

New Jersey Commissioner of Education
Final Decision

H.R., on behalf of minor child, N.R.,

Petitioner,

v.

Board of Education of the Township of Long Hill,
Morris 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 concurs with the Administrative Law Judge's (ALJ) conclusion that no violation of the Anti-Bullying Bill of Rights Act occurred because the teacher's actions were not based on a distinguishing characteristic. The Commissioner further concurs with the ALJ that respondent's decision to affirm the investigation report 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.¹


COMMISSIONER OF EDUCATION

Date of Decision: March 7, 2025
Date of Mailing: March 7, 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 10815-24

AGENCY DKT. NO. 215-7/24

H.R. ON BEHALF OF MINOR CHILD N.R.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF LONG HILL, MORRIS COUNTY,**

Respondent.

H.R., petitioner, pro se

Caitlin W. Lundquist, Esq., for respondent (The Busch Law Group, LLC,
attorneys)

Record Closed: November 21, 2024

Decided: December 11, 2024

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

STATEMENT OF THE CASE

Respondent fully investigated the harassment, intimidation, and bullying (HIB) complaint filed by petitioner, and determined that there was no violation of the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13, et seq. (ABBRA), because the

incident was not motivated by any distinguishing characteristic. Should the respondent's findings be overturned? No. A board's decision should not be overturned unless it is arbitrary, capricious, or unreasonable. Thomas v. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965).

PROCEDURAL HISTORY

On July 8, 2024, petitioner H.R., on behalf of minor child N.R., filed a petition of appeal with the Commissioner of Education, Office of Controversies and Disputes. On August 1, 2024, respondent filed its answer. On August 2, 2024, the case was transmitted to the Office of Administrative Law as a contested case under N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

On September 5, 2024, a prehearing conference was held, and I entered an order outlining the deadlines for motions for summary decision.

On October 17, 2024, petitioner filed a motion for summary decision. On October 18, 2024, respondent filed its own motion for summary decision. On November 8, 2024, respondent filed its opposition to petitioner's motion. Petitioner did not file any opposition to respondent's motion. On November 21, 2024, respondent filed a further reply to petitioner's motion for petitioner's lack of opposition to respondent's motion.

DISCUSSION AND FINDINGS OF FACT

The Board operates the public school district for the City of Long Hill, New Jersey. There are three public schools, including a pre-kindergarten, an elementary school, and a middle school. The Board enacted District Policy 5131.1, Harassment, Intimidation, and Bullying, in December 2011 to comply with the New Jersey Anti-Bullying Bill of Rights, N.J.S.A. 18A:37-13, et seq. (R-3.)

N.R. is a general education student enrolled in sixth grade at the Millington School and on November 14, 2023, was in her music class. The students were playing a song

on the recorder when N.R. played several wrong notes. The teacher expressed his frustration, adding that he was trying not to lose his temper. (P-A.)

Shortly thereafter, the teacher was speaking with a male student and called him by a name other than his real name. N.R. was not privy to the actual conversation and only heard the teacher call the student by something other than his name. There is a dispute as to the name that the teacher said, but that name is not material to the facts at hand and is not the subject matter of this case. (R-2; P-G.)

N.R. insisted that the teacher call the student by his real name and said that she was trying not to lose her temper. N.R. and the teacher were both speaking in raised voices. N.R. attempted to return to her seat, and the teacher grabbed her by the arm and asked her if she had “lost her mind?” (R-2; P-G.)

The Board contacted the Department of Children and Families (DCF) to report the incident, and the Institutional Abuse Investigation Unit (IAIU) stated that the matter did not warrant an investigation. H.R. also contacted DCF and after an investigation, it was concluded that the allegation of physical abuse was not established. (R-1; P-D.)

On December 18, 2023, H.R., on behalf of N.R., filed complaint form HIB 338. The complaint alleged that in November 2022, H.R. had informed the teacher that N.R. had ADHD, was on medication, and that the teacher violated N.R.’s HIB rights because of her diagnosis. (R-2; P-E.)

On the date of the incident, November 14, 2023, N.R. did not have a Section 504 Plan or an Individualized Education Program (IEP). N.R. had never been referred to the 504 Team or the Child Study Team to determine whether she was in fact eligible for any special education and related services because of ADHD. (R-4; P-G.)

Upon receipt of the HIB complaint, the Board contacted its Anti-Bullying Specialist, Assistant Principal Melissa Backer. Backer met with seven student witnesses and the teachers in the classroom at the time of the incident. On January 10, 2024, Backer issued her report. Backer’s investigation and report stated that the incident took place on school

property, specifically in the music classroom, and that the incident substantially disrupted N.R.'s rights because she became very emotional. However, Backer concluded that the conduct was not reasonably perceived as being motivated by any actual or perceived characteristic such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity expression, or a mental, physical or sensory disability or by any other distinguishing characteristic. Backer further concluded that on the date of the incident, the teacher did not know that N.R. had ADHD or was on medication. While there was no finding of a HIB, the teacher's actions were unacceptable, and proper consequences were administered. (R-4; P-G.)

The Superintendent prepared a report of the findings, and the Board accepted the findings. H.R. challenged the determination and appeared before the Board to appeal the decision. The Board affirmed the findings. (R-5; R-6; P-H.)

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

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.”

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).

In this case, Backer interviewed seven students and the teachers. After conducting those interviews, she concluded that the teacher did not commit an act of HIB as defined by the statute because his actions were not based on a distinguishing characteristic as defined by the statute. Second, Backer concluded that the incident did occur on school premises, it substantially disrupted or interfered with the orderly operation of the school and a reasonable person should have known under the circumstances that it would have the effect of physically or emotionally harming a student, and it created a

hostile educational environment for the student. Backer concluded that the teacher did not know that N.R. had ADHD or was on medication and that the teacher would have no way of concluding that N.R. had ADHD because she did not have an IEP or a 504 Plan. While Backer did not find that an incident of HIB occurred, the teacher did receive the proper consequences for his actions. Here, it was not arbitrary, capricious, or unreasonable for the Board to conclude that the actions of the teacher were not based on a distinguishing characteristic.

The Board complied with the statute. It retained an anti-bullying investigator, Backer. The investigation took place within the required time frame and was reported to respondent and the parents. The investigation concluded that there was no HIB. The statute permits the Board to affirm, reject, or modify Backer's decision, which it did. The Board heard H.R.'s appeal and affirmed the determination that there was no HIB.

Therefore, I **CONCLUDE** that there was no violation of ABBRA because the incident was not based on a distinguishing characteristic, and I **FURTHER CONCLUDE** that the Board did not act arbitrarily, capriciously, or unreasonably in affirming the investigation report.

ORDER

I **ORDER** that petitioner's motion for summary decision is **DENIED** and that respondent's motion for summary decision is **GRANTED** and this case is **DISMISSED**.

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

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

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500. A copy of any exceptions must be sent to the judge and to the other parties.

December 11, 2024

DATE



PATRICE E. HOBBS, ALJ

Date Received at Agency:

December 11, 2024

Date Mailed to Parties:

December 11, 2024

lsr

APPENDIX

Moving Papers for Petitioner:

Brief in Support of Motion for Summary Decision with Petitioner's Exhibits A through H, dated October 17, 2024

Moving Papers for Respondent:

Brief in Support of Motion for Summary Decision with Exhibits 1 through 6, dated October 18, 2024

Respondent's Opposition to Petitioner's Motion for Summary Decision, dated November 8, 2024

Respondent's Further Reply, dated November 21, 2024

Exhibits

For Petitioner:

- P-A Email from N.R. to the teacher, dated November 14, 2023
- P-B Email from H.R. to the teacher, dated November 29, 2022
- P-C Emails between the teacher and various other parents from 2021–2024
- P-D Letter from DCF to H.R., dated December 4, 2023
- P-E HIB 338 Form, dated December 18, 2023
- P-F Email from H.R. to George Alexis, dated January 3, 2024
- P-G HIB Initial Reporting Form and Student Interview Report
- P-H H.R. Letter of Appeal to the Board

For Respondent:

- R-1 IAUI Findings Report, dated December 4, 2023
- R-2 HIB 338 Form, dated December 18, 2023
- R-3 Board Policy 5131.1 Harassment, Intimidation and Bullying
- R-4 HIB Initial Reporting Form

R-5 Letter from Board to H.R., dated February 6, 2024

R-6 Email from Board to H.R., dated April 16, 2024