435-25R
OAL Dkt. No. EDU 12064-24
Agency Dkt. No. 245-7/24

New Jersey Commissioner of Education

Final Decision

A.W., on behalf of minor child, J.W.,

Petitioner,

v.

Board of Education of the Township of Mount Olive, Morris County,

Respondent.

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

In this matter, petitioner challenges the Board's determination that her son, J.W., committed an act of harassment, intimidation, or bullying (HIB) as defined by *N.J.S.A.* 18A:37-14. The Board moved for summary decision, claiming that its determination was not arbitrary, capricious, or unreasonable. Petitioner filed opposition and maintained that disputed factual issues needed to be resolved at a contested hearing.

The Administrative Law Judge (ALJ) denied the Board's motion for summary decision, decided to treat petitioner's opposition brief as a cross-motion for summary decision, granted the cross-motion, and ordered that the Board's HIB determination be reversed. The ALJ held that

HIB did not occur as a matter of law because J.W.'s conduct did not substantially disrupt or interfere with the orderly operation of the school or the rights of other students.

The Board takes exception to 21 of the ALJ's findings and contends overall that its decision was not arbitrary, capricious, or unreasonable. The Board also contends, as a procedural matter, that the ALJ improperly converted petitioner's opposition brief into a cross-motion for summary decision. The Board explains that it was not given the opportunity to oppose the converted cross-motion. The Board requests that the Commissioner either grant its motion for summary decision and dismiss the petition or remand the matter to the OAL for a contested hearing.

Upon review, the Commissioner rejects the Initial Decision. As asserted by petitioner in her opposition brief, the material facts underlying the Board's decision that J.W.'s conduct constituted an act of HIB—including, but not limited to, facts related to the Board's determination that the incident caused a substantial disruption or interference with orderly operation of the school or the rights of other students—are contested and present a genuine issue which can only be determined in an evidentiary proceeding. *N.J.A.C.* 1:1-12.5(b).

Accordingly, this matter is remanded to the OAL for a contested hearing.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: September 8, 2025
Date of Mailing: September 8, 2025

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 12064-24

AGENCY DKT NO. 245-7/24

A.W., ON BEHALF OF MINOR CHILD, J.W.,

Petitioner,

v.

TOWNSHIP OF MOUNT OLIVE BOARD OF EDUCATION, MORRIS COUNTY,

Respondent.

A.W., petitioner, *pro se*

John G. Geppert, Jr., Esq., for respondent (Scarinci Hollenbeck, L.L.C., attorneys)

Record Closed: May 26, 2025 Decided: June 12, 2025

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

STATEMENT OF THE CASE

Petitioner, A.W., the parent of minor child J.W., has challenged the determination made by the respondent, Board of Education of the Township of Mount Olive, Morris County (respondent or District), that J.W. committed an act of harassment, intimidation,

and bullying (HIB) against a classmate on January 22, 2024, pursuant to a complaint that was brought per N.J.S.A. 18A:37-13.2 to -37 (the Anti-Bullying Bill of Rights Act).

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

The HIB complaint arises out of an incident that occurred during a 4th grade library class at Sandshore Elementary School in Budd Lake, New Jersey on January 22, 2024. At that time, it is alleged that J.W. sent multiple emails to a game developer that contained the "N-word."

The District was contacted by the parent of the alleged victim ("A.V.") the following day and an HIB investigation was instituted on January 23, 2024. On or about February 6, 2024, the District advised petitioners that it had been determined that J.W. had committed an HIB violation and the matter was presented to the Board of Education on February 12, 2024.

On or about April 12, 2024, A.W. advised the District that she wished to appeal the HIB finding. Given the timing of the appeal and the next Board of Education meeting (April 15, 2024), the District requested that A.W. waive the "10-day rule" and permit the matter appeal to be heard at the April 29, 2024 meeting. A.W. appeared at the April 29 meeting and by letter dated May 1, 2024, she was advised that the Board upheld the report's findings.

On July 30, 2024, this appeal of the April 29, 2024 Board of Education determination was filed with the Department of Education's Office of Controversies and Disputes. Respondent filed an Answer to the appeal on August 20, 2024, and the Department transmitted this matter to the Office of Administrative Law (OAL) on September 2, 2024, for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

An initial conference was scheduled for October 23, 2024, but was adjourned due to a notice issue. That conference instead took place on October 28, 2024. That

was followed by a conference on December 9, 2024, during which a schedule for respondent's Motion for Summary Decision was set.

However, in reviewing the Motion papers, I determined that there are no issues of material fact in dispute one way or the other that would prevent a decision as to whether the District's HIB determination was arbitrary, capricious, or unreasonable. I will therefore treat petitioner's opposition to respondent's Motion for Summary Decision as a Cross-Motion for Summary Decision. N.J.A.C. 1:1-1.3(a)(b), N.J.A.C. 1:1-12.5(d).

Thereafter, the record officially closed on May 26, 2025.

THE REPORT

There is no real dispute about what occurred. However, the "why" it occurred and its impact are absolutely in dispute.

The initial HIB report was completed on February 6, 2024. (R-D.) It was prepared by Jennifer Curry, the Sandshore Elementary School principal. The HIB "Type" was listed as: "The student knowingly engaged in bullying behavior but was not aware of the potential negative impact on the victim." A.V.'s parent made the initial report.

> **Initial Report information that is being investigated**:
>
> Today, during library, while playing a game, [J.W.] sent a message to someone he was battling and [J.W.] typed "n****r"[1], "n****r", "n****r", literally, three times, and then sent it; [witness name redacted] saw [J.W.] do this. [Witness name redacted] did not tell because he was not sure if this was something to tell an adult about but he knew that what [J.W.] said was very wrong.
>
> **Executive Summary**
>
> The target reported the incident to his parent who then input the information into HIBster. After meeting with witnesses,

[1] The offensive racial slur spelled out in full.

> the aggressor, the victim and reviewing the emails sent, this HIB is founded as there was a substantial disruption for the victim. He went home upset and reported it to a parent. In addition, witnesses reported victim reported feeling shock, anger and upset. Also, there is the distinguishing characteristic of race/ethnic origin.
>
> The MOPD[2] was informed of this incident as it was a Bias Related Incident. The MO BOE has a memorandum of understanding with the MOPD what when a biased related incident occurs, it must be reported to the police.
>
> Officer Leach visited Sandshore School and spoke with Ms. Curry and Mrs. Reyes regarding the initial report. The MOPD conducted their own investigation and determined the following: "After speaking to [name redacted], I concluded that this is nothing else to be investigated on the police side of the incident."
>
> **INVESTIGATION NOTES:**
>
> This class of students were in Library for special. The students were directed to access a variety of activities and games in their Google Classroom that focused on Dewey Decimals. One of the various activities available required visiting a website that had games created by an educator. At the bottom of the page was the option to "send email" to the creator of the games which was an educator from another state.
>
> The aggressor typed out various emails including the word "n****r" and went up to a different table to show other students. The victim was a student at the table that was approached by the aggressor. The victim [w]as upset and as reported by the parent, "mad" that this word was being used. The aggressor sent 5 emails and had one draft email to the game creator. The four of six emails included the word n****r (spelling at times varied). Witnesses shared seeing the emails as well.

A.V., the librarian and multiple students were interviewed. The report included the following:

[2] Mount Olive Police Department.

EXECUTIVE SUMMARY:

> The target [A.V.] reported the incident to his parent who then input the information into HIBster. After meeting with witnesses, [J.W.], [A.V.] and reviewing the emails sent, this HIB is founded as there was a substantial disruption for the victim. He went home upset and reported it to a parent. In addition, witnesses reported victim . . . feeling shock, anger and upset. Also, there is the distinguishing characteristic of race/ethnic origin.

THE MOTION

Respondent has filed a Motion for Summary Decision, arguing that there are no material facts in dispute that would permit the petitioner to demonstrate that the District's finding of an HIB violation against J.W. was arbitrary, capricious or unreasonable.

It points out that a District "is entitled to a presumption of correctness" and that without "an affirmative showing that such 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 was argued that there is clear evidence that a thorough investigation was performed in compliance with the District's HIB policy (R-C) 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. Its position is that the dispute at this point is simply a legal one concerning the outcome of the investigation and not its contents. More specifically;

> Here, petitioner has failed to show that the Board acted in arbitrary, capricious, or unreasonable manner, and, based upon applicable Commissioner of Education decision, the Petition should be dismissed as it does not satisfy the requirements of Harassment, Intimidation and Bullying set

> forth in N.J.S.A. 18A:37-14 et seq and that this Petition is otherwise moot.
>
> [Resp't Reply Br., at 2.]

As for any alleged procedural missteps, the respondent claims that the investigation clearly complied with N.J.S.A. 18A:37-15 et seq. and that A.W.'s complaints concerning same were misstatements of both facts and law.

In her Opposition/Cross-Motion, A.W. emphasizes J.W.'s claim that he was dared to perform the act in question by A.V. and that he was further unaware of the consequences of the use of the word in question. She also argued that the only one of the HIB prongs that the District was able to prove was A.V.'s race. By not investigating the allegation that A.V. dared J.W. to send the email, she claims that the balance of the investigation by definition was arbitrary, capricious, and unreasonable. Petitioner cited to N.U. ex rel. M.U. v. Board of Education of the Town of Mansfield, 2022 N.J. AGEN LEXIS 632 (June 27, 2022) in support of her argument that the District had failed to demonstrate that J.W.'s actions caused a hostile educational environment or substantially disrupted or interfered with the rights of other students or the orderly operation of the school. See also W.D. & J.D. ex rel. G.D. v. Bd. of Educ. of Jefferson, 2020 N.J. Super. Unpub. LEXIS 1787 (App. Div., Sept. 29, 2020).

Finally, petitioner alleges that respondent made multiple administrative and procedural errors during the investigation that are violative of N.J.S.A. 18A:37-13.2 to -37 and its own District policies and that the HIB finding should be overturned.

LAW AND ANALYSIS

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

> The judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.
>
> [R. 4:46-2(c).]

The New Jersey Supreme Court has modified and clarified the analysis required when considering a motion for summary decision/judgment. In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (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).[3]

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:

[3] See R.Z. & L.D. ex rel. minor child, L.Z. v Northern Valley Reg'l High Sch. Dist. Bd. of Educ., 2025 N.J. AGEN LEXIS 78 (Feb. 12, 2025), adopted, Comm'r (Apr. 28, 2025), from which much of this section is borrowed.

> 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.]

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. Board of Education, Township 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.
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> [Id. at *7–8 (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. Schools Bd. of Educ., 2023 N.J. AGEN LEXIS 526 (July 26, 2023), adopted, Comm'r, 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, respondent 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.

Here, respondent's reasoning in support of its findings that J.W.'s actions constituted an HIB violation was:

> The target [A.V.] reported the incident to his parent who then input the information into HIBster. After meeting with witnesses, [J.W.], [A.V.] and reviewing the emails sent, this HIB is founded as there was a substantial disruption for the victim. He went home upset and reported it to a parent. In addition, witnesses reported victim . . . feeling shock, anger and upset. Also, there is the distinguishing characteristic of race/ethnic origin.
>
> [R-D.]

STATUTORY ANALYSIS

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

The petitioner conflates two defenses in responding to this Prong. First, is the "I didn't know it was/mean it to be offensive" defense, which is posited in conjunction with the "he dared me to do it" defense.

As for the "he dared me" defense, that is largely a credibility call and as will be seen in some of the cases referenced below, as long as the investigation is reasonably conducted and there is some support for the District's position, it is very difficult to challenge that conclusion.

However, where New Jersey law is clear is that J.W.'s intent is effectively irrelevant. Rather, it is the perception of the victim that controls; as long as they would reasonably perceive that the action was motivated by an actual or perceived characteristic, it would satisfy Prong 1.

One of the first cases to discuss this issue was Melynk v. Teaneck Board of Education, 2016 U.S. Dist. LEXIS 161524 (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 *17–18.]

Melynk was cited with approval in R.H. ex rel. A.H. v. Borough of Sayreville Board of Education, 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) (collecting cases).
>
> [Id. at 13.]

This result is also alluded to in S.A. v. Board of Education of Moorestown, 2019 N.J. Super. Unpub. LEXIS 2114 (App. Div. Oct. 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;

> we 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 *6.]

It further noted that:

> even 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.
>
> [Id. at *7]

This prong was again discussed in L.K. & T.K. ex rel. A.K. v. Mansfield Board of Education, 2019 N.J. AGEN LEXIS 62 (Jan. 22, 2019), Final Decision, 2019 N.J. AGEN LEXIS 345 (Comm'r of Educ. Apr. 22, 2019), reversed and remanded, L.K. v. Board of Education of Mansfield, 2020 N.J. Super. Unpub. LEXIS 2082 (App. Div. Nov. 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 tribunal 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 N3 dressed like a girl even though N3 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. & T.K. ex rel. A.K. v. Mansfield Bd. of Educ., 2019 N.J. AGEN LEXIS 62 at *66.]

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. Board of Education of the Township of Verona, 2020 N.J. AGEN LEXIS 50 (Comm'r of Educ. Feb. 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 the offense, the burden concerning motivation would be improperly placed on the alleged victim. Id. at *8 n.3.

Ultimately, I **FIND** that in order to find that 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 makes a determination 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 J.W.'s motivation in showing A.V. the email was racial. It is by no means a stretch to expect that a reasonable person (and that includes a reasonable 5th grader) would make that connection even accepting J.W.'s assertions of ignorance as being true.

Prong 2 – Location of the Conduct

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

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

Here, frankly, is the issue. This incident occurred at about 1:00 p.m. on January 22, 2024, and appears to have been reported by A.V.'s parent that evening via HIBster. Per the report, A.V.'s mother reported that he was "mad" that the word had been used and had come home "upset."

Significantly, there is no evidence that A.V. left school early or that it impacted the balance of his school day. Further, A.V. attended school the next day, where he was interviewed as part of the investigation at about 11:16 a.m. The entirety of the interview is as follows:

A.V. – I[n] library we were doing a game and you could email[] and [J.W.] came over and typed the n word three times. [Name redacted] saw it to[o].

Q. – [J.W.] came where? Up to your table?
A.V. – Yes

Q. – Whose chromebook was he on?
A.V. – His

Q. – When he cam[e] over what did he do?
A.V. – He wrote it then sent it.

Q. – What did you do or say?
A.V. – Oh my goodness.

Q. – Did [name redacted] say or do anything?
A.V. – No they just saw.

Q. – Did you or anyone tell the teacher?
A.V. – No.

Q. – What happened next?
A.V. – They called out table to get books.

Q. – Who else was at your table?
A.V. – [Names redacted].

Q. – Did [J.W.] say anything when you said “oh my goodness?”
A.V. – He said nothing.

Q. – Is there anything else you want me to know?

A.V. – No.

Q. – How are you doing?
A.V. – Good.

Other witnesses described A.V.'s reaction as "like OMG"[4] and "what the hell?" There is no indication that the librarian/teacher was ever made aware of the incident, and per the student interviews, other than in the immediacy of the event, there was no disruption of the educational process as students continued to be "busy on Dewey Decimal stuff" on their laptops.

And that is the only evidence presented by the respondent to support its conclusion that this event "substantially disrupt[ed] or interfere[d] with the orderly operation of the school or the rights of other students."

While there is relatively limited case law on this prong, there is some guidance on the use of the word "n****r" in HIB cases. First, however, as background, the Commissioner in D.D.K. ex rel. D.K. v. Board of Education of Readington, 2016 N.J. AGEN LEXIS 1348 (Nov. 11, 2016) provided a solid primer concerning this prong;

> 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-I) 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

[4] Oh, my God.

> 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. ex rel. D.K., 2016 N.J. AGEN LEXIS 1348 at *5–7.]

As for the use of the word “n****r,” it was addressed in detail in the infamous case of W.D. & J.D. ex rel. G.D. v. Board of Education of Jefferson, 2020 N.J. Super. Unpub. LEXIS 1787 (App. Div., Sept. 29, 2020). That case involved a group text chain amongst a racially diverse group of female 5th grade students who utilized an amazing array of offensive terms, including the word “n****r,” which was sent by a white member to the group. There was then testimony concerning the impact of the incident on the A.V. (G.D.);

> G.D.’s Mother agreed to send G.D. to school the following Monday but sent additional emails to Lipton that she was considering keeping G.D. out of school, demanding the school remove J.D. from G.D.’s classroom, and stating G.D. was “very uncomfortable about the entire situation.” On January 30, 2017, Lipton notified the parents of G.D. and J.D. that the school commenced an HIB investigation.
>
> On Monday, January 30, 2017, Lyndsay LaConti, the school’s anti-bullying specialist, investigated the incident. LaConti conducted approximately sixty previous HIB investigations. She met with G.D. and her grandmother, interviewed the students involved, and obtained statements from five students, including G.D. LaConti also spoke with

> Ms. Young, who advised that G.D. seemed to be her happy, normal self in class on the Monday after the incident. Ms. Young later testified the incident and subsequent events did not adversely affect G.D.'s attendance or grades.
>
> [Id. at *5–6.]

The HIB report determined that since the behavior did not constitute HIB since there was no evidence that it:

> • substantially disrupted or interfered with the orderly operation of the school or the rights of other students.
>
> • created a hostile educational environment for the students by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student
>
> [Id. at *6–7.]

The ALJ upheld the Board's decision and found that G.D. "'appeared to suffer no detrimental effect,' noting her grades 'were virtually unaffected' and that she appeared 'nonplussed by the incident.'" Id. at *10. The decision was upheld by the Commissioner. Ibid.

In its appeal, amongst other things, G.D. argued that "the Commissioner erred in determining J.D.'s single use of the N-word toward G.D. was not HIB per se." Id. at *14. The Appellate Division refused to make such a finding and noted that:

> [T]he record does not establish G.D. suffered any significant impact beyond being rightfully upset following the incident and wanting to avoid resulting awkwardness at school the next day. Nor is there evidence the incident interfered with G.D.'s ability to safely and effectively learn. Petitioners are therefore unable to demonstrate the incident substantially disrupted or interfered with the orderly operation of the school or the rights of G.D.
>
> If we were to adopt petitioner's position, that the single use of a racial slur is a per se violation of the Act, this Court would effectively legislate, and give new meaning to the

> plain language of the Act. We are guided not to assume that role. See Watt v. Mayor and Council of Franklin, 21 N.J. 274, 277, 121 A.2d 499 (1956). Instead, our review is limited to determining whether the Commissioner's decision was arbitrary, capricious or unreasonable, or unsupported by substantial credible evidence in the record.
>
> [Id. at *15–16.]

Respondent cites to two cases in support of its position concerning the alleged use of the word "n****" or another racial epithet. In R.M. & J.M. ex rel. O.M. v. Board of Education of the Borough of Mountain Lakes, 2024 N.J. AGEN LEXIS 961 (Sept. 30, 2024), adopted, No. 447-24 (Comm'r Dec. 9, 2024), it was alleged that the A.V. was called a "n****r" by the petitioner (and another non-party student), while the petitioner denied using the word. Both of the students involved were in the 9th grade at Mountain Lakes High School. A teacher overheard the A.V. telling her mother about the incident on the phone and in her statement claimed that the A.V. "was very upset about what . . . had [been] said behind her back in the hallway." The teacher told her to come to her classroom if she needed support, and indeed she did and reported exactly what was said. Id. at *4–5.

The matter was reported to the principal and they attempted to interview A.V. that day, but she had been picked up from school early. The Vice Principal had previously been advised that this might occur, because A.V. was "upset and feeling uncomfortable in school." Id. at *6. The investigation documented that both of the alleged offenders denied using the word in question, but in her interview, A.V. was adamant that they had. She also confirmed that she had left school early that day because she "didn't feel comfortable in school" and "you never know what will happen . . . like if [she] was going to be harassed or jumped."

In determining that the Board's decision to uphold the finding that an act of HIB had occurred, the ALJ wrote on Prong 3:

> [T]he conduct towards the Victim substantially disrupted the Victim and interfered with her rights in violation of the ABBRA and the Board policy. She retreated from the scene

> of the Incident, texted her mother, and then went to the bathroom so she could call her mother "to calm [her] down." She expressed that she "didn't feel comfortable in school" and had her grandmother come to pick her up early. The Victim also reported a concern that she could possibly be "harassed or jumped" if she had stayed in school.
>
> [Id. at *15–16.]

In adopting the Initial Decision, the Commissioner focused on the thoroughness of the investigation and the credibility of the witnesses as well as the "arbitrary, capricious, or unreasonable" standard and did not specifically comment on the ALJ's Prong 3 findings. R.M., No. 447-24 (Comm'r Dec. 9, 2024).

The other case cited by respondent was R.R. ex rel. A.R. v. Board of Education of the Borough of Ramsey, 2024 N.J. AGEN LEXIS 72 (Jan. 29, 2024), adopted, Comm'r No. 131-24 (Mar. 8, 2024). There, a 5th grade student was accused of telling a black classmate that "Black is bad." While he denied saying it, the ALJ found that the A.V. was credible and that the District's conclusion that an act of HIB had occurred was not arbitrary, capricious or unreasonable.

In addition to wrestling with the "he said – she said" nature of the accusation, the ALJ had the most difficulty with Prong 3, writing:

> The second element is arguably less clear because the HIB report did not state 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." However, the school maintains that A.R.'s conduct not only created a hostile educational environment for the victim, but to its students, meeting this prong of the statutory analysis. The incident was a limited one-time comment and did not begin a series of events at the school. However, the victim was crying at the time and "felt off" the rest of the day. Other students became involved after the unsettling incident took place in response to the victim's distress. 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.

[Id. at *15–17.]

The Commissioner's decision adopting the ALJ's decision centered on the petitioner's exceptions to the ruling, which focused solely on whether the incident had occurred as claimed by the A.V. and not the statutory requirements of the HIB finding. R.R. ex rel. A.R. v. Bd. of Educ. of the Borough of Ramsey, Comm'r No. 131-24 (Mar. 8, 2024).

Prong 3 was also addressed in R.P. ex rel. A.P. v. Board of Education of Township of Hamilton, 2018 N.J. AGEN LEXIS 83 (Feb. 13, 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 innuendo 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., 2018 N.J. AGEN LEXIS 83 at *14. Given the severity of the

harassment, the tribunal found that the student's "extreme discomfort and distress" was sufficient to satisfy the "disruption" prong. Ibid. See also W.D. & J.D., 2020 N.J. Super. Unpub. LEXIS 1787.

Just to reiterate, here, the District's explanation for finding that this prong of the test was:

> HIB is founded as there was a substantial disruption for the victim. He went home upset and reported it to a parent. In addition, witnesses reported victim . . . feeling shock, anger and upset.

This is simply not enough. The "immediacy" position taken by the District to support its decision is not only belied by the facts, but is directly and persuasively addressed in W.D. & J.D. Not only did A.V. literally note that he only stated "oh my goodness" in immediate response to the incident, that reaction was confirmed by some of the student witnesses. Contrary to the report's conclusion, none of them reported that A.V. exhibited "anger" or was "upset."[5] As noted above, the librarian/teacher was not advised of the incident and there was clearly no outcry. There is no evidence that even the rest of this "special" period was interrupted, or that most of the class was even aware of the event, let alone that they were upset by it and none of them reported it to anyone. The evidence further shows that A.V. attended school as normal the next day and told the investigator that he was doing "good."

This (lack of) impact mirrors the situation in W.D. & J.D., where the Court held:

> [T]he record does not establish G.D. suffered any significant impact beyond being rightfully upset following the incident and wanting to avoid resulting awkwardness at school the next day. Nor is there evidence the incident interfered with G.D.'s ability to safely and effectively learn. Petitioners are therefore unable to demonstrate the incident substantially disrupted or interfered with the orderly operation of the school or the rights of G.D.
>
> [Id. at *15.]

[5] The only person who reported that A.V. was "mad" or "upset" was his mother in the initial HIBster report.

That is the case here. While by no means underestimating the potential impact of the use of this word in particular, it is clear that its mere utilization is insufficient to support an HIB finding. Similarly, it is clear that there must be something more beyond the immediate reaction to an incident to justify an HIB finding. There has been literally no evidence supplied by the District to demonstrate that this incident caused a "substantial disruption" to anyone's educational experience or interfered with the orderly operation of the school or A.V.'s rights.

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.

With the District's failure to meet Prong 3 of the HIB test, there is no need to review Prongs 3a, 3b, and 3c. However, I would note that in order for there to be a finding of an HIB violation, only one of those three prongs has to be satisfied. Here, even assuming that the assertion that J.W. did not know the derogatory meaning of the word "n****r," or by inference that he 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 J.W.'s conduct, no matter the intent (or lack thereof), had "the effect of insulting or demeaning" A.V. This is documented in the HIB report, and I **FIND** the Prong 3b was clearly met.

The support for a violation of Prong 3c is clearly not as strong as Prong 3b, but with the finding on Prong 3b, whether Prong 3c is met is doubly irrelevant (i.e., since Prong 3 was not met).

Given the above, there is no need to review the petitioner's allegations of procedural violations by the District.

Ultimately, I **CONCLUDE** that petitioner has demonstrated that respondent's determination that J.W.'s actions constituted a violation of N.J.S.A. 18A:37-13.2 to -37 was arbitrary, capricious and unreasonable.

ORDER

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

It is further **ORDERED** that petitioner's Cross-Motion for Summary Decision be and is hereby **GRANTED** and;

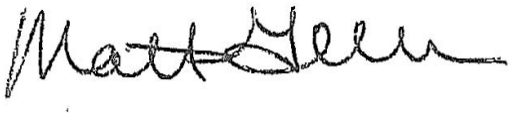
It is further **ORDERED** that respondent's determination that J.W. committed an act of HIB in violation of N.J.S.A. 18A:37-13.2 to -37 (the Anti-Bullying Bill of Rights Act) be and is hereby **REVERSED**.

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. 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.



June 12, 2025
DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency: June 12, 2025

Date Mailed to Parties: June 12, 2025

sej

APPENDIX

EXHIBITS

For Petitioner:

None

For Respondent:

R-A A.W. Pro Se Petition of Appeal (July 30, 2024)

R-B Respondent Answer to Petition (August 20, 2024)

R-C Mount Olive Board of Education HIB Policy (5512)

R-D HIBster Report (February 12, 2024)

R-E BOE meeting agenda (April 29, 2024) BOE meeting minutes (April 29, 2024)

R-F Petitioner's Answers to Interrogatories

R-FA Email from petitioner to principal (February 6, 2024; 2:05 p.m.)

R-FB Email from petitioner to principal (February 6, 2024; 8:10 p.m.)
Email from principal to petitioner (February 6, 2024; 3:16 p.m.)

R-FC Email exchange between petitioner and anti-bullying coordinator (February 6, 2024 through February 14, 2024)

R-FD Same as R-C

R-FE Same as R-D

R-FF Email exchange between petitioner and anti-bullying coordinator (April 13, 2024 through April 15, 2024)

R-FG HIB Hearing Notice (April 25, 2024)

R-FH Email from anti-bullying coordinator to petitioner (April 30, 2024)

R-FI BOE meeting agenda (April 29, 2024)

R-FJ BOE meeting minutes (April 29, 2024)

R-FK HIB Appeal result (May 1, 2024)