

**New Jersey Commissioner of Education**  
**Final Decision**

M.A.T., on behalf of minor child, M.T.,

Petitioner,

v.

Board of Education of the Township of Holland,  
Hunterdon County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered.<sup>1</sup>

The Holland Township Board of Education (Board) found that petitioner's child, M.T., committed an act of harassment, intimidation, and bullying (HIB) when he used the word "garbage" in the vicinity of another student, S.V., knowing that S.V. was sensitive to that word. The Board also found that S.V. did not commit an act of HIB when she repeatedly sat next to M.T., despite being admonished to keep her distance. Petitioner appealed both determinations by the Board.

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<sup>1</sup> Respondent filed exceptions that were untimely pursuant to *N.J.A.C. 1:1-18.4(a)* and were therefore not considered. Petitioner did not file exceptions as to the portion of the Initial Decision that found in the Board's favor.

Following a hearing, the Administrative Law Judge (ALJ) concluded that M.T. did not commit an act of HIB because S.V.'s personality and alleged sensitivity to the word "garbage" are not distinguishing characteristics. The ALJ noted that M.T. did not call S.V. "garbage," indicate that S.V. smelled like garbage, or otherwise use the word in reference to S.V. specifically. Additionally, S.V. did not respond negatively when other students used the word "garbage." The ALJ found that, while M.T.'s acting in a manner intended to distress S.V. was not appropriate, it did not rise to the level of HIB. Accordingly, the ALJ granted the petition as to the finding of HIB against M.T. and ordered that it be removed from M.T.'s records. As to the Board's decision that M.T. was not the victim of an act of HIB by S.V., the ALJ found that S.V.'s conduct could not reasonably be perceived to be motivated by a distinguishing characteristic, and the Board's decision was not arbitrary, capricious, or unreasonable. Accordingly, the ALJ dismissed this portion of the petition.

Upon review, the Commissioner concurs with the ALJ and finds that the Board's decision that M.T. committed an act of HIB was arbitrary, capricious, and unreasonable. 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, 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).

While a broad range of characteristics may constitute a distinguishing characteristic under the Act, the Commissioner concludes that the Board was arbitrary, capricious, and unreasonable in determining that S.V.'s sensitivity to a specific term was a distinguishing characteristic. In the absence of a distinguishing characteristic, conduct – even harmful or demeaning conduct – that is motivated only by a personal dispute does not come within the statutory definition of bullying. *K.L. v. Evesham Twp. Bd. of Educ.*, 423 N.J. Super. 337, 351 (App. Div. 2011).

The Commissioner further concurs with the ALJ, for the reasons detailed in the Initial Decision, that M.T. was not the victim of an act of HIB by S.V.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The petition of appeal is granted as to the Board's decision that M.T. committed an act of HIB, and the Board

is directed to remove all references to its decision from M.T.'s records. The petition of appeal is dismissed as to the Board's decision that M.T. was not the victim of an act of HIB by S.V.

IT IS SO ORDERED.<sup>2</sup>



COMMISSIONER OF EDUCATION

Date of Decision: March 17, 2025  
Date of Mailing: March 19, 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**

OAL DKT. NO. EDU 07053-24

AGENCY DKT. NO. 109-4/24

**M.A.T., ON BEHALF OF MINOR CHILD, M.T.,**

Petitioner,

v.

**TOWNSHIP OF HOLLAND BOARD**

**OF EDUCATION, HUNTERDON COUNTY**

Respondent.

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**Michael A. Thompson**, Esq., petitioner, pro se

**Mark G. Mucciolo**, Esq., for respondent (Busch Law Group, LLC, attorneys)

Record Closed: November 1, 2024

Decided: January 28, 2024

BEFORE **GAURI SHIRALI SHAH**, ALJ:

**STATEMENT OF THE CASE**

Respondent upheld two harassment, bullying or intimidation (HIB) determinations, finding that petitioner M.T. committed HIB by using the word “garbage” in S.V.’s vicinity knowing she was sensitive to the word and finding that S.V. did not commit HIB when she repeatedly sat next to M.T. despite being admonished to keep distance. Does either student’s conduct support the respondent’s HIB determinations?

No. A HIB incident means any act that is reasonably perceived as being motivated by an actual or perceived characteristic, such as race, color, gender, disability or other distinguishing characteristics. N.J.S.A. 18A:37-14.

### **PROCEDURAL HISTORY**

On April 17, 2024, respondent Holland Township Board of Education (the Board) upheld a February 29, 2024, HIB finding against M.T. and a March 15, 2024 finding that M.T. was not a victim of HIB. On April 22, 2024, petitioner M.A.T., on behalf of a minor child, M.T., appealed both Board decisions to the Department of Education (DOE).

The DOE transmitted this case to the Office of Administrative Law, where it was received and filed on May 23, 2024, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

On September 12, 2024, and September 16, 2024, I held the hearing but kept the record open for the parties to obtain transcripts and provide post-hearing submissions. Upon receipt of those submissions, I closed the record on November 1, 2024<sup>1</sup>.

### **DISCUSSION OF FACTS**

This case involves dual HIB investigations of incidents between two students, petitioner M.T. and S.V., that took place primarily in February and March 2024. At that time, M.T. and S.V. were fifth graders in the same homeroom and classes at Holland Township School (Holland School). The first investigation, which began on February 9, 2024, resulted in a finding of HIB against M.T. The second HIB investigation, which began just a few weeks later, involved allegations against S.V. and resulted in a finding of no HIB. On April 17, 2024, both findings were upheld by the Board. Both investigations were initiated by the Holland School principal, Susan Wardell, who also was the District Anti-Bullying Coordinator. Both investigations were completed by the

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<sup>1</sup> An extension was granted due to a voluminous caseload.

Holland School's Anti-Bullying Specialists (ABS) Jennifer Leap and Ms. Deniz. Leap had worked at Holland School as an ABS and a guidance counselor for ten years. Leap and Wardell were both called as witnesses in petitioners' case and both provided testimony about the underlying HIB matters, the substance of the underlying allegations, the investigation conducted, and the conclusions reached.

### The February 9, 2024, HIB Investigation

An email from S.V.'s parent to school staff, dated February 9, 2024, triggered the first HIB investigation. The email advised that S.V. was being bullied by two boys in school but did not identify the students by name. Earlier that same day, at 9:07 a.m., the Spanish teacher, Ms. Kelly Mullooly, had sent an email to Wardell and Leap, as well as others at the school, advising of "an interesting situation that came about in class today." (P-8.) Specifically, the email noted that another student and M.T. were "picking on" S.V. and "triggering her by saying the word garbage." Ibid. At the hearing, Wardell confirmed receipt of the email but also advised that she had spoken by phone with Mullooly as well as engaged in an in-office conference with her that day. According to Wardell, none of the information gleaned from her conversations with Mullooly was reflected in investigation reports, as she did not participate in the investigation. The information did, however, inform Wardell, who approved the start of a HIB investigation into M.T. and another student. Wardell also signed off on the final HIB incident report decision.

Wardell testified that her only role in a HIB matter was in the beginning and the end. Specifically, Wardell testified that she decides whether an investigation should occur and then, after the investigation is concluded, meets with the ABS to consider the results of the investigation and ultimately determine whether a HIB incident was founded. A HIB summative report is issued as a result of her conclusions and is then forwarded to the Board. Wardell neither participates in the investigation nor reviews the investigation notes or records. Wardell testified that the Holland School had a HIB policy in place, District Policy 5512 (the HIB Policy), which was effective February 28, 2023. (P-46.) The HIB Policy requires the principal to make a preliminary finding that

an investigation is required. The ABS conducts the investigation if authorized, and a separate investigation for each reported incident is required. (P-46.)

The investigation was conducted jointly by ABS Leap and Deniz. Specifically, they would meet with each witness and handwrite their own notes of the witness interview. In addition, the witness would be provided with a form on which to handwrite their own notes, which were considered as part of the investigation. Some of the notes by the ABS and witnesses are difficult to read, either due to extensive redactions or because the handwriting is illegible.

The incident in Spanish class, coupled with two other incidents, one in after-school band rehearsal and one at lunch in the cafeteria, comprised the events investigated by the ABS. Based on the investigation, Leap concluded that M.T. had used the word “garbage” in the vicinity of S.V. The investigation further revealed that due to an incident that occurred in third grade, S.V. was sensitive to the use of the word “garbage.”

Leap testified that S.V. was a “sensitive” person and “emotional” and that the word “garbage” triggered an emotional response from her. Thus, the investigation concluded that M.T. had used the word garbage in the vicinity of S.V. knowing she was sensitive to it to elicit an emotional response. However, Leap confirmed in her testimony that S.V. was not triggered when other persons used the word in her presence, including her teachers and her friends; she selectively decided who was “nice” and could say the word without an emotional response from her. Wardell confirmed as well that S.V. was selective in who she felt could say the word “garbage.”

The investigative records provided reflect that the ABS interviewed several Holland School staff members, S.V., M.T. and other students. The gym teacher did not identify any issues between M.T. and S.V. (P-22; P-37). The music teacher, Mr. Kevin Kuchinsky, noted one incident where several boys, including M.T., were speaking loudly about “taking out the garbage” in after-school band practice. He asked them to quiet down, and the next day he met with them to ask that they not disrupt band practice. This incident occurred on January 29, 2024, based on the email from the



teacher documenting what happened and how he handled it. (P-12.) The email noted that three boys were involved in the incident. Ibid.

Ms. Christine Detrick, a teacher, described the interactions between M.T. and S.V. as “butting heads”, noting “they just can’t be together w/out (sp) bugging each other.” (P-23.) Ms. Qualteria, a cafeteria aide who was interviewed stated that a few students had said the word “garbage”, it had had upset S.V., and that S.V. said that M.T. and others were pushing a garbage can near S.V. (P-25.) The aide noted that S.V. seemed upset a lot. (P-24 at 066.) Leap testified that S.V. was a sensitive child, and a number of things upset her.

S.V., when interviewed by the ABS, initially said she had “kind of forgot about it” since she had gone on vacation. (P-13–P-15.) S.V. explained in the interview notes that M.T. was never her friend and that she thought he said the word “garbage” to annoy her. (P-13.) She also confirmed that M.T. was not calling S.V. “garbage”. (P-14 at 038.)

Leap agreed that M.T. had not called S.V. “garbage” or said she looked like or smelled like garbage. There is no evidence that M.T. had directly said the word to S.V. but rather had been involved in conversations with other boys revolving around “taking out the garbage” or “when do you take out the garbage at your house.” From the investigation notes produced, the ABS did not specifically ask M.T. what was said and the context of any comments, including when he said the word “garbage” or how often. (P-17; P-18.) The interview notes reflect that M.T. simply complained that there was only an issue with the word “garbage” with S.V. when he, but not others, said it. (P-17–P-19.)

The Holland School did not have a policy against the use of the word “garbage.” Nor had school staff been advised to limit or refrain from the use of the word “garbage” as a potential trigger for S.V.

Leap’s “Memory Notes,” spanning January 26, 2024, through March 1, 2024, reflect that S.V. suggested that another child who said “garbage” be stabbed with a

plastic knife and that she allegedly kicked another student. (P-3.) See also P-24 and P-25.

Based on M.T.'s engaging in the use of the word "garbage" in the vicinity of S.V., Wardell and the ABS concluded that M.T. had committed an act of HIB against S.V. (P-1.) As part of the analysis required by the HIB summative report, Wardell had to identify the motivating factor, which was defined as the actual or perceived characteristic of the target that was the motivating factor. Some of the examples of characteristics included race, color, religion and gender. The characteristic identified for M.T.'s motivating factor was "Other," followed by S.V.'s "personality and sensitivity to the word 'garbage'." (P-1 at 004.)

At the hearing, Wardell had difficulty answering the questions posed to her and at one point asked if she could confer with counsel. Wardell seemed hesitant to testify and wanted to limit her testimony to the information contained in the HIB summative report. She further testified that she did not read the investigative reports but waited for a summary from the ABS. However, when questioned about how she knew M.T. had said the word "garbage" and the context in which it was said, she eventually declared that "everyone had told her," including the teachers and the parents, pointing specifically to the email from the Spanish teacher. (P-8.) When confronted with the email, she admitted that it did not specify what M.T. had said and then recounted that she had private conversations with the Spanish teacher that formed the basis of her conclusions. This of course begs the question: Why conduct an investigation if the ultimate decision maker has already concluded the incident underlying the HIB investigation has occurred prior to the start of the investigation?

Lastly, in going through the February 29, 2024 HIB summative report as to M.T., I found an unredacted name and the notation "no motivation." Thinking it was another staff member's perspective on the investigation, I inquired about it. Leap testified that the ABS, at Wardell's direction, combined more than one investigation in the final HIB summative report. The other investigation did not involve either M.T. or S.V. or the incidents giving rise to the February 9, 2024 investigation.

The March 1, 2024, Investigation

An initial email dated February 28, 2024, was sent by M.T.'s parents to the Holland School, including Wardell and Leap, advising them that S.V. was antagonizing M.T. by sitting near him when they were not supposed to be near each other. (P-4; see also P-5.)

Leap sent an email on February 28, 2024, to the teachers advising them that the children needed to be kept away from each other and spoke with both S.V. and M.T. (P-6.) Another email from M.T.'s parents indicated that the same scenario had occurred on March 1, 2024, and that M.T. asked S.V. to move away and was feeling harassed. The parents inquired if S.V. had claimed harassment by M.T., why would she then approach and sit next to him. On March 4, 2024, Wardell authorized a HIB investigation of S.V.'s actions. (P-40.)

In each instance, M.T. sat on a bench and S.V. joined him. M.T. asked S.V. to please move away, reminding her they were not supposed to be near each other. (P-33.) Leap confirmed in the March 15, 2024, HIB summative report that the witnesses she spoke to in the HIB investigation that followed confirmed that M.T. was there first and that S.V. joined him later on the bench. (P-32.) S.V. claimed that she had been there first. (P-32.) Interestingly, at the hearing, Leap testified that S.V. had been there first, until confronted with the witness statements she presented in her own summative report of the incidents. In the end, Wardell and the ABS concluded that S.V.'s conduct did not rise to a HIB incident. (P-32.) Specifically, the summative report found no actual or perceived characteristic that was a motivating factor in the incident and thus, no HIB. The summative report also did not find that the alleged offender, S.V., knew or should have known that the incident would have the effect of emotionally or physically harming M.T. or placing M.T. in reasonable fear of emotional or physical harm or that the incident caused a hostile educational environment. (P-32 at 082.) The summative report left blank the number of times the incident occurred, which appears to be twice. Ibid.

### **FINDINGS OF FACT**

Given my discussion of the facts, the testimony the parties provided and my assessment of its credibility, together with the documents the parties submitted and my assessment of their sufficiency, I **FIND** the following as **FACT**:

During the 2023–2024 school year, M.T. and S.V. were fifth-grade students at Holland School who were in homeroom and some other classes together. As such, they were in the vicinity of each other for most of the school day. M.T. and S.V., by their own admissions, were not friends. M.T. referred to S.V. as “horrible,” while S.V. called M.T. “mean.” Both had their own group of friends.

On February 9, 2024, based on an email from S.V.’s parent, Holland Township began a HIB investigation of M.T. On February 29, 2024, the investigation concluded with a finding that M.T. committed HIB by using the word “garbage” in the vicinity of S.V., who was sensitive to the use of the word.

The February 29, 2024, HIB summative report completed by Holland School required that the motivating characteristic for the HIB be identified. The motivating characteristic was identified as S.V.’s “personality and her sensitivity to the word garbage.”

The record is clear that M.T. did not state that S.V. looked like garbage, smelled like garbage, dressed like garbage or was garbage. Rather, M.T. would engage in conversations about garbage with other boys, such as about taking out the garbage at home or related ideas about garbage, in the vicinity of S.V. Notably, since most of their classes were together, most of these conversations would be in the vicinity of S.V. For her part, S.V. expressed that M.T. said things to annoy her.

S.V., at times, had reacted emotionally to the word “garbage.” However, S.V. is selective as to when she reacts emotionally to the use of the word “garbage.” S.V. would not react to the use of the word “garbage” if teachers, her friends, and those she deems “nice” say the word. S.V. did, on some identified occasions, have an emotional

response if M.T. or certain boys used the word “garbage” in her presence. ABS Leap, whose testimony I found credible and helpful, described S.V. as a “sensitive child” who reacts emotionally to many different things.

Holland School does not have a policy against the use of the word “garbage”. Nor did the school inform or instruct teachers or students that they were prohibited from using the word “garbage” generally or in the presence of S.V. because it was a trigger for her.

As part of its February 9, 2024, HIB investigation, the ABS did not ask M.T. what he had specifically said in the vicinity of S.V. relating to the word “garbage” including, when he had said it, the context of what he said, and who else had participated in any incident. In short, ABS Leap did not have “specifics” of the various alleged incidents identified in her investigation. In Spanish class, the boys in the class, including M.T. were bothering S.V. by commenting on various things, including her shoes and how much work she had done; any commentary using the word “garbage” was part of a larger effort to annoy S.V. rather than any specific characteristic of S.V. As confirmed by another teacher, Ms. Detrick, M.T. and S.V. could not be together without “bugging each other.”

S.V.’s personality and her sensitivity to the word “garbage” also are not a motivating characteristic because, unlike characteristics such as race, gender or disability, both her personality and her sensitivity were prone to fluctuations, depending on her perception of the people with whom she interacted. S.V.’s sensitivity was guided by whether she liked the person or their status and thus fluctuated based on her perception, as evidenced by her lack of emotional response when some people used the word “garbage.”

S.V. also engaged in actions for which Holland School conducted a HIB investigation. Two emails from M.T.’s parent, complaining that S.V. was antagonizing M.T. by sitting near him, triggered the March 4, 2024, investigation into S.V.’s conduct.

The investigation found that on February 29, 2024, and on March 1, 2024, S.V. sought out M.T. and deliberately sat next to him on a bench identified as the “buddy bench.” At the time, S.V. knew that she and M.T. were to keep their distance from each other because they had been instructed to do so by school staff, including ABS Leap. Despite these clear instructions, S.V. sat near M.T. twice.

Indeed, on February 29, 2024, S.V. at least knew that a HIB investigation of M.T. was pending, based on her complaint. By March 1, 2024, S.V. ostensibly knew that M.T. had been found to have committed a HIB against her. At this juncture, the only reason to approach M.T. was to provoke or aggravate him, which S.V. successfully did. The investigative record reflects that M.T. asked S.V. to move away, reminding her that they were to keep away from each other, and his concerns that he would be in trouble for being near her.

The March 9, 2024, summative report of the HIB investigation of S.V. correctly found no motivating characteristic. That investigation was properly conducted by Holland School. In contrast, the February 4, 2024, investigation was not conducted in accordance with Holland School HIB policy because the HIB summative report includes information relating to more than one investigation and two different unrelated incidents. Additionally, although the document references that more than two students were involved in some of the incidents involving S.V., Holland School only conducted an investigation of M.T. and one other student, which made the investigation incomplete and thus unreliable.

### **DISCUSSION AND CONCLUSIONS OF LAW**

The Legislature enacted the Anti-Bullying Bill of Rights Act (the Anti-Bullying Act) 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:37-13.1–13.2.

N.J.S.A. 18A:37-14 defines harassment, intimidation, or bullying as conduct that could be “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” and “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.]

Holland School’s District Policy 5512 essentially mirrors the language and intent expressed in the Anti-Bullying Act. Here the key and initial question that needs to be addressed is whether the conduct of either student, petitioner M.T. or S.V., was motivated by any actual or perceived characteristic. Notably, all aggressive or violent conduct does not constitute bullying under the Anti-Bullying Act. K.L. v. Evesham Township Board of Education, 423 N.J. Super. 337, 350–51 (App. Div. 2011). In K.L. v. Evesham Township Board of Education, the Appellate Division specifically found that “harmful 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.” Id. at 351.

Thus, an incident may be physically, psychologically, or socially harmful, but still not meet the HIB criteria. Here I **CONCLUDE** that the conduct of M.T. and S.V., in this instance, does not meet the statutory definition of HIB under the Anti-Bullying Act. Both

students acted in a manner that sought to distress the other, which, while not appropriate, does not rise to meet the definition of HIB.

In the case of the February 9, 2024, HIB investigation, S.V.'s personality and alleged sensitivity to the word "garbage" are not distinguishing characteristics, where the sensitivity and her personality differed based on the person she encountered and her perception of them. A characteristic cannot be fluid and selectively determined by the alleged victim. It is undisputed that S.V. would respond negatively when M.T. and certain other boys used the word "garbage", but not when others said it. This means that one day the use of the word garbage by a person may be fine, but on the next day, it may not, leading to, at the very least, uncertainty of when a HIB has occurred. It was unreasonable for the Board to apply such a wavering standard in their investigation and conclusion of HIB by M.T., and I **CONCLUDE** thus that M.T. did not commit HIB.

Based on the definition of HIB, I **FURTHER CONCLUDE** that the Board correctly upheld the March 9, 2024, finding of no HIB against S.V. because there was no actual or perceived motivating characteristic for S.V.'s actions in sitting next to M.T.

Generally, in matters involving the exercise of a board of education's discretion, the scope of the Commissioner's review is "not to substitute his judgment for that of those who made the evaluation but to determine whether they had a reasonable basis for their conclusions." Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 296 (App. Div. 1960). Our courts have held that "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." Bayshore Sewage Co. v. Dep't of Env'tl. Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App Div. 1974). To satisfy the arbitrary and capricious standard, petitioner must prove that respondent acted in either bad faith or in disregard of the circumstances, and I **CONCLUDE** that petitioner has met that burden in part. Specifically, I **CONCLUDE** that petitioner has done so with regard to the February 29, 2024, HIB finding against M.T., where the conduct did not meet the statutory definition of HIB and where respondent, unreasonably, did not comply with the Holland School HIB policy by including and combining two separate investigations in its February 29,



2024, HIB summative report. I **FURTHER CONCLUDE** that petitioner has not met its burden of establishing that the March 9, 2024, finding of no HIB against S.V. upheld by the Board was arbitrary, capricious or unreasonable.

### **ORDER**

In accordance with my conclusions above, I **ORDER** that the petition appealing the March 14, 2024 HIB finding is hereby **DISMISSED**. It is **FURTHER ORDERED** that the petition appealing the February 29, 2024 HIB finding against petitioner M.T. is **GRANTED**, and I **ORDER** respondent to remove the HIB finding from petitioner's student record.

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

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days, and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 28, 2024

DATE



**GAURI SHIRALI SHAH, ALJ**

Date Received at Agency:

January 28, 2025

Date emailed to Parties:

GSS/nn

## **APPENDIX**

### **WITNESSES**

#### **For petitioner**

Susan Wardell  
Jennifer Leap

#### **For respondent**

None

### **EXHIBITS**

#### **For petitioner**

- P-1 HIB Summative Report, dated February 29, 2024
- P-2 HIB 338 Form (Kaylee Qualteria), dated February 22, 2024
- P-3 Memory Notes of Leap re: S.V.
- P-4 Email from J. Thompson to Leap, Wardell and Snyder, dated February 28, 2024
- P-5 Email from Qualteria to Leap and Kephart re: S.V. Antagonization, dated March 1, 2024
- P-6 Email from Leap to HTS Staff, dated February 28, 2024
- P-7 Not in evidence
- P-8 Email from Mullooly to HTS Staff, dated February 9, 2024
- P-9 Not in evidence
- P-10 Email from Wardell to HTS Staff, dated February 9, 2024
- P-11 Email from J. Thompson to Kuchinsky, Lang and Leap, dated January 30, 2024
- P-12 Email from Kuchinsky to J. Thompson, dated January 31, 2024
- P-13 Target Interview Form (S.V.), dated February 20, 2024
- P-14 Target Interview Form (S.V.), dated February 20, 2024
- P-15 Target Interview Statement (S.V.), dated February 20, 2024

- P-16 Alleged Offender Interview Form (L.B.), dated February 15, 2024
- P-17 Alleged Offender Interview Form (M.T.), dated February 15, 2024
- P-18 Alleged Offender Interview Form (M.T.), dated February 15, 2024
- P-19 Accused Interview Statement (M.T.), dated February 15, 2024
- P-20 Witness Interview Form (Zdepski), dated February 28, 2024
- P-21 Not in evidence
- P-22 Witness Interview Form (Schedlbauer), dated February 28, 2024
- P-23 Witness Interview Form (Detrick), dated February 29, 2024
- P-24 Witness Interview Form (Qualteria), dated February 29, 2024
- P-25 Witness Interview Statement (Qualteria), dated February 28, 2024
- P-26 Witness Interview Form (Mullooly)
- P-27 Witness Interview Statement (Mullooly), dated February 29, 2024
- P-28 Witness Interview Form (Kuchinsky)
- P-29 Witness Interview Statement (Kuchinsky), dated March 6, 2024
- P-30 Not in evidence
- P-31 Not in evidence
- P-32 HIB Summative Report, dated March 1, 2024
- P-33 Target Interview Form (M.T.), dated March 5, 2024
- P-34 Target Interview Statement, dated March 5, 2024
- P-35 Witness Interview Form (Qualteria), dated March 14, 2024
- P-36 Witness Interview Statement (Qualteria), dated March 13, 2024
- P-37 Witness Interview Form & Statement (Schedlbauer), dated March 13, 2024
- P-38 Witness Interview Form (Kephart), dated March 14, 2024
- P-39 Witness Interview Statement (Kephart), dated March 14, 2024
- P-40 HIB Form 338, dated March 1, 2024
- P-41 Email from Qualteria to Leap and Kephart, dated March 1, 2024
- P-42 Memory Notes re: S.V.'s Antagonization, March 1, 2024
- P-43 Email from J. Thompson to Wardell and Snyder re: Continued Harassment, dated March 4, 2024
- P-44 HIB Form 338, dated February 29, 2024
- P-45 Leap Memory Notes, dated February 29, 2024

**For respondent**

P-46 Holland Township School HIB Policy (marked thus by respondent and not objected to by petitioner)