

New Jersey Commissioner of Education

Decision

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

Petitioner,

v.

Board of Education of the Borough of Ramsey,
Bergen County,

Respondent.

Synopsis

Petitioner disputed the respondent Board's finding that his son, A.R., 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 (ABS), the Board determined that A.R. had committed an act of HIB against an African-American classmate when he told her during recess that she is Black, and "black is bad", which caused the victim to become visibly upset; she cried and told several friends that A.R. had made "racist" comments to her. The petitioner contended that his son told the victim, "you smell" and "you're bad," and that if A.R. did say anything racist toward the victim, he didn't mean to. A hearing in the matter was held in the Office of Administrative Law (OAL) on November 17, 2023.

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 testimony of the ABS regarding the HIB investigation was credible; it was reasonable and rational for the ABS to have found the victim's explanation more consistent with the evidence collected during the investigation; the petitioner was sincere in his testimony and steadfastly denied that his son ever said "you're Black" and "black is bad" to the victim, maintaining that the victim simply misheard what was said; nevertheless, the ALJ concluded that petitioner failed to meet his burden of demonstrating that the Board acted arbitrarily when it determined that A.R. committed an act of HIB as defined at *N.J.S.A. 18A:37-14* within the Anti-Bullying Bill of Rights Act, *N.J.S.A. 18A:37-13 to 37*. Accordingly, the ALJ 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.

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.

New Jersey Commissioner of Education
Final Decision

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

Petitioner,

v.

Board of Education of the Borough of Ramsey,
Bergen County,

Respondent.

The record of this matter, the hearing transcript, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by petitioner pursuant to *N.J.A.C. 1:1-18.4*, have been reviewed and considered. The Board did not file a reply to petitioner's exceptions.

This matter involves the Board's determination that petitioner's son, A.R., committed an act of harassment, intimidation, or bullying (HIB) when he told an African-American classmate during recess that she is Black, and "black is bad." Immediately thereafter, the victim became visibly upset, cried, and told several friends that A.R. had made "racist" comments to her. During the HIB investigation conducted by the school's anti-bullying specialist (ABS), A.R. maintained that he told the victim, "you smell" and "you're bad" and further stated that "if he happened to say something racist" to the victim, "he didn't mean to." Upon completion of the investigation, the ABS concluded that A.R. had made racially motivated, insulting, or demeaning

comments to the victim which created a hostile educational environment, and the Board upheld the ABS's findings and conclusions. Petitioner now appeals the Board's determination.

During the contested hearing at the OAL, the ABS and petitioner testified. The ALJ found that the ABS testified credibly regarding the HIB investigation. The ALJ further found that, upon considering both the victim and A.R.'s version of the interaction, it was reasonable and rational for the ABS to have found the victim's explanation more consistent with the other evidence collected during the investigation. For his part, petitioner steadfastly denied that his son ever said, "you're Black" and "black is bad" to the victim. He maintained that his son said, "you smell" and "you're bad" to the victim and that the victim simply misheard what was said. Ultimately, the ALJ concluded that petitioner failed to meet his heavy burden of demonstrating that the Board acted arbitrarily, capriciously, or unreasonably when it determined that A.R. committed an act of HIB as defined at *N.J.S.A. 18A:37-14* within the Anti-Bullying Bill of Rights Act, *N.J.S.A. 18A:37-13 to -37*.

In his exceptions, petitioner argues—as he did before the ALJ—that his son never said, "you're Black" and "black is bad" and that the victim simply misheard what his son said. He contends that the record lacks substantial credible evidence to establish that his son committed an act of HIB. He emphasizes that none of the other students interviewed by the ABS heard his son say, "you're Black" or "black is bad" and that the victim's emotional reaction is not sufficient evidence of bullying. He also contends that the victim's statements to her friends about what A.R. said were inconsistent, though she repeatedly referenced A.R.'s use of the word "black." Additionally, petitioner points to the fact that the victim told one friend that she did not hear the full sentence that A.R. spoke to her. Petitioner's exceptions did not address

the ALJ's findings and conclusions regarding the specific statutory requirements codified at N.J.S.A. 18A:37-14, which must be met to sustain a HIB finding; his exceptions state that his "disagreement with the [ALJ] is not about the law or the facts, it is about logic."

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. Bd. of Educ. of W. Orange*, 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't Prot.*, 122 N.J. Super. 184, 199 (Ch. Div. 1973), *aff'd*, 131 N.J. Super. 37 (App. Div. 1974). Regarding HIB determinations, this standard has been explained as requiring a petitioner to "demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it." *G.H. and E.H. o/b/o K.H. v. Bd. of Educ. of Borough of Franklin Lakes, Bergen Cnty.*, EDU 13204-13 (Initial Decision Feb. 24, 2014), *adopted* Commissioner Decision No. 157-14 (Apr. 10, 2014).

Upon careful review of the entire record, the Commissioner adopts the Initial Decision of the ALJ as the final decision in this matter. The Commissioner concurs with the ALJ that petitioner failed to satisfy his heavy burden of demonstrating that the Board acted arbitrarily, capriciously, or unreasonably when it determined that A.R. committed an act of HIB as defined at N.J.S.A. 18A:37-14. Petitioner has not shown that the Board's HIB determination was arbitrary, without rational basis, or induced by improper motives. Nor has petitioner

demonstrated that the Board acted in bad faith or in utter disregard of the circumstances before it. As detailed by the ALJ in the Initial Decision, the experienced ABS conducted a thorough, non-biased investigation of the HIB allegation during which she considered all relevant circumstances including, but not limited to, A.R.'s version of events and the victim's acknowledgment that she did not hear the full sentence that A.R. spoke to her:

Undeniably, [the ABS] agrees that the event presents a difficult 'he-said-she-said' situation, which can be the case in HIB investigations. However, in making her HIB determination, [the ABS] found the victim to be more persuasive in her version of the incident than A.R. At no time during the investigation did A.R. assert that the victim misheard him. Still, her HIB report confirms that A.R. maintained that he said something different than the victim stated. [The ABS] acknowledges that witnesses reported that the victim was unclear about the whole sentence A.R. said and that others did not overhear what A.R. said. In other words, she considered those factors in her analysis.

Ultimately, [the ABS] believed the victim more than A.R. [The ABS] highlighted what swayed her. Initially, the victim was consistent when she immediately told her peers that A.R. commented about her skin color, which upset her, and she cried. Indeed, the victim immediately reported to her friends that A.R. said something like "black is bad" and that he was being "rude" and "racist." She was sufficiently distressed to report the incident to her parents that day. [The ABS] analyzed the victim's demeanor and significant emotional response when describing the incident to her [during the] interview, which [the ABS] found genuine. Her experience with school-aged children was a reluctance to tattletale. Indeed, the victim expressed worry that her classmates would get in trouble and be upset with her over the incident.

[Initial Decision, at 6.]

The Commissioner disagrees with petitioner that the records lacks substantial credible evidence to support the Board's HIB determination. Substantial evidence has been defined as "such evidence as a reasonable mind might accept as adequate to support a conclusion." *In re*

Pub. Serv. Elec. & Gas Co., 35 N.J. 358, 376 (1961) (quoting *In re Hackensack Water Co.*, 41 N.J. Super. 408, 418 (App. Div. 1956)). The term has also been defined as “evidence furnishing a reasonable basis for the agency’s action.” *McGowan v. N.J. State Parole Bd.*, 347 N.J. Super. 544, 562 (App. Div. 2002).

Here, the Commissioner finds that the record—including the documents in evidence as well as the credible testimony of the ABS—contains substantial credible evidence providing a reasonable basis to support the Board’s HIB determination. As emphasized by petitioner in his exceptions, the evidence may leave room for two opinions. However, that is an insufficient reason for the Commissioner to overturn the Board’s decision so long as the Board has not acted dishonestly or in bad faith. *Bayshore Sewerage Co.*, 122 N.J. Super. at 199. The Commissioner finds no reason to substitute his judgment for that of the Board. The Commissioner is also in accord with the ALJ’s determination—for the reasons thoroughly explained in the Initial Decision—that all requisite elements of the statutory definition of HIB, codified at *N.J.S.A. 18A:37-14*, were satisfied in this case.

Accordingly, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 8, 2024
Date of Mailing: March 11, 2024

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 03078-23
AGENCY DKT. NO. 61-3/23

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

Petitioner,

v.

**BOARD OF EDUCATION OF THE BOROUGH
OF RAMSEY, BERGEN COUNTY,**

Respondent.

R.R., petitioner appearing pro se

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

Record Closed: January 4, 2024

Decided: January 29, 2024

BEFORE: **NANCI G. STOKES**, ALJ

STATEMENT OF THE CASE

R.R. challenges a determination that A.R. engaged in Harassment, Intimidation, and Bullying (HIB) against an African-American fifth-grade classmate by telling her that “Black is bad.” Should the HIB conclusion stand, even though the victim did not hear A.R.’s complete comment and A.R. denied saying it? Yes. A Board of Education’s

decision will stand if it is not arbitrary, capricious, or unreasonable. Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960).

PROCEDURAL HISTORY

On March 8, 2023, R.R. filed a Petition of Appeal with the Commissioner of Education (Commissioner) on behalf of his son A.R. challenging the Ramsey Board of Education's (Board) HIB determination against A.R. R.R. largely disputes that the Board based its determination on inadequate evidence and seeks to set aside the Board's decision.

On March 27, 2023, the Board answered the petition denying the petitioner's allegations, maintaining it followed all required procedures and requesting that this tribunal and the Commissioner uphold the Board's HIB determination.

The Department of Education (DOE) transmitted this case to the Office of Administrative Law (OAL) as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to-15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to-13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On April 10, 2023, the OAL received and filed the transmittal.

On August 4, 2023, the R.R. and the Board filed cross-motions for summary decision. On August 24, 2023, the parties filed responses to the motions. On September 11, 2023, I denied the motions, finding that disputed material facts existed concerning the evidence the investigator relied upon in making her HIB determination and how the event caused a substantial disruption in the school's operations or the rights of other students.

On November 17, 2023, I held the hearing and allowed the parties to present post-hearing summations. The parties submitted their summations on January 4, 2024, and I closed the record.

FINDINGS OF FACT

The parties present a stipulation of facts and exhibits, which I incorporate, and I **FIND** the following as **FACT** after considering the sufficiency of the documents and weighing the credibility of the witnesses:

In October 2022, A.R. was a fifth-grade student at John Y. Dater School (Dater) in Ramsey, New Jersey. A.R. had no trouble at school or acted racially insensitively before events on October 20, 2022.

On October 20, 2022, the alleged victim's parents emailed the school stating that A.R. told their daughter that she is "black and black is bad" multiple times during recess.

Under N.J.S.A. 18A:37-15, the Board issued Policy #5512 concerning HIB, which essentially mirrors the State HIB law and the process a school must follow when investigating HIB claims. See Exhibit R-1.

The school's anti-bullying specialist, Ann Fishman, investigated the complaint and testified at the hearing.

In evaluating the evidence, a trier of fact must assess and weigh the credibility of the witnesses to make factual findings as to the disputed facts. Credibility contemplates an overall assessment of a witness's story considering its rationality, internal consistency, and the "manner in which it hangs together" with other evidence. Carbo v. U.S., 314 F.2d 718, 749 (9th Cir. 1963). A fact-finder must base credibility determinations on their common sense, intuition, and experience. Barnes v. U.S., 412 U.S. 837 (1973).

Based on those principles, I **FIND** that Ms. Fishman credibly testified on behalf of the Board. She was straightforward in her testimony about the steps she took to investigate the playground incident and why she concluded that A.R. committed a HIB against his classmate. She showed no hostility or bias towards A.R. in her recount of the investigation or her responses to questions by R.R. at the hearing.

As the anti-bullying specialist at Dater for eleven years, Ms. Fishman was responsible for implementing the HIB law, investigating any reports of HIB, and drafting reports of her investigations. In that role, Ms. Fishman receives annual HIB training, including making credibility determinations about the students that she interviews during an investigation. Ms. Fishman also served as the school counselor for twelve years. In other words, Ms. Fishman has considerable experience with children and investigating HIB claims.

To investigate the alleged HIB, Ms. Fishman spoke to A.R., the victim, and five students on the playground during the incident. Ms. Fishman determined that the five student witnesses she interviewed on October 21, 2022, gave credible statements in response to open-ended questions, to which the students responded without hesitation. The investigation forms indicate that the incident occurred on the playground when the alleged victim attempted to interrupt a game where other students were kicking around a soccer ball. None of the five witnesses overheard the interaction between A.R. and the victim.

Specifically, Witness One stated that the alleged victim stated that A.R. “was being rude to her and racist.” The alleged victim wanted to give the ball to another student, her crush. The alleged victim told Witness One that when she tried to get the ball, A.R. said “black, black” to her. Witness One then confronted A.R. and told him that comment was “pretty rude.” A.R. replied that he didn’t make a racist comment.

Witness Two told Ms. Fishman that the alleged victim was playing the big red ball game, and she left the game crying. The alleged victim told witness two that A.R. said something rude, like “black, black.” Witness Two also confronted A.R., and A.R. denied saying anything racist. Instead, A.R. responded, “What did I say?” and reported that, “I just told her that she stinks.” Witness Two confirmed that A.R. asked the alleged victim what he said that was racist, and the alleged victim replied, “You know what you said.”

Witness Three reported seeing the alleged victim join the game and get the ball. After the game, the alleged victim said, “A.R. was being racist.” The alleged victim acknowledged that she did not hear A.R.’s entire sentence, but she heard “something like black people are bad” or “black, black.”

Witness Four was playing the game with A.R. and other students. He said the alleged victim joined them and tried to get the ball. The alleged victim stated that A.R. said something racist. At the end of recess, A.R. noted that “all he said to her was you smell.” Witness Four also reported that the alleged victim looked upset at the end of recess.

Similarly, Witness Five was also playing the game with the ball. He was passing the soccer ball to another student, and the alleged victim took the ball and ran away with it. A.R. went to get it back. At the end of recess, the alleged victim was crying. Witness Five stated that he spoke with A.R., and A.R. told him that the alleged victim said that A.R. said something bad to her. However, A.R. wouldn’t tell Witness Five what “the bad thing was” that he said.

During her interview on October 25, 2022, the victim reported that A.R. said, “black, black is bad.” Further, the victim reported that A.R. had made fun of her previously. The victim also told Ms. Fishman that after recess, she “felt off” the rest of the day but did not leave school. The victim’s interview about the incident reflects that A.R. made only one comment to her, not that he repeated the statement as her parents reported. Indeed, Ms. Fishman concluded that A.R. only made one comment during the interaction.

Still, A.R. denied making a racial comment to the victim, stating that he said, “You smell,” and four days later indicated he also said, “You’re bad.” A.R. acknowledged that he was annoyed that she interfered with the game. When confronted by others on the playground after the incident, A.R. responded by asking, “What did I say that was racist?” and told Ms. Fishman that he did not understand how telling someone that they stink was racist. A.R. reported asking the alleged victim the same question, who responded, “You know what you said.”

R.R. testified at the hearing on behalf of A.R., but A.R. did not. R.R. was sincere in his testimony but relied on what his son told him happened. Further, R.R. perceives Ms. Fishman’s investigation as an unfair assessment that lacks sufficient evidence, especially given the victim’s report that she did not hear A.R.’s complete sentence. Still, R.R. does not dispute that the alleged victim was upset or hurt by what she believed his

son said to her or that an incident occurred between A.R. and the alleged victim. To be sure, if the alleged victim believed A.R. said the words she accused him of uttering, it would flow that she would be upset. Instead, R.R. maintains that the evidence does not support that A.R. said what the alleged victim thinks she heard on a busy playground. In other words, the victim misheard A.R. R.R. highlights that A.R. denied saying it, the alleged victim acknowledged she did not fully hear A.R.'s comment, and no one else heard his conversation. Thus, R.R. questions the lack of evidence Ms. Fishman and the Board relied upon in concluding that A.R. committed a HIB.

R.R. highlights that his wife complained of bullying against A.R. that the school did not investigate. Yet, a different incident or failure to investigate is not an issue in this case.

Undeniably, Ms. Fishman agrees that the event presents a difficult "he-said-she-said" situation, which can be the case in HIB investigations. However, in making her HIB determination, Ms. Fishman found the victim to be more persuasive in her version of the incident than A.R. At no time during the investigation did A.R. assert that the victim misheard him. Still, her HIB report confirms that A.R. maintained that he said something different than the victim stated. Ms. Fishman acknowledges that witnesses reported that the victim was unclear about the whole sentence A.R. said and that others did not overhear what A.R. said. In other words, she considered those factors in her analysis.

Ultimately, Ms. Fishman believed the victim more than A.R. Ms. Fishman highlighted what swayed her. Initially, the victim was consistent when she immediately told her peers that A.R. commented about her skin color, which upset her, and she cried. Indeed, the victim immediately reported to her friends that A.R. said something like "black is bad" and that he was being "rude" and "racist." She was sufficiently distressed to report the incident to her parents that day. Ms. Fishman analyzed the victim's demeanor and significant emotional response when describing the incident to her at the October 25, 2022, interview, which Ms. Fishman found genuine. Her experience with school-aged children was a reluctance to tattletale. Indeed, the victim expressed worry that her classmates would get in trouble and be upset with her over the incident.

On October 26, 2022, Ms. Fishman and the school principal, Courtney Rejent, met with R.R. to discuss the incident. R.R. expressed his concerns about the lack of a standard or evidence to support the fact that A.R. committed an act of HIB.

On October 31, 2022, Ms. Fishman submitted her final report to the Principal, who provided it to the Superintendent.

The final HIB report found that A.R.'s HIB behavior was a single "insulting and demeaning comment," resulting in "insulting and demeaning" the victim and "create[d] a hostile education environment." Further, the report considered the incident as "racially, sexually, or religiously motivated." The report further states that "[t]his report and investigation findings must be submitted to the Principal within ten school days" of receiving a written notice of a HIB incident. The report attached the witness, victim, and target investigation reports but offered no further explanation of how Ms. Fishman determined that A.R. committed an act of HIB. Yet, Ms. Fishman explained her reliance on these investigative statements in making her determination and her experience in assessing credibility.

Notably, Ms. Fishman did not report that A.R.'s alleged comment caused a "substantial disruption or interference with orderly operations of the school or the rights of others." Instead, Ms. Fishman determined that the interaction between the victim and A.R. created a hostile educational environment for the victim and that the utterance of a statement that related to the color of the victim's skin created a hostile educational environment sufficient to constitute a HIB.

A.R.'s discipline for the HIB act was a parent conference, in-school counseling, and two lunch detentions.

In sum, I **FIND** that Ms. Fishman considered A.R.'s version of the interaction before arriving at her HIB conclusion but found that the victim's explanation was more consistent with the evidence. Indeed, I **FIND** that Ms. Fishman explained what she reasonably relied upon in making her decision and that evidence exists to support her determination.

The Board of Education reviewed the HIB report and affirmed the decision that a HIB occurred. Subsequently, A.R.'s parents appeared before the Board on December 6, 2022, appealing the decision.

On December 21, 2022, the Board wrote to R.R., advising that the Board affirmed the conclusion that A.R. committed an act of HIB. This appeal followed.

DISCUSSION AND CONCLUSIONS OF LAW

The Legislature designed the Anti-Bullying Rights Act (ABRA), N.J.S.A. 18A:37-13 to -37, "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). 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).

Under the ABRA, "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]

Thus, a HIB finding requires demonstrating three elements, assuming the alleged incident or incidents occurs 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. First, the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic, and second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. The third condition is that one of the three criteria enumerated in the Act regarding the effect of the conduct must also be satisfied. Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex County, EDU 10981-18, Initial Decision (December 29, 2019), <http://njlaw.rutgers.edu/collections/oal>, rejected and remanded Comm'r Decision No. 51-20 (February 4, 2020), 2020 N.J. Agen. Lexis. 50.

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness that 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). To overcome that presumption, the petitioner must prove by a preponderance of the evidence that the board “acted in either bad faith or in disregard to the circumstances.” T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07 (February 6, 2008), aff’d, Comm’r (April 25, 2013) (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff’d, 46 N.J. 581 (1966)). In other words, the burden is a heavy one. Indeed, the Commissioner recognizes that Boards should “have the discretion to operate their schools in a manner that best serves their unique communities,” the Commissioner will not interfere with that discretion concerning HIB matters unless the Board acted arbitrarily, capriciously, or unreasonably. G.H. & E.H. o/b/o K.H. v. Franklin Lakes Bd. of Educ., EDU 13204-13 (Feb. 24, 2014), aff’d, Comm’r (Apr. 10, 2014), n.4. Further, “where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration[.]” 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).

Still, the Board's factual determinations require such deference only when supported by substantial credible evidence, e.g., having a rational basis. Quinlan v. Board of Ed. of North Bergen Tp., 73 N.J. Super. 40 (App. Div. 1962); Schinck v. Board of Ed. of Westwood Consol. School Dist., 60 N.J. Super. 448 (App. Div. 1960). Additionally, the reviewing tribunal may reject the findings of fact if the evidentiary record does not support them. In re Suspension of License of Silberman, 169 N.J. Super. 243, 255-56 (App. Div. 1979), aff'd, 84 N.J. 303 (1980).

Undeniably, the incident took place on school grounds and is subject to the HIB statutory directives. Regarding the first element, the statute defines HIB is an action "that is reasonably perceived as being motivated either by any actual or perceived characteristic." N.J.S.A. 18A:37-14. Here, the statute requires an analysis of the victim's perception of the actor's motivation and whether that perception is reasonable. Yet, an analysis of the actual motivation of the actor is not required. Webbeh, at *8. Here, I **CONCLUDE** it was not arbitrary, capricious, or unreasonable for the Board to conclude that a reasonable person would consider A.R.'s comment using the term "black," directed at an African-American victim, was racially motivated.

The second element is arguably less clear because the HIB report did not state that the incident created a "substantial interruption in the ordinary operation of the school or in the disruption of the victim's education or the rights of other students." However, the school maintains that A.R.'s conduct not only created a hostile educational environment for the victim, but to its students, meeting this prong of the statutory analysis. The incident was a limited one-time comment and did not begin a series of events at the school. However, the victim was crying at the time and "felt off" the rest of the day. Other students became involved after the unsettling incident took place in response to the victim's distress. In D.D.K. o/b/o D.K v. Board of Education of the Township of Readington, Hunterdon County, EDU 07682-15 (October 6, 2016), adopted, Comm'r Decision (November 11, 2016), <https://njlaw.rutgers.edu/collections/oal/>, the Commissioner discussed those situations where the Board's HIB determination satisfied the second prong, explaining that:

[C]onduct has been determined to substantially disrupt the orderly operation of the school when students are so upset or embarrassed that they are "not fully available for learning." G.H. and E.H. on behalf of K.H. v. Board of Education of the Borough of Franklin Lakes, Bergen County, OAL Dkt. No. EDU 13204-13, decided February 24, 2014, adopted Commissioner Decision No. 157-14, April 10, 2014. Additionally, when other students are "so affected" by behavior that they report it, the orderly operation of the school may be substantially disrupted. T.R. and T.R. on behalf of E.R. v. Bridgewater-Raritan Regional Board of Education, OAL Dkt. No. EDU 10208-13, decided September 25, 2014, adopted Commissioner Decision No. 450-14, November 10, 2014.

Id.

Thus, I **CONCLUDE** that the Board satisfied the second requirement necessary to conclude that A.R. committed a HIB.

The third element under N.J.S.A. 18A:37-14(a) requires a conclusion that the HIB act 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." In Wehbeh, the Commissioner highlighted that "none of these criteria require the actor to have actual knowledge of the effect that their actions will have, or to specifically intend to bring about that effect." Id. Further, any one of the three criteria satisfies the third element. Here, the Board found that A.R.'s comments demeaned and insulted the victim and created a hostile environment. There is no doubt that a reasonable person should know that a racist comment would result in emotional harm or insult. Hence, I **CONCLUDE** the Board was not arbitrary, capricious, or unreasonable in reaching that conclusion, meeting the third prong of the analysis.

Here, R.R. presented no credible evidence that the Board acted arbitrarily or that its decision did not have a rational basis. I am mindful of R.R.'s strong desire to protect his son from harm and determinations with which he disagrees. Still, I found that the Board's HIB conclusion had a rational basis and that evidentiary support existed to

support its conclusion. Thus, I **CONCLUDE** that the Board's decision that A.R. committed a HIB should stand.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the petitioner's appeal 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.

January 29, 2024

DATE

Date Received at Agency:

Date Mailed to Parties:

ljb



NANCI G. STOKES, ALJ

January 29, 2024

January 29, 2024

APPENDIX

Testimony

For Petitioner

R.R.

For Respondent

Ann Fishman

Exhibits

Joint

- J-1 Petition of Appeal dated March 8, 2023
- J-2 Harassment, Intimidation and bully Report dated October 21, 2022
- J-3 Ramsey Board of Education's Answer dated March 20, 2023
- J-4 Correspondence from Principal Courtney Regent to R.R. dated October 24, 2022
- J-5 Correspondence from Principal Regent to R.R. dated December 5, 2022
- J-6 Correspondence from Thomas O'Hern to R.R. dated December 21, 2022
- J-7 Email from R.R. to Dr. Matthew Murphy dated December 21, 2022
- J-8 Correspondence from Dr. Murphy to R.R. dated December 22, 2022
- J-9 Correspondence from Donna Ryan to R.R. dated December 23, 2022
- J-10 Email from R.R. to Dr. Murphy dated December 23, 2022
- J-11 Email from R.R. to Dr. Andrew Matteo dated January 3, 2023
- J-12 Email from Dr. Matteo to R.R. dated January 3, 2023
- J-13 Joint Stipulations of Fact

For Petitioner

- P-1 Notes on Meeting with Courtney Rejent and Annemarie Fishman
- P-2 Email to Molly dinning and Annemarie Fishman dated June 8, 2022
- P-3 Email Correspondence with Superintendent's Office, December 21, 2022 – January 19, 2023

For Respondent

- R-1 Board's Harassment, Intimidation and Bullying policy #5512
- R-2 Email from Lauren Tango to Molly Dining dated November 2, 2022
- R-3 Correspondence to Parents of Target from Courtney Rejen, dated December 5, 2022
- R-4 Email from Laura Tango to Annemarie Fishman dated November 2, 2022
- R-5 Email from Laura Tango to Annemarie Fishman dated October 31, 2022