

New Jersey Commissioner of Education**Final Decision**

K.W. and S.W., on behalf of minor child, A.W.,

Petitioners,

v.

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

Respondent.

Synopsis

Petitioners appealed the decision of the respondent Board that their son, a ninth grader at Chatham High School during the 2022-2023 school year, committed an act of harassment, intimidation, and bullying (HIB), pursuant to the Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.*, against a fellow classmate. Petitioners contended, *inter alia*, that the Board's determination of HIB against their son was arbitrary, capricious, and unreasonable; they sought an order reversing the decision and removal of any mention of the HIB finding from A.W.'s school record. A hearing in the matter was held on February 14, 2024 in the Office of Administrative Law (OAL).

The ALJ found, *inter alia*, that: an action by a board of education is entitled to a presumption of correctness and will not be undermined unless it can be shown that the decision was arbitrary, capricious or unreasonable; here, the HIB complaint at issue resulted from A.W.'s posting of the word "NIGERs" to a SnapChat chat group using a Chat Bot artificial intelligence app (AI) that could create words; the chat group consisted of several ninth grade boys, one of whom is black; although A.W. contends that he quickly deleted the post, a few of the other boys screenshot the post, thereby preserving its content; this electronic communication occurred on school property during school hours, disrupted the orderly operation of the school and triggered the HIB investigation; the posting of the word "NIGERs" was an intentional act that could not be accidentally generated; A.W. should have known that posting the word "NIGERs" to a group chat where one of the members is black could have the effect of emotionally harming that student or placing him in reasonable fear of harm to his person; and the chat post was insulting and demeaning to the black member of the group. The ALJ concluded that petitioners failed to demonstrate that the Board's determination of HIB was arbitrary, capricious, or unreasonable in this case. Accordingly, the petition was dismissed.

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 in this case. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

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

139-24
OAL Dkt. No. EDU 10064-23
Agency Dkt. No. 241-9/23

New Jersey Commissioner of Education
Final Decision

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Petitioners,

v.

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

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge that petitioners failed to demonstrate that respondent's determination that A.W. committed an act of harassment, intimidation, or bullying (HIB) was arbitrary, capricious, or unreasonable.

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

IT IS SO ORDERED.¹


ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 15, 2024

Date of Mailing: March 20, 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 10064-23

AGENCY REF. NO.: 241-09/23

**K.W. AND S.W. ON BEHALF OF
MINOR CHILD A.W.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE
SCHOOL DISTRICT OF THE CHATHAMS,
MORRIS COUNTY,**

Respondent.

Charles F. Clark, Jr., Esq., for Petitioners (Clark & Noonan, LLC, attorneys)

Janice Arellano, Esq., for Respondent (Cleary, Giacobbe, Alfieri, Jacobs, LLC,
attorneys)

Record Closed: February 14, 2024

Decided: February 15, 2024

BEFORE THOMAS R. BETANCOURT, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a Petition of Appeal with the New Jersey Department of Education, Office of Controversies and Disputes, dated December 8, 2023, challenging the Board's harassment, intimidation, and bullying (HIB) determination.

The Office of Controversies and Disputes transmitted the contested case to the Office of Administrative Law (OAL) as a contested matter, where it was filed on September 28, 2023.

A prehearing conference was held on October 13 and 17, 2023, and a Prehearing Order was entered on October 17, 2023.

A hearing on the matter was held on February 14, 2024, whereupon the record closed.

ISSUE

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

FINDINGS OF FACT

1. The incident that led to the HIB investigation occurred on April 21, 2023, a Friday. (R-1, P-2, Hendersen testimony)
2. A.W. posted the word "NIGERs" to a SnapChat chat group using a Chat Bot artificial intelligence app (AI) that could create words. A.W. used this to create the word "NIGERs" multiple times. (R-1, P-2, Hendersen testimony)
3. There are several members of the chat group called the "Nice Fellers". A.W. was a member of this group. S.R., the alleged HIB victim, was also a member. (R-1, P-2, Hendersen testimony)

4. Other members of this chat group, not A.W., posted the word “NIGGA” and tagged S.R. with the post. (R-1, P-2, Hendersen testimony)
5. Tagging is when the person you tag is notified of the post so he or she can see it immediately. (Hendersen testimony and S.R. testimony)
6. All posts to SnapChat are deleted within 24 hours. The only way to save a post is to take a screen shot. (Hendersen testimony)
7. The incident was reported by a schoolteacher who overheard S.R. and another member of the chat group talking about what was posted to the chat. (Hendersen testimony)
8. The school’s anti bullying specialist, Conner Hendersen, commenced an investigation. He spoke with A.W. on April 21, 2023. He also spoke with S.R. the same date. (R-1, P-2, Hendersen testimony)
9. Several other members of the chat group were also interviewed that date. They were: C.N., S.D., and S.N. (R-1, P-2, Hendersen testimony)
10. On the following Monday, April 24, 2023, S.R. was again interviewed and revealed he had spent the weekend with the group chat members and reported they had apologized and said he felt “fine”. (R-1, P-2, Hendersen testimony and S.R. testimony)
11. Also interviewed again on April 24, 2023 were S.D. and S.N. B.R. was interviewed for the first time on this date.
12. All participants in the chat group, other than S.R., offered various explanations as to why they posted the two versions of the N word. No one admitted it was done to target S.R.
13. S.R. told Mr. Hendersen at his April 21, 2023, interview that the use of the N word bothered him. Mr. Hendersen admitted that he did not so state in his HIB report. S.R. confirmed he advised Mr. Hendersen that he stated so during the April 21, 2023 interview. (R-1, P-2, Hendersen testimony and S.R. testimony)

14. S.N., S.D. and B.R. tagged S.R. with the post of the word Nigga. A.W. did not tag S.R. with his post of the word NIGERs. (R-1, P-2, Hendersen testimony)
15. In order for the AI Chat Bot app to generate a word must enter words which the app will use the first letters of to generate an acronym. The words are not generated by the app without input. (R-1, P-2, Hendersen testimony)
16. Based on the above, the only logical conclusion is that the words were purposely generated, and not attributable to some accident. This was an intentional act. (R-1, P-2, Hendersen testimony)
17. Mr. Hendersen concluded in his HIB report that A.W. committed an act of HIB by posting the word NIGERs into the chat group. (R-1, P-2, Hendersen testimony)
18. After the completion of his initial HIB report, Mr. Hendersen received additional information from petitioners in the form of a screen shot of a message from S.R. to A.W. wherein he used the N word to refer to A.W. (R-2, P-3 and Hendersen testimony)
19. Mr. Hendersen then completed a supplemental report dated May 18, 2023, wherein he concluded that the additional information did not alter his conclusion that an act of HIB was committed by A.W. (R-2, P-3 and Hendersen testimony)
20. S.R. admitted to using the N word in addressing A.W. in a text. He maintained he could use this word as he is black. He further stated A.W. could not use the word as he is white.
21. Petitioners contested that determination and appealed to the Board of Education. A hearing was held on June 5, 2023, and considered the HIB report, a statement by A.W. read into the record by his father and arguments of counsel. The Board upheld the HIB determination. (P-1 and Daquila testimony)

22. There was a second addendum to the HIB report dated June 7, 2023, regarding additional posts to the chat group from April 21, 2023. Those posts do not involve A.W. and were not part of the HIB finding as to him. (R-2 and P-4)
23. This incident involved an electronic communication that occurred on school property during school hours that substantially disrupted and interfered with the orderly operation of the school or the rights of other students. That disruption was the catalyst for the ABS, Mr. Hendersen, to conduct a HIB investigation. This entailed pulling students out of class to be interviewed. Those students, admittedly the perpetrators of the HIB, should have been in class but for their actions. The disruption continued into the next week as more interviews were required. Other staff such as the teacher who made the initial report were not engaged in their ordinary duties to address this incident. That includes S.R.'s case manager, who had to address his concerns regarding the incident.ⁱ The incident further disrupted school operations by requiring the Board to conduct a hearing, something but for A.W.'s actions would not have occurred.
24. I find that the posting of the word NIGERs to the group chat was an intentional act as the word could not be accidentally generated. (R-1, P-2, Hendersen testimony)
25. I find that a reasonable person should know that posting the word NIGERs to a group chat where one of the members is a black, under the circumstances, will have the effect of emotionally harming a student. or placing a student in reasonable fear of emotional harm to his person. (R-1, P-2, Hendersen testimony)
26. I find that it had the effect of insulting or demeaning S.R. (S.R. testimony)
27. I find that it created a hostile educational environment for S.R. by interfering with his education by causing him to lose focus and not be able to concentrate on his studies. (R-1, P-2, Hendersen testimony and S.R. testimony)

LEGAL ANALYSIS AND CONCLUSION

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

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

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

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

Each school district must adopt a policy that prohibits HIB and provides for a prompt response to any alleged HIB incident. N.J.S.A 18A:37-15. Once an alleged HIB incident is reported to the school principal, the principal must initiate an investigation within one school day of the report. N.J.S.A 18A:37-15(b)(6). The investigation shall be conducted by a school anti-bullying specialist, and shall take no longer than ten school

days to be completed. The results of the investigation shall then be quickly reported to the superintendent of schools, who may take certain remedial action. The results shall also be reported to the board of education “no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent.” Ibid.

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

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

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

In the instant matter, there is no question that A.W. posted the word "NIGERs" to a SnapChat group called the NICE FELLERS. This group consisted of A.W., the victim S.W., and several other freshman boys. That act by A.W. was intentional. This was not inadvertent tapping of some buttons. The word could only be generated by prompting the app to do it. Argument that the disruption to the school and to S.R. were only caused by the HIB investigation, and not the act of HIB itself, are completely unconvincing. The only logical conclusion is that it was done intentionally and was directed at S.R. based upon his race; and, that it harmed S.R. and disrupted school functions.

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

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

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

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

ORDER

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

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

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and

unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



February 15, 2024

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Witnesses

For Petitioner:

Connor Hendersen

Peter Daquila

For Respondent:

J.W., mother of S.W.

S.W.

List of Exhibits

For Petitioner:

P-1 Petition of Appeal

P-2 ABS Hendersen's HIB report, 4/28/23

P-3 ABS Hendersen's HIB Addendum Report, 5/18/23

P-4 ABS Hendersen's HIB Addendum Report, 6/7/23

For Respondent:

R-1 Unredacted Confidential HIB report (Same as P-1)

R-2 Unredacted Confidential HIB report addendums (same as P-3 and P-4)

R-3 letters to family of S.R. and A.W.

R-4 Screenshot of Group Chat regarding HIB incident

R-5 Group Chat talking/Poems about S.R.

R-6 Petition of Appeal (same as P-1)

ⁱ S.R. receives special education and related services pursuant to his Individualized Education Program or IEP.