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OAL Dkt. No. 01405-24 & 01408-24 (Consolidated)

Agency Dkt. No. 271-10/23 & 272-10/23

**New Jersey Commissioner of Education**

**Final Decision**

R.F., on behalf of minor child, O.F.,

Petitioner,

v.

Board of Education of the Township of  
Montclair, Essex County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by the petitioner pursuant to *N.J.A.C. 1:1-18.4* have been reviewed and considered. The respondent, Montclair Board of Education (Board), did not file exceptions or a reply to the petitioner's exceptions.

This matter involves two harassment, intimidation, and bullying (HIB) determinations concerning petitioner's minor child, O.F. On February 17, 2023, petitioner filed an HIB complaint (HIB058) alleging that O.F. was bullied when two fellow classmates, B.K. and B.M., excluded him from a game of Jenga during indoor recess. The Board commenced an HIB investigation regarding the incident and referred the matter to an independent investigator, Joanne Butler, Esq. (Butler). Butler concluded that B.K. and B.M. refused to play Jenga with O.F.; however, there was insufficient proof that their refusal was based on a real or perceived characteristic or that they

knew or should have known that the refusal would result in harm to O.F. As such, Butler concluded that no HIB violation occurred. The Board affirmed Butler's determination.

On February 28, 2023, B.K.'s parents initiated an HIB complaint (HIB066) on B.K.'s behalf against O.F. B.K.'s parents noted that they had instructed B.K. to stay away from O.F. given their past issues. They alleged that O.F. continued to instigate contact with B.K., harass B.K., and interfere with B.K.'s freedom and rights at school. In addition, they alleged that O.F. threw Jenga pieces at B.K. and B.M.'s Jenga tower, trying to knock it down, when they refused to let him play. After conducting an independent investigation of HIB066, Butler found B.K. and B.M. credible. Butler determined that while O.F. antagonized B.K., made inappropriate comments, and pinched and scratched him, the HIB allegation against O.F. was unfounded as O.F.'s actions were not motivated by a distinguishing characteristic. Butler further found that retaliation did not appear to be the basis for the complaint.

The Board, however, issued a determination that O.F. violated Board Policy 5512, the district's HIB policy. Specifically, the Board found that O.F. targeted alleged victims and instigated conflicts, then reported that he was the victim. The Board found that O.F.'s HIB allegations were unfounded and that O.F. substantially interfered with B.K.'s rights by making repeated allegations against him. In addition, the Board found that B.K. was uncomfortable being around O.F. because he feared false accusations. The district's superintendent at the time, Dr. Jonathan Ponds, reversed the HIB066 determination, and B.K. appealed. A hearing was held on August 21, 2023, during which B.K. appeared. The Board reinstated the HIB066 determination against O.F.

Petitioner appealed the Board's determination regarding both HIB058 and HIB066, and the cases were consolidated at the OAL. The parties filed cross-motions for summary decision,

as well as a Joint Stipulation of Facts and Joint Exhibits. Upon finding that the material facts were undisputed, the ALJ determined that the matter was ripe for summary decision. As to HIB058, the ALJ found that the Board's investigation comported with the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A.* 18A:37-13 to -32, and that Butler appropriately concluded that B.K. and B.M.'s refusal to play Jenga was not based on a distinguishing characteristic of O.F. The ALJ further found that the students' refusal did not substantially disrupt the rights of other students or the operation of the school. Accordingly, the ALJ concluded that the Board's determination that O.F. was not the victim of HIB was not arbitrary, capricious, or unreasonable.

As to HIB066, the ALJ concluded that the Board's HIB finding against O.F. was not arbitrary, capricious, or unreasonable. The ALJ reasoned that even though Butler found that O.F.'s actions were not motivated by a distinguishing characteristic, the student did violate the Board's HIB policy by falsely accusing B.K. In so doing, the ALJ rejected petitioner's arguments that the Board acted arbitrarily and capriciously in reaching different determinations throughout the complaint process and for not affording him a right to be heard at the hearing for HIB066. Pointing to the Joint Stipulation of Facts and Joint Exhibits, the ALJ found that the respondent spent significant time and resources continually investigating each of R.F.'s allegations. The ALJ concluded that the Act permits the Board to affirm, modify, or reject Ponds' decision. Lastly, the ALJ concluded that a student's complaint appeal before a Board is confidential to protect the child and that hearings are always held in executive session for that reason.

In his exceptions, petitioner reiterates arguments that were considered and rejected by the ALJ, namely that HIB066 does not meet the statutory criteria to warrant a HIB finding, and that the Board retaliated against petitioner by rejecting Butler's and Ponds' recommendations

that HIB066 is unfounded. Furthermore, petitioner argues that the ALJ erred in providing the Board a presumption of correctness where the record does not support that O.F. participated in HIB conduct or retaliation. Regarding HIB058, Petitioner contends that he met all three elements of the HIB statute and as such, the matter should be resolved through trial. Lastly, petitioner takes exception to the ALJ's finding that O.F. interfered with B.K.'s rights by making multiple allegations against him, and that B.K. was uncomfortable around O.F. because he feared by falsely accused.

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." *Kopera v. Bd. of Educ. of W. Orange*, 60 N.J. Super. 288, 294 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration," and the Commissioner will not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep't of Env't Prot.*, 122 N.J. Super. 184, 199 (Ch. Div. 1973), *aff'd*, 131 N.J. Super. 37 (App. Div. 1974). Regarding HIB determinations, this standard has been explained as requiring a petitioner to "demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." *G.H. and E.H. o/b/o K.H. v. Bd. of Educ. of Borough of Franklin Lakes, Bergen Cnty.*, OAL Dkt. No. EDU 13204-13 (Initial Decision Feb. 24, 2014), *adopted*, Commissioner Decision No. 157-14 (Apr. 10, 2014).

As discussed in the ALJ's Initial Decision, the Act defines HIB as:

[A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion,

ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L. 2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:

- a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
- b. has the effect of insulting or demeaning any student or group of students; or
- c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

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

In summary, once the alleged written, verbal, or physical act, or any electronic communication is substantiated, 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).<sup>1</sup>

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<sup>1</sup> The conduct must also take place on school property, at a school-sponsored function, on a school bus, or off school grounds as provided for in *N.J.S.A. 18A:37-15.3*. This requirement does not appear to be at issue in this case.

Upon review, the Commissioner concurs with the ALJ's conclusion that the Board's determination regarding HIB058 was not arbitrary, capricious, or unreasonable. The record reflects that the Board's investigation was sufficiently thorough; Butler reviewed O.F.'s written notes regarding the alleged incident, and interviewed the alleged offenders, two fellow students, and five of the students' teachers. Butler found insufficient evidence to show that B.K. and B.M.'s refusal to play Jenga with O.F. was motivated by a distinguishing characteristic. Furthermore, the record does not demonstrate that B.K. and B.M.'s actions could reasonably be perceived as being motivated by a distinguishing characteristic. As such, the statutory criteria for HIB were not met and it was not arbitrary, capricious, or unreasonable for the Board to find that HIB058 was unfounded.

With regard to HIB066, the Act requires each district's HIB policy to include "consequences and appropriate remedial action for a person found to have falsely accused another as a means of retaliation or as a means of harassment, intimidation or bullying." *N.J.S.A. 18A:37-15(b)(9)* (emphasis added). The use of the term "or" indicates that a false accusation as a means of retaliation is sufficient for a finding that a district's HIB policy has been violated; it is not necessary for the false accusation to also meet the definition of HIB outlined elsewhere in the Act. Here, the Board found that the incident met the criteria for HIB, listing under the heading for distinguishing characteristic: "parents of OF are retaliating for previous unfounded HIB allegations . . .". (Exhibit P-I). The Commissioner disagrees that B.K.'s being the subject of a prior unfounded HIB complaint by O.F. constitutes a distinguishing characteristic. However, a distinguishing characteristic is not required for a finding that levying false HIB accusations against a student as a means of retaliation violated the Board's HIB Policy, as provided for by *N.J.S.A.*

18A: 37-15(b)(9). Therefore, the Commissioner concludes that the Board's determination was not arbitrary, capricious, or unreasonable.

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.<sup>2</sup>



ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 10, 2025  
Date of Mailing: January 13, 2025

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<sup>2</sup> 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. NOS. EDU 01405-24

and EDU 01408-24

AGENCY DKT. NOS. 271-10-23 and  
272-10/23

(CONSOLIDATED)

**R.F. ON BEHALF OF MINOR CHILD O.F.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE**

**TOWNSHIP OF MONTCLAIR,**

**ESSEX COUNTY,**

Respondent.

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**R.F.,** petitioner, pro se

**Alexander L. D’Jamoos, Esq.,** for respondent (Flanagan, Barone & O’Brien, LLC,  
attorneys)

Record Closed: September 25, 2024

Decided: October 18, 2024

BEFORE **PATRICE E. HOBBS, ALJ:**



## **STATEMENT OF THE CASE**

Respondent Board of Education of the Township of Montclair (Board) conducted multiple investigations concerning harassment, intimidation and bullying regarding petitioner's son. All were thoroughly, and professionally investigated under the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13, et seq. (ABBRA). Should the respondent's findings be overturned? No. A decision by a board acting within the scope of its authority is "entitled to a presumption of correctness unless it's arbitrary, capricious, or unreasonable." Thomas v. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965).

## **PROCEDURAL HISTORY**

On October 8, 2023, petitioner R.F. on behalf of minor child O.F. filed two petitions of appeal with the Commissioner of Education, Office of Controversies and Disputes. On January 24, 2024, respondent filed its answers. On January 25, 2024, the cases were transmitted to the Office of Administrative Law as contested cases under N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

On February 21, 2024, a prehearing conference was held, and on February 22, 2024, I entered an order outlining the deadlines for discovery and motions for summary decision. Consolidation was not ordered, as the cases involved different witnesses.

On July 19, 2024, petitioner filed a motion for summary decision for both cases. On August 8, 2024, respondent filed its opposition to petitioner's motion for summary decision and a cross-motion for summary decision for both cases. On August 19, 2024, petitioner filed opposition to respondent's cross-motion for summary decision. On September 13, 2024, respondent filed its reply.

On September 25, 2024, after receiving all the paperwork, I ordered that the cases be consolidated for judicial economy.

## **DISCUSSION AND FINDINGS OF FACT**

Montclair Board of Education is the public school district for the City of Montclair, New Jersey. It operates twelve public schools, including pre-kindergarten, elementary, middle schools, and a high school. It enacted District Policy 5512 Harassment, Intimidation, and Bullying in December 2016 to comply with the New Jersey Anti-Bullying Bill of Rights. N.J.S.A. 18A:37-13, et seq.

From 2020–2022, petitioner’s son, O.F., was home-schooled. He was an A student and placed first nationally in the Math Kangaroo International Competition. During the 2022–2023 school year he was enrolled in fifth grade at Northeast Elementary School. His homeroom teacher was Ms. McCann. Students B.K. and B.M. were also in McCann’s homeroom class.

On October 11, 2022, R.F. sent an email to McCann to report that B.K. and B.M. were looking at O.F.’s private parts in the bathroom and taunting him. R.F. reported that O.F. wet his pants when he went to close his zipper and that B.K. and B.M. kicked him. R.F. reported that it was the second time that this has happened to O.F. McCann forwarded the email to the school principal, Terence Somerville (Somerville), who contacted R.F.

On October 12, 2022, R.F. emailed the school social worker and anti-bullying specialist, Danielle Kupperman (Kupperman), to learn the status of his email to McCann. Kupperman met with O.F., who advised her of a playground incident with B.M. and the bathroom incident with B.K. O.F. did not report either incident to an adult.

On October 14, 2022, Somerville met with O.F., B.K., and B.M. to attempt to resolve the issue.

On October 15, 2022, R.F. reported to Kupperman and Somerville that the incidents where O.F. was beaten and kicked in his private parts occurred more than twenty times. R.F. also reported that there was sexually explicit language, teasing, and harassment.

On October 18 and 19, 2022, Kupperman met with O.F. Somerville spoke with R.F. and confirmed that a HIB investigation was initiated. R.F. reported that O.F. was stressed, asked that O.F. not be pulled out of class, and demanded that the accused students apologize to O.F.

On October 20, 2022, R.F. filed a formal HIB 338 complaint (HIB012) against three students alleging that O.F. was tormented and assaulted since the first week of fifth grade because other children did not like O.F.'s answers in school because he was good at math, and because he was the national Math Kangaroo champion two years in a row. HIB012 also included allegations that O.F. was the "wife" and B.K. and B.M. were the "husbands," and that B.K. and B.M. used sexually explicit language, teasing, and harassment.

On October 21, 2022, Kupperman met with B.K. to investigate HIB012. R.F. reported that O.F. was frustrated at school and continues to be emotionally distraught because of the alleged hostile environment in school.

On October 24, 2022, R.F. reported to Somerville and Kupperman that O.F. was punched, kicked, and taunted during the first three weeks of school.

On October 25, 2022, Kupperman, the mental-health coordinator, and the anti-bullying coordinator, Maggie Dock (Dock), met with B.K. and B.M. to investigate the allegations.

On October 26, 2022, R.F. again demanded that the accused students apologize to O.F., and on October 27, 2022, R.F. confirmed that the accused students did apologize to O.F.

On November 1, 2022, Kupperman completed the HIB012 investigation, which Somerville signed.

On November 7, 2022, R.F. advised Kupperman and Somerville that O.F. had a limp and complaints of pain and was referred to a psychiatrist. R.F. also reported that

while O.F. was in the bathroom, a fourth-grade student peeped into his bathroom stall. Kupperman and Somerville requested an in-person meeting.

On November 15, 2022, Somerville and Kupperman met with petitioners. R.F. was unhappy with the investigation of HIB012, provided O.F.'s notes to Somerville and Kupperman, and demanded an appeal.

On November 17, 2022, R.F. spoke with Dock, reiterating R.F.'s request for an appeal and including additional allegations of race and gender-expression discrimination.

On November 22, 2022, Dock interviewed O.F. and reopened the HIB012 investigation. O.F. was also seen at the nurse's office for a wrist injury.

On November 28, 2022, Dock completed the reopened the HIB012 investigation, which Somerville signed on November 30, 2022, and superintendent Jonathan Ponds (Ponds) signed on December 5, 2022.

On December 21, 2022, Dock and the director of pupil services, David Goldblatt, reported the results of HIB012 to the Board. On January 3, 2023, the Board informed R.F. that the investigation concluded that insufficient evidence existed to meet the criteria of a finding of HIB.

On January 10, 2023, petitioner filed his appeal. On January 20, 2023, Ponds scheduled the appeal hearing for January 31, 2023. On February 22, 2023, the hearing was adjourned.

#### HIB058—the finding of no HIB

On February 17, 2023, R.F. initiated a HIB complaint against B.K. and B.M. for retaliation (HIB058). O.F. alleged that B.K. and B.M. did not allow him to participate in a game of Jenga during recess. (P-CC.)

O.F.'s handwritten note states that he wanted to play Jenga with B.K. and B.M., and they said no. They asked him to go to another table, and O.F. refused. After three minutes of arguing, O.F. was finally allowed to play. O.F. kept asking to play and they said no, but he kept asking until they let him play. (P-KK.)

On March 6, 2023, Joanne Butler, Esq. (Butler) conducted an independent investigation of HIB058. As a part of her investigation, Butler interviewed B.K., B.M., Student J., Student D., and teachers Donna Soprano, Karma Cloud, Kristen McCann, Monique Von Wiegen, and Alison Campbell. R.F. did not allow O.F. to be interviewed. (R-C.)

Butler concluded that B.K. and B.M. refused to play Jenga with O.F., but that the refusal was not based on a real or perceived characteristic, nor should they have known that the refusal would result in harm to O.F. Butler's investigation concluded that there was no HIB violation by B.K. and B.M against O.F. (R-C.) Petitioner filed an appeal, and the case is currently pending before the undersigned as EDU 01405-24.

#### HIB066—the finding of HIB for other retaliation

On February 28, 2023, B.K. initiated a HIB complaint against O.F. for retaliation (HIB066). B.K. had been instructed to stay away from O.F. because of the ongoing issues with O.F. B.K. alleges that O.F. continued to instigate contact with B.K. and interfere with B.K.'s rights and freedom at school. B.K. also feared being around O.F. because he may be wrongly accused by O.F.

On March 15, 2023, Butler conducted an independent investigation of HIB066. As a part of her investigation, Butler interviewed B.K., B.M., Student J., Student D., and teachers Donna Soprano, Karma Cloud, Kristen McCann, Monique Von Wiegen, and Alison Campbell. R.F. did not allow O.F. to be interviewed. (R-D; R-E.)

Butler concluded that while O.F. has antagonized B.K., made inappropriate comments, and pinched and scratched him, it was not sufficient for a HIB finding. Respondent reviewed the Butler report and agreed with the conclusion that O.F.'s actions

were not motivated by a distinguishing characteristic. Respondent, however, determined from the investigation and testimony that O.F. was not excluded from activities as alleged in HIB058. Respondent also found that the HIB complaints filed by O.F. have been unfounded, not corroborated by witnesses, and not corroborated by O.F. himself when interviewed. As a result, respondent found that O.F. did interfere with B.K.'s rights by making multiple allegations against him, and B.K. was uncomfortable being around O.F., as he feared false accusations. (R-A.) Respondent determined that O.F. was a student who falsely accused other students of harassment, intimidation, or bullying as a means of retaliation and found a HIB violation by O.F. (P-I.)

However, Ponds reversed the HIB066 finding. B.K. then appealed the reversal by Ponds and attended a hearing on August 21, 2023. Despite Ponds' reversal of the HIB066 finding, respondent affirmed the HIB066 finding against O.F. Petitioner filed an appeal, and the case is currently pending before the undersigned as EDU 01408-24.

### **CONCLUSIONS OF LAW**

Summary decision "may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). This rule is substantially like the summary judgment rule embodied in the N.J. Court Rules, R. 4:46-2. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). All inferences of doubt are drawn against the party filing the motion and in favor of the party against whom the motion is directed. Id. at 75. The judge's function is to determine whether there are genuine issues of fact to be adjudicated. Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995).

The parties submitted a Joint Stipulation of Facts and Joint Exhibits. Those facts, as supported by the Joint Exhibits, demonstrate that no material fact is in dispute. Having read the briefs and certifications and having reviewed the exhibits, no issues of material fact exist, and the case is ripe for summary decision.

The Anti-Bullying Bill of Rights Act (“Act”), N.J.S.A. 18A:37-13 et seq., is designed “to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises.” N.J.S.A. 18A:37-13.1(f). 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). The investigation must be conducted by a school anti-bullying specialist and take no longer than ten school days to be completed. The results of the investigation must be reported to the superintendent of schools, who may take certain remedial action. The results must also 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. The parents may request a hearing before the board, and the hearing must be held within ten days of the request. Any hearing must be held in executive session to protect the identity of any students involved. The board may hear from the 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. The board may affirm, reject, or modify the superintendent’s decision. The board’s decision may be appealed to the Commissioner of Education. N.J.S.A. 18A:37-15(b)(6)(d), (e).

A finding of HIB requires three elements. First, the conduct must be reasonably perceived as being motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic. Second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. Third, one of the three criteria enumerated in the Act regarding the effect of the conduct must

also be satisfied. N.J.S.A. 18A:37-14. The conduct must also take place on school property, at a school-sponsored function, on a school bus, or off school grounds as provided for in N.J.S.A. 18A:37-15.3. Finally, HIB means any gesture, any written, verbal or physical act, or any electronic communication 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 any student,” or “creates a hostile educational environment.” N.J.S.A. 18A:37-14, “Harassment, intimidation or bullying.”

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’t. Prot., 122 N.J. Super. 184, 199 (Ch. Div. 1973).

#### HIB058

Regarding HIB058, the Jenga incident, Butler interviewed four students and five teachers. After conducting those interviews, she concluded that the students did refuse to play Jenga with O.F., but it was not based on a distinguishing characteristic as defined by the statute. Second, the refusal to play Jenga occurred during recess, and it did not substantially disrupt the rights of other students or the operation of the school. Here, it was not arbitrary, capricious, or unreasonable for the Board to conclude that this element was not found. Butler concluded that she did not believe the students thought their actions were emotionally harmful or would have created a hostile educational environment.

Respondent complied with the statute. It retained an antibullying investigator, Butler. The investigation took place within the required time frame and was reported to respondent and the parents of all the children involved. The investigation concluded that there was no HIB. Accordingly, there could be no determination that the alleged act or



acts would have a harmful effect. It was not arbitrary, capricious, or unreasonable for the Board to reach that conclusion. The parties submitted a Joint Stipulation of Facts and joint exhibits supporting the stipulated facts. These facts are agreed upon and lead to the conclusion that the respondent comported with the law; the Board did a HIB investigation and concluded, twice, that an act of HIB was not substantiated.

### HIB066

Regarding HIB066, the other-retaliation violation, B.K. had been instructed to stay away from O.F. because of the ongoing issues with O.F. Butler interviewed five students, including O.F., and five teachers. Butler concluded that even though O.F. targeted and antagonized victims and instigated conflict, this behavior was not motivated by a distinguishing characteristic and there was no HIB violation. While respondent agreed with Butler that the actions were not motivated by a distinguishing characteristic, it did find that O.F. interfered with B.K.'s rights by making multiple allegations against him, and he feared being wrongly accused, which is the second prong of the HIB analysis. Respondent further found that a reasonable person would know that this could emotionally harm a student, as O.F. himself admitted that he kept asking to play until the other students agreed.

Ponds, however, overturned that HIB finding. Respondent argued that Ponds, who is deceased, reversed the HIB finding as an attempt to mediate the conflict between the involved students and their parents. B.K. and his parents appealed that reversal. The Board reinstated the HIB finding as it is allowed to do under the statute and argues that its action is not arbitrary, capricious, or unreasonable because B.K.'s rights to be free from intimidation at school were infringed upon and the school has a duty to protect all its students.

Petitioner, in his reply brief, raises the many other HIB cases filed by R.F. to raise the specter of retaliation. However, these show that R.F. tends to file HIB complaints in retaliation against other students. Petitioner asserts that respondent's actions in the HIB066 case were arbitrary and capricious because respondent had different outcomes

throughout the complaint process and that he was not afforded a right to be heard at the hearing concerning HIB066, B.K.'s HIB complaint against O.F. The Joint Stipulation of Facts and joint exhibits refute these assertions, as noted above, and in fact show that the respondent expended significant time and resources to continually investigate each HIB complaint filed by R.F. on behalf of O.F. Further, R.F.'s assertion that he was entitled to be present at the hearing on B.K.'s appeal is of no moment. A student's complaint appeal before respondent is confidential to protect the student and the hearings are always held in executive session for that purpose.

The statute permits the respondent to affirm, reject, or modify Ponds' decision, which it did. Respondent's decision to reject Ponds' reversal of HIB066 was based on its obligation to protect every student in the district. The HIB policy prohibits any student from falsely accusing another student. Butler interviewed five students and five teachers, all of whom agreed that O.F. targeted and antagonized B.K. While Butler could not conclude that it was retaliation, respondent found that O.F. substantially interfered with B.K.'s rights at school given the totality of the circumstances, and that O.F.'s conduct warranted a HIB finding. Respondent considered all the other HIB complaints filed by R.F. against B.K., the statements of the teachers and other students that show that O.F. was not excluded from activities, and O.F.'s own handwritten statement that he interfered with B.K.'s rights and made B.K. uncomfortable because B.K. fears retaliation through another HIB complaint. Therefore, I **CONCLUDE** that respondent did not act arbitrarily, capriciously, or unreasonably.

### **ORDER**

I **ORDER** that petitioner's motion for summary decision is **DENIED** and respondent's cross-motion for summary decision is **GRANTED**.

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](mailto:ControversiesDisputesFilings@doe.nj.gov) or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.



October 18, 2024

DATE

PATRICE E. HOBBS, ALJ

Date Received at Agency:

October 18, 2024

Date Mailed to Parties:

October 18, 2024

lsr

## **APPENDIX**

### **Moving Papers for Petitioner:**

Brief in Support Motion for Summary Decision with Petitioner's Exhibits A through Q, dated 7/19/24

Reply to Respondent's Opposition to Petitioner's Motion for Summary Disposition and Counter-Motion for Summary Decision, dated 8/19/24, with Exhibits A through L

### **Moving Papers for Respondent:**

Opposition to Motion for Summary Decision with Brief, Counter-Motion for Summary Decision, dated 8/8/24

Respondent's Further Reply with Certifications of Joanne Butler, Esq., and Maggie Dock, dated 9/13/24

## **Exhibits**

### **For Petitioner:**

- P-A Affidavit of R.F.
- P-B Email dated 2/16/23, from R.F. to Ms. Kupperman
- P-C Email dated 2/17/23, from R.F. to Ms. Dock
- P-D Email dated 3/6/23, from Ms. Dock to R.F.
- P-E Email dated 3/10/23, from R.F. to Ms. Dock
- P-F Email dated 3/25/23, from R.F. to Ms. Dock
- P-G Email dated 3/31/23, from R.F. to Jonathan Irizarry, Esq.
- P-H Email from Jonathan Irizarry, Esq., to R.F.
- P-I Initial HIB determination against O.F., dated 5/22/23, and HIB investigation form
- P-J Email dated 7/23/23, from R.F. to Ms. Dock
- P-K Email dated 6/20/23, from R.F. to Ms. Dock
- P-L Email dated 7/13/23, from David Goldblatt to R.F.

P-M Email dated 8/3/23, from Christine Martinez, Esq., to R.F.  
P-N Letter dated 8/23/23, from Cristina Hunt to R.F.  
P-O Letter dated 9/1/23, from Cristina Hunt to R.F.  
P-P Email dated 9/1/23, from R.F. to Ms. Hunt  
P-Q Respondent's Answer to Petition in the HIB matter pending before ALJ  
Hobbs  
P-AA 5th Grade Report card, dated 6/22/23  
P-BB Recommendation letter from McCann  
P-CC Letter from Somerville, dated 3/30/23  
P-DD Start Strong test results for O.F.  
P-EE CogAT test results  
P-FF HIB Complaint against O.F.  
P-GG Butler report, dated 3/6/23  
P-HH Butler report, dated 3/15/23  
P-II Butler report, dated 4/5/23  
P-JJ Appeal to Board of HIB 058  
P-KK O.F. handwritten note  
P-LL R.F. Supplemental Affidavit

For Respondent:

R-A R.F. letter dated 4/18/23, appealing HIB 058  
R-B HIB form for HIB 066  
R-C Butler report dated 3/6/23, HIB 058  
R-D Butler report dated 3/15/23, HIB 066  
R-E Butler report dated 4/5/23, HIB 066  
R-F Joint Stipulation of Facts  
R-G Joint Exhibits 1-45  
R-H Order of Judge Betancourt barring Dr. Mora  
R-I Certification of B.K.

Joint:

1. September 2012 Guidance for Parents on the Anti-Bullying Bill of Rights
2. District Policy 5512—Harassment, Intimidation, and Bullying
3. 9/9/21 letter to R.F. from Assistant Superintendent of Montclair Public Schools re: confirming continued homeschooling of O.F. for 2021–2022 school year; Montclair Local article on O.F. (p. 27–32), and CogAT Abilities Test results where O.F. scored in the 98th percentile
4. 9/29/22 Nurse Visit Summary Form and 9/30/22 Nurse Visit Summary Form
5. Email exchange between R.F. and Ms. Kristen McCann
6. 10/12/22 email exchange between R.F. and Ms. Danielle Kupperman re: “O.F. 5th Grade”
7. 10/11/22–10/13/22 email exchange between Ms. Kristen McCann and Principal Terence Somerville and Ms. Danielle Kupperman re: “O.F.”
8. 10/12/22–10/18/22 R.F. email exchange between R.F., Principal Terence Somerville, and Ms. Danielle Kupperman re: “O.F. 5th Grade”
9. 10/18/22 & 10/19/22 handwritten notes of Ms. Danielle Kupperman
10. 10/19/22 R.F. email to Terence Somerville re: “Concern”
11. 10/19/22 R.F. emails with T. Somerville & D. Kupperman re: “O.F. (bullying)”
12. 10/20/22 R.F. emails with T. Somerville & D. Kupperman re: “O.F. (bullying)”
13. 10/19/22–10/20/22 R.F. emails with T. Somerville & D. Kupperman re: “O.F. (bullying)”
14. 10/20/22 R.F. email submitting HIB Form 338 O.F., dated 9/9/2022
15. 10/20/22–10/21/22 emails re: O.F. HIB Form 338
16. HIB 338 Form completed by D. Kupperman
17. 10/21/22–11/22/22 Investigation Notes of D. Kupperman
18. 10/26/22 Genesis Portal and 11/1/22 Confidential HIB Investigation Report
19. 11/1/22 Nurse Visit
20. 10/20/22–11/15/22 R.F. email exchange with T. Somerville & D. Kupperman re: “O.F. HIB Form 338 O.F.”
21. 10/27/22 letter from Dr. Li Zhang with medical records

22. Email from Maggie Dock to T. Somerville re: "HIB IMPORTANT" and 11/15/22–11/16/22 email exchange between R.F., Maggie Dock, D. Kupperman, and T. Somerville re: "Northeast Meeting Questions"
23. 11/17/22 M. Dock notes re: 012—Re-opened/phone contact to father R.F.
24. 11/15/22–11/22/22 email re: Case Reopened N.E. O.F.
25. 11/16/22–11/21/22 emails between J.K. & D. Kupperman re: "HIB issue"
26. 11/22/22 Nurse visit, Nurse Turnstile records, O.F. attendance calendar
27. 11/22/22 Investigation Notes of D. Kupperman
28. 12/23/22 Fifth-Grade Report Card of O.F.
29. 1/3/23 letter from M. Dock to R.F. re: Notification of Alleged Incident Ruling NON-HIB
30. 1/11/23 Emails re: Appeal board of education and more instances of bullying (OF) enclosing Request for Appeal
31. 1/10/23 R.F. email to T. Somerville with O.F. handwritten notes
32. 1/12/23–1/14/22 emails re: "O.F. HIB matter"
33. 1/19/23 R.F. email to T. Somerville re: "O.F. (Bullying)"
34. Joint Exhibit 34 is a true and accurate copy of the 1/20/23 Dr. Jonathan Ponds letter to R.F. re: appeal hearing
35. 1/20/23 R.F. email to Nina DeRosa re: "Northeast F. HIB hearing 2/1/23 and Mental Health Evaluation Matter"
36. 1/22/23–1/26/23 email from M. Dock to R.F. re: O.F. NE update
37. 1/26/22–1/28/23 email from R.F. to M. Dock re: O.F. (Board Appeal Meeting/Document Request/New Counsel)
38. Undated letter from Dr. Mora to Superintendent Pond re: Confirming attendance at 2/1/23 HIB Appeal meeting
39. 2/28/23 letter from Christine M. Martinez, Esq., re: Independent Investigator and redacted HIB documents
40. 3/7/23 letter from Board Secretary re: Board Affirmed NON-HIB incident on 3/1/23
41. 5/30/23 Pro Se Petition of Appeal re: Addendum to Case # 10122-012(A)(B)
42. 2/7/24 Petitioner's Discovery Responses
43. 1/23/24 Respondent's Discovery Responses

44. The Genesis HIB Data
45. Program for 5/4/23, 2022–2023 National PTA Reflections Art Program National Winner O.F., Northeast for Intermediate Visual Arts—“Stop Bullying”; Leaflet for 5/21/23, NJ PTA Reflections Student Art and Award’s Showcase; Show Your Voice! National PTA Reflections 2022–2023 Award Presented to O.F., Outstanding Interpretation—Visual Arts