

New Jersey Commissioner of Education

Decision

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

Petitioner,

v.

Board of Education of the Township of Bedminster,
Somerset County,

Respondent.

Synopsis

Petitioner disputed the respondent Board's finding that his son, J.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 J.M. had committed an act of HIB against classmate C.D. when he made comments regarding C.D.'s weight and attire. The Board asserted that J.M.'s conduct satisfied all of the elements of the statutory definition of HIB under the Act. The petitioner contended that the Board's HIB determination was based on a flawed, incomplete, and biased investigation, and was therefore arbitrary, capricious, and/or unreasonable.

The ALJ found, *inter alia*, that: an action by a board of education is entitled to a presumption of correctness unless it is proven to be arbitrary, capricious or unreasonable; under the Act, "harassment, intimidation, or bullying" is broadly defined as any gesture, any written, verbal, or physical act, or any electronic communication that is reasonably perceived as motivated by any actual or perceived distinguishing characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical, or sensory disability, that takes place on school property and substantially disrupts the orderly operation of the school; in the instant case, the record reflects that J.M. did not deny asking C.D. how much he weighed, nor making unkind comments about the size of C.D.'s shoes, but defended his inappropriate comments as merely "trash talk" among a group of classmates; C.D. was insulted and demeaned by the comments made by J.M. and those comments had the effect of disrupting C.D.'s education by causing him to stop taking his medication in the hope that he would lose weight, and by causing him not to want to go to school for fear of being made fun of by J.M. The ALJ concluded that the petitioners have failed to meet their burden of proof that the Board acted in an arbitrary, capricious, or unreasonable manner in concluding that J.M.'s actions constituted harassment, intimidation or bullying under the Anti-Bullying Bill of Rights Act. Accordingly, the ALJ affirmed the Board's HIB determination and dismissed the petition.

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

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

New Jersey Commissioner of Education
Final Decision

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

Petitioner,

v.

Board of Education of the Township of
Bedminster, Somerset County,

Respondent.

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

In this matter, petitioner challenges the Board's determination that his son committed an act of harassment, intimidation, and bullying (HIB) based on alleged comments about the victim's weight and attire. Specifically, J.M. admitted to asking C.D. how many pounds he weighs; witnesses reported J.M. calling C.D. fat behind his back and referring to his shoes as being as big as "sailboats"; and C.D. alleged that J.M. used his body to push and intimidate him. As a result of the conduct, C.D. stopped taking his medication because it caused him to gain weight and he did not want to come to school out of concern that he would be teased. The school's anti-bullying specialist conducted an HIB investigation in which she interviewed J.M, C.D., and three student witnesses, and concluded that J.M.'s conduct met the definition of HIB.

Specifically, the HIB investigation report found that the verbal and physical acts were motivated by the distinguishing characteristics of weight, attire, and athletic ability. Moreover, in addition to causing a substantial disruption or interference, the conduct had the effect of insulting or demeaning C.D, and severely or pervasively caused physical or emotional harm to C.D., as he did not want to come to school and ceased taking his prescribed medication. The Board confirmed the HIB determination and petitioner subsequently filed this petition of appeal.

Following a hearing on the merits, the Administrative Law Judge (ALJ) concluded that the Board was not arbitrary, capricious or unreasonable in determining that J.M. committed an HIB violation, as the record demonstrates that J.M made a series of insulting and demeaning comments based on C.D.'s perceived characteristics of weight, shoe size, clothing, and athletic ability. The ALJ further explained that the comments disrupted C.D.'s education as they caused C.D. to stop taking his medicine and fear coming to school. Moreover, the ALJ disagreed with petitioner's arguments and found that the HIB investigation was proper, unbiased, and complete.

In his exceptions, petitioner argues that the HIB determination should be reversed because it was based on a flawed, incomplete, and biased investigation. Petitioner explained that when C.D.'s parent first contacted the guidance counselor about J.M.'s conduct, the counselor told her she was sorry about what the family was going through and that C.D. is a great kid. Petitioner contends that since the guidance counselor is also the anti-bullying specialist who conducted the investigation, the investigator was biased in favor of C.D. based of her initial exchange with C.D.'s parent. Petitioner also contends that the investigation was flawed as no staff were interviewed and, instead, the report relied only on the statements of

fifth-grade students who were named by the victim. As one witness was a good friend of the victim's and was also suspended for punching J.M. in the nose, petitioner alleges he was a biased witness. According to petitioner, the investigator downplayed the assault and never explored the possibility that the HIB complaint was in retaliation for the witness' three-day suspension. Further, the petitioner argues that the investigator did not ask the witnesses about whether C.D. participated in trash-talking; did not consider evidence demonstrating that J.M. was joking and had no history of HIB complaints; and did not place weight on the fact that the victim had no physical injury and that, although he claimed he did not want to come to school, C.D. missed no school days.

Petitioner contends that the ALJ erred in not placing weight on his testimony or the testimony of his son, which, he alleges, demonstrates that the HIB determination was arbitrary, capricious, and unreasonable. According to petitioner, his testimony established that there was a conflict of interest as the Superintendent's children were involved, while his son, J.M., testified that the students would all "trash-talk" each other at lunch, and that after the investigator informed him that C.D. was upset, J.M. apologized. Finally, petitioner takes exception to the ALJ's refusal to accept the testimony of petitioner's expert as reliable. Accordingly, petitioner urges the Commissioner to reject the Initial Decision.

In reply, the Board argues that petitioner does not challenge the ALJ's legal determinations, but rather credibility determinations and assessment of the facts. The Board argues that the ALJ's credibility assessments are supported by the record – as petitioner's testimony was inconsistent and his expert relied on inaccurate information – and therefore the ALJ's determinations were not arbitrary, capricious, or unreasonable. Additionally, the Board

contends that the HIB determination was supported by the record, including J.M.'s own admission that he made a comment about how many pounds C.D. weighed. As such, the Board asks that the Initial Decision be adopted.

Upon review, the Commissioner agrees with the ALJ that, based on the evidence in the record, petitioner did not establish that the Board acted in an arbitrary, capricious, or unreasonable manner in finding that J.M. committed an act of HIB. The Anti-Bullying Bill of Rights Act (the Act) defines HIB as follows:

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

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

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

Therefore, a finding of HIB requires three elements. 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. 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, J.M. admitted to asking the victim how many pounds he weighs, and the comments about weight and shoe size were corroborated by witness statements. It was not arbitrary, capricious, or unreasonable for the Board to conclude that a reasonable person would consider J.M.'s comments to be motivated by the distinguishing characteristic of weight or body type. Regarding the second element, there is ample evidence in the record that the conduct caused a substantial disruption to the rights of C.D, as he reported that he stopped taking his medication in an effort to lose weight and was afraid to come to school. Finally, regarding the third element, there is no doubt here that making fun of someone's weight and shoe size would insult or demean that student. As such, the Board was not arbitrary, capricious or unreasonable in determining that J.M.'s conduct met the definition of HIB.

The Commissioner does not find petitioners' exceptions to be persuasive. The investigation was not biased or flawed. Any initial contact with the victim's family did not impact the investigation and the ultimate determination was made based on the victim's own admission and supported by witness statements. Additionally, the Act does not require interviews with staff members for an investigation to be complete. In this case, evidence to justify the HIB determination was established by interviews with the victim, the accused, and three student witnesses, including one of the accused's friends who indicated that he heard

J.M. call the victim “fat” behind his back. Further, the evidence in the record in no way reflects that the HIB complaint was in retaliation for another incident in which a witness punched the accused. It is irrelevant to the determination in this matter whether C.D. participated in trash-talking or whether J.M. was joking; the HIB definition does not consider the accused’s intent. It is also irrelevant that C.D. did not have a physical injury or miss school; the victim’s fear of coming to school as well as his refusal to take his medicine constitutes a substantial disruption of his rights. Petitioner’s remaining exceptions stem from the ALJ’s credibility determinations, which the Commissioner finds no basis to overturn. As such, petitioner failed to meet his burden of demonstrating that the Board’s HIB determination was arbitrary, capricious, and unreasonable.

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

IT IS SO ORDERED.¹


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

Date of Decision: March 7, 2023
Date of Mailing: March 9, 2023

¹ 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 07337-19

AGENCY DKT. NO. 73-4/19

W.M. ON BEHALF OF MINOR

CHILD J.M.,

Petitioner,

v.

**TOWNSHIP OF BEDMINSTER BOARD
OF EDUCATION, SOMERSET COUNTY,**

Respondent.

Robert M. Biagiotti, Esq., for petitioners

Rita F. Barone, Esq., for respondent (Flanagan, Barone, O'Brien, LLC, attorneys)

Record Closed: September 14, 2022

Decided: December 15, 2022

BEFORE **SUSAN L. OLGATI, ALJ:**

STATEMENT OF THE CASE

Petitioner, W.M. on behalf of his minor son J.M., challenges the determination of the respondent, Bedminster Township Board of Education (hereinafter referred to as the Board) that J.M. committed an act of harassment, intimidation or bullying (HIB) under the Anti-Bullying Bill of Rights N.J.S.A. 18A:37-13.2 et seq.

PROCEDURAL HISTORY

Petitioner filed a Petition of Appeal with the Commissioner of Education, disputing respondent's determination in HIB case #137. The Department of Education transmitted the matter to the Office of Administrative Law (OAL) for hearing as a contested case, where it was filed on May 30, 2019. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23. The hearing was delayed due to COVID restrictions on in-person proceedings.¹ The hearing was held on May 24, 2022. During conferencing on the first day of hearing, the parties advised the undersigned that petitioner had just learned that the victims in HIB case #137, the HIB that is the subject of this appeal, and HIB case #138² were not the same student. Petitioner acknowledged that the HIB investigation reports, along with the identification numbers of the students involved in the two HIB cases had been provided to them in discovery but contend that W.M. formed his belief as to the identity of the victims based on information provided to him by the Board. Following the testimony of W.M. and J.M., the hearing was continued and petitioners presented the testimony of their expert witness on the second day of hearing held on June 7, 2022. Thereafter, the record remained open for the parties to request a transcript of the proceedings and submit written closing arguments. Upon receipt of the closing arguments, the record closed on September 14, 2022. Thereafter, by Order of Extension, the time for filing this Initial Decision was extended until December 15, 2022.

FACTUAL DISCUSSION AND FINDINGS OF FACT

Having reviewed the evidence in the record, I **FIND** that the following facts have been jointly stipulated or are otherwise undisputed, therefore I **FIND** them as **FACT**:

During the relevant time, J.M. was in the fifth grade in the Bedminster Township Public School District. In December 2018, J.M. was identified as the accused/alleged

¹ The parties jointly requested/agreed upon an in-person hearing rather than proceeding via zoom remote hearing platform.

² Another HIB case in which J.M. was named as one of the accused. The allegations of the matter were not substantiated and were not appealed.

offender in HIB case #137 and was identified as one of multiple accused/alleged offenders in HIB case #138.

For HIB case #137, the initial report was received on December 3, 2018. See Stipulation of Facts at No. 1.

The investigation was concluded on December 13, 2018, and the report was signed by the Anti-Bullying Specialist, Anti-Bullying Coordinator, and Principal and then submitted to the Superintendent on that same date. Id. at No. 2.

The Superintendent, Jennifer Giordano, signed off on the report on December 17, 2018, after she clarified a statement on page five of the report. Id. at No. 3.

A reorganization meeting of the Bedminster Board of Education was held on January 4, 2019. Id. at No. 4.

On January 17, 2019, HIB #137 was discussed in executive session of the Board. Id. at No. 5.

By letters dated January 21, 2019, petitioners were advised by the District that HIB case #137 was substantiated against J.M. Id. at No. 6.

By email dated February 5, 2019, petitioner W.M. requested a hearing on HIB case #137 before the Board. Id. at No. 7.

The hearing was scheduled for February 12, 2019, but cancelled due to weather. Id. at No. 8.

Petitioners were advised that the hearing was rescheduled for February 21, 2019, but failed to appear. Id. at No. 9.

On February 21, 2019, HIB case #137 was discussed in executive session of the Board. Id. at No. 10.

By letters dated February 25, 2019, petitioners were advised by the District that HIB case #137 was substantiated against J.M. Id. at No.11.

For HIB case #138, the initial report was received on December 20, 2018. Id. at No. 12.

For HIB case #138, the investigation concluded on January 10, 2019, and the allegations were found to be unsubstantiated. Id. at No. 13.

For HIB case #138, the Principal Todd St. Laurent signed off on the investigation report and notified the victim's parents on January 21, 2019. Id. at No. 14.

Gina Infante was the investigator regarding both HIB case #137 and HIB case #138. Id. at No. 15.

Testimony for petitioner

W.M. testified that he has been a teacher for the past thirty-four years. During the relevant time period, J.M. attended school in the District. He is currently attending school at St. James and is in the seventh grade. On approximately November 27, 2018, W.M. received a telephone call from the Vice Principal (VP) Mr. St. Laurent, advising that J.M. had been punched in the face. At that time, the VP said he could not say who was involved in the incident. W.M. later talked with his son who advised that he was punched in the face by A.C. or S.C., who were twin brothers, and that another student, C.D. was there egging them on to punch J.M. The VP advised that the student who punched J.M. had been suspended for three days. W.M. had a good relationship with the VP. The VP later confirmed which of the students were involved in the incident. He also advised that J.M. would have to sit with him at lunch—meaning he would have detention relating to the punching incident.

Thereafter, he received a call from the Principal, Corby Swan, about a HIB incident in the cafeteria [HIB #137]. Mr. Swan advised that he could not provide any details of the incident.

W.M. then learned about a second HIB concerning J.M. Mr. Swan called him to advise that there was a HIB on the bus. [HIB #138]. W.M. was concerned because J.M. did not take the bus.

Later at the Board meeting, he asked whether the two HIB incidents were the same and he was told, "yes." He also asked if children of the board members were involved in HIB case #138, and was told, "yes." The conversation was with the Board. The Superintendent, Ms. Giordano was also there.

W.M. appeared at the Board meeting with his former attorney who has since passed away. At the meeting, he was advised that the HIB matters were handled together and that the victims were the same. As a teacher, W.M. is very familiar with the HIB process. He advised the Board that proper procedure was not followed. He was told that the Board meeting was not a regular meeting, but rather a reorganization meeting. In speaking with others, he learned that the Board should have taken time at the meeting to hear J.M.'s case. Later in his testimony, W.M. recalled that his conversation regarding improper procedure and whether the two incidents were the same, was with Superintendent Giordano.

W.M. explained that he did not look at the student ID numbers in the HIB reports. He thought the Board would have told him the truth about the students involved.

On cross-examination, W.M. explained that after he was called by the principal about HIB case #137, he contacted the VP to ask whether the same boys who punched J.M. were also involved in HIB #137. He believed he contacted the VP after J.M. spoke with Ms. Infante. J.M. came home hysterically crying, extremely upset and angry. Infante pulled him off the lunch line in the cafeteria and questioned his actions and had him sign an important document. His friends overheard and they called him a bully. His discussion with the VP concerned his disgust regarding Infante's actions and how she could be so

“callous” about J.M.’s well-being. His information regarding Infante’s interview of J.M. came from J.M. and the VP. W.M. asked for school video from the cafeteria and was given inaccurate/untrue information about the existence of video footage.

He was confused by the letters he received from the District regarding the two HIB cases. He didn’t understand how the same incident could be substantiated in one case and not the other.

He clarified that the Board told him the incidents were the same but did not tell him “it was the same kid.”

Upon review of Infante’s report, W.M. acknowledged that he was mistaken about her pulling J.M. out of the cafeteria to interview him, and explained that information must have come from J.M. or the VP.

Upon questioning by the undersigned, W.M. testified that Ms. Giordano told him at the Board meeting that the victim in the two HIB incidents were the same, that children of board members were involved, and that the next meeting of the Board was not a reorganization but was a regular Board meeting.

J.M. is currently fourteen years old. He testified that he is doing well at St. James’ school and has had no behavioral issues there.

.He described the lunchroom at the Bedminster school as being organized by grade. Students are able to sit where they wanted within the tables assigned to their grade. C.D. is the student whom he was accused of bullying. C.D. was a part of his lunch group, he regularly sat with J.M. and his friends. During lunch, J.M. and his friends would talk about sports and would sometimes “trash talk” with each other. They sometimes referred to him as “giraffe neck” or “twig.” C.D. would participate in the trash talk. When they played sports at lunch, he would block and/or “box out” others, but he did not do that with C.D.

He admitted to commenting about C.D.'s shoes size but at the time, didn't think there was any problem with it. He also acknowledged commenting about C.D.'s weight but explained that they all talked trash with each other. They joked around and no one took things too harshly. C.D. continued to sit with them daily.

On November 27, 2018, J.M. was punched in the face by A.C. A.C. said something to him, and he said something back, and A.C. punched him in the nose. A teacher sent them both to the principal's office. A.C. was also a witness in HIB #137.

J.M. did not recall where Infante interviewed him. She asked him yes/no questions and couldn't really explain what happened. Sometime after speaking with Infante, she had him sign a statement in the lunchroom. She called him over to a table near the entrance. He didn't know what he was being asked to sign. If he knew it was going to be on his record, he "would never have signed it." He was embarrassed. His friends asked him what it was about. C.D. was there.

After J.M. spoke with Infante, he said, "sorry" to C.D. He stopped making comments about him. He did not intend to hurt C.D.

On cross-examination, he acknowledged that asking somebody "how many pounds they are" would be offensive but explained that they were all joking around and that C.D. said things to him. He denied saying to C.D. that he was fat but acknowledged that he could have used another word other than "pounds." He also acknowledged that he might have asked C.D. why his shoes were so big.

Raymond Bauer testified to his credentials and work experience in the field of education. He began his career as a teacher and then worked as a vice principal in middle and high school. He was a middle school principal and was the acting superintendent of schools. He is familiar with the HIB statute and has been involved in approximately ten HIB investigations and has reviewed HIB investigation reports. He never served as an anti-bullying coordinator and acknowledged that he attended only one HIB training when the statute was implemented. He was offered and qualified as an expert in the field of HIB investigations over the objection of the Board.

He explained that he was advised by W.M. that the victims in HIB cases #137 and #138 were the same. He has since learned the information was not correct. He acknowledged that the investigation reports he reviewed contained student identification numbers, but he did not review or compare that information in the two HIB reports.

Bauer opined that the investigation in HIB case #137 was not appropriate. As an initial matter, he found a conflict with guidance counselor Gina Infante investigating the HIB, because as a counselor, she is a student advocate, and in the course of a HIB investigation, she is obtaining information that could be used against a student for disciplinary purposes.

He found procedural inconsistencies in HIB #137. Infante made assumptions about the victim's statements. He believed that Infante's response to the victim's mother, in which she expressed that she was sorry for what C.D. and the family was going through, and that her comment that C.D. was a "great kid," were not appropriate. She should have received the information from the mother without comment.

He also had serious questions regarding Infante's handling of J.M.'s interview and the manner in which his statement was presented for his signature. J.M. was not given an opportunity to edit or comment on the statement and he was placed in an embarrassing situation when he was required to sign the statement. Additionally, Infante failed to interview or obtain information from adults who were supervising the students.

Further, the fact that J.M. was punched by witness No. 1 three days earlier was not taken into consideration. Infante seemed not to have considered that there were conflicts with the other children involved in the HIB. She failed to learn about a prior conflict that J.M. had with one of the witnesses outside of school.

As the investigator, Infante had the prerogative to arrange for a peer to help ensure proper behavior at the lunch table. Witness No. 2 offered to speak with J.M., but this was never explored. She also could have arranged for a group counseling session, but there

was no indication that was ever done and saw no counseling for the parents of the children involved.

Bauer opined that Infante made comments she was not qualified to make, about the psychological harm allegedly suffered by C.S. He believes that J.M. was a scapegoat because HIB case #137, which involved alleged psychological harm, was substantiated against J.M. while HIB case #138, which involved allegations of hitting and pushing, was not. He explained that learning that the victims in the two HIB cases were not the same, strengthened his opinion that J.M. was “scapegoated” because in a very short time, the victim in HIB #137 went from being considered a victim to an accused in HIB #138.

On cross-examination, Bauer acknowledged that it would be highly unusual for a superintendent to breach student confidentiality and inform another parent that the students involved in a HIB were children of Board members.

Regarding his opinion that it was a conflict for a guidance counselor to serve as the HIB investigator, Bauer acknowledged that the HIB statute allows the District discretion in appointing the investigator. He further acknowledged that guidance counselors are often appointed as investigators in HIB matters.

Bauer believes the charges against J.M. should not have been substantiated. He also did not agree with the corrective action recommended by Infante.

Gina Infante testified to her work experience. She has been a school counselor for twenty years. She has been an Anti-Bullying Specialist and has received HIB training since 2011. She also presented HIB training to teachers and staff. She investigated HIB case #137. At the time, she had conducted approximately thirty other HIB investigations. HIB #137 was brought to her attention through a November 30, 2018, email from C.D.’s mother, who reported that he was being bullied at school. Infante responded to the mother immediately, because she made concerning statements that C.D. stopped taking his medication, was very depressed, and that they were having problems finding a psychiatrist. Infante told the mother she was sorry they were going through this and that

C.D. was a great kid. The mother reported that the bullying occurred throughout the school year. The father also sent an email about the bullying.

Infante explained that when she conducts an interview, she types up her notes and reads through it with the individual and if they are okay with the statement—they sign it.

She interviewed C.D. and asked if people were making fun of his clothes. She took his statement in her office. He reported that J.M. said he wears the same clothes every day and called his shoes “crap.” J.M. also asked about how much he weighed. J.M. put him down and called him stupid. He had heard that J.M. called him fat, but did not say it “to his face.” C.D. was talking about his medication and how it made him gain about thirty pounds and J.M. commented that he could not believe he gained thirty pounds from medication. C.D. said he stopped taking the medication because he thought he could lose weight. He didn’t want to come to school because he was afraid J.M. would make fun of him. He sits with other students and said that his friendships have improved since he moved from J.M.’s table. He named three witnesses.

Witness No. 1 confirmed that the victim said he did not want to come to school. He saw J.M. being mean to the victim multiple times. The victim did not respond. He just put his head down. Infante found this significant because a lack of response can demonstrate an imbalance of power. She was aware that witness No.1 had previously punched J.M. He told her about the incident during the interview. That incident was handled through the Code of Conduct. J.M.’s comments leading up to the punch were not appropriate and were not tolerant, but they did not justify the punch.

She interviewed witness No. 2 in her office. He was a friend of J.M.’s. He heard J.M. make comments about C.D.’s weight behind his back. He didn’t know if J.M. understood that his comments were hurtful, but witness No. 2 noticed that C.D. was upset. J.M. made fun of C.D.’s double chin.

Infante interviewed J.M. in her office on December 5, 2018. She asked him about his comments to C.D. He could not remember his comments but acknowledged that he asked C.D. “how many pounds he weighed.” Infante had previously talked to J.M. about

calling others names. J.M. said that after their talks, he learned his lesson and knew not to do that, and apologized. J.M. denied “body checking” or blocking C.D. They also talked about when J.M. got punched by witness No. 1. He gave her his version of what happened. They were using inappropriate terms and J.M. acknowledged that he had taunted witness No. 1 by telling him to push him and hit him. On December 13, Infante reviewed J.M.’s statement with him in her office. She told him to read it to make sure it was accurate. He did not make any changes.

She had J.M. sign his statement for HIB case #138 in the lunchroom. J.M. did not demonstrate any HIB behaviors in that matter. She waived him over to the doorway. She told him to read it, asked him if he was okay with it, and had him sign it. She explained that there were eleven students involved in HIB #138. She was under time constraints to interview everyone, type up the reports, and get the statements signed off. All the behavior in HIB #138 was unsubstantiated.

Infante also interviewed witness No. 3 in connection with HIB case #137. Witness No. 3 is the brother of witness No. 1. He said he had been bullied by J.M. since “pre-K.” J.M. recently called him a “loser” and said that “no one liked him.” He also heard J.M. call C.D. a “fat loser” and said that he was terrible at recess.

She did not interview any adults because the information she obtained met the HIB criteria.

Infante concluded that J.M.’s comments were motivated by the victim’s weight. J.M. admitted asking C.D. how much weight he gained on his medication. Witnesses No. 1 and No. 2 also said they heard J.M. say that C.D. was fat and that his shoes were as big as “sailboats.” In addition to weight, she concluded that J.M.’s statement/actions also involved athletic ability. J.M.’s comments also caused a substantial disruption to C.D.’s day. He stopped taking his medication, did not want to wear his clothes because he was afraid of what J.M. would say to him, and did not want to come to school. It didn’t matter that C.D. did not actually miss any school days. It was significant that he did not want to come to school. She also determined that there was a series of incidents because it was reported that the HIB occurred throughout the year—no specific dates were given.

Following her investigation, Infante recommended using peer leaders to lead group lessons and talk about different character traits. She also recommended that the teachers incorporate empathy lessons, that they bring in an empathy program, and provide all accused students with a mandatory anti-bullying message. She also recommended pupil counseling and counseling to the parents, if needed. Additionally, she recommended increased supervision or assigned seats, since the lunchroom/recess were “hot spots.” In terms of the corrective action taken, she explained there was a Unity Day in February where they had a program called, “The New Kid.” The teachers were given follow up questions for use in the classroom. The leaders talked to the students about kindness and tolerance and the DARE officer came in to talk to the students during health class.

She completed the investigation in HIB case #137 on December 13, 2018.

Infante received a verbal report regarding another HIB—case #138 on December 17, 2018. In HIB #138, the only accusation against J.M. was that he and another student taunted the victim and his friends. Infante interviewed J.M. in her office. She found nothing inappropriate with the way he acted in that matter.

On cross-examination, Infante did not agree that most of the allegations in HIB case #137 occurred in the lunchroom and at recess. She contends that the incidents also occurred in the classroom. She acknowledged she did not interview any teachers or staff.

Additionally, she explained that she did not perceive the emails from the victim’s parents in which they referenced taking “severe action,” to be threatening a lawsuit. Rather, she understood that they wanted the HIB to be addressed.

Witness No. 1 told Infante that C.D. was one of his best friends. Infante agreed that witness No. 3 did not think much of J.M., and that much of his statement discussed things that happened between he and J.M. more than five years ago.

She testified that the information supporting her conclusion that the HIB was also based on “athletic ability” may have come from the victim’s mother. She acknowledged that notes of such conversations were not in her report.

Jennifer Giordano is the school superintendent. She explained that once the HIB investigation was completed, it went to the principal, the superintendent, and then to the Board. She signed the report on December 17, 2018. Under the “further action” section of the report, she noted that when she was in the lunchroom on December 4, 2018, she saw the victim and the accused sitting at the same table.

The Board’s next regularly scheduled meeting was held on January 17, 2019. She presented both HIB cases during the executive session. On January 4, 2019, the Board had a joint special meeting with the Township, where they swore in new members. The January 17, 2019, meeting date was the first meeting at which the HIBs could have been presented.

The appeal of HIB case #137 was scheduled for February 12, 2019. The Board honored a request to reschedule the appeal due to bad weather. The appeal was rescheduled for February 21, 2019, but J.M.’s parents did not appear. The Board honored another request for a meeting which was held on March 12, 2019. The meeting was attended by the Board, its attorney, the Board secretary, and Giordano. W.M. and his then attorney also attended and spoke at the meeting. They requested that the HIB be looked at again because they felt it should not have been substantiated. Giordano made no statements regarding the HIB. The meeting was run through the Board’s attorney. Petitioners did not appeal HIB case #138. Giordano was not aware of HIB case #138 being mentioned. After the meeting, Giordano received correspondence from W.M. requesting a meeting to discuss the well-being and academic achievement of his children. The meeting took place in the beginning of April. She and the VP talked with W.M. She was asked if she would dismiss the charges, but she refused.

Regarding the remedial steps and corrective action taken, Giordano was aware that peer leaders were involved, and of “The New Kid” presentation which addressed bullying, and that the DARE officer conducted a class in February. Additionally, Infante

conducted student counseling with the victim and J.M. until W.M. advised that he did not want Infante to meet with his children. The student lunch seats were also moved but she explained that in middle school, students change their seats.

On cross-examination, Giordano acknowledged that the recommendation of parent counseling was not provided.

During the April 2019 meeting with Giordano and the VP, W.M. said that Giordano had the authority to “make the HIB go away.” She could not recall if HIB #138 “came up” at that meeting.

She did not agree that the two HIB cases had “certain similarities.”

Credibility

In evaluating evidence, it is necessary for me as the finder of fact to assess the credibility of the witnesses. This requires an overall assessment of the witness’s story in light of its rationality or internal consistency and the manner in which it “hangs together” with the other evidence. Carbo v. United States, 314 F. 2d 718, 749 (9th Cir. 1963).

A trier of fact may reject testimony as “inherently incredible” when “it is inconsistent with other testimony or with common experience” or “overborne” by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). “The interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

The testimony of W.M. concerning the information he claims he was told about the two HIB cases, including the identity of the victim and the other students involved, and by whom he was told, was confusing—and at times contradictory. Additionally, his testimony that C.D. was involved in the incident in which J.M. was punched and that he was “egging on” the puncher, is unsupported by the evidence in the record. Further, he acknowledged

at hearing that he was mistaken about Ms. Infante pulling J.M. out of the cafeteria to interview him. W.M. was emotional and angry during his testimony and during that of Gina Infante. While he is understandably very concerned about his son and the substantiated HIB determination, his testimony appeared to be unduly influenced and colored by his belief that J.M. was treated unfairly by the District, and that its handling of the HIB investigation was improper. Although W.M.'s beliefs may be sincerely held, he has no first-hand knowledge of the HIB incidents or of Infante's actions in conducting the investigation. Moreover, some of the information upon which he relies has been demonstrated to be incorrect and/or is overborne by the more credible testimony and the documentary evidence in the record. For these reasons, I am unable to accept W.M.'s testimony as reliable or to give it much, if any weight.

J.M.'s testimony that he made comments about C.D.'s weight and shoe size and his acknowledgement that those statements could be considered offensive is consistent with his statements made during the investigation and with the documentary evidence in the record, thus I accept this testimony as credible.

With respect to assessing the testimony and opinions of petitioner's expert witness, it is well settled that "[t]he weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated." Johnson v. Salem Corp., 97 N.J. 78, 91 (1984) (citation omitted). In this regard, it is within the province of the finder of fact to determine the credibility, weight, and probative value of the expert testimony. State v. Frost, 242 N.J. Super. 601, 615 (App. Div.), certif. denied, 127 N.J. 321 (1990); Rubanick v. Witco Chem. Corp., 242 N.J. Super. 36 (App. Div. 1990), modified on other grounds and remanded, 125 N.J. 421 (1991). Much of the testimony of Raymond Bauer was based on inaccurate information provided by W.M. and/or his unsupported theories of the case. Additionally, Bauer references no statutory or regulatory provision, nor any model policy, or procedure in support of his opinion. Rather, his opinion appears to be based on his personal belief that the investigation could or should have been conducted differently. Finally, his conclusions that investigation was flawed and that J.M. was "scapegoated" because HIB case #137 was substantiated, while case #138 was not and/or because the victim in HIB #137 was also named as an accused in HIB #138, is not reasonable or sensible and appears to ignore that the two cases

involve unrelated and wholly differing facts and circumstances. For these reasons, I do not accept the opinion testimony of Bauer as reasonable or reliable and afford it little to no weight.

As to respondent's witnesses, I accept the testimony of Gina Infante as credible. Her testimony regarding her conduct of the investigation is supported by the documentary evidence in the record. Similarly, her testimony regarding her conclusions was straightforward, reasonable, and supported by the evidence in the record including the written statement and hearing testimony of J.M.

Finally, I also accept the testimony of Jennifer Giordano regarding the Board meetings and her communications with W.M. to be straightforward and reasonable. Thus, to the extent her testimony on these issues differs from that of W.M., I accept her testimony as more reliable and more credible than W.M.'s.

Additional Findings

Having considered the testimony of the witnesses, and having observed their demeanor at hearing, and further having reviewed the documentary evidence, I further **FIND as FACT:**

J.M. admitted to making comments to C.D. about how much he weighed and about his shoes being so big. The comments were insulting and demeaning and were not isolated instances.

These comments were reasonably perceived as being motivated by actual or perceived distinguishing characteristics of C.D.

C.D. and witnesses No. 1 and No. 2 confirmed these types of comments by J.M. Witness No. 1 reported that J.M. said C.D.'s shoes were bigger than "sailboats." See J-1, HIB investigation report at pg. 6

C.D. also reported that J.M. made fun of his clothes and called his shoes “crap.” These comments were confirmed by witnesses No. 1 and No. 2 who reported that J.M. made fun of C.D.’s shoes and called them fakes. See J-1, HIB investigation report at pgs. 6 and 8.

C.D. also reported that J.M. would extend his arms and push him with his body at recess. See J-1, HIB investigation report at p. 4.

Witness No. 2 also reported J.M. told C.D. that he reminded him of a rooster because of his neck (double chin). See J-1, HIB investigation report at p. 8.

Witness No. 3 reported that J.M. called C.D. fat and a loser and said he was terrible at recess. He also saw J.M. push C.D. See J-1, HIB investigation report at p. 9.

Witness No. 1 considered C.D. to be one of his best friends. He was not friends with J.M. and he was involved in a November 27, 2018, incident in which he punched J.M.

Witness No. 2 was a friend of J.M.

Witness No. 3 was not a friend of J.M. He is the twin brother of witness No. 1.

C.D. was upset by the demeaning and insulting comments made by J.M. He stopped taking his medication for a period of time in hopes that he would lose weight. He did not want to come to school or wear his clothes because he was worried that J.M. would make fun of him. Witnesses No. 1 and No. 2 confirmed that C.D. was upset by J.M.’s comments.

A reasonable person should have known, under the circumstances, that such comments would have the effect of emotionally harming a student.

J.M. acknowledged at hearing that his comments to C.D. could be considered offensive.

J.M. claimed that boys at his lunch table engaged in trash talk. He attributed no specific comments to C.D.

Gina Infante interviewed J.M. about HIB case #137 in her office. She reviewed his statement with him and J.M. signed the statement in her office.

Infante had J.M. review and sign his statement in HIB case #138 by the doorway of the cafeteria. The charges in that matter were not substantiated.

The Board exercised proper procedure in noticing and hearing HIB case #137 at its next regular meeting on January 17, 2019.

Statements made by Infante to C.D.'s mother in response to her HIB complaint in case #137, including that she was sorry the family was experiencing the incidents complained of and that C.D. was a "great kid" did not demonstrate bias in favor of C.D. or against J.M.

J.M. participated in several "talks"/counseling sessions with Infante. These sessions were discontinued after W.M. advised that he did not want his children to meet with Infante.

J.M. received no discipline in connection with HIB case No. 137.

LEGAL ANALYSIS AND CONCLUSIONS

Here, the issue to be decided is whether the Board's determination that J.M. committed a HIB violation was arbitrary, capricious, and unreasonable.

The Anti-Bullying Bill of Rights Act 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.” N.J.S.A. 18A:37-13.1(f). Under the Act, “[h]arassment, intimidation or bullying” is defined as:

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

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

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

Each school district must adopt a policy that prohibits HIB and provides “a procedure for prompt investigation of reports of violations and complaints.” N.J.S.A. 18A:37-15(b)(6). 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)(a). The investigation shall be conducted by a school anti-bullying specialist, but “[t]he principal may appoint additional personnel who are not school anti-bullying specialists to assist in the investigation.” Ibid. The investigation shall be completed within ten days of the initial HIB complaint. Ibid.

The results of the investigation shall then be reported to the superintendent of schools, within two days of completion of the investigation, who may “decide to provide intervention services, establish training programs to reduce [HIB] 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 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.” N.J.S.A. 18A:37-15(b)(6)(c).

The parents of the students involved in any alleged HIB incident “shall be entitled to receive information about the investigation . . . including the nature of the investigation, whether the district found evidence of [HIB], or whether discipline was imposed or services provided to address the incident of [HIB].” N.J.S.A. 18A:37-15(b)(6)(d). The parents may request a hearing before the board, and the hearing must be held within ten days of the request. Ibid. Any hearing shall be held in executive session to protect the identity of any students involved. Ibid. And “[a]t 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.

A school board must issue a written decision at the first meeting after its receipt of the investigation report. N.J.S.A. 18A:37-15(b)(6)(e). The board may affirm, reject, or modify the superintendent’s decision. Ibid. The board’s decision may be appealed to the Commissioner of Education. Ibid.

The Commissioner of Education will not overturn the decision of a local board in the absence of a finding that the action below was arbitrary, capricious or unreasonable. T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07, Initial Decision (February 4, 2008) (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff’d, 46 N.J. 581(1966)), adopted, Comm’r (April 7, 2008), <<http://njlaw.rutgers.edu/collections/oal/>>. Further, the Commissioner will not substitute his judgment for that of the board of education, whose exercise of its discretion may not

be disturbed unless shown to be “patently arbitrary, without rational basis or induced by improper motives.” Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). New Jersey courts have held that “[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.” Bayshore Sewage Co. v. Dep’t of Env’tl. Prot., 122 N.J. Super. 184, 199 (Ch. Div. 1973), aff’d, 131 N.J. Super. 37 (App. Div. 1974).

Here, petitioners argue that the Board’s determination was arbitrary, capricious, and unreasonable because the investigation by Gina Infante was biased, flawed, incomplete, and inconsistent with HIB standards. Despite these arguments, petitioners have presented no credible or competent evidence that the Board acted in an arbitrary, capricious, or unreasonable manner in concluding that J.M. committed a HIB violation under the Anti-Bullying Bill of Rights Act. Rather, the evidence, including the statement and hearing testimony of J.M., as well as the statements of the victim and of the three witnesses, demonstrate that J.M. made a series of insulting and demeaning comments concerning C.D. based on perceived distinguishing characteristics including his weight, shoe size, and clothing. Additionally, the evidence including the statements of the victim and witness No. 3 demonstrates that Infante, and ultimately the Board, reasonably concluded that J.M.’s comments/actions were motivated by athletic ability.

C.D. was insulted and demeaned by the comments made by J.M. and they had the effect of disrupting his education by causing him to stop taking his medication in the hope that he would lose weight and by causing him not to want to go to school for fear of being made fun of by J.M. Further, petitioners’ arguments that Infante should have interviewed adult teachers and staff who *may* have witnessed the alleged incidents do not render the investigation as flawed or incomplete. Particularly as the statements of C.D., the three witnesses, and of J.M. demonstrated that the HIB criteria had been established, and further because, no specific dates for the incidents were given—instead the incidents were alleged to have occurred throughout the year. Finally, as previously indicated, petitioners point to no statute, regulation, model policy, or procedure to demonstrate that Infante’s investigation of HIB #137 was biased, flawed, incomplete or otherwise improper.

Accordingly, for the reasons set forth herein, I **CONCLUDE** that petitioners have failed to meet their burden of proof that the Board acted in an arbitrary, capricious, or unreasonable manner in concluding that J.M.'s actions constituted harassment, intimidation or bullying under the Anti-Bullying Bill of Rights Act.

ORDER

Based on the foregoing, I hereby **ORDER** that the decision of the Board is **AFFIRMED** and that the petition is **DISMISSED**.

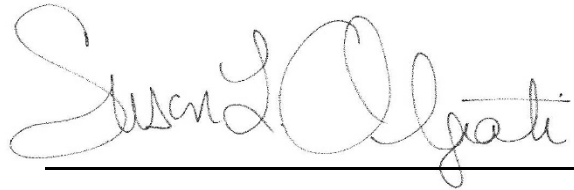
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.

December 15, 2022

DATE



SUSAN L. OLGIATI, ALJ

Date Received at Agency:

Date Mailed to Parties:

SLO/as

APPENDIX

WITNESSES

For petitioner

W.M.

J. M.

Raymond Bauer

For respondent

Gina Infante

Jennifer Giordano

EXHIBITS

Joint exhibits

- J-1 Initial Harassment Reporting Form - Case #137 — Attached emails, December 2, 2018 (6 pages)
- J-2 Case #137 Investigation Report of Gina Infante (15 pages)
- J-3 Initial Harassment Reporting Form - Case #138, December 20, 2018 (2 pages)
- J-4 Case #138 Investigation Report of Gina Infante (23 pages)
- J-5 Bedminster Board of Education Executive Session Minutes — January 17, 2019 (1 page)
- J-6 Bedminster Board of Education Executive Session Minutes — February 21, 2019 (1 page)
- J-7 Bedminster Township Correspondence to Parents of J.M. advising Case #138 unsubstantiated, January 21, 2019 (1 page)
- J-8 Bedminster Township Correspondence to Parents of J.M. advising Case #137 substantiated — February 25, 2019 (1 page)
- J-9 HIB Certification of Gina Infante HIB Investigation Cases #137 and No. 138 (9 pages)
- J-10 Bedminster School District Report — November 27, 2018 (1 page)
- J-11 Not admitted

- J-12 Bedminster Twp. School Cafeteria Lunch Duty Schedule — 2018–2019
(1 page)
- J-13 Curriculum Vitae of Raymond Bauer (5 pages)
- J-14 Expert Report of Raymond Bauer with exhibits (33 pages)
- J-15 Resume of Gina Infante (Pecorello) (3 pages)
- J-16 Not Admitted
- J-17 Bedminster Twp. correspondence to Parents of J.M., dated January 21,
2019, delivering HIB #137 substantiated (2 pages)
- J-18 Bedminster Twp. correspondence to Parent of J.M., dated February 25,
2019, advising HIB #137 substantiated (2 pages)