New Jersey Commissioner of Education

Final Decision

J.P. on behalf of minor child, D.P.,

Petitioner,

v.

Board of Education of the Gloucester County Vocational-Technical School District, Gloucester County,

Respondent.

Synopsis

Petitioner appealed the respondent Board's determination that D.P. 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 called A.G., a fellow student, "gay". Petitioner admitted to calling A.G. "gay," but contended that he used the term in a joking manner and did not intend it in a demeaning way. The Board argued that D.P.'s actions constituted an act of HIB, and that its imposition of an in-school suspension was appropriate discipline for the infraction. Petitioner sought a reversal of the Board's determination and the resulting discipline. A hearing in this matter was conducted at the Office of Administrative Law (OAL) in December 2019.

The ALJ found, *inter alia*, that: the definition of HIB in the Board's HIB policy does not mirror the definition found in *N.J.S.A.* 18A:37-14; the statute requires a finding that the actor knew or should have known that the conduct at issue would cause harm; the Board failed to consider whether D.P. knew or should have known that his conduct would have the effect of harming A.G.; and the Board failed to consider D.P.'s motivation in making the statement at issue here. The ALJ concluded that the Board acted in an arbitrary, capricious and unreasonable manner when it determined that D.P. had committed an act of HIB based upon his own admission, without considering his explanation of the circumstances surrounding the comment and the fact that D.P.'s comments "were not motivated by any actual or perceived characteristic, such as sexual orientation…" of the targeted student. Accordingly, the ALJ reversed the Board's determination that D.P. committed an act of HIB, and instead found that D.P.'s conduct constituted a violation of the Student Code of Conduct.

Upon review, the Commissioner reversed the Initial Decision of the ALJ and affirmed the Board's determination of HIB. In so doing, the Commissioner found, *inter alia*, that: petitioner failed to demonstrate that the Board's actions were arbitrary, capricious or unreasonable; no evidence was provided to overturn the Board's finding of HIB other than D.P.'s alleged lack of subjective ill intent; the record contained sufficient credible evidence to support the Board's decision that commenting on or misstating another student's sexual orientation could reasonably be perceived as being motivated by that characteristic; D.P.'s comments substantially disrupted A.G.'s education; and such comments were reasonably considered to be insulting or demeaning. Accordingly, the petition was dismissed.

March 13, 2020

OAL Dkt. No. EDU 15220-18
Agency Dkt. No. 241-9/18

New Jersey Commissioner of Education

Decision

J.P., on behalf of minor child, D.P.,

Petitioner,

v.

Board of Education of the Gloucester County Vocational-Technical School District, Gloucester County,

Respondent.

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

This matter concerns an alleged act of harassment, intimidation, and bullying (HIB) by D.P., who admitted to calling another student, A.G., "gay." The Board found that D.P. had committed an act of HIB and imposed an in-school suspension. Following a hearing, the ALJ found that the Board's decision should be overturned because the Board did not consider D.P.'s motivation in making the statement or whether a reasonable person should have known that calling a student "gay" would cause harm. The ALJ further found that the definition of HIB in the Board's HIB policy did not conform to *N.J.S.A.* 18A:37-14.

In its exceptions, the Board argues that its HIB policy is consistent with the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A.* 18A:37-13 *et seq*. The Board cites to case law

[1] Petitioner did not file a reply to respondent's exceptions.

establishing that the subsections of the statute dealing with the effect of the alleged act of HIB are alternate criteria and that any of the three alternatives are sufficient to satisfy the statute. The Board disagrees that its decision finding that D.P. committed an act of HIB was arbitrary, capricious, or unreasonable. The Board indicates that it is undisputed that A.G. suffered emotional harm because of the comments made by D.P., pointing to testimony that A.G. was in counseling and did not want to attend school due to the comments. Therefore, according to the Board, two of the criteria regarding the effect of D.P.'s comments were met: 1) they had the effect of insulting or demeaning A.G., and 2) they created a hostile educational environment by severely or pervasively causing emotional harm to A.G. The Board contends that it is not necessary to establish that a reasonable person would know that the act would cause harm. However, the Board also argues that a reasonable person should know that purposely misstating another student's sexual orientation would cause emotional harm or that the victim would reasonably perceive the comment as insulting, and that D.P.'s subjective intent or motivation is irrelevant to the analysis. Furthermore, the Board disputes the finding in the Initial Decision that the comments could not have been construed by A.G. to be truthful because A.G. had a girlfriend, since the comments were made in an open school setting – where anyone could have heard them, including individuals who may not have known anything about A.G's sexual orientation.

Upon review, the Commissioner disagrees with the ALJ's conclusions that the Board's policy did not conform to the Act and that the Board's decision finding that D.P. committed an act of HIB was arbitrary, capricious, or unreasonable. 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.[2] 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).

The Initial Decision incorrectly views subsection (a) – that a reasonable person should know the act will have a harmful effect – as the third requirement, with an additional fourth requirement being a choice between subsections (b) and (c). As a matter of standard statutory construction, the term "or" between subsections (b) and (c) also applies to subsection

[2] 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 dispute that this element has been satisfied in this case.

(a), such that a demonstration of any of these three criteria can support a finding of HIB. *Ibid.* Accordingly, the Board's use of the term "or" between subsections (a) and (b) in the definition of HIB in its policy conforms entirely to the Act. The Commissioner therefore reverses the ALJ's conclusion on this issue.

Turning to the Board's decision that D.P. committed an act of HIB, the ALJ found that the Board's decision was arbitrary, capricious, and unreasonable because the Board did not consider whether D.P. knew or should have known under the circumstances that his conduct would have the effect of harming A.G. However, the Board was not required to consider this factor, because it is only one of three alternate criteria outlined in the statute, so its failure to do so does not render its decision arbitrary or unreasonable. [3, 4]

The Initial Decision also finds fault with the Board's decision because D.P. stated that he did not intend to harm A.G. This, too, is an incorrect interpretation of the Act.[5] 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 perception is reasonable. It does not require an analysis of the actual motivation of the actor.[6] *Wehbeh*, *supra.* Certainly,

[3] The Board's decision was instead based on the criteria outlined in subsection (b), because it found that the comments were insulting and demeaning.

[4] To the extent that the ALJ found the testimony of HIB specialist Edward Ferrari not credible regarding what a reasonable person should have known, that finding is based on the ALJ's erroneous legal interpretation of the Act. Because the Board was not required to consider what D.P. knew or what a reasonable person should have known, Mr. Ferrari's credibility on this topic is irrelevant. Mr. Ferrari testified that D.P.'s comments were insulting or demeaning – an appropriate basis for a finding of HIB – and the ALJ did not take issue with Mr. Ferrari's credibility in making this statement. Indeed, to the contrary, the ALJ also characterized the comments as insulting and demeaning.

[5] The ALJ found Mr. Ferrari not credible on the question of D.P.'s motivation but, again, this finding was based on the ALJ's erroneous legal interpretation of the Act. Mr. Ferrari testified that he considered A.G.'s perception of the comments – which is appropriate, as explained herein – and the ALJ did not take issue with Mr. Ferrari's credibility in making this statement.

[6] This conclusion does not make the Act a strict liability statute, as the ALJ opined it would. The statute is clear that the perception must be reasonable.

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. Moreover, 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 intend to cause harm.

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 her burden of demonstrating that the Board's decision was arbitrary, capricious, or unreasonable. Petitioner has provided no evidence to overturn the Board's finding other than D.P.'s alleged lack of subjective ill intent. On the other hand, the record contains sufficient credible evidence to

support the Board's decision that commenting on or misstating another student's sexual orientation could reasonably be perceived as being motivated by that characteristic, that D.P.'s comments substantially disrupted A.G.'s education, and that D.P.'s comments were insulting or demeaning.[7]

Accordingly, the Initial Decision is hereby reversed and the Board's decision finding that D.P. committed an act of HIB is affirmed. The petition is dismissed.

IT IS SO ORDERED.[8]

COMMISSIONER OF EDUCATION

Date of Decision: March 13, 2020
Date of Mailing: March 16, 2020

[7] The petition of appeal raised procedural concerns about the Board's decisions, but the Initial Decision did not address those concerns. However, the Commissioner finds that the Board followed the procedures required by the Act by making the petitioner aware of the charges and the evidence on which they are based and by offering the petitioner the opportunity to present evidence to the Board – an opportunity of which she availed herself. Following those procedures, the Board determined that the petitioner had committed an act of HIB. Nothing in the record indicates that the Board, in making that determination, operated in an arbitrary, capricious, or unreasonable manner.

[8] 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 15220-18

AGENCY DKT. NO. 241-9/18

J.P.,

Petitioner,

v.

BOARD OF EDUCATION OF THE GLOUCESTER COUNTY VOCATIONAL-TECHNICAL SCHOOL DISTRICT, GLOUCESTER COUNTY,

Respondent.

_____

J.P., petitioner, pro se

Jay Branderbit, Esq., on behalf of respondent (Kent McBride, P.C., attorneys)

Record Closed: January 13, 2020 Decided: February 5, 2020

BEFORE **CATHERINE A. TUOHY**, ALJ:

STATEMENT OF THE CASE

Petitioner, J.P., on behalf of D.P., appeals the respondent, Gloucester County Vocational-Technical School District's Board of Education (the Board) determination that D.P. committed an act of harassment, intimidation or bullying (HIB) in violation of the New Jersey Anti-Bullying Law, N.J.S.A. 18A:37-13.2 et seq. and the resulting discipline. At issue is whether D.P. committed an act of HIB.

PROCEDURAL HISTORY

On September 19, 2018, petitioner, on behalf of her minor child, D.P., filed an appeal with the Department of Education, Bureau of Controversies and Disputes, seeking the reversal of respondent's determination that D.P. had committed an act of HIB and the withdrawal or reduction of the discipline imposed. On October 15, 2018 respondent filed an answer. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on October 19, 2018 as a contested case pursuant to N.J.A.C. 6A:3-1 et seq. and N.J.S.A. 52:14B-1 to -15. A pre-hearing telephone conference was conducted on December 5, 2018 and the matter was scheduled for a hearing on April 4, 2019.

Prior to the scheduled hearing date, respondent filed a motion for summary decision on February 27, 2019. Petitioner filed opposition to respondent's motion for summary decision on April 2, 2019. Respondent filed a reply on April 16, 2019. By Order dated May 15, 2019, respondent's motion for summary decision was denied. A hearing was conducted on December 5, 2019 and the record remained open to allow for closing submissions. The record closed on January 13, 2020 following receipt of closing statements.

FACTUAL DISCUSSIONS AND FINDINGS

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Edward Ferrari testified on behalf of the respondent. He has a master's degree in educational school counselling and is employed by respondent as a school counsellor. He has worked for respondent for ten years and was the HIB specialist for a two-year period for the 2017-2018 and the 2018-2019 school years.

The HIB specialist works as part of a team and when a complaint is received, they conduct an investigation and the group determines if a violation of HIB has occurred. This complaint came in during Mr. Ferrari's first year as the HIB specialist. Other members of the team were Mrs. White, the school psychologist and Dr. Heicken, Director of Special Education and the HIB Director. This was not Mr. Ferrari's first HIB investigation. Mr. Ferrari prepared a certification in support of respondent's motion for

summary decision to which he was referred to refresh his recollection (R-X). In early March 2018, Mr. Ruiz of School Based Youth Services approached Mr. Ferrari and advised him that A.G. was having some problems with other students and that Mr. Ruiz referred him to Robin's Nest for crisis counselling. There was no mention of any harassment comments at that time. Thereafter, on or about March 27, 2018, Mr. Ferrari received an email from A.G.'s mother that read:

> "Good Afternoon: A few weeks ago, several students went to Guidance concerned with my son that he was not himself and seemed down. He and I met with Mr. Ruiz and Ms. Glazer. I was then advised to call Robin's Nest for an evaluation. After a few days A.G. finally opened up to me and Mr. Ruiz of what was going on. He was being bullied by a boy in his electrical program and two - three other boys would laugh and join in the comments that were being made. For example, you're "gay", bowling is not a sport, you will never get anywhere with that. No girl would like you rumors spread to other kids that would comment in the halls that he doesn't even know etc. . . . He has been working with an in-home therapist named Jenny. Mr. Ruiz as well who has suggested that A.G. and the boy meet to discuss the issues which A.G. does not feel comfortable doing and neither does Jenny his therapist. It was also brought up again today and I do not feel comfortable with how this is being handled. I clearly feel this is a case of bullying and should be addressed in a different manner and Jenny the therapist agrees along with A.G. If someone can get back to me in this regard that would be great."

The first page of exhibit R-V is the Initial Report of HIB with a copy of the March 27, 2018 email from A.G.'s mom attached. This was the first notice that there was an HIB incident (R-V). Prior to this date there was no indication that A.G. was being bullied. Based on this email an investigation was commenced. He was charged with conducting the interviews for the investigation and interviewed A.G. Exhibit R-L is a hand-written copy of the statement provided by A.G. The interview took no more than ten to fifteen minutes. During the interview, A.G. said he did not want to go to shop anymore, which Mr. Ferrari considered adverse to his educational experience since he did not want to go to class. He continued to interview the other students involved, including D.P. Exhibit R-J is a handwritten statement provided by D.P. during his interview. D.P. admitted to calling A.G. gay but stated that he did not mean it in a demeaning way but in a joking manner. Mr. Ferrari allowed the students to make additions to their statement and on April 6, 2018 D.P. added to his original statement

taken on March 28, 2018. D.P. added that they had an inside joke and would say to each other "Dude your gay". Exhibit R-P contains written statements from three other students, J.M., M.A. and G.C. Theses statements were given as a result of interviews Mr. Ferrari conducted. J.M. admitted that D.P. called A.G. gay, but J.M. did not admit to calling A.G. gay. J.M. also stated that he could not tell if D.P. was joking or not. This is significant because he did not know what the intent was or could not tell the intent based on the nature of the comments. J.M. said that G.C. also called A.G. gay.

M.A.'s statement does not admit to calling A.G. any names. G.C. did not admit in his statement that he called A.G. gay. Mr. Ferrari interviewed two other students, A.U. and A.R. who were also in the same class, but not in the same friend group, in order to get another perspective from a neutral party. Neither heard nor saw anyone pick on A.G. (R-Q).

Mr. Ferrari's certification at paragraph 8 references a meeting held March 28, 2018, the day after A.G.'s mother sent the email. In attendance were the shop teacher in the electrical program, Mr. McCoy, Mr. Ruiz, A.G., A.G.'s mother, Jenny the therapist and Mr. Ferrari. Mr. McCoy had stated during the meeting that if he had heard students making comments to A.G., he would have interceded and would have also reported the students (R-X). Mr. Ferrari did not take a written statement from Mr. McCoy because he knew from the meeting that Mr. McCoy did not witness anything, and Mr. Ferrari believed the best witnesses would be the students involved. The fact that D.P. admitted that he made the statements also effected Mr. Ferrari's decision that it was not necessary to take a statement from Mr. McCoy. Regardless of D.P.'s intent, he admitted to making the statements. Also, one of the accused indicated he did not know if D.P. was joking or not. Mr. Ferrari felt he did a thorough investigation. None of the other members of the HIB team advised him to do anything further in his investigation.

As a result of the investigation, there was a finding that D.P. violated the HIB policy. There was a report prepared by Mrs. White based on Mr. Ferrari's investigation. The results of his investigation were discussed with Ms. White and Dr. Heiken (R-F). There were three separate findings:

1. No HIB finding against M.A. and J.M.

2. G.C. did not commit a HIB violation, but violated the Student Code of Conduct
3. D.P. committed an act of HIB

The HIB behavior committed by D.P. was "insulting or demeaning comments" based on his calling A.G. gay. The actual or perceived characteristic that motivated the behavior was "Perceived Sexual Orientation". The report indicated that this was a series of incidents. The report also indicated that the students had not previously committed an act of HIB and that A.G. had not previously been a target of HIB while attending school in the district (R-F, page 2, paragraphs 3 - 6). Ms. White signed off on the report.

D.P. received an in-school suspension as a result of the HIB finding and G.C. received an after-school detention from 3:00 – 6:00 p.m. (R-F, page 3). An in-school suspension involves staying in a room all day in school and not attending any classes. Discipline could have been more severe such as an out of school suspension or expulsion. Mr. Ferrari does not impose discipline, the administrator does.

There have been no further issues involving D.P. or A.G. or any of the students involved. Mr. Ferrari has interacted with D.P. as he is his guidance counsellor and they have discussed classes and grades. At no time did D.P.'s parents request that Mr. Ferrari be changed as D.P.'s guidance counsellor. He has had a normal relationship with D.P. since the investigation. D.P.'s performance has been averaged since the 2017-2018 school year. D.P. has done well in shop but struggles with some of his classes. Mr. Ferrari has not noticed any significant changes in his performance. D.P. has not complained to him about any emotional problems. He has not said heard from anyone that D.P. feels that he has been stigmatized by the HIB investigation.

On cross-examination, Mr. Ferrari was a shop teacher in the past and familiar with how students talk to each other and has heard students call each other gay in the past. After Mr. Ferrari spoke to A.G. his position was to move forward with the investigation. When he first spoke with D.P. on March 28, 2018, he does not recall being upset with D.P. but rather being disappointed with the whole group. Mr. Ferrari did not refuse to extend a handshake to D.P. when he first met with him. When he met with D.P. again on April 6, 2018, he advised D.P. to add to his statement because it would help. When he met with all of the witnesses, he told them to write as much

information as possible to explain that if they were joking to write it all down because the more information provided would help them. Initially, D.P. wrote down that he admitted he called A.G. gay. Mr. Ferrari was his counsellor and wanted to make sure D.P. got a fair shake. He did advise D.P. about the process and that if he felt strongly about it, his parents should appeal the finding.

J.M.'s statement that he could not tell if they were joking or not could mean both, that either they were joking, or they were not. Out of the four boys who were accused, the fact that D.P. admitted to calling A.G. gay, was the basis for finding D.P. in violation of the HIB policy and not the others.

Mr. Ferrari was not aware of a significant change in D.P.'s performance as far as grades go from the 2017-2018 school year until now and that he actually failed two classes last year when he has never even come close to failing, which J.P. claims was as a direct result of him being falsely accused.

Mr. Ferrari's recollection was that when they met as a team to discuss the case none of the others involved admitted to saying the comments other than D.P. and that is why they were not found in violation of the policy. Out of the four interviewed only D.P. admitted to calling A.G. gay. Mr. McCoy is the shop teacher and had them every day and did not notice anything. A statement should have been taken from him. Although D.P.'s admission was used against him, his explanation that they were joking with each other was not considered. Mr. Ferrari stated that students sometimes speak to each other in ways they should not. It was not commonplace in Mr. Ferrari's shop. He is training students to go into the carpenters' union and to go into peoples' houses. He cannot speak to what goes on in Mr. McCoy's shop class because he is not there every day. However, the language was not something he would accept in his class or as a counsellor. He did not interview Mr. McCoy because at the meeting he said he did not witness anything. After he conducted the investigations, he was not instructed by any of his supervisors to go and interview Mr. McCoy. Mr. Ferrari has a decent relationship with D.P. and as the HIB specialist and D.P.'s counsellor, Mr. Ferrari was never looking to file a HIB charge on D.P. and being part of that was a very hard part of his job.

On redirect examination, Mr. Ferrari stated that if D.P. had not admitted making the statements, the outcome would be different.

Mr. Ferrari was part of the group of three people discussing whether D.P.'s conduct violated HIB. There was not enough evidence against the other students, but D.P. admitted it although his intent was different. The Board believed they could defend their decision in finding HIB against D.P. because of his admission. Mr. Ferrari explained that they took into consideration D.P.'s explanation of the circumstances surrounding the comments and D.P.'s intent, but it was perceived differently by A.G. When they spoke to people during the course of the investigation, there seemed to be an imbalance of power between D.P. and A.G., rather than a conflict. In his HIB training, with no imbalance of power, you can go back and forth making comments to the other person and that is considered a conflict. However, if comments are made and the other person is perceiving them differently because one person has power over the other and the comments are causing school avoidance, that is the reason the group recommended the finding of a HIB violation to the Board. The imbalance of power is the sexual orientation of the student. D.P. had more power over A.G. It was Mr. Ferrari's understanding that it was not a back and forth between D.P. and A.G. D.P. just made comments to A.G. and A.G. did not respond.

They have HIB training in-district each year. He and Ms. White also went to an additional one-day training for HIB at the firm of Strauss Esmay.

On re-cross examination, D.P.'s April 6, 2018 written statement stated:

> "In the beginning of the year our shop class had an inside joke 'Dude, you're gay' and we all made sure no one would be offended by it. We all said to each other all the time knowing that it was a joke. A.G. would say it as much as everyone else. I don't understand why people would be offended if they are saying it too." (R-J).

Although D.P. did say that in his statement, but Mr. Ferrari did not have any evidence that that was going on.

The comment that he made, 'Dude you're gay', disrupted A.G.'s education that he did not want to come to school to the point that he went to crisis intervention. The

evidence was that it significantly disrupted A.G.'s educational process and he did not want to come to school anymore. The outside therapist was working with A.G. and revealed this information. Mr. Ferrari does not know A.G.'s sexual orientation and does not care either way. Mr. Ferrari took D.P.'s admission that yes, D.P. called A.G. gay, regardless of intent and that violates the policy. If D.P. did not admit it, then there probably would have to have been more investigation and additional individuals brought in.

Mr. Ferrari does not think D.P. believes A.G. is gay. However, it is the perception of the person accusing D.P. Mr. Ferrari did not know and could not say whether D.P., under the circumstances of this case, knew or should have known that his comments would cause harm to A.G. He thinks D.P. is a really nice kid and knows better than to say those words to someone. Mr. Ferrari admitted that he really did not know how to answer that question.

On re-direct, J.M. said G.C. also called A.G. gay. No one else corroborated D.P.'s statements that A.G. also called D.P. gay.

On re-cross examination, Mr. Ferrari did not know that A.G. had a girlfriend. He does not get involved in relationships. He admitted that sometime other students know students better than staff.

In Mr. Ferrari's opinion, if there was other evidence that there was a back and forth between A.G. and D.P. saying "Dude, your gay", as the HIB specialist at the time, there would not have been an imbalance of power, it would have been a code of conduct violation through the administration for them using inappropriate language pursuant to the policy. The imbalance of power would have been D.P. calling A.G. gay. It is only a HIB violation if it is reported as an imbalance of power by the person targeted. It is the perception of the person being targeted. In Mr. Ferrari's opinion, D.P. is truthful. However, he has to have some corroboration. Even though he feels that D.P. is a truthful kid, he has to go with what he was instructed to do.

D.P. should have known that the comments would have harmed A.G. He believes D.P. made a mistake and this was a learning lesson and he would not do this again.

According to Mr. Ferrari, it was A.G.'s perception that D.P.'s comments were motivated by an actual or perceived characteristic of his and that was A.G.'s sexual orientation.

Philip Nicastro testified on behalf of the respondent. He has a B.A. from Glassboro State College; a Masters' degree in educational administration from Monmouth University; a doctorate in education from Temple University; and a Law degree from Widener University School of Law. He is licensed to practice law in Pennsylvania and New Jersey since 1994. He is a principal and employed by Strauss Esmay Associates, a New Jersey School Policy and Regulation Consulting firm. They work with about 480 public school districts in New Jersey; twenty-five charter schools and forty private schools for students with disabilities. There are about 550 – 560 public school districts in New Jersey and they have contracts with 480 of them to provide school policy and regulation consulting services. The firm has been in existence since 1972, but his wife, a former school teacher acquired the firm in 2001. He has worked as a legal consultant to Strauss Esmay since 1994. Usually a school district comes to the firm realizing they need to update their policies and then they work with the school district to develop a customized policy manual. Thereafter they have an annual contract with school district to provide them updates as the statutes, code and decisions come out that impact school policy. Mr. Nicastro retired after twenty years as a school business administrator and five years as a superintendent. He retired as the Superintendent of the Brick Township school district in 2003.

The current HIB law came into effect for the 2011 school year. The firm does professional development programs on the HIB law. Since 2011 he has trained ten-thousand people on the HIB law. They run training programs for HIB specialists and teachers. One of the services they provide to their clients is if they have questions, they can call them. Mr. Nicastro was accepted as an expert to address the respondent's HIB policy and whether it conforms to the New Jersey HIB statute. Strauss Esmay wrote

respondent's HIB policy 5512. Strauss Esmay provides a policy guide to school districts and it's the school districts decision whether to adopt it or not.

Mr. Nicastro recalls Superintendent Dicken reaching out to him in May 2019 regarding a question involving the school's HIB policy. Mr. Dicken had received the order denying the Board's motion for summary decision wherein it was pointed out that the Board's HIB policy was not consistent with the statute. Mr. McCastro sent an email dated May 21, 2019 to Michael Dicken in response (R-Y).

Mr. Nicastro stated to have HIB you need four things: motivation; location; it has to create substantial harm or effect the rights of other students; and there has to be harm. There have been lots of cases that if there is no motivation, you may have a code of conduct violation, but you do not have a HIB violation. There has to be motivation, the conduct has to be motivated by an actual or perceived characteristic. Location is an easy one. It has to affect the orderly operation of the school or the rights of other students. The last component is harm and the harm components are three. 1. that a reasonable person would know under the circumstances that whatever they did would cause harm; 2. The act had the effect of insulting or demeaning; or 3. The act created a hostile educational environment where the child did not want to come to school anymore. Those three elements in everything he and his firm have read was that only one of those items was required. In his opinion, you only need one of those three items to satisfy the statute.

His firm publishes a monthly school law digest where they report all major educational law decisions, eight a month for eleven months, eighty-eight a year. He has read every one since 2011. There has never been a requirement that you need as a threshold to find that a reasonable person would know under the circumstances that the conduct would cause harm before you went to the other sections. It has always been interpreted that you need any of the three – that is, a reasonable person would know under the circumstances or has the effect of insulting or demeaning or creates a hostile educational environment.

The New Jersey Department of Education has issued a publication entitled "Guidance for School on Implementing the Ant-Bullying Bill of Rights Act (R-Y,3). This

document on page three supports Mr. Nicastro's opinion that the statute was meant to be read with an "or" between the three sections.

In Mr. Nicastro's opinion, respondent's HIB policy in March 2018 comported with the statutory requirements and all the guidance put out by the Department of Education.

On cross-examination, Mr. Nicastro said they must have motivation. This is the hardest part to determine what is the motivation. Two kids are in a playground playing kickball and a disagreement breaks out on a call of an out on base. One of the children says not only were you out but proceeds to use a racial epithet. The motivation for using the racial epithet was not the race of the child, but the call out on base. It was a conflict, not a HIB. In Mr. Nicastro's opinion, the hardest thing for anti-bullying specialists to determine is what was the motivating factor.

Looking on page two of R-Y,3 under HIB definition, Mr. Nicastro indicated if you were required to meet all six bullet points, the number of HIB cases would be drastically reduced. Although Mr. Nicastro was not here to discuss the facts of this case, he indicated that in 90% of these cases, the ALJ and the Commissioner of Education have deferred to the school districts. Any interpretation that would limit a finding of bullying would be contrary to the policy of stopping the HIB conduct. Intent does not really matter as it is whether a reasonable person would conclude it would be harmful.

Mr. Nicastro does agree that the statute N.J.S.A. 18A:37-14 does not contain an **or** between sections (a) and (b). The statute as written demonstrates the legislative intent and is controlling. He does not know why it has not been amended if it is incorrect.

Michael Dicken testified on behalf of the respondent. He is the Superintendent of the Gloucester County Vocational-Technical School District. He has a B.S. degree from Westchester State College with a certificate in health and physical education; a Masters' degree from Rowan University in School Business Administration. He spent five years working at Glen Mill School for Boys, which is a juvenile delinquent facility in Pennsylvania as a teacher and a counsellor. He was a teacher and administrator at the Yale school, which is a private school for the handicapped. He was employed in 1999

by the Gloucester County Special Services School District school as a program manager. He later served as assistant principal and later principal of that program. He has been the Assistant Superintendent of both school districts for three years. This is his ninth year as Superintendent of both programs, the Gloucester County Special Services School District and the Gloucester County Vocational and Technical School District. As Superintendent he oversees all operations of both school districts including finances, curriculum, students and faculty. He supervises all employees of the school districts, including Mr. Ferrari.

Mr. Dicken is familiar with the HIB complaint filed by the mother of A.G. Mr. Ferrari conducted the HIB investigation under the direction of Dr. Susan Heiken, the Director of Clinical Services and the HIB Coordinator. Mr. Ferrari's testimony was accurate as far as processing and procedure. As Superintendent, he reviewed the final HIB report after it was reviewed by the principal, Mr. James Dundee. He affirmed the HIB finding and Mr. Dicken then approved the HIB finding. A letter from the principal to D.P.'s parents regarding the HIB complaint involving their son was sent on March 29, 2018 (R-C). This was two days after the email sent by A.G.'s mother. Also, on March 29, 2018 a letter was sent to the parents of A.G. advising that A HIB investigation was being conducted concerning their son being the target of an act of HIB (R-G). A letter of April 20, 2018 was also sent to the parents of A.G. advising them of the results of the investigation. The results of the investigation were that a violation of the schools' code of conduct had taken place and that interventions and remedial measures were put into place (R-H). The final results of the investigation that Mr. Dicken signed off on were contained in exhibit R-F which bears his signature.

Mr. Dicken approved the in-school suspension punishment for D.P. An April 23, 2018 letter was sent out to D.P.'s parents alerting them to the findings and advising them of their rights to appeal (R-D). These are the standard letters the District uses advising the parties of the investigation and outcome. D.P.'s parents requested a hearing before the Board of Education and Mr. Dicken sent them a letter dated April 30, 2018 advising them that the hearing was scheduled for May 9, 2018 (R-B). The minutes of the Executive Session of the Board of Education for May 9, 2018 reflect that D.P.'s mother had a hearing in front of the Board regarding a HIB violation against her son. J.P. had a written statement that she read to the Board. Some questions were

asked of her and she thanked the Board (R-N). After J.P. left the Board meeting, the HIB team including Mr. Ferrari, Ms. White and Dr. Heiken spoke and answered questions of the Board and Mr. Dicken reviewed the HIB policy with the Board as to what qualified as HIB. He does not remember the discussion between the Board and the HIB team, but it took a few minutes longer than J.P.'s presentation. A decision was not reached by the Board at the May 9, 2018 meeting. The Board revisited the matter at the June 20, 2018 meeting which was the next board of education meeting. The Executive Session meetings for June 20, 2018 indicated that Mr. Dicken recommended affirming the HIB determination for D.P.(R-W). Mr. Dicken sent a letter to D.P.'s parents on June 25, 2018 advising them that the Board affirmed the results of the HIB investigation and further advised them of their right to appeal to the Commissioner of Education (R-E). The next thing Mr. Dicken received regarding this dispute was the due process petition.

D.P. received an in-school suspension which was not the most severe punishment. The fact that D.P. was found to have violated the school HIB policy and received an in-school suspension does not become a part of his school record and would not be provided to anyone requesting his school records including employers or colleges.

On cross-examination, the Board voted on Mr. Dicken's recommendation to find a HIB violation. The Board was not provided with all of the witnesses' statements. Mr. Dicken briefly reviews the facts of the case in open session without identifying the students. His recollection was that J.P. was asked questions by the Board when she said she was not asked any questions by the Board. The Superintendent is the last one to review the investigation and he reviewed it all. He was comfortable with the materials presented to him and his discussions with the HIB team. He was okay with the teacher not being interviewed based on what was presented to him.

D.P. testified on his own behalf. He admitted that he called A.G. and others in his shop class 'gay'. A.G. called D.P. and others 'gay' also. He did not think A.G. was gay. A.G. had a girlfriend at the time. D.P. did not call A.G. 'gay' with intent to cause him harm.

Discussion

Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App Div. 1958).

In general, I believe all of the witnesses testified credibly, however Mr. Ferrari's testimony regarding the existence of an imbalance of power due to A.G.'s sexual orientation was not supported by the record. A review of the record indicates that the respondent basically found D.P. to have committed a HIB violation because D.P. admitted that he called A.G. gay. There was no consideration given to D.P.'s motivation in making the statement. He was not motivated to make the statement based on an actual or perceived characteristic such as sexual orientation because D.P. knew A.G. was straight. Mr. Ferrari admitted he did not think D.P. believed A.G. was gay. There can be no HIB finding without the required motivation. Mr. Ferrari testified that had D.P. not made the admission there would have been a different outcome. It is interesting to note that G.C. who did not admit to calling A.G. gay, but was said to have called A.G. gay by another witness J.M., was only found to have violated the Student Code of Conduct. J.M. also stated in his written statement that he did not know if the statements were made in jest. Mr. Ferrari also initially testified candidly that he did not know and could not say whether D.P., under the circumstances, knew or should have known that his comments would cause harm to A.G. and he really did not know how to answer that question. Respondent's HIB policy, as written, did not require an initial finding that D.P. knew, or should have known, under the circumstances that his conduct would cause harm to A.G.

Although Mr. Nicastro was called as an expert to defend respondent's HIB policy as conforming to the statute, I was not persuaded by his explanation, since he admitted that the school policy does not mirror N.J.S.A. 18A:37-14 and that the statute controls and is the best evidence of the legislative intent.

Based upon due consideration of the testimonial and documentary evidence presented at this hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following as **FACTS**:

A.G., a classmate of D.P., had given a written statement dated March 27, 2018 indicating that in the last couple of months, students in his shop class had been making rude remarks/comments to him, including D.P., G.C., J.M. and M.A. (R-L). Petitioner's son, D.P. gave a written statement dated March 28, 2018 to his guidance counsellor and the schools HIB specialist, Edward Ferrari, wherein D.P. wrote,

> "Yes, I called him gay but in a joking matter. We all know we are straight and mess with each other. I never meant it to be in a serious matter and truly apologize that it was taken the wrong way."

D.P. further added to his statement on April 6, 2018, following the suggestion of Mr. Ferrari, that:

> "In the beginning of the year, our shop class had an inside joke, "Dude, you're gay" and we all made sure no one would be offended by it. We all said to each other all the time knowing it was a joke. A.G. would say it as much as everyone else. I don't understand why people would get offended if they are saying it too." (R-J).

Written statements were also taken from the other accused students G.C., J.M. and M.A., none of whom admitted to making any rude comments to A.G. (R-P). J.M.'s statement corroborated that G.C. also called A.G. gay. Other independent witnesses, A.U. and A.R., were also interviewed and stated that they did not notice anyone picking on A.G (R-Q). No statement was taken of the shop teacher, Mr. McCoy, in whose class the incidents occurred because Mr. McCoy had advised Mr. Ferrari that he did not hear or observe any HIB conduct in his classroom, or he would have prevented and reported same.

J.M. and M.A. were exonerated. G.C. was found not to have committed an act of HIB, but to have violated the Student Code of Conduct and received a 3:00 p.m. – 6:00

p.m. detention. D.P. was found to have committed an act of HIB by making insulting and demeaning comments and received an in-school suspension (R-F).

Out of the four boys who were accused, the fact that D.P. admitted to calling A.G. 'gay' was the basis for respondent's finding that D.P.'s conduct was in violation of respondent's HIB policy and not the others.

D.P. did not believe that A.G. was gay.

D.P.'s statements to A.G. that "Dude, you're gay" were not motivated by any actual or perceived characteristic such as sexual orientation. The statements were motivated by D.P. and other students joking around with each other.

D.P. did not know, nor reasonably should have known that his comments would cause harm to A.G. as they were made in jest and that D.P. knew A.G. was not gay and had a girlfriend.

I further **FIND** as **FACT** that the Board's HIB definition as set forth in its Policy 5512 B and also as set forth in its HIB Investigation Report (R-F) does not conform to the HIB definition set forth in N.J.S.A. 18A:37-14. N.J.S.A. 18A:37-14 does not contain an **or** between sections (a) and (b). The statute as written demonstrates the legislative intent and is controlling.

LEGAL ANALYSIS AND CONCLUSION

New Jersey enacted the Anti-Bullying Bill of Rights Act (Act) to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises. N.J.S.A. 18A:37-13.1(f). 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.

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 Sewage Co. v. Dep't of Envtl. 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. and A.L. ex rel L.L. v. Tenafly Bd.

Petitioner bears the burden of proof by a preponderance of the credible. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); DYFS v. M.R., 314 N.J. Super. 390, 414 (App. Div. 1998); In re Allegations of Sexual Abuse at E. Park High Sch., 314 N.J. Super. 149, 168 (App. Div. 1998). This tribunal has the duty to decide in favor of the party on whose side the weight of the evidence preponderates, and according to a reasonable probability of truth. Jackson v. Del., Lackawanna and W. R.R., 111 N.J.L. 487, 490 (E.&A. 1933). Evidence is said to preponderate "if it establishes 'the reasonable probability of the fact.'" Jaeger v. Elizabethtown Consol. Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) (citation omitted). The evidence must "be such as to lead a reasonably cautious mind to the given conclusion." Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275 (1958).

A close review of respondent's HIB Policy 5512 B, "Harassment, Intimidation and Bullying," indicates that the Board's definition of HIB does not mirror the New Jersey law in that respondent's policy contains an **"or"** between 3(a) and 3(b) whereas N.J.S.A. 18A:37-14(a) and (b) does not. The plain reading of the statute is that a reasonable person should know, under the circumstances that the conduct will have the effect of harming a student **and** the conduct has the effect of insulting or demeaning a student or creates a hostile educational environment for the student. The legislature, in enacting the statue, did not choose to insert an "or" between N.J.S.A. 18A:37-14(a) and N.J.S.A. 18A:37-14(b). Therefore, the statute should be read in the conjunctive which requires an initial finding that a reasonable person knew or should have known that the conduct would have the effect of harming a student. The statute was not written to be a strict liability statute and first requires a finding that the actor knew or should have known that the conduct would cause harm. To the extent that respondent has implemented HIB Policy 5512 B which sets forth a broader definition of HIB than set forth in N.J.S.A. 18A:37-14, I **CONCLUDE** that respondent has acted in a manner that is arbitrary, capricious and unreasonable.

It is clear that in determining whether a HIB violation took place, respondent did not consider whether D.P. knew or should have known under the circumstances that his

conduct would have the effect of harming A.G. Mr. Ferrari initially indicated that he did not know and that it was difficult for him to answer that question. Later in his testimony he indicated that D.P. was a smart boy and should have known his comments would cause harm. However, when finding a HIB violation according to their policy 5512 B as written, the respondent only had to satisfy one of the three prongs, either 3(a) or 3(b) or 3(c). Their focus was that D.P. admitted to making the comments and that the comments insulted, and demeaned A.G. Mr. Ferrari testified that the outcome would have been different if D.P. had not admitted to calling A.G. gay.

D.P. admitted that he called A.G. gay, however explained that it was a joke and that they all called each other gay, even though they all knew they were all straight. D.P. did not know, or should he have known, under the circumstances, that his comments to A.G. would have the effect of causing him harm, since he did not believe him to be gay and the boys were all joking with each other. D.P. did not believe that A.G. was gay and knew he had a girlfriend. D.P.'s comments were not motivated by any actual or perceived characteristic, such as sexual orientation, because D.P. knew A.G. was straight, had a girlfriend, was not gay and the boys were all joking with each other in calling each other 'gay'.

Since D.P.'s comments were not motivated by any actual or perceived characteristic, such as sexual orientation, his conduct does not rise to the level of a HIB violation. His comments, although certainly not condoned by this tribunal, at most would be more appropriately characterized as constituting a violation of the school code of conduct for making insulting and demeaning comments to A.G. D.P. was candid and truthful in admitting to calling A.G. gay. He also explained the circumstances surrounding the comments. I **CONCLUDE** that the respondent found D.P. in violation of the HIB policy because of D.P.'s admission yet acted in utter disregard of the facts in failing to consider D.P.'s explanation of the circumstances surrounding the comments and the fact that D.P.'s comments were not motivated by any actual or perceived characteristic, such as sexual orientation of A.G.

A.G. had accused three other students of making rude remarks to him. There was corroboration by at least one other student, J.M., (in addition to A.G. and D.P.) that G.C. also called A.G. 'gay' (R-P). G.C. was charged with a code of conduct violation

and received a 3:00 p.m. – 6:00 p.m. detention, whereas D.P. was found to have committed a HIB violation and received a one day in-school suspension. I further **CONCLUDE** that respondent's disparate treatment of D.P. in sustaining a HIB violation against him and imposing more severe punishment for the same conduct as G.C., is arbitrary, capricious and unreasonable.

Based on the whole of the credible evidence presented, I **CONCLUDE** that petitioner has met her burden of proof that the respondent acted in an arbitrary, capricious and unreasonable manner in finding that D.P.'s conduct constituted an act of HIB as set forth in N.J.S.A. 18A:37-14.

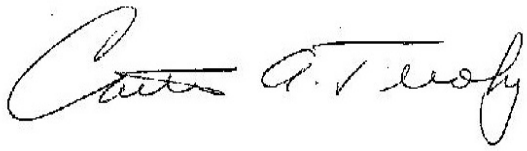
ORDER

Based on the foregoing, I **ORDER** that the petition be **GRANTED**. The Board's decision finding D.P. to have committed an act of HIB is **REVERSED** and **AMENDED** to a finding that D.P.'s conduct constituted a violation of the Student Code of Conduct.

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

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

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



February 5, 2020
DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency: February 5, 2020 (emailed)

Date Mailed to Parties:

CAT/mel

APPENDIX

LIST OF WITNESSES

For Complainant:

D.P.

For Respondent:

Edward Ferrari
Philip Nicastro
Michael Dicken

LIST OF EXHIBITS IN EVIDENCE

For Complainant:

None

For Respondent:

R-A GCIT Parent/Student Handbook Excerpt (two pages)
R-B April 30, 2018 letter from Superintendent to D.P.'s parents
R-C March 29, 2018 letter from Principal to D.P.'s parents (two pages)
R-D April 23, 2018 letter from Principal to D.P.'s parents
R-E June 28, 2018 letter from Superintendent to D.P.'s parents
R-F Respondent's HIB Investigation Report Form (four pages)
R-G March 29, 2018 letter from Principal to A.G.'s parents (two pages)
R-H April 20, 2018 letter from Principal to A.G.'s parents
R-I Petition dated September 9, 2018 (two pages)

R-J D.P.'s written statement

R-K Respondent's HIB Policy 5512 (seventeen pages)

R-L A.G.'s written statement

R-M SSDS Incident Report Form (three pages)

R-N May 9, 2018 Executive Session Meeting Minutes

R-O N.J.S.A. 18A:37-14

R-P Written statements of J.M., M.A. and G.C. (three pages)

R-Q Written statements of A.U. and A.R.

R-R Consequences and Remedial Measures form (two pages)

R-S Certification of Michael Dicken (three pages)

R-T January 28, 2018 email from D.P.'s mother to Mr. Branderbit

R-U J.P.'s April 17, 2018 email to the Principal; D.P.'s parents April 30, 2018 letter to the Superintendent; and written statement read by J.P. to the Board at meeting of May 9, 2018 (three pages)

R-V Initial Report of HIB and March 27, 2018 email from A.G.'s mother (two pages)

R-W June 20, 2018 Executive Session Meeting Minutes

R-X Certification of Edward Ferrari (three pages)

R-Y May 21, 2019 email Opinion Letter from Strauss Esmay Associates to Mr. Dicken with attachments (R-Y, 1 – 3) (seventeen pages)