

New Jersey Commissioner of Education
Final Decision

B.N. and S.O., on behalf of minor child, B.U.,

Petitioners,

v.

Board of Trustees of the North Star Academy Lincoln
Park High School, Essex County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that the Board's decision to suspend B.U. for thirty days following a physical assault of another student was not arbitrary, capricious, or unreasonable. The Commissioner also concurs with the ALJ that the Board's harassment, intimidation, and bullying (HIB) investigation related to the incident, and its conclusion that HIB did not occur, were not arbitrary, capricious, or unreasonable.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The Board's motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


COMMISSIONER OF EDUCATION

Date of Decision: September 12, 2025
Date of Mailing: September 15, 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 16572-24

AGENCY DKT. NO. 367-11/24

B.N. & S.O. ON BEHALF OF MINOR CHILD B.U.,

Petitioner,

v.

**BOARD OF TRUSTEES OF THE NORTH
STAR ACADEMY LINCOLN PARK HIGH
SCHOOL, ESSEX COUNTY,**

Respondent.

B.N. and S.O., petitioners, appearing pro se (parents of B.U.)

Jaryda A. Gonzalez, Esq., appearing on behalf of the respondent (Johnston Law
Firm LLC, attorneys)

Record Closed: June 30, 2025

Decided: July 16, 2025

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

STATEMENT OF THE CASE

Suspension

Respondent suspended four ninth-grade students, including B.U., after a physical altercation on October 18, 2024, stemming from peer conflict. B.U. and another student received longer suspensions for physical contact with an administrator and injuries. Was the suspension supported? Yes. Student conduct policies justify long-term suspensions when there is potential danger to others or risk of disruption, and a school district's disciplinary decision stands unless it is arbitrary, capricious, or unreasonable.

Harassment, Intimidation and Bullying (HIB)

In December 2024, the respondent investigated a HIB allegation by petitioners regarding the altercation that did not reveal a distinguishing characteristic of B.U. that led to the peer conflict. Did the incident meet the HIB criteria? No. To qualify as HIB, the conduct must be "reasonably perceived as being motivated either by any actual or perceived [distinguishing] characteristic." N.J.S.A. 18A:37-14.

PROCEDURAL HISTORY

On November 15, 2024, B.N. and S.O. filed a petition seeking emergent relief returning B.U. to his high school, North Star Academy Lincoln Park (North Star), and challenging the discipline imposed by North Star's suspension committee. Yugo Certification (Yugo Certif.), Exhibit M.

On November 22, 2024, the Department of Education, Office of Controversies and Disputes, transmitted this case to the Office of Administrative Law (OAL) as a contested case for hearing as a contested case and resolution of petitioner's motion for emergency relief under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. The OAL scheduled oral argument on the emergent application for December 10, 2024.

On December 4, 2024, I conducted a conference on petitioners' request for emergent relief. Following the conference, petitioners withdrew their emergent application on December 9, 2024.

On December 12, 2024, North Star concluded its investigation into the petitioners' assertion that B.U. was a victim of HIB on October 18, 2024, finding that no HIB occurred. The Board upheld that determination.

On February 13, 2025, petitioners filed an amended petition of appeal, acknowledging the removal of the emergent application, and sought to address North Star's "failure to apply equitable disciplinary procedures, their neglect in addressing bullying concerns, and their unjustified decision to suspend B.U. for an extended period." Yugo Certif., Exhibit N.

At a pre-hearing conference following the conclusion of discovery, North Star requested leave to file a summary judgment motion, maintaining that the material facts were not in dispute. I granted leave and set a motion schedule.

On May 22, 2025, North Star filed its motion, and on June 18, 2025, the petitioners responded. On June 30, 2025, North Star replied, and I closed the record.

FINDINGS OF FACT

Based upon a review of the documentary evidence presented, I **FIND** the following undisputed **FACTS** when viewed in the most favorable light to the non-movants:

North Star is a charter school in New Jersey. North Star supplies the Certification of Nick Yugo, regional superintendent of operations for North Star, to support its motion.

On October 18, 2024, B.U. was a ninth-grader at North Star in classroom 620 when the incident began, under the supervision of substitute teacher Ms. Meghai. Yugo

Certif., Exhibit B. After the altercation, North Star interviewed the students present that day. The student statements from October 18, 2024, corroborate that B.U. engaged in a fight. Yugo Certif., Exhibit G. However, no student or staff member statement, including B.U.'s, mentions gangs or gang activity. Ibid. Accepting B.U.'s statement regarding the incident, the following occurred:

I got back from class after writing an incident involving [T] [D] from yesterday and when I got seated down there was already something going on with [N] and a teacher so I got seated and [K.W.] started talking to [R] to use artificial intelligence to do her math homework So, I told her you can't be doing that she said shut up and to mind my business, so I told her ight [sp.] but she can't be doing that. So she said shut up before I slapped you and I told her you're not slapping me so she came up to me and slapped me so I slapped her back and she punched me so I punched her back and we started fight and [S.F.] joined and started fighting me to and after all that [K.W.] got someone to fight me [R.G.] and when we was fighting I was backed up on something and when he got off me I punched him on the side of his face.

[Id.] at 2.]

Notably, petitioners suggest B.U. meant the word "assault," not "fight," as his statement reflects, to support their position that B.U. was a targeted victim. However, B.U. stated, "we started [to] fight" and "we was fighting," which I **FIND** supports the plain meaning of a fight rather than an assault upon B.U.

Students alerted Dean Hughes to the fight, and she provided the following statement regarding her involvement:

I heard some commotion in the hallway coming from around the corner. I heard kids saying fight. I yelled where and started running to the classroom. There were so many students in the hallway I had to move some of them out of the way. When I got to the classroom students were trying to tell [B.U.] and [R.G.] to stop fighting. I grabbed [R.G.] to break them up. I kept yelling [R.G.] stop because I didn't know the other student's name. [S] was also holding onto him asking him to stop. I guess at some point [R.G.] noticed it was me holding him back and stopped. He was coming with me when [B.U.] punched him in his face from behind. That made [R.G.] mad all over again and he turned around and started

swinging, I had to duck. I lost my grip on [R.G.] and had to grab him again. We were tussling over chairs and desks. I finally got a hold of [R.G.] again and some students assisted with holding [B.U.]. [P] and [S] assisted me with getting [R.G.] out of the classroom. I saw the Para whose name he says is KC and told him to grab the other student, [B.U.]. Then I walked [R.G.] to the dean's office. I forgot to mention when I arrived at the room Ms. Meghai was just standing there.

[Yugo Certif., Exhibit B.]

North Star issues a Student and Family Handbook (Handbook) to all students and parents each school year (SY). Yugo Certif., Exhibit A. The 2024–25 SY Handbook informs students and their families of North Star's policies, including the Code of Conduct, its disciplinary procedures, and prohibitions against harassment, discrimination, and bullying. Ibid.

The Handbook's disciplinary procedures outline a series of consequences that the school uses to ensure a safe, equitable, respectful, and supportive school environment. Id.

When administering discipline, the school will consider several factors:

- a. the type and severity of the conduct;
- b. the harm or potential harm of the conduct (including the disturbance of education processes, physical harm, or emotional harm to others, damage to property, etc.);
- c. the student's prior disciplinary and academic record;
- d. the student's age;
- e. deterrence;
- f. the student's honesty and cooperation when confronted with the violation; and the future protection of persons and property

[Id.]

For serious offenses, the school may impose long-term suspensions of over ten days and expulsions, including, in relevant part, open defiance of the Code of Conduct

that threatens safety, physical contact, fighting, or physical assault of another student, teacher, or staff member. Id. B.U. suffered head injuries during the altercation. P-10.

Following North Star's investigation, the school notified petitioners on October 21, 2024, that B.U. would receive a minimum ten-day suspension, and the discipline committee would convene to determine if it would recommend additional disciplinary consequences to the Board. Yugo Certif., Exhibit C.¹ The letter stated that the following conduct occurred: "physical altercation with multiple peers, resulting in physical contact with a school leader." Ibid. Notably, the description of the event states that the school leader was injured, but this is inaccurate. Instead, Dean Hughes restrained R.G. during the altercation with B.U., e.g., physical contact, and reported having to duck to avoid being struck. Yugo Certif., Exhibit B.

Further, North Star's letter stated that it scheduled a Board hearing for October 28, 2024. Id. The notice advised petitioners that B.U. could be present at that meeting, obtain counsel, present witnesses, and cross-examine any witnesses presented by North Star. Id.

Before the meeting, North Star advised petitioners via email that the administration would recommend a thirty-day suspension.

October 27, 2024, petitioners prepared a response to the suspension notice, asserting that the incident involved gang activity. They also confirmed that B.U. and R.G. had not met before the altercation. P-6.

Petitioners and B.U. attended the October 28, 2024, hearing. Principal Dowling presented the administration's recommendations to the Board.

On October 30, 2024, North Star notified petitioners that the Board agreed with the administration's recommendation that the suspension should continue for a total of thirty school days through December 4, 2024. Yugo Certif., Exhibit D. Notably, the

¹ Petitioners take issue with the lack of signatures on the notices certified by Mr. Yugo. However, they supply signed letters and do not dispute the receipt of the letters or their contents.

letter corrected the nature of the October 18, 2024, events to reflect only physical contact with a school leader, not injury to the school leader. Id. North Star incorrectly dated the letter October 21, 2024, and initially noted a twenty-day suspension, but North Star acknowledged the error and corrected the suspension period. Id.

During the Board's meeting on December 9, 2024, the Board reviewed the Student Hearing Committee's findings and voted to uphold its recommendations. Yugo Certif., Exhibit L.

The administration recommended ten-day suspensions for the two female students, S.F. and K.W., which the Board also upheld. The administration also recommended a thirty-day suspension for the other male student, R.G., which the Board also upheld. Yugo Certif., Exhibit B. R.G. had a previous three-day out-of-school suspension and a half-day in-school suspension. B.U. had a prior one-day in-school suspension. Ibid. At the time of the incident, R.G. had a 504 plan, developed under Section 504 of the Rehabilitation Act of 1973, to provide accommodations and supports for a disability. Id. Notably, S.F. and K.W.'s actions did not inflict significant physical injury or involve a staff member, and neither had a disciplinary record. Id.

B.U. received home instruction during his long-term suspension. He returned to school on December 5, 2024. Yugo Certif., Exhibit E.

In December 2024, Petitioners requested a HIB investigation regarding the altercation on October 18, 2024, maintaining that the other students committed HIB against B.U. Yugo Certif., Exhibits I and J. Although all students were in the ninth grade, petitioners maintain the other students were "retained" and thus, older and more established than B.U. The HIB investigator issued a report on December 12, 2024, concluding that no HIB occurred:

After reviewing the statements from all students involved as well as this HIB Investigation Report, the evidence does not meet the criteria for HIB related to Motivation, therefore HIB is not established due to the lack of evidence indicating the act was

motivated 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. I am attaching the HIB No Outcome letter for your records & to provide to [B.U.'s] family. The consequences for all students seem appropriate given the egregious nature of the incident and I do not have any recommendations for any additional consequences at this time. The school may decide to engage in mediation between students should they decide it is necessary.

[Yugo Certif., Exhibit K.]

Although the petitioners suggest the HIB report makes no mention of R.G., whom they assert was the “main” aggressor, the last paragraph of the incident’s description states that, “Despite the intervention of a school leader, [B.U.] continued to engage in the altercation, ultimately involving a second peer who initiated physical contact by hitting [B.U.] first.” By all accounts, this describes R.G. and acknowledges that R.G. initially struck B.U.

On December 16, 2024, North Star advised petitioners of its failure to establish HIB. Yugo Certif., Exhibit L.

Still, petitioners argue that the other students bullied B.U. as a younger ninth-grader and that he was a victim who North Star unfairly suspended for an extended period. At the same time, the original instigators, K.W. and S.F., only received ten-day suspensions. For purposes of this motion and the favorable inferences required towards movants, this tribunal accepts that the other ninth-grade students were older than B.U. However, petitioners supply no supporting evidence of this fact.

Petitioners also argue that B.U. was assaulted “for expressing his freedom and foreign nationality.” Yugo Certif., Exhibit N. Petitioners rely upon Ms. Meghai’s statement that reports R.G. entered the classroom from the hallway and assaulted B.U. Yugo Certif., Exhibit B. Still, based on B.U.’s statement, the initial conflict with K.W. arose after B.U. told K.W. that he disagreed with her instructions to another student to

“cheat” on her homework through artificial intelligence or “AI.” Further, B.U. reported that R.G.’s involvement was at K.W.’s request after her altercation with B.U.

In other words, no evidence exists that R.G. fought with B.U. to bully him or that R.G.’s interaction was premeditated, that K.W.’s dispute with B.U. was related to a distinguishing characteristic of B.U., that the event involved gang activity, or related to B.U.’s expression of his foreign nationality. Ibid. Instead, I **FIND** that a preponderance of the evidence supports that a peer conflict led to the unfortunate events on October 18, 2024, involving these four students. Still further, B.U.’s statement also indicates that while fighting R.G., R.G. was restrained or “off” B.U., and B.U. punched R.G. R.G. then broke free of his restrainers, including a school leader, and attempted to retaliate. Yugo Certif., Exhibits B and G. In other words, I **FIND** that R.G. and B.U. continued to fight after a staff member intervened and physically restrained R.G. Indeed, B.U. may not have initiated the conflict, but he undeniably participated in the aggression.

DISCUSSION AND CONCLUSIONS OF LAW

Summary Decision Standard

A party may move for summary decision upon all or any substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion shall be served with briefs, with or without affidavits. When the filed papers, discovery and any affidavits show that no genuine issue of material fact exists and that the moving party is entitled to prevail as a matter of law, the judge may grant the motion. N.J.A.C. 1:1-12.5(b). When such a motion is made and supported, an adverse party, to prevail, must submit an affidavit setting forth specific facts showing that a genuine issue of material fact exists that can only be determined in an evidentiary proceeding. Ibid.

To determine whether a genuine issue of material fact exists that precludes summary judgment, the motion judge must consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to demonstrate that the moving party is entitled to a judgment as a matter of law. Brill v. Guardian Life Ins., 142 N.J. 520, 540 (1995). The “judge’s function is not

to . . . weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Id.

When a motion for summary decision is made and supported, the burden shifts to the adverse party to set forth, by affidavit, specific facts showing there is a genuine issue resolvable only by an evidentiary proceeding. N.J.A.C. 1:1-12.5(b). Given this burden shift, a party opposing a summary-judgment motion “who offers no substantial or material facts in opposition to the motion cannot complain if the court takes as true the uncontradicted facts in the movant’s papers.” Burlington Cnty. Welfare Bd. v. Stanley, 214 N.J. Super. 615, 622 (App. Div. 1987). Failure of the opponent to make such a showing entitles the moving party to summary judgment. Brill, 142 N.J. at 529.

Even though a statute calls for a “hearing,” where a motion for summary decision is made and the objector submits no evidence to demonstrate that a genuine issue of material fact exists, the motion procedure constitutes the hearing, and no trial-type hearing is necessary. Contini v. Newark Bd. of Educ., 286 N.J. Super. 106, 120–21 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996).

Further, when the non-movant comes forward with some evidence, the court still must grant summary judgment if the evidence is “so one-sided that [the movant] must prevail as a matter of law.” Ibid. at 536 (citation omitted). If the non-moving party’s evidence is “merely colorable or is not significantly probative,” the judge should not deny summary judgment. Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998). Indeed, courts recognize that liberalizing the summary judgment standard allows disposition of more cases sooner because we live in “a time of great increase in litigation and one in which many meritless cases are filed.” Brill, 142 N.J. at 539 (citation omitted).

In this case, no genuine issue exists as to the material facts, and the only question presented is whether North Star acted arbitrarily, capriciously, or unreasonably in suspending B.O. for thirty days and in failing to consider the incident HIB against B.U. More pointedly, no genuine issue exists that B.U. was involved in a physical altercation on October 18, 2024, at North Star with three other students, which required a staff

member's intervention to "break it up," who was nearly struck during the fight. R.G.'s involvement in the fight arose when K.W. requested that R.G. intervene in her peer conflict with B.U., not because of premeditation or any distinguishing characteristic of B.U., such as his age. K.W. and S.F. fought with B.U. after he commented on using AI to do homework, not because of any distinguishing characteristic of B.U. Moreover, although petitioners suggested the incident was gang-related, they supplied no evidence to support that assertion.

Furthermore, there is no dispute that North Star has disciplinary policies that permit long-term suspensions for serious offenses involving fighting or threats to safety. North Star also afforded B.U.'s parents a hearing as to the disciplinary actions it proposed.

Since these facts are clear and undisputed, I **CONCLUDE** that this case is ripe for summary decision.

Suspension

The right to education is not without certain restrictions. Pupils must submit to the authority of their teachers; they must pursue their prescribed courses of study and comply with the rules established to govern the schools. N.J.S.A. 18A:37-1. Under N.J.S.A. 18A:37-2, a school district may expel or suspend a student for good cause. Good cause includes, in relevant part, physical assault upon another pupil, open defiance of authority, or harassment, intimidation, or bullying. School districts must develop a student code of conduct, establishing clear standards, policies, and procedures that promote positive student development and behavioral expectations. N.J.A.C. 6A:16-7.5. Indeed, school districts have wide discretion in determining student discipline. N.J.A.C. 6A:16-7.1–7.10.

Although petitioners question Principal Dowling's involvement at the hearing, when the Board votes on a student's suspension, it must review the case in consultation with school administrators. N.J.A.C. 6A:16-7.3. Thus, I **CONCLUDE** that Principal Dowling's presentation to the Board was not inappropriate or evidence of bias. Still, that

a school district may expel or suspend a student for good cause is settled in the Board's favor.

Indeed, when a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness that will not be disturbed unless there is an affirmative showing that the decision was “patently arbitrary, without rational basis or induced by improper motives.” Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). To overcome that presumption, the petitioner must prove that the board “acted in either bad faith or in disregard to the circumstances.” T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07 (February 6, 2008), aff’d, Comm’r (April 25, 2013) (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff’d, 46 N.J. 581 (1966)). Furthermore, “where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration[,]” and the Commissioner will not substitute his judgment for that of the board. Bayshore Sewerage Co. v. Dep’t. of Env’tl. Prot., 122 N.J. Super. 184, 199 (Ch. Div. 1973), aff’d, 131 N.J. Super. 37 (App. Div. 1974); C.M. o/b/o J.M. v. Bd. of Educ. of the Boro. of Bergenfield, Bergen Cnty., EDU 11504-24, Initial Decision (February 24, 2025), adopted, Comm’r (April 21, 2025), <https://www.nj.gov/education/legal/commissioner/2025/143-25.pdf>. In other words, petitioners’ burden is a substantial one.

Still, the Board’s factual determinations require such deference only when supported by appropriate credible evidence, e.g., having a rational basis. Quinlan v. Bd. of Ed. of N. Bergen Twp., 73 N.J. Super. 40 (App. Div. 1962); Schinck v. Bd. of Ed. of Westwood Consol. Sch. Dist., 60 N.J. Super. 448 (App. Div. 1960). Additionally, the reviewing tribunal may reject the findings of fact if the evidentiary record does not support them. In re Suspension of License of Silberman, 169 N.J. Super. 243, 255–56 (App. Div. 1979), aff’d, 84 N.J. 303 (1980).

Students in public educational institutions facing severe disciplinary measures such as suspension or expulsion have the right to due process of law. R.R. v. Bd. of Ed., Shore Reg. H.S., 109 N.J. Super. 337, 346–47 (Ch. Div. 1970). The fundamental requirements of due process of law are notice and a hearing. Id. at 349 (quoting from

Dixon v. Alabama St. Bd. of Educ., 294 F.2d 150 (5th Cir. 1961), certif. denied, 368 U.S. 930 (1961)). Here, petitioners received notices, attended a hearing, and presented their arguments. See N.J.A.C. 6A:16-7.3(c).

Nonetheless, it remains undisputed that B.U. was involved in a physical assault against another pupil, prohibited by the Code of Conduct. Once B.U.'s aggressor was "off" him, he punched him again. Indeed, B.U. and R.G. continued to fight after staff attempted to intervene, and both received thirty-day suspensions. North Star also suspended S.K. and K.W., recognizing that their behavior also violated the Code of Conduct. Still, S.K. and K.W. did not cause the same level of injury to others and did not continue their actions after a staff member intervened. Further, S.K. and K.W. also had no disciplinary history, unlike R.G. and B.U. R.G. also had a 504 plan, requiring different procedures and considerations for long-term discipline. 34 CFR §104.35(c). Thus, I **CONCLUDE** that a rational basis exists to penalize S.K. and K.W. differently than R.G. and B.U. under North Star's Code of Conduct.

While petitioners may be dissatisfied with North Star's disciplinary actions in addressing the events of October 18, 2024, I **CONCLUDE** that they present insufficient evidence to show that North Star or the Board acted improperly, arbitrarily, or unreasonably. On the contrary, I **CONCLUDE** that the administration and the Board provided a reasonable basis to support their disciplinary conclusions and afforded the petitioners and B.U. with notice and opportunity to challenge the disciplinary determination.

HIB

The Legislature designed the Anti-Bullying Rights Act (ABRA), N.J.S.A. 18A:37-13 to -37, "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises." N.J.S.A. 18A:37-13.1(f). Each school district must adopt a policy that prohibits HIB and provides "a procedure for prompt investigation of reports of violations and complaints." N.J.S.A. 18A:37-15(b)(6).

The District's HIB policy binds every student, and the District is required to investigate HIB complaints and enforce its HIB policies, as it did here. Id.

Under the ABRA, “harassment, intimidation or bullying” (HIB) is defined as:

[A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:

- a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
- b. has the effect of insulting or demeaning any student or group of students; or
- c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

[N.J.S.A. 18A:37-14]

Thus, a HIB finding requires demonstrating three elements, assuming the alleged incident or incidents occur on school property, at a school-sponsored function, on a school bus, or off school grounds as provided for in N.J.S.A. 18A:37-15.3. Undeniably, the incident took place on school grounds and is subject to the HIB statutory directives.

Initially, the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristics. Secondly, the conduct must also substantially disrupt or interfere with the rights of other students or the orderly operation of the school. The third condition is that one of the three criteria enumerated in the Act regarding the effect of the conduct must also be satisfied. Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex Cnty., EDU 10981-18, Initial Decision (December 29, 2019), <http://njlaw.rutgers.edu/collections/oal>, rejected and remanded, Comm'r Decision No. 51-20 (February 4, 2020), 2020 N.J. Agen. Lexis. 50.

Regarding the first HIB element, the statute defines HIB as an action “that is reasonably perceived as being motivated either by any actual or perceived characteristic.” N.J.S.A. 18A:37-14. Notably, the statute requires an analysis of the victim's perception of the actor's motivation and whether that perception is reasonable. Wehbeh, at *8 (emphasis added). Yet, an analysis of the actual motivation of the actor is not required. Id. Here, I **CONCLUDE** it was not arbitrary, capricious, or unreasonable for the HIB investigator or Board to conclude that a reasonable person would not consider the peer conflict as related to a distinguishing characteristic of B.U. The HIB investigator found that the incident met other HIB criteria. However, B.U.'s statement provides the genesis of the fight: his calling out another student's improper conduct. To be sure, the reaction of that student to slap B.U. and involve other students was inappropriate, but no evidence suggests that her actions, or those of R.G., were reasonably related to a distinguishing characteristic of B.U. or premeditated. Indeed, petitioners only suggest that the other ninth-grade students were “retained” and older than B.U. Still, I **CONCLUDE** there is **NOT** a preponderance of evidence to support that this factor played a role in the altercation or was its motivation.

Therefore, I **CONCLUDE** that the Board is entitled to summary judgment as a matter of law, and the amended petition is hereby **DISMISSED**.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the Board be **GRANTED** summary decision and that the amended petition be and is hereby **DISMISSED**.

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

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



July 16, 2025

DATE

NANCI G. STOKES, ALJ

Date Received at Agency:

July 16, 2025

Date Mailed to Parties:

July 16, 2025

ljb