

New Jersey Commissioner of Education
Final Decision

D.M., on behalf of minor child, Z.E.,

Petitioner,

v.

Board of Education of the City of Ventnor, Atlantic
County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge's conclusion that the Ventnor Board of Education's harassment, intimidation, and bullying 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.¹


COMMISSIONER OF EDUCATION

Date of Decision: May 8, 2025
Date of Mailing: May 9, 2025

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

SUMMARY DECISION

OAL DKT. NO. EDU 07454-22

AGENCY DKT. NO. 207-8/22

D.M. ON BEHALF OF MINOR CHILD, Z.E.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF
VENTNOR, ATLANTIC COUNTY,**

Respondent.

D.M., pro se petitioner

Geoffrey N. Stark, Esq., for respondent (Capehart & Scatchard, P.A., attorneys)

Record closed: February 18, 2025

Date decided: April 7, 2025

BEFORE: Elaine B. Frick, ALJ

STATEMENT OF THE CASE

Petitioner, D.M., contests the determination made by respondent, Board of Education of the City of Ventnor (BOE), regarding a harassment, intimidation, and bullying (HIB) complaint made against Z.E. by another student, B., and Z.E.'s HIB complaint against B. and another student. The BOE determined that there was no HIB by either student against the other, but that there was a conflict between the students which was

addressed through discipline. The BOE submitted a summary decision motion seeking dismissal of petitioner's appeal, asserting that there are no material facts in dispute and that the BOE's determination that no HIB occurred regarding both complaints was a reasonable decision and not done in an arbitrary and capricious manner. Petitioner asserts that Z.E.'s disciplinary records should be expunged or amended to note that Z.E. was not the initiating aggressor in the situation between the students and is seeking to have a "safe space" for her children "with the riddance of microaggression, bullying, lack of diversity and inclusion, and lack of equity under the proactive leadership." The summary decision motion is granted as petitioner has not demonstrated that the BOE's determination on the HIB complaints was done in an arbitrary, capricious and unreasonable manner.

PROCEDURAL HISTORY

The matter was transmitted to the Office of Administrative Law (OAL) by the Department of Education (DOE) and filed on August 30, 2022, to be heard as a disputed matter. N.J.S.A. 52:14B-1 to 14B-15 and 14F-1 to 14F-13. The hearing request was transmitted as petitioner's challenge to the BOE's action regarding harassment, intimidation, and bullying complaints.

D.M. was pro se when she submitted her petition for relief to the DOE. She thereafter retained counsel to represent her. The parties engaged in multiple settlement discussions and conferences.

As of July 11, 2023, the initial attorney for the BOE withdrew and current counsel substituted in for the District. Petitioner's counsel filed a motion to be relieved, and an Order Relieving Counsel was entered on July 28, 2023. Petitioner indicated she would proceed pro se, pending her retaining other legal representation. D.M. thereafter confirmed she would not be retaining another attorney and would represent herself.

Multiple telephonic conferences were conducted with the parties. Multiple discovery extensions were provided. Telephonic conferences were conducted with the parties to resolve their discovery disputes. Once discovery was reported as completed,

the BOE requested to submit a motion for summary decision. A submission schedule was set for motion papers.

After motion filings were submitted, the parties confirmed during another telephonic conference that they did not intend to file any further papers regarding the motion for summary decision. Oral argument was scheduled and conducted via Zoom audio/video technology on February 18, 2025.

FACTUAL DISCUSSION AND FINDINGS

Having reviewed the documentation submitted in support and opposition to the summary decision motion by the BOE, and having heard oral argument from the parties, I **FIND** as **FACTS** the following:

D.M. is the mother of Z.E., who was a third-grade student attending Ventnor Elementary School, in the Ventnor school district as of the 2021-2022 school year. (Ex K, Stark certification.) D.M. also has a younger son who attended the school. D.M. has identified Z.E. as being African American.

On February 15, 2022, D.M. contacted Jenna DiMauro, the Elementary School Counselor and District Anti-Bullying Coordinator (Coordinator DiMauro), and Z.E.'s teacher, alleging that an incident occurred between Z.E. and two classmates, and that Z.E. had been kicked and told to shut up. (Ex. D, Stark certification.) Coordinator DiMauro viewed a video recording of the incident, which did not show any evidence of Z.E.'s allegation that she was kicked and shoved into a corner by two other students, B. and N. (Ex. D, Stark certification.)

On February 17, 2022, D.M. reported to the teacher that Z.E. stated she was called an ugly animal the day prior. Shortly thereafter, the teacher responded back to D.M., advising that she investigated the situation and described that the students were lined up for recess next to the teacher's bookshelf. A student was looking through the bookshelf and read the title of a book "Ugly Animals" which Z.E. heard and misunderstood, assuming the student was talking about her and calling her names. The teacher indicated

she had updated Coordinator DiMauro, and that DiMauro would be speaking to the students.

Shortly after the teacher sent her responsive email to D.M. regarding the “ugly animals” comment allegation, Coordinator DiMauro conducted a peer conflict resolution on February 17, 2022, with Z.E. and two other students. The result of the resolution session was reported to D.M. by DiMauro as having been positive for Z.E. and that she understood and agreed with the other students that they would keep respectful distance from one another, use the up-stander rule, be kind and respectful to one another, and they understood the difference between tattling and reporting. (Ex. D, Stark certification.)

On February 22, 2022, D.M. mentioned in an email to Coordinator DiMauro that she had a heightened conflict with a parent/neighbor who yelled and cursed at D.M. after D.M. commented that the neighbor’s kids were ringing her doorbell and running. (Ex. D, Stark certification.) D.M. spoke to Coordinator DiMauro on that date, who suggested that Z.E. be switched to another classroom, away from the children with whom she had the conflict. D.M. indicated that it was not necessary at the time. (Ex. D, Stark certification.)

On February 23, 2022, D.M. sent an email to Coordinator DiMauro, asking DiMauro to advise staff in charge of seating arrangements on the school bus to enforce seating arrangements. She asserted that on that morning, student B. sat next to Z.E. on the bus and “was beginning to start trouble.” (Attachment 3, petitioner submission.) Z.E. called D.M. and they spoke on the telephone until Z.E. arrived at the school without incident.

On March 2, 2022, Z.E. and student B., who was standing with student N., had a conflict while in line at the cafeteria. Student B. bumped into Z.E. and Z.E. responded by punching B. (Ex. F, Stark certification.) Students and staff who were interviewed could not definitively state whether B.’s bump of Z.E. was intentional or not. (Ex. F, Stark certification.)

A complaint alleging HIB committed by Z.E. against B. was submitted to the District on behalf of B. A complaint alleging HIB committed by B. and student N. as to Z.E. was

submitted by D.M. (Ex C, Stark certification.) In her complaint on behalf of Z.E., D.M. asserted that on February 23, 2022, Z.E. had to call D.M. while on the bus, to ensure her comfortability and safety. She asserted that Z.E. was subjected to rude remarks regarding her clothing during origami class. D.M. asserted that on March 2, 2022, students N. and B. shoved and pushed Z.E. She wanted to “reopen” investigation into Z.E. being kicked and told to shut up by the two other students on February 15, 2022, and was called an ugly animal on February 17, 2022. D.M. also outlined issues in her neighborhood, that student B. rings D.M.’s doorbell and runs, playing ding dong ditch. (Ex C, Stark certification.)

The administration had an investigation completed. Statements were obtained from students and staff and other documentation related to the alleged incidents between the students. (Ex F, Stark certification.) On March 22, 2022, the investigator completed a report, finding that the incidents complained of on behalf of Z.E. did not meet the standard of HIB, but that disciplinary action was warranted for violations of the code of conduct. (Ex. E, Stark certification.)

On March 22, 2022, D.M. sent an email inquiry to Coordinator DiMauro, seeking the status of the HIB investigation D.M. requested on behalf of Z.E., and advising her of continuing conflict between Z.E. and other students. (Ex. A, Stark certification.) D.M. thereafter sent another email asking about the consequences faced by other students. Coordinator DiMauro responded that due to student confidentiality protection, she could not discuss other students or their consequences with D.M. (Ex. Z, Stark certification.)

The District’s HIB Investigation Form was completed by Coordinator DiMauro, outlining actions taken for the investigation of the HIB incidents raised by D.M. on behalf of Z.E. as to two students, B. and N. (Ex E, Stark certification.) The investigator reviewed the disciplinary files and reported that there was a prior incident between Z.E. and student B. on January 21, 2022, and one of the incidents alleged in the HIB complaint being investigated had already been addressed as a code of conduct violation on March 2, 2022. (Ex E, Stark certification.) The investigator confirmed having conducted interviews with Z.E. and the other two students, B. and N. The notes of all interviews with other students were attached with the report. (Ex F, Stark certification.) The findings outlined

in the investigation form address the incidents complained of by D.M. in her HIB complaint. (Ex C, Stark certification.)

The video recording of students Z.E. and B. and N. from February 15, 2022, was reviewed and there was no evidence of Z.E. being kicked or shoved into a corner by the other students. The findings regarding the “ugly animals” comment incident of February 17, 2022, outline that Z.E. claims B. pointed at the book titled “Ugly Animals” and said, “that’s you.” Some of the other students heard something “like that” and B. reported that she read the title of the book and Z.E. misunderstood her. B. also reported that Z.E. nudged her into the bookshelf. (Ex E, Stark certification.) D.M.’s report about incidents on March 22, 2022, in aftercare and in chorus class were investigated and the other students involved in those matters (not B. or N.) admitted to what they did. One of the students had already apologized and had to write a four part apology to Z.E. The other student admitted to saying something unkind to Z.E., repeating what student B. had said to the other student about Z.E. The report noted that B. was counseled for using unkind words. (Ex E, Stark certification.)

The investigator determined that the incidents did not meet the standard of bullying but confirmed that other action was warranted. It was determined that there “is an ongoing conflict” between Z.E. and student B. “where both parties have been the initiator of previous conflicts and disciplinary incidents. This incident does not meet the standard for NJ HIB.” The report indicates “Code of Conduct violation. Per code of conduct, disciplinary action has already taken place.” (Ex E, Stark certification.)

The HIB report was presented by the Superintendent to the Board of Education at its meeting on March 29, 2022. The following day, March 30, 2022, two letters issued to D.M. regarding the HIB investigation report having been given to the BOE and that the BOE adopted the results. (Ex G, H, Stark certification.) The first letter confirmed that the district did not find evidence that Z.E. had committed an act of HIB. (Ex G, Stark certification.) The second letter advised that an investigation was conducted about the accusation of HIB having been committed against Z.E. The investigation confirmed that the accusation was “Not verified. However, a conflict has been found, and appropriate disciplinary actions have been imposed.” (Ex H, Stark certification.)

The notification letters advised D.M. that she could request a hearing before the BOE. At the end of May 2022, D.M. requested a BOE hearing. (Ex I, Stark certification.)

The BOE conducted a hearing at its meeting of June 22, 2022. The BOE heard information presented by D.M. and the District's Anti-Bullying Specialist at the meeting. The BOE affirmed the initial findings in the HIB investigations. (Ex E, Stark certification.) The Superintendent sent correspondence on June 28, 2022, to D.M., confirming the BOE decision as to no findings of HIB either done by Z.E. or against Z.E. The letter outlined D.M.'s appeal rights. (Ex J, Stark certification.)

D.M. submitted her petition of appeal to the DOE, dated August 8, 2022. The petition states that she is seeking expungement of her child's disciplinary records or an amendment to the records noting that Z.E. was not the initiative aggressor and that D.M. is seeking to have a "safe space" for her children "with the riddance of microaggression, bullying, lack of diversity and inclusion, and lack of equity under the proactive leadership." (Parent's petition August 8, 2022.)

The BOE asserts that summary decision is appropriate. It asserts there is no genuine issue of fact in dispute. It contends that the facts demonstrate that the BOE did not act in an arbitrary, capricious, or unreasonable manner when it affirmed the District's HIB investigation results and determination that an HIB violation was not committed either by Z.E. or against Z.E., but that discipline was warranted due to a conflict between the students.

D.M. contends that the motion should be dismissed because the District failed to address critical issues, has misrepresented facts, and disregarded the ongoing harm caused to her daughter as a result of the District's failure to act. She asserts there is clear evidence of racial bias, harassment, and improper intervention that has marred her daughter's educational experience. She argues that this motion should be denied because there are "clear, unresolved issues" that require investigation, regarding discriminatory actions, manipulation of records, and systemic failure to protect her daughter.

D.M. provided argument asserting the District is discriminatory and marginalizing her daughter. There is no focus in her arguments to the issue at hand—the incidents that were reviewed as part of the HIB complaint she alleged against the other students, and why the BOE’s determination was unreasonable, arbitrary or capricious that there was no HIB by or against Z.E. but an ongoing conflict was identified between students Z.E. and B. which was addressed as code of conduct violations.

D.M. contends that the District mishandled the investigation here because there is a longstanding history of racial discrimination in the District which has affected her children. She contends the situations at issue are not cases of “student conflict” but reflect a systemic failure to protect her vulnerable child who has been marginalized by a dominant demographic. She asserts that the investigation was not handled properly because the school focused on minimizing the issue instead of addressing the racial nature of the harassment of Z.E. She did not specify who or how the HIB investigation was minimized or mishandled. She did not identify the “racial nature” of the alleged harassment.

D.M. contends that she was left without critical information and that there are inconsistencies in the notification given to the parent of student B. (Attachment 2, petitioner’s submission.) She argues that the District manipulated documents, but could not articulate what documents were manipulated that pertain to the BOE’s determination to uphold the HIB determinations that no HIB occurred.

D.M. asserts the District wants to maintain a “clean” HIB record to avoid losing funding rather than address the harassment her daughter faced. She contends her daughter has been marginalized and forced to internalize her pain, rather than receive the support she needed. D.M. further contends that there is an ongoing pattern of retaliation and nepotism within the school district, which undermines the integrity of the school’s HIB investigation process and questions the impartiality of the administrators.

D.M. asserts that the motion should be dismissed because the motion papers misrepresent the events that occurred and disregard the ongoing harm caused to her

daughter by the school's failure to properly investigate the HIB complaints. She did not specify what events were misrepresented by the District.

D.M. further contends the evidence is clear that Z.E. was subject to discriminatory treatment and the school failed to intervene. She seeks an order that there should be a thorough investigation into the school's handling of the case due to its manipulation of documents and failure to protect her daughter and failure to take appropriate disciplinary action. D.M. further seeks that the school be held accountable for its actions so that all students can learn in an environment free from racial discrimination and harassment.

LEGAL ANALYSIS AND CONCLUSIONS

In an administrative law matter, a "party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). The motion "shall be served with briefs and with or without supporting affidavits." N.J.A.C. 1:1-12.5(b). The judge may grant the motion if the documents and information filed, together with any submitted affidavits, "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." Ibid. The non-moving party will prevail if they "set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid.

At issue here is whether the BOE acted reasonably and appropriately in determining that there was no HIB committed by either Z.E. or against Z.E. Disciplinary action against students is considered within the discretionary power of a local board of education. Such discretionary actions taken by a board of education are presumed to be correct and "will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable." Thomas v. Board of Education, Township of Morris, 89 N.J. Super. 327, 332 (App. Div. 1965); and see Kopera v. Board of Education of the Town of West Orange, 60 N.J. Super. 288, 294 (App. Div. 1960). A board's factual determinations "must be accepted if supported by substantial credible evidence." Thomas, 89 N.J. at 332, citing Quinlan v. Board of Education of North Bergen Township, 73 N.J. Super. 40 (App. Div. 1962); Schinck v. Board of Education of Westwood Consolidated School District, 60 N.J. Super. 448 (App. Div. 1960). Thus, the question

presented is “whether the board had a reasonable basis for its factual conclusion.” Kopera, 60 N.J. at 295-296.

The Anti-Bullying Bill of Rights Act (Act) was enacted in New Jersey to “strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students” occurring both on and off of school grounds. N.J.S.A. 18A:37-13.1(f). Definitions regarding the terms harassment and bullying are found in N.J.S.A. 18A:37-14, which states in part:

“Harassment, intimidation or bullying” means 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.

An individual who challenges a board’s HIB finding bears the burden of proof to “demonstrate that the board acted in bad faith, or in utter disregard of the circumstances before it.” G.H. and E.H. ex rel. K.H. v. Board of Education of the Borough of Franklin

Lakes, EDU 13204-13, Initial Decision (February 24, 2014), adopted, Commissioner (April 10, 2014). “Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances.” Bayshore Sewage Co. v. Dept. of Environmental Protection, 122 N.J. Super. 184, 199 (Ch. Div. 1973), affirmed, 131 N.J. Super. 37 (App. Div. 1974). “[A]ction is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.” Id. at 199.

Petitioner D.M. thus bears the burden of proof to demonstrate that the board acted arbitrarily, capriciously, or unreasonably in its finding based upon the information presented to it. D.M. must prove that there was no reasonable basis for the BOE’s finding that the conflict between her daughter and the other student did not meet the standard of HIB based on the statutory requirements.

The relevant facts are not in dispute. The findings in the HIB report regarding the complained-about incidents have not been challenged. The findings demonstrate ongoing interactions between Z.E. and B. Nothing has been asserted that student B. was motivated in their interactions with Z.E. due to a distinguishing characteristic such as race, color, or religion. For example, in the incident when student B. bumped into Z.E. while in line and Z.E. responded by punching B., nothing was presented to demonstrate that B. was motivated by Z.E.’s racial or color characteristic to bump into her. Neither student reported that the other made any comments or gestures when the bump and punch exchange occurred to indicate either student being motivated by a racial characteristic of the other. Even the “ugly animals” comment had no other context presented that B. stating the name of the book was done with the intention of inflicting harm to Z.E. based upon a distinguishing characteristic.

None of the other student witnesses reported in their interviews that any of the complained-about interactions between the two students was motivated by an actual or perceived characteristic, such as race, or any other distinguishing characteristic. The student interviews confirm that student B. and Z.E. would engage in yelling and conflict with one another, but none of the statements indicated any racial or discriminatory motivation heard, seen, or perceived.

The HIB investigation here concluded that there was no HIB but there was an ongoing conflict between Z.E. and B. which was addressed through discipline, due to code of conduct issues in the interactions. This information was presented to the BOE. The event of one student pushing another, whether inadvertently or on purpose, with the other reacting to the bump with a punch to the other, without any words or gestures exchanged or any indication that a characteristic such as race, gender, or religion, was a motivating factor, reasonably lends itself to be a code of conduct matter. Likewise, the other complained of incidents by D.M. did not allege that B. acted with discriminatory intent and bullying towards Z.E. based upon a distinguishing characteristic as defined in the Anti-Bullying Act.

The legal arguments asserted by D.M. broadly assert claims of discrimination and systemic oppression within the school district. This is not the tribunal to be asserting such claims. This is an action challenging the HIB determination by the BOE. Broad arguments regarding systemic oppression do not dispel the reasonable determination by the BOE, based upon the undisputed information presented to it, to adopt the determination that there was no HIB, but rather a code of conduct issue between the students.

D.M. contends the HIB investigation at issue was mishandled but provides no underlying factual support as to who mishandled the investigation and how it was mishandled. There has been no factual support to discredit the BOE's determination to uphold the HIB investigator's determination based upon the information presented to the BOE. I **CONCLUDE** that with the absence of any facts to show motivation by any other students to bully or harass Z.E. due to a distinguishing characteristic such as race or color, it was reasonable for the BOE to affirm the determination that there was no HIB, but acknowledge the conflict between Z.E. and B. which was addressed through code of conduct disciplinary measures. I **CONCLUDE** that the BOE's motion for summary judgment shall be granted and this action challenging the BOE's finding of no HIB shall be dismissed.

ORDER

It is **ORDERED** that the BOE's motion for summary decision is **GRANTED** and the petition for relief 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 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 **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.



April 7, 2025

DATE

ELAINE B. FRICK, ALJ

Date Received at Agency:

Date Mailed to Parties:

EBF/gd

APPENDIX

October 24, 2024: Summary Decision Motion submission by respondent, BOE

November 6, 2024: Opposition to BOE's motion by petitioner, D.M.

November 21, 2024: Reply to D.M.'s opposition by respondent, BOE