

347-26
OAL Dkt. No. EDU 08531-24
Agency Dkt. No. 148-5/24

New Jersey Commissioner of Education

Final Decision

R.H. and E.H., on behalf of minor child, A.H.,

Petitioners,

v.

Board of Education of the Borough of West Long
Branch, Monmouth County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge that the West Long Branch Board of Education did not act in an arbitrary, capricious, or unreasonable manner in determining that petitioners' child was not the victim of 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: September 3, 2026
Date of Mailing: September 4, 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 08531-24

AGENCY DKT. NO. 148-5/24

**R.H. AND E.H., ON BEHALF OF MINOR
CHILD, A.H.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE
BOROUGH OF WEST LONG BRANCH,
MONMOUTH COUNTY,**

Respondent.

R.H. and E.H., petitioners, pro se

Isabel Machado, Esq. and Christine McGee, Esq. for respondent (Machado Law
Group, attorneys)

Record Closed: April 16, 2026

Decided: July 22, 2026

BEFORE **KIMBERLEY M. WILSON**, ALJ:

STATEMENT OF THE CASE

Petitioners R.H. and E.H., on behalf of minor child A.H., appeal a determination from respondent Board of Education of the Borough of West Long Branch, Monmouth County (Board or District), that A.H. was not the victim of an act of harassment, intimidation, or bullying (HIB) on February 26, 2024, under the Anti-Bullying Bill of Rights Act ("Act"), N.J.S.A. 18A:37-13 to -37. Was the Board's determination arbitrary, capricious or unreasonable? No, because there was no actual or perceived characteristic motivating the incident as required under the Act.

PROCEDURAL HISTORY

On or around May 17, 2024, petitioners filed a pro se petition of appeal with the Commissioner of the Department of Education (DOE). On or around June 6, 2024, the DOE transmitted this matter to the Office of Administrative Law as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On or around August 20, 2024, the Board filed a motion to dismiss, which was held in abeyance to allow for discovery. Status conferences were held on September 17, 2024; October 30, 2024; and November 18, 2024. An Order to Seal was entered on April 14, 2025, in part to address confidentiality concerns about the disclosure of information regarding potential non-party witnesses. Petitioners filed a motion to compel discovery, which was granted in part and denied in part pursuant to a Letter Order dated October 21, 2025.

After additional status conferences, the parties were permitted to file their respective motions for summary decision by January 15, 2026. The Board relied on its motion to dismiss papers. R.H. and E.H. filed opposition on or around January 29, 2026. Counsel for the Board filed its reply on February 3, 2026, and oral argument was heard on March 23, 2026.

During oral argument, it was clear that R.H. and E.H. had not submitted any documents that they wished for me to consider in opposition to the Board's motion for summary decision. Pursuant to a Letter Order dated March 25, 2026, I allowed R.H. and E.H. to submit any documents to me on or before April 1, 2026, which I received on March 30, 2026. Counsel for the Board was permitted to file any written response by April 17, 2026, which I received on April 16, 2026.

FACTUAL DISCUSSION AND FINDINGS

Based on the information the parties submitted to me, I **FIND** the following **FACTS**:

During the 2023–2024 school year, A.H. was a fourth-grade student attending District schools. On February 26, 2024, during recess, A.H. was physically restrained and held down against her will by two other District students for about fifty-seven seconds. The two girls held A.H.'s arms while A.H. was seated on an outdoor bench and asked A.H, "Why do you wear makeup?" and "Why are you sassy?" Second Egan Aff. at Ex. 3.

On or around February 28, 2024, R.H. and E.H. reported this incident to school officials. A HIB investigation report was completed on March 8, 2024. Ibid. In the investigation report, none of the witness statements referenced an actual or perceived characteristic, such as race, gender, or any other distinguishing characteristic, as the reason for the February 26, 2024, incident. Ibid. The investigation report found that the incident was not a HIB because it was not motivated by any actual or perceived characteristic. Ibid.

On or around March 20, 2024, Christina M. Egan, Ed.D., District superintendent, sent a letter to R.H. and E.H., advising them that the allegations of a verbal act against A.H. were not a confirmed act of HIB and their right to appeal the finding to the Board. Second Egan Aff. at Ex. 4. On or around April 8, 2024, Dr. Egan sent R.H. and E.H. a second letter, indicating that the allegations of the verbal and physical actions against A.H. were not confirmed acts of HIB. Ibid. This second letter also advised R.H. and E.H. of their appeal rights. Ibid.

On or around May 2, 2024, the Board heard R.H.'s and E.H.'s appeal of the District's determination on the HIB investigation where A.H. was the target. Egan Aff. at Ex. 1. The Board found that the February 26, 2024, incident did not violate the Board's policy regarding HIB, but "it was found to be a code of conduct violation and consequences were issued to the other students." Ibid. The Board noted that the incident "failed to meet the legal definition of HIB," noting that the February 26, 2024, conflict was not motivated by any actual or perceived characteristic, such as race, color, religion or gender, among other characteristics. Ibid.

LEGAL ANALYSIS AND CONCLUSIONS

Summary Decision

Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, "[a] party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). Such motion "shall be served with briefs and with or without supporting affidavits," and "[t]he decision sought may be rendered 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). When the motion "is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid. What constitutes a genuine issue of fact is discussed in R. 4:46-2(c), which states, in relevant part:

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.

From a review of the facts presented, there are no material facts in dispute. The case is ripe for summary decision.

The Act

The 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, HIB is defined as follows:

“Harassment, intimidation or bullying” means 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 by severely or pervasively causing physical or emotional harm to the student.

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

The Act mandates that, within two days of witnessing or receiving reliable information regarding any acts of HIB, school personnel must report the incident in writing to the school principal. N.J.S.A. 18A:37-15(b)(5). The principal or the principal’s designee must initiate a prompt investigation of the incident, and the investigation must be completed within ten school days after the incident is reported to the principal. N.J.S.A. 18A:37-15(b)(6)(a). The results of the investigation must be reported to the

superintendent and the board of education. N.J.S.A. 18A:37-15(b)(6)(b),(c). School officials must inform the parents or guardians of students involved in a suspected act of HIB within five school days of reporting the results to the board of education. N.J.S.A. 18A:37-15(b)(6)(d).

A HIB finding requires an affirmative finding on the following 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.

[Wehbeh v. Bd. of Educ. of the Twp. of Verona, EDU 10981-18, Initial Decision (Dec. 24, 2019), rev'd and remanded, Comm'r Decision No. 51-20, slip op. at 7-8 (Feb. 4, 2020) (2020 N.J. Agen Lexis 50).]

The standard of review for HIB determinations is high. The DOE Commissioner will not overturn a local school board's decision unless they determine that the action below was arbitrary, capricious or unreasonable. 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/NJLAW-pdfs/initial/edu02780-07_1.pdf/. For a successful challenge to a board of education's HIB determination, a party "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 the Borough of Franklin Lakes, EDU 13204-13, Initial Decision (Feb. 24, 2014) (citation omitted), adopted, Comm'r (Apr. 10, 2014), https://njlaw.rutgers.edu/OAL/NJLAW-pdfs/initial/edu13204-13_1.pdf. A board of education's decision may also 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., EDU 10826-12, Initial Decision (Mar. 11, 2013) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)), adopted, Comm'r (Apr. 25, 2013), [OAL/NJLAW-pdfs/initial/edu10826-12_1.pdf](https://njlaw.rutgers.edu/OAL/NJLAW-pdfs/initial/edu10826-12_1.pdf). In other words, to determine whether the

Board's decision was arbitrary, capricious, and unreasonable, I need only decide whether sufficient credible evidence supports the Board's decision. Even if that evidence leaves room to form another opinion, it is insufficient grounds to overturn the Board's decision "so long as the Board has not acted dishonestly or in bad faith." R.R. o/b/o minor child, A.R. v. Bd. of Educ. of the Borough of Ramsey, Bergen Cnty., Comm'r Decision No. 131-24, at 5 (Mar. 8, 2024), https://njlaw.rutgers.edu/OAL/NJLAW-pdfs/final/edu03078-23_2.pdf.

As previously noted, the Board upheld the District finding that the February 26, 2024, incident was not a confirmed act of HIB because it was not motivated by any actual or perceived characteristic, such as race, color, religion or gender, among other characteristics. There is no evidence presented indicating that the February 26, 2024, incident was motivated by A.H.'s gender, race, religion or any other actual or perceived characteristic. The alleged comments made to A.H. during the incident also do not touch upon or refer to any such actual or perceived characteristic. See K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337, 351 (App. Div. 2011), certif. denied, 210 N.J. 108 (2012) (stating, "[h]armful 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."). Proof that an incident was motivated by an actual or perceived characteristic is a necessary and required part of any finding of a confirmed act of HIB; without proof of this element, an unfounded finding is warranted and appropriate. See C.S. o/b/o minor child C.S. v. Bd. of Educ. of Bridgewater-Raritan Reg'l Sch. Dist., EDU 04735-23, Initial Decision (March 25, 2024), adopted Comm'r (April 29, 2024) (finding that statements made that another student was a "school shooter" did not constitute an act of HIB), https://njlaw.rutgers.edu/OAL/NJLAW-pdfs/initial/edu04735-23_1.pdf; N.M. o/b/o minor child E.M. v. Bd. of Educ. of Twp. of Voorhees, EDU 10879-22, Initial Decision (September 7, 2023), adopted Comm'r (October 13, 2023) (finding that the statement that another student was a racist and pushing, smacking or slapping him was not a HIB), https://njlaw.rutgers.edu/OAL/NJLAW-pdfs/initial/edu10879-22_1.pdf. On its face, the lack of evidence on this element supports the Board's finding that the February 26, 2024, incident was not an act of HIB.

In opposition to the Board's motion for summary decision, petitioners argue that the February 26, 2024, incident was "intentional, aggressive, and caused [A.H.] emotional distress. Regardless of motive, physical restraint by peers constitutes a serious safety violation and meets the criteria for harassment and intimidation under school policy." See Pet'r's Br. at 1 (emphasis added). According to petitioners, the District's unfounded finding does not consider the following:

- The physical nature of the incident.
- The power imbalance created by two students against one.
- The lack of consent and inability of [A.H.] to remove herself from the situation.
- The emotional and psychological impact on my daughter.
- The girls continued to harass [A.H.] after the fact.

[Ibid.]

None of petitioners' arguments mentions or refers to an actual or perceived characteristic as the motivation for the February 26, 2024, incident, which, again, is a necessary element to determine that an event constituted a HIB.

Finally, petitioners allege that the District failed to follow the Act's timeline, which led to a "botched investigation." The undisputed facts in this matter do not support that conclusion. The District completed its investigation within ten days of February 28, 2024, the date that petitioners reported the incident to school officials, as is required under the Act.

For these reasons, there is sufficient credible evidence supporting the Board's finding that the February 26, 2024, incident was not an act of HIB. The Board's actions were not arbitrary, capricious or unreasonable, and for the petitioners' failure to prove otherwise, the Board's motion for summary decision is **GRANTED**.

ORDER

I **ORDER** that the Board's motion for summary decision is hereby **GRANTED**, and accordingly, the petition is **DISMISSED**.

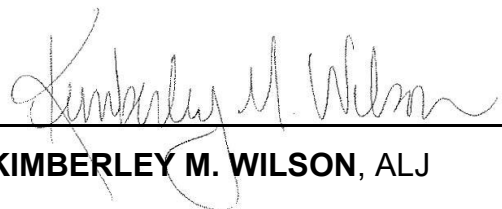
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.

July 22, 2026

DATE


KIMBERLEY M. WILSON, ALJ

Date Received at Agency:

July 22, 2026

Date Mailed to Parties:

KMW/ml

APPENDIX

Witnesses

For petitioners:

None

For respondent:

None

Exhibits

For petitioners:

Motion papers, including letters dated January 28, 2026, and March 30, 2026, and proof of service

For respondent:

Motion papers, including moving brief, reply brief, Affidavit of Christina M. Egan, Second Affidavit of Christina M. Egan, and proof of service