

183-26
OAL Dkt. No. EDU 09400-25
Agency Dkt. No. 137-5/25

New Jersey Commissioner of Education

Final Decision

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

Petitioner,

v.

Board of Education of the Township of East
Brunswick, Middlesex 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 his burden of establishing that respondent's harassment, intimidation, and bullying determination 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: May 29, 2026
Date of Mailing: May 29, 2026

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 09400-25

AGENCY DKT. NO. 137-5/25

M.S. ON BEHALF OF MINOR CHILD Z.S.,

Petitioner,

v.

**TOWNSHIP OF EAST BRUNSWICK BOARD OF
EDUCATION, MIDDLESEX COUNTY,**

Respondent.

Jeremy D. Smith, Esq., for petitioner (Vignuolo, Hyman & Stahl, LLC, attorneys)

Janice V. Arellamo, Esq., for respondent (Cleary, Giacobbe, Alfieri, Jacobs, LLC,
attorneys)

Record Closed: February 13, 2026

Decided: March 23, 2026

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

STATEMENT OF THE CASE

M.S. alleged that respondent East Brunswick Board of Education (Board) intentionally engaged in harassment, intimidation, or bullying (HIB) when it played a video at a Board public meeting to retaliate against him for his political affiliations and in

disregard for the individualized education program (IEP) for Z.S. Respondent investigated the incident and concluded that there was no incident of harassment, intimidation, or bullying under the Anti-Bullying Bill of Rights Act (Act), N.J.S.A. 18A:37-13, et seq. Should 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 February 10, 2025, the Board upheld an October 15, 2024, finding that the alleged conduct did not meet the definition of HIB. On May 8, 2025, petitioner M.S., on behalf of minor child Z.S., appealed the Board's decision to the Department of Education (DOE). On May 27, 2025, the Board filed an answer. The DOE transmitted the matter to the Office of Administrative Law (OAL), where it was filed on May 29, 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.

On October 20, 2025, I held a prehearing conference call, at which time respondent requested leave to file a motion for summary decision. On or about October 29, 2025, respondent filed its motion for summary decision, contending that the statutory definition of HIB had not been met. On or about January 29, 2026, another conference call was held. On February 5, 2026, petitioner filed an opposition to respondent's motion for summary decision. On February 13, 2026, respondent filed its reply brief.

DISCUSSION AND FINDINGS OF FACT

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

Z.S. is an East Brunswick public school student classified as eligible for special education and related services.¹

On September 26, 2024, the Board held a public meeting and hosted a presentation entitled “School Bus Safety: A Guide for Parents and the General Public.”² Resp’t’s Br. Ex. A. During this presentation, a video clip from February 2022 was played. This 2022 recording showed a white vehicle, driven by petitioner M.S., parent of Z.S., driving from out of frame, cutting off and blocking the path of a school bus as the bus stopped to pick up a child. M.S. exited the white vehicle, approached the bus, and confronted the bus driver. Meanwhile, Z.S., who had been in the vehicle, never appeared in the video, and she was never mentioned by members of the Board during the presentation. The child getting on the bus and M.S.’s face were unrecognizable. The Board did not identify M.S. or Z.S. Resp’t’s Br. Ex. B.

On October 2, 2024, M.S. filed a HIB complaint, alleging that his children, Z.S. and H.S., were targets of HIB behavior. Resp’t’s Br. Ex. C. An anti-bullying specialist (ABS) was assigned to investigate the complaint. Assistant superintendent Bernardo Giuliana, who is alleged to have been the primary offender in the HIB complaint, was interviewed first. Giuliana stated that the intent of showing the video was to exhibit what they actually deal with, and that precautions were taken to conceal M.S.’s identity. Resp’t’s Br. Ex. D. He mentioned that it was a member of the public who later revealed M.S.’s identity publicly, and when asked if the video was shown because of M.S.’s political affiliations, Giuliana replied, “absolutely not.” Ibid.

Z.S. was interviewed next. She believed that the video was inappropriate, causing stress for her family, yet no other children spoke to her about the video. Ibid. It is unclear how she found out about the Board meeting. Z.S. went on to explain that, despite 2022 being a “hard” year and her belief that the Board embarrassed the family, the school year was going well for her. Ibid.

¹ At the time of the incident, Z.S. was in ninth grade.

² All exhibits discussed in this decision use the lettering system within the Board’s Motion for Summary Decision Brief, rather than the exhibit letters in the Petition of Appeal.

The ABS interviewed assistant superintendent Bernardo Giuliana. Mr. Giuliano recalled the video and stated that M.S. said the bus driver ignored Z.S., who was sitting in his car waiting for the bus. Mr. Giuliano stated that as a result of the incident, M.S. was charged with motor vehicle and criminal charges. He stated that the Board showed the video to the community as a safety video, covering dos and don'ts for parents and the community. Ibid.

The ABS interviewed superintendent Victor Valeski. Dr. Valeski explained that the video was shown by the Board as a public service announcement and to illustrate that the Board takes bus safety very seriously. Ibid.

The ABS interviewed Board president Laurie Lachs. Ms. Lachs reiterated that the video was shown as a public service announcement about bus safety. Although the Board did not identify M.S. in the video, a member of the public spoke during the public comment session and disclosed information about M.S. and Z.S. Ibid.

On or about October 15, 2024, the ABS found that the alleged conduct did not meet the definition of HIB, justifying this in a HIBster report by noting, among other factors, that “[t]here is no evidence to show that the alleged offenders ever targeted any identifiable characteristic(s) of the student . . . [who] did not express any substantial impact that caused disruption to her education . . . [and] the video was used to show the importance of bus safety” Ibid. However, M.S. sought a hearing before the Board on the matter. On January 30, 2025, the Board held a hearing at which M.S. spoke. Resp’t’s Br. Ex. E.

On February 10, 2025, the Board affirmed the ABS’s finding in a letter to M.S. that the alleged conduct did not meet the definition of HIB, reasoning that “[1] HIB requires conduct that is targeted against a student . . . [2] the conduct was not motivated by any distinguishing characteristic . . . [3] there is no substantial disruption to [Z.S.]” Board’s Mot. for Summary Decision, Ex. F. The Board’s decision explains that M.S.’s face was not visible in the recording played publicly, that no student or parent has approached Z.S. about the video or incident, that Z.S. said her school year was going well, and that the alleged HIB offenders denied that the video was to retaliate against M.S. Ibid.

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” 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.]

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 Sewerage 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); G.H. & E.H. ex rel. K.H. v. Bd. of Educ. of the Borough of Franklin Lakes, Initial Decision, 2014 N.J. AGEN LEXIS 19, 20 (February 24, 2014), adopted, 2014 N.J. AGEN LEXIS 1137 (April 10, 2014). Also, a board’s decision may be overturned if its determination violates the legislative policies expressed or implied in the governing act. J.A.H. ex rel. C.H. v. Twp. of Pittsgrove Bd. of Educ., Initial Decision, 2013 N.J. AGEN LEXIS 58, 11 (March 11, 2013), adopted, 2013 N.J. AGEN LEXIS 436 (April 25, 2013).

M.S. challenges respondent’s HIB findings, alleging that this recording was played publicly to retaliate against him “for his support and endorsement of certain candidates who were running for positions on the Board, and that the video was in disregard for Z.S.’s IEP. M.S. does not argue that the Board intended to harass his daughter, Z.S.; instead, he argues that the Board intended to humiliate him. The Act, however, is designed to protect students’ welfare, not their parents’. N.J.S.A. 18A:37-14 requires that a student be subjected to actual emotional or physical harm, be subjected to fear of harm, be insulted or demeaned, or be subjected to a hostile educational environment. However, no conduct is directed toward Z.S. The Board never showed her in the recording nor revealed identifying information about her. Thus, I **CONCLUDE** that M.S. is not a protected person under the Act.³

³ M.S.’s arguments about his political affiliations are altogether irrelevant because he is not protected under the definition of HIB.

As to Z.S., while she, as a student, is protected by the Act, N.J.S.A. 18A:37-14 requires that the alleged HIB conduct be motivated by some distinguishing characteristic that substantially disrupts or interferes with the orderly operation of the school. While Z.S. has an IEP for anxiety, no evidence was presented that the Board's motivation for showing the video was because of Z.S.'s anxiety and/or IEP in any way. The Board used the video to remind parents/community of their responsibilities regarding bus safety. Moreover, no evidence was produced that Z.S. was harmed or that the video substantially interrupted her school environment. The statements made by Z.S. in the HIB investigation, including that no child or parent had discussed the 2022 incident or video with her, unless she brought it up, and that she was doing well in school, establish that Z.S.'s educational setting was not disrupted. In fact, several interviewees were unaware of M.S.'s relationship with Z.S. Therefore, I **CONCLUDE** that the Board's conduct was not motivated by animus towards Z.S.'s special education status.

Based on the above, I **CONCLUDE** that petitioner failed to sustain his burden of establishing that the action of respondent in determining that the September 26, 2024, incident did not constitute HIB was arbitrary, capricious, or unreasonable.

ORDER

Based on the foregoing, it is hereby **ORDERED** that 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.

March 23, 2026 _____

DATE



NICOLE T. MINUTOLI, ALJ

Date Received at Agency:

March 23, 2026 _____

Date Mailed to Parties:

NTM/tc

APPENDIX

Exhibits

For petitioner:

Opposition to Respondent's Motion for Summary Decision

For respondent:

Motion for Summary Decision and Reply to Petitioner's Opposition