

New Jersey Commissioner of Education

Final Decision

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

Petitioner,

v.

Board of Education of the City of Burlington,
Burlington County,

Respondent.

Synopsis

Pro se petitioner challenged the determination of the respondent Board that several interactions between petitioner's daughter, A.P., and a school lunchroom aide did not constitute harassment, intimidation, or bullying (HIB) under New Jersey's Anti-Bullying Bill of Rights Act (the Act), *N.J.S.A. 18A:37-14*. Following an investigation by the school district's anti-bullying specialist into the allegations that A.P. was a victim of HIB, the Board found that the incidents reported did not satisfy the Act's definition of HIB. The District's anti-bullying specialist concluded that there was no HIB but recommended that the lunchroom aide should not interact with A.P. at lunch and recess. Petitioner subsequently filed the within appeal. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; the decision of a board acting within the scope of its authority is entitled to a presumption of correctness and will not be overturned unless there is an affirmative showing that such decision was arbitrary, capricious, or unreasonable; further, the action of a board which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives; in this case, petitioner's allegations did not meet the legal standards of the HIB statute; for a finding of HIB, the alleged behavior must reasonably be perceived as being motivated by an actual or perceived distinguishing characteristic of the victim, a critical element that is missing in this case; petitioner instead argued that the lunchroom aide targeted A.P. because of an acrimonious relationship between petitioner and the aide, who were long-time acquaintances. The ALJ concluded that the lunchroom aide's actions did not permit a finding of HIB because her behavior was not motivated by an actual or perceived characteristic of A.P. Accordingly, there was no violation of *N.J.S.A. 18A:37-14* and the Board's actions were not arbitrary, capricious, or unreasonable. Summary decision was granted to the Board and the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that the Board's determination in this matter was not arbitrary, capricious, or unreasonable. 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.

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Respondent.

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

Petitioner alleged that her child, A.P.,¹ was bullied when, on several separate occasions, a lunch aide made A.P. sit by herself at lunch, miss recess for doing nothing wrong, and cry. Additionally, petitioner alleged that the lunchroom aide singled out A.P. due to the aide's personal history with petitioner. The Administrative Law Judge (ALJ) concluded that the lunchroom aide's actions did not permit a finding of HIB because her behavior was not motivated by an actual or perceived characteristic of A.P.

In her exceptions, petitioner fails to address the ALJ's conclusion that the lunchroom aide's actions were not motivated by an actual or perceived characteristic of A.P. Instead, petitioner argues

¹ Because petitioner and her child share the same initials, petitioner will be referred to herein as "petitioner," and her child will be referred to herein as "A.P."

that there are four different kinds of harassment, intimidation, and bullying (HIB). Petitioner contends that in reaching his decision, the ALJ utilized the incorrect type of HIB, which had been provided by the Board, rather than the type of HIB under which she filed. While petitioner does not define her preferred type of HIB (or the three other types of HIB), she cites to an excerpt from guidance published by the Department of Education that identifies four distinct kinds of bullying behavior.² It appears petitioner misunderstands these four behaviors to be separate grounds upon which an individual may file an HIB complaint. Petitioner's preferred type of HIB is likely "psychological," as it is the only bullying behavior highlighted in the excerpt she provides. The guide defines psychological bullying as, "... purposefully keeping people from activities and breaking up friendships and other relationships." *Ibid*. Lastly, petitioner claims that the lunchroom aide has a history of harassment and cites to a screenshot of the aide's records from a New Jersey Municipal Court Case Search.

Upon review, the Commissioner concurs with the ALJ that the lunch aide's actions do not warrant a finding of a violation of *N.J.S.A. 18A:37-14*. When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." *Kopera v. W. Orange Bd. of Educ.*, 60 *N.J. Super.* 288, 294 (App. Div. 1960). Furthermore, "where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration[.]" and the Commissioner will not substitute his judgment for that of the board. *Bayshore Sewerage Co. v. Dep't. of Env'tl. Prot.*, 122 *N.J. Super.* 184, 199 (Ch. Div. 1973), *aff'd*, 131 *N.J. Super.* 37 (App. Div. 1974).

² According to the guidance, "Guidance for Parents on the Anti-Bullying Bill of Rights Act (P.L.2010, c.122)," the four types of bullying behavior are verbal, physical, psychological, and electronic. See <https://www.nj.gov/education/mksd/docs/HIB%20ParentGuide.pdf> (page 10).

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.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*, Commissioner Decision No. 51-20 (decided February 4, 2020).

³ The statute also requires that the conduct take place on school property, at a school-sponsored function, on a school bus, or off school grounds as provided for in *N.J.S.A. 18A:37-15.3*. The parties do not contest that this requirement has been met.

In her exceptions, petitioner misconstrues the legal analysis undertaken when considering HIB matters. Pivotal to the analysis is the first element, an act that is reasonably perceived as being motivated by any actual or perceived characteristic. However, petitioner fails to identify a distinguishing characteristic of A.P. that might have motivated the lunchroom aide's behavior. Further, even if true, the lunch aide targeting A.P. due to the aide's personal history with petitioner, while inappropriate, does not constitute a distinguishing characteristic under *N.J.S.A. 18A:37-14*. See *K.L. v. Evesham Twp. Bd. of Educ.*, 423 N.J. Super. 337, 351 ("[H]armful or demeaning conduct motivated only by another reason, for example, a *dispute about relationships* ... or aggressive conduct without identifiable motivation, does *not* come within the statutory definition of bullying.") (emphasis added). Absent a distinguishing characteristic, the lunch aide's conduct cannot satisfy the first prong required for a finding of HIB; therefore, the Board's decision was not arbitrary, capricious, or unreasonable.

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

IT IS SO ORDERED.⁴


ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 23, 2024
Date of Mailing: August 26, 2024

⁴ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 02104-24

AGENCY REF. NO. 17-1/24

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

Petitioner,

v.

CITY OF BURLINGTON

BOARD OF EDUCATION,

Respondent.

A.P. on behalf of minor child, A.P., pro se

Alicia D'Anella, Esq., for respondent (Gorman, D'Anella, and Morlok, LLC,
attorneys)

BEFORE **MICHAEL R. STANZIONE, ALJ:**

Record closed: May 14, 2024

Decided: July 10, 2024

STATEMENT OF THE CASE

This case arises from petitioner A.P.'s challenge of the determination by respondent, City of Burlington Board of Education (respondent or Board), that there was

no harassment, intimidation or bullying (HIB) during several interactions between petitioner A.P.'s daughter, A.P., and a school lunchroom aide.

Petitioner's daughter is a student in the City of Burlington School District (District). Following an investigation by the District's anti-bullying specialist into the allegation that she was a victim of HIB, the Board found that the incident reported did not satisfy the Anti-Bullying Bill of Rights Act's (ABR) definition of HIB. The District's anti-bullying specialist concluded that there was no HIB. The specialist determined that the only corrective action that should be required was that the lunchroom aide should not interact with the student at lunch and recess.

PROCEDURAL HISTORY

The HIB investigation concluded on October 20, 2023, and the HIB investigation summary report completed by the anti-bullying specialist was submitted to the superintendent on October 25, 2023. On or about December 11, 2023, petitioner's requested appeal hearing on the investigation determination was held. Following the appeal hearing, the Board affirmed the determination that the incident did not satisfy the ABR definition of HIB. On or about February 14, 2024, petitioner filed an appeal of that determination. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on February 14, 2024, for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

The Board filed an answer and a motion for summary decision on February 13, 2024, before the matter was transmitted to the OAL. An initial prehearing conference was held on March 12, 2024. On March 14, 2024, petitioner emailed a response to the Board's motion for summary decision. This was followed by a prehearing conference on March 25, 2024. On May 14, 2024, oral argument was held on the motion via Zoom with the consent of the respondent, as the petitioner was unable to travel for an in-person oral argument.

MOTION

Respondent has filed a motion for summary decision, arguing that the undisputed facts demonstrate that the alleged actions by the lunchroom aide do not constitute HIB as defined by the ABR. Specifically, respondent relies on the anti-bullying specialist's finding that the student lacked a defining characteristic to meet the requirements of a finding of HIB.

Petitioner opposes respondent's motion, arguing generally that the actions of the District's lunchroom aide meet the definition of HIB. She argues that her daughter was singled out by the employee because of petitioner's history with the employee.

FINDINGS OF UNDISPUTED FACT

The following **FACTS** of the case are not in dispute:

1. At all times relevant to this matter, petitioner's daughter was a student attending school in the District.
2. The lunchroom aide had A.P. sit by herself in the cafeteria and sit-out recess. The petitioner and the lunchroom aide have had multiple interactions in their past and they "were not good ones."
3. Respondent's investigation concluded that the alleged conduct was not reasonably perceived as being motivated by an actual or perceived characteristic of petitioner's child. R-4 at ¶ 3. The report noted that no motivating factor was determined. R-5, Exhibit A, at 4. It stated that the "student was reprimanded for not following school rules. Student was not targeted for any real or perceived characteristics." Id. at 6. The incident, according to the anti-bullying specialist, did not satisfy the definition of HIB. Id. at 7.

4. The anti-bullying specialist found that the lunchroom aide was responding to the student's behavior. R-4 at ¶ 4.
5. Respondent took steps to ensure that the student would not have any future contact with the lunchroom aide Id. at ¶ 5. The lunchroom aide was moved to a different lunch period than A.P.

PARTIES' ARGUMENTS

Petitioner:

Petitioner, through oral argument, alleged that the staff member is "singling out" her daughter. Referencing her personal history with the lunchroom aide, she argues that the staff member unfairly harassed and bullied her daughter because she is petitioner's child. Petitioner asserted that she and the staff member "have never been friends" and queried why the staff member told her daughter that they knew each other. P-2. Prior to these interactions with the lunchroom aide, her daughter always loved school; however, since interacting with the aide, she no longer wants to attend school.

Respondent:

Respondent argues that its motion must be granted because the staff member's conduct was not motivated by an actual or perceived distinguishing characteristic. R-4 at ¶ 3.

First, the Board concluded in its HIB investigation report that the actions of the lunch aide toward petitioner's child were found to be in direct response to the student's behavior. Id. at 4. Although the incident was not determined by the Board to meet the criteria of HIB, the District took steps to ensure that the student did not have further contact with the accused staff member. Id. at 5.

LAW AND ANALYSIS

Summary decision may be granted “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). The OAL summary decision rule is essentially the same as the summary judgment rule under the New Jersey Court Rules, which states:

The judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

[R. 4:46-2(c).]

The New Jersey Supreme Court has modified and clarified the analysis required when considering a motion for summary decision/judgment. In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995), the Court adopted the summary judgment standard utilized by federal courts:

Under this new standard, a determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” [Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986).] . . . If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a “genuine” issue of material fact for purposes of Rule 4:46-2. Liberty Lobby, supra, 477 U.S. at 250, 106 S. Ct. at 2511, 91 L. Ed.

2d at 213. The import of our holding is that when the evidence “is so one-sided that one party must prevail as a matter of law,” Liberty Lobby, supra, 477 U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214, the trial court should not hesitate to grant summary judgment.

The burden is on the moving party to exclude all reasonable doubt as to the existence of any genuine issue of material fact, and all inferences of doubt are drawn against the moving party and in favor of the non-moving party. Saldana v. DiMedio, 275 N.J. Super. 488, 494 (App. Div. 1994). The critical question, therefore, is “whether the evidence presents a sufficient disagreement to require [a hearing] or whether it is so one-sided that one party must prevail as a matter of law.” Brill, 142 N.J. at 533 (citation omitted). If the non-moving party’s evidence is merely colorable or is not significantly probative, summary judgment should not be denied. See Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998).

All of the material facts in this case are undisputed. The petitioner has not contested any material fact put in front of this tribunal. Petitioner argued only that the legal definition under ABR of what constitutes HIB is not good enough.

The ABR defines harassment, intimidation or bullying as follows:

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 (emphasis added).]

The requirement that the conduct is reasonably perceived as being motivated by a distinguishing characteristic is fundamental to the decision. The statutory definition of HIB “does not include all violent or aggressive conduct.” K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337, 350 (App. Div. 2011).

On October 25, 2023, the HIB investigation report was submitted to the District superintendent. In its summary of findings, the report noted that no motivating factor was determined. R-5, Exhibit A, at 4. It stated that the “student was reprimanded for not following school rules. Student was not targeted for any real or perceived characteristics.” Id. at 6. The incident, according to the anti-bullying specialist, did not satisfy the definition of HIB. Id. at 7.

In other words, the petitioner's child, according to the investigation, was not targeted due to race, color, religion, ancestry, gender, sexual orientation, or a mental, physical, or sensory disability, or due to any other distinguishing characteristic. Petitioner corroborated the findings of the investigation, because she asserted in her opposition to the motion for summary decision, during oral argument, and in her pro se petition of appeal that the school staff member targeted her child due to her personal history with the petitioner.

Accordingly, accepting petitioner's version of the facts as accurate and undisputed, I **CONCLUDE** that the school lunchroom aide's actions were not motivated by an actual

or perceived characteristic of student A.B. This does not permit a finding of a violation of N.J.S.A. 18A:37-14.

I therefore **CONCLUDE** that the respondent's motion for summary decision should be granted.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED**.

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

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting 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 **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to **ControversiesDisputesFilings@doe.nj.gov** or by mail to **Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**. A copy of any exceptions must be sent to the judge and to the other parties.

July 10, 2024

DATE


MICHAEL R. STANZIONE, ALJ

Date Received at Agency:

Date Mailed to Parties:

APPENDIX

EXHIBITS

For Petitioner:

- P-1 Pro Se Petition of Appeal
- P-2 Response email to respondent's Motion for Summary Decision

For Respondent:

- R-1 Filed answer to petition of appeal
- R-2 Notice of Motion for Summary Decision
- R-3 Brief in support of respondent's Motion for Summary Decision
- R-4 Certification of superintendent Dr. John Russell
- R-5 Exhibits A and B