

New Jersey Commissioner of Education
Final Decision

M.D., on behalf of minor child, N.D.,

Petitioner,

v.

Board of Education of the Town of Westfield,
Union County,

Respondent.

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

This matter involves petitioner's challenge to the Board's determination that his minor child, N.D., committed harassment, intimidation, or bullying (HIB). The Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.*, defines HIB 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

¹ Following the Commissioner's issuance of a final decision in this matter on March 31, 2025, the Board requested that the matter be reopened because it had not received a copy of petitioner's exceptions and thus did not have an opportunity to submit a reply pursuant to *N.J.A.C. 1:1-18.4*. The Commissioner granted the Board's request and permitted the Board to submit a reply. However, the Commissioner did not consider the Board's undated Certification of Falynn Bassalone or any references thereto within the reply because "evidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions." *N.J.A.C. 1:1-18.4*. Additionally, petitioner's sur-reply was not considered as such submissions are not permitted under *N.J.A.C. 1:1-18.4*.

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.]

A finding of HIB requires three elements under the Act. First, the conduct at issue must be reasonably perceived by the victim as being motivated by any actual or perceived characteristic expressly identified in the statute, or by any other distinguishing characteristic. Second, the conduct must substantially disrupt or interfere with the orderly operation of the school or the rights of other students. Third, one of the three conditions set forth in subsections (a), (b), and (c) must be satisfied. *Wehbeh v. Bd. of Educ. of Twp. of Verona*, Commissioner Decision No. 510-20 (Feb. 4, 2020). “The Act specifically allows a school district to respond to harassment, intimidation or bullying that occurs off school grounds.” *G.D.M. v. Bd. of Educ. of Ramapo Indian Hills Reg’l High Sch. Dist.*, 427 N.J. Super. 246, 266 (App. Div. 2012) (citing N.J.S.A. 18A:37-15.3).

In this case, the Board determined that N.D. committed HIB when he followed the female victim, who was walking home from school, told her that she was pretty, repeatedly asked her for hugs, and asked if he could lift up her backpack from behind to see how heavy it was. The victim reported that she became fearful and repeatedly told N.D. to stop following her, and that he eventually turned around. When questioned during the investigation, N.D. stated that he did not remember the incident. The Administrative Law Judge (ALJ) granted the Board's motion for summary decision upon concluding that the material facts were undisputed and the Board's HIB determination was not arbitrary, capricious, or unreasonable.

In his exceptions, petitioner argues that the ALJ's decision is based solely on hearsay and unsubstantiated allegations. He contends that the victim's description of events is not corroborated, and that reliance upon same by the ALJ is unjust and exposes N.D. to potential irreversible harm to his reputation, emotional distress, and social stigmatization.

In response, the Board contends that petitioner's arguments regarding the legal process and violations of justice and due process were not raised before the ALJ. In any event, the Board maintains that it adhered to applicable law and policy with respect to this HIB matter. Moreover, the Board asserts that the ALJ applied the correct legal standard when determining that the incident satisfied the statutory definition of HIB, and that the Board's finding was not arbitrary, capricious, or unreasonable. The Board also maintains that the ALJ properly relied upon some hearsay evidence in accordance with *N.J.A.C. 1:1-15.5*.

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). Regarding HIB determinations, this standard of review requires petitioners 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 Cty.*, OAL Dkt. No. EDU 13204-13, Initial Decision (Feb. 24, 2014), *adopted*, Commissioner Decision No. 157-14 (Apr. 10, 2014). The Commissioner may not substitute his judgment for that of the Board. *Schinck v. Bd. of Educ. of Westwood Consol. Sch. Dist.*, 60 N.J. Super. 448, 476 (App. Div. 1960).

Upon review, the Commissioner rejects the ALJ’s conclusion that the Board’s HIB determination was not arbitrary, capricious, or unreasonable. According to documents in the record, the HIB investigation concluded that the incident did not substantially affect the operation of the school or the rights of other students. Respondent’s Motion for Summary Decision, Exhibit 2, page 8. The ALJ noted on page 5 of the Initial Decision that the investigation determined “that N.D.’s comments . . . did not substantially affect the school’s operation.” For a finding of HIB to be sustained, the Act expressly requires that the conduct at issue “substantially disrupts or interferes with the orderly operation of the school or the rights of other students.” N.J.S.A. 18A:37-14. The Board’s decision fails to provide any explanation for why it disagreed or disregarded the findings contained in the investigation report or how N.D.’s conduct met the statutory criteria. Thus, the Commissioner finds that the Board’s decision lacks a rational basis.

While N.D.’s actions were clearly inappropriate, not all such behaviors constitute HIB under the Act’s very specific definition. The record is devoid of evidence that the incident, although understandably distressing, caused the victim to be so upset that she was “not fully available for learning.” *G.H.*, Initial Decision at 18. The incident occurred after the school day

ended. While the ALJ found on page 11 of the Initial Decision that “the victim was uncomfortable, fearful, and reported the incident,” that finding does not constitute a substantial disruption of the orderly operation of the school or the rights of other student as claimed by the Board in its reply to petitioner’s exceptions. The victim attended school the next day. The fact that she reported the incident, in and of itself, does not satisfy the second element of the HIB statute. The ALJ’s conclusion on page 12 that the incident “interfered with [the victim’s] education and created a hostile educational environment,” thereby satisfying the “substantial disruption” requirement, is not supported by the record.

Accordingly, the Initial Decision is rejected, and the petition of appeal is hereby granted. The Board is directed to remove any references to the HIB determination from N.D.’s student records.

IT IS SO ORDERED.²



COMMISSIONER OF EDUCATION

Date of Decision: April 28, 2025
Date of Mailing: April 28, 2025

² 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 08600-24

AGENCY DKT. NO. 137-5/24

M.D. ON BEHALF OF MINOR CHILD N.D.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWN OF
WESTFIELD, UNION COUNTY,**

Respondent.

M.D., petitioner appearing pro se

Christina Michelson, Esq. for Respondent (Methfessel & Werbel, attorneys)

Record Closed: December 27, 2024

Decided: January 21, 2025

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

STATEMENT OF THE CASE

M.D. challenges that N.D. engaged in Harassment, Intimidation, and Bullying (HIB) on January 31, 2024, against a female student after N.D. approached her, stated she was pretty, and did not stop following her. Was the HIB conclusion supported even if N.D. did

not recall the incident, has a disability, and is uninterested in females? Yes. HIB prohibitions apply to disabled students, and a Board of Education's decision will stand unless it is arbitrary, capricious, or unreasonable.

PROCEDURAL HISTORY

On May 6, 2024, M.D. filed a Petition of Appeal with the Commissioner of Education (Commissioner) challenging the Westfield Board of Education's (Board or District) HIB determination against his minor son, N.D. Petitioner maintains that the District mishandled the investigation, relied upon witnesses that were not credible or biased, insufficient evidence, and failed to consider N.D.'s disabilities. Thus, the petitioner seeks to set aside the Board's decision and remove the HIB finding from N.D.'s record.

On June 6, 2024, the Board answered the petition, denying the petitioners' allegations, maintaining that it followed all required procedures and that its decision met the HIB criteria. The Board requests that this tribunal dismiss the petition.

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 June 6, 2024, the OAL received and filed the transmittal.

On November 25, 2024, the Board filed a motion for a summary decision asserting no disputed material facts exist. The petitioner submitted email responses on November 26 and December 3, 2024. The petitioner provided an additional email on December 27, 2024, which I accepted. On December 27, 2024, the Board responded, and I closed the record.

FINDINGS OF FACT

Viewing the facts in the most favorable light to the non-movants, I **FIND** the following as **FACT** after considering the sufficiency of the documents and materials submitted for and against the motion:

On January 31, 2024, N.D. was an eleventh-grade student at Westfield High School. At that time, N.D. suffered from a social disability and had an Individualized Education Plan (IEP) in place to address his need for special education services. R-2.

Under N.J.S.A. 18A:37-15, the Board issued District Policy 5512 concerning HIB, which essentially mirrors the State HIB law and the process a school must follow when investigating HIB claims. See R-7. Notably, the policy does not exclude any students or District staff from its HIB prohibitions.

On February 2, 2024, J.S., a ninth-grade female student, reported an incident involving N.D. on January 31, 2024, to the assistant principal, Mable Huynh. On that date, the principal contacted M.D. to advise that the District received a HIB allegation against N.D.

On February 8, 2024, J.S. provided a written statement about the incident and met with the HIB investigator. J.S. reported that N.D. followed her and a friend from Starbucks after school around 3:00 p.m. When J.S. and her friend separated, N.D. continued to follow J.S. N.D. approached J.S. and told her she was pretty, repeatedly asked for a hug, and requested to lift her bookbag, which she refused. J.S. began walking quickly and asked N.D. repeatedly to stop following her, but he continued until she reached her street. She was too afraid to stop at her home because she did not want N.D. to know where she lived. She reported that his actions made her uncomfortable and fearful of harm. Although M.D. suggests J.S.'s account is speculation, it is not. Instead, her statement recounts her version of events on January 31, 2024, with N.D.

The HIB report notes N.D.'s ethnicity as white. Ibid. However, M.D. asserts that N.D. is mixed race and that the District targeted N.D. in the investigation because of his race. Yet, M.D. offers no evidence to support this allegation, and the incident did not involve race.

On February 9, 2024, the investigator spoke with J.S., who identified N.D. as the person following her. J.S. identified N.D. from two student pictures that matched her description of the student following her on January 31, 2024.

The investigator spoke to other witnesses as part of the HIB investigation. On February 15, 2024, Nick Calello, the Student Resources Officer, stated that he saw N.D. trailing a block behind two girls after leaving school. However, he could not identify the girls. I **FIND** this statement offers little to demonstrate the events J.S. reported.

Despite multiple requests, N.D. refused to provide a written or verbal statement regarding the incident. Instead, he told the HIB investigator that he did not recall the interaction on January 31, 2024.

Yet, assistant principal Huynh spoke with N.D. after J.S. reported the interaction. On March 7, 2024, Huynh advised the HIB investigator that N.D. recalled the incident when she spoke with him on February 8, 2024, and he asked if J.S. reported him. However, M.D. maintains he was on the February 8, 2024, call and disputes that N.D. remembered the incident but denied it. Thus, M.D. maintains Huynh's statement was biased and the investigator should not have considered it. M.D. suggests that there was tension between Huynh and N.D. that created a conflict of interest. Yet, M.D. supplies no evidence to support this assertion.

N.D. lives near where the girls were walking, and it would not be unusual for him to be in the area or walking in their direction to go home. N.D.'s sexual orientation is not heterosexual. Thus, M.D. suggests the incident is a misunderstanding and based on speculation.

On March 12, 2024, the investigator concluded that N.D.'s actions on January 31, 2024, constituted a HIB. The conclusion's justification focused on the criteria for a HIB determination: N.D. approached J.S. "when she was alone, continued to follow her and comment[ed] on her appearance, even after she asked him to leave her alone" (a verbal act); the incident took place walking home after school; and J.S. reported being fearful and uncomfortable going into her home, which interfered with her education. R-2. The report also noted that N.D.'s comments were not insulting or demeaning and did not substantially affect the school's operation. Ibid. In other words, the HIB investigator relied upon J.S.'s statements about the incident, her feelings regarding the interaction, and her identification of N.D. While M.D. questions the reliance on accounts by Calello or Hyunh, I **FIND** the HIB determination did not focus on those statements. Further, N.D. made no formal statement about the incident to the investigator despite numerous requests to contradict J.S.'s version of the January 31, 2024, events.

On March 28, 2024, Westfield's Anti-Bullying Coordinator wrote to N.D.'s parents, informing them of its HIB investigation concerning N.D.'s actions and determination that a HIB incident occurred. The letter explains that the District's HIB policy requires the District to notify parents of the "nature of the investigation, whether the District found evidence of HIB, and whether consequences are imposed, or services provided to address the incident of HIB." R-4. The letter also advised N.D.'s parents that they could request a hearing before the Board. Ibid.

M.D. maintains that the District did not adequately advise him of the HIB claims against N.D. Yet, he also asserts that he was on the call with N.D. and Hyunh when she asked N.D. about the January 31, 2024, incident.

N.D.'s discipline for the HIB action was student counseling, a student conference, and an IEP services review. R-2.

At some point, M.D. reported a HIB against N.D. occurring on January 22, 2024, which the District found to be a District Code of Conduct violation, not a HIB. M.D. requested a hearing regarding the District's determinations regarding the incidents on January 22 and January 31, 2024. R-5.

Following the April 23, 2024, Board hearing requested by M.D., the Board wrote to M.D. advising that it upheld the determination. Specifically, on January 22, 2024, the incident "was not motivated by any actual or perceived characteristic" necessary to conclude that a HIB had occurred. Ibid. M.D. did not dispute that determination in this case.

However, the Board also advised M.D. that it agreed with the conclusion that N.D. committed an act of HIB on January 31, 2024.¹ Id. The Board also advised M.D. that if he had additional allegations of HIB occurrences against N.D., he should complete additional documentation to allow for an investigation. This appeal followed.

On May 7, 2024, the Board voted to affirm the HIB against N.D. and advised M.D. of his right to appeal the Board's determination.

DISCUSSION AND CONCLUSIONS OF LAW

Summary Decision Standard

A party may move for summary decision upon any or all substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion for summary decision shall be served with briefs and may be served with supporting affidavits. Ibid. "The decision sought may be rendered 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).

¹ The letter references January 31, 2023, which was an error.

An issue is “genuine” if, considering the burden of persuasion at trial, the evidence submitted on the motion and all legitimate inferences could sustain a decision in favor of the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 530 (1995). A fact is “material” if it will “affect the outcome of the suit under the governing law.” Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986). Significantly, “bare conclusions in the pleadings, without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment.” U.S. Pipe and Foundry Co. v. Amer. Arbitration Assn., 67 N.J. Super. 384, 399–400 (App. Div. 1961) (citations omitted.); see R 4:46-5(a) (non-movants “may not rest on mere allegations or denials” to create a genuine issue of material fact.)

When a party moves for summary decision, supported by affidavit, the burden shifts to the adverse party to identify specific facts showing there is a genuine issue resolvable only by an evidentiary proceeding. N.J.A.C. 1:1-12.5(b). Given this burden shift, a party opposing the motion “who offers no substantial or material facts in opposition to the motion cannot complain if the court takes as true the uncontradicted facts in the movant’s papers.” Burlington Cnty. Welfare Bd. v. Stanley, 214 N.J. Super. 615, 622 (App. Div. 1987). An opponent’s failure to make such a showing entitles the moving party to summary judgment. Brill, 142 N.J. at 529. The Brill Court advised that such a liberalized standard allows for summary judgment in more cases in “a time of great increase in litigation and one in which many meritless cases are filed.” Id. at 539 (citation omitted.)

Viewing the facts most favorable to M.D., the non-movant, he essentially disputes the witness statements by Calello and Hyunh and asserts J.S.’s statement amounts to speculation. I found that Calello’s statement offered little to prove the occurrence of the HIB incident. M.D. does not dispute that N.D. might have been in the area where the HIB occurred because he lived nearby. In other words, he only offers another reason that N.D. was in the area, not that he was not there. Even if N.D.’s statement to Hyunh was inaccurately reported to the investigator and not considered here, J.S. undeniably reported the incident and identified N.D. as the individual who committed the HIB and

how those events made her feel. Significantly, accepting that M.D. was on the call with Hyunh where N.D. was notified of the HIB allegation against him, any claim that M.D. was unaware of the nature of the HIB against N.D. is unfounded. Regardless, the District separately notified M.D. that a HIB allegation against N.D. occurred. Notably, J.S.'s statement and identification of N.D. are the basis of the investigator's conclusion that N.D. committed a HIB. Further, there is no dispute that N.D. provided no formal statement to the HIB investigator to counter the allegations made by J.S., and no evidence exists that he did. Similarly, the District does not dispute that N.D. has a disability or, for purposes of this motion, that N.D. has no sexual interest in females. Thus, I **CONCLUDE** that no genuine issue of any material fact exists, and summary judgment is appropriate here.

HIB

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). Every student is bound by the District's HIB policy, and the District is required to investigate HIB complaints and enforce its HIB policies, as it did here. Id.

Student confidentiality laws preclude the District and Board from sharing another student's confidential information, including their name, when conducting investigations under the ABRA. See, e.g. New Jersey Pupil Records Act (PRA), N.J.S.A. 18A:36-19 (operating in conjunction with the Family and Educational Records Privacy Act, 20 U.S.C. § 1232g, to safeguard pupil records.)

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. Dept. 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).

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. Indeed, N.J.S.A. 18A:37-15.3 mandates that HIB provisions apply to student conduct off school grounds when a "school employee is made aware of such actions." Undeniably, the incident took place off school grounds. N.D. denies following the victim from school and lives in the area where the incident occurred. However, HIB prohibitions need not be on school grounds or at a school event. Instead, the HIB policies apply to students off school grounds. M.D. challenges the security guard's statement that he saw N.D. following the two girls leaving school because he could not identify the individuals involved. I agree that this alone would be insufficient to support that N.D. followed the girls. Yet, the crux of this case is the victim's recount of the incident, which is far from being simply speculation or supposition. J.S. reported the HIB event to a school employee, which occurred between two students soon after school ended while she was walking home from school. Thus, I **CONCLUDE** that this part of N.J.S.A. 18A:37-15.3 is met.

Initially, the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic. Secondly, the conduct must also 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.

Regarding the first HIB 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. Wehbeh, at *8 (emphasis added). Yet, an analysis of the actual motivation of the actor is not required. Id. Here, I **CONCLUDE** it was not arbitrary, capricious, or unreasonable for the Board to conclude that a reasonable person would consider N.D.'s comment about the female victim being pretty, wanting to lift her backpack up, and continuing to follow her after being told to stop, was gender motivated. Whether N.D. is sexually interested in males, not females, does not change that the victim reasonably perceived that his actions were gender oriented.

The second element requires 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." The incident was limited but the victim was uncomfortable, fearful, and reported the incident.

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.

Here, J.S. was in fear of harm, the incident interfered with her education and created a hostile educational environment for J.S. R-2. Thus, I **CONCLUDE** that the Board satisfied the second requirement necessary to conclude that N.D. 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 N.D.'s actions made the victim fearful of harm. N.D.'s disabilities do not excuse his inappropriate actions. J.S. repeatedly refused hugs and asked N.D. to stop following her multiple times. Thus, a reasonable person would know their conduct was causing distress. Hence, I **CONCLUDE** the Board was not arbitrary, capricious, or unreasonable in reaching that conclusion, meeting the third prong of the analysis.

Notably, N.J.A.C. 6A:16-7.7(a)2 requires that the consequences stemming from a HIB reflect the nature of the actions and the perpetrator's disabilities, if any. Here, the discipline imposed was student counseling, a student conference, and IEP services review. The District imposed no suspension and was aware of N.D.'s disabilities, calling for an IEP services review following the HIB determination.

Here, M.D. presented no credible evidence that the Board acted arbitrarily or that its decision did not have a rational basis. M.D. received notice of the HIB allegation and had no entitlement to specific student information about the victim. Even disregarding the witness statements by Calello and Hyunh for this motion, I found that the Board's HIB conclusion had a rational basis, and that evidentiary support existed to support its conclusion. M.D. asserts there was a "witch hunt" against his son for which he supplies no evidence and disregards the District's obligations to investigate reports of HIB conduct. I am mindful of M.D.'s strong desire to protect his son from harm and determinations with which he disagrees. Still, I **CONCLUDE** that the Board's decision that N.D. committed a HIB was appropriate and supported by a rational basis and sufficient evidence.

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 21, 2025

DATE

Date Received at Agency:

Date Mailed to Parties:

ljb



NANCI G. STOKES, ALJ

January 21, 2025

APPENDIX

APPENDIX

Submissions Considered

For Petitioner

Petition

Emails dated November 26, December 3, and December 27, 2024.

For Respondent

Motion, brief, and supporting certification with exhibits

Reply brief dated December 27, 2024.