

## New Jersey Commissioner of Education

### Final Decision

A.J., on behalf of minor child, J.J.,

Petitioner,

v.

Board of Education of the Town of  
Boonton, Morris County,

Respondent.

### Synopsis

Petitioner appealed the respondent Board's determination that J.J. committed an act of harassment, intimidation and bullying (HIB) in violation of New Jersey's Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.*, when he said the "n" word to some classmates and was overheard by another student, who complained to one of the school guidance counselors; an HIB investigation subsequently ensued and concluded that an act of HIB had occurred; J.J. denied using the "n" word on the morning in question but noted a distinction between two forms of the word, one ending in "er" and the other with "a"; J.J. admitted that he sometimes used the "a" form of the word among close friends, as a term of familiarity or endearment. A hearing in the matter was held at the Office of Administrative Law (OAL) on January 13, 2020.

The ALJ found, *inter alia*, that: the Act defines HIB as any gesture, written, verbal or physical act, or electronic communication 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, and must also substantially disrupt or interfere with the orderly operation of the school; while the Act does not limit "distinguishing characteristic" to those specified in the statute, it has consistently required such a perceived motivation; here, the Board acknowledged that the comment in question, regardless of who said it, was not directed at the complainant, and the complainant did not initially know the identity of the person who she claimed uttered the "n" word, until she identified him through photographs. The ALJ concluded that the Board failed to establish that J.J. said the "n" word on the morning in question; accordingly, any resulting HIB violation and/or code of conduct violation in this matter must be overturned.

Upon review, the Commissioner reversed the Initial Decision of the OAL and affirmed the Board's determination of HIB. In so doing, the Commissioner found, *inter alia*, that: the record contains sufficient credible evidence to support the Board's decision that J.J. said the "n" word; while the evidence may leave room for two opinions regarding whether J.J. made the statement, it is insufficient to overturn the Board's decision, which was not arbitrary, capricious or unreasonable; and the Commissioner is not permitted to substitute his judgment for that of the Board.

<p>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.</p>
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July 10, 2020

**New Jersey Commissioner of Education**

**Decision**

A.J., on behalf of minor child, J.J.,

Petitioner,

v.

Board of Education of the Town of  
Boonton, Morris County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent pursuant to *N.J.A.C.* 1:1-18.4, and petitioner's reply thereto, have been reviewed.

This matter concerns an alleged act of harassment, intimidation, and bullying (HIB) by J.J. The Board found that J.J. had committed an act of HIB when he said the "n" word to some classmates and it was overheard by another student (complainant). The Administrative Law Judge found that J.J. did not say the word on the morning in question and overturned the Board's finding that J.J. had committed an act of HIB.

In its exceptions, the Board argues that the ALJ applied the incorrect legal standard when he concluded that the Board failed to establish that an act of HIB took place. The Board cites to case law establishing that its decision should not be overturned unless it is arbitrary or capricious. The Board also recounts its evidence demonstrating that the act did occur, such that it meets even the ALJ's improperly applied preponderance of the evidence standard. The Board further contends that the ALJ was factually incorrect when he found that J.J. denied making the statement during his initial interview with the district's HIB investigator, pointing to the investigation report which listed J.J.'s attempts to explain his

behavior. Moreover, the Board argues that J.J. was not a credible witness when he denied making the statement during the OAL hearing, as that testimony conflicted with prior statements.

In reply, petitioner argues that J.J. did not say the “n” word and never admitted to saying it. Petitioner notes that the Investigation Report indicates that the statement was made without malicious intent. Petitioner takes issue with the investigator’s techniques while interviewing J.J. and subsequent procedures of the district in addressing the complaint.

Upon review, the Commissioner disagrees with the ALJ’s conclusion that J.J. did not say the “n” word. When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was “patently arbitrary, without rational basis or induced by improper motives.” *Kopera v. W. Orange Bd. of Educ.*, 60 *N.J. Super.* 288, 294 (App. Div. 1960). Furthermore, “where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration[,]” and the Commissioner will not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep’t. of Envtl. Prot.*, 122 *N.J. Super.* 184, 199 (Ch. Div. 1973), *aff’d*, 131 *N.J. Super.* 37 (App. Div. 1974). Based on the evidence in the record, the Commissioner finds that petitioner did not meet his burden of demonstrating that the Board’s decision was arbitrary, capricious, or unreasonable. The record contains sufficient credible evidence to support the Board’s decision that J.J. said the “n” word, including the complainant’s statements and the staff’s review of corroborating video evidence. While petitioner presented evidence showing that J.J. did not make the statement, including his denials and the denials of his friends who were interviewed, at best this evidence balances the evidence that he did make the statement.<sup>1</sup> While the evidence may leave room for two opinions regarding whether J.J. made the statement, it is insufficient to overturn the Board’s decision, because it does not demonstrate

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<sup>1</sup> The ALJ did not make specific credibility findings regarding the witnesses’ testimony, which makes the precise weight of each party’s evidence difficult to determine. For purposes of this decision, the Commissioner assumes that the ALJ found petitioner’s witnesses credible, but nonetheless reaches the same legal conclusion regarding the standard of review.

that the decision was arbitrary, capricious, or unreasonable. To overturn the Board's decision would require the Commissioner to substitute his judgment for the Board's, which is impermissible.

The Anti-Bullying Bill of Rights Act (the Act) defines HIB as follows:

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

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

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

Therefore, a finding of HIB requires three elements.<sup>2</sup> First, the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic and, second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. The third condition is that one of the three criteria enumerated in the Act regarding the effect of the conduct must also be satisfied. *Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex County*, Commissioner Decision No. 51-20 (decided February 4, 2020).

Regarding the first element, in defining HIB as an action “that is *reasonably perceived* as being motivated either by any actual or perceived characteristic . . .”, *N.J.S.A.* 18A:37-14 (emphasis added), the statute requires an analysis of how the actor's motivation is perceived and whether that

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<sup>2</sup> The statute also requires that the conduct take place on school property, at a school-sponsored function, on a school bus, or off school grounds as provided for in *N.J.S.A.* 18A:37-15.3. The parties do not contest that this requirement has been met.

perception is reasonable. It does not require an analysis of the actual motivation of the actor. *Wehbeh, supra*. Certainly, evidence that the actor was motivated by a distinguishing characteristic would meet the standard of this section of the Act, but evidence that the actor was not so motivated does not end the analysis. Here, it was not arbitrary, capricious, or unreasonable for the Board to conclude that the complainant reasonably perceived J.J.'s use of a racial slur as being motivated by the distinguishing characteristic of race.<sup>3</sup>

Regarding the second element, the complainant told school staff that she did not want to come to school because the "school is racist." (Initial Decision at 5) The school's anti-bullying specialist testified that the complainant's statement demonstrated a substantial disruption of the student's rights, and the district's superintendent agreed, testifying that the district does not want the children to come to a school "where they feel that they will be discriminated against on any level." (Initial Decision at 8) The Commissioner finds that it was not arbitrary, capricious, or unreasonable for the Board to conclude that the use of a racial slur interferes with the rights of other students to attend school in a bias-free setting, and that J.J.'s comment substantially disrupted the complainant's rights.

Regarding the third element, an act of HIB is one that "a reasonable person *should* know, under the circumstances, will have the effect of physically or emotionally harming a student," "*has the effect* of insulting or demeaning a student," or "*creates* a hostile educational environment . . .". *N.J.S.A.* 18A:37-14(a) (emphasis added). None of these criteria require the actor to have actual knowledge of the effect that his actions will have, or to specifically intend to bring about that effect. The first requires only that a reasonable person should know there would be a harmful effect, not that the actor knows there would be such an effect. The second two criteria address only the actual effect of the act, without any reference to what either the actor or a reasonable person does or should know. *Wehbeh, supra*. As such, a board of education can find that an individual committed an act of HIB even if the individual did not

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<sup>3</sup> Petitioner has argued both that he did not say anything on the morning in question, and that if he did say anything, there is a distinction between two variations of the "n" word, one ending in "a" and one ending in "er." The Board has argued that the word is offensive in either form, and two of its witnesses testified that they have informed students that the district considers both forms to be inappropriate. J.J. himself indicated on cross-examination that some African-American students would object to either form of the word. The Commissioner agrees that either form of the word can be the basis for a finding of HIB.

intend to cause harm. Here, the Board found that J.J.'s use of the "n" word was insulting or demeaning, satisfying *N.J.S.A.* 18A:37-14 of the Act. The Commissioner finds that it was not arbitrary, capricious, or unreasonable for the Board to conclude that J.J.'s use of a racial slur was insulting or demeaning.

Accordingly, the Initial Decision is reversed, and the Board's determination that J.J. committed an act of HIB is affirmed.

IT IS SO ORDERED.<sup>4</sup>

INTERIM COMMISSIONER OF EDUCATION

Date of Decision: 7/10/2020  
Date of Mailing: 7/13/2020

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<sup>4</sup> This decision may be appealed to the Appellate Division of the Superior Court 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 10470-19

AGENCY DKT. NO. 158-7/19

**A.J. ON BEHALF OF MINOR CHILD, J.J.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWN OF**

**BOONTON, MORRIS COUNTY,**

Respondent.

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**A.J. o/b/o J.J.**, petitioner pro se

**James L. Plosia, Jr.**, Esq., for respondent (Plosia Cohen, attorneys)

Record Closed: March 19, 2020

Decided: April 9, 2020

BEFORE **JUDE-ANTHONY TISCORNIA**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, A.J., disputes respondent Boonton Board of Education's harassment, intimidation, or bullying (HIB) investigation regarding his minor son, J.J., and the Board's subsequent finding that an HIB violation occurred. Petitioner also disputes

any corresponding code-of-conduct violation. The child, J.J., is accused of uttering the “n” word to a group of two or three friends during a conversation. A third-party minor child (“target”) who is African-American overheard the utterance, became incensed, and complained to the administration. The target did not see which one of the youths in the group uttered the “n” word, but she was subsequently able to identify J.J. as the bad actor after a school district employee provided her with a copy of the yearbook, which contained pictures of the target’s schoolmates for her to select from.

### **ISSUE**

Do the facts here constitute an HIB violation under the Anti-Bullying Bill of Rights Act (ABRA), N.J.S.A. 18A:37-13?

### **PROCEDURAL HISTORY**

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Petitioner filed the instant petition with the New Jersey Commissioner of Education, where it was received on July 2, 2019, by the Office of Controversies and Disputes.

The matter was transmitted as a contested case to the Office of Administrative Law (OAL), where it was received on July 31, 2019.

The matter was set down for a hearing on January 13, 2020. Final submissions were received on March 19, 2020, at which point the record was closed.

### **SUMMARY OF TESTIMONY**

#### **J.J.**

J.J. is the minor child of petitioner A.J. On the morning of February 6, 2019, J.J. was dropped off at school by A.J. a few minutes before the bell rang. J.J. approached a small group of students he knew (two or three youths), greeted them, and waited with



them for the bell to ring. J.J. testified that these youths were already in the middle of a conversation and that he had little verbal interaction with them that morning aside from the initial greeting.

Two days later, on Friday, February 8, 2019, J.J. was summoned into the school's main office, where he was met by Principal Nosal and Ms. Maier, the school anti-bullying specialist. J.J. testified that, at the time, he did not know what he had been called there for. Upon questioning, he denied having said the "n" word on the morning of February 6, 2019.

J.J. further testified that he has been an active Boy Scout for nine years, a member of the town drum core for five years, and has played in local soccer and baseball leagues for nine years. He has also performed over 260 lifetime hours of community service through his various activities.

On cross-examination, J.J. testified that there is a difference between the "n" word spoken and written as "nigger" and that spoken and written as "niggah." He further testified that he never uses the "nigger" form, because he knows it to be disrespectful. He does, sometimes, use the "niggah" form among close friends, but only as a term of familiarity or endearment. He further testified that he used neither term on the morning in question.

**Mrs. J.**

Mrs. J. is J.J.'s mother. Mrs. J. testified that J.J. has had an individualized education program since preschool for attention deficit disorder, attention deficit hyperactivity disorder, and sensory issues.

Mrs. J. testified that J.J. had been disciplined by the school once before for saying the "f" word. She testified that J.J. received a one-day out-of-school suspension and a fourteen-day in-school suspension. She testified that for each of the fourteen

days of in-school suspension, J.J. would start the day reporting to the principal's office along with his mother, Mrs. J., and would be asked by the principal at the time, Dr. Caruso, if J.J. was ready to return to school. Each day J.J. would respond that he was ready, and each day Dr. Caruso would direct him to complete another day of in-school suspension until the total fifteen days was served. Mrs. J. then testified that based on her past experiences with the school, she believes her son is routinely targeted by the administration.

Mrs. J. testified that on Friday, February 8, 2019, she was contacted by Principal Nosal, and was informed that there had been an HIB complaint against her son, that it had been substantiated, and that J.J. would be receiving a suspension. She was given no further information. When she inquired about the basis for the HIB violation and corresponding code-of-conduct violation, she was informed by the principal that he could not provide her with any such information due to privacy concerns, and that for further detail she would have to ask her son, J.J. Mrs. J. requested that Principal Nosal stay the suspension until she and her husband could arrive at the school to review and discuss the incident with the administration, but Nosal declined the request and affirmed the immediate suspension of the child. No issue involving any racial slur was conveyed to Mrs. J. at the time.

**Christine Maier**

Christine Maier (Maier) testified on behalf of the school board. She is a guidance counselor at J.J.'s school and also the anti-bullying specialist (ABS). She has been employed for thirteen years as a guidance counselor and for more than two years as an ABS. She testified that there is no specific training to be an ABS.

Maier testified that the incident at issue was first reported by the complaining student (the target) to Mrs. Brady (Brady), who is another guidance counselor at the school, on February 6, 2019. Maier testified that she became aware of the incident the next morning, February 7, 2019, after Brady had reported the target's

complaint to Principal Nosal. Maier did not initially interview the target, but based on her review of the incident report, she understood that the target, who is an African-American student, reported to Brady that she overheard someone say the “n” word earlier in the day, while the target was standing just outside the school, waiting for the bell to ring. Maier testified that the target did not know who the individual was that made the comment. Based on the report, Maier testified that Brady then showed a yearbook to the target and asked her to look at the pictures of the students in order to identify the individual who said the “n” word. The target identified J.J. as the individual who uttered the “n” word.

Maier then read into the record the following statement from the target as recorded by Brady from the incident report: “This school is racist; I don’t want to come here.” The report went on to say that the target overheard another student say the “n” word to some other students and the target was upset.

Maier then testified to the factors she uses to determine if an HIB complaint exists, and applied them to the facts at hand: 1) identifying characteristic—in this case, she found that there was one, race; 2) substantial interference—in this case she found that there was substantial interference because the target became very upset and went to her guidance counselor and stated that she felt that the climate of the school was racist; and 3) violation of rights. With regard to this last category, Maier testified that there had been much debate about this among her colleagues, but she felt that anyone who belonged to a protected category has a right to enter into the “school climate” free from harassment, intimidation, and bullying. Thus, due to the racial nature of the word the target overheard, Maier found that the target’s rights in this case were violated. Maier testified that the target in this instance did not know J.J., even after identifying his picture in the yearbook to Brady. Maier testified that she felt that the target’s rights were violated even though the statement in question was not directed at the target and the target did not know the alleged bully.

Maier then testified that she viewed the closed-circuit video surveillance from the schoolyard on the morning in question, and that the events appeared to play out as J.J. described them during his testimony. J.J. is standing in a small group of students and the target is standing a few feet away with her back to them. At some point, the target turns around, sees J.J., and then turns to her friend and says something. The recording did not include sound, and Maier testified that one could not ascertain who, if anyone, uttered the “n” word.

On February 7, 2019, Maier interviewed four student witnesses, including the target. None of the witnesses confirmed that J.J. made the statement in question. One of the witnesses interviewed, B., who was among the small group of friends J.J. was with on the morning in question, told Maier that nothing offensive at all was uttered by anyone in the group on the morning in question.

Maier then interviewed J.J., on February 8, 2019. Maier stated that J.J. said he didn’t remember anything in particular happening on the morning in question. Maier stated that she believed him. She then testified that J.J. admitted after questioning that he had, from time to time, used the word “niggah” informally in private conversations, and never with the intent to insult anyone. He noted that that version of the word could be heard used by his schoolmates hundreds of times a day, and noted, “that’s how people talk.” J.J. added that if someone were to be offended by eavesdropping on a private conversation, then that would be “their problem.” Maier then testified that she took this comment as a tacit admission that he did, in fact, use the “n” word on the morning in question, though, she noted, not with the intent to offend anyone. She noted that this usage was “not ok.”

On cross-examination, Maier testified that she called J.J.’s mother after interviewing J.J. and informed her that there was an ongoing HIB investigation regarding her son and that there was an assumption that J.J. violated the code of conduct regarding foul language. Maier testified, “We determined that we thought he said that.” She further testified that she

provided no further details of the HIB investigation to Mrs. J. When Mrs. J. asked what her son was accused of, Maier told her only that “we are investigating it as an HIB but that the consequence was determined due to our assumption that he violated the code of conduct,” and “the consequence was for offensive language because we determined that we thought he said that.” Maier further testified that it is standard practice to have a student serve a period of suspension before the parents receive any information regarding the investigation, as long the district “believes there is a code-of-conduct violation.” She noted that the punishment for the code-of-conduct violation (the fifteen-day suspension) is separate and apart from the HIB investigation.

When questioned with regard to the “substantial disruption” aspect of the HIB statute, Maier testified that she feels that any student that becomes incensed enough to lodge a complaint with the administration has experienced a substantial disruption. She added that the target here experienced a violation of her right to come to a school where she does not hear “that word.”

### **Robert Presuto**

Robert Presuto (Presuto) is the superintendent of schools for the Town of Boonton, a position he has held for five years.

Presuto first became involved in the current matter when his office received the HIB investigation report for review. He testified that the HIB statute is a law, and that as superintendent he is charged with making sure all appropriate laws and protocols, including those surrounding HIB, are followed. He testified that he ultimately affirmed the HIB-violation finding, and that the Board also affirmed this finding. Presuto explained that the Board is given the HIB investigation report after he reviews it, and that he gives the Board a brief synopsis of the report before it makes its determination. This synopsis is usually supplied by the bullying specialist. The Board then votes on whether to affirm, overturn, or ask for additional information. Presuto stated that these processes are statutorily prescribed.

Presuto testified that, in this case, the parents followed an appeal process, which occurs after the Board takes a second vote, this vote being at a public meeting, and the parents are notified.

Presuto testified that Boonton is extremely diverse and is surrounded by much less diverse communities. He stated that there are many languages spoken in the district, and that, after Spanish, the next three most common second languages are “Arabic in nature.” Presuto testified that he takes the idea very seriously that the children “do not come to a school district where they feel discriminated against on any level.”

Presuto then testified as to the distinction between a code-of-conduct violation and an HIB violation. He affirmed that in this case, the penalty, i.e., the fifteen-day suspension, was imposed for the code-of-conduct violation and not for the HIB violation. Presuto noted that he felt that this aspect was one of the most confusing aspects for parents to understand, that the code-of-conduct violation/penalty is not necessarily connected to the HIB investigation. He went on to say that the HIB statute specifically states that punishment for a code-of-conduct violation in the process of an HIB investigation can be put into effect immediately, even before there is a determination regarding the HIB investigation.

On cross-examination, Presuto testified that no information surrounding the HIB investigation was provided to J.J.’s parents early on. He noted that this was likely because the parents did not request any information, or they did not know that they could request such information. Presuto went on to testify that it is common practice for parents of a child accused of an HIB violation not to be provided with any information regarding the investigation while it is ongoing, because it taints the investigation. He explained that the parents of the accused HIB violator are provided with no details about the HIB investigation until after the investigation is concluded, a report is generated and reviewed by the superintendent, and a determination has

been made by the superintendent and voted on by the Board. Presuto testified that he was not intimately involved in the HIB investigation, and that his purpose was to make sure the law was followed, and a proper determination was made.

### **FACTUAL DISCUSSION**

On the morning of February 6, 2019, J.J., a middle-school student within the district, was dropped off in front of his school by his parent. Before entering the school, he greeted a small group of classmates and waited with them for the school bell to ring. The group engaged in light conversation. Another student, the target, was standing with her back to the group and heard what she believed to be the “n” word uttered by someone behind her. Though she did not know the identity of the individual, she became upset and complained to her guidance counselor, and an HIB investigation ensued.

The district acknowledges that the utterance, regardless of who said it, was not directed at the target. The district further admits that the target did not initially know the identity of the bad actor. Yet, armed with this knowledge, the district decided to conduct an HIB investigation anyway, and aided in this investigation by staging a line-up of sorts by having the target flip through photos of students until she fingered a bully.

Upon questioning, J.J. denied having said the “n” word on the morning in question, a position he reiterated under oath at the hearing. The district did not present the target as a witness, nor any other individual that heard the alleged utterance on the date in question. The only witness offered by the district that had any direct involvement in the HIB investigation, Christine Maier, testified that, aside from the target, all other students that were interviewed as part of the investigation deny that J.J. uttered any such word. Further, Maier testified that the target’s back was to the group of students when the word was uttered, and affirmed that the target did not actually see any individual utter the word. Based on the foregoing, I **FIND** that J.J. did not utter the “n” word on the morning in question.

## **LEGAL DISCUSSION AND CONCLUSION**

Under the ABRA, “harassment, intimidation or bullying” means any gesture, any written, verbal, or physical act, or any electronic communication that is reasonably perceived as being motivated by any actual or perceived distinguishing characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical, or sensory disability, that takes place on school property. See N.J.S.A. 18A:37-14. It must also substantially disrupt or interfere with, among other things, the orderly operation of the school. Ibid. Although the ABRA does not limit “distinguishing characteristic” to those specified in the statute, it has consistently required such a perceived motivation. See K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337, 351 (App. Div. 2011). “Thus, harmful or demeaning conduct motivated only by another reason, for example, a dispute about relationships or personal belongings, or aggressive conduct without identifiable motivation, does not come within the statutory definition of bullying.” Ibid.

The definition of “harassment, intimidation, or bullying” is reproduced below in full:

“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.

[N.J.S.A. 18A:37-14.]

Here, the respondent Board has failed to establish that J.J. even uttered the "n" word on the morning in question. I, therefore, **CONCLUDE** that any resulting HIB violation and/or code-of-conduct violation must be overturned.

### **ORDER**

Given my findings of fact and conclusions of law, I **ORDER** that any finding of an HIB violation and any corresponding code-of-conduct violation are hereby **OVERTURNED**, and any allegations of an HIB violation against J.J. are dismissed.

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

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

unless such time limit is otherwise extended, this recommended decision shall become a final decision under N.J.S.A. 52:14B10.

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

April 9, 2020

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DATE

  
\_\_\_\_\_  
**JUDE-ANTHONY TISCORNIA, ALJ**

Date Received at Agency:

4/9/20  
\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

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**APPENDIX**

**LIST OF WITNESSES**

For Petitioner:

J.J.

Mrs. J.

For Respondent:

Christine Maier

Robert Presuto

**LIST OF EXHIBITS IN EVIDENCE**

For Petitioner:

None

For Respondent:

None