

144-23
OAL Dkt. No. EDU 10889-22
Agency Dkt. No. 309-11/22

New Jersey Commissioner of Education

Final Decision

<p>P.F., on behalf of minor child, D.F.,</p> <p>Petitioner,</p> <p>v.</p> <p>Board of Education of the High Point Regional High School District, Sussex County,</p> <p>Respondent.</p>
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered.¹ The parties did not file exceptions.

In this matter, petitioner challenges the Board’s determination that her daughter was not the victim of harassment, intimidation, and bullying (HIB) when another student allegedly grabbed her by the arm and would not let go. Petitioner also alleged that the student had stolen D.F.’s Chromebook twice before turning it in, claiming that she had found it. Following an investigation in accordance with the Anti-Bullying Bill of Rights Act, *N.J.S.A. 18A:37-13 et seq.*, the Board found the incident was the result of a conflict between students that was not motivated by a distinguishing characteristic of D.F., and therefore concluded that the incident did not meet the definition of HIB. Nevertheless, to address the conflict, the Board had the students sign a no-contact order and adjusted class schedules as necessary.

¹ The Commissioner was not provided with a transcript of the February 10, 2023 hearing in this matter.

Following a hearing on the merits, the Administrative Law Judge (ALJ) concluded that the petitioner had not met her burden of demonstrating that the Board's determination regarding the HIB allegations was arbitrary, capricious, or unreasonable.

Upon review, the Commissioner agrees with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination, as the alleged actions were not motivated by a distinguishing characteristic of D.F. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition is hereby dismissed.

IT IS SO ORDERED.²


ANGELINA ALLEN McMILLAN, Ed. D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 16, 2023

Date of Mailing: May 17, 2023

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 10889-22

AGENCY DKT. NO. 309-11/22

P.F. ON BEHALF OF MINOR CHILD, D.F.,

Petitioner,

v.

HIGH POINT REGIONAL HIGH SCHOOL

DISTRICT BOARD OF EDUCATION,

SUSSEX COUNTY,

Respondent.

P.F., petitioner, pro se

Eric L. Harrison, Esq., for respondent (Methfessel & Werbel, attorneys)

Record Closed: February 21, 2023

Decided: April 4, 2023

BEFORE **KELLY J. KIRK**, ALJ:

STATEMENT OF THE CASE

Petitioner, P.F., challenges the decision of the High Point Regional High School District Board of Education (Board) that the incident complained of did not constitute harassment, intimidation, and bullying (HIB).

PROCEDURAL HISTORY

By letter dated October 27, 2022, the Board notified petitioner that “the incident in question was properly determined to not have been a HIB.” On November 15, 2022, petitioner filed with the New Jersey Department of Education (Department) a Pro Se Petition of Appeal (Petition) alleging that her “daughter [D.F.] was being bullied during the 2020/21 school year which has now carried over into the 2022/23 school year” and that the superintendent, administrators and board of education were not following policy, and requesting the following relief: “Superintendent and BOE to admit that this is indeed HIB”; “Have my daughter complete art work and a functional resume from the 2022/23 school year”;¹ “Enforce HIB laws, policies, and safety for all students”; and “Stop the HIB incidences that are flowing over into the 2022/23 school year.” On December 1, 2022, respondent filed its answer to the Petition.

The Department transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the rules of procedure established by the Department of Education to hear and decide controversies and disputes arising under school laws, N.J.A.C. 6A:3-1.1 to -1.17. The case was filed at the Office of Administrative Law (OAL) on December 6, 2022. The hearing was held on February 10, 2023. The record closed on February 21, 2023, after receipt of the parties post-hearing submissions.

FACTUAL DISCUSSION

Preliminary Facts

P.F. testified on behalf of petitioner. School anti-bullying specialist (ABS) James Rice testified on behalf of respondent. Having had an opportunity to consider the

¹ The matter transmitted to the OAL was a challenge to the Board’s HIB investigation and therefore this relief falls outside the scope of the subject matter and is not addressed herein.

evidence and to observe the witnesses and make credibility determinations based on the witnesses' testimony, I **FIND** the following preliminary **FACTS**:

High Point Regional High School (HPRHS) Harassment—Intimidation—Bullying Report 33-21-22, initial referral date May 10, 2022 (May 2022 HIB Report), reflects that there was an investigation into an incident between D.F. and another student, P.D., that occurred in a school hallway on May 4, 2022.

James Rice, who previously worked as an active police officer for twenty-five years, is employed at HPRHS as the director of safety and security and as the school anti-bullying specialist (ABS). Rice was on vacation on May 4, 2022, so the incident was initially handled by the school assistant principal. Upon his return from vacation, Rice was directed by the school principal to conduct a HIB investigation. Rice prepared the May 2022 HIB Report and summarized his factual findings as follows:

On 5/4/2022, it was reported to AP Schleer that an incident involving [redacted] and [redacted] had occurred in the 400 wing hallway near Room 409 at the top of the ramp. AP Schleer had conducted an investigation and reviewed video tape of the incident which involved the two students conversing, then [redacted] ["grabbing" [redacted] left wrist and pulling [redacted] toward [redacted]. AP Schleer concluded that the arm pulling was an attempt by [redacted] to pull [redacted] towards her. [Redacted] did not come to school on 5/5/22, 5/6/22, or 5/9/22. The administration contacted [P.F.] about the absences, at which time [P.F.] said that she felt [redacted] was being bullied and that she was not allowing [redacted] to return to school until "something is done."

On 5/10/2022, I was directed by Principal Tallamy to conduct an HIB investigation in reference to the conflict between the two students that had occurred on 5/4/2022 and what may have been going on prior to that incident.

Myself, AP Schleer, and Mrs. Delaney (acting as Case Manager) now spoke to a witness to the incident, [redacted] who is [redacted] boyfriend.² [Redacted] told us that [redacted] and [redacted] are friends, but that there was an

² The boyfriend referred to herein is the boyfriend of D.F.

issue previous to 5/4 where [redacted] took [redacted] Chromebook. [Redacted] said that [redacted] brought the Chromebook to the office and said she “found it.” [Redacted] said that [redacted] was not talking to [redacted] because of the Chromebook issue and planned to avoid her for 2 days. [Redacted] said that on 5/4, [redacted] came up to talk to [redacted] and that [redacted] wanted to hug [redacted] and that [redacted] grabbed [redacted] arm to give her the hug. [Redacted] said that he stepped between them and [redacted] let go. [Redacted] provided a written statement about what we talked about (see statement).

Myself, AP Schleer, and Mrs. Delaney (acting as Case Manager) now spoke to [redacted] about the incident. [Redacted] said that she took the Chromebook because [redacted] left it in the lunchroom and that she turned it into the Main Office so they could give it back to her. [Redacted] said that [redacted] is her friend and that she wanted a hug. [Redacted] said that [redacted] wouldn't give her a hug so she grabbed her arm to pull her towards her to get a hug. [Redacted] said that [redacted] stepped in and she let go of [redacted] arm. They all went to class after that.

At approximately 2:45 p.m., Myself and Mrs. Imhoff, (acting as Case Manager per Mrs. Delaney) spoke to [P.F.] and [redacted] via telephone in order to gather information from [redacted] about this incident. [Redacted] told me that Last week (Week of 5/2/22 through 5/6/22) that [redacted] “started acting different (explained different as weird). [Redacted] continued by saying that on Monday, [redacted] took her Chromebook and that it wasn't the first time. Then on Wednesday, [redacted] came up to her and [redacted] while they were walking in the hallway near Room 409. [Redacted] said that they met, and [redacted] grabbed her left arm and pulled her towards her. I asked [redacted] said anything, [redacted] said yes, but she forgets exactly what it was. [P.F.] added that someone should have talked to [redacted] sooner. I asked [redacted] why she did not come to school since that incident took place and [redacted] said that she was afraid that [redacted] would do that again. I then asked [redacted] if that incident made her feel uncomfortable, to which she replied yes. [P.F.] added that [redacted] wasn't uncomfortable, that she was afraid. I asked [P.F.] to have [redacted] email me a statement about the incident, to which she told me that [redacted] would. No email was ever sent.

On 5/11/2022, a meeting took place with [P.F.], [redacted], and School Administration. A No Contact Order was put in

place and signed by [redacted], [P.F.] and AP Schleer. I was not present at this meeting.

On 5/13/2022, [redacted] came to school and she provided me with a written statement about the incident at that time. (see statement). Later this day, Myself, AP Schleer and Mrs. Delaney (acting as Case Manager) met with [redacted] signed the No Contact Order and Mrs. Delaney went over everything with her. [Redacted] said she understood.

Based on the information gathered as part of this investigation, I have concluded that this incident is the result of a conflict between the two students and that no distinguishing characteristic is present at this time. This incident is classified as unfounded as a HIB. Report submitted by ABS Rice.

[R-1.]

The May 2022 HIB Report reflects that Rice's investigation found no substantial disruption of or interference with operations of the school or rights of students, no actual or perceived distinguishing characteristic, no physical or emotional harm or fear of harm to a student or his or her property, no effect of insulting or demeaning a student or group of students, and no creation of "hostile educational environment" interfering with a student's education. The handwritten questions on the last page of the May 2022 HIB Report were from Superintendent Ripley and were answered by Rice and the assistant principal and resulted in no changes to the May 2022 HIB Report.

By email dated May 10, 2022, P.F. advised that before she would allow D.F. to return to school she required the following: P.D. to be removed from D.F.'s gym class; P.D. to be removed from the adjoining art room; P.D. to sit in a different area/room during lunch; D.F. to be allowed to use her cell phone or a school phone privately to immediately inform her of issues with P.D.; and a member of HPRHS administration to immediately advise her of any issue with P.D. (P-1.)

An HPRHS No-Contact Order, dated May 11, 2022, reflects that "[o]n the basis of information obtained in statements, interviews and incident report at this time it is found that there is reasonable cause to believe that the . . . students have been involved in a

dispute that requires action by the [HPRHS] District” and ordering, inter alia, that the students: “shall have no contact of any nature, to include in person, by telephone, in writing, through e-mails, instant messages or [otherwise],” “shall not personally or through third parties (friends), threaten assault, stalk, attack, harass, bully, intimidate, or otherwise abuse in any nature each other,” “shall be expected to keep a reasonable distance from each other while attending school,” “shall avoid each other is [sic] the hallways, cafeteria, and classrooms,” and “shall maintain distance from each other that will avoid any type of physical confrontation.” (R-2.) The No-Contact Order reflects that it was effective immediately and would remain in effect unless modified or terminated “by the Main Office,” that “a party that violates this order faces immediate disciplinary action,” and that “[v]iolation may occur even if the parties consent to contact” because only HPRHS administration could release the parties from the No-Contact Order. (R-2.) P.F. and D.F. signed the No-Contact Order on May 11, 2022, and D.P. signed the No-Contact Order on May 13, 2022.

By email dated May 11, 2022, principal Jonathan Tallamy confirmed that P.D. had been “changed to a different PE period.” (P-1.) By email dated May 15, 2022, P.F. advised that D.F. had seen P.D. in gym class. (P-1.) By emails dated May 16, 2022, and May 17, 2022, Principal Tallamy advised that the PE schedule is sometimes tricky with activities and locations, and that it was an issue due to weather, but there was no interaction between D.F. and P.D. and it would not be a problem in the future, regardless of weather. (P-1.) By email dated May 22, 2022, P.F. alleged that D.F. had been the victim of three HIB incidents and advised that if she did not receive written confirmation that P.D. was removed from D.F.’s gym class she would keep D.F. out of school. By email dated May 23, 2022, Superintendent Ripley advised that he was reviewing the May 2022 HIB Report and that he would contact her to discuss the process and management of the issue. (P-1.)

By email dated June 2, 2022, P.F. advised that there was an incident in school on June 1, 2022, wherein P.F. and her boyfriend were being made fun of and harassed in the auditorium and another student, D.M., said to them they were “special education kids,” and that contrary to her agreement with the District, she was not notified. P.F. further advised that she was concerned about several enumerated changes in her daughter’s

demeanor. (P-1.) Superintendent Ripley replied, stating, inter alia, that he personally communicates with the director, D.F.'s case manager, and other administrators several times a week to monitor D.F.'s social, emotional, and academic health, and that a HIB investigation would be initiated. (P-1.) Rice investigated the June 1, 2022, incident and determined that it met the HIB criteria.

By letter dated July 1, 2022, Principal Tallamy notified petitioner that the District did not find evidence that D.F. was involved in an act of HIB or any other Code of Conduct violation with regard to the May 4, 2022,³ incident, that a follow-up session had been conducted with D.F. and a school counselor, and that no administrative action was necessary at that time. (R-3.) The July 1, 2022, letter further reflects that the following services were offered for D.F.: "Met with ABS, Assistant Principal [and] Case Manager"; "No contact order in place"; "Guidance Counselor follow up as needed"; and "Reminder of student support resources." (R-3.) The July 1, 2022, letter advised petitioner that she could request a hearing before the Board. (R-3.) On July 13, 2022, petitioner emailed Principal Tallamy in response to the July 1, 2022, letter stating that she "would like to meet with the Board of Education regarding the incident" and that "[w]e can do it in executive session; however, the public does need to know about situations like this being swept under the carpet." (R-4.) On July 13, 2022, superintendent Scott Ripley emailed petitioner advising that she could present her concerns to the Board during public comments at the next meeting on July 26, 2022. (R-4.) Shortly thereafter, Superintendent Ripley again emailed petitioner, advising, "If however you are seeking an official appeal to a HIB determination, please provide the request and the context regarding the case in question." (R-4.) Petitioner replied that "this is an official appeal request" of a "harassment/assault incident" and subsequent emails confirmed that it was for the May 4, 2022, incident. (R-4.) The HIB appeal was scheduled for the Board's July 21, 2022, at 6:00 p.m. virtual meeting. (R-4.) Rice did not attend the Board meeting.

³ The letter incorrectly states, "the incident of 5/10/22" (the date on which Rice's investigation was commenced).

A memorandum dated July 21, 2022, from anti-bullying coordinator Seamus Campbell to Superintendent Ripley summarizes events related to two situations that were investigated as possible HIB, to wit: 33-21-22 and 38-21-22.

33-21-22

On **5/4/22**, [redacted] notified Assistant Principal Mr. Michael Schleer of an incident involving herself and another student. [Redacted] communicated an allegation to Mr. Schleer that earlier that day, a student had physically assaulted her. Mr. Schleer began to investigate [redacted] allegations immediately. Mr. Schleer contacted High Point's Security Office in an attempt to obtain surveillance footage of the alleged incident. Mr. Schleer attempted to make contact with the student's parent, [P.F.], by phone on 5/4/22, but was unable to establish contact.

On **5/5/22**, Mr. Schleer viewed the video footage in question, and called and spoke with [P.F.] over the phone.

On **5/6/22**, Mr. Schleer attempted to meet with [redacted], but she was absent from school. Mr. Schleer spoke with Mr. Tallamy and it was decided that [P.F.] should be invited to attend a meeting at her earliest convenience with the High Point Administration as well as Special Education Case Manager, Ms. Tess Roman. **Mr. Tallamy directed Mr. Rice to conduct a H.I.B. investigation.** Mr. Tallamy made several attempts to schedule a meeting with [redacted] and her mother, [P.F.] finally agreed to come in for a meeting on 5/9/22 at 3:30 p.m.

On **5/9/22**, an in person meeting was held at High Point. Attendees included [redacted], [P.F.], Mr. Tallamy, Mr. Schleer, Ms. Roman and Mrs. Delaney (Supervisor of Pupil Personnel Services).

On **5/13/22**, Mr. Rice procured a written statement from [redacted].

Additional Information and Context:

[Redacted] was absent from school on 5/6, 5/9, 5/10, 5/11. An essential component of a H.I.B. investigation is obtaining a written statement from the alleged victim. [Redacted] persistent absences prolonged the time it took to complete this investigation.

NJ regulations stipulate that a “distinguishing characteristic” must be a component of a conflict in order for it to be considered a H.I.B. Mr. Rice’s investigation concluded that no distinguishing characteristic existed, and thus the incident and related incidents amounted to a “conflict” among students and not a H.I.B.

As is always the case, High Point provides structured support and proactive measures to remediate such conflicts. For this conflict, a “no contact order” was developed and signed by students and parents which facilitated preventing further conflict. [Redacted] case manager, Ms. Roman, and other HP staff, consulted with her regarding ways in which to avoid future conflict. Other students involved in this conflict were provided with similar support. Also, one or more student schedules were changed in order to reduce contact between students having a conflict and several teachers were notified of the need to supervise specific students at specific times in order to prevent subsequent conflicts.

On **5/15/22**, [P.F.] lodged a complaint to Mr. Tallamy claiming that [redacted] and another student might have been in the same gym class despite schedule changes. Mr. Tallamy responded to [P.F.] through email and explained that inclement weather sometimes causes Phys. Ed. classes to share facilities.

On **5/20/22**, Mr. Tallamy signed Mr. Rice’s H.I.B. report and forwarded it to Dr. Ripley.

On **5/23/22**, Dr. Ripley signed the H.I.B. report affirming Mr. Rice’s investigation.

This investigation was not completed in time to be submitted for Board review at the June meeting.

On **6/28/22**, the HPBOE affirmed the HIB report 33-21-22.

38-21-22

On **6/2/22**, Mr. Rice was directed by Mr. Tallamy to initiate a HIB investigation into an incident that was reported to have occurred in the Auditorium on 6/1/2022. The report involved [P.F.], [redacted] mother, who alleged via email that [redacted] and her boyfriend, [redacted], were “being made fun of” “aka harassed” by another student who called them “special education kids.”

The ensuing investigation involved numerous interviews and meetings involving [redacted], several other students, Ms. Schleer and Ms. Roman. Based on the evidence reviewed as part of this investigation, Mr. Rice concluded that [redacted] was a victim of a HIB.

On **6/215/22** [sic], Mr. Tallamy signed Mr. Rice's H.I.B. report and forwarded it to Dr. Ripley.

On **6/20/22**, Dr. Ripley signed the H.I.B. report affirming Mr. Rice's investigation.

On **6/28/22**, the HPBOE affirmed the HIB report 38-21-22.

[R-6.]

The HPRHS July 21, 2022, virtual-meeting minutes reflect, in pertinent part, the following:

HIB Appeal

The Committee discussed an HIB incident and the parties involved. The committee is scheduled to meet (virtually) with the parent at 6:00 this evening. At 6:07, the committee heard the appeal of the parent. At 6:55, the parent left the meeting.

[R-5.]

On July 25, 2022, petitioner emailed, among others, Superintendent Ripley and various Board members. In the email, which was several pages long, petitioner apologized for abruptly ending the July 21, 2022, meeting, noted her frustrations with the meeting, and raised multiple concerns and complaints. (R-7.) Petitioner's email also stated that her daughter "is suffering emotionally, socially, and academically from this incident." (R-7.)

A letter dated October 27, 2022, from Superintendent Ripley to petitioner states as follows:

Please accept this letter as an official notification and resolution of the HIB Appeal about which you met with the

Board of Education on Thursday July 21, 2022 at 6:05 p.m. During that meeting you presented your belief that your daughter had been "HIBed" by another student. It was your stated belief, as communicated to the Board of Education, that the district's determination that it was not a HIB was in error. During that meeting, you became frustrated that the Board communicated their belief that the matter did not meet the parameters of a HIB. Prior to resolving the matter your agitation resulted in your stating that you were withdrawing the HIB Appeal and then you promptly disconnected from the meeting. Therefore, this letter shall serve as official notice of the HIB Appeal meeting summary and Board determination supporting the district's determination that the incident in question was properly determined to not have been a HIB. Please let me know if you have any further questions.

[R-8.]

Testimony

P.F.

D.F. was definitely singled out. Her Chromebook was stolen twice and when she asked the main office who found the Chromebook, she was told P.D. had found it both times. P.D. and her friends are continually harassing D.F. and HPRHS does not provide her with the required documentation. P.D. admitted that she also grabbed D.F.'s arm because she was mad. D.F.'s boyfriend's statement was that P.D. was told to stop five times before he stepped between them. She kept D.F. home after the May 4, 2022, incident because D.F. said she was afraid, not just uncomfortable. D.F. was smiling in the video, but because of her communication and multiple handicaps, D.F. smiles when she is in a stressful or uncomfortable situation.

Trooper Popeck, the school resource officer, told her in two separate conversations that he was upset that D.F. was being harassed and bullied. Nothing is being done to stop the HIB incidents. Since April 2022 there have been four HIB incidents, not including several other incidents that P.F. has let slide. On the last day of school there was an incident between D.F. and P.D. P.F. received a call from two administrators who advised that P.D. had violated the No-Contact Order and approached

D.F., and that if it had not been the last day of school D.F. would have been given detention because she answered P.D.'s question. So, somewhere along the line, we eliminated the No-Contact Order because, due to her communication and multiple handicaps, D.F. does not understand the No-Contact and had always been taught that if someone talks to her, to talk back.

She is trying to protect D.F. D.F. is still on home instruction because she has considered suicide and needs a safety plan, but no safety plan is being created. D.F. has been involved in four HIB incidents with P.D. D.F. is aware that she has other rights, but she is a single parent and has no money, so it is difficult for her.

James Rice

Rice determined that the May 4, 2022, incident was a student conflict as a result of the Chromebook situation and not a HIB incident because it did not meet the HIB criteria. P.F. had chosen to keep D.F. home, asserting that it was not a safe situation for her, but he was not able to determine if D.F. was actually in fear or if that was a parent choice. A no-contact order is entered for non-HIB situations for students involved in conflicts to separate them, allow time to cool off, and to avoid interaction that would further the incident. Students may choose to reenact a friendship, but, if not, it sets a clear boundary or line not to cross so the students may coexist without creating further conflict.

LEGAL ANALYSIS AND CONCLUSION

It was the intent of the Legislature in enacting the "Anti-Bullying Bill of Rights Act" (ABR) 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; N.J.S.A. 18A:37-13.2. Notwithstanding any provision of N.J.S.A. 52:14B-1 et seq. or any other law to the contrary, the commissioner may adopt such rules and regulations as the commissioner deems necessary to implement the provisions of the ABR.

“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 N.J.S.A. 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.]

Each school district shall adopt a policy prohibiting harassment, intimidation or bullying on school property, at a school-sponsored function or on a school bus. N.J.S.A. 18A:37-15(a); N.J.A.C. 6A:16-7.7(a). School districts have local control over the content of the policy, except that the policy must contain, at a minimum, the twelve components enumerated at N.J.S.A. 18A:37-15(b). See also N.J.A.C. 6A:16-7.7(a)(2). A school district is not prohibited from adopting a policy that includes components that are more stringent than the aforesaid components. N.J.S.A. 18A:37-15(f); N.J.A.C. 6A:16-7.7(b). The superintendent of schools shall appoint a district anti-bullying coordinator, and the principal in each school in a school district shall appoint a school anti-bullying specialist. N.J.S.A. 18A:37-20(a)–(b). The school anti-bullying specialist shall (1) chair the school safety team; (2) lead the investigation of incidents of harassment, intimidation, and

bullying in the school; and (3) act as the primary school official responsible for preventing, identifying, and addressing incidents of harassment, intimidation, and bullying in the school. Ibid.

All acts of harassment, intimidation, or bullying must be reported to the school principal verbally the same day and in writing within two days of when the school employee or contracted service provider witnessed or received reliable information regarding any such incident. N.J.S.A. 18A:37-15(b)(5). The written report must be on a numbered form developed by the Department of Education and must be submitted promptly by the principal to the superintendent of schools. Ibid. The school district must provide a means for a parent or guardian to complete an online numbered form to confidentially report an incident of harassment, intimidation, or bullying. Ibid. The principal must inform the parents or guardians of all students involved in the alleged incident, and keep a written record of the date, time, and manner of notification to the parents or guardians. Ibid. A redacted copy of the form that removes all student identification information shall be confidentially shared with the board of education after the conclusion of the investigation, if a hearing is requested by a parent or guardian pursuant to N.J.S.A. 18A:37-15(b)(6)(d). Ibid.

An investigation shall be initiated by the principal or the principal's designee within one school day of the report of the incident and shall be conducted by a school anti-bullying specialist. N.J.S.A. 18A:37-15(b)(6)(a). The investigation shall be completed as soon as possible, but not later than 10 school days from the date of the written report of the incident of harassment, intimidation, or bullying. Ibid. The results of the investigation must be reported to the superintendent of schools within two school days of the completion of the investigation, and in accordance with regulations promulgated by the State Board of Education pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the superintendent may decide to provide intervention services, establish training programs to reduce harassment, intimidation, or bullying and enhance school climate, impose discipline, order counseling as a result of the findings of the investigation, or take or recommend other appropriate action. N.J.S.A. 18A:37-15(b)(6)(b). The results of each investigation shall be reported to the board of education no later than the date of the board of education meeting next following the completion of

the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent. N.J.S.A. 18A:37-15(b)(6)(c).

Parents or guardians of the students who are parties to the investigation are entitled to receive information about the investigation, in accordance with federal and State law and regulation, including the nature of the investigation, whether the district found evidence of harassment, intimidation, or bullying, or whether discipline was imposed or services provided to address the incident of harassment, intimidation, or bullying. N.J.S.A. 18A:37-15(b)(6)(d). This information must be provided in writing within 5 school days after the results of the investigation are reported to the board. Ibid. A parent or guardian may request a hearing before the board after receiving the information, and the hearing shall be held within 10 days of the request. Ibid.; N.J.A.C. 6A:16-7.7(a)(2)(xi)(2). The board shall meet in executive session for the hearing to protect the confidentiality of the students. N.J.S.A. 18A:37-15(b)(6)(d). At the hearing the board may hear from the school anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents. Ibid. At the next board of education meeting following its receipt of the report, the board shall issue a decision, in writing, to affirm, reject, or modify the superintendent's decision. N.J.S.A. 18A:37-15(b)(6)(e). The board's decision may be appealed to the Commissioner of Education, in accordance with the procedures set forth in law and regulation, no later than 90 days after the issuance of the board's decision. Ibid.

The statutory definition of "bullying" does not include all violent or aggressive conduct against a student. The definition, both before and after adoption of the 2010 Anti-Bullying Act, refers to conduct that is "reasonably perceived as being motivated" by a "distinguishing characteristic" of the victim, such as, "race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory [disability]." N.J.S.A. 18A:37-14. The statute has not limited "distinguishing characteristic" to those specifically enumerated, but it has consistently required such a perceived motivation.

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.

[K.L. v. Evesham Tp. Bd. of Educ., 423 N.J. Super. 337, 350–51 (App. Div. 2011) (footnote omitted).]

Thus, an incident may even be physically, psychologically, or socially harmful, but still not meet the HIB criteria.

Petitioner argues that this is a HIB violation because of the language in the New Jersey Guidance for Parents on the Anti-Bullying Bill of Rights Act (Guidance), which reflects, “to set . . . apart from others . . . to single out,” and P.D. has singled out P.F. two times prior—stole her Chromebook twice—and this third time grabbed her arm and did not let go. Specifically, the Guidance petitioner refers to states:

The ABR does not explain the meaning of a “distinguishing characteristic.” However, the dictionary (Webster’s Ninth Collegiate Dictionary) defines the word “distinguish” as “. . . to perceive a difference in . . . to mark as separate or different . . . to separate into kinds, classes or categories . . . to set above or apart from others . . . to single out. . .” The same dictionary defines the word “characteristic” as “. . . something that identifies a person or thing or class. . .”

After an investigation by the ABS, the Board determined that this incident was ordinary student conduct—not HIB—as a result of a history of sporadic conflict between the two students. It found no substantial disruption of or interference with operations of the school or rights of students, no actual or perceived distinguishing characteristic, no physical or emotional harm or fear of harm to a student or his or her property, no effect of insulting or demeaning a student or group of students, and no creation of “hostile educational environment” interfering with a student’s education. The Board thereafter took action reasonably calculated to remediate and end the conduct—the students signed a no-contact order, staff was alerted to the potential for conflict, and some schedule/class changes were made.

The decision of a board acting within the scope of its authority is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing

that such decision was arbitrary, capricious, or unreasonable. Thomas v. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). Similarly, the action of a board which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives. Kopera v. Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). Although petitioner contends that her daughter is being set apart or singled out, the ABR nevertheless requires that it be the result of a distinguishing characteristic—such as race, color, religion, ancestry, national origin, sexual orientation, gender identity and expression, mental disability, physical disability, sensory disability—or other difference, and no such distinguishing characteristic or difference has been identified for the May 4, 2022, incident.

In view of the foregoing, I **CONCLUDE** that the Board's determination that the incident complained of did not constitute harassment, intimidation, and bullying was not arbitrary, capricious, or unreasonable and further **CONCLUDE** that the Petition should be dismissed.

Additionally, it is noted that petitioner referenced social, emotional, and academic issues, and submitted numerous additional emails (P-1) relative to, inter alia, D.F.'s individualized education plan (IEP) and IEP meetings, an alleged November 2022 HIB incident, an alleged "hit list," home instruction, and a safety plan that post-date the May 4, 2022, incident. Petitioner also submitted text messages and social-media printouts (P-2; P-3) which post-date the May 4, 2022, incident. This matter involves only an appeal of the Board's HIB determination as to the May 4, 2022, incident and therefore those emails, text messages, and social-media printouts fall outside the scope of this hearing and are not otherwise referenced herein.

ORDER

It is hereby **ORDERED** that petitioner's Petition is **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 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.

April 4, 2023



DATE

KELLY J. KIRK, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

LIST OF WITNESSES

For Petitioner:

P.F.

For Respondent:

James Rice

LIST OF EXHIBITS

For Petitioner:

- P-1 Emails
- P-2 Personal notes and printouts
- P-3 Message

For Respondent:

- R-1 HPRHS HIB Report, dated May 10, 2022
- R-2 HPRHS No-Contact Order, dated May 11, 2022
- R-3 HPRHS letter to petitioner, dated July 1, 2022
- R-4 Emails, dated July 2022
- R-5 Virtual-meeting minutes, dated July 21, 2022
- R-6 Memo, dated July 21, 2022
- R-7 Email from petitioner, dated July 25, 2022
- R-8 HPRHS letter to petitioner, dated October 27, 2022