

561-25

OAL Dkt. Nos. EDU 05949-25 and 11772-24

Agency Dkt. Nos. 96-4/24 and 218-7/24

New Jersey Commissioner of Education

Final Decision

J.S. and A.S., on behalf of minor child, M.S.,

Petitioners,

v.

Board of Education of the Township of Franklin,
Somerset County,

Respondent.

AND

J.S., on behalf of minor child, M.S.,

Petitioners,

v.

Board of Education of the Township of Franklin,
Somerset County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by the petitioners pursuant to *N.J.A.C. 1:1-18.4*, and the Franklin Board of Education's (Board) reply thereto, have been reviewed and considered.

Petitioners appeal two harassment, intimidation, and bullying (HIB) determinations concerning their minor child, M.S — (1) that on October 30, 2023, students A.M. and K.M. did

not commit an act of HIB against M.S.; and (2) on March 7, 2024, M.S. committed an act of HIB. At the time of both incidents, M.S. was a fifth-grade student at Elizabeth Avenue Elementary School (Elizabeth School).

Regarding the first HIB matter, petitioner J.S. contacted the Board on October 30, 2023, to report an incident involving M.S. that had occurred during recess. According to the incident's HIBster log, J.S. alleged that a classmate had made a comment about M.S. having a bald spot in his hair. On October 31, 2023, the Board commenced an investigation to determine whether the incident constituted HIB against M.S. and referred the matter to Abigail Stanton-Schmidt (Schmidt), the anti-bully specialist (ABS) at Elizabeth School. On October 31, 2023, Schmidt interviewed M.S., alleged offenders K.M. and A.M., and witness B.D. In his written statement dated October 31, 2023, M.S. wrote that "[t]here are a group of students that comment on my alopecia." Exhibit J-1. M.S. later identified A.M. and K.M. as the alleged offenders but could not specify which one made the comment. M.S. also said that while he was playing basketball on October 30, 2023, "they came up to me and stole my ball." Exhibit J-32. M.S. also admitted that "[t]here will be times we say things back and forth" and that he has made a comment about K.M.'s teeth and has called A.M. "a rat." *Ibid.*

A.M. stated that she and M.S. "basically hate each other" and that M.S. has called her a "rat" and makes up lies about her. Exhibit J-27. Regarding the October 30, 2023, incident, A.M. stated that she was playing basketball with another student when M.S. tried to "put himself into the game." *Ibid.* A.M. stated that K.M. took the ball and M.S. started making comments first. A.M. claimed that K.M. said, "At least I don't have a bald spot." *Ibid.* K.M. denied making a comment about M.S.'s hair. Exhibit J-30. K.M. stated that M.S. said several comments to her

including, “[y]ou always cut the line, that’s why you have no friends,” and “[y]our gap is ugly and no one likes you.” K.M. also stated that M.S. was “calling us roaches and rats.” *Ibid.* Witness B.D. said that he heard someone make a comment about M.S.’s hair but did not know who said it. Exhibit J-31.

Schmidt completed her investigation on November 3, 2023. The result of her investigation was inconclusive as Schmidt was unable to substantiate who had made the comment about M.S.’s alopecia. On November 3, 2023, Schmidt’s findings were assigned to the Principal of Elizabeth School, Greg Romero (Romero) for review. Romero approved the findings, and forwarded them to the district’s anti-bullying coordinator, Orvil Wilson (Wilson) for review. Wilson discussed the incident with the district’s superintendent, Dr. John Ravally (Dr. Ravally); both agreed with the investigation’s results. Wilson prepared an executive summary of the October 30, 2023, incident and on December 21, 2023, Dr. Ravally presented the results of the investigation to the Board. On December 22, 2023, the Board sent petitioners a letter stating that investigation did not find evidence of harassment, intimidation, or bullying. Petitioners appealed the determination and appeared before the Board on January 15, 2024. On January 17, 2024, the Board sent petitioners a letter affirming the inconclusive finding. On April 11, 2024, petitioners appealed the Board’s decision to the Commissioner

Regarding the second HIB matter, on March 8, 2024, petitioner, J.S., reported that students were making fun of M.S.’s bald spots and hairline. The Board commenced an HIB investigation that day and referred the investigation to Schmidt. As part of her investigation, Schmidt interviewed M.S., alleged offenders J.H., S.P., and M.M., and student witnesses E.M., B.D., J.G.T., S.A., A.R.A., and D.C. Schmidt had each student write a statement. In addition, she

added a notation on a few statements based on information she received during that student's interview. In his handwritten statement, M.S. stated that on March 7, 2024, S.P., J.H, and M.M., were outside, grouped together. Exhibit J-3. There is a school rule that requires students to line up with their class before reentering the school after recess. M.S. stated that he asked J.H. to go to her class line, however the girls became upset and said, "no." Later at lunch, M.S. was telling his friend, E.M., what had occurred when the girls overheard him. Exhibit J-3. M.S. stated that S.P. and M.M. said, "your hairline is the shape of a 'V,' and that's why you got bald spots on the back of your head." Exhibit J-2.

J.H. stated that a classmate had fallen in mud and said, "I have poop on my leg." Exhibit J-8. According to J.H, M.S. replied, "you have poop all over yourself." As J.H. got up to walk away, M.S. said, "See, that's how to get those people away." Exhibit J-8. The comment made J.H. "irritated and uncomfortable" and in response, she stated, "I heard you have bald spots, and the back of your head looks like a 'V.'" Exhibit J-16.

M.M. stated that when she and her friends were lining up after recess, M.S. said, "Can you guys move, I don't wanna be in your mess." Exhibit J-9. From there, M.M., S.P., and M.S. began arguing. M.M. wrote that M.S. "made a comment on my skin saying, 'you have poop on your face.'" *Ibid.* M.M. took this comment as an insinuation about the color of her skin. *Ibid.* M.M. retorted by saying that M.S.'s hairline was V-shaped. *Ibid.* S.P. stated that when her and her friends were lining up to come back into the building after recess, M.S. was trying to get J.H. and M.M. to go to their appropriate class line. Exhibit J-10. S.P. said that comments were made between M.S., and S.P. and her friends, and M.S. told her to "shut up and said something else." *Ibid.* S.P. admitted that she said to M.S., "the back of your hair looks like a 'V.'" Exhibit J-10.

Witness B.D. stated that he heard M.S. “saying something about their skin color.” Exhibit J-15. Witness D.C. said that he never heard M.S. say anything about their skin color. Exhibit J-14.

Schmidt completed her investigation and on March 15, 2024, determined that the incident did not constitute HIB because the alleged victim, M.S., was in a mutual conflict with the alleged offenders, M.M., S.P., and J.H. Petitioners contacted Dr. Ravally, who, after reviewing the preliminary findings, referred the matter back to Schmidt for further investigation. As part of her investigation, Schmidt re-interviewed M.S. and newly identified witnesses. Schmidt found that M.S. experienced a substantial amount of emotional distress from the incident and determined that S.P.’s, and M.M.’s comments to M.S. constituted HIB. In the investigation summary, Schmidt included that according to the alleged offenders, M.S. “made a comment to the effect of ‘It looks like you are covered in poop.’” Exhibit J-6 at 833. Schmidt noted that the alleged offenders took this as an insinuation about the color of their skin, and that they were angered by M.S.’s behavior towards them which resulted in them making the comments.

A parent of one of the alleged offenders requested an investigation into the alleged comments made by M.S. regarding her skin color/race on March 7, 2024. Counseling Supervisor Quiyon Peters (Peters) was assigned the second investigation into the March 7, 2024, incident. The alleged victims were J.H. and M.M., and the alleged offender was M.S. As part of her investigation, Peters reviewed the executive summary from the initial investigation, reviewed the statements from Schmidt’s investigation, reviewed video footage of the March 7, 2024 incident, and on March 27, 2024, re-interviewed M.S., J.H., M.M, and student witnesses, S.P., P.B., E.M. J.G.T., A.R.A., S.A. B.D., and D.C. Peters began her interviews by reading each student’s previous

statement to them to confirm its accuracy, and then asked questions specific to the HIB allegation against M.S. Peters recorded any additional comment made by the student.

In his interview, M.S. denied making a comment about J.H. having poop all over her body. M.M. reiterated what she said in her initial interview, specifically that M.S. told her that she has poop on her face, and she again admitted to making a comment about M.S.'s hair looking like the letter "V." S.P. stated that M.S. told J.H. and M.M., "it looks like you have poop all over your skin and body." S.P. stated that they were offended and upset by the comment. Exhibit J-19. J.H. stated in her interview that as she got up to walk away during the incident, M.S. said, "See, that's how to get those people away." Exhibit J-8. The comment made J.H. "irritated and uncomfortable" and in response, she stated, I heard you have bald spots, and the back of your head looks like a 'V.'" Exhibit J-16. In his interview, witness B.D. who stated that M.S., J.H, and M.M. were in an argument on March 7, 2024, told Peters that he heard M.S. says, "when I close my eyes, I see you." B.D. added that J.H. responded by saying something about M.S.'s bald spot. Exhibit J-20. Witnesses J.G.T., S.A., and D.C. did not recall hearing any comments about the girls' skin color looking like poop. Exhibits J-21, 22, and 24.

From her investigation, Peters determined that HIB had occurred. Peters found that M.S.'s comments were race-motivated and used to cause emotional harm to and/or embarrass students. Peters sent the preliminary findings to Romero for review; Romero reviewed and approved Peters' findings. He then sent the materials to Wilson, who also watched the video from March 7, 2024, as part of his review. Wilson agreed with the decision, and on April 25, 2024, the Board affirmed the determination. Petitioner appealed to the Commissioner on July 15, 2024. On October 29, 2024, the matters were consolidated.

At the OAL, the Administrative Law Judge (ALJ) determined that the Board was not arbitrary, capricious, or unreasonable in determining that (1) the October 30, 2023, incident did not constitute HIB against M.S., and (2) on March 7, 2024, M.S. committed an act of HIB. In reaching her determination regarding the October 30, 2023, incident, the ALJ rejected petitioners' arguments that the Board failed to comply with the procedures under the Anti-Bullying Bill of Rights (Act). The ALJ found that the Board completed the HIB investigation within 10 school days, as mandated by *N.J.S.A. 18A:37-15(b)(6)(a)*. The ALJ also found that *N.J.S.A. 18A:37-15(b)(6)* permits a principal to designate someone to initiate an HIB investigation, and that here, the evidence establishes that Schmidt, as Romero's designee, contacted petitioners within one day of when the incident was reported. In addition, the ALJ concluded that the Board did not violate the Act by putting the HIB matter on the agenda for the December 2023 Board meeting, rather than the November 16, 2023, meeting. The ALJ noted that the Board completed its investigation on November 15, 2023, one day before the November Board meeting; by then, the meeting agenda had already been set and published. Given this, the ALJ concluded that the Board correctly moved the HIB to the December meeting. The ALJ further concluded that even if the Board committed the procedural errors that petitioners claim, the deficiencies were cured because the Board heard the HIB matter at the December 2023 Board meeting, petitioners received a call from Schmidt informing them of the HIB matter the day after the incident was reported, and the investigation was completed in 10 school days.

Next, the ALJ concluded that the Board's determination regarding the October 30, 2023, incident was not biased or influenced in any way. In so doing, the ALJ rejected petitioners' arguments that Schmidt tampered with M.S.'s written statement and that the Board's decision

was influenced by the fact that A.M.'s mother works for the district. Regarding petitioners' claims that the Board was arbitrary, capricious, or unreasonable in determining that the HIB allegation could not be substantiated, the ALJ found that Schmidt conducted a prompt and thorough investigation; the ALJ also found that M.S. could not identify exactly who made the comment, as evidenced by his statement, "a group of students that comment on my alopecia" Exhibit J-1. The ALJ found that K.M. denied A.M.'s allegation that K.M. made a comment about M.S.'s alopecia; the ALJ also found that neither M.S. nor B.D. could corroborate the comment. The ALJ concluded that because the alleged incident could not be substantiated, the Board's decision was not arbitrary, capricious, or unreasonable.

As to the March 7, 2024, incident, the ALJ concluded that petitioners failed to sustain their burden of establishing that the Board was arbitrary, capricious, or unreasonable in finding that M.S. committed an act of HIB. Citing to the testimonies of Schmidt, Wilson, Romero, and Dr. Ravally, the ALJ further concluded that petitioners did not establish that the Board initiated the investigation against M.S. out of retaliation. The ALJ also rejected petitioners' claim that Peters' investigation was racially biased, finding that petitioners provided no evidence indicating that such a bias existed. Further, Peters testified that her investigation was based on the law and not the victims' skin color or race. Lastly, the ALJ concluded that petitioners did not meet their burden of establishing that the Board acted arbitrarily, capriciously, or unreasonably in utilizing the designated Safety and Security Committee to review the HIB investigation against M.S. In reaching her determination, the ALJ cited case law where the Commissioner deemed permissible the Board's use of a HIB committee to fulfill its responsibility of reviewing an investigative report.

In their exceptions, petitioners reiterate arguments that were considered and rejected by the ALJ, namely that the Schmidt tampered with M.S.'s written statement leading to a determination that the October 30, 2023, incident did not constitute HIB, that the Board's investigation into the October 30, 2023, incident spanned more than 10 school days in violation of *N.J.S.A. 18A:37-15(b)(6)(a)*, that the Board improperly utilized its Safety and Security Committee to review the HIB investigation against M.S., and that the Board commenced an HIB investigation into M.S. out of retaliation.¹ Petitioners contend that the ALJ erred in failing to address alleged discrepancies in the testimonies of district staff. Petitioners further contend that these supposed inconsistencies call into question the validity of their testimony.

Petitioners contend that the Board's HIB determination against M.S. lacks support from the witness statements. For instance, petitioners argue the alleged victims, J.H. and M.M., "do not identify the same statement." Exceptions at 17. Petitioners note that J.H. alleged that M.S.'s comment was "you have poop all over yourself," and M.M.'s alleged that M.S.'s comment was "you have poop all over your face." Petitioners argue that while both comments mention the word "poop," "they do not align with the body part mentioned." *Ibid.* Next, Petitioners argue that the Board lacks the proof "to determine a definitive racial issue" and point to a statement by Wilson that the determination of HIB in the second March 7, 2023, investigation, "could have gone either way" to support their claim that the Board was arbitrary in determining that M.S. committed HIB. Exceptions at 18. Petitioners request that both determinations be overturned.

¹ Petitioners' inclusion of facts not raised at the hearing or in briefs submitted at the OAL is improper per *N.J.A.C. 1:1- 18.4(c)*. Therefore, this information was not considered.

In response, the Board requests that the Initial Decision be affirmed. The Board contends that the appropriate legal standard for assessing a determination by a board of education is whether the Board acted arbitrarily, capriciously, or unreasonably. The Board claims that rather than adhering to the appropriate legal standard, petitioners, in their exceptions, attempt to set new legal standards which have no basis in law. Specifically, the Board points to the petitioners' argument that J.H.'s and M.M.'s comments are not the same statement because "they do not align with the body part mentioned," and therefore the ABS should not have given the statements credence. The Board argues that requiring two separate children to have identical recall of an incident for their statements to be considered is an unreasonably high burden of proof with no basis in law.

In response to petitioners' claim that Wilson's statement that the second March 7, 2023, investigation "could have gone either way" is evidence that the Board acted arbitrarily, the Board contends that where there is room for two opinions, a Board's 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. Lastly, the Board denies targeting M.S. and argues that the additional information and context petitioners attempt to introduce into the record through exceptions is inappropriate under *N.J.A.C. 1:1-18.4(c)*.

When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and 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. Bd. of Educ. of W. Orange*, 60 N.J. Super. 288, 294 (App. Div. 1960). 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’t Prot.*, 122 N.J. Super. 184, 199 (Ch. Div. 1973), *aff’d*, 131 N.J. Super. 37 (App. Div. 1974). Regarding HIB determinations, this standard has been explained as requiring a petitioner to “demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it.” *G.H. and E.H. o/b/o K.H. v. Bd. of Educ. of Borough of Franklin Lakes, Bergen Cnty.*, OAL Dkt. No. EDU 13204-13 (Initial Decision Feb. 24, 2014), adopted, Commissioner Decision No. 157-14 (Apr. 10, 2014).

Upon review, the Commissioner concurs with the ALJ – for the reasons thoroughly set forth in the Initial Decision – that petitioners failed to establish that the Board was arbitrary, capricious, or unreasonable in determining that (1) the October 30, 2023, incident did not constitute HIB, and (2) M.S. committed an act of HIB on March 7, 2024. The Commissioner does not find petitioners’ exceptions to be persuasive. First, petitioners contend that Wilson’s statement that the second March 7, 2024, investigation “could have gone either way” supports their claim that the Board arbitrarily determined that M.S. committed HIB. However, petitioners are mistaken. As the Board correctly argues, when there is room for two opinions, a Board’s action will not be considered arbitrary when exercised honestly and upon due consideration.

Bayshore Sewerage Co., 122 N.J. Super. at 199

Here, the Board initiated the second HIB investigation after a parent requested an investigation into the alleged comments made by M.S. on March 7, 2024, regarding their daughter’s skin color/race. The Board referred the investigation to Peters. As part of her investigation, Peters reviewed the executive summary from the initial investigation, reviewed the statements from Schmidt’s investigation, reviewed video footage of the March 7, 2024, incident,

and on March 27, 2024, re-interviewed M.S., J.H., M.M, and student witnesses, S.P., P.B., E.M. J.G.T., A.R.A., S.A. B.D., and D.C. Peters began her interviews by reading each student's previous statement to them to confirm its accuracy, and then asked questions specific to the HIB allegation against M.S. Peters recorded any additional comment made by the student. Peters included her notes in the HIBster log, where changes or alterations to the system are noted. Peters testified that her investigation was based on the law and not the victims' race or skin color. Peters' investigation revealed that M.S.'s statements were motivated by race and constituted HIB. The record supports Peters' finding. Thus, Peters' investigation was conducted with honesty and upon due consideration; as such, her determination was not arbitrary or capricious. For the Commissioner to overturn the determination just because it could go the other way would require the Commissioner to substitute his judgment for that of the Board's, which is impermissible. Thus, the Commissioner agrees with the ALJ that the Board was not arbitrary, capricious, or unreasonable in determining that M.S. committed an act of HIB on March 7, 2024.

Second, petitioners also appear to take issue with the ALJ's weighing of certain testimony and evidence, particularly the comments about "poop" that J.H. and M.M. allege that M.S. made towards them. Petitioners note that M.M. alleged that M.S. said, "you have poop all over your face," and J.H. alleged that M.S.'s comment was "you have poop all over yourself." Petitioners appear to argue that because the statements are not identical, the ALJ should not have considered the statements credible. Similarly, petitioners allege that there are discrepancies in the testimony of the district staff members and that the ALJ erred in failing to address these inconsistencies. Petitioners contend that these supposed inconsistencies call into question the validity of the district staff members' testimonies. For instance, petitioners claim that the

testimonies of Schmidt and the Vice Principal Edgar Vasquez Molina contradict each other, particularly regarding whether Vasquez was part of M.S.'s interview process for the March 7, 2023 incident. The Commissioner notes that the ALJ had the opportunity to assess the credibility of the various witnesses who appeared before her and make findings of fact based upon their testimony. In this regard, the clear and unequivocal standard governing the Commissioner's review is:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record.

N.J.S.A. 52:14B-10(c).

The Commissioner finds no basis in the record to disturb the ALJ's credibility assessment regarding Schmidt's, Vasquez's, or any district staff member's testimony regarding the Board's HIB investigations. The ALJ did not demonstrate bias against petitioners and petitioners have failed to provide any credible evidence that the ALJ's findings are not supported by credible evidence in the record. Regarding the discrepancy in J.H.'s and M.M.'s comments, petitioners have not provided any evidence indicating that the ALJ was arbitrary, capricious, or unreasonable in finding that M.S. said both comments. Furthermore, as the ALJ correctly noted, the fact that a discrepancy exists regarding what M.S. said does not negate the fact that all the comments concerned color and race.

Lastly, petitioners claim retaliation without providing any evidence in support of their contention. The burden of proof in the instant matter rests with the petitioners; they have not met their burden of establishing that the Board's behavior was arbitrary, capricious, or

unreasonable due to retaliation. Petitioner contends that the Board initiated the second HIB investigation regarding the March 7, 2024, incident in retaliation as evidenced by an HIBster log that states, “District/School recommendation for HIB investigation as a follow-up.” Exhibit J-6 at 1. However, even if the Commissioner was to accept petitioners’ argument, the Board initiating the investigation is not dispositive. Petitioners have failed to establish that the Board was arbitrary, capricious, or unreasonable in deciding that the October 30, 2023, incident does not constitute HIB and that M.S. committed an act of HIB on March 7, 2024.

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.²



COMMISSIONER OF EDUCATION

Date of Decision: December 22, 2025
Date of Mailing: December 22, 2025

² 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

J.S. AND A.S. ON BEHALF OF M.S.,

Petitioners,

v.

**TOWNSHIP OF FRANKLIN BOARD
OF EDUCATION, SOMERSET COUNTY,**

Respondent,

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**TOWNSHIP OF FRANKLIN BOARD
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OAL DKT. NO. EDU 05949-24

AGENCY DKT. NO. 96-4/24

OAL DKT. NO. EDU 11772-24

AGENCY DKT. NO. 218-7/42

J.S. and A.S., pro se

Susan S. Hodges, Esq., for respondent (Parker McCay, P.A., attorneys)

Record Closed: June 12, 2025

Decided: June 30, 2025

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

STATEMENT OF THE CASE

Respondent upheld two harassment, bullying, or intimidation (HIB) determinations, finding that on October 30, 2023, A.M. and K.A. did not commit an act of HIB against M.S. and finding that on March 7, 2024, M.S. committed an act of HIB. Should the HIB conclusions stand? Yes. Respondent's determinations are entitled to a presumption of correctness, and petitioners have not established that the decisions were arbitrary, capricious, or unreasonable.

PROCEDURAL HISTORY

On January 17, 2024, respondent, Township of Franklin, Board of Education (Board), upheld a November 11, 2023, finding that M.S. was not a victim of HIB on October 30, 2023. On April 11, 2024, petitioners J.S. and A.S., on behalf of M.S., appealed the Board's decision of January 17, 2024, to the Department of Education (DOE). The DOE transmitted the matter to the Office of Administrative Law (OAL), where it was filed on April 30, 2024, 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.

On May 25, 2024, the Board upheld a March 21, 2024, finding that M.S. committed an act of HIB on March 7, 2024. On July 15, 2024, petitioners J.S. and A.S., on behalf of M.S., appealed the Board's decision of May 25, 2024, to the DOE. The DOE transmitted the matter to the Office of Administrative Law (OAL), where it was filed on August 12, 2024, 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.

On March 11, 2025, March 12, 2025, and March 25, 2025, I held the hearing but kept the record open for the parties to obtain transcripts and provide post-hearing submissions. I requested supplemental information, and upon receipt of the requested information, I closed the record on June 12, 2025.

DISCUSSION AND FINDINGS OF FACTS

The parties submitted joint exhibits and a Joint Statement of Undisputed Facts. (Stip.) Based upon a review of the testimony and the joint documentary evidence presented and having had the opportunity to observe the demeanor and assess the credibility of the witnesses who testified, I **FIND** the following pertinent **FACTS** and accept as **FACT** the testimony set forth below.

At the time of each incident, M.S. attended the Elizabeth Avenue Elementary School (Elizabeth School). (Stip.) At the time of each incident, M.S. was in fifth grade. (Id.)

The October 30, 2023, incident involved allegations of an act of HIB against K.M. and A.M. and was investigated by Abigail Stanton-Schmidt (Schmidt), the anti-bullying specialist (ABS) at the Elizabeth School. Schmidt had worked at Elizabeth School as an ABS since 2019.

The March 7, 2024, incident involved allegations of an act of HIB against M.S. It was investigated by Schmidt and Quiyon Peters (Peters), supervisor of school counseling for kindergarten through eighth grade at Franklin Township Public Schools. Peters had worked in the field of school counseling for nineteen years, eleven of which were spent in Franklin Township Public Schools. While at Franklin Township Public Schools, Peters spent eight years as a middle school counselor before being promoted to her current position as supervisor. (T-1 at 135–136.)

Schmidt and Peters were both witnesses and provided testimony regarding the underlying HIB matters, the substance of the allegations, the investigation conducted, and the conclusions reached. M.S. and E.M. were also called in petitioners' case. Dr. John Ravally, superintendent, Orvil Wilson, the former director of school management and student advocacy and anti-bullying coordinator for the Franklin Township Board of Education, Elizabeth School Principal Greg Romero (Romero), and Vice Principal Edgar Vasquez Molina (Vasquez) were joint witnesses.

The October 30, 2023, HIB Investigation

On October 30, 2023, M.S.'s parents contacted his teacher to report an incident in which M.S. was involved that day. Schmit was assigned to investigate this incident. On October 31, 2023, Schmidt contacted M.S.'s parent to discuss the incident. On October 31, 2023, Schmidt interviewed M.S., K.M., A.M., and B.D. (J-1.)

M.S. stated that on October 30, 2023, "[t]here are a group of students that comment on my alopecia." (J-1 at 4.) M.S. later identified K.M. and A.M. as the alleged offenders, but he was unable to specify which one commented. M.S. alleged that during recess, he was playing basketball on the basketball court at school, and "they would come up to me [and] steal my ball." (Ibid.)

During the altercation, someone called M.S. a cockroach, and he responded by calling someone a rat. (T-1 at 34.) After the incident, M.S. went back to class, and he "didn't think much of it." (Ibid.) M.S. and A.M. had ongoing arguments since third grade. (T-1 at 37.)

K.M. stated that M.S. made several comments to her, including, "you always cut the line, that's why you have no friends," "the only friend you have is your mom," "you have a gap in your teeth you shouldn't be talking," and "you gaps ugly and no one likes you." (J-1 at 1.) K.M. also said M.S. was calling her a roach and a rat. K.M. denied saying anything about M.S.'s alopecia. (Ibid.)

A.M. stated that M.S. called her a rat and that she and M.S. have called each other names in the past. M.S. also makes up lies about her. (J-1 at 2.) On October 30, 2023, A.M. was playing basketball with other students, and M.S. attempted to insert himself into the game. M.S. started making comments, but she did not mention his hair. A.M. claimed that K.M. said, "at least I don't have bald spots." (Ibid.)

Witness B.D. said he heard someone comment about M.S.'s hair, but he did not know exactly who said it. (J-1 at 3.)

During each interview, Schmidt wrote notes in a notepad and later transferred the statements to the HIBster log without altering the statements. (T-1 at 216.) Schmidt completed her investigation on November 3, 2023. She found that all three parties involved exchanged comments, and no student, besides A.M., could identify who made the statement about M.S.'s alopecia. Schmidt found the incident was a mutual conflict and not covered under HIB because she was unable to substantiate who made the comments about M.S.'s alopecia. (J-25 at 5; T-1 at 159–160.) Schmidt did not alter any reports or witness statements, nor did anyone from the board of education or administration attempt to influence her HIB investigation or preliminary findings. (T-1 at 208.) The fact that A.M.'s mother worked for the school district did not influence Schmidt's investigation, nor did anyone from the BOE or administration attempt to shield A.M. (T-3 at 64; T-1 at 161.)

On November 3, 2023, Schmidt's preliminary findings were assigned to Romero for review. Romero was not involved in any student interviews. (J-25 at 21; T-2 at 77–78.) On November 11, 2023, Romero approved the preliminary findings and forwarded them to Wilson. (J-25 at 22; T-2 at 77.)

As the District's anti-bullying coordinator, Wilson was trained on how to handle HIB incidents under the Act, overseeing the District's HIB policy and its ABS. (T-3 at 9.) He oversees the principal's responsibilities and role in HIB investigating and reporting. (T-3 at 10.) The principal, vice principal, or ABS is permitted to make initial contact with the parents at the start of a HIB investigation. (T-3 at 11.)

An appeal of a HIB investigation can be presented to the Board or a committee of the Board. The District's Climate and Safety Committee is responsible for reviewing HIB appeals, as HIB is considered part of the District's safety procedures and policies. (T-3 at 19–22; T-2 at 122.)

After discussing the incident with Dr. Ravally, Wilson prepared an executive summary of the October 30, 2023, incident to submit to the Board meeting. (T-2 at 114.) Wilson and Dr. Ravally agreed with the investigation's results and Romero's actions.

(J-34.) The HIB investigation was not deemed completed until Wilson completed his review and prepared a summary report of the HIB investigation. (T-2 at 120.)

There were four school days that week in which to investigate (October 31, November 1, November 2, and November 3). (R-1 at 1–2.) The following week, Elizabeth School was closed for the New Jersey Education Association Convention on November 9 and 10, 2023, leaving only November 6, 7, and 8, 2023, for the investigation. (Ibid.) The investigation continued the following week and was completed on November 15, 2023.¹

The investigation's results were reported to the Board at its meeting on December 21, 2023. (T-2 at 117.)² By letter dated December 22, 2023, respondent informed the parents of the results of the HIB investigation related to the incident on October 30, 2023, and their appeal rights. (J-24.)

On January 3, 2024, petitioners appealed the HIB findings. (J-36.) On January 5, 2024, respondent attempted to schedule a hearing for January 10, 2024, with the District's Climate and Safety Committee. However, petitioners refused to meet with this committee and requested a hearing with the Board. (Ibid.) On January 8, 2024, respondent notified petitioners that the Board would hear their appeal in a closed session on January 15, 2024. (J-38.)

During the Board meeting on January 15, 2024, petitioners presented additional information. (J-39.) By letter dated January 17, 2024, the Board issued its final decision affirming the finding that HIB was not evidenced concerning the October 30, 2023, incident. (Ibid.)

¹ Wilson testified that the investigation was completed one day before the scheduled Board meeting on December 16, 2023. (T-3 at 62–63.)

² Although there was a November 16, 2023, board meeting, the agenda for that meeting was already set and published. (T-3 at 15.)

The March 7, 2024, HIB Investigation

On March 8, 2024, M.S.'s parents reported that students were making comments about M.S.'s "bald spots and hairline." (J-28.) Romero responded via email, and Vasquez called M.S.'s father to inform him that a HIB investigation had begun. (Ibid.)

On March 8, 2024, Schmidt initiated her investigation into the incident. Initially, M.S. was the alleged victim, and M.M. and J.H. were the alleged offenders. Schmidt interviewed M.S., M.E., J.H., M.M., S.P., B.D., J.G.T., S.A., A.R.A., and D.C. Schmidt had each student write their statement, but she added a notation on a few based on the interview. (T-1 at 10–11.)

Before students wrote their statements, Schmidt provided them with an overall summary of the report received by the school and asked the students to state as much information as possible, including who, what, when, where, and why. (T-2 at 12.) Schmidt did not instruct any student on what to write. (T-2 at 13.)

M.S. stated that on March 7, 2024, S.P., J.H., M.M., and a few girls were outside at recess. The school rule requires students to line up in their class line to enter the school. M.S. asked J.H. to go to her class line. The girls got mad, and J.H. refused. During lunch, when M.S. was telling his friend, E.M., what happened, the girls overheard, and then S.P. started making comments about M.S.'s alopecia. S.P. and M.M. said, "your hairline is in the shape of a 'V,' and that's why you have bald spots on the back of your head." (J-2; J-3.) Although M.S. stated that he was asked to help line up students at recess as a member of the safety patrol, Romero stated that safety patrol students only assist at arrival and dismissal.

J.H. stated that another student fell in mud and said about himself, "I have poop on my leg." M.S. said, "you have poop all over yourself." (J-8.) As J.H. walked away, M.S. then said, "See, that's how you get rid of those people." J.H. was irritated and uncomfortable by M.S.'s comment. J.H. responded, "you have bald spots and the back of your head looks like a 'V.'" (Ibid.)

M.M. stated that when lining up for recess, M.S. said, “I don’t want to be in [your] guys mess, so you can move.” (J-9.) At that point, M.M., S.P., and M.S. began arguing. M.S. then commented on M.M.’s skin, saying, “you have mud all over your body and there is poop all over your face.” (Ibid.) M.M. responded, making fun of M.S.’s hairline in a “V.” (Ibid.) M.M. stated that in the lunchroom, M.S. continued to talk about the argument. (Ibid.)

S.P. stated that M.S. was trying to tell J.H. and M.M. to get in line at recess. M.S. said it multiple times because they ignored his request. S.P. said there were comments made between M.S. and the group of girls S.P. was with. S.P. stated that she and her friends were getting upset about M.S.’s comments – they were offensive. S.P. said to M.S., “the back of your head looks like a ‘V.’” (J-10.)

Witness E.M. stated that while lining up at recess, S.P. and M.M. were not in their correct class line. M.S. told them to get in their class line. After he did, S.P. and M.M. began making comments about M.S.’s alopecia. (J-4.) E.M. stated that he or M.S. was not asked to assist students lining up at recess on this day. (Ibid.)

Witness J.G.T. stated that M.S. argued with a few girls during recess. He told M.S. to walk away. J.G.T. heard one of the girls comment on a bald spot on the side of M.S.’s head. (J-11.)

Witness S.A. stated that M.S. and a group of girls were pushing and shoving when lining up after recess. He said M.S. pushed some of the girls and was making fun of the girls’ friends and family. (J-12.)

Witness A.R.A. stated that M.S., M.M., J.H., and S.P. were arguing and pushing each other while coming in from recess but didn’t hear what was being said. (J-13.)

Witness D.C. stated that while he was at the lunch table, M.S. told him that M.M. and S.P. were talking badly about M.S. Some girls overheard M.S. and told him to be quiet. D.C. never heard M.S. say anything about color. (J-14.)

Witness B.D. stated he heard M.S. say something about “their” skin color. (J-15.)

Schmidt completed her investigation and, on March 15, 2024, determined that the HIB was unfounded due to a mutual conflict between the alleged victim, M.S., and the alleged offenders, M.M., J.H., and S.P. (T-1 at 198). Romero agreed with Schmidt’s preliminary findings and assigned the matter to Wilson for review.

On or about March 15, 2024, M.S.’s parents were advised of the preliminary findings. (T-2 at 50.) On the same day, M.S.’s parents contacted Dr. Ravally to discuss the matter. (T-2 at 128.)

After reviewing the preliminary findings, Dr. Ravally decided to refer the matter back to the ABS for further investigation. (T-3 at 61.) The investigation was reopened. (T-2 at 13.) Schmit re-interviewed M.S. (J-3) and newly identified witnesses.³ (T-2 at 14.) Schmidt determined that M.S. experienced a substantial amount of emotional distress as a result of comments made on March 7, 2024. (T-2 at 15.) Schmidt then found the remarks to M.S. constituted an act of HIB by M.M. and S.P. (T-2 at 16.)

Romero or Molina did not attempt to influence or aid Schmidt’s investigation. (T-1 at 177.) Romero, Molina, the BOE, or the administration did not attempt to influence Schmidt’s decision on whether the March 7, 2023, incident constituted an act of HIB. (T-1 at 205–208.) Schmidt was not instructed or advised by anyone in the administration or the BOE to have a specific outcome on the HIB investigation. (T-2 at 14–18.) No one from the BOE or administration attempted to influence Molina regarding the outcome of any HIB investigation. (T-2 at 68–69.) Dr. Ravally never directed the administration or ABS to reach a specific result in the HIB investigation involving M.S. (T-2 at 140–141.)

By letters dated March 21, 2024, respondent informed the parents of M.S., S.P., and M.M. of the results of the HIB investigation related to the incident on March 7, 2023, and their appeal rights.

³ Schmidt could not recall which witnesses were interviewed after the matter was reopened.

After sharing the findings with the families of the alleged victim and alleged offenders, the parent of an alleged offender requested an investigation into the alleged comments made by M.S. concerning their race/skin color. (T-2 at 16; T-2 at 89; T-3 at 28; J-6 at 10.) The request for a HIB investigation was documented in the HIBster log, but it does not identify that a parent requested the investigation. It states that the “District/School recommendation for HIB investigation as a follow-up.” (J-6 at 1.)

On or about March 27, 2024, the HIB investigation was initiated regarding M.S.’s comments towards J.H. and M.M. (J-25 at 1.) Peters was assigned to perform the second investigation into the March 7, 2024, incident. (T-2 at 59.) The alleged victims in this investigation were M.M. and J.H., and the alleged offender was M.S. (T-1 at 65.) Peters began her investigation by reviewing the executive summary from the initial investigation. (J-6 at 771–772.) In the summary, M.S. allegedly said, “it looks like you are covered in poop,” which M.M. and J.H. understood as an insultation about the color of their skin. (J-6 at 772.) Peters next reviewed the statements from Schmidt’s investigation and on March 27, 2024, reinterviewed the alleged victims, J.H. and M.M., the alleged offender, M.S., and witnesses, S.P., P.B., E.M., J.G.T., S.A., A.R.A., D.C., and B.D. (T-1 at 89–90; J-6 at 2–3.) During her interviews, Peters read each student’s previous statement to them to confirm its accuracy, asked questions specific to the HIB allegation against M.S., and recorded any additional comments made by the student. (T-1 at 139–143.) Schmidt attended these interviews as an observer only. (T-2 at 17.)

During Peters’ interview with M.S., he stated that J.H. was not in her class line, so M.S., after waiting two minutes, asked her to move to her correct line. (J-18.) J.H. refused to move. J.H. and her friends were in line behind M.S. Once in the cafeteria, M.S. told his friend E.M. about how J.H. and her friends were cutting lines and not following the rules. (Ibid.) S.P., M.M., and J.H. overheard M.S. speaking with E.M. and told M.S. to shut up. M.S. responded, “no.” S.P. then said to M.S., “That’s why you have a bald spot in the back of your head,” and “your hairline is in the shape of a ‘V.’” (Ibid.) M.S. stated he did not make any comments about J.H. having poop all over her body or to M.M. about poop. He denied making any comments about poop. (Ibid.)

Peters interviewed J.H., who said that as she, M.M., and S.P. walked away, M.S. said, “see how you get those people away.” (J-16.)

Peters interviewed M.M., who repeated almost verbatim what she said in her initial interview. (J-17.)

Peters interviewed the witness, E.M., who stated that M.M. and S.P.’s friend, J.H., was in the wrong line. M.S. told J.H. to go to her line. J.H. was angry that M.S. was trying to tell her what to do, so J.H. started making comments about M.S.’s bald spots. (J-5.) E.M. heard J.H. say, “You can’t be talking with that bald spot.” (Ibid.) E.M. stated that he or M.S. was not asked to help line up people during recess that day, although they had been asked in the past. E.M. stated that he thought he had heard someone mention something about poop, but he did not remember. (Ibid.) E.M. admitted that he has serious hearing problems – he thought he heard it, but he wasn’t sure. (Ibid.)

Peters interviewed the witness, S.P., who stated that M.S. said to J.H. and M.M., “it looks like you have poop all over your skin and body.” J.H. and M.M. got upset from this comment. (J-19.)

Peters interviewed the witness, J.G.T., who stated that she didn’t recall hearing any comments about poop. (J-21.)

Peters interviewed the witness, S.A., who stated she heard M.S. say one of the students had poop all over their pants, but she did not hear any other comments about poop and their skin. (J-22.)

Peters interviewed the witness, D.C., who stated that during recess, he fell in the mud. M.S. was telling everyone to line up after recess; he specifically told M.M. and S.P. D.C. stated that M.S. is bossy. (J-24.) He did not remember hearing anyone comment about poop or M.S.’s hair. (Ibid.)

Peters interviewed the witness, B.D., who stated that M.S., M.M., and J.H. were engaged in an argument. He heard M.S. say, “when I close my eyes, I see you,” meaning pitch black. J.H. then said something about M.S.’s bald spot. (J-20.)

Peters reviewed the video from the school cameras. (J-7.) Peters saw students gathering at the end of the recess line, but because the students were all grouped, she couldn't see if they were pushing or shoving. (T-1 at 70, 72.)

Peters recorded her investigation into the HIBster log. Any changes to the HIBster log would be reflected in the log, including corrections of typographical errors. (T-1 at 138.) Peters’ investigation was based on the law, not a victim’s race or skin color. (T-1 at 147.) Peters’ race did not influence her determination in the HIB case against M.S. (Ibid.)

Based on her investigation, Peters found that M.S.’s comments were race-motivated and used to embarrass and/or cause emotional harm to students, as evidenced by witness statements denoting “poop” as a skin color and “when I close my eyes, I see you (the dark).” (J-6 at 771.) Peters determined that the act of HIB had occurred based on the information collected in the investigation. (Ibid.)

On April 3, 2024, Peters assigned her preliminary findings to Romero. On the same day, Romero reviewed and approved Peters’ initial findings and forwarded them to Wilson for review. (J-6 at 865–866.)

During his review, Wilson watched the video of March 7, 2024. The camera was too far away to capture exactly what was happening, but there was some commotion. (T-3 at 37.) Wilson did not direct anyone to reach a particular conclusion. (T-3 at 66.) Wilson did not find anything unusual in this investigation. (T-3 at 67.) Wilson agreed with the decision. (T-3 at 39.) On April 25, 2024, the BOE affirmed the report of the incident as HIB, and petitioners were notified on April 26, 2024. (R-4.)

DISCUSSION AND CONCLUSIONS OF LAW

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(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(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(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(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). 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, petitioners 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., 2008 N.J. AGEN LEXIS 67 (February 6, 2008) (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581 (1966)).

Petitioners challenge two separate determinations of respondent.

The October 30, 2023, HIB Investigation

Petitioners challenge respondent's determination that on October 30, 2023, A.M. and K.A. did not commit an act of HIB against M.S. Petitioners raise three procedural defects. First, petitioners allege that the school principal, Romero, rather than the ABS, should have contacted petitioners after they reported the incident to M.S.'s teacher the preceding day. While the Act does state that the principal must inform the parents of all students involved in the alleged incident, this is not always reasonable in light of the strict HIB timeline. Additionally, the Act permits a principal to designate someone to initiate the investigation. N.J.S.A. 18A:37-15(b)(6). One can infer that a principal may appoint someone to contact the parents, especially in cases like this, when the parents were the ones who reported the incident to the school. Moreover, Wilson affirmed that the principal, vice principal, or ABS is permitted to make initial contact with the parents at the start of a HIB investigation. In this case, the evidence establishes that Schmidt, as Romero's designee, contacted petitioners within one day of when the incident was reported.

Petitioners next allege that respondent failed to complete the investigation within ten school days from the date of the incident report. This is incorrect. The evidence presented establishes that the investigation was completed within ten days. The HIB investigation was opened on October 31, 2023. There were four school days that week in which to investigate (Oct. 31, Nov. 1, Nov. 2, and Nov. 3). The following week, Elizabeth School was closed for the New Jersey Education Association Convention on November 9 and 10, 2023, leaving only November 6, 7, and 8, 2023, to investigate. (R-1 at 1-2.) The investigation continued the following week and was completed on November

15, 2023.⁴ Counting the school days available for the investigation, respondent completed it within ten days.⁵

Third, petitioners allege that respondent violated the Act by failing to place the HIB on the November 16, 2023, agenda of the Board meeting. In this case, the investigation was completed on November 15, 2023. A Board meeting was scheduled for December 16, 2023; however, the meeting's agenda had already been set and published. (*Ibid.*) Therefore, respondent placed the HIB on the agenda of the December Board meeting. (T-3 at 62–63.) Understanding the Act requires the results of a HIB investigation to be reported to the BOE no later than the date of the board meeting immediately following the completion of the investigation; this may not be practicable in every case, as in this instance. Because the November 16, 2023, board meeting agenda was set and published, respondent correctly added the HIB to the next board meeting.

Even arguendo, that respondent failed to follow the ABR to the letter, these procedural defects do not amount to a violation of petitioners' due process rights. Petitioners were contacted by Schmit, the ABS, the day after the incident was reported. The investigation was completed in ten days, and the Board heard the HIB matter at its December 2023 meeting. Thus, whatever procedural irregularities occurred in this matter were cured. Therefore, I **CONCLUDE** that respondent's actions in response to the HIB reporting complied with the Act.

As to the substantive issues, petitioners make unsupported allegations that respondent's decision in this matter was influenced because A.M.'s mother works for the school district. Not only did petitioners fail to produce any evidence of the alleged bias, but Schmidt and Wilson both testified that it did not influence their HIB investigations. Therefore, I **CONCLUDE** that the HIB finding in the October 30, 2023, incident was not influenced by or biased in any way.

⁴ Wilson testified that the investigation was completed one day before the scheduled Board meeting on December 16, 2023. (T-3 at 62–63.)

⁵ Wilson testified that the investigation is not deemed completed until he completes his review and the summary report is done. (T-2 at 120.)

Finally, petitioners allege that respondent erred in its determination that the October 30, 2023, incident did not constitute HIB because it was unsubstantiated. I disagree.

Schmit conducted a thorough and prompt investigation. After interviewing M.S., A.M., K.M., and B.D., no one was able to confirm who made the alleged comment about M.S.'s hair. M.S. himself did not identify who commented. In his statement, he stated, "a group of students that comment on my alopecia." (J-1.) It was Schmidt who indicated A.M. and K.M.'s names on the statement after asking M.S. clarifying questions during the interview. K.M. denied A.M.'s allegation that K.M. made the comment to M.S., and neither M.S. nor B.D. could corroborate it. In addition, although petitioners argued that E.M. was interviewed and Schmidt failed to include this information, E.M. testified that he was not interviewed. (T-1 at 48.) Based on her investigation, she concluded that the HIB allegation could not be substantiated regarding the identity of the commenter, thus finding the HIB unfounded. Because the alleged incident could not be substantiated, I **CONCLUDE** that the action of respondent in determining that the October 30, 2023, incident did not constitute HIB was not arbitrary, capricious, or unreasonable.

The March 7, 2024, HIB Investigation

Petitioners challenge respondent's determination that on March 7, 2024, M.S. committed an act of HIB by making comments regarding students' race. Petitioners first allege that respondent acted arbitrarily, capriciously, and unreasonably in finding M.S. in violation of HIB because respondent initiated the investigation in retaliation. In support of their allegation, petitioners' only evidence is that the HIBster log states the "District/School recommendation for HIB investigation as a follow-up." (J-6 at 1.) Based on the HIBster log, petitioners infer that respondent alone decided to open the HIB investigation against M.S. in retaliation.

Respondent contends that the parent of one of the alleged offenders requested the HIB investigation against M.S. Although they did not know why the HIBster log stated, District/School recommendation for HIB investigation as a follow-up, Wilson, Schmidt, Romero, Wilson and Dr. Ravally all testified that it was a parent who requested the HIB

investigation against M.S. (T-1 at 199; T-2 at 16, 52–53, 89, 90, 92, 139; T-3 at 27–28.) Based on the evidence presented, I **CONCLUDE** that petitioners failed to establish that respondent requested the HIB investigation against M.S. in retaliation.

Petitioners make unsupported allegations that the March 7, 2024, HIB investigation conducted by Peters was racially biased. Petitioners failed to produce any evidence of this bias, and Peters testified that her investigation was based on the law, not on a victim's race or skin color. Accordingly, I **CONCLUDE** that the March 7, 2024, investigation conducted by Peters was not racially biased.

Petitioners next contend that respondent acted arbitrarily, capriciously, and unreasonably in finding M.S. in violation of HIB because 1) the alleged victims could not be identified; and 2) witnesses did not provide the exact wording of M.S.'s alleged statements. I disagree that M.S.'s statements didn't meet the requirements of the Act.

Regarding the first element, in defining 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, "the statute requires an analysis of how the actor's motivation is perceived and whether that perception is reasonable[;] [i]t does not require an analysis of the actual motivation of the actor." See, R.H. and M.H. o/b/o A.H. v. Sayreville Bd. of Educ., EDU 09435-17 and EDU 14833-17 (consolidated), Comm'r, (September 23, 2021), <https://www.nj.gov/education/legal/commissioner/2021/198-21.pdf>. Here, it was not arbitrary, capricious, or unreasonable for the Board to conclude that a reasonable person would consider M.S.'s statements to be motivated by race.⁶ The fact that student statements were not identical in verbiage does not negate the fact that all comments were regarding color and race.

Regarding the second element, there is ample evidence in the record that M.S.'s comments caused a substantial disruption to or interference with "the orderly operation

⁶ M.S.'s comments include, among others, that the target students "it looks like you are covered in poop"; "you have poop all over yourself"; "you have mud all over your body and there is poop all over your face"; and "when I close my eyes, I see you." (J-8; J-9; J-19; J-20.)

of the school or the rights of other students[.]” J.H. was irritated and uncomfortable by M.S.’s comment. S.P. stated that she and her friends were getting upset about M.S.’s remarks – they were offensive. M.M. stated she was trying to move away from the arguing. Accordingly, given this evidence, the Board was not arbitrary, capricious, or unreasonable in finding a substantial disruption to the school environment and the rights of multiple students.

Regarding the third element, an act of HIB is one that “a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student,” “has the effect of insulting or demeaning any student or group of students,” or “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. M.S.’s comments had the “effect of insulting or demeaning” not only J.H. and M.M., but also any other Black students who heard his comments. In short, given this evidence, the Board was not arbitrary, capricious, or unreasonable in finding that M.S.’s conduct satisfied N.J.S.A. 18A:37-14(b) and (c). Therefore, I **CONCLUDE** that petitioners failed to sustain their burden of establishing that the Board acted in an arbitrary, capricious, or unreasonable manner in finding that M.S. committed an act of HIB.

Lastly, petitioners allege that respondent acted arbitrarily, capriciously, and unreasonably in utilizing a designated Safety and Security Committee to review the HIB investigation against M.S. I disagree.

In J.L. o/b/o A.L. v. Bd. of Educ. of the Bridgewater-Raritan Reg’l Sch. Dist., Somerset Cnty., EDU 11604-15, Comm’r (December 9, 2016) <https://www.nj.gov/education/legal/commissioner/2016/dec/416-16.pdf>, (The Commissioner determined that the Board’s use of a HIB committee to fulfill its responsibility for reviewing the investigative report was permissible under the Act.) Also, in J.M. o/b/o T.M. v. Bd. of Educ. of the Town of Tinton Falls, Monmouth Cnty., EDU 1131-14, Comm’r (April 2, 2025), <https://www.nj.gov/education/legal/commissioner/2015/apr/124-15R.pdf>, a subcommittee was designated and utilized to review the HIB investigation.

Here, the HIB investigation was reviewed by the Safety and Security Committee. Wilson testified that the Safety and Security Committee is respondent's designated subcommittee responsible for reviewing HIB investigations. (T-3 at 19–20.) Accordingly, I **CONCLUDE** that petitioners failed to establish that respondent acted arbitrarily, capriciously, and unreasonably in utilizing a designated Safety and Security Committee to review the HIB investigation against M.S.

ORDER

Following my conclusions above, I **ORDER** that the Petitions of Appeals filed under OAL Docket No. 05949-24 and OAL Docket No. 11772-24 be and hereby are **DISMISSED**.

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

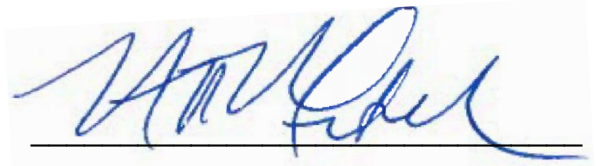
This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five 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**. 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 30, 2025

DATE



NICOLE T. MINUTOLI, ALJ

Date Received at Agency:

Date emailed to Parties:

NTM/tc

APPENDIX

Witnesses

Joint:

Quiyon Peters
Abigail Stanton-Schmidt
Edgar Vasquez Molina
Greg Romero
John Ravally
Orvyl Wilson

For petitioners:

M.S.
E.M.

For respondent:

None

Exhibits

Joint:

J-1 M.S. Handwritten Statement – October 30, 2023, incident
J-2 M.S. Handwritten Statement – March 7, 2024, incident
J-3 M.S. Handwritten Statement – March 7, 2024, incident
J-4 E.M. Handwritten Statement – March 7, 2024, incident
J-5 E.M. Typed Statement – March 7, 2024, incident
J-6 HIBster log – March 7, 2024, incident
J-7 Video of March 7, 2024 incident
J-8 J.H. Handwritten Statement – March 7, 2024, incident
J-9 M.M. Handwritten Statement – March 7, 2024, incident

- J-10 S.P. Handwritten Statement – March 7, 2024, incident
- J-11 J.G.T. Handwritten Statement – March 7, 2024, incident
- J-12 S.A. Handwritten Statement – March 7, 2024, incident
- J-13 A.R.A. Handwritten Statement – March 7, 2024, incident
- J-14 D.C. Handwritten Statement – March 7, 2024, incident
- J-15 B.D. Handwritten Statement – March 7, 2024, incident
- J-16 J.H. Typed Statement – March 7, 2024, incident
- J-17 M.M. Typed Statement – March 7, 2024, incident
- J-18 M.S. Typed Statement – March 7, 2024, incident
- J-19 S.P. Typed Statement – March 7, 2024, incident
- J-20 B.D. Typed Statement – March 7, 2024, incident
- J-21 J.G.T. Typed Statement – March 7, 2024, incident
- J-22 S.A. Typed Statement – March 7, 2024, incident
- J-23 A.R.A. Typed Statement – March 7, 2024, incident
- J-24 D.C. Typed Statement – March 7, 2024, incident
- J-25 HIBster log – October 30, 2023, incident
- J-26 Answers to Interrogatories
- J-27 A.M. Typed Statement – October 30, 2023, incident
- J-28 Emails between J.S. and Romero relating to the March 7, 2024, incident
- J-29 Genesis notes
- J-30 K.M. Typed Statement – October 30, 2023, incident
- J-31 B.D. Typed Statement – October 30, 2023, incident
- J-32 Petitioners' Interrogatory Request
- J-33 Response to Interrogatory Request
- J-34 December 22, 2023, letter from Wilson to petitioners regarding the conclusion of the October 30, 2023, HIB investigation
- J-35 Description of the BOE Safety & Security Committee
- J-36 Petitioners' email requesting a hearing for the October 30, 2023, incident
- J-37 Petitioners' email requesting a meeting for the March 7, 2024, incident
- J-38 January 8, 2024, email from petitioners regarding the October 30, 2023, incident
- J-39 January 17, 2024, letter from Dr. Ravally to petitioners regarding the October 30, 2023, incident.

For respondent:

- R-1 Affidavit of Dr. John Ravally
- R-2 March 21, 2024, letter from Wilson to S.P.'s parents relating to the March 7, 2024, incident
- R-3 March 21, 2024, letter from Wilson to M.M.'s parents relating to the March 7, 2024, incident
- R-4 April 26, 2024, letter from Brian Bonnano, assistant superintendent, to petitioners relating to the March 7, 2024, incident
- R-5 April 26, 2024, letter from Brian Bonnano, assistant superintendent, to S.P.'s parents relating to the March 7, 2024, incident
- R-6 April 26, 2024, letter from Brian Bonnano, assistant superintendent, to M.M.'s parents relating to the March 7, 2024, incident