

515-25
OAL Dkt. No. EDU 02032-25
Agency Dkt. No. 383-12/24

**New Jersey Commissioner of Education
Final Decision**

K.C., on behalf of minor child, D.C.,

Petitioner,

v.

Board of Education of the Township of West Deptford,
Gloucester 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 that petitioner failed to sustain her burden that respondent's harassment, intimidation, and bullying was arbitrary, capricious, or unreasonable.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹



COMMISSIONER OF EDUCATION

Date of Decision: October 31, 2025
Date of Mailing: November 3, 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 02032-25

AGENCY DKT. NO. 383-12/24

K.C. ON BEHALF OF D.C.,

Petitioner,

v.

**TOWNSHIP OF WEST DEPTFORD BOARD OF
EDUCATION, GLOUCESTER COUNTY,**

Respondent.

K.C., petitioner, pro se

William Morlok, Esq., for respondent (Gorman, D'Anella and Morlok, LLC,
attorneys)

Record Closed: August 18, 2025

Decided: September 29, 2025

BEFORE **NICOLE T. MINUTOLI**, ALJ:

STATEMENT OF CASE

Petitioner's son was accused of being intentionally verbally abusive by calling a student classified as having special educational needs, "special ed." Respondent investigated the incident and concluded that there was an incident of harassment,

intimidation, and bullying (HIB) under the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13, et seq. (Act). Should the respondent's findings be overturned? No. A school board acting within the scope of its authority is "entitled to a presumption of correctness . . . 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).

PROCEDURAL HISTORY

On December 11, 2024, respondent, West Deptford Board of Education (Board), upheld a November 15, 2024, finding that D.C. committed an act of HIB on October 2, 2024.¹ On December 5, 2024, petitioner K.C., on behalf of D.C., appealed the Board's decision to the Department of Education (DOE). The DOE transmitted the matter to the Office of Administrative Law (OAL), where it was filed on January 27, 2025, to be heard as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23.

Prehearing conference calls took place on April 8, 2025, and June 30, 2025. The parties agreed to file cross-motions for summary decision. On or about August 11, 2025, petitioner filed her motion for summary decision, contending that the statutory definition of HIB had not been met because no derogatory intent or language was used, there was no evidence of substantial disruption, and the procedural defects in respondent's handling of the HIB appeal also warranted dismissal. On or about August 18, 2025, respondent filed its motion for summary decision, contending that all the elements of HIB are met and that there is no basis to find that the Board's decision was arbitrary or capricious or that it warrants reversal.

¹ Respondent also sent the petitioner a letter dated November 20, 2024, advising petitioner, in part, of her appeal rights.

DISCUSSION AND FINDINGS OF FACT

Based upon the documents the parties submitted and my assessment of their sufficiency, I **FIND** the following **FACTS**:

On October 2, 2024, D.C. referred to another student as “special ed.”² Resp. Brief. Ex., at HIB 26–32. The alleged student victim that D.C. called “special ed” is classified as a special education student. Id. at HIB 38. The day of the incident, Bridgette Deacon, the teacher of the alleged student victim and D.C., completed a HIB 338 Form. Id. at HIB 26–29. The school informed D.C.’s mother, K.C., of the HIB investigation by letter dated October 3, 2024. Id. at HIB 34. The letter informed K.C. of the process for HIB investigation, including that “a parent or guardian may request a hearing before the Board of Education after receiving” the school’s findings. Ibid. The investigation yielded written statements from D.C., the student victim, and a student witness. Id. at HIB 43–44. The alleged student victim reported that D.C. called him special ed and was making jokes about it and that it made the student victim feel sad. Id. at HIB 43. “Before that, [student witness] and I were making funny jokes, and he came over and ruined it.” Ibid. By letter dated October 7, 2024, the investigation results, which found that D.C. committed an act of HIB, were provided to petitioner. Id. at HIB 35. The letter stated that petitioner “may request a hearing before the Board of Education after receiving this information by submitting a letter requesting a Board hearing to the Superintendent of Schools.” Ibid.

At the November 13, 2024, board meeting, petitioner was present to appeal the HIB violation. Petitioner was misinformed that she could appeal the finding of HIB before the Board had the opportunity to read and affirm the school’s decision. Id. at HIB 45. Respondent acknowledged at the meeting and in a follow-up letter dated November 15, 2024, that petitioner’s communication included “inaccurate timing.” Id. at HIB 45. However, because petitioner was already present at the board meeting, respondent gave petitioner the option to present her appeal of the HIB finding then or wait until the following meeting. Petitioner chose to present to the Board at that November meeting. Ibid. In the letter dated November 15, 2024, respondent notified petitioner that the Board had fully

² The student victim said D.C. called him a “special ed weirdo.”

considered the facts during the appeal hearing and affirmed the findings of the HIB investigation. Ibid. Then, by letter dated November 20, 2024, respondent advised petitioner that she had sixty days to request a hearing before the Board and ninety days after the final decision to appeal to the Commissioner of Education (“Commissioner”). Id. at HIB 46.

On December 11, 2024, the Board approved the finding of HIB against D.C. Id. at HIB 65.

ANALYSIS, DISCUSSION, AND CONCLUSIONS OF LAW

Standard for Summary Decision

Under N.J.A.C. 1:1-12.5(a), “[a] party may move for summary decision upon all or any of the substantive issues in a contested case.” A motion for summary decision is a common legal ploy to resolve a case without an evidentiary hearing. A motion for 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). Additionally, “[w]hen a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Ibid.

A determination of whether a genuine issue of material fact exists that precludes summary decision requires the 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 fact finder to resolve the allegedly disputed issue in favor of the non-moving party. Our courts have long held that “if the opposing party . . . offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘Fanciful frivolous, gauzy or merely suspicious,’ he will not be heard to complain if the court grants summary judgment.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (quoting Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954)).

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.” Brill, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 252.

Having read the briefs and certifications and having reviewed the exhibits, I **CONCLUDE** that no issues of fact exist and that the case is ripe for summary decision.

The Anti-Bullying Bill of Rights Act (Act), N.J.S.A. 18A:37-13 et seq., 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, “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.]

Each school district must adopt a policy that prohibits HIB and provides for a prompt response to any alleged HIB incident. N.J.S.A. 18A:37-15(a). Once an alleged HIB incident is reported to the school principal, the principal or their designee must initiate an investigation within one school day of receiving the report. N.J.S.A. 18A:37-15(b)(6). A school anti-bullying specialist shall conduct the investigation, which must be completed within ten school days from the date of notification of the incident. 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). The results shall also be reported to the board of education "no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent." N.J.S.A. 18A:37-15(b)(6)(c).

Under the Act, the parents of the students involved in any alleged HIB incident are entitled to receive information about the nature of the investigation and the result of the investigation. N.J.S.A. 18A:37-15(b)(6)(d). Parents may request a hearing before the board, which must be held within ten days of the request. Ibid. Any hearing shall be held in executive session to protect the identity of any students involved. The board may hear from the anti-bullying specialist regarding the incident, recommendations for discipline or services, and any programs implemented to prevent such incidents. Ibid. The board must issue a decision at the first meeting after its receipt of the investigation report. The board may affirm, reject, or modify the superintendent's decision. The board's decision may be appealed to the Commissioner of Education. N.J.S.A. 18A:37-15(b)(6)(e).

An action by a 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) aff’d, 46 N.J. 581 (1966). The Commissioner will not substitute their judgment for that of a board of education, whose exercise of discretion may not be disturbed unless shown to be “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). 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 Sew. Co. v. Dep’t of Env’tl. Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff’d, 131 N.J. Super. 37 (App. Div. 1974). Thus, to prevail, petitioner must demonstrate that the Board acted in bad faith or in utter disregard of the circumstances before it. T.B.M. v. Moorestown Bd. of Educ., EDU 02780-07, Initial Decision (February 6, 2008), <http://njlaw.rutgers.edu/collections/oal> (citing Thomas, 89 N.J. Super. at 332).

Petitioner challenges respondent’s HIB findings based on substantive and procedural grounds. Procedurally, petitioner argues that she was deprived of due process because she was misinformed that she could appeal the finding of HIB before the Board had the opportunity to read and affirm the school’s decision.

The Commissioner has found that a procedural irregularity is an “insufficient reason to require the Commissioner to reverse the Board’s substantive HIB determination.” H.P. ex rel. R.S. v. Tenaflly Bd. of Educ., EDU 07170-23, Initial Decision (Jan. 24, 2024), adopted, Comm’r (Mar. 26, 2024), <https://njlaw.rutgers.edu/collections/oal> at 1. When a board’s actions amount to more than just an accidental misstep, such as affirmatively denying a hearing to an accused HIB violator, the proper remedy is still to remand the matter to the board for a hearing. Gibble v. Hunterdon Cent. Reg’l Sch. Dist. Bd. of Educ., EDU 02767-15, Initial Decision (April 12, 2016), modified, Comm’r (July 13, 2016), <https://njlaw.rutgers.edu/collections/oal>. Even when procedural protections are “largely ignored” by a board, the proper remedy is remanding for a hearing in compliance with the Act. Young-Edri v. City of Elizabeth Bd. of Educ., EDU 17812-18, Initial Decision (May 30, 2019) at 6, adopted, Comm’r (July 8, 2019), <https://njlaw.rutgers.edu/collections/oal>.

Even a reversal of a substantive HIB finding is unnecessary when the investigation report reveals “a comprehensive investigation.” Id. at 7.

Unlike the petitioners in the cases cited above, petitioner was not denied a hearing. Petitioner had a hearing before the Board on November 13, 2024. Respondent recognized that petitioner appeared at the board meeting because of respondent’s miscommunication and provided petitioner with the option of presenting her case then or later. Petitioner chose to present her case at the November 13, 2024, meeting. Additionally, petitioner was given notice that she could appear at the December board meeting to appeal the Board’s determination. The procedural irregularity in the instant matter did not deny petitioner any rights; petitioner presented her case to the Board, and her arguments were considered by the Board. Moreover, D.C.’s substantive HIB investigation was detailed and thorough. Although respondent provided the incorrect appeal timeline to petitioner, the fact that petitioner had a hearing cured this procedural irregularity and does not warrant dismissal of the legitimate HIB violation. I **CONCLUDE** that respondent’s actions complied with the Act.

Petitioner next argues that the Board’s HIB finding against D.C. must be reversed because D.C. was not motivated by the student victim’s actual or perceived characteristics when D.C. called him “special ed” and D.C. did not intend to harass, intimidate, or bully the student victim. Pet’r’s Br. at 4. However, D.C.’s motivation during the October 2, 2024, incident is not a factor in the HIB analysis.

Regarding the first element required for a HIB violation finding, it is not necessary to find actual intent to harm an alleged student victim. A HIB may be found even if the person accused of the HIB did not actually intend to harm the victim student. In J.P. ex rel. D.P. v. Board of Education of Gloucester County Vocational-Technical School District, Comm’r Dec. No. 97-20 (March 13, 2020), <https://www.nj.gov/education/legal/commissioner/index.shtml>, rev’g, EDU 15220-18 (Feb. 5, 2020), <https://njlaw.rutgers.edu/collections/oal>, where a student called a classmate “gay” and claimed he did so as a joke, the Commissioner explained that the statute defines a HIB “as an action ‘that is *reasonably perceived* as being motivated either by any actual or perceived characteristic” and clarified that “the statute requires an

analysis of how the actor’s motivation is perceived and whether that perception is reasonable,” not an analysis of the actor’s actual motivation. Id. at 4 (quoting N.J.S.A. 18A:37-14); see also Janan Wehbeh v. Bd. of Educ. of the Twp. of Verona, Comm’r Dec. No. 51-20 (February 4, 2020), <https://www.nj.gov/education/legal/commissioner/index.shtml> at 5, remanding EDU 10981-18 (December 24, 2019), <https://njlaw.rutgers.edu/collections/oal/>.

For the second element of HIB, the analysis centers on the legislative intent of the Act. Although students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” school officials are permitted to circumscribe student speech that “materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school” or “colli[des] with the rights of other students to be secure and to be let alone.” Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506, 508–09 (1969) (quoting Burnside v. Byars, 363 F. 2d 744, 749 (5th Cir. 1966)). The purpose of the Act is to foster a safe and civil educational environment, enabling all students to learn and achieve high academic standards. To that end, in S.P. ex rel. E.P. v. Board of Education of Montgomery, Comm’r Dec. No. 46-25 (February 7, 2025) at 6, <https://www.nj.gov/education/legal/commissioner/index.shtml>, aff’g, EDU 12772-23 (November 15, 2024), <https://njlaw.rutgers.edu/collections/oal/>, the Commissioner upheld a finding of a HIB when one student called G.P., a student with a disability, a “retard” because the name-calling interfered with G.P.’s “right to a safe and civil environment at school.” Name-calling, regardless of the actor’s intent, can satisfy the third element of a HIB when the name-calling has the effect of emotionally harming a student by being insulting and demeaning. See Id. at 7.

In the instant matter, it is undisputed that D.C. called the student victim “special ed.” It is also undisputed that the student victim is classified as a student with special needs. It can be reasonably perceived that D.C.’s comment was motivated by the fact that the student victim was classified as having special educational needs. In D.C.’s written statement during the HIB investigation, D.C. admitted that he made the comment, and there is no dispute that D.C.’s comment was made on school grounds. D.C.’s attempts to explain that his comment was not intended to hurt the student victim’s feelings are inconsequential; the statute only requires that his comment was reasonably perceived

as motivated by the student victim's disability. As such, the first element of the statutory definition of HIB is met. Second, D.C.'s comment substantially disrupted or interfered with the orderly operation of the school and the student victim's rights. D.C. substantially interfered with the student victim's right to be secure and to be let alone to learn in a safe and civil environment. Finally, the effect of D.C.'s comment left the student victim reasonably feeling upset, offended, and demeaned. Therefore, I **CONCLUDE** that petitioner failed to sustain her burden of establishing that the Board acted in an arbitrary, capricious, or unreasonable manner in finding that D.C. committed an act of HIB, and so its HIB determination must stand.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the petitioner's motion for summary decision is **DENIED**. It is further **ORDERED** that the respondent's motion for summary decision is **GRANTED**.

I hereby **FILE** my 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**, which 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.

September 29, 2025

DATE



NICOLE T. MINUTOLI, ALJ

Date Received at Agency:

Date Mailed to Parties:

NTM/tc

APPENDIX

Exhibits

For petitioner:

Motion for Summary Decision and Reply to Respondent's Motion for Summary Decision

For respondent:

Motion for Summary Decision and Reply to the Petitioner's Motion for Summary Decision