

New Jersey Commissioner of Education
Final Decision

M.C. and K.C., on behalf of minor child, L.C.,

Petitioners,

v.

Board of Education of the City of South Amboy,
Middlesex County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioners pursuant to *N.J.A.C. 1:1-18.4*, and the South Amboy Board of Education's (Board) reply thereto, have been reviewed and considered.

This matter involves the Board's determination that petitioners' child, L.C., committed an act of harassment, intimidation, or bullying (HIB) when he drew a picture and labeled it "monkey," posted the picture on a computer behind a black classmate's (target) seat, and directed the target's attention to the image. Petitioners appealed the Board's decision to the Commissioner, claiming that the HIB investigation was incomplete because the Board failed to thoroughly investigate all the witnesses' statements. Petitioners further allege that L.C. was unaware of the racial connotations of the word "monkey" because black students at the school use it frequently, and the Board had failed to correct this practice.

At the OAL hearing, South Amboy Middle School Vice Principal Michelle Buchanan, Anti-Bullying Specialist and guidance counselor Michelle Masella, and Principal Sean Dunphy testified on behalf of the Board. Petitioners did not call any witnesses. Ms. Buchanan testified that on March 6, 2023, her office received a phone call from a substitute teacher who was in the classroom when the incident occurred. The teacher reported that a student drew a picture of a monkey and held it up over another student. Ms. Buchanan asked the accused to come to her office with the drawing to explain what had happened. She testified that L.C. told her that he drew the picture and held it up.

Ms. Masella testified that she conducted the HIB investigation regarding the March 6, 2023, incident. She interviewed the target student and the potential witnesses once and interviewed L.C. twice. Ms. Masella testified that during their initial interview, L.C. said he showed the target student the picture because the target likes to draw. However, upon speaking to the witnesses and reviewing the written statement provided by the substitute teacher, Ms. Masella re-interviewed L.C. for clarification because the target said that he did not like to draw. She testified that L.C. replied that the target student wrote in his notebook a lot, but “I don’t really know what it is.”

Ms. Masella testified that it became clear to her, through collecting and reading witness statements, that the picture was displayed behind the target student, and that L.C. pointed and said, “Look, a monkey.” She stated that two witnesses confirmed that L.C. placed the drawing on a computer monitor right behind where the target sat. Regarding the target student’s reaction, Ms. Masella testified that he took it as an insult and that he wanted to make it go away. She also testified that there were other black students in the class who could have been impacted

by L.C.'s conduct. Ultimately, she concluded that L.C. committed an HIB violation because his actions caused an argument between himself and the target over whether he was calling the target a monkey, which disrupted the classroom environment, and the distinguishing characteristic was race.

The Administrative Law Judge (ALJ) found the testimony of the Board's witnesses to be highly credible, consistent, and corroborated by the documentary evidence. The ALJ further found that while in class, L.C. drew a picture and labeled it "monkey," pasted it behind the target's head, and called the target a "monkey;" immediately thereafter, an argument ensued between the target and L.C. over whether L.C. was calling the target a monkey. Next, the ALJ concluded that the requisite elements to establish an HIB violation under *N.J.S.A. 18A:37-14* had been satisfied and that petitioners had not established that the Board's determination was arbitrary, capricious, or unreasonable.

In their exceptions, petitioners dispute the ALJ's factual findings, specifically that L.C. "pasted [the drawing] behind a student" and "proceeded to call the student, 'monkey.'" Petitioners contend that the witness statements and a comment that Ms. Masella wrote on the target's written statement — "It didn't offend me, but I know other people might be offended because it's a form of racism." (Exhibit F) — contradict Ms. Masella's testimony that the target took L.C.'s conduct as an insult. Petitioners suggest that the Initial Decision should have included this information.

In response, the Board argues that the Commissioner should adopt the ALJ's Initial Decision. It contends that the facts discovered through the HIB investigation support a finding that L.C. called the target a "monkey." The Board further argues that even if petitioners could

show that L.C. did not say the word “monkey,” the Board’s HIB determination would still hold because the Board did not act with impropriety in investigating the incident, nor did it act in an arbitrary or capricious manner.

Upon review, the Commissioner adopts the Initial Decision of the ALJ as the final decision in this matter. The Commissioner concurs with the ALJ that petitioners failed to satisfy their burden of establishing that the Board acted arbitrarily, capriciously, or unreasonably when it determined that L.C. committed an act of HIB as defined under *N.J.S.A. 18A:37-14*. The Commissioner further concurs with the ALJ that petitioners have not demonstrated that the Board acted in bad faith or in utter disregard of the circumstances before it.

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was “patently arbitrary, without rational basis or induced by improper motives.” *Kopera v. W. Orange Bd. of Educ.*, 60 N.J. Super. 288, 294 (App. Div. 1960). Furthermore, “where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration[,]” and the Commissioner will not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep’t. of Env’tl. Prot.*, 122 N.J. Super. 184, 199 (Ch. Div. 1973), *aff’d*, 131 N.J. Super. 37 (App. Div. 1974). Regarding HIB determinations, this standard of review requires petitioners 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 Cty.*, OAL Dkt. No. EDU 13204-13, Initial Decision (Feb. 24, 2014), *adopted*, Commissioner Decision No. 157-14 (Apr. 10, 2014).

The Anti-Bullying Bill of Rights Act (the Act) defines HIB as follows:

[A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L. 2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:

a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;

b. has the effect of insulting or demeaning any student or group of students; or

c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

N.J.S.A. 18A:37-14.

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).

The Commissioner agrees with the ALJ that L.C.'s drawing a picture and labeling it "monkey," placing it behind the target student's head, and verbally calling the same student a "monkey" on school property satisfies the statutory definition of HIB. Regarding the first

element, the Commissioner finds that it was not arbitrary, capricious, or unreasonable for the Board to conclude that the target student reasonably perceived that L.C.'s conduct was racially motivated. Contrary to petitioners' argument, L.C.'s actual intent or actual motivation is not a necessary component of HIB under the Act. The pertinent inquiry is whether the target reasonably perceived that L.C.'s conduct toward him was motivated by his race. *See Wehbeh*, at 5 ("[T]he statute requires an analysis of how the actor's motivation is perceived and whether that perception is reasonable. It does not require an analysis of the actual motivation of the actor."). The Commissioner finds that it was reasonable for the target student, who is black, to perceive L.C.'s drawing a picture of a monkey, posting it behind the target, and calling the target a "monkey" as racially motivated. *See S.H. o/b/o J.H. v. Bd. of Educ. of the West Essex Reg'l School Dist., Essex Cnty.*, OAL Dkt. No. EDU 10052-23, Initial Decision, at 6 (Dec. 30, 2024), *adopted*, Commissioner Decision No. 104-25 (Mar. 24, 2025) ("Primate rhetoric has been used to intimidate African Americans throughout our country's history, and monkey imagery has been significant in racial harassment.")

Regarding the second element, the Commissioner finds that it was not arbitrary, capricious, or unreasonable for the Board to conclude that L.C.'s behavior substantially disrupted or interfered with the orderly operation of the school or the rights of other students. Conduct has been determined to substantially disrupt the orderly operation of the school when students are so upset or embarrassed that they are "not fully available for learning." *G.H., supra*, Initial Decision at 18. In the instant matter, the record reflects that L.C.'s behavior caused the target student to feel insulted during class, so much so that he yelled out, "[L.C.] called me a monkey" or "Why did you just call me a monkey?" and an argument between the two ensued. The target

student was not fully available for learning. Additionally, L.C.'s conduct interfered with the target student's right to be free from negative, verbal attacks. The Act's preamble provides that "a safe and civil environment in school is necessary for students to learn and achieve high academic standards." *N.J.S.A.* 18A:37-13. L.C.'s conduct also interfered with the rights of other students in the class as the learning environment was disrupted due to the argument and the substitute teacher had to step away from her teaching duties to report the incident to Ms. Buchanan's office.

Regarding the third element, the record supports the conclusion that a reasonable person should know, under the circumstances, that posting a drawing captioned "monkey" directly behind a black student and calling that student a "monkey" would have the effect of emotionally harming, demeaning, or insulting that student. Furthermore, L.C.'s actions had the effect of insulting or demeaning the target student. "Racial epithets are regarded as especially egregious and capable of engendering a severe impact." *Taylor v. Metzger*, 152 *N.J.* 490, 502 (1998). For these reasons, the Commissioner concurs with the ALJ that L.C.'s behavior constitutes an HIB violation under the Act.

The Commissioner does not find petitioners' exceptions to be persuasive. Petitioners allege that the ALJ's factual finding – that L.C. "pasted the drawing behind the target and proceeded to call him a 'monkey'" (Initial Decision, at 2) – contradicts the witness statements and HIB paperwork from the incident. They contend that L.C. did not call the target a "monkey" and that L.C. posted the drawing on the teacher's computer. Petitioners' exceptions overlook the following statements from the Statutory HIB Board Report, Summary of Claims (Exhibit A): 1) witness #1 stated that "she saw Accused place a drawing of a monkey behind the Target, over

his shoulder,” and that the “Accused then pointed in the direction of Target and said ‘monkey;’” 2) the Target student stated that “after [the picture] was placed, the Accused pointed in Target’s direction and said ‘Look, a monkey;’” 3) witness #2’s written statement that she saw the “Accused get up and tape a picture of a monkey . . . to the teacher’s computer. [Target] turned around and saw it;” and 4) Ms. Masella’s testimony that “it was made clear to me that the picture was actually displayed behind the target. And the accused pointed out and said, ‘Look a monkey.’” The record contains sufficient evidence to support the Board’s conclusion that L.C. called the target a monkey, and that L.C. posted the drawing on the teacher’s monitor that was located behind the target. As such, the Commissioner concurs with the ALJ’s factual finding.

The Commissioner is similarly unpersuaded by petitioners’ argument that the Initial Decision should have included statements from Ms. Masella and the witnesses that contradict Ms. Masella’s testimony that the target was insulted by L.C.’s conduct. However, as discussed above, the record as a whole indicates that the target student was insulted, as evidenced by the argument between the two students.

Petitioners also appear to question the credibility of Ms. Masella’s testimony, stating that she testified to not remembering all the facts of the case given the time since the incident. The Commissioner notes that the ALJ had the opportunity to assess the credibility of the various witnesses who appeared before her and make findings of fact based upon their testimony. In this regard, the clear and unequivocal standard governing the Commissioner’s review is:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record.

N.J.S.A. 52:14B-10(c).

“When such a record, involving lay witnesses, can support more than one factual finding, it is the ALJ’s credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole.” *Cavalieri v. Bd. of Trs. of Pub. Empl. Ret. Sys.*, 368 N.J. Super. 527, 537 (App. Div. 2004). Upon careful review of the record, the Commissioner has identified nothing arbitrary, capricious, or unreasonable about the ALJ’s findings, which are adequately supported by sufficient, competent, and credible evidence.

Accordingly, the Initial Decision is adopted as the final decision in this matter, the Board’s motion for summary decision is granted, and the petition of appeal is hereby dismissed

IT IS SO ORDERED.¹



COMMISSIONER OF EDUCATION

Date of Decision: May 23, 2025
Date of Mailing: May 27, 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

OAL DKT. NO. EDU 05027-23

AGENCY DKT. NO. 107-4/23

**M.C. AND K.C. ON BEHALF OF
MINOR CHILD L.C.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE CITY
OF SOUTH AMBOY, MIDDLESEX COUNTY,**

Respondent.

M.C. and K.C., on behalf of minor child L.C., petitioners, pro se

Robert M. Tosti, Esq., appearing for respondent (Flanagan, Barone & O'Brien,
LLC, attorneys)

Record Closed: February 11, 2025

Decided: February 27, 2025

BEFORE **JOAN M. BURKE**, ALJ:

STATEMENT OF THE CASE

Petitioners M.C. and K.C. on behalf of their minor child L.C. challenge the harassment, intimidation, or bullying (HIB) determination relative to L.C. by respondent Board of Education of the City of South Amboy, Middlesex County (Board).

PROCEDURAL HISTORY

The petitioners initially filed a challenge of the Board's HIB determination and requested a hearing before the Office of Administrative Law (OAL). The matter was transmitted to the OAL on June 5, 2023, where it was filed as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. A hearing was conducted on November 25, 2024. The parties agreed to closing summations after the transcripts were received. The closing summations were received, and the record was closed on February 11, 2025.

FACTUAL DISCUSSION AND FINDINGS

The following facts of this case are not in dispute. I **FIND** as **FACT** that in March 2023 L.C. was fifth grader at South Amboy Elementary School (SA). While in class, he drew a picture characterized as a "monkey," and pasted it behind a student. L.C. proceeded to call the student "monkey." The classmate took offense to the comment and argued with L.C. by asking him if he was calling him a monkey. The incident was reported. A HIB investigation was conducted, and it was determined that L.C.'s conduct towards his classmate constituted HIB.

Testimony

Michelle Buchanan (Ms. Buchanan) has been the vice principal at SA for the past three years. She has worked for the South Amboy school district for twenty-six years. On March 6, 2023, the secretary received a call from the substitute teacher who was in the classroom where the incident occurred. The teacher reported that a student (L.C.) drew a picture of a "monkey" and held it up over a student's head. (1T 11:1–5.) Ms. Buchanan had L.C. come with the drawing to her office. L.C. relayed to her that he had drawn the picture and held it up. Ms. Buchanan asked L.C. if the picture was appropriate. L.C.'s response was "no." (1T 18–21.) Ms. Buchanan informed L.C. that it is a HIB violation. Ms. Buchanan filed an electronic HIB report, which triggers an investigation. She then called the parents of the accused student and the parents of the target student. Ms. Buchanan believed that L.C. was remorseful; he is a good student, and they never

had a problem with him before. (1T 12:2–25,13:1–10.)

Michelle Masella (Ms. Masella) has worked in the district for approximately twenty-nine years. Her current position is the building anti-bully specialist and also the guidance counselor. She has been an anti-bullying specialist for nine years. Her investigation usually begins after the HIB form is completed. This form can be completed by anyone (parent, victim, student, etc.). The form is usually transmitted to the district's anti-bullying director, at which point she initiates her investigation. On March 6, 2023, a substitute in the classroom noted that there were inappropriate behaviors in the classroom. Ms. Masella interviewed the students that were involved. She interviewed L.C. twice. The first time, he told her that he made the drawing and showed it to the student target because he likes to draw. After she spoke with the witnesses, she went back to him and told him that his report of the incident did not match, because the target said he did not like drawing. At that time, L.C. seemed to have a change in his demeanor, and it appeared that he had been “coached” in what to say. He was more remorseful in the first interview.

According to Ms. Masella, she confirmed that the picture of the monkey was attached to a monitor behind where the target was. The target confirmed that he did confront L.C. and asked why he was calling him a monkey. An argument ensued as to why he was calling him a monkey. Ms. Masella said the target said he felt like so much had happened that he just wanted to move on. There were other African American students in the class that could have been impacted by L.C.'s action. The target told her he felt insulted. Thus, based on her confirmation that the picture was hung behind the target's head; the reports of two witnesses who saw the accused placed the pictures behind the target's head; a disruption of the classroom environment; and a characteristic of race, Ms. Masella confirmed that the incident constituted bullying. (1T 34–37.)

Ms. Masella, after gathering the information, prepared an official report and submitted it to the principal, who forwarded the report to the superintendent's office. Ms. Masella could not recall if a subsequent HIB complaint was filed in this matter. She did speak with the parents of the accused about their right to appeal. (1T 38:15–19.) On cross-examination, Ms. Masella admitted to having a conversation with all the fifth graders

regarding words that can offend other classmates. (1T 45:7–13.)

As part of a HIB investigation, Ms. Masella's role is to interview the alleged victim of HIB, interview the alleged perpetrator as well as any witnesses, and collaborate with the principal to make a determination as to whether or not an act of HIB occurred.

Ms. Masella testified that the determination from her investigation was that L.C. committed HIB against the other student. Specifically, she testified that the comment was related to an actual characteristic of the victim, his race, and that the comment had an impact on the student, as the student just wanted to get over the investigation and not call further attention to himself.

Ms. Masella testified that her investigation was thorough, and she believed the investigation and its result were proper and that the Board acted appropriately in upholding the recommendation of HIB against L.C.

Sean Dunphy (Principal Dunphy) has been employed by the District as principal for thirteen years. At the time of the incident he was out of the District. Ms. Buchanan called him and told him about the incident. When he returned, he found out exactly what happened. According to Principal Dunphy, once a HIB investigation is launched, it is out of his hands and is with the anti-bullying specialist. (1T 17:2–8.) There is a process that after the HIB investigation is filed online, statements are taken from both the victim and the accused and any witness. (1T 17: 11–16.) A determination is made after the investigation with the anti-bullying specialist and the anti-bullying coordinator on whether there was HIB. Once this process is completed the parents are contacted. These steps were followed here. (1T 18:13.)

At the time this incident occurred, there was a lot of language being used in the school by students that stemmed from online, social media, texts, group texts, and group chats where the term “monkey was thrown around a lot.” (1T 18:11–15.) This led him to have Ms. Masella, the guidance counselor, go to homerooms and talk about language. Principal Dunphy then had to address the fifth graders as a whole during a lunch period after this incident to let them know that the use of certain words was not acceptable. (1T

18: 16–25.) There was one other previous incident that involved the use of the term “monkey.” Principal Dunphy sent a letter to the parents and guardians of the fifth-grade students informing them of the meeting he had with the students. In his letter he noted: “[T]he terms we have been alerted to are, but not limited to: Gay, Lesbian, Homosexual, and Monkey. These are all terms that some may and do find offensive.” (J-J.) Principal Dunphy testified that the problem subsided for a little while, not fully.

Principal Dunphy testified that after reading the anti-bullying report he agreed with the findings that L.C.’s conduct was HIB. (1T 21:5–11.) On cross-examination, Principal Dunphy admitted that it was over a month after the incident before he addressed the students about “the use of dehumanizing words.” (1T 23:11–12.)

Credibility is best described as that quality of testimony or evidence which makes it worthy of belief. The Supreme Court of New Jersey considered the issue of credibility in In re Estate of Perrone, 5 N.J. 514 (1950). The Court pronounced:

Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances.

[5 N.J. at 522.]

In order to assess credibility, the witness’ interest in the outcome, motive or bias should be considered. Furthermore, a trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

When assessing credibility, inferences may be drawn concerning the witness’ expression, tone of voice, and demeanor. MacDonald v. Hudson Bus Transp. Co., 100 N.J. Super. 103 (App. Div. 1968). Additionally, the witness’ interest in the outcome, motive, or bias should be considered. Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which

it “hangs together” with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963).

Having considered the testimonial and documentary evidence presented and observing the demeanor of Michelle Masella, Sean Dunphy and Michelle Buchanan, I accept their testimony to be highly credible. Michelle Masella, Sean Dunphy and Michelle Buchanan merely stated the facts as they recalled them, without histrionics or magnification. Their testimony was consistent and corroborated by the documentary evidence. None of these witnesses had an ulterior motive or anything to gain by testifying.

LEGAL ANALYSIS AND CONCLUSION

New Jersey enacted the Anti-Bullying Bill of Rights Act (Act) to “strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying” occurring both on and off of school grounds. N.J.S.A. 18A:37-13.1(f). Definitions relative to adoption of harassment and bullying prevention policies are found in N.J.S.A. 18A:37-14, which states in part:

“Harassment, intimidation or bullying” means 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.

Here, the investigation revealed a single incident of L.C. drawing a picture purported to be a monkey, placing it behind the target student's head, and verbally calling the target student a monkey on school property. The distinguishing characteristic in this case was the student's race. This incident interfered with the student's right to be free from negative, verbal attacks. A reasonable person should know, under these circumstances, that such a verbal attack would have the effect of emotionally harming the student. Clearly this incident had the effect of insulting or demeaning any student, as is evidenced by the target student just wanting the investigation to go away.

The petitioners allege that the HIB investigation was conducted improperly and was incomplete, as they did not do a thorough investigation of all the witnesses, and therefore the determination should be reversed.

The Board urges this tribunal to conclude that the Board was not arbitrary, capricious, or unreasonable in its determination that the HIB investigation was conducted properly and that L.C.'s conduct did constitute HIB.

The Commissioner of Education will not overturn the decision of a local board in the absence of a finding that the action below was arbitrary, capricious, or unreasonable. T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07, Initial Decision (February 6, 2008) (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581 (1966)), adopted, Comm'r (April 7, 2008), <http://njlaw.rutgers.edu/collections/oal/>. Further, the Commissioner will not substitute his judgment for that of the board of education, whose exercise of its discretion may not be disturbed unless shown to be "patently arbitrary, without rational basis or induced by improper motives." Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). New Jersey 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 Sewage Co. v. Dep’t of Env’tl. 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, the petitioner must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it.

Here, based on the credible evidence presented, I **CONCLUDE** that all elements required to establish a violation under the HIB Act have been satisfied. I **CONCLUDE** that petitioners have not met their burden of proof that the Board acted in an arbitrary, capricious or unreasonable manner in concluding that L.C.’s actions constituted harassment, intimidation or bullying under the Act. Furthermore, I **CONCLUDE** that the petitioner failed to demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it.

ORDER

Based on the foregoing, I **ORDER** that the petition be **DISMISSED**.

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

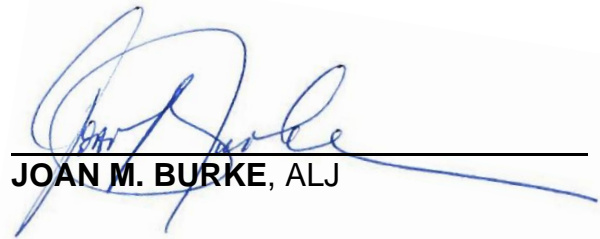
This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting Commissioner of the Department of Education does not adopt, modify, or reject this decision within 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.

February 27, 2025

DATE



JOAN M. BURKE, ALJ

Date Received at Agency:

Date Mailed to Parties:

JMB/js/jm

APPENDIX

Witnesses

For Petitioners:

None

For Respondent:

Michelle Masella

Sean Dunphy

Michelle Buchanan

Exhibits

Joint:

J-A Statutory HIB Board Report

J-B Harassment, Intimidation, or Bullying Mandatory Reporting Form, March 7, 2023

J-C Reporting Form For Use by Anti-Bullying Specialist, March 6, 2023

J-D Incident Report

J-E Witness Statement

J-F Witness Statement

J-G L.C.'s Statement

J-H Statement

J-I Drawing

J-J Letter to Parents/Guardians, March 10, 2023

J-K1 HIB 338 Form

J-K2 Student's Statement

J-K3 Reporting Form for use by Anti-Bullying Specialist, February 2, 2023

J-L Letter to parents from the Board, April 5, 2023

For Petitioners:

P-1 Petitioners' closing email letter brief

For Respondent:

R-1 Respondent's closing brief