

New Jersey Commissioner of Education
Final Decision

E.B., on behalf of minor child, B.B.,

Petitioner,

v.

Board of Education of the Township of
Hainesport, Burlington 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, and for the reasons thoroughly detailed in the Initial Decision, the Commissioner concurs with the ALJ that E.B. has failed to meet her burden of demonstrating that the Board acted arbitrarily, capriciously, or unreasonably when it determined that her son, B.B., committed an act of harassment, intimidation, or bullying.

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: 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 15578-25

AGENCY DKT. NO. 282-8/25

E.B. ON BEHALF OF MINOR CHILD B.B.,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF HAINESPORT, BURLINGTON COUNTY,**

Respondent.

E.B., petitioner, pro se

Audra A. Pondish, Esq., for respondent (Adams Lattiboudere Croot & Herman,
attorneys)

Record Closed: January 16, 2026

Decided: April 29, 2026

BEFORE **KIM C. BELIN**, ALJ:

STATEMENT OF THE CASE

Respondent, the Hainesport Board of Education (respondent or Board), determined that student B.B. committed an act of harassment, intimidation, or bullying (HIB) and imposed a two-day suspension. Petitioner, E.B. (petitioner or E.B.) appeals

seeking to have the disciplinary action removed from B.B.'s pupil records. The inquiry is whether there are material issues of fact in dispute to warrant a hearing.

PROCEDURAL HISTORY

On August 20, 2025, petitioner filed a petition with the New Jersey Department of Education's Office of Controversies and Disputes (OCD), appealing respondent's decision to impose discipline upon petitioner's son, B.B. Respondent filed its answer with affirmative defenses on September 3, 2025. The matter was transmitted by the Department of Education to the Office of Administrative Law (OAL), where it was filed on September 9, 2025, as a contested case. N.J.S.A. 52:14B-1 to -15; and N.J.S.A. 52:14F-1 to -13.

Respondent filed a motion for summary decision that was received on December 29, 2025. Petitioner filed a response that was received on January 12, 2026, and respondent's reply was received on January 16, 2026.

FACTUAL FINDINGS AND CONCLUSIONS

The following undisputed facts were gleaned from the written submissions of the parties, which I adopt and **FIND** as **FACTS**:

1. Anthony Procopio serves as the Assistant Principal/Director of the Child Study Team and Anti-Bullying Coordinator for respondent. (Resp't's Br. ¶ 1.)
2. For the 2024-2025 school year, B.B. was a thirteen-year-old seventh-grade student attending Hainesport Elementary School. (Pet'r's Pet.)
3. On May 14, 2025, a female student, L.A., reported to the school counselor and submitted an incident report stating that there were male students, including B.B., who called her "board game." L.A. did not know what that meant until another student explained that it meant she was flat in the front and rear areas of her body. (Resp't's Br. ¶ 4.)

4. On May 14, 2025, Mr. Procopio contacted L.A.'s mother explaining that she could file a HIB claim. On May 15, 2025, L.A.'s mother told Mr. Procopio and other staff that she wanted to start the HIB complaint process. (Resp't's Br. ¶¶ 6-9.)
5. By letter dated May 15, 2025, Mr. Procopio notified petitioner that B.B. may be an offender in a HIB incident. (Ex. 3, Resp't's Br.) He also sent E.B. an email on the same date. (Id. at Ex. 9.)
6. On May 23, 2025, Mr. Procopio and the Anti-bullying specialist discussed the findings and possible discipline with B.B., explaining that an act of HIB was founded because another student verified B.B.'s comments about L.A. (Procopio Certif. at ¶¶17-18.)
7. During this meeting B.B. shared that female students had made comments about his appearance in the prior school year, and that he only made his comments about the female student this year because of the name-calling from the previous school year. The district had no record of B.B. reporting any alleged HIB during the prior school year. (Id. at ¶19.)
8. Mr. Procopio asked B.B. to provide the relevant information, such as students' names and the alleged comments about B.B., so that Mr. Procopio could conduct an investigation. (Id. at ¶20.)
9. On May 23, 2025, Mr. Procopio notified E.B. via email that B.B. was found to have committed an act of HIB and would be subject to a two-day out-of-school suspension. (Ex. 8, Resp't's Br.) Mr. Procopio offered one-to-one counseling for B.B. (Ibid.)
10. By letter dated July 23, 2025, respondent notified petitioner that respondent determined that B.B. was involved in an act of HIB. (Id. at Exs. 3 and 12.)

11. On May 15, 2025, Board staff interviewed B.B. (Ex. 4, Resp't's Br.)
12. Under the Board's Student Code of Conduct, a confirmed act of HIB, first offense, for grades six through eight, results in a three-day out-of-school suspension and contact with the parent or guardian. (Ex. 7, Resp't's Br. at 13.) In addition, a suspended student may not attend dances, special events, or extra-curricular activities during the suspension. (Id. at 34.)
13. E.B. appealed the Board's decision and requested a hearing before the Board in an email dated June 3, 2025. (Ex. 13, Resp't's Br.)
14. The Board secretary responded on June 4, 2025, setting the hearing for June 17, 2025. (Ibid.)
15. On July 10, 2025, the Board Secretary notified E.B. that the Board planned to issue its decision at the July 22, 2025, board meeting. (Ibid.)

Parties' Arguments

The Board contends that there are no genuine issues of material fact sufficient to permit a rational fact-finder to resolve the alleged disputed issue in favor of petitioner and, thus, summary decision should be awarded in its favor. Specifically, the Board set forth three justifications: 1) it did not act in an arbitrary and capricious manner in determining that B.B.'s conduct constituted HIB; 2) all elements necessary to substantiate a HIB complaint were met and thus the discipline imposed was appropriate; and 3) B.B.'s complaint was handled fairly and investigated appropriately under the circumstances. Finally, the Board contends that the "other factors" included in petitioner's opposition to the Board's motion for summary decision are irrelevant and must be disregarded, specifically, because the text messages between B.B. and L.A. were sent long after the incident, and the pending contested case before the OAL cited by petitioner relates to petitioner's other child and is not a HIB matter.

Conversely, E.B. asserts that a hearing is required because: 1) there are competing interpretations of the evidence, including B.B.'s motive, context of the comment, impact on L.A., and credibility of witnesses; 2) the preponderance of the evidence proves that the Board acted in bad faith or in disregard for the circumstances, and the conclusion is not supported by the evidence; 3) the Board failed to meet the prongs necessary to satisfy a HIB finding; and 4) other factors such as: L.A. sent a text to B.B. in August apologizing for getting him into trouble, and there is another pending contested case filed against the Board related to how the Board handles investigations and discipline.

DISCUSSION AND CONCLUSIONS OF LAW

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits that may have been filed with the application, show that there is no genuine issue of material fact, and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must “consider whether 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 alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536.

An issue is “genuine” if, considering the burden of persuasion at trial, the evidence submitted on the motion and all legitimate inferences could sustain a decision in favor of the non-moving party. Id. at 530. A fact is “material” if it will “affect the outcome of the suit under the governing law.” Anderson v. Liberty Lobby, Inc., 477 U.S.

242, 248 (1986). Significantly, “[b]are conclusions in the pleadings, without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment.” U.S. Pipe & Foundry Co. v. Am. Arb. Ass’n, 67 N.J. Super. 384, 399–400 (App. Div. 1961) (citation omitted).

The issue here is whether the Board’s finding that B.B. committed an act of HIB was arbitrary, capricious, or unreasonable in light of the information that the Board possessed when it made its determination. 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). The Act defines HIB as follows:

[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 . . . 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 (emphasis added).]

Thus, to establish a finding of HIB, three elements must be established: 1) the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic that occurs on school property, at a school-sponsored event, or on the school bus; 2) the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school; and 3) a reasonable person should know that the conduct will have the effect of physically or emotionally harming a student or insulting or demeaning a student, or creates a hostile educational environment by interfering with a student's education. Wehbeh v. Bd. of Educ. of Verona, Essex Cnty., OAL Dkt. No. EDU 10981-18, Comm'r (February 4, 2020) (footnote omitted), <https://www.nj.gov/education/legal/>. Only one element in the last category must be met. Ibid.

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. 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 and shall take no longer than ten school days to be completed. Ibid. The results of the investigation shall then be quickly reported to the superintendent of schools, who may take certain action, including intervention services, establish training programs to enhance the school climate, impose discipline, order counseling or other appropriate action. N.J.S.A. 18A:37-15(b)(6)(b). Consequences and appropriate remedial action for a student who commits a first act of HIB may include:

a copy of the results of the investigation shall be placed in the student's record and the student may be subject to remedial actions, including the provision of counseling or behavioral intervention services, or discipline, or both, as determined by the principal in consultation with appropriate school staff.

[N.J.S.A. 18A:37-15(b)(4) (emphasis added.)]

The results of the investigation shall be reported to the board of education “no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent.” N.J.S.A. 18A:37-15(b)(6)(c).

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. They may request a hearing before the board of education, which shall be held within ten days of the request. N.J.S.A. 18A:37-15(b)(6)(d). The board must issue a decision at the first meeting after its receipt of the investigation report. N.J.S.A. 18A:37-15(b)(6)(e). The board may affirm, reject, or modify the superintendent’s decision. Ibid. The board’s decision may be appealed to the Commissioner of Education. Ibid.

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). Thus, to prevail, those challenging a HIB 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, EDU 13204-13, Initial Decision (February 24, 2014) (citation omitted), adopted, Comm’r (April 10, 2014), <https://njlaw.rutgers.edu/OAL/index.php>. The Commissioner will not substitute his or her judgment for that of the board of education, whose exercise of its 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); see also T.B.M. v. Moorestown Bd. of Educ., EDU 2780-07, Initial Decision (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)), adopted, Comm'r (April 7, 2008), <https://njlaw.rutgers.edu/OAL/index.php>.¹

In determining whether agency action is arbitrary, capricious, or unreasonable, a reviewing court must examine:

- (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law;
- (2) whether the record contains substantial evidence to support the findings on which the agency based its action;
- and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[In re Stallworth, 208 N.J. 182, 194 (2011) (citation omitted).]

As stated above, the Act establishes three elements that must be satisfied to find that a student committed an act of HIB. The first is whether the action is reasonably perceived as being motivated by any actual or perceived characteristic. This "requires an analysis of how the actor's motivation is perceived and whether that perception is reasonable. It does not require an analysis of the actual motivation of the actor." Wehbeh, OAL Dkt. No. EDU 10981-18, Comm'r, <https://www.nj.gov/education/legal/> (footnote omitted).

Here, it is undisputed that B.B. called L.A. a "board game," which was a reference to her gender and physical appearance. E.B. contends that a hearing is required to consider B.B.'s motive and the context of the statement. However, these are irrelevant. What is critical is whether it is reasonable that a fourteen-year-old girl would perceive that B.B.'s choice of words was motivated by an actual or perceived characteristic, in this case, her gender and physical appearance.

While "physical appearance" is not specifically enumerated in the Act, our courts have ruled that "[t]he statute has not limited 'distinguishing characteristic' to those

¹ This decision and other administrative and unpublished court decisions are not binding. They are referenced because they provide relevant guidance.

specifically enumerated[.]” K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337, 351 (App. Div. 2011).

By its plain terms, the Legislature made clear that courts and school districts should not limit the scope of the statute to the more classic protected characteristics such as race or religion, and they intended instead that the statute apply whenever the harassment at issue was motivated by any distinguishing characteristic of the targeted student. Instead of providing a longer list, the Legislature in the [Act] intentionally included a very open-ended phrase, “any other distinguishing characteristic,” to signal that the Act would apply to a broad, unlimited range of distinguishing characteristics, so long as the distinguishing characteristic motivated the bully to harass the targeted student.

[R.A. ex rel. B.A., v. Bd. of Educ. of Hamilton], EDU 10485-15, Initial Decision (May 12, 2016), adopted, Comm’r (June 22, 2016), <https://njlaw.rutgers.edu/OAL/index.php> .]

For example, in J.M.C. ex rel. A.C. v. Board of Education of East Brunswick, EDU 04144-12, Initial Decision (November 27, 2012), adopted, Comm’r (January 9, 2013), <https://njlaw.rutgers.edu/OAL/index.php>, the Commissioner found that a single incident in which a male student was demeaned by a statement that he “danced like a girl” was a violation of the Act because the bullying was based on the distinguishing characteristic of the perception of the targeted student’s dancing. In C.C. ex rel. S.C. v. Board of Education of Jefferson, EDU 10872-14, Initial Decision (April 6, 2015), <https://njlaw.rutgers.edu/OAL/index.php>, adopted, Comm’r Decision No. 153-15 (May 12, 2015), <https://www.nj.gov/education/legal/>, the Commissioner found that a perception that the targeted student was not a good athlete was sufficient to trigger the protection of the Act. The Commissioner noted that “the HIB statute is intended to drive home the principle that cruel words will not be tolerated in a school environment.” Similarly, in W.C.L. & A.L. ex rel. L.L. v. Board of Education of Tenafly, EDU 03223-12, Initial Decision (November 26, 2012), adopted, Comm’r (January 10, 2013), <https://njlaw.rutgers.edu/OAL/index.php>, the Commissioner held that even a single and true comment by a student that the targeted student had dyed her hair because she had head lice violated the statute.

Applying these decisions to the present circumstances, it is reasonable that a fourteen-year-old girl would perceive that being called a “board game” was based upon the distinguishing characteristics of her gender and physical appearance. The fact that L.A. did not know initially what the term meant does not invalidate this.

E.B, however, contends that her son did not make the offending comment as alleged in L.A.’s incident report,² but made the comment in the cafeteria on another date, and, thus, respondent had no basis to make a HIB finding against B.B. However, when he made the offending comment is of no moment because B.B. does not deny that he said it, and it is uncontested that he said it while on school property. While L.A. did not know what the term meant, B.B. acknowledged that he said it. In addition, petitioner contends that B.B. only made the comment because female students had made derogatory comments about him during the previous school year; however, the appropriate focus of the present matter remains on the events during the 2024–2025 school year. Accordingly, based upon the evidence presented to the Board, I **CONCLUDE** that petitioner has not shown by a preponderance of the evidence that the Board’s determination concerning the first element is arbitrary, capricious, or unreasonable.

The Commissioner addressed the type of situations that may satisfy the second element of the HIB statute:

[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.

² L.A. stated that the comment was made in a classroom.

[D.D.K. ex rel. D.K. v. Bd. of Educ. of Readington, Hunterdon Cnty., EDU 07682-15, Comm'r (November 11, 2016), <https://njlaw.rutgers.edu/OAL/index.php>.]

Here, L.A. reported the offending language to the school counselor and requested to have her classes changed because she no longer felt comfortable in her classes. Other students were involved to the extent that B.B. told them that he thought L.A. was a “board game,” and another student explained what that meant to L.A. Petitioner opines that this is insufficient; however, she did not present any evidence to prove otherwise. Accordingly, I **CONCLUDE** that petitioner has not shown by a preponderance of the evidence that the Board’s determination concerning the second element is arbitrary, capricious, or unreasonable.

The third element requires a finding that the act at issue 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.” N.J.S.A. 18A:37-14. Any one of the three criteria satisfies the third element. In Wehbeh, the Commissioner wrote that “[n]one of these criteria require the actor to have actual knowledge of the effect that her actions will have, or to specifically intend to bring about that effect.” OAL Dkt. No. EDU 10981-18, Comm’r, <https://www.nj.gov/education/legal/>.

Here, the Board found that B.B. engaged in verbal behavior that hurt and made L.A. uncomfortable. As discussed above, this impacted L.A. and had the effect of insulting and demeaning her. At a minimum, a reasonable person should know that such behavior would place a student in reasonable fear of at least emotional harm. In addition, the uncontroverted fact that L.A. was upset by the comment once she learned of its meaning, and requested a change in her classes and locker, demonstrates that B.B. and others created a hostile educational environment. I therefore **CONCLUDE** that petitioner has not demonstrated by a preponderance of the evidence that the Board’s determination concerning the third element is arbitrary, capricious, or unreasonable.

Finally, E.B. offered an exchange of text messages purportedly between L.A. and B.B. in which L.A., approximately three months later, apologizes for getting B.B. into “trouble” as proof that L.A. was not harmed but had a “crush” on B.B. that was not reciprocated. (Pet’r’s Opp’n to Resp’t’s MSD.) Whether L.A. and B.B. had a friendly relationship following the incident has no impact on the HIB finding. “There is nothing in the Act that requires that a hostile educational environment persist for a specified period of time.” L.K. and T.K. ex rel. A.K. v. Bd. of Educ. of Mansfield, Burlington Cty., OAL Dkt. No. EDU 07067-16, Comm’r (December 9, 2021), <https://www.nj.gov/education/legal/>.

Petitioner’s concern for her child and her desire to protect him are understandable and commendable. However, for all of the reasons stated above, I am compelled to **CONCLUDE** that she has not demonstrated by a preponderance of the evidence that the Board’s determination was arbitrary, capricious, or unreasonable. Even if there were room for an alternate conclusion, the Board’s determination was supported by the evidence, and there is no evidence of improper motivation.

ORDER

I hereby **ORDER** that respondent’s motion for summary decision is **GRANTED** and petitioner’s appeal is **DISMISSED**.

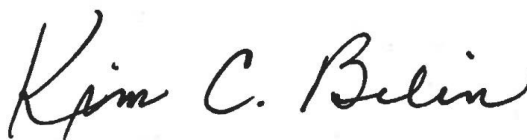
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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 Acting 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 29, 2026

DATE

A handwritten signature in black ink that reads "Kim C. Belin". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

KIM C. BELIN, ALJ

Date Received at Agency:

Date Mailed to Parties:

KCB/gd