348-25
OAL Dkt. No. 15753-24
Agency Dkt. No. 333-10/24

New Jersey Commissioner of Education
Final Decision

C.H., on behalf of minor child, P.H.,

Petitioner,

v.

Board of Education of the Town of Secaucus, Hudson County and Sarah Sciscilo,

Respondents.

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, and for the reasons thoroughly detailed in the Initial Decision, the Commissioner agrees with the Administrative Law Judge (ALJ) that the petitioner did not establish that the Board acted in an arbitrary, capricious, or unreasonable manner when it determined that P.H. committed an act of harassment, intimidation, and bullying. The Commissioner further agrees with the ALJ that the alleged administrative errors by the Board had no substantive impact on the case that would warrant a reversal of the Board's decision.

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: July 11, 2025
Date of Mailing: July 14, 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 15753-24
AGENCY DKT. NO. 333-10/24

C.H. ON BEHALF OF MINOR CHILD, P.H.,
Petitioner,
v.
BOARD OF EDUCATION OF THE TOWN OF SECAUCUS, HUDSON COUNTY, AND SARAH SCISCILO,
Respondent.

C.H., pro se, for petitioner

Danielle N. Pantaleo, Esq., for respondent (Busch Law Group, LLC, attorneys)

Record Closed: May 2, 2025 Decided: May 23, 2025

BEFORE **MATTHEW G. MILLER**, ALJ:

STATEMENT OF THE CASE

Petitioner C.H., the parent of minor child P.H., has challenged the determination made by the respondent, Secaucus District Board of Education, et al. (respondent, District or BOE), that P.H. committed an act of harassment, intimidation, and bullying

(HIB) against a fellow student in violation of N.J.S.A. 18A:37-13.2 et seq. (the Anti-Bullying Bill of Rights Act).

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

The HIB complaint arose out of an incident which occurred on March 19, 2024. Following the conclusion of an investigation on April 12, 2024, the Board of Education, during its meeting of May 9, 2024, affirmed the finding that P.H. had committed an act of HIB. C.H. appealed that finding. Following a hearing before the BOE on July 18, 2024, he was advised by letter dated July 22, 2024 that the appeal had been denied.

The appeal of the BOE determination was then filed with the Department of Education's Office of Controversies and Disputes on or about October 19, 2024. Respondent filed an Answer to the Appeal on October 29, 2024, and the Department transmitted this matter to the Office of Administrative Law (OAL) that same day 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 -23.

An initial conference was held on December 19, 2024, during which respondent advised that it intended to file a Motion for Summary Decision. Following extensive briefing, the record closed on May 2, 2025.

THE INCIDENT AND ITS IMMEDIATE AFTERMATH

There is no significant dispute about what occurred. However, the "why" it occurred and how C.H. was apprised of its occurrence are contested.

On March 19, 2024, P.H. was an almost twelve-year-old seventh-grade student at Secaucus Middle School. Per the HIB report, the following occurred:

> On March 19th, 2024, student reported to Ms. Boczun[1] that during phys. ed. class, a student made a comment about his height, getting called "midget," and also called him a "Jewish

[1] Samantha Boczun, a counselor at the school.

> monkey." In speaking to the other student PH, she admitted that she was annoyed by him singing and dancing during class, and that she was having a bad day, and lashed out. Student said that in general, he has been made fun of based on his height and religion and has not wanted to come to school. Both parents were contacted and PH wrote an apology email to the other student. PH was initially receiving a restorative measure (Suite 360 assignment), but her father also requested a disciplinary punishment.
>
> [R-2B.]

TIMELINE

Much is made by C.H. as to administrative errors that were allegedly made by the District. In order to address these, a detailed timeline is helpful.

03/19/24 – Date of incident, which A.V.[2] reports to Samanta Boczun

03/19/24 – Boczun speaks with P.H. about the incident.

03/20/24 – A.V.'s mother reports the issue. Boczun leaves a note on Sarah Sciscillo's (HIB Specialist) desk about a possible HIB and requests that she speak with A.V.

03/21/24 – HIB 338 mandatory reporting form completed ("to be filled out by Principal or Designee") by Boczun

03/21/24 – Boczun leaves a voicemail for C.H.

03/21/24 – Sciscillo emails C.H. at 2:30 p.m.:

Good afternoon Mr. H,

> My name is Sarah Sciscilo and I am the other counselor along with Ms. Boczon. We tried calling you but got your voicemail. I also am the Harassment, intimidation, and bullying specialist for middle school. Yesterday, during gym class, P. got annoyed by a student who was dancing and singing and called him "midget" and a "Jewish monkey." This student was very offended and upset, and in any case

[2] Alleged victim.

where there is a characteristic being made fun of, I am required to write up a report to the board. P.'s name would not be mentioned, just what was said. I spoke to P. today and she is very apologetic and admitted to saying it because she was having a bad day. She even wrote the boy an apology email which we appreciate. I know she was very nervous about being in trouble with you. I told her that I wouldn't even ask the principals to give her a detention − Instead she may just need to do an online assignment about watching the words we say to others. I just wanted you to be aware and to know that she understood what she said was wrong. I will not be in tomorrow but if you have any questions, please call Ms. Boczon.

Best,

Mrs. Sciscilo

03/21/24 – C.H. emails Boczun at 8:58 p.m.:

Ms. Boczon, Sorry I didn't see that you called til just now. I just had a talk with P. and she told me what she had said to the boy. P. knows better than to talk to anyone like that. I assure you that she will be severely punished so that something like this never happens again. I will call you tomorrow morning to discuss this further and whatever disciplinary action the school decides to take because of her unacceptable behavior I will fully understand.

C.H.

03/21/24 – C.H. emails Sciscilo at 11:52 p.m.:

My name is C.H., P's father. I am sorry I missed your call, I did email Ms. Boczon and will call her tomorrow. I understand your position and with no disrespect I feel that P. should be disciplined according to the rules and regulations of the school. I am a single father and have been raising P. since she was 2. We talk about everything and P. knows that there are certain things I will not tolerate and bullying is one of them, P. also knows if someone ever bullied her I would be right there for her. I see this as my daughter was bullying that boy and to use his ethnic background is unacceptable. P. has told me about this boy since last year and I had told her to ignore him and walk away. P. knew how to handle the situation the right way but chose not to and having a bad day is no excuse. I will speak with Ms Boczon tomorrow and talk with her and then when you come

and have any questions or comments for me I will make myself available.

Thank you

C.H.

03/22/24 – C.H. and Boczun telephone conversation[3]

03/26/24 – P.H. completes an online anti-bullying class.

04/12/24 – HIB investigation is concluded.

04/18/24 – Charles Voorhees confirmed as acting superintendent.

04/18/24 – Voorhees submits the investigation to BOE.

04/19/24 – C.H. is advised by letter of the HIB finding.[4]

05/09/24 – BOE affirms the finding of HIB.

05/13/24 – C.H. is advised by letter of the affirmation of the HIB finding.

06/18/24 – C.H. emails a request for the HIB report.

06/19/24 – BOE emails C.H. the HIB report and the letters of April 19, 2024, and May 13, 2004.

06/20/24 – C.H. emails the BOE and claims that he never received the April 19, 2024 letter but did get the May 13, 2024 letter.

06/20/24 – BOE emails C.H. and advises that the April 19, 2024, letter was mailed to him and A.V.'s parent, "and no letter was returned to us from the post office."

06/22/24 – C.H. emails an appeal request, which is acknowledged by the BOE.

07/01/24 – C.H. emails BOE requesting information on appeal scheduling with a reply, asking if he is available to attend the July 18, 2024 meeting.

07/02/24 – C.H. emails confirming his attendance.

07/12/24 – Email from Voorhees to C.H., re: appeal hearing details

[3] The contents of this conversation are disputed.
[4] C.H. denies receiving this letter.

07/18/24 – appeal hearing held

07/22/24 – C.H. advised that the appeal had been denied.

THE REPORT

The HIB report (R2-B) reflects that the incident occurred on March 19, 2024; the investigative report was opened on March 21 and closed on April 12. Amongst the key aspects are that contact had been made with C.H., that there were no listed witnesses, and that the "Effects of HIB" were that:

> Offender knew action would physically or emotionally cause harm to the victim or damage to the victim's property
>
> Insulted or demeaned a student or a group of students
>
> Created a hostile educational environment by severely or pervasively causing physical or emotional harm to student

Per the interview with the alleged victim (A.V.):

> AV saw Ms. Boczon twice, told her that someone said something mean to him. He feels like they won't stop, wants to move his classes. I don't want to be around her . . . doesn't want to go to school (according to mom).
>
> − in gym, 3/20 − was sitting out and another student was also sitting out. He was minding his own business, dancing − he said other student got annoyed with him and told him shut up midget − AV said he didn't say anything . . . said to AV "oh you would be the jewish monkey."
>
> PH-confirmed and AV didn't say anything back.
>
> Mom − thinks he's an easy target − and he is quiet and holds it in, doesn't want to be a snitch – "he doesn't want to go to school" − the kids in general bother him, the ones he's in classes with all day. He tells mom he tries to hide from kids. He doesn't stick up for himself − 2nd time about his religion − he's at his end.

The report concluded:

> On March 19th, 2024, student AV reported to Ms. Boczon that during phys. ed. class, a student made a comment about his height, getting called "midget," and also called him a "Jewish monkey." In speaking to the other student PH, she admitted that she was annoyed by him singing and dancing during class, and that she was having a bad day, and lashed out. Student AV said that in general, he has been made fun of based on his height and religion and has not wanted to come to school. Both parents were contacted and PH wrote an apology email to the other student. PH was initially receiving a restorative measure (Suite 360 assignment), but her father also requested a disciplinary punishment.

The report continued:

> 3/21/2024 12:45 PM: AV spoke to Mrs. Sciscilo and Ms. Boczon and stated that yesterday in gym class, he had to sit out because he forgot his sneakers. AV said he was dancing and singing by himself and P.H. started calling him a bunch of names, including "ugly" "bitch" "midget," and then referred to him as a "Jewish monkey."
>
> AV said these comments really upset him and he tried going to Ms. Boczon twice that day to talk to her about it. P. is in all AV's classes and he said he doesn't like school, mainly because of the students in his classes including P. When speaking to AV's mom, she also stated that AV has dealt with similar comments/issues in the past based on his size and religion. This has made him ask his mom if he can be home schooled or change classes to avoid getting made fun of or bothered.

An interview with P.H. was also documented:

> 3/21/2024 12:54 PM: P. stated to Mrs. Sciscilo that she was having a bad day yesterday and was getting annoyed by AV's singing and dancing. She admitted that she burst out and used the terms "Jewish monkey" and "midget" to AV. She did not remember calling him "ugly" or "bitch." P. admitted that she made a mistake and even wrote an apology email.
>
> In speaking with P.'s father, he was in agreement that she should receive punishment. Ms. Boczon and Mrs. Sciscilo

> also said that she would complete a Suite 360 on bullying behavior.

The determination that this was an act of HIB was that:

a. There was verbal harassment.
b. The harassment was based on A.V.'s religion and height.
c. It took place on school grounds (the gymnasium).
d. A.V. "was upset, wanted to change schedule or be homeschooled."
e. A reasonable person would know that the act will have the effect of (emotionally) damaging a pupil.
f. The harassment had the effect of insulting or demeaning a student.
g. It created a hostile educational environment by interfering with the pupil's education or by severely or pervasively causing emotional harm to the student.

CERTIFICATIONS

Respondent supplied three Certifications in support of its Motion.

Samantha Boczun

Ms. Boczun is the school counselor involved in this case. She reviewed the timeline of the incident and its aftermath. She certified that on March 19, 2024, a student reported to her that P.H. had called him a "midget" and a "Jewish monkey." He was particularly concerned because she was in all his classes and did not feel that she would stop. She then spoke to P.H., and she admitted to me that "she was annoyed by A.V.'s singing and dancing during class, that she was having a bad day, and lashed out." (R-1 at ¶6.)

A.V.'s mother contacted her the next day and advised her that he did not want to come to school that day because of the incident. Ms. Boczun then left a note on Sarah Sciscillo's desk (the HIB Specialist at the school) about the incident and requested that she speak with A.V. Then, on March 21, 2024 (two days post-incident), she completed an HIB 338 Form (R-1A.) She also contacted C.H. and left him a voicemail, which he returned via email. (R-1B.)

She then certified that, with Ms. Sciscillo being absent from school, she called C.H. and that during that conversation, she "explained the process about the HIB investigation and report". (R-1 at ¶11.)

Sarah Sciscilo

Ms. Sciscilo certified that she is employed as the Anti-Bullying Specialist at the middle school and that she learned about the incident on March 21, 2024. She interviewed A.V. that day, who told her that "P.H. said offensive comments to him in gym class, which included calling him 'Jewish monkey,' 'ugly,' 'bitch,' and 'midget.'" (P-2 at ¶3.)

She also interviewed P.H. that day, who admitted to calling A.V. "Jewish monkey" and "midget," but not to the other names. She noted that "P.H. was very apologetic and admitted that she said the names . . . called A.V. those names because she was having a bad day." P.H. also wrote an apology note "(o)n her own accord." (P-2 at ¶4.)

Given the facts and circumstances, she decided to open an HIB investigation. She attempted to call C.H. but failed to connect with him so she sent an email to him explaining the situation. (R-2A.) C.H. responded to the email late on March 21, in which he advised that P.H. had effectively admitted to the behavior. (R-2A.)

Since she was absent from school on March 22, Ms. Boczun spoke to C.H. "and further explained the process regarding the HIB report." She then certified that in her report, she concluded that the incident constituted an instance of HIB, and that report was forwarded to the Acting Superintendent on April 12. (R-2B.)

Charles Voorhees

Mr. Voorhees certified that he was approved as the Acting Superintendent of Schools on April 18, 2024, and that he was provided with the HIBster Report on this case that same day. He reviewed the report and presented a summary of the same to the BOE during the executive session of its meeting that night.

The following day (April 19), he notified C.H. of the HIB investigation findings in writing. (R-3B.) On July 18, 2024, at C.H.'s request, an HIB appeal hearing was conducted during the executive session of the BOE meeting. C.H. presented his defense (which is repeated in his opposition to respondent's Motion), but "the Board was persuaded by the finding of the anti-bullying specialist that P.H. admitted to making offensive comments to another student and, in fact, wrote the student an apology." The HIB finding was then affirmed.

At his direction, a letter was sent to C.H. advising him of the Board's findings and how to file an appeal. (R-3A.)

THE MOTION

Respondent has filed a Motion for Summary Decision, arguing that there is no cognizable evidence that the District's finding of a Harassment, Intimidation or Bullying (HIB) violation was arbitrary, capricious or unreasonable and that it has met the standard of Brill v. Guardian Life Ins., 142 N.J. 520.

It points out that a District is entitled to a presumption of correctness and that without an affirmative showing that such a decision was arbitrary, capricious and unreasonable, it must prevail. Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). See also, Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960).

It is argued clear evidence that a thorough investigation was performed in compliance with the District's HIB policy (R-3A) and that both A.V. and P.H. "offered statements confirming that the event in question occurred as described therein" and that "the facts satisfy the criteria required under the definition of HIB, as articulated in the statute." N.J.S.A. 18A:37-14.

As for any alleged procedural missteps, the respondent claims that the investigation clearly complied with N.J.S.A. 18A:37-15(b)(6) in that it was performed "promptly" and was "completed as soon as possible, but no later than 10 school days from the date of the written report . . ." N.J.S.A. 18A:37-15(b)(6)(a). It is also argued that C.H. was given every opportunity to appeal the finding and did so and that he was apprised of the incident, that it was an HIB issue and of the results of the investigation in a timely and proper manner.

In his opposition argument, C.H. cites to no case law and does not provide any certifications or affidavits from anyone (himself, P.H. or any witnesses). Rather, he alleges that respondent made a litany of administrative and factual errors during the investigation that are violative of N.J.S.A. 18A:37-13.2 et seq. and its own District policies.

More specifically, he claims that:

1. The investigation was incomplete.
2. Whatever statements were made to A.V. were not based on any distinguishing characteristics.
3. More specifically, that P.H.'s reference to "Jewish monkey" was actually to an Israeli rock band. [5]
4. P.H.'s apology letter was not genuine and was only written because she was promised that the incident would "go away" if she wrote it.

[5] Is there a group called the Jewish Monkeys? Yes, there is. (P-M.) https://jewishmonkeys. bandcamp.com/music (last accessed May 13, 2025)

5. He was not made aware of the HIB investigation and never received the April 19, 2025 letter advising him of the results.

6. It was impossible for the principal to have signed the HIB report, since that office was vacant at the time of the incident.

7. The veracity of A.V. and his mother should be questioned.

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 Ins. Co. of Am., 142 N.J. 520 (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, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 212 (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 R. 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.
>
> [Id. at 540.]

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).

An action by a local 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). Our courts have held that "[w]here there is room for two opinions, action 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." Bayshore Sewerage Co. v. Dep't of Env't Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App. Div. 1974). Thus, in order to prevail, those challenging a 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 Franklin Lakes, 2014 N.J. AGEN LEXIS 19 (Feb. 24, 2014) (citation omitted), adopted, 2014 N.J. AGEN LEXIS 1137 (Apr. 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., 2013 N.J. AGEN LEXIS 58 (Mar. 11, 2013) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)), adopted, 2013 N.J. AGEN LEXIS 436 (Apr. 25, 2013).[6]

The Anti-Bullying Act 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." N.J.S.A. 18A:37-13.1(f). Under the Act, "[h]arassment, intimidation or bullying" is defined as:

> 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

[6] See R.Z. and L.D. ex rel., L.Z. v. N. Valley Reg. High Sch. Dist. Bd. of Educ., OAL Dkt. No. EDU 10029-23, Initial Decision (Feb. 12, 2025), adopted, Comm'r (Apr. 28, 2025), from which much of this section is borrowed.

> 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 "a procedure for prompt investigation of reports of violations and complaints." N.J.S.A. 18A:37-15(b)(6). 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)(a). The investigation shall be conducted by a school anti-bullying specialist, but "[t]he principal may appoint additional personnel who are not school anti-bullying specialists to assist in the investigation." Ibid. The investigation shall be completed within ten days of the initial HIB complaint. Ibid.

The results of the investigation shall then be quickly reported to the superintendent of schools, who may take certain remedial action. N.J.S.A. 18A:37-15(b)(6)(b). In particular, "the superintendent may decide to provide intervention services, establish training programs to reduce [HIB] and enhance school climate, impose discipline, order counseling as a result of the findings of the investigation, or take or recommend other appropriate action." Ibid.

At this point, it is important to note that the interplay of sections (a), (b) and (c) of the HIB statute was addressed by the Commissioner in Wehbeh v. Bd. of Ed., Twp. of Verona, 2020 N.J. Agen LEXIS 50 (Feb. 4, 2020).

> [A] finding of [HIB] requires three elements. 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.

[Id. at *5 (footnotes omitted).]

The Commissioner explained that "as a matter of standard statutory construction, the term 'or' between subsections (b) and (c) also applies to subsection (a), such that a demonstration of any of these three criteria can support a finding of HIB." Ibid. at n.2.

Put another way, for there to be a valid finding of an HIB violation, these things had to have happened:

1. A reasonable person would perceive that the conduct was based upon a distinguishing characteristic.

AND

2. The conduct took place on school property.

AND

3. The conduct must substantially disrupt or interfere with the orderly operation of the school or the rights of other students.

AND

3a. A reasonable person should know that the conduct would have the effect of…emotionally harming a student.

OR

3b. The conduct has the effect of insulting or demeaning the student.

OR

3c. The conduct created a hostile educational environment for the student by interfering with the student's education or by severely or pervasively causing emotional harm to the student.

[See generally, Shim v. Ridgefield Pub. Schs., Bd. of Educ., 2023 N.J. Agen LEXIS 526 (July 26, 2023), adopted, 2023 N.J. Agen LEXIS 441 (Sept. 7, 2023).]

In other words, in order for there to be a cognizable finding of an HIB violation, the petitioner must demonstrate that it met prongs 1, 2 and 3 and then any of 3a, 3b or 3c. Any break in the chain causes the charge to fail.

STATUTORY ANALYSIS

Prong 1 − The conduct was reasonably perceived to be based upon a distinguishing characteristic.

The primary argument made by C.H. is that P.H. did not intend to harass or bully A.V. but rather praise (?) him with the "Jewish monkey" descriptor and called him a midget "in fear" after he (understandably) stared at her after she called him a "Jewish monkey."

However, New Jersey law is clear; P.H.'s intent is irrelevant. Rather, it is the perception of the victim that controls, as long as they reasonably perceive that the action is motivated by an actual or perceived characteristic.

One of the first cases to discuss this issue was Melynk v. Teaneck Bd. of Educ., No. 16-0188, 2016 WL 6892077 (D.N.J. Nov. 22, 2016):

> On its face, the HIB Policy requires that several factors must be met before an expression can be found to be harassment. First, the communication must be "reasonably perceived as motivated" by an actual or perceived characteristic. That is to say, the comment must be objectively perceived to a reasonable person as motivated by a characteristic.
>
> [Id. at 12.]

Melynk was cited with approval in R.H. ex rel. A.H. v. Borough of Sayreville Bd. of Educ., 2023 U.S. Dist. LEXIS 83587 (D.N.J. May 12, 2023):

> First, the communication must be "reasonably perceived as being motivated either by any actual or perceived

> characteristic, such as race . . .” among other things. N.J.S.A. § 18A:37-14. “The ‘reasonably perceived’ test is an objective one that has withstood constitutional scrutiny,” and does not present a vagueness issue. See Melynk v. Teaneck Bd. of Educ., No. 16-0188, 2016 U.S. Dist. LEXIS 161524, 2016 WL 6892077, at *8 (D.N.J. Nov. 22, 2016).
>
> [Id. at 9.]

This result is also alluded to in S.A. v. Bd. of Educ. of Moorestown, 2019 N.J. Super. Unpub. LEXIS 2114 (App. Div. October 15, 2019). There, in a case involving a teacher who requested a student’s (poor) test papers as part of his job duties, the court concluded that an HIB violation had not occurred since:

> [W]e do not discern sufficient facts to support a conclusion that any actions by R.L. were motivated by G.A.'s ADHD or other personal characteristics.
>
> [Id. at 7.]

It further noted that:

> [E]ven if we presume R.L. was insensitive or even unkind, there is no evidence R.L. was prompted 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.
>
> [Ibid.]

This prong was again discussed in L.K. and T.K. ex rel. A.K. v. Mansfield Bd. of Educ., 2019 N.J. Agen. LEXIS 62 (January 22, 2019), Final Decision, 2019 N.J. Agen. LEXIS 345 (Comm’r of Ed. April 22, 2019), reversed and remanded, L.K. v. Bd. of Educ. of Mansfield, 2020 N.J. Super. Unpub. LEXIS 2082 (App. Div. November 2, 2020).

In L.K., the ALJ found that “the statute focuses on the impact of (the) conduct on (the alleged victim) and what (the alleged victim) reasonably perceived.” However, in that case involving young children and a gender-transitioning student, the Court further found:

> There is no requirement that the Board find that A.K.'s conduct was actually motivated by the perceived characteristic, because, as petitioners argue, A.K. most likely does not even know what "gender identity" means. However, even under the actual wording of the statute, the only corroborated finding from the investigation was that A.K. asked questions about why N.V. dressed like a girl even though N.V. asked her to stop. Therefore, the age of A.K. was relevant to whether A.K.'s conduct was motivated by the perceived characteristic or because a seven-year-old would be curious about why a student she knew as a boy was dressing like a girl. The investigators had the time to find and interview someone in the cafeteria who may have heard A.K. continue the "harassment," but they did not.
>
> [L.K., 2019 N.J. Agen. LEXIS 62 at *17−*18.]

Given the lack of clarity in the statute, there will, of course, be some confusion. However, that lack of clarity was addressed in Wehbeh v. Bd. of Educ. of the Twp. of Verona, 2020 N.J. Agen. LEXIS 50 (Comm'r of Ed. February 4, 2020), where the Commissioner found that a "standard reasonableness determination common in many types of adjudications" should be utilized. It was noted that to require an actor to have intentionally committed an offense, the burden concerning motivation would be improperly placed on the alleged victim. Id. at 3.

Ultimately, I **FIND** that in order to find the first prong of the statute had been satisfied, an investigating body must view the evidence in its entirety and determine whether a reasonable person could perceive that the conduct could be "motivated by an actual or perceived characteristic." That determination should take into account the totality of the circumstances, including the traits/characteristics of the alleged victim, the age, knowledge and experience of the actor, as well as the time, place and location of the act, etc.

Then, if the investigator determines that a reasonable person would conclude that the act was motivated by an actual or perceived characteristic, the investigation will proceed to the next element of the HIB offense. In essence, the consideration of this prong does not focus purely on either the perception of the alleged victim or the

expressed intent of the alleged actor but instead provides an objective standard based on the totality of the circumstances.

In doing so, I **FIND** that a reasonable person could very easily conclude that P.H.'s motivation in both calling A.V. a "Jewish monkey" and a "midget" was "motivated by an actual or perceived characteristic." To expect a reasonable person to make the asserted "Jewish monkey" connection is, to put it mildly, a huge stretch and the use of the word "midget" to a short person who was annoying you cannot really be defended, even accepting C.H.'s assertion of P.H.'s current version of events as being true.

Prong 2 – Location of the conduct

That the second prong of the HIB statute, which concerns the location of the incident, has been met is unchallenged, since the conduct occurred in the school gymnasium.

Prong 3 – The conduct substantially disrupted or interfered with the orderly operation of the school or the rights of other students.

The only evidence supplied clearly supports a conclusion that this event "substantially disrupt(ed) or interfere(d) with the orderly operation of the school or the rights of other students." While the petitioner questions the impact of the incident and the veracity of both A.V. and his mother, the evidence demonstrates that both of them confirm that P.H.'s conduct led him to express a desire not to return to school and even to ponder the possibility of homeschooling.

The "evidence" cited by C.H. in his opposition to the motion isn't so much evidence as speculation and ignores the documented fact that A.V. went to see Ms. Boczun twice on the day of the incident and that his parent reported it again the next day. The complaints made by both A.V. and his mother are documented in the HIB reports and his mother even notes that A.V. "doesn't want to be a snitch," but that the conduct clearly had a significant impact on him.

While case law is relatively sparse concerning this prong, it is clear that when there is more than a negligible impact on the student, it is satisfied. As noted by the Commissioner in D.D.K. o/b/o D.K. v. Bd. of Educ. of Readington, et al., 2016 N.J. Agen. LEXIS 1348 (Nov. 11, 2016):

> However, the report determined that the incident did not amount to HIB because the comments did not substantially disrupt or interfere with the orderly operation of the school or the rights of other students. In support of this finding, the report noted that D.K. stated in his interview that "fortunately, this was not problematic for my learning experience, but it ticked me off at the time." (Exhibit J-l.) The student witness observed the alleged aggressor make an "embarrassed laugh" to himself when he realized what he had said had come out wrong, but did not hear anyone else laugh and did not think D.K. was upset as a result of the comment. *Ibid.* The teachers did not hear any of the alleged comments.
>
> Previously, conduct 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*. Given that D.K. indicated that the comments were not problematic for his learning experience and other students did not appear to be affected by them − combined with a lack of any other evidence to the contrary − the Commissioner is constrained to agree that petitioner failed to meet his burden of demonstrating that the comments substantially disrupted or interfered with the orderly operation of the school or the rights of other students.
>
> [D.D.K. o/b/o D.K., 2016 N.J. Agen. LEXIS 1348 at *3−*4.]

It is also addressed in R.P. o/b/o A.P. v. Bd. of Educ. of Twp. of Hamilton, 2018 N.J. Agen. LEXIS 83 (Jan. 2, 2018), adopted, Comm'r, 2018 N.J. Agen. LEXIS 346

(Mar. 29, 2018). That matter involved a ten-year-old student who was exposed to repeated sexual innuendos and gestures by another student. She wrote a letter to the school "urgently seeking help . . . due to A.P.'s ongoing inappropriate behavior. Through this letter and confirmed during her interview with (a school official), S.W. expressed her extreme discomfort and distress over A.P.'s ongoing conduct." R.P. at 2018 N.J. Agen. LEXIS 83 at *14. Given the severity of the harassment, the Court found that the student's "extreme discomfort and distress" was sufficient to satisfy the "disruption prong." Ibid. See also, W.D. & J. v. Bd. of Educ. of Jefferson, 2020 N.J. Super. Unpub. LEXIS 1787 (Sept. 29, 2020).

Prong 3a – A reasonable person should know that the conflict would have the effect of . . . emotionally harming a student.

Prong 3b – The conduct has the effect of insulting or demeaning the student.

Prong 3c – The conduct created a hostile educational environment for the student by interfering with the student's education or by severely or pervasively causing emotional harm to the student.

In order for there to be a finding of an HIB violation, only one of Prongs 3a, 3b and 3c has to be satisfied. Here, even assuming that C.H.'s assertion that P.H. did not intend that the use of the term "Jewish monkey" (or "midget") be derogatory, or by inference that she would not know that the conduct would have the effect of "emotionally harming a student," that only relieves the burden of Prong 3a.

Here, there is no question that the only evidence presented is that P.H.'s conduct, no matter the intent, had "the effect of insulting or demeaning" A.V. This is clearly documented in the HIB report, and while C.H. attempts to raise a credibility issue about this issue, he has provided no evidence to support his claims. For instance, there is no evidence (such as texts, details of conversations, social media postings, etc.) that A.V. did not feel insulted or demeaned and was effectively "making it up."

As for Prong 3c, once again, the only cognizable evidence presented is that P.H.'s conduct indeed created a hostile educational environment by interfering with A.V.'s education to the degree that he expressed a desire to change classes to avoid P.H., not attend school and/or be homeschooled. While the support for a violation of Prong 3c is perhaps not as strong as Prong 3b, C.H. again fails to provide any cognizable evidence to support his opposition to the HIB finding.

CONCLUSION

While I understand C.H.'s desire to defend his daughter, his arguments are strained. From the start, while not required by N.J.A.C. 1:1-12.5(b), the failure to supply affidavits in support of his opposition to the Motion was extremely unhelpful. This is particularly true in light of the contradictions between the C.H.'s emails to the school and his Opposition to the Motion.

For example, within the first six lines of his submission, C.H. writes: "I spoke to my daughter and she told me she asked A.V. if he was a 'Jewish monkey,' and she did refer to him as a 'Midget.'" (Pet'r's Opp'n at 2.) So, the base allegations (which were explicitly spelled out in Ms. Sciscilo's March 21 email[7]) against P.H. are admitted. In fact, in reply to that email, C.H. wrote back:

> I see this as my daughter was bullying that boy and to use his ethnic background is unacceptable. P. has told me about this boy since last year and I had told her to ignore him and walk away. P. knew how to handle the situation the right way but chose not to and having a bad day is no excuse.
>
> [R-2A.]

Nowhere in any of the submitted materials is there any evidence that P.H. was referencing a music group when she called A.V. a "Jewish monkey," and nowhere does she deny calling him a midget (her claim now, per C.H., is that after she called him a Jewish monkey, he turned and stared at her, which is claimed to have "intimidated" her and made her "nervous"). And while, as noted above, her motivation is ultimately (and

[7] R-2A.

literally) irrelevant, nowhere does P.H. claim that she was doing this in jest. In fact, all of the evidence (even including the "period" explanation espoused by C.H.) demonstrates that P.H. was annoyed with A.V. and lashed out.

In other words, while C.H. presents alternative explanations in his opposition, he provides no cognizable evidence to support his assertion that P.H. did not commit an act of HIB and certainly no logical narrative supporting that position.

The petitioner has simply not demonstrated what about the investigation or conclusions was arbitrary, capricious, or unreasonable. Not only is there evidence that P.H. admitted her actions to the District (and in her email apology to A.V.), but also the emails from her father reflected that she admitted them to him. Only after C.H. came to understand that there was a HIB complaint and its consequences did the story change and his unverified alternate explanations for P.H.'s actions were propounded. In fact, in his opposition, he actually writes, in claiming that Mr. Voorhees "twisted his words," that:

> **I never said calling a 'Jewish Monkey' and a "midget" were not discriminatory.** What I did say was the way my daughter used the words "Jewish Monkey" she was talking about a music group. When she said midget he scared her by staring at her.
>
> [Pet'r's Opp'n at 14 (emphasis added.)]

Ultimately, I **CONCLUDE** that petitioner has failed to demonstrate as a matter of law that respondent's determination that P.H.'s actions constituted a violation of N.J.S.A. 18A:37-13.2 et seq. was arbitrary, capricious, and unreasonable. I **FIND** that this is by far the most logical conclusion and that the evidence is clear that P.H. indeed committed an act of HIB and that the District's conclusion was correct.

As to the purported procedural violations, I **FIND** that there was nothing about those actions (giving all reasonable inferences to petitioner) that substantively impacted the case. It must be noted that there is substantial support for the conclusion that there is no private remedy in the HIB statute in cases of administrative errors during the investigative process. This was most recently discussed in H.P. o/b/o R.S. v. Borough

of Tenafly Bd. of Educ., 2024 N.J. AGEN LEXIS 73 (Jan. 24, 2024), adopted, Comm'r (Mar. 26, 2024), where the court pointed to multiple prior cases involving procedural errors where "the Commissioner has simply ordered school districts . . . to comply with the statutory requirements." Id. at *14–15 (citing T.R. & T.R. ex rel. E.R. v. Bd. of Educ. of the Bridgewater-Raritan Reg'l Sch. Dist., 2014 N.J. AGEN LEXIS 634 (Sept. 25, 2014), adopted, Comm'r (Nov. 10, 2014)). See also, R.Z. and L.D. o/b/o L.Z. v. N. Valley Reg'l High Sch. Dist. Bd. of Educ., OAL Dkt. No. EDU 10029-23, Initial Decision (Feb. 12, 2025), adopted, Comm'r (Apr. 28, 2025).

Here, while there are some questions concerning the exact nature of the contacts between Ms. Sciscilo, Ms. Boczun and C.H., he was clearly aware of the nature of the incident and that there was an allegation of bullying. (R-2A.) Whether he received the April 19, 2024 letter or not, there is no question that he was fully aware of the fact that there was a bullying investigation by the time of the May 13, 2024 letter. (P-D.) After his email request of June 18, 2024, he was, the next day, provided with a copy of the HIB Investigation Report and the April 19th letter. He was also advised that, because he claimed not to have received the April 19th letter, his time to appeal the determination was extended to June 24th. (P-G.) He then appeared at the July 19, 2024 BOE meeting and presented his case in support of his daughter.

His arguments about the technicalities of the HIB report are entirely unconvincing and to be believed, one has to believe that, effectively, the District, for no apparent reason, concocted its version of events. This is simply not credible, particularly when there is no real dispute about what happened, but only the intent behind it and its impact on A.V.

There is nothing about the alleged substantive bobbles that deprived C.H. of his ability to challenge the HIB findings, and, frankly, he really doesn't allege that he was so deprived. While he alleges that P.H. effectively lied in her apology email, he fails to explain his emails in which she admits to her conduct or her unequivocal "fresh complaint" statements made during her interview with Ms. Sciscilo, save that she was purportedly not given an opportunity to fully explain her actions. Even that explanation is called into question when the report specifically documented that P.H. admitted to the

"Jewish monkey" and "midget" comments but did not recall calling A.V. a "bitch" or "ugly."

In other words, C.H. and P.H. were afforded a full and fair opportunity to defend against the HIB allegations, and I **CONCLUDE** that any alleged administrative errors had no substantive impact on the case and that there is no reason to reverse the Board's decision.

ORDER

Based on the foregoing, it is hereby **ORDERED** that respondent's Motion for Summary Decision be and is hereby **GRANTED** and;

It is further **ORDERED** that petitioner's appeal be and is hereby **DISMISSED** and;

It is further **ORDERED** that respondent shall follow the rules and regulations promulgated in N.J.S.A. 18A:37-15 et seq. concerning its handling of HIB complaints in the future.

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.

May 23, 2025
DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency: May 23, 2025

Date Mailed to Parties: May 23, 2025
sej

APPENDIX

EXHIBITS

For petitioner:

P-A Email from C.H. to Samantha Boczun (March 21, 2024)

P-B Email from Sarah Sciscilo and C.H. (March 21, 2024)

P-C Email from C.H. to Susan Sciscillo (March 21, 2024)

P-D Letter from respondent to C.H. advising of HIB finding (May 13, 2024)

P-E Excerpts from the Guidance for Parents on the Anti-Bullying Bills of Rights Act (P.L. 2010, c.122)

P-F Secaucus BOE HIB policy (5512.01)

P-G Email exchange between C.H. and respondent (June 18-19, 2024)

P-H Email exchange between C.H. and respondent with attachments (June 20, 2024)

P-I Email exchange between C.H. and respondent requesting an appeal and confirming receipt of the request (June 22, 2024)

P-J Email exchange between C.H. and respondent, re: appeal scheduling (July 1, 2024)

P-K Email and letter from respondent to C.H., re: appeal process (July 12, 2024)

P-L HIBster User Guide (undated)

P-M Aleks, Eror, *Who Are The Jewish Monkeys?*, Vice Media, November 15, 2012, https://www.vice.com/en/article/who-are-the-jewish-monkeys/

P-N Letter from respondent to C.H. (July 22, 2024)

For respondent:

R-1 Certification of Samantha Boczon (January 23, 2025)

R-1A HIB Report (March 21, 2024)

R-1B Email from C.H. to Samantha Boczon (March 21, 2024)

R-2 Certification of Sarah Sciscilo (January 23, 2025)

R-2A Email exchange between Sarah Sciscilo and C.H. (March 21, 2024)

R-2B Completed HIB report (April 12, 2024)

R-3 Certification of Charles Voorhees (January 23, 2025)

R-3A Secaucus BOE HIB policy (5512.01)

R-3B Letter from respondent to C.H. advising of the decision finding that P.H. committed an act of HIB. (April 19, 2024)

R-3C Letter from respondent to C.H. advising of the BOE's decision to affirm the finding that P.H. had committed an act of HIB. (July 22, 2024)

R-4 J.M. o/b/o B.M. v. Bd. of Educ. of the Sch. Dist. of the Chathams, 2023 N.J. Agen. LEXIS 87 (July 6, 2023)

R-5 J.M. o/b/o B.M. v. Bd. of Educ. of the Sch. Dist. of the Chathams, 2023 N.J. Agen. LEXIS 118 (Apr. 13, 2023)

R-6 W.M. o/b/o J.M. v. Twp. of Bedminster Bd. of Educ., 2022 N.J. Agen. LEXIS 927 (Dec. 15, 2022), adopted, Comm'r (Mar. 7, 2023).