

New Jersey Commissioner of Education

Decision

J.M., on behalf of minor child, B.M.,

Petitioner,

v.

Board of Education of the School District of
the Chathams, Morris County,

Respondent.

Synopsis

Petitioner disputed the respondent Board's finding that his son, B.M., committed an act of harassment, intimidation or bullying (HIB) against a fellow student pursuant to New Jersey's Anti-Bullying Bill of Rights Act, *N.J.S.A. 18A:37-13.2 et seq* (the Act). After an investigation by the school's anti-bullying specialist, the Board determined that B.M. violated the Act when he offered a cashew nut to A.K. – a classmate with a known and documented allergy to nuts – causing A.K. to recoil; B.M. then touched A.K.'s water bottle and lunch bag without first washing his hands. B.M. received a penalty of five days of lunch detention and a follow-up meeting with a guidance counselor. The Board asserted that B.M.'s conduct satisfied all of the elements of the statutory definition of HIB under the Act. The petitioner contended, *inter alia*, that the Board's affirmative determination of HIB was arbitrary, capricious, and unreasonable. The parties consented to resolve the case by summary decision.

The ALJ found, *inter alia*, that: the incident in question was not part of a pattern of conduct; A.K.'s mother did not seek to have B.M. receive a severe penalty for his actions in this matter; a review of the Board's HIB Report Form indicates that school officials acted defensively and overreacted to the incident between B.M. and A.K.; and the inclusion of an affirmative HIB determination in B.M.'s school record could be detrimental to him in the future. The ALJ concluded that the record did not support a finding that B.M. committed an act of HIB and that the Board's HIB determination was unjustified and excessive. Accordingly, the ALJ reversed the Board's finding of HIB and ordered that B.M.'s student record be adjusted to remove any reference to that finding.

Upon review, the Commissioner rejected the ALJ's conclusion that the Board's HIB determination was unjustified and excessive, concluding instead that the petitioner failed to establish that the Board's actions in this matter were arbitrary, capricious, unreasonable, or induced by improper motives. In so doing, the Commissioner found, *inter alia*, that B.M.'s conduct satisfied the statutory definition of HIB and interfered with A.K.'s right to a safe and civil environment at school; further, the HIB investigation was sufficiently thorough in scope. Accordingly, the Commissioner upheld the Board's HIB determination, and the petition of appeal was dismissed.

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

201-23

OAL Dkt. No. EDU 04092-19

Agency Dkt. No. 37-2/19

New Jersey Commissioner of Education

Final Decision

J.M., on behalf of minor child, B.M.,

Petitioner,

v.

Board of Education of the School District of the
Chathams, Morris County,

Respondent.

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

Petitioner challenges the Board's determination that his son, B.M., committed an act of harassment, intimidation, and bullying (HIB) against a classmate, A.K., who has a nut allergy. During the school lunch period, B.M. offered A.K. a cashew, which caused A.K. to recoil. B.M. subsequently touched A.K.'s lunch bag¹ and water bottle with the same hand that had offered the cashew, even after A.K. warned him to stop due to his nut allergy.

When the school's anti-bullying specialist investigated the incident, B.M. admitted that he knew A.K. was allergic to "peanuts" but stated that he temporarily forgot about it. B.M. admitted touching A.K.'s water bottle and volunteered that he had not washed his hands

¹ In the Initial Decision, the ALJ appears to use "lunch bag" and "lunchbox" interchangeably. For consistency, the Commissioner will use "lunch bag" here.

before doing so. Security camera footage confirmed that B.M. had also touched A.K.'s lunch bag. B.M. acknowledged that A.K. got "annoyed" with him "due to his allergy." The HIB Report Form completed by the anti-bullying specialist states that the single incident at issue "[t]argeted pupil's allergy to nuts" and describes the HIB behavior as "jeopardizing the safety of others."

At the conclusion of a thorough investigation during which B.M., A.K., and a student eyewitness were interviewed, the anti-bullying specialist determined that B.M. committed an act of HIB. The Board agreed, finding that B.M.'s actions were motivated by A.K.'s nut allergy, that the conduct occurred on school grounds during the school day, and that it had the effect of upsetting A.K. and compromising his safety. Thereafter, petitioner filed the instant appeal. Once the matter was transmitted to the OAL, the parties consented to its resolution by summary decision without the need for a hearing.

The Administrative Law Judge (ALJ) concluded that the record did not support a finding that B.M. committed an act of HIB and that the Board's HIB determination was unjustified and excessive. The ALJ cited the fact that the incident was not part of a pattern of conduct, and that A.K.'s mother had not sought for B.M. to receive a severe penalty. The ALJ further found that the HIB Report Form indicated that school officials acted defensively and overreacted. In addition, the ALJ considered the negative impact that the HIB determination might have on B.M. in the future.

In its exceptions, the Board argues that the ALJ erroneously focused upon whether, in his opinion, B.M.'s actions were severe enough to warrant an affirmative finding of HIB instead of whether the Board's HIB determination was arbitrary, capricious, or unreasonable. It also

argues that the ALJ inappropriately considered whether B.M. intended to harm A.K. through his actions.

In reply, petitioner contends that the ALJ correctly applied the arbitrary, capricious, or unreasonable standard of review when determining that the finding of HIB against B.M. was unjustified and excessive. Petitioner also asserts that: (1) the record lacks proof that B.M.'s conduct was motivated by A.K.'s allergy to peanuts or that B.M. rubbed his hands on A.K.'s lunch bag; (2) B.M. did not realize that offering A.K. a cashew could cause A.K. to have an allergic reaction; and (3) the HIB investigation was too limited as it ignored B.M.'s diagnosis of ADHD and Auditory Processing Disorder, did not include statements from other students at the lunch table, and failed to give due consideration to all available evidence.

Upon review, the Commissioner rejects the ALJ's conclusion that the Board's HIB determination was unjustified and excessive.² Board action conducted within the ambit of its broad discretionary authority "may not be upset unless 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). The Commissioner may not substitute their judgment for that of the Board. *Schinck v. Bd. of Educ. of Westwood Consol. Sch. Dist.*, 60 N.J. Super. 448, 476 (App. Div. 1960).

The Anti-Bullying Bill of Rights Act (the Act), N.J.S.A. 18A:37-13 *et seq.*, requires local boards of education to adopt policies prohibiting HIB which address, among other things,

² The Commissioner also rejects as unsupported by the record the ALJ's factual finding #18, which states: "In reaching his determination that an HIB violation occurred, [the anti-bullying specialist] confirmed that he based his entire decision on the nature of A.K.'s allergy, parent input, and the medical information the school has on file." It appears that, in rendering this finding, the ALJ misconstrued an email which states that the anti-bullying specialist based his decision regarding A.K.'s allergies "on both parent input and the medical information that we have on file for him."

procedures for promptly investigating HIB allegations as well as remedial action for HIB violations. *L.W. ex rel. L.G. v. Toms River Reg'l Schs. Bd. of Educ.*, 381 N.J. Super. 465, 498 (App. Div. 2005), *modified by, aff'd by, remanded*, 189 N.J. 381 (2007) (citing N.J.S.A. 18A:37-15); *Dunkley v. Bd. of Educ. of Greater Egg Harbor Reg'l High Sch. Dist.*, 216 F. Supp. 3d 485, 489 (D.N.J. 2016) (quoting N.J.S.A. 18A:37-15). The Act defines HIB as:

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

a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;

b. has the effect of insulting or demeaning any student or group of students; or

c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

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

In summary, a finding of HIB requires three elements under the Act. First, the conduct must be reasonably perceived as being motivated by any actual or perceived characteristic expressly identified in the statute, or by any other distinguishing characteristic.³ Second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly

³ The parties do not dispute that the conduct at issue took place on school property.

operation of the school. Third, one of the three conditions set forth in subsections (a), (b), and (c) must be satisfied. *Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex Cnty.*, Comm'r Decision No. 510-20 (decided Feb. 4, 2020).

B.M.'s conduct satisfies the statutory definition of HIB. Regarding the first element, the record establishes that, on school property during the lunch period, B.M. held a cashew in his hand, extended his arm toward A.K., offered the cashew to him, and later touched A.K.'s lunch bag and water bottle. A.K. reacted by recoiling and warning B.M. to stop his behavior due to his nut allergy. A.K. reasonably perceived that B.M.'s conduct toward him was motivated by his nut allergy, which qualifies as a distinguishing characteristic. B.M.'s actual intent is not relevant under the Act.

As for the second element, B.M.'s conduct interfered with A.K.'s right to a safe and civil environment at school. *See N.J.S.A. 18A:37-13* (explaining the purpose of the Act and finding that "a safe and civil environment in school is necessary for students to learn and achieve high academic standards"). Concerning the third element, a reasonable person should know that presenting a cashew to a student with a nut allergy will place that student in reasonable fear of physical harm. While B.M. claimed that he only knew A.K. was allergic to "peanuts," A.K. reacted negatively to the cashew and immediately reminded B.M. of his "nut" allergy. B.M. proceeded to touch A.K.'s lunch bag and water bottle with the same hand that held the cashew. Whether or not B.M. intended to harm A.K. is immaterial under the Act.

The Commissioner agrees with the Board that the ALJ erroneously focused upon whether, from his own perspective, B.M.'s actions were severe enough to warrant a finding of HIB instead of whether the Board's determination was arbitrary, capricious, or unreasonable

under the Act. Rather than analyzing B.M.'s conduct under the statutory definition of HIB and evaluating the reasonableness of the Board's HIB determination, the ALJ inappropriately substituted his own judgment for that of the Board. It was not for the ALJ to decide that B.M. could or should have received a lesser code of conduct violation as opposed to a HIB violation. Whether A.K.'s mother had sought a finding of HIB against B.M. is irrelevant under the Act, as is the potential negative impact of a HIB determination on B.M.'s school record. And yet, the ALJ considered these immaterial factors. Furthermore, the ALJ's finding that the content of the HIB Report Form was indicative of a defensive overreaction by school officials is unfounded.

Petitioner's reply exceptions are unavailing. The record need not contain proof that B.M.'s conduct was actually motivated by A.K.'s nut allergy. Rather, as explained herein, the pertinent inquiry under the Act is whether A.K. reasonably perceived that B.M.'s conduct toward him was motivated by his nut allergy. Additionally, petitioner's insistence that A.K. is only allergic to peanuts is contradicted by the record. Moreover, the ALJ never found that B.M. "rubbed" his hands on the lunch bag or the water bottle. Rather, security video confirmed, and the ALJ found, that B.M. touched A.K.'s lunch bag with his hands. And whether B.M. realized in the moment that offering A.K. a cashew could trigger A.K. to experience an allergic reaction is not relevant under the reasonable person standard stated at *N.J.S.A. 18A:37-14(a)*.

Finally, the Commissioner finds that the HIB investigation was sufficiently thorough in scope. Contrary to petitioner's claim, the record reflects that another student seated at the same lunch table as B.M. and A.K. on the date of the incident was interviewed during the investigation. That student confirmed that B.M. had offered A.K. a nut and stated that, in response, A.K. had asked B.M.: "Are you trying to kill me?" Additionally, the anti-bullying

specialist was fully aware of B.M.'s 504 plan. The fact that the 504 plan was not mentioned on the HIB Report Form does not establish that it was not considered. In any event, petitioner has not cited any legal authority to support the conclusion that B.M.'s 504 plan should have absolved him of a HIB determination against him.

Accordingly, the ALJ's conclusion that the Board's HIB determination was unjustified and excessive is rejected. Instead, the Commissioner finds that petitioner has not established that the Board's HIB determination was arbitrary, capricious, unreasonable, or induced by improper motives. Accordingly, the Commissioner upholds the Board's HIB determination, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁴


ANGELINA ALLEN McMILLAN, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 6, 2023
Date of Mailing: July 7, 2023

⁴ 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 04092-19

AGENCY DKT. NO. 37-2/19

J.M. ON BEHALF OF MINOR CHILD, B.M.,

Petitioners,

v.

THE CHATHAMS SCHOOL DISTRICT

BOARD OF EDUCATION, MORRIS COUNTY,

Respondent.

Richard Kaplow, Esq. for petitioner

Frances L. Febres, Esq. for respondent (Cleary Giacobbe Alfieri Jacobs, LLC,
attorneys)

Record Closed: March 17, 2023

Decided: April 13, 2023

BEFORE ANDREW M. BARON, ALJ:

STATEMENT OF THE CASE

Petitioner challenges an HIB (Harassment, Intimidation and Bullying, "HIB") finding against their minor child by the Chatham School District involving an incident with another student.

BACKGROUND AND PROCEDURAL HISTORY

On October 24, 2018, the District ABS officer determined that petitioner had engaged in an HIB violation, because his actions could have harmed another student. Two days later, the school principal affirmed the finding, which was followed by a penalty of five days detention and a follow up meeting with the guidance counselor.

On or about October 31, 2018, the matter was then sent to the Superintendent, who informed petitioner's parents that the matter was being formally reported to the Chatham Board of Education as a bullying incident. Even though the determination had already been made, the ABS officer continued his investigation and questioning of the alleged victim.

The matter was then taken up by the Board of Education on November 19, 2018. Following a hearing, the board affirmed the HIB determination, specifically finding that the student's actions were motivated by knowledge of the victim's nut allergy, which occurred on school grounds, during the school day and had the effect of upsetting the victim and compromising his safety.

This appeal was filed and transmitted to the Office of Administrative Law on March 22, 2019. Numerous conferences and efforts to resolve the matter pre and post pandemic ensued, which were unsuccessful.

Thereafter, by consent, the parties determined that the matter could be decided by Summary Disposition without testimony.

FACTUAL DISCUSSION AND FINDINGS OF FACT

Based on the facts as submitted by both sides, I make the following **FINDINGS OF FACT**, which are essentially undisputed, and which are subject to the interpretation and application of the New Jersey Anti-Bullying Law.

1. A.K. and B.M. were both seventh grade students attending The Chatham Middle School on October 17, 2018.
2. Sometime during the lunch/recess period that day, the school was notified by A.K.'s mother that B.M. had waived cashews in A.K.'s face and was touching his lunch bag and water bottle.
3. A.K. has a nut allergy, and apparently shared this incident with his mother when he returned home from school.
4. In an email communication from A.K.'s mother dated October 17, 2018, in a calm tone, his mother simply requested: "Can you please let Benjamin know that this is a serious health issue and, for some individuals can be potentially life threatening? It is unclear how and why this incident was then escalated into an HIB investigation, as opposed to a code of conduct violation, or simply detention with counseling.
5. B.M. has auditory processing, ADHD and other forms of related and other documented social and learning challenges. He also has accommodations under a Federal 504 plan. None of this is referenced in the HIB report.
6. Thereafter, a HIB investigation was initiated and conducted by the school's anti-bullying specialist, Anthony Giaconia.
7. Mr. Giaconia filed a nine-page report, and while it appears A.K.'s mother only asked for the District to speak with B.M. about the potential health ramifications, at no time was she demanding severe punishment of B.M. that was consistent with the actions of the District.
8. In fact, by the time it got to the school principal, it then escalated once it went to the District Superintendent who also directed school officials to contact the local police.
9. Although a one-day suspension was recommended, school officials themselves decided to reduce that to five days of lunch detention, which is a common penalty for other student infractions.
10. The HIB form which Chatham utilizes contains sixteen possible actions in connection with the statute. However only one box was checked: "Jeopardizing the safety of others."
11. The report also allows for the opportunity to reference up to six interviews with witnesses to the incident. No one was listed.

12. At a meeting between B.M. and the school counselor which Mr. Giaconia attended in his capacity as the A.B.S. investigator, Mr. Giaconia told B.M. that “no one thinks B.M. tried to intentionally hurt, A.K.”
13. Other options on the HIB report which would support a finding under the Act are not checked, including but not limited to: “threatening comments, gestures or physical acts, intimidating conduct towards another pupil.
14. For example, it is undisputed that leading up to the incident which the District determined was an HIB violation, there was no physical aggression or contact by B.M. against the pupil, there was no teasing or name calling, there were no insulting or demeaning comments, there were no threatening comments, gestures or physical acts, there was no indication of intimidating conduct, there was no spreading harmful rumors or gossip about the pupil, there was no getting another person to harm a pupil, there was no indication of harassment intimidation or bullying through electronic communications, no stalking, no destruction of property, no public humiliation, stealing or theft, no defacing of property, excluding or rejection, and finally, no extorting or exploiting a pupil.
15. In fact, it was not disputed that leading up to the incident which gave rise to the HIB complaint, both boys were friends, even playing together at each other’s homes.
16. During the interview, A.K. indicated that B.M. waved a cashew in this face, and when he asked B.M. to stop, B.M. also touched his lunchbox and his water bottle.
17. During his interview with B.M., he acknowledged that he knew A.K. was allergic to nuts, but that he “temporarily forgot.” He further indicated that he hadn’t “washed his hands yet. The ABS official interpreted that to mean that B.M. knew the residue from the nuts he was holding could transfer to A.K.’s water bottle and lunch bag.
18. In reaching his determination that an HIB violation occurred, Mr. Giaconia confirmed that he based his entire decision on the nature of A.K.’s allergy, parent input, and the medical information the school has on file.
19. When communicating with B.M.’s parents, Mr. Giaconia indicated that even if the incident did not constitute a provable act of bullying, “it would still be classified as a violation of the Code of Conduct and the disciplinary consequences would be the same.”

20. Although there was some question about the status of the friendship between the boys on the day of the incident, A.K. who usually sits at another lunch table, chose to sit with B.M. on the day of the incident, and prior thereto, they had been frequent guests at each other's homes.
21. **I FIND**, that whatever occurred between B.M. and A.K. on October 17, 2018, a preponderance of the facts and evidence **DO NOT** support a finding that a HIB violation was committed by B.M. **I FIND** that while school officials were justified in conducting an investigation, the end result, which was to charge and sustain a finding of a HB violation by B.M. was not justified and was excessive.
22. **I FURTHER FIND**, that in viewing the extensive nine-page report, together with the initial email submitted to school officials by A.K.'s mother, there is nothing to suggest she was seeking to have such a severe penalty imposed, nor does the report itself suggest a pattern of conduct by B.M. against A.K. that is more in line with what the Anti-Bullying statute requires. **I FIND** that the lack of entries in all sixteen boxes which outline what an HIB violation is, speaks volumes to the fact that out of defensiveness, school officials may have overreacted, including but not limited to involving the superintendent of schools, and also by contacting the local police.
23. As school officials indicated to B.M.'s parents, he could have been charged with a code of conduct violation, which seems more consistent with the underlying events, and the ultimate penalty of a five-day lunch detention, which is a common form of discipline in schools. Even though B.M. was a seventh grader at the time, **I FIND** that having a bullying incident as part of his school record may be detrimental to him at some time in the future.
24. For all of the foregoing reasons outlined above, **I CANNOT FIND** that the events of October 17, 2018 constitute an act of bullying.

LEGAL ANALYSIS AND CONCLUSION OF LAW

The New Jersey Anti-Bullying Bill of Rights, sets forth four elements under N.J.S.A. 18A:37-13 that must be established in order to constitute an incident of bullying in a school setting. (HIB).

The first element requires conduct that must be “reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic.”

The next requirement is the conduct must take place “on school property, at any school-sponsored function, on a school bus, or off school grounds.

Third, the conduct must substantially disrupt or interfere with the orderly operation of the school or the rights of other students.

The fourth and final element necessary to establish an HIB incident is that the conduct must be such 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 or group of students by interfering with a student’s education or by severely or pervasively causing physical or emotional harm to the student.

In addition to the aforementioned criteria, the statute also references that an HIB investigation must be thorough and timely and be completed within ten days of the reported incident. See: L.P. and H.P. o/b/o L.P. v. Bd. of Educ. of the West Morris Reg. High School Dist. OAL Dkt. No. EDU 04462-16, 2016 WL 3361005 (2016).

Other cases have defined bullying on a case-by-case basis as within the discretion of the district. In C.K. & M.K. o/b/o M.K. v. Voorhees Bd. of Ed. OAL Dkt. No. EDU 20510-10 2017 WL 10399002, Final Decision (N.J. Adm. March 2017), an accused student who was developmentally disabled reached under a bathroom stall and grabbed a girl's leg asking for a high-five. Though the accused student was not interviewed during the investigation, which went beyond the ten-day timeline, the ALJ found that it would not be in the best interests of the students to be re-interviewed, as the information received would be inconsequential.

In another matter involving the timing and manner in which an investigation was conducted, an HIB inquiry consisted of student interviews, written statements and review of surveillance footage. See: W.H. o/b/o Z.A. v. Beverly Bd. of Educ. OAL Dkt. No. EDU 08075-19, Initial Decision 2021 WL 7629602 adopted Comm'r Final Decision (N.J. Adm. October 21, 2021). In upholding the ABS determination that there was no evidence to support any element of the HIB statute, the ALJ determined that the District had conducted a prompt and thorough" investigation.

And, in a case which upheld a District's fining of an HIB violation, which ultimately reversed an ALJ's finding that the HIB investigation was not thorough, the Commissioner of Education rejected an ALJ's determination finding that the investigation was insufficient. See: L.K. and T.K. o/b/o A.K. v. Mansfield Twp.Bd. of Educ. OAL Dkt. No. EDU 7067-16, 2019 WL 1259466, Initial Decision rejected, Comm'r Final Decision (N.J. Adm. April 22, 2019). The conduct of the student in that case was motivated by gender, and notably however and left undisturbed was the ALJ's finding was that the ABR focuses on the impact of the conduct of an accused student, which the victim reasonable perceived as being the motivation for the conduct itself.

CONCLUSION

The parties by Consent filed a Motion and Cross Motion for Summary Disposition, suggesting there I no need for a hearing, and the case can be decided as a matter of law based on facts which are for the most part undisputed.

I agree, and therefore **CONCLUDE** there are insufficient facts to establish by a preponderance of the evidence that an HIB violation occurred. While food allergies in children must be taken seriously at all times, **I CONCLUDE** for purposes of this situation that District officials overreached, and the matter would have been more appropriately dealt with at the time through internal alternate means. That is not to suggest that no discipline was warranted, but **I CONCLUDE** that the events did not give rise to a determination that B.M. was bullying A.K. The counseling the District required, together with a lunch detention was sufficient, without escalating the matter to an HIB violation.

ORDER

With the **Finding and Conclusion** that there are insufficient facts to establish by a preponderance of the evidence that B.M. committed an HIB violation, it is hereby **ORDERED** that the finding against him arising out of an incident on October 17, 2018 is hereby **REVERSED**, and a copy of this decision shall be placed in B.M.'s student file. The District' internal records concerning B.M. should be adjusted accordingly.

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 13, 2023
DATE


ANDREW M. BARON, ALJ

Date Received at Agency:

April 13, 2023

Date E-Mailed to Parties:

April 13, 2023

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APPENDIX

LIST OF WITNESSES

For Petitioner:

None

For Respondent:

None

LIST OF EXHIBITS IN EVIDENCE

(Confidential and subject to privacy laws due to nature of proceeding, minor children involved, exempt from OPRA and other public disclosure not to be released unless court ordered)

For Petitioner

Incorporates by reference Exhibits R-1 through R-5

P-1 Thumb drive- (Unable to view after first sixty seconds)

For Respondent

R-1 E-mail notification from A.K.'s mother

R-2 HIB Investigation report

R-3 Principal affirmance of HIB finding

R-4 E-mail clarification to ABS investigator

R-5 Board Affirmance