

New Jersey Commissioner of Education
Final Decision

A.M. and A.M., on behalf of minor child, B.M.,

Petitioners,

v.

Board of Education of the Somerset Hills School
District, Somerset 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, the Commissioner concludes that the Board's decision that B.M. targeted H.B. due to her distinguishing characteristic of autism was not arbitrary, capricious, or unreasonable. In addition, the Commissioner concurs 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 B.M. committed an HIB violation. The Commissioner further concurs with the ALJ that although the Board did not issue an HIB report within the requisite number of days under *N.J.S.A. 18A:37-15(b)(6)*, petitioners were not prejudiced as they were advised of the allegation and investigation, provided with the redacted HIB report, and had a full opportunity to appear before the Board whilst represented by counsel. Lastly, the Commissioner agrees with

ALJ that the Board did not violate B.M.'s First Amendment rights by determining that he committed HIB.

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: 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

SUMMARY DECISION

OAL DKT. NO. EDU 08742-24

AGENCY DKT. NO. 180-6/24

**A.M. AND A.M. ON BEHALF OF MINOR
CHILD B.M.,**

Petitioners,

v.

**SOMERSET HILLS PUBLIC SCHOOL
DISTRICT BOARD OF EDUCATION,**
Respondent.

Julie Warshaw, Esq., for petitioners (Warshaw Law Firm, LLC, attorneys)

Eric L. Harrison, Esq., for respondent (Methfessel & Werbel, PC, attorneys)

Record Closed: February 7, 2025

Decided: March 6, 2025

BEFORE **JUDITH LIEBERMAN**, ALJ:

STATEMENT OF THE CASE

Petitioners A.M. and A.M., parents of minor son B.M., appeal from a determination made by respondent Board of Education of the Somerset Hills School District ("District" or "Board") that B.M. committed an act of harassment, intimidation, or bullying (HIB) in

violation of the Anti-Bullying Bill of Rights Act (“Act”), N.J.S.A. 18A:37-13.1 to -32. The parties filed cross-motions for summary decision.

PROCEDURAL HISTORY

The Department of Education transmitted the matter to the Office of Administrative Law, where on June 26, 2024, it was filed as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The parties sought leave to file cross-motions for summary decision. All briefs were filed by November 12, 2024. On January 24, 2024, the record was reopened to request additional information from both parties. That information was received on February 7, 2025, and the record for the motions closed that day.

FINDINGS OF FACTS

The following facts, taken from the parties’ submissions, including certifications and supporting documents, are undisputed.

1. Respondent adopted Board Policy 5512, “Harassment, Intimidation, and Bullying.” Certification of Dr. Jaime Walker, director of guidance and HIB coordinator, (“Walker Cert.”), R-C. It requires, among other things, that an investigation into an allegation of HIB “shall be initiated by the Principal or the Principal’s designee within one school day of the verbal report of the incident. The investigation shall be conducted by the school Anti-Bullying Specialist in coordination with the Principal. The Principal may appoint additional personnel who are not school Anti-Bullying Specialists to assist with the investigation.” Id. at 25. Also, the “investigation shall be completed and the written findings submitted to the Principal as soon as possible, but not later than ten school days from the date of the written report of the incident. Should information regarding the reported incident and the investigation be received after the end of the ten-day period, the school Anti-Bullying Specialist shall amend the original report of the results of the investigation to ensure there is an accurate and current record of the facts and activities concerning the reported incident.” Ibid.

2. B.M. is currently a third-grade student at Bedwell Elementary School (“Bedwell”). He was diagnosed with attention-deficit/hyperactivity disorder (ADHD) combined type, anxiety, and oppositional defiant disorder. P-14. He has had a 504 Plan since the end of first grade, which focuses on his concentration in the classroom. Certification of A.M. (“A.M. Cert.”) at ¶ 2.

3. The events at issue here occurred while B.M. was in second grade.

4. On or about February 1, 2024, Bedwell principal Jazmyn Allen was informed by teacher Ms. Falzarano of a series of negative behaviors occurring in her second-grade classroom, 2-F. Walker Cert. at ¶ 5.

5. On February 5, 2024, Ms. Dooley, a school counselor/anti-bullying specialist, received an email from the parents (“Parents 1”) of a child who was in the 2-F class. They wrote that their child was anxious about school and cited incidents involving B.M. They cited examples of B.M.’s behavior that was troublesome to their child: B.M. told the child that he was “the second worst in the class after [H.]”; B.M. told the child that he was part of the “[H.] Hit Club”; B.M. and another student “made him hit H.B. so he would get in trouble”; and B.M. kicked their child. R-D. The parents wrote that the interactions have “directly affect[ed] [their child’s] education.” Ibid.

6. Another parent (“Parent 2”) wrote to Principal Allen, Dooley, the 2-F teacher, and another staff member about their child’s anxiety. They did not reference B.M. R-E.

7. On February 7, 2024, Principal Allen met with a third parent (“Parent 3”), who “advised of the negative behaviors exhibited by B.M. within the classroom and at recess, which targeted H.B. Upon information and belief, the behaviors were perceived as being motivated by H.B.’s disabling condition.” Walker Cert. at ¶ 8.

8. An HIB investigation was initiated the following day, February 8, 2024. Schools were closed on February 13, 16, and 19, 2024, and students were dismissed early on February 15, 2024. Id. at ¶¶ 9–10; R-F.

9. H.B. was interviewed and reported that B.M. “bullies” her, that he “is mean a lot of the time,” and that he “does inappropriate stuff[.]” He wrote “I hate you” on an apology note that H.B. gave him. H.B. said that B.M. never hit or pushed her. R-M at 5.¹

10. B.M. was interviewed² and stated that he is in the “hating [H.B.] club,” which he thought was started by his good friend [R.] because “kids didn’t like [H.B.]. She keeps asking if they want to play over and over again and she annoys them because they don’t want to play with her.” B.M. “wants to be part of the club because [H.B. is] annoying.” Another student, [B.,] is also a member of the club. B.M. stated that he pushed H.B. two months prior while they were playing basketball and [H.B.] was throwing footballs. [H.B.] was upset and said, “Hey don’t do that.” Id. at 6.

11. Statements were provided by four additional students.³ Student 1 reported that B.M. tried to get H.B. to “play a game where you fight people. [B.M.] pushed [H.B.] into the mulch. She was sometimes crying and sometimes mad.” Id. at 7. She gets angry when he calls her a certain name; he laughs at her when she is angry. He “says bad words to [H.B.] like ‘shut up’” and says, “you’re either on my team or [H.’s] team.” Ibid. Students are afraid to “take [H.’s] side.” Ibid. Student 1 is friends with H.B., which B.M. does not like. Student 1 fears that B.M. may “do

¹ An unredacted version of H.B.’s statement is found at R-G.

² Petitioners assert in their brief that “B.M. has stated that he did not give a statement, and his parents were not advised otherwise.” Pet’rs’ Br. at 20. However, respondent produced an unredacted report of B.M.’s interview, for in camera review. Although petitioners refer to the redacted statement as an “alleged statement” and claim that the report is vague, apparently due to the redactions, there is no evidence in the record to indicate or suggest that the unredacted report is not authentic. His redacted statement is found at R-M; his unredacted statement is found at R-H.

³ In order to maintain student confidentiality, respondent referred to the students as Students 1, 2, 3, and 4. Redacted versions of their statements are found at R-M. Unredacted versions are found at R-I through R-L.

something to him” and has tried to punch him. However, B.M. is nice to Student 1 when they are not around H.B. Ibid. H.B. willingly goes with B.M. when he tells her to, because she believes he is trying to be nice; however, he is then mean to her.

12. Student 2 reported that B.M. asked them to join the “[H.B.] club.” Id. at 8. B.M. has teased Student 2, called them “weird,” and “called [them] the second worse kid in the class[.]” Ibid. This is why Student 2 “doesn’t want to come to school.” Ibid. Student 2 is afraid to refuse to join the H.B. club because they do not want B.M. to be mean to them. B.M. is also mean to other students. Student 2 refused to push H.B. when B.M. told them to do so.

13. Student 3 reported that B.M. has tried to fight them; he physically twisted their arm and punched them. B.M. was mean to H.B., but he was also “mean to everyone.” Id. at 9. Last year he tried “to fight [H.B.]” Ibid. Student 3 was aware of the “[H.B.] club” and that the members were annoyed by H.B. and said mean things about her. Student 3 did not know if B.M. was part of the club. Ibid. Student 3 and H.B. were friends but Student 3 said H.B. was sometimes “a little annoying” or “mean to people.” Ibid. H.B. told Student 3 to stop when Student 3 tried to help her.

14. Student 4 is friends with B.M. B.M. asked Student 4 to join the “[H.B.] Hitting Club.” Id. at 10. B.M. said that Student 1 “asked B.M. to be in charge of the club or he will kick him in the shin 100 times.” Ibid. As of the date of the interview, B.M. and Student 1 were “still talking about the club” and they said “[H.] is the worst.” Ibid. Student 4 refused to hit H.B. when Student 1 asked them to. B.M. has “said bad words” to H.B., including that he hates her. Ibid. Student 1 also told H.B. that he hates her. B.M. tried to hit Student 3.

15. The investigation concluded on or about February 22, 2024,⁴ and found that B.M. “knowingly engaged in racist, homophobic, or other stereotyping behavior

⁴ The investigation report lists February 27, 2024, as “Date closed.” R-M at 1.

with the specific objective of hurting, intimidating or bullying.” R-M at 1. The behavior was classified as “verbal, physical, emotional.” Ibid. The following actions were reported with respect to B.M.: “Student Counseling” and “staff were cautioned to be alert to any further interactions and partnering with certain students; the student will be attending counseling to develop and sustain friendships; the homeroom teacher and counselor will review the student’s safety plan that was developed last school year; and the 504 will be re-visited to enlist other accommodations to support the student, reflective conversation with Assistant Principal.” Id. at 2.

16. The superintendent endorsed the results of the investigation on or about February 26, 2024. Walker Cert. at ¶ 14.

17. The Board was informed of the matter during its March 13, 2024, meeting. Ibid.; P-12.

18. On March 15, 2024, assistant superintendent of schools Colleen Butler, Ed.D., sent a letter to petitioners in which she informed them that the HIB investigation was complete and that the results were reported to the superintendent. She wrote:

Pursuant to the requirements of Board Policy and State law, when the investigation of an HIB allegation is commenced, the Superintendent must report the findings to the Board of Education and then to the alleged victims and offenders. Specifically, the law requires that the alleged victims and offenders be informed of the nature of the investigation, whether the district found evidence of HIB, and whether discipline was imposed or services provided to address the incident.

The anti-bullying specialist at Bedwell Elementary School completed the investigation. As part of the investigation, your child was interviewed as an alleged offender. Other alleged victims, offenders or witnesses were also interviewed. The Board of Education was informed of the results of the investigation at the Board of Education meeting held on March 13, 2024.

It has been determined that there was sufficient evidence that your child committed a violation of the HIB statute.

....

You have the right to request a hearing before the Board of Education regarding this incident, but you are not required to do so. If you [sic] like to request a hearing, please contact me directly.

[P-12.]

Assistant Superintendent Butler also advised petitioners of the “services or discipline” that were to be provided to B.M. as a result of the investigation. Ibid.

19. On March 19, 2024, respondent provided petitioners the HIB report, including the witness statements. The personal identifiers of the students were redacted. November 12, 2024, Certification of Julie Warshaw, Esq. (“Warshaw Cert. II”) at ¶ 5; Exh. C.

20. A Board hearing was conducted, with petitioners and their counsel present, on April 17, 2024. Pet’rs’ Br. at 9; P-1.

21. On April 26, 2024, Dr. Butler advised petitioners of the Board’s determination after the April 17, 2024, hearing:

After careful consideration of the arguments that were raised by you and your attorney during the HIB appeal hearing, the Board decided to affirm the determination that the allegations that were asserted against your child constitute HIB, as your child’s actions were reasonably perceived to be motivated by an actual, perceived or other distinguishing characteristic, resulted in a substantial disruption or interference with the orderly operation of the school and/or the rights of a student and had the effect of insulting or demeaning a student, among other things. As a result, at its meeting on April 24, 2024, the Board passed a resolution affirming the determination.

[P-1.]

22. The District conducted educational, psychological, and social history evaluations. P-15. An initial 504 eligibility determination meeting was conducted on June 14, 2023, and a plan was developed. A.M. Cert. at ¶ 46. After a June 4, 2024, child study team meeting, the District found B.M. eligible for special education services under the classification of “other health impaired,” given assessments that concluded that he had behavioral and emotional disorders with a history of ADHD. P-14; P-15.

Petitioners assert the following with respect to the HIB investigation:

1. After the HIB charge against B.M., the school “refused to provide any information to [petitioners] regarding the charges except that it was reported by staff, and it was not physical.” A.M. Cert. at ¶ 3. B.M. “had no idea what he was accused of doing as he did not recall any alleged incident.” Id. at ¶ 24.

2. Petitioners dispute respondent’s assertion that Principal Allen or any other school personnel communicated with them about the reports made by other parents about B.M.’s behavior toward H.B. Pet’rs’ Opp’n Br. at 6, ¶ 4.

3. A.M. learned, from speaking with unidentified parents of other students in the class, “that the way the matter was investigated was discriminatory and the reliability of the results suspect.” A.M. Cert. at ¶ 32. She referenced the following information she was told:

a. B.M. and the alleged victim, “H.,” were removed from the classroom when the investigator arrived there.

b. All of the other students were asked to write a report.

c. Only four witness statements were included in the report, “as only four children were called for ‘private’ conversations.”

- d. Petitioners were not provided the other students' reports.
- e. The parents with whom A.M. spoke had not been contacted by the school about their children's role in the investigation. However, A.M. was told that they would be contacted.
- f. B.M. was singled out even though there were widespread problems in the class.
- g. "[T]here is a girl in the class who is defiant and rude and considered annoying by the other children" and no tools were offered to the children to help them get along. One parent told A.M. that her daughter repeatedly complained about the female student.
- h. B.M. told petitioners that three other children were involved in the "Hate Club" but were not held accountable, even though they were called to the school counselor's office.

A.M. Cert. at ¶¶ 32–42.

Petitioners asserted the following undisputed facts concerning B.M.:

1. Before B.M. was in second grade, school personnel advised petitioners that he "had difficulty getting along with other children and often bothered other children and got into their personal space." A.M. Cert. at ¶ 7; P-3. While B.M. was in first grade, his teacher reported that his behavior was regressing and that his behavioral problems affected other students. P-3 to P-5.
2. Petitioners requested assistance from the school to teach B.M. coping and social skills and asked for more supervision during lunch and recess. A.M. Cert. at ¶ 6; P-3. They detailed their requests in 2022 for evaluations for a 504 Plan and supports, in response to B.M.'s medical diagnoses and teacher reports about his behavior. A.M. Cert. at ¶¶ 7–8, 11; P-3 at 3.

3. Petitioners also detailed their ongoing discussion with school personnel about recommendations made by a board-certified behavior analyst, results of tests that showed concern about aggression, hyperactivity, conduct, adaptability, and social skills, as well as an assessment of being “at risk” for emotional disturbance. They also relayed insights offered by their family counselor. P-3 at 1–2.

4. They also described the responses of school personnel to their requests, which included descriptions of how B.M. had “some difficulty with social behaviors. He constantly bothered the other children by grabbing them and being too close to them. . . . When the children ask to be left alone [B.M.] doesn’t listen to their request and seems to bother them even more.” A.M. Cert. at ¶¶ 7, 10, 13, 14; P-3 at 3–4.

5. In February 2022 the school counselor scheduled an “I&RS/504” meeting for B.M., and petitioners asked if some accommodations could be “considered and tried” prior to the meeting. P-3 at 3.

6. Petitioners further described their discussions in 2022 with B.M.’s principal about B.M.’s episodes of aggression toward classmates and the lack of support they received from the school until he punched a girl in the face, stabbed a child with a pencil, and bullied an older child. Id. at 6.

7. Petitioners continued to communicate their concerns about B.M.’s behavior through the end of kindergarten and into first grade and requested assistance from the school “to ensure his inappropriate and unkind behaviors are discouraged and stopped in the school environment and he is directed to make better choices.” Id. at 5–7.

8. On March 14, 2023, B.M.’s teacher completed a Child Behavior Checklist Report. She noted that he has more problems than typically experienced by

children in his age group, “particularly problems in social relationships, attention problems, rule-breaking behavior and problems of an aggressive nature.” P-7.

9. In March 2023, medical professionals requested accommodations for B.M., including a behavior management program and functional behavior analysis, and evaluation by the child study team to determine if he qualifies for an individualized education program. P-8; P-9. A school psychologist who treated B.M. wrote that he had oppositional defiant disorder and attention deficit hyperactivity disorder. She advised that he required a behavioral specialist and close adult supervision, particularly in “loosely supervised school settings like recess, playground and lunch, etc.” P-10.

10. After a March 20, 2023, meeting, the District determined that an evaluation to determine if B.M. had a disability was not warranted because it “was determined that [he] is not suspected of having a disability which adversely affects [his] educational performance, and is not in need of special education and related services, or speech-language services only.” P-11.

Parties’ Arguments

Respondent asserts that the undisputed evidence shows that it conducted an appropriate HIB investigation that found that B.M. engaged in behavior that targeted fellow student H.B. and that this conduct constituted an HIB violation. Because there is no evidence that it acted in bad faith or disregarded the circumstances, there is no basis for reversing its decision. It also contends that petitioners raise irrelevant arguments, in particular that B.M.’s misconduct is attributable to the District’s failure to teach him coping and social skills and an alleged lack of supervision during unstructured activities. Respondent argues that the petitioners inappropriately seek to challenge the adequacy of B.M.’s 504 Plan and the District’s alleged failure to timely evaluate and classify B.M. pursuant to the Individuals with Disabilities Education Act (IDEA).

Petitioners argue that respondent’s decision was arbitrary, capricious, and unreasonable, in that it was prejudicial, procedurally deficient, and subjective; it failed to

comply with the required elements of the Act and its regulations; and it lacked evidentiary support. They also assert that a statement attributed to B.M., and which was considered by the Board in finding that B.M. committed an act of HIB, was protected by the First Amendment.

LEGAL DISCUSSION

Under N.J.A.C. 1:1-12.5(a), a party may move for summary decision upon all or any of the substantive issues in a contested case prior to a hearing. A motion for summary decision shall be granted where the papers and discovery together with affidavits 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). When a motion for summary decision is made and supported, an adverse party, in order to prevail, must by responding affidavit set forth specific facts showing that there is a genuine issue that can only be determined in an evidentiary proceeding. Ibid.

An issue is “genuine” if, considering the burden of persuasion at trial, the evidence submitted on the motion and all legitimate inferences could sustain a decision in favor of the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 530 (1995). A fact is “material” if it will “affect the outcome of the suit under the governing law.” Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986). Significantly, “bare conclusions in the pleadings, without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment.” U.S. Pipe & Foundry Co. v. American Arb. Ass’n, 67 N.J. Super. 384, 399–400 (App. Div. 1961) (citations omitted).

Here, both parties stated that there were no genuine issues of material fact and, thus, that the case is ripe for summary decision. Neither party contested material facts offered by the other party concerning the substance of the underlying HIB charge. While petitioners averred that B.M. did not recall having made a statement about the incident at issue here, they did not supply evidence supporting his assertion and, moreover, there is undisputed documentary evidence of his statement. To the extent that petitioners referenced statements by other parents, those statements are hearsay and are not documented by admissible evidence. Otherwise, to the extent that petitioners seem to

challenge other of respondent's facts as they relate to the underlying charge, they actually do so in the form of legal argument and conclusion that is based on those facts. To the extent that petitioners argue that the HIB determination should be reversed due to procedural violations, the material facts concerning the manner in which the investigation was conducted are not in dispute. In sum, the facts that are material to the issues presented by the cross-motions are not in dispute. For these reasons, I **CONCLUDE** that summary decision is appropriate.

The issue presented is whether the Board's finding that B.M. committed an act of HIB was arbitrary, capricious, or unreasonable in light of the information that the Board possessed when it made its determination. The Act defines HIB as follows:

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 [N.J.S.A. 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 (emphasis added).]

Each school district must adopt a policy that prohibits HIB and provides for a prompt response to any alleged HIB incident. N.J.S.A. 18A:37-15. 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 and shall take no longer than ten school days to be completed. 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). Remedial action shall take into account the “nature of the behavior; the nature of the student’s disability, if any, and to the extent relevant; the developmental age of the student; and the student’s history of problem behaviors and performance.” N.J.A.C. 6A:16-7.7(a)(2)(v). Remedial action may include a “behavioral assessment or evaluation, including, but not limited to, a referral to the child study team, as appropriate” and “[s]upportive interventions and referral services[.]” Ibid.

The results shall be reported to the board of education “no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent.” N.J.S.A. 18A:37-15(b)(6)(c).

The parents of the students involved in any alleged HIB incident are entitled to receive information about the nature of the investigation and the result of the investigation. N.J.S.A. 18A:37-15(b)(6)(d) details school districts’ obligations in this regard:

[P]arents or guardians of the students who are parties to the investigation shall be entitled to receive information about the investigation, in accordance with federal and State law and regulation, including the nature of the investigation, whether the district found evidence of harassment, intimidation, or bullying, or whether discipline was imposed or services provided to address the incident of harassment, intimidation, or bullying. This information shall be provided in writing within 5 school days after the results of the investigation are reported to the board. A parent or guardian may request a hearing before the board after receiving the information, and the hearing shall be held within 10 days of the request. The board shall meet in executive session for the hearing to protect the confidentiality of the students. At the hearing the board may

hear from the school anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents[.]

The board must issue a decision at the first meeting after its receipt of the investigation report. N.J.S.A. 18A:37-15(b)(6)(e). The board may affirm, reject, or modify the superintendent's decision. Ibid. The board's decision may be appealed to the Commissioner of Education. Ibid.

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), <https://njlaw.rutgers.edu/collections/oal/>.⁵

In determining whether agency action is arbitrary, capricious, or unreasonable, a reviewing court must examine:

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[In re Stallworth, 208 N.J. 182, 194 (2011) (citation omitted).]

Thus, 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). "Where there is room

⁵ This decision and other administrative and unpublished court decisions are not binding. They are referenced because they provide relevant guidance.

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’tl Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff’d, 131 N.J. Super. 37 (App. Div. 1974).

The Act applies to students with disabilities even if the disabilities may affect their actions and impact their ability to appreciate the impact of his actions on others.⁶ In E.H. and B.H. v. Board of Education of Jefferson, Morris County, 2024 N.J. AGEN LEXIS 405 (April 22, 2024), adopted, 2024 N.J. AGEN LEXIS 383 (May 30, 2024), the student who was found to have engaged in bullying in violation of the Act suffered from ADHD, central auditory processing disorder, autism, sensory processing disorder, emotional disorder, and disruptive mood dysregulation disorder. His parents argued that, given his disabilities, he did not know that his behavior could harm the other student, and he could not form the necessary intent to support a violation of the Act. The administrative law judge (ALJ) found, and the Commissioner agreed, that, “[w]hile the Board accepts that [the student] did not fully appreciate his actions or intend to harm the victim, [his] disabilities do not excuse his inappropriate actions. Every student is bound by the District’s HIB policy, and the District is required to investigate HIB complaints and enforce its HIB policies. N.J.S.A. 18A:37-15(b)(6).” 2024 N.J. AGEN LEXIS 405 at *12. The ALJ thus concluded, “Although petitioners feel the school, aware of [the student’s] struggles, could have done more to help [him] avoid such behavior, that does not change what [he] did, even if [his] actions were careless.” Ibid. Thus, “the only issue [to be considered] is whether the Board’s HIB determination should stand.” Id. at *4; see also N.J.A.C. 6A:16-7.7 (appropriate remedial action after a finding of HIB shall take into account the nature of the student’s disability, if any). Therefore, whether respondent failed to adequately address B.M.’s needs as a student with disabilities is not to be addressed here and cannot form a basis for a grant of summary decision to petitioners.⁷

⁶ Petitioners argue that the District violated B.M.’s rights as a student with disabilities in that it knew he had a 504 Plan; refused to evaluate him for special education and related services; and did not conduct a disciplinary hearing or manifestation determination pursuant to the IDEA, 20 U.S.C. § 1415(k). Pet’rs’ Br. at 34–35.

⁷ Petitioners may, of course, pursue a separate action under the IDEA.

As stated above, the Act establishes three elements that must be satisfied to find that a student committed an act of HIB. The first is whether the action is reasonably perceived as being motivated either by any actual or perceived characteristic. This “requires an analysis of how the actor’s motivation is perceived and whether that perception is reasonable.” Wehbeh v. Bd. of Educ. of Verona, Essex Cnty., Comm’r Decision No. 51-20 at *5 (February 4, 2020), <https://www.nj.gov/education/legal/>. This does not require that the victim correctly assess the actor’s motivation, “as such a requirement would convert the analysis from one about reasonably perceived motivation to one about actual motivation and would inappropriately place the burden on the alleged victim to divine the intent of the actor.” Id. at *5, n.3.

“The statute has not limited ‘distinguishing characteristic’ to those specifically enumerated[.]” K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337, 351 (App. Div. 2011).

By its plain terms, the Legislature made clear that courts and school districts should not limit the scope of the statute to the more classic protected characteristics such as race or religion, and they intended instead that the statute apply whenever the harassment at issue was motivated by any distinguishing characteristic of the targeted student. Instead of providing a longer list, the Legislature in the [Act] intentionally included a very open-ended phrase, “any other distinguishing characteristic,” to signal that the Act would apply to a broad, unlimited range of distinguishing characteristics, so long as the distinguishing characteristic motivated the bully to harass the targeted student.

[R.A. on behalf of minor child, B.A., v. Bd. of Educ. of Hamilton, Mercer Cnty., EDU 10485-15, Initial Decision (May 12, 2016), adopted, Comm’r (June 22, 2016), <https://njlaw.rutgers.edu/collections/oal/>.]

For example, in J.M.C. ex rel A.C. v. Board of Education of East Brunswick, EDU 04144-12, Initial Decision (November 27, 2012), adopted, Comm’r (January 9, 2013), <https://njlaw.rutgers.edu/collections/oal/>, the Commissioner found that a single incident in which a male student was demeaned by a statement that he “danced like a girl” was a violation of the Act because the bullying was based on the distinguishing characteristic of

the perception of the targeted student's dancing. In C.C. ex rel S.C. v. Board of Education of Jefferson, EDU 10872-14, Initial Decision (April 6, 2015), <https://njlaw.rutgers.edu/collections/oal/>, adopted, Comm'r Decision No. 153-15 (May 12, 2015), <https://www.nj.gov/education/legal/>, the Commissioner found that a perception that the targeted student was not a good athlete was sufficient to trigger the protection of the Act. The Commissioner noted that "the HIB statute is intended to drive home the principle that cruel words will not be tolerated in a school environment." Similarly, in W.C.L. & A.L. ex rel L.L. v. Board of Education of Tenafly, EDU 03223-12, Initial Decision (November 26, 2012), adopted, Comm'r (January 10, 2013), <https://njlaw.rutgers.edu/collections/oal/>, the Commissioner held that even a single and true comment by a student that the targeted student had dyed her hair because she had head lice violated the statute.

When the Department amended its HIB regulations, it added the requirement that district policies include a statement that "bullying is unwanted, aggressive behavior that may involve a real or perceived power imbalance." N.J.A.C. 6A:16-7.7(a)(2)(iii). The Commissioner has addressed the intent of this amendment, writing that it is "to assist school officials in identifying HIB within the context and relative positions of the alleged aggressor and target, rather than focusing *solely* on the real or perceived characteristics." Klapach v. Bd. of Educ. of Fort Lee, Bergen Cnty., 2021 N.J. AGEN LEXIS 89 (April 6, 2021) (quoting 50 N.J.R. 155(b) (2018)). However, an analysis of the power dynamic alone "cannot be the sole basis for a finding of HIB." Ibid. The "distinguishing characteristic" element must be satisfied.

Furthermore, there must be a showing of more than a mere dispute between students, even if unpleasant words or conduct is used. "[H]armful or demeaning conduct motivated only by another reason, for example, a dispute about relationships or personal belongings, or aggressive conduct without identifiable motivation, does not come within the statutory definition of bullying." K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. at 351; see also L.B.T. ex rel K.T. v. Bd. of Educ. of the Freehold Reg'l Sch. Dist., EDU 07894-12, Initial Decision (January 24, 2013), adopted, Comm'r (March 7, 2013), <https://njlaw.rutgers.edu/collections/oal/> (a personal breakdown in the relationship between two students is a mutual non-power-based conflict that is not about a

characteristic of the targeted student); L.P. v. Bd. of Educ., 2018 N.J. Super. Unpub. LEXIS 1928 (App. Div. August 15, 2018) (alleged HIB act was not motivated by a distinguishing characteristic because it was an interpersonal conflict between athletes on a school sports team).

Petitioners argue that B.M.'s interview report does not identify the characteristic that motivated his alleged actions and, "[a]t most, B.M. does not like someone that he finds annoying." Pet'rs' Br. at 21.⁸ Indeed, the undisputed evidence in the record⁹ shows that B.M. mistreated H.B. B.M. stated¹⁰ that he is a member of the "Hating [H.] Club" because he finds H.B. to be annoying. "She keeps asking if they want to play over and over again and she annoys them because they don't want to play with her." He also stated that he pushed her while they were playing. H.B. stated that B.M. bullies her, is mean to her "a lot of the time," and does "inappropriate stuff." Student 1 stated that B.M. pushed H.B.; calls her a name that upsets her; laughs at her; and tells her to "shut up." B.M. also causes division by stating, "You're either on my team or [H.'s] team[.]" which causes students to be afraid to take H.B.'s side. Student 1 added that H.B. believes B.M. when he pretends to be nice to her; however, he is ultimately mean to her. Student 2 stated that B.M. asked them to join the "Hating H. Club," and also told Student 2 to push H.B. Student 3 confirmed that "people who were annoyed by [H.] were in the club" and

⁸ Petitioners also argue that the investigation report contradicts itself because it identifies motivating factors of "disability" and "autism" but also states "none" under "motivation" on the last page. However, the last page is an "Incident Queue Submission" form that is dated February 7, 2024. It merely reports that a "staff member reported that a group of students were making fun of another student and created a [sic] 'I Hate' club against the student." R-M at 13. As the investigation was not concluded at the time this entry was recorded, it is superseded, not contradicted, by the findings reported in the "HIBster Report" that was issued after the investigation was completed. Id. at 1.

⁹ The record that was considered here is the HIB report, which includes the written recordings of the statements of B.M., H.B., and Students 1 through 4. The emails from other students' parents were considered only to the extent they served as notice to the school of a potentially problematic interaction between B.M. and H.B. The record does not indicate that the HIB finding was based upon these parents' emails. Rather, the emails spurred the initiation of the HIB investigation, the findings of which were based upon the interviews with B.M., H.B., and Students 1 through 4.

¹⁰ Petitioners asserted that "B.M. has stated that he did not give a statement" and that some or all of the witnesses' statements are "highly redacted." Pet'rs' Br. at 20. However, respondent produced an unredacted version of B.M.'s statement and those of the other witnesses for in camera review. Resp't's Br. at 4. For this reason, petitioners' argument that the investigation was improper because B.M. was not interviewed was rejected. Petitioners also note that some or all of the witnesses' statements were "highly redacted." Ibid. However, in camera review of the unredacted versions of the documents reveals that only the students' names were redacted.

that H.B. “can be a little annoying.” Also, B.M. “has been mean to [H.] but he’s mean to everyone. Last year he was trying to fight [H.]” Student 4 stated that B.M. was a member of the “[H.] Hitting Club” and said that “[H.] is the worst.” B.M. has said “I hate you” to H.B. and sometimes said “bad words” to her.¹¹

While petitioners argue that the evidence does not demonstrate that B.M. was motivated by H.B.’s autism diagnosis, which is stated in the HIB report, an analysis of his actual motivation is not required. Because the Legislature intended an expansive meaning of “distinguishing characteristic,” it was not arbitrary, capricious, or unreasonable for the Board to have concluded that a reasonable person would consider B.M.’s behavior to have been motivated by B.M.’s perception of H.B. as “annoying,” which is undisputed. Importantly, there is no evidence that B.M. and H.B. were engaged in a mutual conflict such that H.B. fought or argued with B.M. or that they were engaged in some form of a disagreement or argument without an imbalance of power. Rather, it was reasonable to conclude that B.M. actively sought to mistreat and ostracize H.B. because he considered her to be annoying and thus dislikable.

Contrary to petitioners’ assertion, the Act does not require that the victim felt that she was bullied because she had a disability, nor does it require that the victim or the victim’s family request an HIB investigation. Moreover, while the students who were interviewed also reported that B.M. acted inappropriately toward other students, including themselves in some cases, this does not mitigate his actions with respect to H.B. Similarly, B.M.’s actions cannot be disregarded if other students also mistreated H.B.¹² Accordingly, I **CONCLUDE** that petitioners have not shown by a preponderance of the

¹¹ Petitioners argue that the reports of the students’ statements are vague, such that it cannot be determined which incidents occurred on February 7, 2024, “which is the subject of the HIB investigation.” Pet’rs’ Br. at 20–21. While the report lists February 7, 2024, as the “incident date,” petitioners do not cite authority requiring that the review be limited to only the events that occurred that day. To do so would be to negate prior events that led to the concern about potential ongoing harassment. Also, as noted above, only the names of students have been redacted from the statements. The unredacted statements are not vague or confusing.

¹² Moreover, petitioners assert that one of the other students who “allegedly started the ‘hate club’ was recently the subject of an HIB investigation due to his alleged actions toward another student.” Warshaw Cert. II at ¶ 13. While petitioners reference this to argue that only M.B. was accused of HIB notwithstanding that there was conflict among multiple students, it demonstrates that other students may also be subject to HIB investigations concerning their behavior.

evidence that the Board's determination concerning the first element is arbitrary, capricious, or unreasonable.

The Commissioner addressed the type of situations that may satisfy the second element of the HIB statute:

[C]onduct 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. and E.H. on behalf of K.H. v. Board of Education of the Borough of Franklin Lakes, Bergen County, OAL Dkt. No. [EDU 13204-13](#), decided February 24, 2014, adopted Commissioner Decision No. 157-14, April 10, 2014. Additionally, when other students are "so affected" by behavior that they report it, the orderly operation of the school may be substantially disrupted. T.R. and T.R. on behalf of E.R. v. Bridgewater-Raritan Regional Board of Education, OAL Dkt. No. EDU 10208-13, decided September 25, 2014, adopted Commissioner Decision No. 450-14, November 10, 2014.

[D.D.K. ex rel. D.K. v. Bd. of Educ. of Readington, Hunterdon Cnty.], EDU 07682-15 Initial Decision (October 6, 2016), adopted, Comm'r (November 11, 2016), <https://njlaw.rutgers.edu/collections/oal/>.]

Here, the victim did not report the incidents; rather, other students' parents relayed information they obtained from their children about B.M.'s behavior, including his role in the "H.B. hit club" and that B.M. made another student hit H.B. Thus, it is plain that B.M.'s behavior disrupted or interfered with the orderly operation of the school, as students reported, via their parents, the disruption caused by B.M.'s treatment of H.B. Also, per Student 1, B.M.'s behavior impacted other students, as he caused students to be afraid to take H.B.'s side and B.M. told Student 2 to push H.B. It is also clear that these behaviors and interactions substantially impacted H.B. and had the effect of insulting and demeaning her, as she told the investigator that H.B. bullies her, was mean to her a lot of the time, and does "inappropriate stuff." As noted above, this was corroborated by the other students. For these reasons, I **CONCLUDE** that petitioners have not shown by a preponderance of the evidence that the Board's determination concerning the second element is arbitrary, capricious, or unreasonable.

The third element requires a finding that the act at issue is one that “a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student,” “has the effect of insulting or demeaning a student,” or “creates a hostile educational environment.” Any one of the three criteria satisfies the third element. In Wehbeh, the Commissioner wrote that “none of these criteria require the actor to have actual knowledge of the effect that their actions will have, or to specifically intend to bring about that effect.” Commissioner Decision No. 51-20 at *6, <https://www.nj.gov/education/legal/>.

Here, the Board found that B.M. engaged in verbal, physical, and emotional behavior that was intended to hurt, intimidate, or harass H.B. As discussed above, this impacted H.B. and had the effect of insulting and demeaning her. At a minimum, a reasonable person should know that such behavior would place a student in reasonable fear of at least emotional harm. I therefore **CONCLUDE** that petitioners have not demonstrated by a preponderance of the evidence that the Board’s determination concerning the third element is arbitrary, capricious, or unreasonable.

Nonetheless, petitioners assert that the Board did not take appropriate remedial action, contrary to N.J.A.C. 6A:16-7.7 and District policy 5512, and ignored the evidence of B.M.’s disability and petitioners’ requests for assistance, notwithstanding that his “behaviors were interfering with his ability to learn and make friends.” Pet’rs’ Br. at 15. As noted above, the Act shall be applied to students with disabilities. Moreover, the Board, in accord with N.J.A.C. 6A:16-7.7(a)(2),¹³ imposed consequences on B.M. that

¹³ N.J.A.C. 6A:16-7.7 provides, in pertinent part:

(a) Each district board of education shall develop, adopt, and implement a policy prohibiting harassment, intimidation, or bullying on school grounds, pursuant to N.J.S.A. 18A:37-15.

....

2. Each district board of education shall have control over the content of the policy, except that the policy shall contain, at a minimum, the following components:

....

addressed his disabilities and did not impose a suspension or other discipline. The HIB report ordered the following actions: counseling for B.M.; staff shall be alert to interactions and partnerships between students; a review of B.M.'s safety plan and 504 plan "to enlist other accommodations to support" him; and "reflective conversation" with the assistant principal. Thus, the Board directed remedial measures to assist B.M. and prevent future HIB acts.

Alleged Procedural Violations

Petitioners assert that there were several procedural violations that undermine the HIB report and its findings. First, they assert that Principal Allen was inappropriately involved in the investigation. The District Court has rejected this type of argument, noting that "the Anti-Bullying Act does not require the Anti-Bullying Specialist to be the only school official who may conduct the investigation. ('[T]he investigation shall be initiated by the principal or the principal's designee within one school day of the report of the incident and shall be conducted by a school anti-bullying specialist. The principal may

v. Appropriate remedial action for a student who commits an act of harassment, intimidation, or bullying that takes into account the nature of the behavior; the nature of the student's disability, if any, and to the extent relevant; the developmental age of the student; and the student's history of problem behaviors and performance. The appropriate remedial action also may include the following:

(1) A behavioral assessment or evaluation, including, but not limited to, a referral to the child study team, as appropriate; and

(2) Supportive interventions and referral services, including those at N.J.A.C. 6A:16-8;

vi. Consequences for a student who commits an act of harassment, intimidation, or bullying that are:

(1) Varied and graded according to the nature of the behavior; the nature of the student's disability, if any, and to the extent relevant; the developmental age of the student; and the student's history of problem behaviors and performance; and

(2) Consistent with the provisions of N.J.A.C. 6A:16-7, as appropriate

appoint additional personnel who are not school anti-bullying specialists to assist in the investigation.’)” Dunkley v. Bd. of Educ., 216 F. Supp. 3d 485, 495 (D.N.J. 2016) (quoting N.J.S.A. 18A:37-15(b)(6)(a)). Moreover, the evidence documents that Ms. Dooley, a school counselor and the anti-bullying specialist, was in receipt of communications about alleged HIB acts committed by B.M. Although the HIB report does not specifically address who conducted the investigation, there is no evidence of prejudice to petitioners as a result of this omission.

Petitioners also assert that the principal was biased because she made the complaint. However, they offer no support for this other than to suggest that participants should have been “non-reporter[s].” Pet’rs’ Br. at 29. They do not cite authority for this position. They similarly assert that the certification of Dr. Jamie Walker, the director of guidance and HIB coordinator, is irrelevant because she was not involved in the HIB investigation. Dr. Walker certified to the procedural history, based upon her knowledge of these facts. Petitioners point to no evidence that suggests that Dr. Walker’s certification is not credible, nor do they cite a statute, regulation, or case law that prevents consideration of the procedural history set forth in the certification.

Petitioners claim that they did not receive the “alleged statements by students 1–4” and that the respondent’s references to those statements “do not match up with the statements as set forth in the HIB report.” Pet’rs’ Reply Br. at 4. However, it is undisputed that petitioners received the statements prior to the Board hearing and, having conducted an in camera review of the unredacted statements, it is clear that only the students’ names were redacted. There is no basis for concluding that the statements provided to petitioners were misleading or confusing.

Petitioners further assert that they did not receive the emails that other parents sent to school personnel, notwithstanding their request for the entire HIB investigation and all witness statements. They argue that the “[D]istrict cannot rely upon information that was requested and then not shared with Petitioners” and that this constitutes a due process violation. Id. at 5. During a conference call with the parties, petitioners confirmed that the documents they claim the Board withheld are emails from two parents, which are Exhibits D and E to respondent’s motion, which were also included in Exhibit M, the HIB

report. They also noted that in her certification Dr. Walker referred to a third parent of another student. Petitioners' concern is that, although they received a redacted investigation report from the Board, it did not include the emails from parents that raised concerns about B.M.'s behavior.

In response to petitioners' arguments about procedural defects, the parties were asked to submit supplemental briefs concerning the scope of documents that must be provided to the parents of a student who is the subject of a HIB investigation and the consequences for failing to do so. Petitioners addressed multiple issues in their supplemental brief; the brief was considered with respect to the two questions above. As noted above, N.J.S.A. 18A:37-15(b)(6)(d) requires production of "information about the investigation . . . including the nature of the investigation, whether the district found evidence of harassment, intimidation, or bullying," and information about any discipline that was imposed and services that were provided. Although petitioners acknowledge that the statute does not expressly mandate production of the investigation report or witnesses' statements, they contend that "a school district is required to provide parents with a complete investigatory record which includes the HIB investigative report, witness statements, written and recorded, and other documentary or other evidence that was part of the investigation or considered in the investigation." Pet'rs' February 6, 2025, Br. at 4. Petitioners assert that these emails "are relevant in assessing the whole situation" and, although they "mention B.M. there is no reference to the alleged victim or any reference or support that any actions by B.M. were motivated by any distinguishing characteristic such as a disability." Id. at 5. They argue that fundamental fairness and due process dictated the disclosure of these documents prior to the Board's consideration of the matter.

In response, respondent seems to assert that the "contents" of the emails "appear in the very redacted HIB report that [petitioners] . . . received prior to the Board meeting." Resp't's February 7, 2025, Br. at 3. It also contends that the "emails are not the HIB investigation on which the Board is relying in support of its defense." Id. at 4.

Petitioners acknowledge that the Act does not expressly mandate production of the investigation report or witness statements. They also assert that, "[i]n practice, most

school districts turn over at least a redacted investigation report before an appeal to the Board of Education.” Pet’rs’ February 6, 2025, Br. at 5. Cases that have addressed the Act have addressed the scope of required production. In J.L. v. Board of Education, 2018 N.J. Super. Unpub. LEXIS 2272 (October 16, 2018), the court affirmed the remand of a HIB decision to the board of education because the parents of the student whose actions were alleged to have violated the Act were not provided information about the HIB investigation until after the board of education voted and found that the student violated the act. The court directed, “[p]rior to the remand hearing, the Board shall provide [the parent of the student who was alleged to have violated the Act] with the full record of the HIB allegations against [the student,] including the underlying investigative report, any additional written reports or summaries, and the letter from [the alleged victim’s] parents to the superintendent. Only upon receipt of a complete record can the Board satisfy the requirements of N.J.S.A. 18A:37-15(b)(6)(a) to -15(b)(6)(f).”¹⁴ (Emphasis added.)

The scope of information that must be provided was also addressed in Young-Edri v. Board of Education of Elizabeth, Union County, EDU 17812-18, Initial Decision (May 30, 2019), adopted, Comm’r (July 8, 2019), <https://njlaw.rutgers.edu/collections/oal/>. A finding that a teacher violated the Act was remanded to the local board of education for a new hearing because she was not properly informed about the investigation. Even though the school’s anti-bullying specialist “conducted a comprehensive investigation and interviewed numerous witnesses,” the notice of the finding against her did not “provide any information about the investigation or in any way recount the factual support for the . . . conclusion” that she had violated the Act. Young-Edri, Initial Decision, <https://njlaw.rutgers.edu/collections/oal/>. The ALJ concluded “that due process requires that Young-Edri be given an opportunity to review [the anti-bully specialist’s investigation report], and any available statements or other documentary evidence, and be permitted to appear again before the Board for the hearing contemplated by law. . . . [W]hat is surely required is an opportunity for Young-Edri to fully understand the evidence against her and to present testimony and documents to the Board for its consideration; or, put another way, what is required is the modicum of local due process needed to guard

¹⁴ After the Board found a violation of the Act, the victim’s parents wrote to the principal and HIB Committee, expressing their desire that the students receive counseling and that the “incident not . . . be classified as HIB.” Id. at *6.

against arbitrary, capricious, or ill-informed Board action.” Ibid. The judge thus ordered that “that Young-Edri be supplied with the investigatory file to include witness statements and the report of the anti-bullying specialist; and that she be permitted to present witnesses and documentary evidence to the Board at a hearing.” Ibid. (emphasis added). The Commission adopted the ALJ’s decision, highlighting that the petitioner was entitled to receive “a written summary of the HIB investigation” pursuant to N.J.S.A. 18A:37-15(b)(6)(d). Young-Edri, Comm’r, <https://njlaw.rutgers.edu/collections/oal/> (emphasis added).

Here, it is undisputed that, prior to their hearing before the Board, respondent provided petitioners the investigation report and the reports of the students’ interviews. It did not violate the express language of the Act if it did not produce the parents’ emails. Moreover, the finding that B.M. violated the Act was based on the students’ interviews, including his own, not the parents’ emails. Thus, petitioners were not denied information that the Act required.

Petitioners also contend that the report was inappropriate because it was not issued in a timely fashion. While it appears that the report was not issued within the requisite number of days, petitioners have not demonstrated how they were prejudiced by this. In G.C. ex rel. Minor Child B.C. v. Township of Lacey Board of Education, Ocean County, EDU 10910-20, Initial Decision (August 10, 2022), <https://njlaw.rutgers.edu/collections/oal/>, adopted, Comm’r (September 19, 2022), <https://www.nj.gov/education/legal/>, the HIB report stated that the finding of HIB “will be affirmed at the . . . Board meeting” and did not state whether the investigation was completed within ten days of the initial complaint. G.C., Initial Decision, <https://njlaw.rutgers.edu/collections/oal/>. The ALJ wrote, “While the Board should, in the future, be more precise in its recordkeeping and reporting in HIB matters, these procedural missteps by the Board do not amount to a violation of petitioner’s due process rights.” Ibid. Noting that the parents were on notice of the HIB allegation and were given a hearing before the Board to contest the finding, during which they were represented by counsel, the ALJ found that “whatever procedural irregularities occurred in this matter were cured by the Board hearing[.]” Ibid.; see also Dunkley, 216 F. Supp. 3d at 496 (“although schools are required to provide students with some level of due process,

maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship”) (citation omitted); R.F. ex rel. minor child O.F. v. Bd. of Educ. of Montclair, Essex Cty., EDU 09352-23, Initial Decision (September 4, 2024), 2024 N.J. AGEN LEXIS 913, adopted with mod., Comm’r (October 10, 2024)(while hearing was more than ten days following initial report, both parties contributed to the delay and “the delay did not interfere with the due process rights of [the student] or petitioner, who presented testimony and other evidence at the Board hearing”). Similarly, here, petitioners were not prejudiced, as they were advised of the allegation and investigation; they were provided the redacted HIB report, which included the students’ interview statements; and they had a full opportunity to address the matter, while represented by their counsel, before the Board.

Petitioners also assert that it was inappropriate to interview student witnesses on the same day and approximately two weeks after the alleged incident. They assert that this improperly required the students to “go back in time to recall the details of an alleged incident,” as the students “recount[ed] various alleged incidents that are not related in time and timeframes that are not referenced[.]” Pet’rs’ Br. at 2. There is no evidence in the record that indicates that the students’ recollections were faulty. Rather, their statements are largely consistent with respect to the key facts supporting the HIB finding. Without more, petitioners’ argument relies upon speculation. Moreover, the passage of considerably more time was not a bar when courts ordered remanded hearings before boards of education. See, e.g., J.L. v. Bd. of Educ., 2018 N.J. Super. Unpub. LEXIS 2272 at *5 (rejecting argument that a fair hearing could not be provided on remand because almost two years passed from the school board’s decision to the Appellate Division’s decision; court noted that the anti-bullying specialist “made a record of the children’s statements”).

With respect to petitioners’ claim that the investigation was prejudicial because only some of B.M.’s classmates were interviewed, they have not cited authority for this proposition. Moreover, as discussed above, the evidence in the record amply supports

the finding of HIB against B.M.¹⁵ Finally, petitioners seem to contend that it is problematic that the student witnesses' names were provided for the first time with respondent's summary decision motion. However, they do not explain how this is problematic and, moreover, students' identities must be protected.¹⁶

For the above reasons, I **CONCLUDE** that the action taken by the District in response to the HIB complaint was substantially in compliance with the controlling statutes and regulations. While some aspects of the process appear to have not been conducted in a timely manner, this was not prejudicial to petitioners.¹⁷

First Amendment Protection

Lastly, petitioners argue that "B.M.'s alleged statement, 'I hate you,' cannot legitimately form the basis for an HIB since it was protected speech." Pet'rs' Br. at 41. The United States Supreme Court addressed students' First Amendment rights in Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). It explained that, while "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," "conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech." *Id.* at 506, 513. A school may circumscribe speech that results in the "interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone." *Id.* at 508. Moreover, "schools, as instruments of the state, may determine that the essential

¹⁵ Petitioners, citing to respondent's representation that student interviews were "recorded," also asserted that they were denied copies of the audio recordings or verbatim transcripts. Respondent explained in a supplemental brief that neither audio recordings nor verbatim transcripts were prepared. Rather, the recordings were the written reports of the students' interviews. Resp't's February 7, 2025, Br., Certification of Eric. L. Harrison ("Harrison Cert.") at ¶ 2.

¹⁶ Student confidentiality laws preclude the District and Board from sharing another student's confidential information, including their name, when conducting investigations under the Act. *See, e.g.*, New Jersey Pupil Records Act, N.J.S.A. 18A:36-19 (operating in conjunction with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, to safeguard pupil records).

¹⁷ However, the District should endeavor to comply with the deadlines established by the Act and to be precise when reporting data and the names of the personnel who participated in the HIB process.

lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct[.]” Bethel Sch. Dist. v. Fraser, 478 U.S. 675, 683 (1986); see also Morse v. Frederick, 551 U.S. 393, 403 (2007) (Generally, “student expression may not be suppressed unless school officials reasonably conclude that it will ‘materially and substantially disrupt the work and discipline of the school’”(internal citation omitted)).

Here, the Board did not violate B.M.’s First Amendment rights by finding that he engaged in HIB acts by, in part, telling H.B. that he hated her. As discussed above, the Act recognizes free-speech concerns, such that an HIB finding must be predicated in part on a substantial disruption of the orderly operation of the school or the rights of other students. Here, B.M.’s statement substantially interfered with H.B.’s right to be secure and free from emotional harm and contributed to the disruption of the orderly operation of the school. Moreover, even if the phrase were not considered, there is sufficient other evidence of his negative behavior toward H.B. Accordingly, petitioners’ First Amendment argument does not carry the day with respect to B.M.’s use of this phrase.

Petitioners’ concern for their child and their desire to protect him is understandable and commendable. Their efforts to address his significant needs and to work collaboratively with the school are apparent. However, for all of the reasons stated above, I am compelled to **CONCLUDE** that they have not demonstrated by a preponderance of the evidence that the Board’s determination was arbitrary, capricious, or unreasonable. The Board’s determination was supported by the evidence; there is no evidence of improper motivation; and petitioners were afforded due process.

ORDER

I hereby **ORDER** that respondent’s cross-motion for summary decision is **GRANTED** and petitioners’ cross-motion for summary decision is **DENIED**.

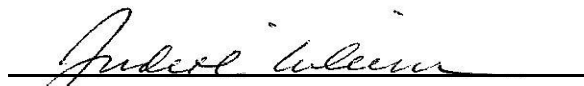
I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.

March 6, 2025

DATE


JUDITH LIEBERMAN, ALJ

Date Received at Agency:

March 6, 2025

Date Mailed to Parties:

APPENDIX

Exhibits

For respondent:

R-A Curriculum vitae of Dr. Jaime Walker
R-B Board Policy 5600 (Student Discipline/Code of Conduct)
R-C Board Policy 5512 (Harassment, Intimidation, and Bullying)
R-D Electronic mail from Parent 1
R-E Electronic mail from Parent 2
R-F Somerset Hills School District Calendar, 2023–24 SY
R-G Statement of H.B.
R-H Statement of B.M.
R-I Statement of Student 1
R-J Statement of Student 2
R-K Statement of Student 3
R-L Statement of Student 4
R-M Investigation Report
Certification of Eric L. Harrison, Esq., with Exhibits

For petitioners:

P-1A Notification of disposition of HIB appeal, April 26, 2024
P-1B HIB Report
P-1C Section 504 Accommodation Plan, June 14, 2023
P-2 Certification of A.M.
P-3 Emails between petitioners and school personnel
P-4 Report card
P-5 Report card
P-6 Letter from petitioners to school personnel, February 27, 2023

- P-7 CBCL/6-18 Narrative Report & Critical Items
- P-8 Letter from Shelly Lanzkowsky, M.D., re: B.M., March 14, 2023
- P-9 Letter from Emily Keim Shaw, APN, March 22, 2023
- P-10 Letter from Elizabeth M. Smith, Psy.D., March 28, 2023
- P-11 Letter from Meredith Panik to petitioners, March 30, 2023
- P-12 Letter from Colleen Butler, Ed.D., to petitioners, March 15, 2024
- P-13 Section 504 Accommodation Plan, June 4, 2024
- P-14 Individualized Education Program, August 6, 2024
- P-15 Letter from Marilyn A. Kubichek, M.D., May 14, 2024
- P-16 Letter from Dr. Porter, October 16, 2024

Certification of Julie Warshaw, Esq., November 12, 2024, with exhibits:

- P-A Email Warshaw to Harrison
- P-B Emails between Warshaw and Harrison
- P-C Emails between Warshaw and Harrison
- P-D Emails between petitioners and Dr. Butler
- P-E Email from Warshaw to Harrison
- P-F Emails between Warshaw and Harrison
- P-G Letter Warshaw to Harrison
- P-H Emails between Warshaw and Harrison
- P-I Written communication from Warshaw to Harrison