such decision was arbitrary, capricious or unreasonable.” Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). Our courts have held that “[w]here there is room for two opinions, action is not arbitrary or capricious when exercised

honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.” Bayshore Sewerage Co. v. Dep’t of Env’t Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff’d, 131 N.J. Super. 37 (App. Div. 1974). Thus, in order to prevail, those challenging a 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 Franklin Lakes, 2014 N.J. AGEN LEXIS 19 (Feb. 24, 2014) (citation omitted), adopted, 2014 N.J. AGEN LEXIS 1137 (Apr. 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., 2013 N.J. AGEN LEXIS 58 (Mar. 11, 2013) (citing Campbell v. Dep’t of Civil Serv., 39 N.J. 556, 562 (1963)), adopted, 2013 N.J. AGEN LEXIS 436 (Apr. 25, 2013).

The 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, “[h]arassment, intimidation or bullying” is defined as:

any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, **that is 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.]

Each school district must adopt a policy that prohibits HIB and provides “a procedure for prompt investigation of reports of violations and complaints.” N.J.S.A. 18A:37-15(b)(6). 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)(a). The investigation shall be conducted by a school anti-bullying specialist, but “[t]he principal may appoint additional personnel who are not school anti-bullying specialists to assist in the investigation.” Ibid. The investigation shall be completed within ten days of the initial HIB complaint. Ibid.

The results of the investigation shall then be quickly reported to the superintendent of schools, who may take certain remedial action. N.J.S.A. 18A:37-15(b)(6)(b). In particular, “the superintendent may decide to provide intervention services, establish training programs to reduce [HIB] and enhance school climate, impose discipline, order counseling as a result of the findings of the investigation, or take or recommend other appropriate action.” Ibid.

At this point, it is important to note that the interplay of sections (a), (b), and (c) of the HIB statute was addressed by the Commissioner in Wehbeh v. Board of Education, Township of Verona, 2020 N.J. AGEN LEXIS 50 (Feb. 4, 2020).

[A] finding of [HIB] requires three elements. First, the conduct must be reasonably perceived as 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.

[Id. at *7–8 (footnotes omitted).]

The Commissioner explained that “as a matter of standard statutory construction, the term “or” between subsections (b) and (c) also applies to subsection (a), such that a demonstration of any of these three criteria can support a finding of HIB.” Ibid. at n.2.

Put another way, for there to be a valid finding of an HIB violation, these things had to have happened:

1. A reasonable person would perceive that the conduct was based upon a distinguishing characteristic.

AND

2. The conduct took place on school property.

AND

3. The conduct must substantially disrupt or interfere with the orderly operation of the school or the rights of other students.

AND

- 3a. A reasonable person should know that the conduct would have the effect of...emotionally harming a student.

OR

- 3b. The conduct has the effect of insulting or demeaning the student.

OR

- 3c. The conduct created a hostile educational environment for the student by interfering with the student’s education or by severely or pervasively causing emotional harm to the student.

[See generally, Shim v. Ridgefield Pub. Schools, Bd. of Educ., 2023 N.J. AGEN LEXIS 526 (July 26, 2023).]

In other words, in order for there to be a cognizable finding of an HIB violation, petitioner must demonstrate that it met prongs 1, 2 and 3 and then any of 3a, 3b or 3c. Any break in the chain causes the charge to fail.

Here, respondent's reasoning in support of its findings that Coach Gabriele's actions did not constitute an HIB violation was:

The ABS found that the allegations regarding the alleged victim #1 did not meet the requisite key component standards to qualify as an HIB violation. The evidence from this investigation did not reasonably substantiate a distinguishing characteristic that served as a motivating factor in this case. However, there was evidence to support a substantial disruption, hostile/harmful environment or an interference to the rights of the alleged victim.

Here, the complaint failed at prong 1 and while it was found that the other aspects of the HIB statute had been met, unless ALL of the elements had been met, respondent was compelled to find that Coach Gabriele's actions did not meet the strict statutory definition of bullying.

COACHING CASES

There is somewhat more than a smattering of "coaching cases" in the HIB genre. In the case most emphasized by petitioners and arguably tangentially connected to this one, the boys' varsity soccer coach at NVD's sister school, NVOT, while ultimately losing his job, was found not to have committed acts of HIB against the complainant. J.B. o/b/o J.B. v. Bd. of Educ. of the Northern Valley Reg'l High Sch. Dist., 2021 N.J. AGEN LEXIS 571 (Mar. 8, 2021), adopted, Comm'r, 2021 N.J. AGEN LEXIS 75 (Apr. 13, 2021).

The primary difference in the J.B. case was the allegation that J.B.'s alleged distinguishing characteristic was being a "student" and "committed to academics." He had accused the coach of "systematic . . . verbal harassment, intimidation, and bullying." In addition to praising the HIB specialist's investigation (the same specialist involved in this case), the ALJ found:

O'Malley's report did not conclude that J.B. was not "committed to academics" or that he did not have a distinguishing characteristic worthy of protection. Instead, there was insufficient evidence that J.B. was the victim of an alleged HIB because he was committed to academics or intellectual. Under ABRA, the misconduct must be "reasonably perceived as being motivated either by any actual or perceived characteristic" to qualify as a HIB violation. N.J.S.A. 18A:37-14. (emphasis added).

[Id. at *26–27.]

The court found that there was no evidence that J.B. was targeted for any specific characteristic, but the coach's "questionable treatment of the players was largely universal." Id. at *27. The ALJ also referred to J.E. and R.E. v. Board of Education of the Hunterdon Central Regional School District, 2017 N.J. AGEN LEXIS 759 (Sept. 28, 2017), adopted, Comm'r, 366-17 (Dec. 21, 2017). There, the head and assistant varsity baseball coaches at Hunterdon Central High School were accused of committing HIB violations against a specific player, although that complaint was investigated in conjunction with four other similar complaints. The respondent moved for summary decision, arguing that there was no evidence that any of the coaches' alleged actions were motivated by any "distinguishing characteristics" of the complainant.

The subsequent investigation determined that the coaches had committed misconduct, which would be treated as a personnel matter; it had also been determined that the HIB statute had not been violated. A major question in the J.E. case was what "distinguishing characteristic" was in play, which is not an issue here. The court noted, however, that even if one could agree on a distinguishing characteristic, such as being "meek or weak," it was not alleged in the complaint that the coaches "ever made

comments about R.E.'s demeanor or physical stature." Rather, the parent noted that the coach "exhibited bullying conduct to everyone from assistant coaches to members of the grounds crew" and was more accurately described as "aggressive conduct without identifiable motivation." Id. at *26 (citing K.L. v. Evesham, 423 N.J. Super. 337, 351 (App. Div. 2011)). While that conduct may be "inappropriate and undesirable, [it] is not covered by the HIB statute." Ibid. The district's Motion for Summary Decision was therefore granted. Id. at *31.

The other two prominent "coaching cases", M.R. on behalf of minor child M.R. v. Ramapo Indian Hills Regional High School District, 2016 N.J. AGEN LEXIS 1350 (Dec. 21, 2016) and Cerchio v. Scotch Plains-Fanwood Regional School District Board of Education, 2023 N.J. AGEN LEXIS 954 (Dec. 29, 2023), were generally decided as "coaches behaving badly" cases, where it was found that neither had committed an act of HIB.

Having reviewed the "coaching cases," it seems appropriate to "bottom line" this case, since everyone involved, to some degree, seems to be dancing around the realities of the situation. The more I read of the exhibits in this case, the more I came to a full understanding of what really happened and that the respondent is entitled to summary decision. Ultimately, I **CONCLUDE** that the following has been proven to be true by a preponderance of the evidence:

1. L.Z. is a physically gifted athlete.
2. Patrick Gabriele is, for better or worse, an "old-school" coach.
3. Stylistically, L.Z. was not a good fit for Coach Gabriele's coaching philosophy.
4. There was already at least some personal animosity between the family and Coach Gabriele, based on the negative experiences of L.Z.'s older brother.

5. Not helping matters was the family's advocacy for John Blackgrove⁷ to be hired as the head coach, who, not coincidentally, was L.Z.'s AAU coach.
6. That animosity never truly abated.
7. There were mixed feelings amongst the team members concerning Coach Gabriele's coaching style and behavior.
8. L.Z.'s playing time was absolutely a concern of the petitioners and there was clearly a "second-guessing" aspect to some of the family's complaints.
9. Coach Gabriele's behavior, attitude and philosophy as a whole was also a concern of the petitioners.
10. Coach Gabriele's treatment of L.Z. was also obviously a major concern.
11. A parent's "advocacy" for their child is often perceived by the coach, rightly or wrongly, as "complaining" (or worse).
12. Many of petitioners' complaints about Coach Gabriele are not exclusively directed towards L.Z., but rather towards the entire team (or, at least to players not deemed to be his "favorites").
13. Coach Gabriele generally did not trust L.Z. on the floor and gave him a very short leash.
14. As will be detailed below, some of the specific incidents complained of by petitioners are irrelevant to the HIB investigation (such as the Pascack Valley post-game incident).
15. Some of those specific incidents were (absolutely correctly) found to be HIGHLY inappropriate and Coach Gabriele was disciplined for them.

⁷ John Blackgrove played at Pascack Valley High School and was the 2000–01 New Jersey Gatorade Player-of-the-Year. He was a prolific scorer in high school and went on to play basketball at Fordham and FDU-Teaneck. <https://bvmsports.com/2021/04/01/two-way-player-the-story-of-john-blackgrove/> (last accessed Dec. 29, 2024.)

16. No matter the outcome of this specific HIB complaint, Coach Gabriele did not handle this situation well.
17. What this dispute became was yet another example of an absolutely toxic situation in high school sports where no one emerged as a winner and where no one was without at least some fault.
18. Ultimately, however, you had a very talented fifteen-year-old stuck in the middle of an escalating series of events over which he had very little control and where the adults in the room, who had the ability to de-escalate the situation, failed to do so.

With all that being said, obviously the overriding question that must be answered is whether the District's conclusion that Coach Gabriele's behavior towards L.Z. did not constitute HIB was arbitrary, capricious, and unreasonable.

In order to answer that question, however, we have to answer some other questions first. First, would a reasonable person conclude that Coach Gabriele's behavior towards L.Z. was motivated, at least in part, by his learning disability? In other words, could a reasonable person conclude that any of Coach Gabriele's treatment of L.Z. was motivated by the mere fact that he suffered from ADHD (i.e., "I'm benching you because you have ADHD") or for some other reason ("I'm not benching you because you have ADHD, I'm benching you because you missed your defensive assignment, can't run the offense, misbehaved, etc.")? Or "I don't care why (in Coach Gabriele's mind) you're making the mistakes/misbehaving, just that you are."

I am, for the purposes of this HIB case, not considering the "non-L.Z." aspects of the case. This, significantly, involves the following:

1. The very ugly Pascack Valley post-game incident.⁸
2. The family's clear efforts to have Coach Gabriele fired.

⁸ R.Z.'s assertion that she was "just cheering for her son" lacks any credibility. She was clearly baiting Coach Gabriele, and he bit.

3. The family's alleged contacting of other parents and undisputed contacting of BOE members.

As noted above, this is not a case about coaching atmosphere, team direction/philosophy, etc. and is not a referendum on Coach Gabriele's behavior as the NVD varsity basketball and baseball coach. This case is solely about whether, as a matter of law, respondent's determination that Coach Gabriele's actions towards L.Z. were not motivated by L.Z.'s learning disability.

One of the first cases to discuss this issue was Melnyk v. Teaneck Board of Education, 2016 U.S. Dist. LEXIS 161524 (D.N.J. Nov. 22, 2016);

On its face, the HIB Policy requires that several factors must be met before an expression can be found to be harassment. First, the communication must be "reasonably perceived as motivated" by an actual or perceived characteristic. That is to say, the comment must be objectively perceived to a reasonable person as motivated by a characteristic.

[Id. at *17–18.]

Melnyk was cited with approval in R.H. ex rel. A.H. v. Borough of Sayreville Board of Education, 2023 U.S. Dist. LEXIS 83587 (D.N.J. May 12, 2023);

First, the communication must be "reasonably perceived as being motivated either by any actual or perceived characteristic, such as race . . ." among other things. N.J.S.A. § 18A:37-14. "The 'reasonably perceived' test is an objective one that has withstood constitutional scrutiny," and does not present a vagueness issue. See Melnyk v. Teaneck Bd. of Educ., No. 16-0188, 2016 U.S. Dist. LEXIS 161524, 2016 WL 6892077, at *8 (D.N.J. Nov. 22, 2016) (collecting cases).

[Id. at *13.]

Petitioner's analysis of J.B. notes that the coach involved in that case was "cleared." While that coach was cleared (correctly) of HIB, counsel fails to mention that

the coach had already left his position by the time the hearing was held, with his contract not being renewed largely for the behavior described in the HIB complaint.

This result is also alluded to in S.A. v. Board of Education of Moorestown, 2019 N.J. Super. Unpub. LEXIS 2114 (App. Div., Oct. 15, 2019). There, in a case involving a teacher who requested a student's (poor) test papers as part of his job duties, the court concluded that an HIB violation had not occurred, since it did "not discern sufficient facts to support a conclusion that any actions by R.L. were motivated by G.A.'s ADHD or other personal characteristics." Id. at *6.

It further noted:

Even if we presume R.L. was insensitive or even unkind, there is no evidence R.L. was prompted 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.

[Id. at *7]

Ultimately, in order to find that the first prong of the statute has been satisfied, an investigating body must view the evidence in its entirety and determine whether a reasonable person could perceive that the conduct could be "motivated by an actual or perceived characteristic." That determination should take into account the totality of the circumstances, including the traits/characteristics of the alleged victim, the age, knowledge and experience of the actor, as well as the time, place, and location of the act, etc.

Then, if the investigator makes a determination that a reasonable person would conclude that the act was motivated by an actual or perceived characteristic, the investigation will proceed to the next element of the HIB offense. In essence, the consideration of this prong does not focus purely on either the perception of the alleged victim or the expressed intent of the alleged actor, but instead provides an objective standard based on the totality of the circumstances.

I understand that L.Z. and his parents had an extremely poor relationship with Coach Gabriele. I also understand the perception (reality) that the coach did not like or appreciate L.Z. and objectively, his behavior clearly crossed the line of propriety (which respondent has never denied). However, as emphasized from the onset of this case, this is an HIB case and nothing more.

The question from the beginning was not whether the coach's behavior was appropriate. Nor was it whether his behavior towards L.Z. was due to his personal dislike of him or his family. Rather, the only question to be answered in this forum is whether a reasonable person could determine that Coach Gabriele's behavior towards L.Z. was due to his learning disability. And breaking that down even more, the question is whether, as a matter of law, a reasonable fact finder could determine that respondent's conclusion that this was not HIB was arbitrary, capricious, and unreasonable.

I **CONCLUDE** that it was not. Rather, I **FIND** that Mr. O'Malley reasonably determined that the evidence demonstrated that Coach Gabriele's behavior towards L.Z. was motivated by multiple other factors, both personal to L.Z. (but not due to his learning disability) and his family, as well as his coaching style. Then, the Board reasonably affirmed that determination.

Petitioner's brief is long on assumption, supposition and conclusion and short on actual evidence. One example of this is the statement that "[t]he assertion that Mr. O'Malley was independent and had no interest in the outcome of [the] investigation is not supported by any evidence." One can easily flip that line on its head; i.e., "the assertion that Mr. O'Malley was biased and had an interest in the outcome of the investigation is not supported by any evidence."

It is safe to say that by the time of the HIB investigation, the entirety of the school administration was well aware of the conflict between the family and Coach Gabriele. Mr. Oppido had literally reported the family to the police and R.Z. was apparently not shy about asserting her feelings, both privately and publicly. What the petitioner has not

demonstrated is what about Mr. O'Malley's investigation or conclusions was arbitrary, capricious, or unreasonable. While I appreciate the content of the January 14th email from Mr. Oppido, it was disclosed to the family, for whatever reason, within thirty minutes. Further, it appears to be a factual recitation of events: (a) R.Z. was calling other parents in an attempt to get Coach Gabriele fired; (b) she used other students' names during their meeting⁹; (c) Coach Gabriele was providing a statement.

There is simply no evidence, only an allegation, that Mr. O'Malley was somehow "compromised" or influenced to determine that Coach Gabriele only violated three of the four prongs of the HIB statute and that the Board was influenced into ratifying a decision that disciplined the coach. Similarly, as to the accusation that Board members and the Athletic Director "acted to ensure that no actual investigation could occur," petitioners have again produced literally no evidence. In fact, there is copious evidence to the contrary.

The evidence shows that what appears to be the entire varsity basketball team was interviewed, as were the assistant coaches. Any objective analysis of the investigation supports Mr. O'Malley's determination that there were times when Coach Gabriele acted inappropriately. It also demonstrates that L.Z. was sometimes singled out for criticism. However, there is literally nothing in the investigation to demonstrate that L.Z. was singled out due to his learning disability. Rather, per the investigation and Coach Gabriele's own statements, L.Z. was criticized and benched for multiple other reasons. I am not persuaded by petitioner's interpretation of Coach Gabriele's statement as being some sort of admission. It clearly is not.

As for the retaliatory conduct alleged by petitioner, even assuming for the sake of this motion that L.Z. was retaliated against due to the filing of the HIB complaint, that fact alone is not a violation of the HIB statute. Rather, the District's HIB policy notes:

School Employees – Consequences and appropriate
remedial action for a school employee found to have

⁹ I disagree with Mr. Oppido that it was somehow inappropriate for R.Z. to refer to other students during the meeting.

engaged in retaliation, reprisal and/or falsely accused another as a means of harassment, intimidation or bullying shall be determined in accordance with district policies, procedures and agreements, up to and including suspension or dismissal from service;

[P-A at 11.]

This is in line with N.J.S.A. 18A:37-16(a), which bars “engag[ing] in reprisal, retaliation or false accusation against a victim, witness or one with reliable information about an act of harassment, intimidation or bullying.” However, there is nothing in the statute that even suggests that any purported act of retaliation is anything but a routine disciplinary offense and not HIB in and of itself.

That is not to say that this finding is an “exoneration” of Coach Gabriele. It most definitely is not. In fact, the HIB report does not place the coach in good light. The report was clear that his actions were inappropriate and that L.Z. was victimized by him.

I have tremendous empathy for L.Z. This is a clearly athletically gifted young man (you do not even think of playing varsity basketball as a freshman at a Group 3 school unless you are very good), who found himself in a situation where his coach clearly did not like (or, at the very least appreciate) him or his family and who ultimately found no alternative but to leave the school or quit playing. That is clearly an awful situation, one which the parents of any serious public school athlete dread because you have extremely limited options available to you, none of which are ideal.

L.Z. and his family may well have other remedies in other forums for any damages they may have sustained as a result of Coach Gabriele’s actions. However, that does not mean that the coach’s actions amounted to a violation of the HIB statute. Ultimately, I **CONCLUDE** that petitioner has failed to demonstrate as a matter of law that respondent’s determination that Coach Gabriele’s actions were not motivated by L.Z.’s learning disability was arbitrary, capricious, and unreasonable and that his actions were violative of N.J.S.A. 18A:37-13.2 et seq.

As to the purported procedural violations, which primarily concern the re-opening of the investigation in May, I **FIND** that there was nothing about those actions that substantively impacted the case. One can clearly infer that the investigation was reopened to include Coach Gabriele's interview and that no one's rights were compromised by that delay, particularly given that the basketball season was long over.

Further, as was alluded to in petitioner's brief, there is an established history that there is no private remedy in the HIB statute in cases of administrative errors during the investigative process. This was most recently discussed in H.P. on behalf of Minor Child R.S. v. Borough of Tenafly Board of Education, 2024 N.J. AGEN LEXIS 73 (Jan. 24, 2024), adopted, Comm'r (Mar. 26, 2024), where the court pointed to multiple prior cases involving procedural errors where "the Commissioner has simply ordered school districts . . . to comply with the statutory requirements." Id. at *14–15 (citing T.R. & T.R. ex rel. E.R. v. Bd. of Educ. of the Bridgewater-Raritan Reg'l Sch. Dist., 2014 N.J. AGEN LEXIS 634 (Sept. 25, 2014), adopted, Comm'r (Nov. 10, 2014)).

Therefore, I **CONCLUDE**, even with the unconventional manner in which this investigation was handled, that there was no substantive harm and that there is no reason to reverse the Board's decision.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's Motion for Summary Decision be and is hereby **GRANTED** and;

It is further **ORDERED** that petitioner's appeal be and is hereby **DISMISSED** and;

It is further **ORDERED** that respondent shall follow the rules and regulations promulgated in N.J.S.A. 18A:37-15 et seq. concerning its handling of HIB complaints in the future.

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.



February 12, 2025
DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency:

February 12, 2025

Date Mailed to Parties:

February 12, 2025

sej

APPENDIX

EXHIBITS

For Petitioner:

- P-1 L.Z. certification (September 26, 2024)
- P-2 R.Z. certification (September 26, 2024)
- P-A Northern Valley HIB Policy (Policy No. 5131.1)
- P-B Written statements from HIB Investigation Report
- P-C Summary of interview of Patrick Gabriele (May 15, 2023)
- P-D L.Z. IEP (April 21, 2022)
- P-E Email exchange between R.Z. and Coach Gabriele (November 15, 2022) and email forwarding that exchange from Coach Gabriele to Michael Oppido, Keith Johnson, and Michael O'Malley (May 16, 2023)
- P-F Email and letter attachment from R.Z. to multiple Northern Valley employees (January 13, 2023)
- P-G Email from R.Z., re: February 7, 2023 basketball game, etc. (February 9, 2023); Email exchange between R.Z., counselor and superintendent at Northern Valley (January 29, 2023 through February 1, 2023)
- P-H Email exchange between R.Z. and Northern Valley superintendent (June 2, 2023 and June 6, 2023)
- P-I Email from R.Z. to various Northern Valley employees, re: Athletic Director "mistake" email. (January 16, 2023)
- P-J Email from R.Z. to Northern Valley superintendent (February 10, 2023)
- P-K Superintendent Report Form (Not HIB) (February 15, 2023)
- P-L Emails re: February incident
- P-M Pro Se Petition of Appeal (May 24, 2023)

For Respondent:

R-A HIB Report (January 30, 2023)

R-B R.Z. and L.D. on behalf of minor child L.Z. v. Board of Education of the Northern Valley Regional High School District, 2023 N.J. AGEN LEXIS 555 (Aug. 22, 2023)

R-C HIB determination letter (June 13, 2023)

R-D Playbook emails

R-E Case law