

New Jersey Commissioner of Education
Final Decision

L.K. and T.K., on behalf of minor child, A.K.,

Petitioner,

v.

Board of Education of the Township of Mansfield,
Burlington County,

Respondent.

Synopsis

Petitioners challenged the determination of the respondent Board that their daughter, A.K., committed an act of harassment, intimidation or bullying (HIB) against an elementary school classmate, N.V., pursuant to the New Jersey Anti-Bullying Bill of Rights Act (the Act), *N.J.S.A. 18A:37-13 et seq.* Petitioners sought a determination that the Board's decision was arbitrary, capricious or unreasonable, and requested the removal of the HIB finding from A.K.'s student records. The Board contended that its actions were in compliance with the requirements of the Act, and that the HIB investigation was conducted properly. The parties filed cross motions for summary decision.

The ALJ determined that summary decision was not appropriate in this case, as there were material facts in dispute; the legal issues for determination were whether petitioners received adequate procedural due process, and whether petitioners could prove by a preponderance of credible evidence that the Board's determination of HIB was arbitrary, capricious or unreasonable. The ALJ found, *inter alia*, that: the HIB investigation conducted by the school district was not thorough and complete; despite that, petitioners were provided adequate due process, and failed to meet their burden to prove otherwise; the superintendent violated statute and policy by failing to provide A.K.'s parents with information regarding the nature of the investigation; the Board's decision herein was arbitrary, capricious and unreasonable because the superintendent misstated the law when he directed the Board not to consider A.K.'s age in their determination of HIB; A.K. did not know, nor should have known, that her conduct would have the effect of harming a student, and did not substantially disrupt or interfere with the orderly operation of the school or the rights of other students; and although the Board decision was not made in bad faith, the decision relied on faulty information. The ALJ concluded that A.K.'s conduct did not meet the statutory definition of HIB, and petitioners proved by a preponderance of evidence that the Board's actions were arbitrary, capricious and unreasonable; the ALJ ordered the Board's decision reversed and the finding of HIB removed from A.K.'s student file.

Upon review, the Commissioner disagreed with the ALJ's findings and rejected the ALJ's determination. In so doing, the Commissioner found, *inter alia*, that: petitioners did not meet their burden of proof to show that the HIB determination was arbitrary, capricious or unreasonable; A.K.'s conduct was clearly motivated by N.V.'s gender identity and expression; and, although the Commissioner is mindful of A.K.'s young age at the time of the incidents, A.K. should have known that her persistent conduct was causing N.V. emotional harm as she was repeatedly counselled that her behavior was not appropriate. Accordingly, the Initial Decision was rejected and the petition was dismissed with prejudice.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

April 22, 2019

New Jersey Commissioner of Education
Final Decision

L.K. and T.K., on behalf of minor child, A.K.,

Petitioner,

v.

Board of Education of the Township of
Mansfield, Burlington County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties' exceptions and replies thereto, filed pursuant to *N.J.A.C.* 1:1-18.4, have also been reviewed and considered by the Commissioner.¹ In this case, the petitioners are challenging the Board's determination that their minor child, A.K., committed an act of Harassment, Intimidation, and Bullying (HIB) pursuant to the Anti-Bullying Bill of Rights Act (the Act), *N.J.S.A.* 18A:37-13 *et seq.*, towards her classmate, N.V.² Following a hearing in this matter, the Administrative Law Judge (ALJ) concluded that the conduct did not meet the statutory

¹ The Parties' sur-replies and subsequent correspondence were not considered by the Commissioner, as such documents do not meet the criteria in *N.J.A.C.* 1:1-18.4; moreover, the parties failed to obtain permission from the Commissioner prior to submitting any additional documents for the Commissioner's review.

² The use of N.V. in this decision is based on the initials used in the record. For the purposes of this decision, "N." represents N.V.'s preferred name. The record further uses male gender pronouns when referencing N.V.; therefore, this decision will do the same. The Commissioner notes that N.V. is a gender nonconforming student who was assigned "male" at birth. The record reflects that N.V. dresses in clothes that are typically associated with the female gender and prefers to be called by a name typically associated with the female gender.

definition of HIB and that the Board acted in an arbitrary, capricious, or unreasonable manner when it determined that an incident of HIB had occurred.

Upon a comprehensive review of the record, the Commissioner disagrees with the ALJ's findings and rejects the ALJ's determination for the reasons set forth below. The Commissioner restores the Board's finding of HIB, mindful of the standard of review of such matters and the deference granted to a board of education's determination. 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." *See Kopera v. W. Orange Bd. of Educ.*, 60 *N.J. Super.* 288 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration[,]" and the Commissioner will not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep't. of Env'tl. Prot.*, 131 *N.J. Super.* 37 (App. Div. 1974).

Here, the petitioners had the burden of proving by a preponderance of the evidence that the Board acted in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination. *See T.B.M on behalf of M.M. v. Moorestown Board of Education*, OAL Dkt. No. EDU 12780-07, decided February 6, 2008 (citing *Thomas v. Morris Township Board of Education*, 89 *N.J. Super.* 327, 332 (App. Div. 1965), *aff'd* 46 *N.J.* 581 (1966)), *adopted* Commissioner Decision No. 157-14, April 7, 2008. Based on the evidence in the record, including the transcripts of the hearing at the OAL, the Commissioner finds that the petitioners did not meet their burden.

Pursuant to *N.J.S.A.* 18A:37-14, harassment, intimidation and bullying is defined 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.

In the instant case, A.K. admitted that she repeatedly questioned N.V. and made comments to him about his name, his hair, and the clothing that he wore. A.K. persisted despite warnings from school staff that such remarks were unacceptable, and instructions from her mother to discontinue such queries.³ In addition to her harassment of N.V., A.K. threatened N.V. regarding his reporting of her behavior, which was verified by N.V. during the course of the HIB investigation. It is clear from the record that A.K.'s behavior was motivated by N.V.'s gender identity and expression. Moreover, A.K.'s conduct took place on the school bus and on school grounds, and consequently interfered with N.V.'s rights and the rights of other students. In fact, for a period of time, N.V.'s parent drove him to school because he did not want to ride on the same bus as A.K. A.K.'s behavior was not only demeaning to N.V., but also caused him emotional harm and created a hostile educational environment.⁴ Although the Commissioner is mindful that A.K. was only seven years old at the time

³ T.K.'s testimony also detailed her efforts to address with A.K. the incident(s) and the differences among individuals with regard to their gender identities and expressions.

⁴ Petitioners' exceptions substantially recast the arguments made below and reiterate their claim that the Board violated A.K.'s due process rights. A review of the record and the determination set forth in the Initial Decision pertaining to petitioners' due process claims reveal that the Board followed the procedures set forth in the Act and in its policy. The procedures set forth in the Act are sufficient to allow all parties involved adequate notice and due process of the law. Petitioners seek to expand the investigatory process and the HIB determination procedures to mirror discovery and trial-like adversarial proceedings, which is not the intent of the Act. The Commissioner is, therefore, unpersuaded by petitioners' exceptions.

of the incidents,⁵ the Commissioner finds that she should have known that her persistent conduct was causing emotional harm to N.V. given that she was repeatedly counselled that her behavior was not appropriate. Therefore, the Board's determination that A.K. committed an act of HIB was not arbitrary, capricious or unreasonable.

Accordingly, the Initial Decision is rejected and the petition of appeal is hereby dismissed with prejudice.

IT IS SO ORDERED.⁶

COMMISSIONER OF EDUCATION

Date of Decision: April 22, 2019
Date of Mailing: April 22, 2019

⁵ It should be noted that A.K. received an age appropriate consequence for her conduct, which included additional counseling and one recess detention.

⁶ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 7067-16

AGENCY DKT. NO. 82-3/16

**L.K. AND T.K. ON BEHALF OF MINOR
CHILD, A.K.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF MANSFIELD,
BURLINGTON COUNTY,**

Respondent.

David R. Giles, Esq., for petitioners

Casey P. Acker, Esq., for respondent (Lenox, Socey, Formidoni, Giordano,
Cooley, Lang and Casey, LLP, attorneys)

Record Closed: April 16, 2018

Decided: January 22, 2019

BEFORE **LISA JAMES-BEAVERS**, Acting Director and Chief ALJ:

STATEMENT OF THE CASE

Petitioners L.K. and T.K. appeal respondent Mansfield Township Board of Education's (the Board) finding that their daughter, A.K., committed an act of

harassment, intimidation, or bullying (HIB), N.J.S.A. 18A:37-13 et seq. Petitioners seek a determination that the Board's decision was arbitrary, capricious, or unreasonable. The Board seeks affirmance of its decision based on the findings of an investigation.

PROCEDURAL HISTORY

By way of petition dated March 14, 2016, petitioners sought to have the Commissioner of Education (Commissioner) remove the HIB determination from A.K.'s student records. Petitioners filed an Amended Petition on or about March 28, 2016. Respondent filed an answer on May 3, 2016. On May 5, 2016, respondent filed an answer to the amended petition. The matter was transmitted to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. It was filed at the OAL on May 9, 2016.

On September 7, 2016, respondent moved for summary decision pursuant to N.J.A.C. 1:1-12.5. Petitioners filed an opposition and cross-motion for summary decision on October 11, 2016, and an amended brief was submitted on October 12, 2016. Respondent replied on October 27, 2016. Oral argument was held on January 3, 2017. On March 6, 2017, I issued an Order denying the motion and the cross-motion for summary decision due to there being facts in dispute. A hearing was scheduled for September 18 and 19, 2017. I heard the case on September 18, 2017; however, petitioners were not able to complete their case, and their next witness was unavailable for the second scheduled hearing date of September 19, 2017. New hearing dates were scheduled for September 26, October 11, and November 15, 2017, and February 14, 2018. The record closed after receipt of petitioners' 118-page written summation and respondent's summation on April 16, 2018.

Pursuant to my Order denying summary decision, the issues on which there was a material factual dispute that needed resolution at hearing were: 1) What process were the petitioners afforded with regard to their right to a hearing; and 2) What evidence did respondent consider in making its HIB determination? The legal issue is whether petitioners received adequate procedural due process as afforded by the HIB statute. Last, the ultimate issue is whether petitioners can prove by a preponderance of

the credible evidence in the record that the Board's decision was arbitrary, capricious, or unreasonable.

STIPULATED FACTS

- 1) Petitioners' minor child, A.K., was a student at the Mansfield Township Board of Education's (Board) John Hydock Elementary School (JHES) during the 2015–2016 school year;
- 2) On September 29, 2015, an incident occurred on the morning school bus involving students A.K. and N.V. ("the incident");
- 3) As a result of the incident, an investigation into harassment, intimidation, or bullying (HIB) was conducted by JHES anti-bullying specialist (ABS) Cheryl Strickland and JHES principal Stacy Cullari;
- 4) Petitioners were notified of the HIB investigation;
- 5) An HIB report ("HIB report") was rendered, which found a confirmed incident of bullying by A.K. against N.V.;
- 6) The HIB report was submitted to the superintendent of the Mansfield Township School District, Tiffany Moutis;
- 7) During executive session on October 19, 2015, Moutis shared with the Board the HIB report, and the HIB report and incident were discussed;
- 8) The Board approved the HIB finding from the HIB report;
- 9) Petitioners were notified that the Board approved the HIB finding from the HIB report;
- 10) Petitioners were provided with a summary of the HIB investigation;

- 11) Petitioners requested a hearing before the Mansfield Board to appeal the approval of the HIB finding;
- 12) The appeal hearing was initially scheduled for November 9, 2015, and, with the consent of petitioners, rescheduled for November 16, 2015;
- 13) The appeal hearing was placed on the agenda of the November 16, 2015, Board meeting;
- 14) Petitioners' appeal was heard by the Board in executive session at the November 16, 2015, Board meeting;
- 15) At its December 14, 2015, meeting, the Board, in public session, approved a resolution to affirm the superintendent's decision, "John Hydock Elementary School HIB case #1"; and
- 16) Petitioners were notified of the Board's decision on their HIB appeal by way of letter dated December 15, 2015.

Additional Stipulations of Fact were also submitted:

- 1) Prior to the hearing, petitioners, through counsel, requested that the Board produce records in its possession that would have included any notes related to the investigation of the HIB complaint against A.K. ("HIB complaint") and related meetings or hearings before the Board.
- 2) The Board produced some notes in response to that request, but handwritten notes taken by Cheryl Strickland and Stacy Cullari, respectively, during their investigation of the HIB complaint were not identified or produced prior to the hearing in this matter before the OAL ("the hearing").

- 3) During their testimony during the hearing, Strickland and Cullari, respectively, stated that they had taken such notes and that they had provided them to the Board in response to a records request from the petitioners.
- 4) Thereafter, petitioners' counsel requested copies of those notes.
- 5) Neither the Board nor Cullari has a copy of her notes or knows what happened to them.
- 6) The Board did produce on October 5, 2017, a copy of notes which it has identified as all of Cheryl Strickland's handwritten notes related to the HIB investigation in the possession of the Board. A copy of those notes has been admitted into evidence in the hearing as Exhibit J-28.
- 7) Although Brett Gorman testified that he believed that the Board's business administrator would have taken "meeting notes" for the meeting minutes of executive sessions, Joyce Goode, the Board's business administrator who was present during the executive sessions of October 19, 2015, and November 16, 2015, and during the November 16, 2015, HIB hearing, does not recall taking any notes during those sessions or hearing, and neither she nor the Board has a copy of any such notes.
- 8) During her testimony, Alison Perrone stated that among other things she reviewed in preparing to testify during the hearing were notes that she had written on a copy of the agenda during the executive session of the Board held on October 19, 2015.
- 9) Thereafter, petitioners' counsel requested a copy of those notes, but Perrone can no longer locate them and the Board does not have a copy of them.
- 10) By stipulation to the above facts, the Board does not admit that any of the notes referenced above are "government records" within the meaning of the

Open Public Records Act (OPRA), or that there is any legal obligation for such handwritten notes to be maintained by a school district.

11) Petitioners acknowledge that it is the position of the Board that none of the notes referenced above are “government records” within the meaning of OPRA, and there is no legal obligation for such handwritten notes to be maintained by a school district.

12) Petitioners also agree that nothing in the above stipulations or the fact that the Board disclosed the mentioned notes may be used to imply or suggest that the Board concedes that such notes are “government records” or that it was legally obligated to maintain them.

FACTUAL DISCUSSION

Testimony

T.K.

Petitioner T.K., mother of A.K., testified that A.K. was seven years old at the time of this incident. T.K. has another child, who is two years younger. T.K. is a self-employed board-certified behavior analyst (BCBA) who works in homes for families. She has done so for nine years. She also has a teacher-of-the-handicapped certificate and more than twenty years of experience in the school setting. Her husband, L.K., is a federal officer with U.S. Customs. They moved to Columbus, New Jersey, in the Mansfield School District in February 2015, and her children started attending school there after Presidents’ Day.

A.K. was seven years old and in the first grade in Ms. Morse’s class in JHES with approximately twenty other children. T.K. communicated regularly with Ms. Morse, met with her, and emailed her. A.K. rode the bus to school every day. The typical school bus had forty children on it. The bus driver was the only adult on the bus. T.K. did not

hear of student N.V. during the first year of school. A.K. attended the second grade in Ms. Papero's class with approximately twenty other students.

A.K. is a girl who likes to dress up in fancy, nice clothes. Cheryl Strickland was a guidance counselor at JHES during A.K.'s second-grade year. T.K. testified that she received a call on September 29, 2015, at approximately 10:00 a.m. when she was working at a school district. Ms. Strickland called to say that her daughter had a "little situation" with a student. She explained that there is a student in A.K.'s school who went by a male name last year but now wants to be called by a female name.⁷ The student now wears clothes associated with girls, and A.K. asked the student many times why he⁸ does so, and he did not have an answer. When they got off the bus, both of them were crying. The student was upset because A.K. kept asking, and A.K. was upset because he was going to tell on her.

Ms. Strickland told T.K. that as far as she understood, the situation was worked out. Ms. Strickland explained that it is "difficult for all of us," and more so for a kid. T.K. wanted mostly to talk to her daughter when she got home. She did not hear anything else from the school that day. When T.K. spoke to A.K., A.K. did not know why she got in trouble. T.K. talked to A.K. about differences, and told her there is a child who dresses differently. She talked about the fact that he chooses to dress that way, and A.K. still did not get it. She went out to look for books on the issue, because it was new, and she was able to find children's books about it. T.K. told her daughter not to ask questions of that student anymore, but to talk to T.K. instead. They talked about his name, and said that if he wants to be called by the girl's name N3, then A.K. should call him by that name. A.K. was very confused, even after they spent an hour on it. She likes the student and just wants to be friends. He likes American Girl dolls as much as she does and he likes to shop at Justice like she does.

A.K. has asked a lot of questions since she could talk. She perseverates about anything in her life she does not understand. There was a child in her class who could

⁷ At the hearing, the parties agreed that to protect the identity of the student, we would use N3 to refer to the student's female name; N2 to refer to the old nickname; and N1 to refer to the name given at birth.

⁸ During testimony, T.K. referred to the alleged victim as "he" or "him," so I am using that terminology in summarizing her testimony.

not talk and used an augmented-communication device. He had a teacher with him all day long. She knew that the boy could not answer her, so she asked her mother about it and had her questions answered. You must answer her or else the situation will snowball.

When A.K. went to school the next day, nothing happened. T.K. found in her daughter's backpack a sheet of paper on which her daughter was trying to understand that her friend now wants to be called N3 by writing the old name and then the new name. (P-2.) A.K. is a visual learner, and that was her way of trying to understand, by writing a note to herself. Ms. Strickland and principal Stacey Cullari had meetings with A.K. to try to help her understand. Then, on October 1, 2015, T.K. heard from Ms. Cullari that there was another incident with the student. Ms. Cullari said now she needed to investigate it as an incident of HIB. Apparently something happened in the lunchroom with A.K. and the student, but she did not make clear what A.K. had done. Ms. Cullari said that they would have to go through the HIB process with an investigation. A.K. was practically in tears and very upset and confused. Ms. Cullari also said she already had given A.K. detention that day. When T.K. asked A.K. about it, she immediately broke down crying. She had to spend a day in detention in the principal's office. A.K. told her that she did nothing, and was very confused. T.K. wanted to get information from Ms. Cullari as to what exactly her daughter did. Ms. Cullari told A.K. that she may be expelled, and A.K. asked what "expel" means. T.K. tried to tell her, but did not know what to say. She did try to say that Ms. Cullari would never do that, but A.K. still talks about it.

T.K. emailed Ms. Cullari after having spoken to A.K. A.K. denied having said anything to the student, and she was upset that no one believed her. A.K. now hates school. T.K. asked to know exactly what had happened, but was never told. Ms. Cullari wrote her an e-mail reply, but did not answer her question. She basically said that everything was okay, and that A.K. seemed okay as well.

T.K. tried several more times to get a response to her question as to what A.K. did, but did not receive anything. She was just told that she would get a letter in the mail on October 15, 2015. She researched everything regarding HIB—the laws,

guidance from the Department of Education, and school guidance—and really thought everything would remain the same regarding her daughter. When she received a letter from Ms. Cullari in October, she questioned the written report that was submitted to the Board. (J-8.) She still was not really concerned. On October 20, 2015, T.K. received the letter from the District and the summary of the investigation. (J-17.) She was shocked, based on all the previous calls with Ms. Cullari and Ms. Strickland, that A.K. had been found guilty of HIB. The summary referenced only an incident date of September 29, 2015. It relied on N3's report that A.K. was mean to him. No one ever said that A.K. had threatened N3, as he alleged. No one ever said that A.K. was being mean to or teasing N3. A.K. admitted to asking questions, but does not see why that was wrong. Apparently the threat was that A.K. said her parents are lawyers, and that if N3 told on her, she would tell on him. As set forth above, neither parent is a lawyer. A.K. admitted that she was asking him questions, and that it was difficult to call him by his new name, but she still did not understand what she had done wrong. T.K. had also never heard that A.K. had made fun of N3. The letter said that the investigation was completed on October 13, 2015. T.K. had no idea what evidence the Board had relevant to her daughter being found guilty of an HIB incident.

T.K. received the letter from Ms. Strickland and Dori Levy, anti-bullying coordinator, informing her that the HIB investigation was presented to the Board on October 19, 2015. Prior to that, she did not know that it had been reported to the Board. (J-17.) Tiffany Moutis, superintendent, sent the report with the results of the HIB investigation under separate letter dated October 20, 2015. It advised that they concluded that an HIB incident had occurred. At that point, T.K. still did not know what A.K. had done that was considered to be HIB. T.K. strongly disagreed, so she did more investigation. She tried to reach out to Ms. Moutis, because she was completely blindsided by the finding. She was supposed to have a meeting with the school staff for them to give her information. However, she received a call from Ms. Moutis saying that if she disagrees with the finding she has to appear before the Board. All Ms. Moutis would say is that it is clear that it is HIB. T.K. requested a hearing after she tried unsuccessfully a few more times to have a meeting with Ms. Moutis. She was given the date of November 16, 2015, to appear before the Board. She expected that it would be the time to get more information and ask questions. She put together a four-page set of

notes, statements, and questions for the Board. She talked to the parents of A.K.'s friends. She knew A.K. had trouble with new information, as well as trouble with her social skills. What she heard from parents is that there are a lot of issues on the bus, and that there were other students who picked on N3.

On November 16, 2015, the day of the scheduled hearing, Ms. Moutis introduced herself to petitioners, as they had not met before. Mr. Gorman went into the meeting with the Board members, along with Ms. Cullari, Ms. Strickland, and Ms. Levy, and stayed approximately five minutes. Mr. Gorman then said that the petitioners could go in and present to the Board. However, he said that they would not be allowed to ask questions. T.K. was completely confused, as Ms. Moutis had said that they would get their questions answered. She was a little upset, so she asked for some time to collect herself before presenting to the Board. She had the statement she had prepared for the hearing. (P-7.) She did not see anything, nor was she given anything, that was handed to the Board. When she tried to ask when the alleged harassment was first reported, Mr. Gorman answered for the Board, and no one else could respond. She asked how the team determined that A.K.'s conduct was HIB, and Mr. Gorman gave the textbook definition of HIB and not what A.K. did. Mr. Gorman talked over them. One of the Board members asked if she thinks A.K. knew that what she said to N3 was mean. She said, "No, I don't believe she knew." Ms. Strickland then jumped in and said she disagrees, and that A.K. said that she knew it hurt N3 and she would try to be nicer. T.K. said that A.K. was aware after all this had occurred that she had hurt N3, because adults had told her that she had hurt him. Ms. Cullari tried to talk to T.K., and Mr. Gorman said, "Please don't say anything." Ms. Cullari then said, "I wish I could tell you."

Petitioners were told at the end of the hearing that the Board would make a decision at the next Board meeting, so they left and everyone else remained. At the next Board meeting, the Board agreed to accept the superintendent's recommendation. Although there was miswording in the letter that the Board had not found an HIB violation, T.K. knew that the HIB determination had been upheld. After that, T.K. made an Open Public Records Act (OPRA) request to obtain more information, and the Board

provided the records. (J-2.) She requested A.K.'s record and all the information regarding the HIB investigation, including reports and notes.

A.K.'s current relationship with N3 is that they are in the same class, as well as on the same bus. They play together and they are just typical students. A.K. is more nervous and anxious and scared of doing anything wrong. N3 is allowed to bring a friend to his counseling session, and invited A.K.

In the records, other children had reported that other kids were doing things to N3. One student pushed him down on the bus and squeezed his hand really hard. These things were left out of the summary. There were three separate versions of N3's mom's report. Each one was modified, until the last one was just talking about A.K., and the comments about the other students were removed. None of the students interviewed said that T.K.'s daughter was mean, or teased or bullied N3. Two of them said N3 was being mean to A.K. She still has no idea how they looked at the witnesses' reports and concluded that A.K. did something wrong. The other items were never conveyed to the Board, as far as she knows. They were in neither the summary nor the report from Strickland and Levy. When she reviewed N3's mother's email to the school principal dated October 5, 2015 (J-7), the concerns expressed were significantly different than the concerns N3's mother had expressed on September 29, 2015. She never saw any more notes of interviews with A.K. She was never given another opportunity to respond to the mother's email. Also received in her OPRA response was the HIB checklist that was filled out the day she got the call from Ms. Strickland, September 29, 2015. Ms. Strickland never mentioned hurtful teasing, as noted on the second page of the report. No one mentioned insulting remarks or threats. After having read all of it, she does not believe A.K. did anything intentionally. The Bullying Incident Report Form dated October 1, 2015 (J-3) indicates that things were done in a classroom and playground that were never mentioned to her. She still did not see records mentioning a demeaning comment that A.K. made to N3. There were no interviews of teachers, or school staff, or the bus driver, or the aide. The very last page of the report form asks why the harassment occurred, and the "other" box is checked, with a handwritten note saying "gender identity." A.K. has no idea what that is. T.K. went on

to say that her husband became a member of the Mansfield Board of Education in 2016, and he had just recently resigned.

T.K. admitted that her daughter has told her things that she later found out were not true but attributed that to her being a kid. She recalled that on September 23, 2015, two parents informed her that her daughter was not very nice. (R-1.) She knows her daughter has social issues, and she has numerous concerns for her daughter dating back to infancy and childhood. The parents did not say she was mean, but said they had to intervene due to conflicts. On September 29, 2015, Ms. Strickland told her the reason why N3 was upset, and it was because of the conflict. When she spoke to A.K. about differences, she believes A.K. understood in a broad sense. A.K. said she would stop the conduct that was bothering N3. When she asked her daughter why she wrote the handwritten note (P-2), A.K. said she wanted to remember to call her friend by the preferred name, N3. On October 1, 2015, Ms. Cullari told her all about the HIB process and investigation, but never specified what occurred that day. It was a twenty-four-minute conversation. After the call with Ms. Cullari, she spoke to her daughter again. However, she never got a number regarding how many times A.K. asked N3 why he dressed as he did. Ms. Cullari did say that A.K. said something to N3 and mentioned something about a threat made and that an investigation was to occur. The nature of the threat was not clear, but there was a reference to the police. Her daughter denied making any threat. Even though T.K. knew an investigation was going to be done, she was still shocked that they found HIB.

T.K. believes that the summary gave new and different information than she had been told, and she wanted to talk about it. Her daughter admitted to asking N3 why he wore a dress, but denied that she was teasing him about it. T.K. never had her questions answered as to what occurred on October 1, 2015. The only threat she heard about was A.K. saying that her parents were lawyers, but she did not think that was HIB. She was aware that when she went to the hearing she could bring evidence, but she did not bring anything other than the documents set forth at Exhibit P-7. She believes that the Board should have looked at environmental factors, developmental age, and assessment of behavior. She brought with her literature consisting of the Department of Education's guidance to schools, but Mr. Gorman said it was not

relevant. She left him a copy of the front page of it anyway. She did not have the OPRA documents when she went to the hearing. She received them later. She considered bringing her daughter, but decided against putting her through that. She believed she was before the Board for at least a half hour. To this day, she still does not know what investigation reports the Board considered. She also does not know whether the investigation reports were presented to Ms. Cullari or Ms. Moutis.

Stacy Cullari

Stacy Cullari testified that she has been the principal of JHES since 2014, and was supervisor of curriculum and instruction at the school in the year prior. Every year, all staff must be trained in HIB.

On September 29, 2015, students came up to her in a frenzy as she greeted students in the morning. Student N3 was upset because A.K. was teasing him on the bus. Student A.K. was upset because N3 was going to tattle on her. She let Cheryl Strickland, anti-bullying specialist, know what occurred. N3 said he liked Shopkins and Monster High, and A.K. said, "you can't like those things because you're a boy." Also, N3 said he wanted to wear a dress on picture day, and A.K. said N3 can't wear a dress because he's a boy. Ms. Cullari first spoke to the students individually, and then spoke to them together in the presence of Ms. Strickland. N3 said A.K.'s remarks were upsetting to him. A.K. disagreed, but did not recall exactly what she had said. Ms. Strickland took the lead in the questioning. They had mediation, where they talked about differences. A.K. seemed receptive, and said that she would stop her questions and comments.

Ms. Cullari filled out an HIB checklist. She notified T.K. about the incident by telephone. She also spoke to N3's mother by phone. N3 was born a male. N3 dressed mostly in female clothing and had pierced ears. N3's mother was quite upset. She said that there were prior incidents involving A.K. Ms. Cullari said that if she felt that it was bullying, she had to put it in writing, which she did.

Ms. Cullari believed that A.K. understood that her conduct made N3 upset. The next day she spoke to other students and took their statements. On September 30, 2015, Ms. Cullari interviewed student J. N3 said that he and J. had arguments on the bus, but they are friends. J.'s behavior did not seem to bother N3 the way A.K.'s did. She next interviewed student M., who rode the same bus, and student W., who said that the whole group had issues and could not get along. They are all second graders. After the interviews, she believed that A.K. knew that what she did was wrong, because she said she did not want N3 to tattle on her.

Ms. Cullari filled out the Bullying Incident Report Form (J-3), which then goes to the superintendent. She selected "gender identity" as the distinguishing characteristic for the report. She and Ms. Strickland conducted the investigation and completed the report. On September 30, 2015, other students brought to her attention that A.K. was continuing to bother N3 in the cafeteria. They said that A.K. was threatening that if N3 told on her, she would get her parents on N3. N3 confirmed that she said that. A.K. denied that it happened. N3's mother also reported that N3 told her it happened. Ms. Cullari spoke to A.K.'s parents on October 1, 2015. She and Ms. Strickland deemed it to be an HIB incident. Ms. Strickland authored the HIB report. (J-9.)

There were two ABS reports, one of which was read at the executive-session meeting of the Board. The results of the investigation were presented to the Board. The Board agreed that A.K. committed HIB, and a letter was sent to A.K.'s parents advising of the Board's decision. (J-16.) Ms. Cullari attended the appeal hearing, but not the executive session where the investigation was presented to the Board. She recalled T.K. reading a statement in response to questions.

Ms. Cullari stated that the evidence confirmed the HIB finding, in that the conduct was based on distinguishing characteristics that created a hostile environment that had an emotional effect on the student. A.K. knew that N3 was a boy dressing like a girl, and created a hostile environment for N3 such that N3 was not comfortable riding the bus any longer. Ms. Cullari testified that N3's mother said that student J.T. said things to N3 also, but N3 was not affected by the behavior of J.T. Ms. Cullari did not include in her report N3's references to being teased for liking Monster High and Shopkins and not

being able to wear a dress for picture day. She believes that there has to be an intent to harm, and believes that the intent occurred after A.K. was told to stop and she continued. Although Ms. Cullari said that she spoke to N3's mother on the day of the incident, she seemed to already know about the incident with A.K. teasing N3 about wanting to wear a dress to school pictures and being told to wear a suit. She explained that it was not the only time. The cafeteria incident the next day convinced Ms. Cullari that A.K. knew what she was doing.

Ms. Cullari did not talk to N3's teachers, lunch aides, bus driver, or any adults. She only talked to the students. Although student J. admitted to pushing N3 down, and student M. said that student J. teases N3, saying that he is a boy and should not dress like a girl, J. was not investigated for HIB because N3 did not seem to be affected by J.'s behavior. The third student interviewed, W., said that N3 is mean to A.K., and A.K. is not mean to N3. None of the other three students corroborated that A.K. was mean to N3. Ms. Cullari did not believe M. and W. She has three versions of Ms. V.'s statement, the last of which (in the order in the binder) removes any reference to the conduct of J. (J-2.) Ms. Cullari does not know the order in which they were written.

There is no documentation of the threat in the cafeteria incident other than the account by N3's mother. "Students" reported it. Ms. Cullari did not respond to T.K.'s request to be told exactly what the threat was that A.K. was said to have made. (J-6.) She was in the process of conducting the investigation. She told T.K. that the allegations were being investigated in a letter dated October 15, 2015, although the investigation had already occurred. There was no HIB incident between A.K. and N3 after October 1, 2015. The one incident on September 29, 2015, would not constitute HIB, and the only thing after that was A.K.'s threat. A.K. admitted to asking the questions and having a hard time calling N3 by his female name.

Cheryl Strickland

Cheryl Strickland testified that she has been a school social worker in Mansfield for ten years. She has been the anti-bullying specialist since the law came into effect in 2010. She was advised of the incident regarding A.K. and N3 by Ms. Cullari on

September 29, 2015. She testified, similar to Ms. Cullari, that they met separately with the students in Ms. Cullari's office. N3 was very upset and said that he tried to get A.K. to stop, but she would say things like he should not like Shopkins, and "you can't dress like a girl." He said A.K. told him that if he tattles on her, her parents are lawyers and they will take him to court, or some threat like that. When they interviewed A.K. she seemed to understand that what she did was hurtful, but she told them that she did not want to call N3 by his female name. They told her not to ask any more questions of N3. They then called the students' parents. N3's mother thought her child was being bullied. They told the parents of A.K. that they would be investigating.

Ms. Strickland and Ms. Cullari authored the report cooperatively. They then met with other students, M. and W. N3 had said that these were the students who witnessed the incident. W. said that there was difficulty with other students on the bus.

The next day there was another incident, where N3 said A.K. was harassing him at lunch, and N3 was upset. A.K. was still bothering him, when she had agreed not to do so anymore. A.K. also accused N3 of tattling on her and told other students. This made him feel bad. When they spoke to A.K., she said she knew she was doing hurtful things, and was trying to be better at saying nice things to N3.

Every year the district trains staff on HIB. Ms. Strickland concluded that the incident met the criteria to be an HIB incident. When they prepared the Bullying Incident Report Form (J-3), she thought the investigation was done, but the process was still ongoing because they had not written the final summary yet. The form added all the actions that were taken. They felt that gender identity was the distinguishing characteristic upon which the bullying was based. Ms. V. wrote a letter to put her concerns in writing, because they felt the parent's point of view was important. A quote from her letter was given to the superintendent. Ms. Strickland drafted the final summary. (J-9.) When she initially met with the students on September 29, 2015, she thought the incident could be an HIB incident based on the criteria and what the students said. A.K. knew her actions could cause harm, and they caused a hostile environment for N3. There were different versions of forms because the required paperwork changed in the middle of the investigation. They used the summary to

explain why she and Ms. Cullari felt it was an HIB case. The report went to the Board for review. She was not at that Board meeting. She is required to make a professional judgment based on the law, and that is what she did. Ms. V. said that N3 did not want to take the bus anymore and felt bad. Even second graders have to understand the rules.

She was asked to attend the executive session with petitioners in case there were any questions. Petitioners were given the chance to ask questions and present their case. She does not recall any specific questions asked. She believes that she was asked questions and she answered them. The whole session was with petitioners, so they were given more than just an opportunity to make a statement in the hour or more that they were before the Board. She recalled answering questions of Board members and petitioners.

Ms. Strickland admits to not being present when any of the incidents took place. She does not have her notes from her meetings with the students. She used them to make the summary. She disagrees that A.K. did not continue to bother N3 after they talked on September 29. She bothered N3 and teased him. Students reported to the teacher that A.K. was bothering N3 at lunch. The reason A.K. was concerned about N3 tattling was because she knew her behavior was wrong. There had been incidences of conflict in the past between A.K. and N3, but nothing serious. The reason they did not go after student J., who another student said pushed N3 down, was that N3 was not bothered by J., but by A.K. N3 did not report anything about J. the way he reported the things A.K. did. Ms. Strickland believes the investigation was completed by October 5, 2015. A.K. admitted asking questions about N3's clothes and having trouble calling N3 by the female name, and admitted that she did not want to write the female name on her paper.

Brett Gorman, Esq.

After debate on whether he should be allowed to testify, Brett Gorman testified that he was an attorney from the firm of Parker McKay, which represented the Board in 2015. He recalled a meeting involving the petitioners having to do with an alleged HIB

incident. Prior to the meeting before the Board on November 16, 2015, he recalled taking the parents aside and explaining to them the ground rules as to what would take place. They then went into the executive session for hearing. He told the petitioners that they could not ask questions of the Board because the Board was there to make a factual determination. He believes they did ask questions of the administration. He recalled petitioners making a long presentation, and the Board discussing it for a long time, as well. It was longer than the usual HIB hearing. Present at the meeting were the principal, the anti-bullying specialist, the anti-bullying coordinator, and the superintendent.

Mr. Gorman did not recall the petitioners being upset at what he told them. He disputes telling them that they could not ask any questions. The parents' argument was that the child did not understand what she was saying when she made comments to N3. They said that their child is young, so she was just inquisitive. He recalled the parents asking questions of the principal, and the principal and the ABS answering. The parents left when the hearing was over, and the Board continued to discuss the issue. The Board then returned to public session.

Alison Perrone

Alison Perrone testified that she is a current Board member, who served in November 2015. She has been an attorney since 1996. She recalled Ms. Moutis presenting the HIB report at the closed session in October 2015. She recalled receiving the report and reading it at the executive session. They did not get it before. She and the Board members had received training on HIB prior to October 2015.

Ms. Perrone recalled the petitioners addressing the Board at their appeal, along with Ms. Strickland and Ms. Cullari. She recalled Ms. Strickland responding to their questions. The parents said that the alleged bullying incident occurred due to their daughter's curiosity. Ms. Cullari had an exchange with A.K.'s father regarding conversations had with A.K. The parents were present in their meeting for approximately thirty minutes, but she does not recall exactly how long. She knows that the parents asked questions about the investigation and what had been done. After the

parents left, the Board stayed in executive session for further discussion. They then went to the public session and voted to uphold the determination of HIB. Ms. Perrone believed that there was a distinguishing characteristic: the incident impacted N3 and it caused emotional harm. She believed that the young age of A.K. was balanced with the fact that the effects of her conduct had been explained to her and she had understood.

Ms. Perrone did not know at the time of the meeting who the involved students were, but she did know by November. The mother of N3 became a member of the Board as of October 2017. Ms. Moutis shared the entire chain of events with the Board. The Board was told that A.K. persisted in making comments to N3 after the bus incident. N3's mother told the HIB investigators that the comments started the previous year, and they continued and made N3 upset. N3 was visibly upset several times in school. Ms. Perrone identified the HIB policy that was in effect until December 2015 (P-10) and the HIB policy that is currently in effect (P-10a). The administrators explained that after A.K. was told the comments upset N3, she continued to ask questions. It would have been a factor if that were not true. The Board members were not provided copies of the interviews, only the report of what N3, A.K., and N3's mom said. The mother conveyed the emotional harm inflicted on N3 and how upset he was, such that he was unable to ride the bus any longer. Perrone was not aware that the parents did not have the superintendent's determination prior to the Board meeting. Ms. Moutis talked to the Board prior to the parents' entry into the meeting. When the parents were there, they asked questions about the investigation.

Tiffany Moutis

Tiffany Moutis testified that she has been the superintendent for the Mansfield School District for approximately two and a half years. Previously she was an assistant superintendent in Kenilworth, and before that she spent nineteen years in the Union School District as a teacher, supervisor, and curriculum director.

Ms. Moutis recalls that she came to know A.K. when she had a meeting with the two building principals and Cheryl Strickland on or about September 29, 2015. Ms. Strickland shared the details of the incident and the investigation. They showed her

the district's HIB forms. After the investigation, which she does not participate in, the administrators submit a report, which she then submits to the Board. In the present case, upon her receipt of the report, she read it, copied it, and placed it in the file for the Board meeting on October 19, 2015. The report did not go home with Board members in their packets. After reading the report, she thought it was very clear that there had been an HIB incident based upon gender identity.

Ms. Moutis presented the report in the Board's executive session. She does not recall how long the executive session lasted, but there was a lot of discussion. She wanted to make sure that everyone understood the process before voting. She gave the members time to read the report and gave them time to ask questions. One Board member was interested in knowing the age of the students, but she explained that age of the alleged bully is not a factor; rather, it is what was stated and how it was stated.

The Board voted to support her decision. After the Board vote, she sent a letter to the parents with the decision of the Board and advising of the right to appeal, which they did. On October 23, on her way home from the New Jersey School Boards Association conference, she had a conversation with T.K. about what would take place. T.K. was confused as to why she was receiving the letter and what her child had done. Ms. Moutis explained that it was a finding of bullying, and that she had the right to appeal. On the day of the appeal, she asked the ABS to be there, as well as the attorney, for questions. Mr. and Mrs. K. came in with guns blazing, and the conversation was immediately heated. They explained that their daughter was inquisitive and asks a lot of questions. They said it should not be determined to be an HIB incident. They asked questions like the staff was on the witness stand. It was a very lengthy executive session, where they asked questions like, "Why did you do it this way?" She did not recall Ms. Strickland's responses, but Ms. Strickland was very nervous. Ultimately, after the executive session the Board voted in public to support the decision of the superintendent. A.K. exhibited HIB on the bus and on the playground. It continued after administrators told her to stop. Ms. Moutis did not speak to any students, but spoke with Ms. Strickland and Ms. Cullari.

Ms. Moutis spoke with Ms. Strickland mainly about writing reports and the various incidents. The incidents were asking why N3 dressed like a girl on the bus, continuing to tease N3 on the playground, and not letting N3 write her female name on her paper. The executive session went from 7:00 to 8:25 p.m. The report given to the Board had identification numbers instead of names or initials. (J-12.) N3's mother had said things that A.K. had done to N3 the year before, but they were not presented.

Everything Ms. Moutis knows regarding the investigation is in her report. She does not communicate with the parents before giving her report to the Board. At the appeal hearing, she brought the binder and a copy of the report for those members who were absent for the vote. She recalled Ms. Strickland answering the parents' questions about the process. The administrators stopped answering questions when the questions became accusatory. The attorney conveyed that it was not the place to discuss the administrators' process. The parents were unable to persuade the Board that its decision was incorrect.

FINDINGS OF FACT

The majority of the facts are not in dispute. However, there are some disputed facts that will require a credibility analysis. Where facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings as to the disputed facts. Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950).

T.K. was mostly credible in her testimony; however, her view of the meeting was tainted by the desire to have her daughter exonerated from the bullying charge. For instance, her view that she was prohibited from asking questions was contradicted by

her own notes. However, the Board's witnesses often contradicted each other, such that it has been difficult to discern what actually happened between the two students. While I attribute this mostly to the length of time that had passed between the incidents in question and the hearing, the administrators could not agree on the most important fact presented to the Board, which is that the HIB continued after September 29, 2015. They confused information that they received from N3's mother with information they received from students. A.K.'s alleged teasing of N3 that he cannot wear a dress to picture day and A.K.'s alleged threat to N3 were from N3's mother. Ms. Perrone seemed to have the best recollection.

Based on the testimony, the documents in evidence, and my credibility determinations, I **FIND** the following facts, in addition to the stipulated facts above.

At all relevant times, petitioners' minor child was a student at JHES. On or about September 29, 2015, an incident occurred on the school bus between second graders A.K. and N3. N3, who is biologically male, had begun wearing clothes that are closely associated with female children.⁹ A.K. questioned N3 about his choice of clothing. N3 was upset about the questions, and A.K. was upset because N3 was going to tell on her. Later that morning, both children were called into a meeting with principal Stacy Cullari and school ABS Cheryl Strickland to discuss what had happened.

N3 stated that A.K. was "always mean to him" and was asking him questions about why he dressed like a girl. When N3 asked A.K. to stop asking questions, A.K. would not stop. N3 reported that the questioning made him feel "bad." N3 also reported that A.K. makes fun of him for liking Monster High and Shopkins toys. Although Ms. Strickland testified that N3 also said that A.K. threatened him that if he tells on her, she will have her parents (who are lawyers) take his parents to court, that statement is not in her notes of her conversation with N3, but in her notes of her conversation with N3's mother.

⁹ It is unclear exactly when N3 began dressing in this manner.

A.K. admitted that she was asking N3 questions about the clothes that N3 wore. She also explained that it was difficult for her to remember to call N3 by the preferred female name, N3, as A.K. had always known him as the male names N1 or N2. When asked about an occasion when A.K. told N3 that he could not write the name N3 on a piece of paper, A.K. said that it was her paper and she wanted N3 to write his old name.

After meeting with both children, Strickland called petitioner T.K., A.K.'s mother, to advise her of the incident on the bus and the meeting with A.K. and N3. Strickland told T.K. that A.K. had an issue on the bus with a peer, and recounted the morning's events. That evening, petitioners T.K. and L.K. talked to A.K. about the incident. They explained to her that N3 did not like to answer her questions and told her that she had to stop. A.K. was upset because she felt like she was in trouble.

On September 29, 2015, Cullari talked to N3's mother, who believes that A.K.'s conduct qualifies as bullying. N3's mother reported that another student, J., pushes her son down on the school bus, doesn't like to sit next to him because he is different, and squeezed his hand really hard one day. She also reported that A.K. teased N3 about wanting to wear a dress on picture day, messed up his hair and teased him about it, and threatened that if he tattled on her, she would have her parents (who are lawyers) take his parents to court. Cullari subsequently revised her notes to remove first one reference to student J., then all references to student J., such that only references to A.K.'s conduct were in the report of the interview with N3's mother.

On September 30, 2015, Strickland interviewed three other students about the events of the previous day.¹⁰ None of the other children supported the claims of N3. An interview with one student, M., indicated that another student, J., "teases N., saying that he is a boy and shouldn't dress like a girl." Neither Strickland nor Cullari spoke to the bus driver or any adults who may have witnessed any alleged bullying behavior.

On October 1, 2015, Principal Cullari called petitioner T.K. and informed her that A.K. had said something again to N3 and that an HIB investigation would be conducted.

¹⁰ Notes from these interviews are not provided in the record. Additionally, they are not mentioned in the HIB investigation report.

Ms. Cullari did not clearly state to T.K. what the allegation was, but indicated that A.K. had said something to friends at lunch about N3 telling on her. There are no notes that support that students came to Ms. Cullari and told her that A.K. threatened or harassed N3. Although she testified that she spoke to N3 about it and he confirmed it happened, there are no notes of that conversation. A.K. denied it. Ms. Cullari gave A.K. recess detention for continuing to harass N3 after she had spoken to her. A.K. was very upset.

N3's mother's October 5, 2015, email to Cullari reported much more than her telephone conversation with Ms. Cullari. The email stated that A.K. had been questioning N3 about his choice of clothing since the previous year. N3 had explained to his mother that A.K. makes fun of him, and when he ignores her she just gets louder. N3's mother also noted that these interactions were having a negative effect on N3 emotionally and academically. N3's mother put in her October 5, 2015, email to Cullari that "A.K. retaliated against N3 the next day and continued her harassment in the cafeteria, telling fellow students that N3 had threatened her." There is no indication in the notes of Ms. Strickland or Ms. Cullari that N3's mother's claim of continued harassment was investigated.

Principal Cullari sent a letter to petitioners dated October 15, 2015, notifying them that she had received a written report on October 5, 2015, which set forth that A.K. had committed an alleged act of HIB and that those allegations were being investigated by ABS Strickland. ABS Strickland provided her report to Superintendent Moutis. Upon her receipt of the report, Moutis read it, copied it, and placed it in the file for the Board meeting on October 19, 2015. The report did not go home with Board members in their packets. The Board members saw the summary for the first time at their meeting on October 19, 2015. They were not advised of the identities of the students. After reading the report, Ms. Moutis thought it was very clear that there had been HIB based upon gender identity.

Ms. Moutis presented the report in the Board's October 19, 2015, executive session. In executive session, the Board discussed the HIB report, the HIB protocol, the rights of the students, and the Board's role. The minutes indicate that the Board convened to executive session at 7:01 p.m. and did not return to open session again

until 8:25 p.m. There was a lot of discussion to ensure that the Board members understood the process before voting. Ms. Moutis gave the members time to read the report and gave them time to ask questions. One Board member was interested in knowing the age of the students, but she explained that age of the alleged bully is not a factor; rather, it is what was stated that is important.

The Board then returned to public session. The minutes indicate that a vote was passed in public session with four yes votes and two abstentions to accept Ms. Moutis's recommendation. No other matter was discussed. Ms. Moutis sent a letter to petitioners dated October 20, 2015, stating that the Board had approved the findings of the ABS investigation at a meeting held on October 19, 2015. The letter informed petitioners that they had a right to request a hearing before the Board, and the request must be in writing.

The same day, ABS Strickland and Dori Levy, the District's anti-bullying coordinator, sent a letter to the petitioners, along with a "Summary of the Bullying Investigation," although what was attached was called a report. The report indicates in the first paragraph that the ABS investigator spoke to N3, and sets forth what he said. However, it attributes to N3 remarks actually made by his mother, specifically, the threat that if he told on A.K. she would have her parents take action against him. The second paragraph references what A.K. told the investigator. The third paragraph references the conversation the investigator had with N3's mother. The summary report did not contain information regarding any other aspects of the investigation, any other evidence considered by the ABS, or the findings of fact upon which the conclusion was based. Those findings were in the separate form entitled HIB Investigation ABS Report, which was not provided prior to the Board hearing. The summary indicates that the investigation was completed on October 13, 2015, and that enumerated support services were offered to the student. It also states at the end that student discipline was administered in the form of a recess detention on October 1, 2015.

On October 27, 2015, petitioners called the superintendent's office and scheduled a meeting with Superintendent Moutis, Principal Cullari, and ABS Strickland to discuss the HIB investigation and the Board's HIB determination. The following day,

Superintendent Moutis cancelled the meeting with petitioners, explaining that she could not meet with them to discuss or answer any questions about the HIB conclusion. Superintendent Moutis informed petitioners that if they disagreed with the HIB determination, their only recourse was to request a hearing to appeal it before the Board.

Petitioners requested a hearing. The letter advising of their right to a hearing did not advise whether they could bring witnesses or documents. The hearing was scheduled for November 9, 2015, but it was rescheduled to November 16, 2015, when petitioners could not make the meeting and waived the right to have the hearing in ten days. Prior to the hearing, Gorman explained the process to petitioners. During the hearing, no one from the Board or the administration presented anything to the Board in front of petitioners. Petitioner T.K. asked the questions that she had brought with her at the hearing. The list showed she had checked off nearly all of them as having been asked. She has notes of some answers in the margins of her questions. Attorney Brett Gorman responded to most of the questions by reading from the HIB Investigation ABS Report. However, Ms. Cullari responded to a comment by A.K.'s father. Petitioner T.K. presented additional facts about A.K. and her inquisitive personality. Gorman permitted petitioners to ask questions of ABS Strickland, but not about the process they used for the investigation.

Petitioners received a letter dated December 15, 2015, from Joyce A. Goode, secretary of the Board, notifying them that the Board had denied their appeal and affirmed the superintendent's determination. Secretary Goode's letter indicated that the Board had considered petitioners' "appeal of the finding that no HIB violation occurred" (J-25, emphasis added), even though petitioners had appealed the superintendent's finding that A.K. had engaged in HIB.

On February 17, 2016, pursuant to New Jersey's Open Public Records Act, petitioners requested copies of all records pertaining to A.K. The Board complied with the request on February 26, 2016. Petitioners then received copies of the HIB allegations made against A.K. and learned what was entailed in the school's

investigation of the HIB allegations, including the notes of the interviews with the students.

A.K.'s current relationship with N3 is that they are in the same class, as well as on the same bus. They play together and they are just typical students. A.K. is more nervous and anxious and scared of doing anything wrong. N3 is allowed to bring a friend to his counseling session, and invited A.K.

LEGAL DISCUSSION

The New Jersey Anti-Bullying Bill of Rights Act (ABA), N.J.S.A. 18A:37-13 to -32, 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)(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). The results shall 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. N.J.S.A. 18A:37-15(b)(6)(d). The parents may request a hearing before the board, and the hearing must be held within ten days of the request. Ibid. Any

hearing shall be held in executive session to protect the identity of any students involved. Ibid. 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. Ibid.

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), <http://njlaw.rutgers.edu/collections/oal/>. Further, the Commissioner will not substitute his judgment for that of the board of education, whose exercise of its discretion may not be disturbed unless shown to be "patently arbitrary, without rational basis or induced by improper motives." Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). New Jersey courts have held that "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." Bayshore 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). Thus, in order to prevail, the petitioner must demonstrate that the board acted in bad faith, or in utter disregard of the circumstances before it. T.B.M., EDU 2780-07, Initial Decision (February 6, 2008), <http://njlaw.rutgers.edu/collections/oal/>; see W.C.L. & A.L. ex rel L.L. v. Tenafly Bd. of Educ., EDU 3223-12, Initial Decision (November 26, 2012), aff'd, Comm'r (January 10, 2013), <http://njlaw.rutgers.edu/collections/oal/> (The petitioners challenged the school board's decision that a student committed an act of HIB. The administrative law judge (ALJ) found that the board's actions were consistent with the letter and spirit of the law and were not taken in bad faith or in disregard of the circumstances. The ALJ concluded that the petitioners failed to establish that the

board's actions were arbitrary, capricious, or unreasonable. The Commissioner affirmed the ALJ's decision to dismiss the petition of appeal.); J.M.C. ex rel A.C. v. E. Brunswick Bd. of Educ., EDU 4144-12 (November 27, 2012), adopted, Comm'r (January 9, 2013), <http://njlaw.rutgers.edu/collections/oal/> (The petitioner challenged the board's determination that the actions of the petitioner's son constituted HIB. The board found that the student called another student "gay" and said he "danced like a girl." The demeaning remarks constituted HIB.). In both cases, the petitioners failed to satisfy their burden to show that the board's actions were arbitrary, capricious, or unreasonable.

Definitions relative to adoption of harassment and bullying prevention policies are found in N.J.S.A. 18A:37-14, which states in part:

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

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

Mansfield Township School District's HIB Policy 5131.9, "Harassment, Intimidation and Bullying," mirrors the New Jersey law. P-10; P-11. Additionally, the policy sets forth a detailed process by which complaints are investigated to see whether an action meets the definition of HIB as set forth in the policy and the ABA.

Petitioners' first argument is that the Board's investigation was not complete or properly documented as required by Board policy 5131.9. While it is true that the only source of the allegation of continued harassment in the cafeteria after the bus incident was N3's mother, who was told that by N3, the issue is how much support for the allegation is necessary. N3's mother said in her email that "[A.K.] retaliated against [N3] the next day and continued her harassment in the cafeteria, telling fellow students that [N3] threatened her." If Principal Cullari or ABS Strickland confirmed the remarks with N3 and made a note that they did so, that would be sufficient, but the fact that there are no notes that they interviewed N3 makes it unbelievable that either of them did, as all other interviews are documented. Neither of them testified that they tried to determine who the students were and confirm it with a staff member who was assigned to the cafeteria at that time. Board policy 5131.9 states that the investigation shall include "taking of statements from victims, witnesses and accused." While the ABS and principal can get statements from the mother of the victim, such a statement should not be the sole source of an allegation. They simply took the mother's word as written in the email, which, as petitioners rightly argue, had to be N3's mother's recounting of what N3 had told her, and was thus triple hearsay.

Petitioners also argue that by ABS Strickland and Principal Cullari investigating the allegations together, they contravened the terms of the ABA and the Board's policy. Petitioners argue that Strickland's therapeutic relationship with N3 caused her to focus almost exclusively on the impact on N3 rather than A.K.'s culpability, and that she was biased. The investigation could have been more thorough by interviewing the teacher or the bus driver. ABS Strickland completely ignored the statements of the other students, who refused to corroborate N3's account of what occurred on the bus. She should have disclosed those interviews and indicated why she did not consider those students' statements. She has the right to make credibility determinations, especially

when A.K. even admitted to some of the conduct N3 alleged, but the Board should be provided with complete information. By not providing all the information, and attributing statements to N3 that were actually made by his mother, Ms. Strickland made it impossible for the Board to make a truly informed decision. I **CONCLUDE** that the investigation was neither thorough nor complete, as required by the Board policy, and caused the Board to make a decision based on incomplete and questionable facts.

Petitioners next argue that the Board's decision was arbitrary, capricious, or unreasonable because the appeal hearing did not comply with the ABA, the Board's policies, or due process. They argue that implicit in the right to a hearing is the right to an evidentiary hearing. However, the Legislature could have simply added the word "evidentiary" if it intended it to be that type of hearing. Instead, N.J.S.A. 18A:37-15(b)(6)(d) provides that, "[a]t 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." Emphasis added. Petitioners state that the student-conduct regulations, N.J.A.C. 6A:16-7.2 and -7.3, which address procedural requirements for student suspensions, should apply to a student engaged in HIB, as it remains in the student's permanent school record. However, the HIB regulations do not set forth such procedural requirements. They allow boards to set rules regarding the conduct of appeal hearings.

Both petitioners and the Board cite the Commissioner's decision in Gibble v. Board of Education of the Hunterdon Central Regional School District, EDU 2767-15, Initial Decision (April 12, 2016), adopted, Comm'r (July 13, 2016), <http://njlaw.rutgers.edu/collections/oal/>, in support of their positions. Petitioners cite it for the holding that the ABA entitles individuals accused of HIB to due process. The Board cites it for the holding that there is no right to a full adversarial hearing, including the right to call witnesses. Thus, the issue is whether the Board provided petitioners with adequate due process. The Board provided petitioners a separate hearing at which they were allowed to present materials and to ask questions. Petitioners were not provided much information regarding their rights to present evidence at the hearing, but they were not prohibited from bringing witnesses and documents or being

represented by counsel. T.K. familiarized herself with the HIB procedures prior to attending the hearing.

The report set forth the factual basis of the HIB finding, although the allegation of harassment after the mediation was vague at best. Petitioners were provided with ample time to present their appeal of the HIB finding, setting forth that A.K. was just curious and that she did not believe that she had done anything wrong to merit the recess detention the day after the bus incident. Petitioners went through all of their comments and questions. The fact that they did not receive answers to their satisfaction does not obviate the fact that they were able to present their case. The hearing was not to cross-examine the ABS or the principal about their process. Petitioners' citations to the rules governing student suspensions are not applicable to HIB hearings. For these reasons, I **CONCLUDE** that petitioners did not meet their burden of proving that the Board's decision was arbitrary because the hearing deprived petitioners of due process as set forth in the ABA and Board policies. I **CONCLUDE**, based on my findings of fact, that petitioners were provided adequate due process in the conduct of the Board hearing.

Petitioners also argue that the Board's notice of the specific charges was inadequate, in that neither A.K. nor her parents were allowed to respond to the specific allegations against A.K. before the conclusion of the HIB investigation. Superintendent Moutis canceled a meeting at which the petitioners were seeking to learn the charges against A.K. Petitioners argue that they should have been notified of what was found and the specific factual basis for concluding that A.K. engaged in HIB. Petitioners argue that the report did not so notify them. The report sets forth that the charge of HIB is based on the reports of N3 and N3's mother and the admissions of A.K. when she was first interviewed. It goes on to note that the harassment continued after Principal Cullari and ABS Strickland told A.K. to stop when questioned about the bus incident. This allegation of continuing harassment, upon which the Board heavily relied, was vague and unsupported. The petitioners and the Board should have been advised of all of the aspects of the investigation. As set forth above, 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). The

parents are to be provided this information within five days after the results of the investigation are reported to the board. If the Board had done so, petitioners would have had it prior to the Board hearing. The letter from the Board secretary after the hearing says that the Board considered “investigation reports, witness statements and other pertinent materials” in addition to petitioners’ presentation, but the Board had nothing but the summary report. I **CONCLUDE** that the failure of the superintendent to provide the parents the information regarding the nature of the investigation was in violation of the statute and Board policy 5131.9.

Petitioners’ next argument, that the Board’s decision was arbitrary, capricious, or unreasonable because it was not supported by substantial evidence, is again based on citations from regulations governing student suspensions, N.J.A.C. 6A:16-7.3. Petitioners note that such regulations can serve as a guide in HIB hearings, but nowhere does it say that the same standard—that the Board’s decision must be based on the preponderance of the competent and credible evidence—applies to HIB hearings. However, ABS Strickland relied heavily on the statements of N3’s mother, both on the phone and in writing. N3’s mother received her information from N3, as she was not present in the school during the incidents, so it was hearsay. ABS Strickland had the right to believe N3, given her knowledge of N3, but N3’s mother’s statement that A.K. engaged in a pattern of harassment against N3 that continued after ABS Strickland spoke to her needed to be corroborated. Petitioners argue that this shows bias on the part of Strickland. While I disagree with this argument, since the Board policy requires that the investigation include support for the victim, corroboration at least from the victim was needed. I therefore **CONCLUDE** that the statements set forth in the report presented to the Board were insufficient to sustain the superintendent’s recommendation of HIB.

Next, petitioners argue that the Board’s decision was clearly erroneous because the superintendent applied the wrong legal standard when she concluded that A.K.’s age did not matter in the analysis of whether she committed HIB. N.J.A.C. 6A:16-7.7(a)(2)(vi)(1) provides that a board’s HIB policy must include consequences for a student who commits an act of HIB that are “[v]aried 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.”

The Board's HIB policy states, “The board expects students to conduct themselves, in keeping with their level of maturity, with a proper regard for the rights and welfare of other students” (P-10 at 1.) It goes on to repeat the standard set forth in the regulations. Petitioners argue that Superintendent Moutis did not take into account A.K.'s developmental age or maturity level, as she believed it was irrelevant. When a Board member asked about A.K.'s age, she insisted that under the law the Board must consider the student's conduct without regard to his or her age. The Board spent more than an hour discussing A.K.'s alleged HIB at its October meeting, and Superintendent Moutis testified that the primary focus of that discussion was the issue of A.K.'s developmental age and the relevance of her age to the question of whether she engaged in HIB. The Superintendent's conclusion was affirmed by a vote of four in favor and two abstaining. The Board discussed the issue again after the November appeal hearing, and the Superintendent's decision was affirmed as part of the Board's consent agenda on December 14, 2015. The Board did not produce any written opinion or decision. Ms. Perrone testified that she considered A.K.'s age, but concluded that A.K. understood that she was upsetting N3 and persisted, and that what really mattered was the impact of her conduct on N3, not her actual intent.

The superintendent was incorrect that A.K.'s developmental age was irrelevant, based on the HIB regulations and the Board's HIB policy. The superintendent's opinion on this point was relevant to the Board members because they asked about it in a lengthy closed-session meeting in October. If Superintendent Moutis had said that A.K.'s young age was not a bar to finding HIB, that would have been correct; however, saying that it had no bearing on the Board's decision was incorrect. The issue is whether the superintendent's misstatement of the law means that the Board was arbitrary, capricious, or unreasonable in its decision to uphold the superintendent's conclusion that A.K. committed HIB. I **CONCLUDE** that it was.

Petitioners argue that A.K.'s developmental age is relevant not just under the regulations and Board policy, but as to whether her behavior can actually be HIB. They

cite N.J.S.A. 18A:37-14 for the proposition that the behavior must be “motivated by any actual or perceived characteristic.” However, the actual wording of the statute says that HIB means “any gesture, any written, verbal or physical act, . . . that is **reasonably perceived** as being motivated either by any actual or perceived characteristic, such as . . . gender identity and expression.” N.J.S.A. 18A:37-14 (emphasis added). Thus, based on the “reasonably perceived” language, Ms. Perrone was correct that the statute focuses on the impact of A.K.’s conduct on N3 and what N3 reasonably perceived. However, Ms. Perrone’s determination of the impact on N3 was made based on the “fact” that A.K.’s conduct persisted. There was no allegation that A.K. continued to question N3 about his choice of clothing after the mediation. The allegation that A.K. continued “harassment” of N3 in the cafeteria the next day was not supported by one person who was there, hence, the vagueness of the charge. T.K. was never told what the harassment consisted of because the allegation was not investigated. Ms. Perrone’s decision was also made without knowing that there was at least one other student, J., who harassed N3 on the bus and could have been an additional source of N3 being upset and not wanting to ride the bus. This fact was hidden by the investigators. There is no requirement that the Board find that A.K.’s conduct was actually motivated by the perceived characteristic, because, as petitioners argue, A.K. most likely does not even know what “gender identity” means. However, even under the actual wording of the statute, the only corroborated finding from the investigation was that A.K. asked questions about why N3 dressed like a girl even though N3 asked her to stop. Therefore, the age of A.K. was relevant to whether A.K.’s conduct was motivated by the perceived characteristic or because a seven-year-old would be curious about why a student she knew as a boy was dressing like a girl. The investigators had the time to find and interview someone in the cafeteria who may have heard A.K. continue the “harassment,” but they did not. I **CONCLUDE** that the misstatement of the law that age was not to be a factor in the Board’s determination was a major factor in the Board’s decision and it made the Board’s decision arbitrary, capricious, or unreasonable.

Petitioners also argue that the Board’s decision was clearly erroneous because the facts do not support the conclusion that A.K. committed HIB, in that they did not show that her conduct “substantially [disrupted or interfered] with the orderly operation

of the school or the rights of other students” and that A.K. knew or should have known that it would have the effect of emotionally harming a student. N.J.S.A. 18A:37-14. The Board accepted the superintendent’s report that A.K. demonstrated that she knew her conduct would emotionally harm N3 because she was concerned about N3 tattling on her. The superintendent advised the Board that there is no reason for A.K. to fear N3 telling the teacher or principal if she really believed she was just asking a question out of curiosity. When A.K. got off the bus on September 29, 2015, she was upset that N3 would tell on her. A second-grade student knows when she is in trouble, even if she does not necessarily believe that she did anything wrong. Strickland and Cullari told her that she did something wrong by asking N3 so many questions, and there is no allegation that she continued to ask him questions after that. In addition, T.K.’s testimony that A.K.’s current relationship with N3 is that they are in the same class as well as on the same bus was unrefuted. The testimony that they play together and are just typical students also was not disputed by any of the Board witnesses. In fact, the testimony demonstrated that the incident had a more lasting effect on A.K., making her more nervous and scared of doing anything wrong. In addition, N3 chose to bring A.K. as his friend to his counseling session. Therefore, I **CONCLUDE** that A.K. did not substantially disrupt or interfere with the orderly operation of the school or the rights of other students, and that A.K. neither knew nor should have known that her conduct would have the effect of emotionally harming a student.

Petitioners insist that the Board had to find “malicious intent” in A.K.’s actions; however, that language is not in the statute or regulations governing HIB. The Legislature could have set a higher standard for a finding of HIB, but it did not. As a result, the reasonable perception of motivation by gender identity is sufficient to support a finding of HIB. Here the Board did not have evidence that A.K.’s conduct was motivated by anything other than curiosity, confusion, and being scared that N3 would tell on her. The impact on N3 that he was upset and no longer wanted to ride the bus may not have been solely the fault of A.K. The investigators did not ask about whether the conduct of J. or any other student on the bus made N3 upset. If the Board had the information that other students harassed N3, and still decided that A.K. was the source of the substantial impact on N3, that would have been fine. However, the Board was not provided that information.

Ms. Strickland, Ms. Cullari, and Ms. Moutis concluded that A.K. engaged in HIB based on their findings that A.K. admitted that she asked questions that made N3 uncomfortable and upset, that she knew her actions made N3 uncomfortable and upset, that she was concerned that N3 would tell on her, and that, the next day, she continued to express concern that N3 would tell on her and threatened him if he did. The conclusion was provided to the Board when there was no corroboration for the finding that A.K. expressed a threat to N3 if he told on her. The Board relied heavily on the continuing nature of the conduct, which was not corroborated. The Board accepted the administrators' conclusion that the conduct was reasonably perceived to be motivated by N3's gender identity because they were told that A.K.'s age was not a factor in that determination. The Board accepted the conclusion that A.K.'s conduct substantially interfered with the rights of N3 because information was withheld from them that there was at least one other student who may have contributed to N3 being upset and not wanting to ride the bus. For these reasons, I **CONCLUDE** that the Board's acceptance of the administrators' determination of HIB was inconsistent with evidence, the law, and Board policy.

Thus, in determining whether A.K. committed HIB pursuant to N.J.S.A. 18A:37-14, the Board did not have evidence that A.K. knew that her asking questions would have the effect of emotionally harming N3. In fact, there is no evidence that her conduct did emotionally harm N3, other than he was upset when getting off the bus. The Board did not have evidence from the alleged victim, the accused, or any witness that A.K.'s conduct had the effect of insulting or demeaning N3. The only source of such information was N3's mom, and her allegations referenced conduct that occurred prior to the September 29, 2015, bus incident. There were no allegations that A.K. said anything insulting to N3 after the September 29, 2015, incident. Last, the Board had no evidence that A.K.'s conduct created a hostile educational environment. The investigators never talked to N3's teacher or any staff members to determine whether N3 was acting differently in school at that time. For these reasons, I **CONCLUDE** that A.K.'s conduct did not meet the statutory definition of HIB, N.J.S.A. 18A:37-14.

The Board decision was not made in bad faith; however, it was made with reliance on faulty information of the circumstances that led to the HIB determination and incorrect statements of the law. For the foregoing reasons, I **CONCLUDE** that the petitioners proved by a preponderance of the credible evidence that the Board's actions were arbitrary, capricious, or unreasonable.


ORDER

I **ORDER** that the decision of the Mansfield Township Board of Education be **REVERSED**, and that the finding of harassment, intimidation, or bullying be removed from A.K.'s student file.

I hereby **FILE** my initial decision with the **COMMISSIONER OF EDUCATION** for consideration.

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

January 22, 2019
DATE



LISA JAMES-BEAVERS
Acting Director and Chief
Administrative Law Judge

Date Received at Agency: _____

Date Mailed to Parties: _____

caa

APPENDIX

WITNESSES

For Petitioners:

T.K.

For Respondent:

Stacy Cullari

Cheryl Strickland

Brett Gorman, Esq.

Alison Perrone

Tiffany Moutis

EXHIBITS

Joint:

- J-1 Initial HIB report dated September 29, 2015
- J-2 Notes from HIB investigation
- J-3 Bullying Incident Report Form
- J-4 HIB Investigation Form 1 dated October 1, 2015
- J-5 HIB Investigation Form 2 dated October 1, 2015
- J-6 Email from T.K. to Stacy Cullari dated October 1, 2015
- J-7 Email from M.V. to Stacy Cullari dated October 5, 2015
- J-8 Letter from Stacy Cullari to petitioners dated October 15, 2015
- J-9 HIB report for N.V. and A.K.
- J-10 HIB Intervention Plan Documents
- J-11 HIB Investigation Anti-Bullying Specialist Report 1 dated October 15, 2015
- J-12 HIB Investigation Anti-Bullying Specialist Report 2 dated October 15, 2015
- J-13 BOE Meeting Agenda dated October 19, 2015
- J-14 BOE Public Meeting Minutes dated October 19, 2015
- J-15 BOE Executive Session Meeting Minutes dated October 19, 2015

- J-16 Letter from Tiffany Moutis to petitioners dated October 20, 2015
- J-17 Letter from Cheryl Strickland and Dori Levy to petitioners dated October 20, 2015, enclosing the Bullying Report
- J-18 Letter from Tiffany Moutis to petitioners dated November 2, 2015
- J-19 Letter from petitioners to Mansfield Township School District dated November 3, 2015
- J-20 BOE Meeting Agency dated November 16, 2015
- J-21 BOE Public Meeting Minutes dated November 16, 2015
- J-22 BOE Executive Session Meeting Minutes dated November 16, 2015
- J-23 BOE Meeting Agenda dated December 14, 2015
- J-24 BOE Public Meeting Minutes dated December 14, 2015
- J-25 Letter from Joyce Goode to petitioners dated December 15, 2015
- J-26 Handwritten notes—bus incident of 9/29/15
- J-27 Handwritten notes—Ms. V. and T.K.—dated September 29
- J-28 Handwritten notes dated October 5, 2015

For Petitioners:

- P-1 Pictures of A.K.
- P-2 A.K. note dated September 30, 2015
- P-3 Ms. Cullari email to T.K. dated October 7, 2015
- P-4 T.K. email to Cullari dated October 7, 2015
- P-5 Email exchange between T.K. and Ms. Cullari dated October 15, 2015
- P-7 T.K.'s HIB appeal outline/presentation
- P-10 Mansfield Township School District HIB Policy 5131.9
- P-11 Mansfield Township School District Conduct/Discipline Policy 5131
- P-12 Mansfield Township School District Parent/Student Handbook—2015—2016
- P-13 N.J. Department of Education Anti-Bullying Bill of Rights Act, Questions and Answers
- P-14 N.J. Department of Education Model Policy and Guidance for Prohibiting HIB
- P-15 Draft HIB report for review

P-16 Email Cheryl Strickland to T.K.

P-17 Email exchanges re: HIB

P-18 Email exchanges of Stacy Cullari re: HIB report

P-19 N.J. Department of Education Guidance for Schools for the Anti-Bullying
Bill of Rights Act

For Respondent:

R-1 Email from T.K. to Cheryl Strickland