

New Jersey Commissioner of Education

Final Decision

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

Petitioner,

v.

Board of Education of the Township of River Edge,
Bergen County,

Respondent.

Synopsis

Pro se petitioner appealed the finding of the respondent Board that her daughter, a third-grade student at one of the respondent Board’s schools, committed an act of harassment, intimidation, and bullying (HIB), pursuant to the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq*, against an African-American classmate. The HIB complaint resulted from a comment made by A.D. to another student, saying that A.D. “hates black people.” The student witness then reported the comment to the complainant, who perceived A.D.’s statement as insulting and demeaning. The petitioner argued, *inter alia*, that the Board failed to follow the investigative procedures outlined in its HIB policy, and that her daughter’s statement was misconstrued as she was not referring to the complainant when she said she “hates black people;” rather, A.D. used the phrase to describe her feelings toward African-American employees of the aftercare program she attended who “yell at her.” Petitioner sought to have A.D.’s HIB violation modified to a violation of the school’s Code of Conduct. The Board contended that it had properly applied Board Policy 5131.1, Harassment, Intimidation and Bullying, in this matter.

The ALJ found, *inter alia*, that: there is no question that A.D. made the statement in question, which included a racial description; A.D.’s intent, however, was not to insult her classmate but rather to express her dislike for the African American personnel working in the school aftercare program; nonetheless, the complainant was upset by the remark and reported that she did not want to attend school, felt unsafe at recess and lunch, and felt fear from knowing that a classmate disliked her because of the color of her skin; and the incident caused a disruption to the school. Accordingly, the ALJ concluded that the Board’s HIB determination was not arbitrary, capricious, or unreasonable, and dismissed the petition.

Upon review, the Commissioner, *inter alia*, concurred with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination in this case. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition 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.

320-23
OAL Dkt. No. 04748-23
Agency Dkt. No. 126-5/23

New Jersey Commissioner of Education
Final Decision

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Petitioner,

v.

Board of Education of the Township of
River Edge, Bergen County,

Respondent.

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

Petitioner appeals the determination of the River Edge Board of Education (Board) that her child, A.D., committed an act of harassment, intimidation, and bullying (HIB). A.D. told another student (the witness) that A.D. "hates black people." The witness reported this comment to a third student (the complainant), who is black, and the witness and the complainant together reported A.D.'s statement to a teacher. During the course of the investigation, in the presence of the complainant, A.D. stated that she "doesn't like black people" because the African-American staff who work in the after-school program yell at her.

Following a hearing, the Administrative Law Judge (ALJ) found that there was no question that A.D. made the statement, which included a racial description. The ALJ further

found that the complainant was upset by the remark and reported that she did not want to attend school, felt unsafe at recess and lunch, and felt fear from knowing that a classmate disliked her because of the color of her skin. Finally, the ALJ found that the incident caused a disruption to the school. Accordingly, the ALJ concluded that the Board's decision was not arbitrary, capricious, or unreasonable.

In her exceptions, petitioner argues that the statement was made when A.D. and the witness were alone, and that A.D. specifically referred to the black people at aftercare who yell at A.D. Petitioner contends that the statement initially caused no disruption; it wasn't until later, when A.D. and the witness began to have some conflicts between them, that the witness reported A.D.'s statement to the complainant. The petitioner suggests that the witness reported the statement in an attempt to get A.D. in trouble and that the witness repeated an incorrect version of the statement. Petitioner alleges that there are discrepancies among the interview notes, HIB report, and information presented at the hearing. According to petitioner, there was no history of mean behavior between the three students. Finally, petitioner argues that the Board did not provide any records or proof of a disruption.¹

In reply, the Board argues that petitioner agreed in the Joint Stipulation of Facts that A.D. admitted saying that she "doesn't like black people." According to the Board, the information contained in the Joint Stipulation of Facts regarding the complainant's reaction to the statement, as well as the testimony presented at the hearing, demonstrates that A.D.'s statement substantially disrupted and interfered with the complainant's rights. The Board

¹ Petitioner also argues that A.D. was subject to retaliatory behavior by the other students following the incident. If petitioner believed that A.D. was the target of HIB, she was free to file a complaint. However, the acts of other students after the incident at issue have no bearing on whether the Board's decision was arbitrary, capricious, or unreasonable.

contends that the Anti-Bullying Bill of Rights Act (Act) requires only an analysis of how A.D.'s motivation was perceived and whether that perception was reasonable, not an analysis of A.D.'s actual motivation or intent in making the statement. Accordingly, the Board urges the Commissioner to adopt the Initial Decision.

Upon review, the Commissioner concurs with the ALJ that that Board's determination that A.D. committed an act of HIB was not arbitrary, capricious, or unreasonable. 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 Env'tl. Prot.*, 122 N.J. Super. 184, 199 (Ch. Div. 1973), *aff'd*, 131 N.J. Super. 37 (App. Div. 1974).

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. First, the conduct must be reasonably perceived as being 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.² The third condition is that one of the three criteria enumerated in the Act regarding the effect of the conduct must also be satisfied. *Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex County, Commissioner Decision No. 51-20* (decided February 4, 2020).

Regarding the first element, in defining HIB as an action “that is *reasonably perceived* as being motivated either by any actual or perceived characteristic . . .”, *N.J.S.A. 18A:37-14* (emphasis added), the statute requires an analysis of how the actor’s motivation is perceived and whether that perception is reasonable. It does not require an analysis of the actual motivation of the actor. *Wehbeh, supra*. Certainly, evidence that the actor was motivated by a distinguishing characteristic would meet the standard of this section of the Act, but evidence that the actor was not so motivated does not end the analysis. Here, it was not arbitrary, capricious, or unreasonable for the Board to conclude that the complainant reasonably

² The conduct must also 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*. This requirement does not appear to be at issue in this case.

perceived A.D.'s statement that she does not like black people as being motivated by the distinguishing characteristic of race.

Regarding the second element, the investigation demonstrated that the complainant was upset by the remark and reported that she did not want to attend school, felt unsafe at recess and lunch, and felt fear from knowing that a classmate disliked her because of the color of her skin. Based on this evidence, the Commissioner finds that it was not arbitrary, capricious, or unreasonable for the Board to conclude that A.D.'s statement substantially interfered with the complainant's rights.

Regarding the third element, an act of HIB is one that "a reasonable person *should* know, under the circumstances, will have the effect of physically or emotionally harming a student," "*has the effect* of insulting or demeaning a student," or "*creates* a hostile educational environment . . .". *N.J.S.A. 18A:37-14(a)* (emphasis added). None of these criteria require the actor to have actual knowledge of the effect that her 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. For this reason, the Commissioner finds that petitioner's exceptions regarding her child's intent, and the alleged context behind her statement, are unpersuasive. The Board found that A.D.'s statement that she did not like black people was insulting or

demeaning, satisfying the requirements of the Act. It was not arbitrary, capricious, or unreasonable for the Board to reach that conclusion.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.³


ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 27, 2023
Date of Mailing: November 1, 2023

³ 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 04748-23

AGENCY REF. NO.126-5/23

A.D ON BEHALF OF MINOR CHILD A.D.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF RIVER EDGE,
BERGEN COUNTY,**

Respondent.

A.D., petitioner, pro se

Stephen R. Fogarty, Esq., for respondent (Fogarty & Hara, attorneys)

Record Closed: September 18, 2023

Decided: September 19, 2023

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a pro se Petition of Appeal with the New Jersey Department of Education, Office of Controversies and Disputes, dated May 1, 2023, challenging the Board's harassment, intimidation and bullying (HIB) determination.

The Office of Controversies and Disputes transmitted the contested case to the Office of Administrative Law (OAL) as a contested matter, where it was filed on June 1, 2023.

A prehearing conference was held on June 20, 2023, and a Prehearing Order was entered on June 21, 2023.

Respondent filed a motion to exclude certain documents that were requested in the discovery demand of Petitioner. Petitioner declined to submit a response.

After an in camera review of the contested documents the undersigned granted Respondent's motion by Order dated September 12, 2023.

A hearing on the matter was held on September 18, 2023, whereupon the record closed.

ISSUE

Did Respondent err in determining that the minor child A.D. committed an act of HIB within the meaning of the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13.2 et seq.

STIPULATED FACTS

1. The River Edge Board of Education (the "Board") operates a kindergarten through sixth grade public school district (the "District") for the Borough of River Edge in Bergen County, New Jersey and operates two schools.

2. Petitioner, A.D. is the mother of A.D., a student enrolled in the District, who is alleged to have committed an act of Harassment, Intimidation, and Bullying ("HIB"). On or about May 8, 2023 Petitioner, on behalf of her daughter (hereinafter, "A.D."), filed a Pro Se Petition of Appeal with the Office of Controversies and Disputes, which was

transmitted as a contested case to the Office of Administrative Law on May 31, 2023. The relief sought by Petitioner is the reversal of the Board's HIB Determination and a modification of that determination to a code of conduct violation. A true and accurate copy of the May 31, 2023 Transmittal Notice is attached hereto as Exhibit J-1.

3. During the 2022-2023 School Year, A.D. was a third-grade student attending Cherry Hill Elementary School. The alleged Victim, (hereinafter referred to as "Victim"), was also a student enrolled in Cherry Hill Elementary School during the 2022-2023 School Year.

4. On or about January 26, 2023 a Cherry Hill School third-grade classroom teacher, Ms. Kristen Karavitis, received a report from the Victim and a Student witness that A.D. said that she "hates black people", which her report noted occurred on school grounds. The report noted that the Victim reported this to her school counselor, who is also the Cherry Hill School's Anti-Bullying Specialist, Mrs. Janel Blake. A true and accurate copy of Mrs. Karavitis' Incident Report Form is attached hereto as Exhibit J-2, pg. 2.

5. Mrs. Blake reported the HIB Complaint to the Cherry Hill Principal, Mrs. Denise Heitman. Upon receiving this complaint Mrs. Heitman spoke with the three students involved outside of their classroom in the presence of Mrs. Karavitis. During this discussion the Victim stated that the Witness told her that A.D. said she "hates black people." The incident date noted in the report was January 24, 2023. During this discussion with Mrs. Heitman A.D. stated "she doesn't like black people" because they yell a lot in the after school program, in the presence of the Victim. A true and accurate copy of Mrs. Heitman's 338 Form is attached hereto as Exhibit J-3, pg. 2-3.

6. An investigation into the alleged incident ensued. On January 26, 2023, Mrs. Heitman called the parents of the students involved to inform them a HIB complaint was reported and that the allegations would be investigated. The District's investigation began on Thursday, January 26, 2023. A true and accurate copy of the District's redacted HIB Report is attached hereto as Exhibit J-4, p. 1, 3.

7. Mrs. Blake conducted the HIB Investigation. As part of her investigation Mrs. Blake interviewed A.D., the Victim, and the Student Witness. Mrs. Blake's HIB investigation report also noted that the Victim and Student Witness reported to their classroom teacher Mrs. Karavitis that A.D. said to the Student Witness that she "hates black people." Mrs. Blake's report also indicated that while the Victim did not hear this statement directly from A.D., the Student Witness who heard the statement repeated it to the Victim, who is African-American, in school on January 26, 2023. This HIB investigation report also noted that A.D. subsequently stated that she "doesn't like black people" because they yell at her in her aftercare program, during her discussion with Mrs. Heitman in front of the Victim, the Student Witness, and the classroom teacher on January 26, 2023. See Exhibit J-4, p. 2.

8. Mrs. Blake noted in her report that A.D. had a pattern of mean behavior and excluding the Victim, which Mrs. Blake determined culminated in A.D.'s statement that she "does not like" or "hates black people." See Exhibit J-4, p. 3.

9. The HIB report noted that the Victim perceived the comment as insulting and demeaning. As a result of these incidents the Victim reported to Mrs. Blake she was uncomfortable, did not want to attend school, felt unsafe at recess and lunch, and reported she had a fear that came with knowing a classmate disliked her because of the color of her skin. See Exhibit J-4 at p. 3.

10. Mrs. Blake completed the HIB Investigation on Monday February 6, 2023. Upon completion of the investigation, Mrs. Blake determined that A.D. committed an act of HIB and violated the Anti-Bullying Bill of Rights Act. See Exhibit J-4, p. 2, 4.

11. Following the incident, A.D. met twice with Mrs. Blake during school hours and had two restorative learning days after school with Mrs. Heitman. The report recommended that A.D. would continue her school counseling with Mrs. Blake, write an apology letter to the Victim, and would enroll in Social and Emotional Learning. Mrs. Karavitis assigned lunch seating for the students involved. See Exhibit J-4, p. 3-4.

12. The results of the HIB Investigation were reported to the Superintendent, Cathy Danahy. After reviewing the report, the Superintendent affirmed the findings of the HIB investigation. The results of the investigation were reported to the Board on March 1, 2023. A true and accurate copy of the March 1, 2023 Board Minutes are attached hereto as Exhibit J-5.

13. The results of the Board's HIB Investigation were sent to Petitioner the following day, March 2, 2023. A true and accurate copy of the March 2, 2023 correspondence to Petitioner is attached hereto as Exhibit J-6.

14. Petitioner notified the Superintendent she would be appealing the Board's decision on March 7, 2023 via e-mail. In response, the Superintendent confirmed Petitioner's request for a Board hearing scheduled for March 14, 2023 and provided Petitioner a copy of the redacted HIB report. A true and correct copy of the March 7, 2023 e-mail exchange is attached hereto as Exhibit J-7.

15. Due to a scheduling conflict Petitioner requested the Board hearing be moved from March 14 to April 19, 2023. A true and correct copy of Petitioner's March 10, 2023 e-mail is attached hereto as Exhibit J-8.

16. At the hearing where Petitioner was represented by counsel, Petitioner implored the Board to reverse the Superintendent's determination to modify the finding to a code of conduct violation. A true and correct copy of the Board's revised decision dated April 24, 2023 is attached hereto as Exhibit J-9.

17. The Board rejected Petitioner's arguments and acted to affirm the Superintendent's decision. The Board's April 24, 2023 decision letter stated that any appeals of the Board's decision must be made to the Commissioner of Education no later than ninety (90) days after the issuance of the decision. See Exhibit J-9.

18. A true and correct copy of Board Policy 5131.1, Harassment, Intimidation and Bullying is attached hereto as Exhibit J-10.

19. A true and correct copy of A.D.'s apology note is attached hereto as Exhibit J-11.

FINDINGS OF FACT

The statement of A.D., the minor child, was not intended to be a racial epithet. Rather, A.D., the minor child, intended to express her dislike for the African-American personnel working in the school after care program, as they were not nice to her. Had A.D. merely stated that she did not like the aftercare personnel as they were not nice to her, without referring to any racial description, there would not have been a HIB investigation, as stated by Janel Blake, HIB specialist, in her testimony.

LEGAL ANALYSIS AND CONCLUSION

The Anti-Bullying Bill of Rights Act ("Act"), N.J.S.A. 18A:37-13 et seq., is designed "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises."³ N.J.S.A. 18A:37-13.1(f). Under the Act, "harassment, intimidation or bullying" (HIB) is defined as:

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

a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's

property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;

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

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

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

Each school district must adopt a policy that prohibits HIB and provides for a prompt response to any alleged HIB incident. N.J.S.A 18A:37-15. Once an alleged HIB incident is reported to the school principal, the principal must initiate an investigation within one school day of the report. N.J.S.A 18A:37-15(b)(6). The investigation shall be conducted by a school anti-bullying specialist, and shall take no longer than ten school days to be completed. The results of the investigation shall then be quickly reported to the superintendent of schools, who may take certain remedial action. The results shall also be reported to the board of education “no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent.” Ibid.

Pursuant to the Act, the parents of the students involved in any alleged HIB incident are entitled to receive information about the nature of the investigation and the result of the investigation. The parents may request a hearing before the board, and the hearing must be held within ten days of the request. Any hearing shall be held in executive session to protect the identity of any students involved. The board may hear from the anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents. The board must issue a decision at the first meeting after its receipt of the investigation report. The board may affirm, reject, or modify the superintendent’s decision. The board’s decision may be appealed to the Commissioner of Education.

An action by a board of education “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. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). Thus, in order to prevail, those challenging an HIB decision made by a board of education “must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it.” G.H. & E.H. ex rel. K.H. v. Bd. of Educ. of the Bor. of Franklin Lakes, EDU 13204-13, Initial Decision (February 24, 2014) (citation omitted) <<http://njlaw.rutgers.edu/collections/oal/>>, adopted, Comm’r (April 10, 2014). Also, a board’s decision may be overturned if its determination violates the legislative policies expressed or implied in the governing act. J.A.H. ex rel. C.H. v. Twp. of Pittsgrove Bd. of Educ., EDU 10826-12, Initial Decision (March 11, 2013) (citing Campbell v. Dep’t of Civil Serv., 39 N.J. 556 (1963), 562 (1963)), adopted, Comm’r (April 25, 2013) <<http://njlaw.rutgers.edu/collections/oal/>>.

There are reported cases in which HIB determinations by boards of education have been both affirmed and overturned. In R.G.B. v. Vill. of Ridgewood Bd. of Educ., EDU 14213-12, Initial Decision (May 15, 2013) <<http://njlaw.rutgers.edu/collections/oal/>>, adopted, Comm’r (June 24, 2013), the ALJ found that the Board did not act in an arbitrary, capricious, or unreasonable manner in determining that a student engaged in HIB when he repeatedly called a female student “fat,” “fat ass,” and “horse.” According to the ALJ, such verbal statements satisfied all of the necessary elements under N.J.S.A. 18A:37-14. And, in G.H., supra, the ALJ also upheld a Board’s finding that a white student who repeatedly called a black student “Kool-Aid” engaged in HIB. The ALJ found that the “use of the word ‘kool-aid’ was directed at [the other student] because of his race; insulted and demeaned [the other student]; and . . . interfered with [the other student’s] education” because “[u]pset and embarrassed children are not fully available for learning.” However, in J.A.H., supra, the Board’s finding that an incident in which one student stuffed a crumbled piece of paper down the shirt of another student constituted an act of bullying was overturned as arbitrary, capricious, and unreasonable because the incident was merely a prank that was part of an ongoing, mutual conflict between the two boys and did not “contain the

more serious and aggravating elements either 'expressed or implied' under [N.J.S.A. 18A:37-14.]” The ALJ found that the incident was not improperly motivated by a distinguishing characteristic and that the facts “only support[ed] a finding of ordinary student conflicts rather than the more serious behavior of bullying.”

In the instant matter, there is no question that A.D. said she didn't like “black people”. She was referring to the African American workers in the after care program that she perceived to be mean. There is also no question that this reference of not liking black people was relayed to an African American student in A.D.'s class by a third student in that class. The African American student was upset by the remark and related the same to Ms. Blake. A.D. then penned an apology letter to the African American student. This incident caused a disruption in that A.D., and the other two students involved, were counseled on the matter. A.D. underwent restorative measures with Ms. Blake and Ms. Heitman.

Given the totality of the facts in the instant matter, I cannot conclude that the Board acted in an arbitrary, capricious, or unreasonable manner in determining that an HIB incident did occur. See In Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965); R.G.B. v. Vill. of Ridgewood Bd. of Educ., EDU 14213-12, Initial Decision (May 15, 2013) <<http://njlaw.rutgers.edu/collections/oal/>>, adopted, Comm'r (June 24, 2013); and, J.A.H. ex rel. C.H. v. Twp. of Pittsgrove Bd. of Educ., EDU 10826-12, Initial Decision (March 11, 2013) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556 (1963), 562 (1963)), adopted, Comm'r (April 25, 2013) <<http://njlaw.rutgers.edu/collections/oal/>>.

While the undersigned may have come to a different conclusion than a finding of HIB, based on the intent of A.D. in making the statement, that does not mean that the Board acted in an arbitrary, capricious or unreasonable manner.

Accordingly, I **CONCLUDE** that Petitioner has failed to sustain the burden of establishing that the Board acted arbitrarily, capriciously, or unreasonably in finding that HIB did occur.

Based upon the foregoing, I **CONCLUDE** that the Petition must be **DISMISSED**.

ORDER

It is hereby **ORDERED** that Petitioner's Amended Petition be **DISMISSED** with prejudice.

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.



September 19, 2023

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Witnesses

For Petitioner:

A.D., minor child

A.D., Petitioner

For Respondent:

Janel Blake, HIB Specialist

Denise Heitman, Principal

Catherine Danahy, Superintendent

List of Exhibits

Joint Exhibits:

- J-1 May 31, 2023 OAL transmittal
- J-2 January 26, 2023 Incident Report Form
- J-3 HIB 338 Form
- J-4 HIB Investigative Report
- J-5 March 1, 2023 Board Meeting Minutes
- J-6 March 2, 2023 HIB Finding Letter
- J-7 March 7, 2023 E-Mail
- J-8 March 10, 2023 E-Mail
- J-9 April 24, 2023 Board Decision Letter
- J-10 5131.1 Board's HIB Policy
- J-11 Apology Note