

New Jersey Commissioner of Education
Final Decision

E.H. and C.H., on behalf of minor child, M.H.,

Petitioners,

v.

Board of Education of the Borough of Kinnelon,
Morris County,

Respondent.

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

This matter involves petitioners' challenge to the Board's determination that their minor child, M.H., committed harassment, intimidation, or bullying (HIB). On March 20, 2024, the alleged victim (A.V.)'s mother emailed a school counselor to request a check-in with her child due to alleged ongoing harassment by A.V.'s classmate and former boyfriend, M.H. The Board commenced an HIB investigation later that day and interviewed A.V., M.H., nine students, and five teachers. The Incident Report/Investigation Form (Investigation Form) notes that a school counselor and Student Assistant Coordinator (SAC) met with A.V., who reported that M.H. "continues to talk badly about her to others, stares at her, and takes pictures of her in class." Joint Exhibit F. A.V. further reported that she "does not want to come to school, feels very

uncomfortable around [M.H.] and feels he is harassing/bullying her in indirect subtle ways that are hard to prove. For example, he will say her name loudly when talking to others,” post things on social media that A.V. knows are directed at her, but will not call her out by name or tag her, and “shows pictures of her to his friends from when they dated, etc.” *Ibid.*

Regarding M.H.’s specific behavior on March 20, 2024, A.V. reported that during their biology class, M.H. started talking about A.V. “hooking up” with his friends. A.V. further reported that M.H.’s behavior continued in their English class, with M.H. saying things like, “It’s crazy how she is saying she got with my friends” while showing classmates something on his phone screen. M.H. then put his phone down on A.V.’s desk and said, “you’re lying about getting with my friends.” Joint Exhibit B. A.V. reported that she felt as though M.H. was trying to publicly humiliate her. *Ibid.*

During his interview, M.H. admitted to speaking with his friend about A.V. during class but denied doing so for A.V. to overhear. M.H. also denied leaving his phone on A.V.’s desk for her to see. Although M.H. denied A.V.’s allegations and accused her of causing the issues between them, the consensus from the witness interviews was that M.H. did things to antagonize A.V. Reported behaviors by M.H. included loudly accusing A.V. during class of engaging in sexual activity or “hooking up” with his friends, speaking badly about A.V. to others within her earshot so that she could hear him, taking pictures of A.V. during class, showing pictures of A.V. to male classmates, and spreading lies intended to turn peers against A.V. The interview notes also mentioned that this was not the first time A.V. had reported problems with M.H. or that M.H. had been disciplined for his behavior towards A.V. Some witnesses noted that they had observed A.V. and M.H. stare at each other during class.

The Anti-Bullying Specialist (ABS) summarized the investigation's findings in the Investigation Form, which stated the following:

Today, it was reported that the named offender came across the classroom to [A.V's] English table and began showing his phone to other students while saying "I can't believe you are lying about hooking up with my friends." This comment was not said directly to the named victim but in front of her and loud enough for her to hear. When speaking with students in the class, it was corroborated that this occurred and upset the named victim. It was also corroborated that he was showing them pictures of the named victim as well from his camera roll.

When speaking with a witness, it was corroborated that they too believed the named offender had taken pictures of the named victim in class. This witness reported that the phone is discretely [*sic*] placed at the offender's side and because they sit behind him in the back of the classroom, they can see the phone and both of them on the screen when he takes the photo. It was reported that [he] does this at least 1-2 times a week.

When speaking with another witness it was reported that the named offender told lies in an attempt to turn them against the named victim and stop being her friend. This was corroborated by a second witness who observed the named offender telling a different student that the named victim was "shit talking them" trying to make her look bad and turn others against her.

Through this investigation, it is determined that the behaviors carried out by the named offender are harassing in nature with the purpose of harming/ to upset the named victim. It does meet the criteria for an HIB as it is motivated by an actual characteristic of gender and other distinguishing characteristic as the victim was a target due to a former relationship with the offender.

Joint Exhibit F.

On June 10, 2024, the Board notified petitioners that it had approved the findings and recommendation of the investigator and the Superintendent. On September 9, 2024, petitioners appealed the determination to the Commissioner of Education, and on September 13, 2024, the Board filed a response. The matter was transmitted to the OAL on September 16, 2024; there, the ALJ granted petitioners' cross-motion for summary decision upon concluding that the Board's HIB determination was arbitrary, capricious, and unreasonable.

In reaching his determination, the ALJ found that M.H.'s conduct satisfied each prong of the Anti-Bullying Bill of Rights Act (Act) except for the requirement that the conduct at issue must be reasonably perceived as being motivated by any actual or perceived characteristic. First, the ALJ rejected the Board's finding that M.H.'s behavior was motivated by A.V.'s gender, stating that "[c]onsidering both the law and the totality of the circumstances . . . no reasonable person could conclude that M.H.'s actions were motivated by A.V.'s gender and not her status as his ex-romantic partner." Initial Decision at 22. According to the ALJ, it was "obvious from the investigation . . . that A.V.'s status as a female is purely incidental to her status as M.H.'s ex-girlfriend." *Id.* at 20. Next, the ALJ acknowledged that the Board had identified A.V.'s former relationship with M.H. as another characteristic motivating M.H.'s conduct. The ALJ concluded, however, that a breakdown in a relationship between two students is peer conflict, and therefore does not constitute a distinguishing characteristic under the Act. Accordingly, the ALJ overturned the Board's HIB determination.

In its exceptions, the Board contends that the ALJ erred in concluding, as a matter of law, that misconduct by a male student against his former girlfriend cannot be motivated by gender merely because the parties previously dated. In so doing, the Board contends that the Initial Decision treats "former romantic partner" and "gender" as mutually exclusive categories when they are not. The Board argues that M.H. targeted A.V. "specifically as [his] former *girlfriend*. The relational status itself is gendered. A male student retaliating against a former female dating partner through humiliation, monitoring, sexualized accusations, and reputational attacks may reasonably be perceived as acting because she is female and because of the gendered nature of their prior relationship." Exceptions at 2 (emphasis in original). The Board further argues that

the first prong of the Act is intentionally expansive, allowing for mixed motives. Nonetheless, even if the prong was construed more narrowly, the Board asserts that it reasonably concluded that A.V.'s gender was a motivating characteristic, and that, at minimum, this conclusion cannot be deemed arbitrary. The Board emphasizes that the ALJ substituted his own judgment for that of the Board, in contravention of the law, when he concluded that "no reasonable person could conclude that gender was a motivator." Lastly, the Board argues that it reasonably viewed A.V.'s status as M.H.'s former intimate partner as a distinguishing characteristic.

In reply, petitioners maintain that the Board's decision is factually and legally unsupported and therefore arbitrary, capricious, and unreasonable. They argue that the ALJ was correct in determining that M.H.'s conduct was motivated by an ongoing dispute following a breakup and not by A.V.'s gender or other distinguishing characteristics. Citing case law, petitioners contend that even if the conduct at issue causes physical, social, or psychological harm, there can be no HIB finding absent an actual or perceived distinguishing characteristic of the alleged victim. Petitioners further contend that the Board's argument that A.V. was targeted because she was M.H.'s former girlfriend and that the relational status itself is gendered "conflates (1) the identity of the person at whom conduct is directed with (2) the statutory requirement that the conduct be reasonably perceived as motivated by a distinguishing characteristic." Reply Exceptions at 11. Specifically, petitioners argue that merely identifying that a student possesses a characteristic such as gender does not satisfy the Act absent a showing that the conduct occurred because of the characteristic.

The Act defines HIB 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.

In summary, once the alleged written, verbal, or physical act, or electronic communication is substantiated, a finding of HIB requires that three elements under the Act be satisfied. First, the conduct must be reasonably perceived as being motivated by any actual or perceived characteristic expressly identified in the statute, or by any other distinguishing characteristic. *Ibid.* Second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. *Ibid.* Third, one of the three conditions set forth in subsections (a), (b), and (c) must be satisfied. *Ibid.*; *Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex Cnty.*, Commissioner Decision No. 510-20 (Feb. 4, 2020).

Upon a comprehensive review of the record, the Commissioner rejects the ALJ's conclusion that petitioners established that the Board's HIB determination was arbitrary, capricious, or unreasonable. As an initial matter, the Commissioner holds that the ALJ improperly

substituted his own judgment for that of the Board when he determined that “no reasonable person could conclude that M.H.’s actions were motivated by A.V.’s gender and not her status as his ex-romantic partner.” Initial Decision at 22. It is well-established that 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. W. Orange Bd. of Educ.*, 60 N.J. Super. 288, 294 (App. Div. 1960). Regarding HIB determinations, this standard of review requires petitioners 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 Cty.*, OAL Dkt. No. EDU 13204-13, Initial Decision (Feb. 24, 2014), adopted, Commissioner Decision No. 157-14 (Apr. 10, 2014). The Commissioner may not substitute her judgment for that of the Board. *Schinck v. Bd. of Educ. of Westwood Consol. Sch. Dist.*, 60 N.J. Super. 448, 476 (App. Div. 1960).

In this case, district staff conducted a thorough HIB investigation and interviewed A.V., M.H., nine student witnesses, and five teacher witnesses. Notes from these interviews indicate that M.H.: 1) loudly accused A.V., during class, of engaging in sexual activity; 2) displayed photos of A.V. to his male peers; 3) spoke loudly about A.V. to his friends so that she could overhear him; 4) spread rumors about A.V. to socially isolate her; and 5) photographed A.V. during class without her consent, with one witness reporting that M.H. engages in such behavior at least 1-2 times per week. Notably, A.V. and M.H.’s English teacher reported that sometimes M.H. and a group of boys would look at A.V. and laugh. It was entirely reasonable for the Board to conclude that a reasonable person would consider M.H.’s conduct of spreading sexual rumors about A.V.,

publicly discussing her alleged sexual behavior, displaying images of her to their peers, regularly photographing her discreetly, and attempting to isolate her by speaking negatively about her with peers, to be motivated by A.V.'s gender. Furthermore, the Commissioner cannot find that it has been demonstrated that the Board's handling of this matter was carried out in a manner that was in bad faith, or in utter disregard of the circumstances. The Commissioner notes that the ALJ's mere disagreement with the Board's finding as to the motivating characteristic does not equate to an abuse of discretion on the part of the Board. Rather, "where 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). By overlooking the Board's properly supported finding that A.V.'s gender was a motivating characteristic, the ALJ failed to afford the Board's decision the proper deference. *See Kopera* at 294. The Commissioner therefore declines to adopt the ALJ's findings and conclusions in that regard.

Turning to petitioners' reply exceptions, the Commissioner notes that petitioners are correct that misconduct motivated *only* by a breakdown in a relationship between two students does not constitute a distinguishing characteristic under the Act. *See K.L. v. Evesham Twp. Bd. of Educ.*, 423 N.J. Super. 337, 351 ("[H]armful or demeaning conduct motivated only by another reason, for example, a dispute about relationships ... or aggressive conduct without identifiable motivation, does not come within the statutory definition of bullying."). As such, the fact that A.V. and M.H. formerly dated cannot by itself qualify as a distinguishing characteristic. However,

the Board reasonably concluded that M.H.'s behavior was motivated by A.V.'s gender as well; as such, the first prong of the HIB analysis has been met.

As to the second element in the Act, the Commissioner concurs with the ALJ that it was not arbitrary, capricious, or unreasonable for the Board to find that M.H.'s conduct substantially disrupted or interfered with the orderly operation of the school or the rights of other students. Here, the record indicates that M.H.'s conduct disrupted A.V.'s learning experience. A.V. and M.H. had four classes together at the time of the investigation. Interview notes from A.V. and M.H.'s science teacher indicate that A.V. would vent to her, seeking assistance on how to deal with being uncomfortable around M.H. This teacher also noticed a developing paranoia in A.V. Another teacher witness noted that A.V.'s facial expressions and body language suggested that she was uncomfortable by M.H.'s presence. M.H. reported feeling embarrassed, humiliated, and very upset when M.H. loudly accused her of engaging in sexual behavior during class, causing her to report the behavior to her mother. A student witness reported that a group of male peers were looking at A.V. while M.V. appeared to be showing them photos, causing her to begin crying. The witness did not know what was shown on the phone but believed that M.H. wanted A.V. to think it was about her. "Upset and embarrassed students are not fully available for learning." *G.H. o/b/o K.H. v. Bd. of Educ. of Franklin Lakes*, Initial Decision, OAL Dkt. No. EDU 13204-13 (Feb. 24, 2014), *aff'd*, Commissioner Decision No. 157-14 (Apr. 10, 2014). In addition, interview notes indicate that M.H.'s conduct affected the learning of other students. For example, a student witness reported that M.H. took photos of A.V. during class at least 1-2 times a week and that because she and A.V. sit near each and behind M.H, her image was in the photos as well, prompting her to confront M.H.

As to the third element, the Commissioner agrees with the ALJ that it was not arbitrary, capricious, or unreasonable for the Board to find that a reasonable person should know, under the circumstances, that M.H.'s actions would have the effect of emotionally harming A.V. For all these reasons, petitioners have failed to satisfy their burden of demonstrating that the Board acted arbitrarily, capriciously, or unreasonably when it determined that M.H. committed an act of HIB. Nor have petitioners demonstrated that the Board acted in bad faith or in utter disregard of the circumstances before it.

Accordingly, the Initial Decision is adopted in part and rejected in part. The Board's determination that M.H. committed an act of HIB is affirmed.

IT IS SO ORDERED.¹


COMMISSIONER OF EDUCATION

Date of Decision: July 27, 2026
Date of Mailing: July 27, 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 13237-24

AGENCY DKT NO. 297-9/24

**E.H. AND C.H., ON BEHALF OF MINOR
CHILD, M.H.,**

Petitioners,

v.

**BOROUGH OF KINNELON BOARD OF
EDUCATION, MORRIS COUNTY,**

Respondent.

Karen P. Edler, Esq., Jacqueline E. Lasher, Esq. and Rebecca Lundgren,
Esq. for petitioners (Price, Meese, Shulman & D'Arminio, P.C., attorneys)

Jeffrey R. Merlino, Esq., for respondent (Methfessel & Werbel, P.C., attorneys)

Record Closed: April 13, 2026

Decided: April 28, 2026

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

STATEMENT OF THE CASE

Petitioners E.H. and C.H., the parents of minor child M.H., have challenged the determination made by the respondent, the Kinnelon Board of Education, Morris County

(respondent or District), that M.H. committed an act of harassment, intimidation, and bullying (HIB) against a classmate that was reported by the alleged victim's parent on March 20, 2024, pursuant to a complaint that was brought per N.J.S.A. 18A:37-13.2 to -37 (the Anti-Bullying Bill of Rights Act).

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

The HIB complaint arises out of a series of incidents that occurred involving M.H. and his ex-girlfriend, A.V.¹

The district was contacted by A.V.'s mother on March 20, 2024 and an HIB investigation was instituted that day. On or about March 25, 2024, the District advised the petitioners that the investigation had been instituted, and their son may have committed an act of harassment, intimidation, or bullying. The investigation was completed on April 11, 2024, and it was determined that M.H. had committed an HIB violation. The matter was presented to the Board of Education on April 25, 2024, where it was accepted on first reading.

By letter dated April 26, 2024, the petitioners were advised of that acceptance. The Superintendent's recommendation that the HIB finding be confirmed was accepted by the Board during its May 21, 2024, meeting. That finding was conveyed to the petitioners by letter on June 10, 2024.

On September 9, 2024, this appeal was filed with the Department of Education's Office of Controversies and Disputes. Respondent filed an answer to the appeal on September 13, 2024, and the Department transmitted this matter to the Office of Administrative Law (OAL) on September 16, 2024, for a hearing as a contested case. N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

An initial conference took place on October 23, 2024, followed by another conference on November 20, 2024. Following a conference on January 2, 2025, during

¹ A.V. – alleged victim

a February 4, 2025 conference, a briefing schedule for Cross-Motions for Summary Decision was set.

THE REPORT

This is the type of HIB case where a compendium of incidents led to the filing of the complaint.

The investigation was performed by Danielle Wysocki, an anti-bullying specialist at Kinnelon High School and was completed on April 11, 2024. (J-6.) The substantive content of the report follows.

Incident Description:

On 3/20/24 a parent sent an email to a school counselor asking for a check-in with their child due to ongoing harassment by a classmate. The school counselor and SAC met with the named victim who reported her ex-boyfriend (named offender) continues to talk badly about her to others, stares at her, and takes pictures of her in class. The named victim reported that she does not want to come to school, feels very uncomfortable around the named offender and feels he is harassing/bullying her in indirect, subtle ways that are hard to prove. For example, he will say her name loudly when talking to others, has posted things on social media that she knows are directed at her but isn't tagged or called out by name, shows pictures of her to his friends from when they dated, etc.

Today, it was reported that the named offender came across the classroom to her English table and began showing his phone to other students while saying "I can't believe you are lying about hooking up with my friends." This comment was not said directly to the named victim, but in front of her and loud enough for her to hear. When speaking with students in the class, it was corroborated that this occurred and upset the named victim. It was also corroborated that he was showing them pictures of the name victim as well from his camera roll.

When speaking with a witness, it was corroborated that they too believed the named offender had taken pictures of the named victim while in class. This witness reported that the

phone is (discreetly) placed at the offender's side and because they sit behind him in the back of the classroom, they can see the phone and both of them on the screen when he takes the photo. It was reported that (he) does this at least 1–2 times a week.

When speaking with another witness it was reported that the named offender told lies in an attempt to turn them against the named victim and stop being her friend. This was corroborated by a second witness who observed the named offender telling a different student that the named victim was 'shit talking them' trying to make her look bad and turn others against her.

Through the investigation, it is determined that the behaviors carried out by the name offender are harassing in nature with the purpose of harming/to upset the named victim. It does meet the criteria for an HIB as it is motivated by an actual characteristic of gender and other distinguishing characteristics as the victim was a target due to a former relationship with the offender. This conduct is unacceptable and will be handled through the KHS code of conduct and restorative counseling in the high school.

Both M.H. and A.V. were classified as being eligible for and receiving special education services.

Supporting the investigation were notes of interviews that were conducted with both A.V. and M.H., five teachers and nine students. (J-B.) Rather than summarizing the multiple interviews, I would note that there was a general consensus amongst the non-involved witnesses as to basic facts of interactions between the parties (which is summarized below).

As for the interviews with M.H. and A.V., he effectively denied everything and claimed that A.V. was the one causing the issues, while she claimed the opposite. In assessing the interviews, there were clear credibility problems on both sides. Frankly, M.H.'s blanket defenses were contrary to every independent witness interview, while A.V. told one teacher she "didn't know" whether she followed M.H. on Instagram but asked another teacher if she should "like" his Instagram posts. She also advised the investigator that "(a)bout a week ago there was a post on tic tok (sic) that (M.H.) had on

his account that said, ‘Glad we aren’t talking anymore because I can’t stand that horrific smell’ insinuating that she smells bad.” She claimed not to have seen that post, but “her friend did.”

BASIC UNDISPUTED FACTS

Based upon the evidence supplied by the parties, the investigative report and the interviews, I **FIND** that the following **FACTS** are largely undisputed.

1. During the 2023–24 school year, both M.H. and A.V. were freshmen at Kinnelon High School.
2. At some point in 2023, M.H. and A.V. were in a dating/romantic relationship.
3. That relationship ended around Thanksgiving 2023.
4. During the 2023–24 school year, they shared four classes.
5. M.H. would do things to antagonize A.V. and speak badly about her to others (sometimes within her earshot) but would rarely speak to her directly.
6. M.H. demonstrated by his actions and statements to others that he was not “over” A.V. and that the problem was exacerbated when he thought she had started dating someone else.
7. M.H. was clearly the antagonist, but the general consensus amongst those interviewed was that A.V. contributed, even unintentionally, to the drama between them by doing such things as staring at him during class and continuing to follow him on Instagram.
8. This was not the first time that M.H. had been disciplined/admonished for his actions toward A.V. following the break-up.

9. Their teachers were aware of the situation and took steps to limit their interactions.
10. Their peer groups were acutely aware of the ongoing situation.

THE MOTIONS

The parties have filed Cross-Motions for Summary Decision, arguing that there are no material facts in dispute that would permit the petitioners to demonstrate that the district's finding of an HIB violation against M.H. was arbitrary, capricious or unreasonable, or on the other hand, that would support the district's finding.

Respondent Motion

Perhaps most importantly, respondent points out that a District "is entitled to a presumption of correctness" and that without "an affirmative showing that such decision was arbitrary, capricious and unreasonable," it must prevail. Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). See also Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960).

It was argued that there is clear evidence that a thorough investigation was performed in compliance with the District's HIB policy (C-1g) and that the facts satisfy the criteria required under the definition of HIB, as articulated in the statute. N.J.S.A. 18A:37-14. Respondent dismisses the petitioners' contention that this is simply a Code of Conduct issue and M.H. "engaged in a campaign of gaslighting (A.V.)" and that whether some specific evidence was recovered or authenticated is irrelevant to what was a very reasonable conclusion that he had committed an HIB violation.

Given the "egregious nature of M.H.'s conduct; a one-sided, sexually explicit gaslighting campaign," it argues that his behavior "was motivated by his desire to humiliate (A.V.) and make (her) uncomfortable to return to school." This was not a situation, such as the petitioners allege, that is borne out of a routine conflict, but rather

one akin to C.C. o/b/o S.C. v. Jefferson Twp. Bd. of Educ., 2015 N.J. Agen. LEXIS 251 (Mar. 24, 2015), adopted, Comm'r, Agency Dkt. No.: 216-8/14 (May 12, 2015).

Petitioners' Motion

In his opposition/cross-motion, counsel emphasizes that while M.H. may have acted in a manner which violated the District's Code of Conduct, respondent has failed to demonstrate that his behavior met the required elements of the HIB statute and that the decision was arbitrary, capricious and unreasonable and therefore should be overturned.

More specifically, it was argued that "the ongoing conflict between M.H. & (A.V.) is post-relationship drama, not a violation of the Act." Instead, the investigation showed that this was a case of a romantic break-up between young teens who "still had to see each other day in and day out in four (4) academic classes and neither knew how to handle it."

M.H. was struggling to get over (A.V.), and (A.V.) felt uncomfortable around M.H. . . . It is well settled law that when a relationship between two students deteriorates or fails resulting in conflict, or even nasty behavior, such conflict/behavior inherently is not based on a "distinguishing characteristic"; therefore, it is not a violation of the Act.

[Pet. brief at pg. 2.]

In support of this position, petitioners cite cases such as K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337 (App. Div. 2011) and R.A. o/b/o B.A. v. Bd. of Educ. of Twp. of Hamilton, 2016 N.J. Agen LEXIS 284 (May 12, 2016).

In addition to not meeting the "distinguishing characteristic" prong of the HIB statute, it was argued that the district failed to demonstrate "that M.H.'s conduct substantially disrupted or interfered with the orderly operation of the school or the rights of other students." It was noted that the HIB report does not check that box and that the facts demonstrate that while A.V. was upset, she also "continued to attend school and

her classes before, during, and after the conflict,” therefore making her “temporary discomfort and claims of wanting to stay home” insufficient “to rise to the level of substantial disruption or interference.” W.D. & J. v. Bd. of Educ. of Jefferson, 2020 N.J. Super. Unpub. LEXIS 1787 (App. Div. Sept. 29, 2020).

LAW AND ANALYSIS

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

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

[R. 4:46-2(c).]

The New Jersey Supreme Court has modified and clarified the analysis required when considering a motion for summary decision/judgment. In Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995), the Court adopted the summary judgment standard utilized by federal courts:

Under this new standard, a determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. The

“judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” [Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 212 (1986).] . . . If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a “genuine” issue of material fact for purposes of R. 4:46-2. Liberty Lobby, supra, 477 U.S. at 250, 106 S. Ct. at 2511, 91 L. Ed. 2d at 213. The import of our holding is that when the evidence “is so one-sided that one party must prevail as a matter of law,” Liberty Lobby, supra, 477 U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214, the trial court should not hesitate to grant summary judgment.

[Id. at 540.]

The burden is on the moving party to exclude all reasonable doubt as to the existence of any genuine issue of material fact, and all inferences of doubt are drawn against the moving party and in favor of the non-moving party. Saldana v. DiMedio, 275 N.J. Super. 488, 494 (App. Div. 1994). The critical question therefore is “whether the evidence presents a sufficient disagreement to require [a hearing] or whether it is so one-sided that one party must prevail as a matter of law.” Brill, 142 N.J. at 533 (citation omitted). If the non-moving party’s evidence is merely colorable or is not significantly probative, summary judgment should not be denied. See Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998).

An action by a local board of education “is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable.” Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). Our courts have held that “[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.” Bayshore Sewerage Co. v. Dep’t of Env’t Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff’d, 131 N.J. Super. 37 (App. Div. 1974). Thus, in order to prevail, those challenging a decision made by a board of education “must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it.” G.H. & E.H. ex rel. K.H. v. Bd. of Educ. of Franklin Lakes, 2014 N.J. AGEN

LEXIS 19 (Feb. 24, 2014) (citation omitted), adopted, 2014 N.J. AGEN LEXIS 1137 (Apr. 10, 2014). Also, a board's decision may be overturned if its determination violates the legislative policies expressed or implied in the governing act. J.A.H. ex rel. C.H. v. Twp. of Pittsgrove Bd. of Educ., 2013 N.J. AGEN LEXIS 58 (Mar. 11, 2013) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)), adopted, 2013 N.J. AGEN LEXIS 436 (Apr. 25, 2013).²

The Anti-Bullying Act is designed “to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises.” N.J.S.A. 18A:37-13.1(f). Under the Act, “[h]arassment, intimidation or bullying” is defined as:

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

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

² See R.Z. & L.D. ex rel. minor child, L.Z. v. Northern Valley Reg'l High Sch. Dist. Bd. of Educ., 2025 N.J. AGEN LEXIS 78 (Feb. 12, 2025), adopted, Comm'r (Apr. 28, 2025), from which much of this section is borrowed.

by severely or pervasively causing physical or emotional harm to the student.

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

Each school district must adopt a policy that prohibits HIB and provides “a procedure for prompt investigation of reports of violations and complaints.” N.J.S.A. 18A:37-15(b)(6). Once an alleged HIB incident is reported to the school principal, the principal must initiate an investigation within one school day of the report. N.J.S.A. 18A:37-15(b)(6)(a). The investigation shall be conducted by a school anti-bullying specialist, but “[t]he principal may appoint additional personnel who are not school anti-bullying specialists to assist in the investigation.” Ibid. The investigation shall be completed within ten days of the initial HIB complaint. Ibid.

The results of the investigation shall then be quickly reported to the superintendent of schools, who may take certain remedial action. N.J.S.A. 18A:37-15(b)(6)(b). In particular, “the superintendent may decide to provide intervention services, establish training programs to reduce [HIB] and enhance school climate, impose discipline, order counseling as a result of the findings of the investigation, or take or recommend other appropriate action.” Ibid.

At this point, it is important to note that the interplay of sections (a), (b), and (c) of the HIB statute was addressed by the Commissioner in Wehbeh v. Bd. of Educ., Twp. of Verona, 2020 N.J. AGEN LEXIS 50 (Feb. 4, 2020).

[A] finding of [HIB] requires three elements. First, the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic and, second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. The third condition is that one of the three criteria enumerated in the Act regarding the effect of the conduct must also be satisfied.

[Id. at *7–8 (footnotes omitted).]

The Commissioner explained that “as a matter of standard statutory construction, the term ‘or’ between subsections (b) and (c) also applies to subsection (a), such that a demonstration of any of these three criteria can support a finding of HIB.” Ibid. at n.2.

Put another way, for there to be a valid finding of an HIB violation, these things had to have happened:

1. A reasonable person would perceive that the conduct was based upon a distinguishing characteristic.

AND

2. The conduct took place on school property.

AND

3. The conduct must substantially disrupt or interfere with the orderly operation of the school or the rights of other students.

AND

- 3a. A reasonable person should know that the conduct would have the effect of...emotionally harming a student.

OR

- 3b. The conduct has the effect of insulting or demeaning the student.

OR

- 3c. The conduct created a hostile educational environment for the student by interfering with the student’s education or by severely or pervasively causing emotional harm to the student.

[See generally, Shim v. Ridgefield Pub. Schs. Bd. of Educ., 2023 N.J. AGEN LEXIS 526 (July 26, 2023), adopted, Comm’r, 2023 N.J. AGEN LEXIS 441 (Sept. 7, 2023).]

In other words, in order for there to be a cognizable finding of an HIB violation, respondent must demonstrate that it met prongs 1, 2 and 3 and then any of 3a, 3b or 3c. Any break in the chain causes the charge to fail.

STATUTORY ANALYSIS

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

This prong is, by far, the biggest hurdle that the respondent must overcome. In the HIB report, the district concluded that M.H.'s actions constituted an HIB violation on this basis:

Through this investigation, it is determined that the behaviors carried out by the named offender are harassing in nature with the purpose of harming/to upset the named victim. **It does meet the criteria for an HIB as it is motivated by an actual characteristic of gender and other distinguishing characteristics as the victim was a target due to a former relationship with the offender.**

[J-F (Emphasis added.)]

The petitioners emphasize that it is undisputed that M.H. and A.V. were previously in a consensual romantic relationship and that the evidence is very clear through the investigation that the breakup of that relationship is the source of their conflict. In fact, the HIB investigation actually cites that as a distinguishing characteristic.

Petitioners argue that merely because A.V. is female, it does not mean that the motivation for her alleged harassment is her status as a female. Here, the undisputed facts demonstrate that the motivation is her status as M.H.'s former romantic partner. The district's conclusion is both factually and legally unsupported and therefore arbitrary, capricious and unreasonable.

One of the first cases to discuss Prong 1 was Melynk v. Teaneck Bd. of Educ., 2016 U.S. Dist. LEXIS 161524 (D.N.J. Nov. 22, 2016):

On its face, the HIB Policy requires that several factors must be met before an expression can be found to be harassment. First, the communication must be “reasonably perceived as motivated” by an actual or perceived characteristic. That is to say, the comment must be objectively perceived to a reasonable person as motivated by a characteristic.

[Id. at *17–18.]

Melynk was cited with approval in R.H. ex rel. A.H. v. Borough of Sayreville Bd. of Educ., 2023 U.S. Dist. LEXIS 83587 (D.N.J. May 12, 2023):

First, the communication must be “reasonably perceived as being motivated either by any actual or perceived characteristic, such as race . . .” among other things. N.J.S.A. § 18A:37-14. “The ‘reasonably perceived’ test is an objective one that has withstood constitutional scrutiny,” and does not present a vagueness issue. See Melynk v. Teaneck Bd. of Educ., No. 16-0188, 2016 U.S. Dist. LEXIS 161524, 2016 WL 6892077, at *8 (D.N.J. Nov. 22, 2016) (collecting cases).

[Id. at 13.]

This result is also alluded to in S.A. v. Bd. of Educ. of Moorestown, 2019 N.J. Super. Unpub. LEXIS 2114 (App. Div. Oct. 15, 2019). There, in a case involving a teacher who requested a student’s (poor) test papers as part of his job duties, the Court concluded that an HIB violation had not occurred, since:

We do not discern sufficient facts to support a conclusion that any actions by R.L. were motivated by G.A.’s ADHD or other personal characteristics.

[Id. at *6.]

It further noted that:

even if we presume R.L. was insensitive or even unkind, there is no evidence R.L. was prompted by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic.

[Id. at *7]

As to the differentiation between conflict and HIB in the context of relationship disputes, there is surprisingly little case law addressing this difference, but what there is, is clear. K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337 (App. Div. 2011) was actually an Open Public Records Act (“OPRA”) case, but the underlying dispute concerned the alleged bullying of the plaintiff’s children. Before ultimately affirming in part and reversing in part the trial court’s order, the Appellate Division, after reviewing the specific language of the HIB statute, wrote:

Thus, harmful or demeaning conduct motivated only by another reason, for example, a dispute about relationships or personal belongings, or aggressive conduct without identifiable motivation, does not come within the statutory definition of bullying. In this case, the limited factual record available to us does not permit a conclusive finding as to whether or not the incidents described in the notes actually involved “bullying” as defined in the statute.

Id. at 351–52.

While it did not involve a romantic relationship, R.A. on behalf of minor child, B.A. v. Bd. of Educ. of the Twp. of Hamilton, 2016 N.J. Agen LEXIS 284 (Feb. 10, 2016), aff’d Comm’r, 2016 N.J. Agen LEXIS 1125 (June 22, 2015) discussed how a soured interpersonal relationship and its aftermath did not meet the definition of HIB, even if it was inappropriate and therefore subject to disciplinary consequences. Essentially, B.A. was a “mean girls” case involving a group of middle schoolers.

However, courts have addressed situations where an act is not considered to be bullying motivated by a “distinguishing characteristic.” In L.B.T. ex rel. K.T. v. Board of Education of the Freehold Regional School District, EDU 7894-12 (January 24, 2013), adopted, Comm’r (March 7, 2013),

<http://njlaw.rutgers.edu/collections/oal/>, there was a mutual dispute between two students about their respective roles on the swim team. The judge held that if a victim was targeted because of a dispute between the two people involved—such as a relationship falling apart between former friends, a fight over a piece of property, or some form of personal vendetta of one against another—such conduct would not be based on a “distinguishing characteristic” of the victim and would not be a violation of the statute. **This is because a personal breakdown in the relationship between two students is a mutual non-power-based conflict that is not about a characteristic of the targeted student.**

[Id. at *18–19. (emphasis added.); See also, P.F. on behalf of minor child, D.F. v. High Point Reg. High Sch. Dist. Bd. of Educ., 2023 N.J. ADMIN LEXIS 135 (Apr. 4, 2023).]

The court in R.A. continued:

a dispute between students such as a relationship falling apart between former friends, a fight over a piece of property, or some form of personal vendetta of one against another is not conduct based on a “distinguishing characteristic” of the victim and, thus, does not constitute a violation of the Act. This is because a personal breakdown in a relationship between students is a mutual non-power-based conflict that is not about a characteristic of the targeted student.”

[Id. at *23.]

Another illustrative case is C.S. on behalf of minor child, J.S. v. Lacey Bd. of Educ., 2019 N.J. Agen. LEXIS 561 (Sept. 5, 2019), adopted, Comm’r (Oct. 16, 2019). There, during a music class, the alleged female bully plugged her ears and proclaimed, “I’m going to need earplugs to get through the rest of this part of the concert,” while the female victim sang her solo. The district found that “[J.S.] targeted [C.H.] who she viewed as a weaker and emotionally vulnerable female with [J.S.] having a perception of a characteristic of [C.H.] relating to sexual orientation.” Therefore, Prong 1 of the HIB statute had been met.

The tribunal disagreed. Even accepting the premise that C.H. was a “weaker and emotionally vulnerable female” (for which there was next to no proof), the district ignored the fact that:

. . . the conduct complained of here appears to have arisen out of the girls' past personal relationship. It is undisputed that they were close personal friends, with the Committee characterizing it as a "relationship of some kind with some form of undetailed intimate characteristics." The record was replete with the ups and downs of the girls' relationship which arguably was the real motivating factor in the conduct complained of in the HIB complaint.

[Id. at *17.]

The district's finding was then reversed. Id. at *18.

Rather, it was a result of the bully and the victim's past intimate relationship falling out. Ibid. In that case, the record was “[r]eplete with ups and downs of the girls' relationship, and the evidence did not suggest that the victim's weak or vulnerable characteristics at all motivated the bully to plug her ears and comment as to the victim's singing skills. Id. at *16. The ALJ noted that “there must be something more linking the conduct to the characteristic, and that link is notably absent here.” Id. at *17.

This issue was also discussed in C.H. v. Burlington Cnty. Inst. of Tech., 2019 N.J. Super. Unpub. LEXIS 2543 (App. Div. 2019). This is actually a Law Against Discrimination (“LAD”) case, but it arose out of a claim that C.H., a student at Burlington Tech, “was subject to harassment because of her gender.” Id. at *1. The base story was that C.H. was a “cordial friend” of Simon, who was dating Cassie. Cassie was, perhaps understandably, unhappy about that “cordial friendship” and told C.H. in no uncertain terms to break off contact. She then proceeded to insult practically everything about C.H., including her looks, as well as impugning her reputation.

The matter was referred to Jeff Pensabene, BCIT's Harassment, Intimation, and Bullying (HIB) specialist and a student assistant counselor, (³) who began an investigation

³ Footnote omitted. It merely cites the definition of HIB as per N.J.S.A. 18A:37-14.

in October 2014. As part of that investigation, plaintiff wrote a letter explaining the situation: [Cassie] hates me because of her boyfriend. She is mad I was talking to her boyfriend when they were broken up, so she called me a whore, bitch, skank, and a bunch of other stuff. She told me my pants were too tight and I was too skinny, and my belt gave me [a] muffin top. Then she commented on my Instagram message, wrote that I looked like a cheese stick and my eyes are cocked like a pistol. Cassie also prepared a statement, explaining: It started because [plaintiff] [F]acetime[d] my boyfriend and I asked her to stop. So I asked her sister[,] [Brie] to talk to [plaintiff] and . . . asked [her] to stop talking to my boyfriend. [Brie] got angry and started saying stuff. I called [plaintiff] [a] slut over the summer and then apologized. [Plaintiff] wouldn't accept it. . . . I did call her [a] dumb cunt and dumb bitch in [I]nstagram text. I did call her muffin top via [I]nstagram.

[Id. at *3–4.]

The negative interactions continued. Mr. Pensabane testified at trial, and the Court summarized what aspects of the same it thought were significant:

We provide certain relevant portions of Pensabene's testimony. He testified that during plaintiff's junior year, he met with her about thirty times. He informed the jury of the differences between a "student conflict" and HIB, explaining that "[s]tudent conflicts happen all the time; kids just don't get along with one another." As an anti-bullying specialist, Pensabene explained he is required to "interview all the parties and find out what happened." He clarified that not every HIB complaint warrants an investigation, but when it does, he looks for two things: 1) "an imbalance of power such as a senior over a freshman" and 2) "distinguishing characteristics" like race or body image issues.

[Id. at *8–9.]

The Court continued:

Pensabene explained that he classified the February 2015 Instagram incident as a student conflict because there was "no distinguishing characteristic." The September 2015 exchange with Martha was also not HIB because "[h]anging out with [Martha's] cousin is not a distinguishing characteristic." In contrast, he advised the November

Instagram post about plaintiff's homecoming dress violated HIB because the comments related to plaintiff's appearance. Pensabene further testified that calling a female student a bitch, cunt, whore, or slut would be classified as a conflict rather than a distinguishing characteristic warranting HIB. At the high school level, Pensabene noted the word "bitch" was not associated exclusively with females; he stated that male students referred to other male students as "bitch" "[a]ll the time."

[Id. at *10.]

The major point of contention in the appeal was the jury charge and the "because of" language concerning the plaintiff's gender:

The discussion centered on the following language of the charge. "First, plaintiff must prove that the conduct occurred because of her/his [gender]. Stated differently, plaintiff must prove that the conduct would not have occurred if her/his [gender] had been different. When the harassing conduct directly refers to the plaintiff's [gender], the 'because of' element is automatically satisfied." (emphasis added).

[Id. at *11.]

Part of the discussion was, because this was a school-related incident, whether the language in L.W. ex rel. L.G. v. Toms River Reg'l Sch. Bd. of Educ., 189 N.J. 381 (2007) (another LAD case) should be utilized. That was permitted and allowed the defendant to "show that plaintiff was not being harassed because of her gender, but because of a love triangle between three high school students and the actions that ultimately led to the conduct." C.H. at *24.

The Appellate Division, while finding an error in the language of one aspect of the jury charge, noted that ultimately the jury was not confused and the charge "adequately conveyed the law." Id. at *29. The approved aspect of the charge was consistent with Mr. Pensabane's testimony:

"However, the law recognizes that offensive, crude or inappropriate comments are not automatically discriminatory

because the words used are tinged with sexual or gender connotations.”

[Id. at *28.]

While I am fully cognizant that this is an HIB case and not a LAD case and there are distinctly different elements necessary to prove a claim, the “because of” issue is common to both of them.

Before proceeding further, I would be remiss in failing to point out that, despite respondent’s contention that the petitioners’ argument concerning Prong 1 of the HIB statute is “abhorrent,” it absolutely is not. (Resp’t’s Br. at 9.) Trying to justify M.H.’s behavior would certainly have been a disturbing tactic but arguing that the behavior does not meet the four corners of the statute is called “lawyering.”

Very simply, no matter the hyperbolic descriptions in respondent’s brief, this is a “student conflict” case. The investigation demonstrates that M.H. and A.V. were two immature, barely teenagers who acted like two immature, barely teenagers, with M.H. openly and obviously crossing a behavioral line, earning him a thoroughly deserved one-day in-school suspension. What is also obvious from the investigation is that A.V.’s status as a female is purely incidental to her status as M.H.’s ex-girlfriend. In other words, the evidence is crystal clear that M.H. was not treating A.V. poorly because she’s a female; he was treating her poorly because she is his ex-romantic partner and any reasonable person would make that determination.

If every high school breakup that ended with nasty overtones and the party/parties saying unkind things about the other was considered a violation of the statute, then we would be hearing nothing but HIB cases in the OAL. What is often forgotten in these cases is that merely because an action is not found to be HIB, it does not mean that it’s acceptable or should/will go without punishment. In fact, this is the EXACT type of case that school codes of conduct were meant to apply to. The parties broke up; M.H. handled it poorly and acted like a . . . jerk.

There is nothing magical about an HIB finding that prevents a District from formulating an appropriate punishment for a code of conduct violation, especially a repeated one. Frankly, the fact that he received only a one-day suspension given his repeated conduct is puzzling, regardless of the HIB finding.

The one case cited by the respondent, C.C. o/b/o S.C. v. Jefferson Twp. Bd. of Educ., 2015 N.J. Agen. LEXIS 251 (Mar. 24, 2015), while accurate, is also clearly factually distinguishable. There, two middle school boys were found guilty of HIB violations concerning A.V. One of the boys, S.C., filed a petition of appeal. The boys were accused of telling A.V. that he would only grow to be about 4'11", can't be in middle school because he's too short, that he was bad at basketball and would never make the National Basketball Association and that he would drop out of college and become a drug dealer. He was also called stupid, dumb and a loser.

The accused boys denied some of the allegations and claimed that while some of the other statements were made, they were made in a joking, non-serious manner. The school's HIB specialist found that "(m)ost of the student statements focused on comments by D.S. regarding characteristics of (A.V.)." He noted those characteristics to be "height, basketball skills, and intelligence." On appeal, the petitioners argued, amongst other things, that S.C.'s behavior "was not an act of HIB but was rather reflective of an ongoing unresolved conflict between the students involved."

The ALJ determined that there was "ample evidence. . . that S.C. engaged in verbal acts that are reasonably motivated by distinguishing characteristics of height, intelligence, and sports proficiency." He therefore determined that the District's HIB determination was not arbitrary, capricious or unreasonable and upheld that finding.

There is, frankly, very little about that case that is applicable to this situation. For one thing, there were continued references to the A.V.'s diminutive stature, which, particularly when connected to the basketball issue, was not unreasonably determined to be a distinguishing characteristic under the broad interpretation of the statute.

That is simply not the dynamic in the M.H./A.V. situation and the final determination by the district on this prong demonstrates its misunderstanding/misinterpretation of the statute. “Ex-romantic partner” is obviously not a distinguishing characteristic, yet it is listed as one and the mere fact that A.V. is female does not make her gender a distinguishing characteristic.

Ultimately, I **FIND** that in order to find that the first prong of the statute has been satisfied, an investigating body must view the evidence in its entirety and determine whether a reasonable person could perceive that the conduct could be “motivated by an actual or perceived characteristic.”

Considering both the law and the totality of the circumstances, I **FIND** that no reasonable person could conclude that M.H.’s actions were motivated by A.V.’s gender and not her status as his ex-romantic partner. Any determination to the contrary defies both logic and the law and is by definition arbitrary, capricious and unreasonable.

That determination in and of itself is sufficient to warrant a dismissal of the case. However, for the sake of completeness, I will briefly review the balance of the prongs.

Prong 2 – Location of the Conduct

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

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

Here, frankly, is the respondent’s second most difficult issue, although it is a distant, distant second. Per the HIB report, A.V. claimed: “that she does not want to come to school, feels very uncomfortable around (M.H.).” (J-F.) Complicating the matter is that Section 4D of the report “Effect of HIB Incident” is not completed. In reviewing the interviews, it was noted that she was upset at her mother for reporting

M.H.'s harassment. However, as that initial March 20, 2024, interview progressed, she also detailed that his actions were clearly disrupting her learning experience, particularly since they were in four classes together.

This disruption was also noted in the interviews with some of the other students as well as her teachers, one of whom described her developing a possible paranoia. Other students were brought into the dispute to the point where pretty much their entire social circle and teachers were aware of the ongoing issues. (J-B.)

While the HIB report itself was woefully incomplete, to be fair, the investigation was not. In fact, it was rather comprehensive, which is what potentially saved respondent's case concerning this prong of the statute.

The "substantially disrupt[ed] or interfere[d] with the orderly operation of the school or the right of other students" prong also has only been examined on a relatively limited basis. One case that discusses the same in detail is R.R. ex rel. A.R. v. Bd. of Educ. of the Borough of Ramsey, 2024 N.J. AGEN LEXIS 72 (Jan. 29, 2024), adopted, Comm'r No. 131-24 (Mar. 8, 2024). There, a 5th-grade student was accused of telling a Black classmate that "Black is bad." While he denied saying it, the ALJ found that the A.V. was credible and that the district's conclusion that an act of HIB had occurred was not arbitrary, capricious or unreasonable.

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

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

unsettling incident took place in response to the victim's distress. In D.D.K. o/b/o D.K. v. Board of Education of the Township of Readington, Hunterdon County, EDU 07682-15 (October 6, 2016), adopted, Comm'r Decision (November 11, 2016), <https://njlaw.rutgers.edu/collections/oal/>, the Commissioner discussed those situations where the Board's HIB determination satisfied the second prong, explaining that:

[C]onduct has been determined to substantially disrupt the orderly operation of the school when students are so upset or embarrassed that they are "not fully available for learning." G.H. and E.H. on behalf of K.H. v. Board of Education of the Borough of Franklin Lakes, Bergen County, OAL Dkt. No. EDU 13204-13, decided February 24, 2014, adopted Commissioner Decision No. 157-14, April 10, 2014. Additionally, when other students are "so affected" by behavior that they report it, the orderly operation of the school may be substantially disrupted. T.R. and T.R. on behalf of E.R. v. Bridgewater-Raritan Regional Board of Education, OAL Dkt. No. EDU 10208-13, decided September 25, 2014, adopted Commissioner Decision No. 450-14, November 10, 2014.

[Id. at *15–17.]

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

Prong 3 was also addressed in R.P. ex rel. A.P. v. Bd. of Educ. of Twp. of Hamilton, 2018 N.J. AGEN LEXIS 83 (Feb. 13, 2018), adopted, Comm'r, 2018 N.J. AGEN LEXIS 346 (Mar. 29, 2018). That matter involved a ten-year-old student who was exposed to repeated sexual innuendo and gestures by another student. She wrote a letter to the school "urgently seeking help . . . due to A.P.'s ongoing inappropriate behavior. Through this letter and confirmed during her interview with [a school official], S.W. expressed her extreme discomfort and distress over A.P.'s ongoing conduct." R.P., 2018 N.J. AGEN LEXIS 83 at *14. Given the severity of the harassment, the

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

Here, as noted above, the negative interactions between M.H. and A.V. were well known in the school, both amongst their friends and their teachers, and there was clearly ongoing drama that impacted A.V.'s "availability for learning." Was it "substantially disruptive?"

The petitioners equate this situation to that in W.D. & J.D., where the Court held:

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

[Id. at *15.]

This is by no means a slam dunk and there is an argument to be made that with A.V. not missing school, not complaining herself (the investigation started with her mother's request for a welfare check) and with no evidence of an impact on her grades (and no request to have M.H. moved or to move herself to limit their interactions), that this prong has not been met. However, a review of the evidence reveals that perhaps a more persuasive case can be made that this prong has been met and with the deference due to the District, I **FIND** that the petitioners have failed to prove by a preponderance of the credible evidence that the District abused its discretion in finding that Prong 3 has been met and that its decision was arbitrary, capricious or unreasonable. There is clearly enough evidence, even if it is not overwhelming, to support the district's decision.

Prong 3a – A reasonable person should know that the conflict would have the effect of...emotionally harming a student.

Prong 3b – The conduct has the effect of insulting or demeaning the student.

Prong 3c – The conduct created a hostile educational environment for the student by interfering with the student’s education or by severely or pervasively causing emotional harm to the student.

As with Prongs 2 and 3, with the District’s failure to meet Prong 1 of the HIB test, there is no need to review Prongs 3a, 3b, and 3c. However, I would note that in order for there to be a finding of an HIB violation, only one of those three prongs has to be satisfied. Here, there is no legitimate question that Prongs 3a and 3b were met and while there may be a question about Prong 3c, I **FIND** that this aspect of the HIB statute has been met.

The support for a violation of Prong 3c is clearly not as strong as Prongs 3a and 3b, but with those findings, whether Prong 3c is met is doubly irrelevant.

CONCLUSION

This decision should in no way be read as an exoneration of M.H. or seen as condoning his behavior. Clearly, his actions went beyond the usual “hard feelings” or badmouthing that can occur after a less-than-amicable breakup, and he should have been and was punished for it. However, what his actions did not do was violate the very specific strictures of the HIB statute.

Ultimately, I **CONCLUDE** that petitioners have demonstrated that respondent’s determination that M.H.’s actions constituted a violation of N.J.S.A. 18A:37-13.2 to -37 was arbitrary, capricious and unreasonable. More specifically, the finding that M.H.’s actions violated Prong 1 of the HIB statute was based on a misapplication of the facts to the law and a misunderstanding of the law itself. That led to the mistaken determination that M.H.’s actions would be perceived by a reasonable person to have been based upon A.V.’s status as a female, rather than her status as M.H.’s former romantic partner.

ORDER

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

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

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

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

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

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to **ControversiesDisputesFilings@doe.nj.gov** or by mail to **Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**. A copy of any exceptions must be sent to the judge and to the other parties.

April 28, 2026

DATE



MATTHEW G. MILLER, ALJ

Date Received at Agency:

April 28, 2026

Date Mailed to Parties:

April 28, 2026

sej

APPENDIX

EXHIBITS

Joint:

- J-A Letter from respondent to petitioners advising of HIB investigation (March 25, 2024)
- J-B 2023–2024 HIB # 7 Notes for the HIB investigation
- J-C Undated picture of an unidentified phone showing a social media conversation allegedly between M.H. and an unidentified student provided by respondent
- J-D Two undated pictures of an unidentified phone showing a social media conversation allegedly between M.H. and an unidentified student provided by respondent
- J-E Undated picture of an unidentified phone showing a social media conversation allegedly between M.H. and an unidentified student provided by respondent
- J-F HIB Report (April 11, 2024)
- J-G Minutes of the Kinnelon BOE's meeting of April 25, 2024, accepting the Superintendent's recommendation to confirm the HIB Report on first reading for the March 20, 2024, incident
- J-H Letter from respondent to petitioners advising of the Board's April 26, 2024, decision
- J-I Minutes of the Kinnelon BOE's meeting of May 21, 2024, accepting the Superintendent's recommendation to confirm the HIB report on second reading
- J-J Letter from respondent to petitioners advising of the Board's finding on second reading. (June 10, 2024)

Court:

- C-1 E.H. and C.H. o/b/o M.H. v. Kinnelon Bd. of Educ. Petition of Appeal (July 30, 2024)

C-1a Same as J-A.

C-1b Same as J-J.

C-1c Same J-F.

C-1d Same as J-G.

C-1e Same as J-H.

C-1f Same as J-I.

C-1g Kinnelon BOE Policy # 5512 (Harassment, Intimidation & Bullying)

C-2 Respondent Answer to Petition of Appeal (September 13, 2024)

For petitioners:

None

For respondent:

None