

72-26  
OAL Dkt. No. EDU 08773-24  
Agency Dkt. No. 165-5/24

**New Jersey Commissioner of Education**  
**Final Decision**

A.H., on behalf of minor child, A.A.,  
  
Petitioner,  
  
v.  
  
Board of Education of the High Point Regional  
High School District, Sussex County,  
  
Respondent.

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

Petitioner appeals the Board's determination that her child, A.A., was not the victim of an act of harassment, intimidation, and bullying (HIB). On December 26, 2023, A.A. was at school for wrestling practice and left her phone and a sweatshirt in the locker room. When A.A. returned to the locker room after practice, she saw that both the phone and sweatshirt had been damaged. Specifically, a graphic on the back of the sweatshirt of a heart with wings and the words "A big piece of my heart lives in Heaven . . . and he is my Dad!" had been cut; a portion that included word "Dad" had been removed. The sweatshirt referred to A.A.'s father, who had passed away.

The Investigation Report completed by the school's Anti-Bullying Specialist (ABS) indicated that although information provided during the investigation suggested that student B.K. might be the perpetrator, he could not positively confirm or deny B.K.'s involvement beyond a reasonable doubt. The HIB Report indicated that all of the characteristics of an HIB incident had been met: the incident was based on an actual or perceived distinguishing characteristic of A.A., which was identified on the report as "loss of father"; there was a substantial disruption or interference with operation of the school or rights of students; and there was physical or emotional harm to a student or property. The HIB Report further noted that a "HIB incident did occur, but at this time, there is no confirmation as to the identity of an Alleged Offender."

Upon his review, the district's Superintendent determined that the incident did not constitute HIB, because 1) there was no confirmed offender and 2) the law "focuses on protected characteristics related to a person['s] identity rather than life events such as the loss of a parent." The Board agreed with the Superintendent's recommendation and found that there was no incident of HIB, noting in its decision that there was no confirmed aggressor or discernible distinguishing characteristic.

The Administrative Law Judge (ALJ) agreed with the Board's finding that there was no confirmed aggressor. Although petitioner argued that a preponderance of the evidence standard should apply, rather than the reasonable doubt standard applied by the ABS, the ALJ concluded that the Anti-Bullying Bill of Rights Act (Act) does not reflect any such standard by which school personnel are bound in an investigation. The ALJ further noted that there was no video recording of or witness to the sweatshirt and phone being damaged, and numerous individuals other than B.K. had access to the locker room at the time of the incident. As such, the ALJ found that there

was no legal basis for the Board to supplant the determination by both the ABS and the Superintendent that the identity of the individual who caused the damage could not be confirmed, and that the Board's decision on this issue was therefore not arbitrary, capricious, or unreasonable.

Regarding the Board's determination that there was no distinguishing characteristic, the ALJ concluded that A.A.'s loss of her father is not akin to the distinguishing characteristics contemplated by the Act. The ALJ found that the Act's requirement pertains to a characteristic of the individual alleged to be the victim of HIB. The ALJ also found that even if "loss of father" were a distinguishing characteristic, there was insufficient evidence that the property damage to A.A.'s phone and sweatshirt was reasonably perceived as being motivated by A.A.'s loss of her father. In fact, the ALJ noted that if the perpetrator was B.K. as posited by petitioner, there was a likelihood that she was instead motivated by a personal conflict with A.A.'s sister. Accordingly, the ALJ concluded that the Board's decision was not arbitrary, capricious, or unreasonable. Finally, the ALJ found that any procedural violations alleged by petitioner did not alter her other conclusions.

In her exceptions, petitioner argues that the ALJ erred in concluding that the loss of a parent is not a distinguishing characteristic. According to petitioner, the fact that A.A. has lost a parent marks her as different, which is consistent with the dictionary definition of "distinguish"; it also has affected her psychologically in a way that leaves her emotionally vulnerable. Petitioner points to prior Commissioner decisions in which a student's vegetarian lifestyle, diagnosis with head lice, and being "weak" or "bad at sports" have been found to be distinguishing characteristics, even though none of those characteristics related to a student's identity in the

same manner as race, religion, national origin, or other protected statuses.<sup>1</sup> Petitioner also contends that the ALJ was incorrect in finding that there was insufficient evidence that the property damage was motivated by A.A.'s loss of her father, because it erroneously focuses on evidence of the actual motivation of the person who committed the act rather than the reasonable perception of the victim. Additionally, petitioner argues that even if it were impossible to determine who destroyed A.A.'s phone and sweatshirt, it is not necessary to know who committed an act of HIB to determine that an act of HIB in fact occurred. Petitioner notes that the Act includes a range of services, interventions, and responses that are aimed at supporting a victim of HIB, which do not require identification of a perpetrator. Finally, petitioner argues that the Board failed to comply with the procedural requirements of the Act.

In response, the Board argues that in the cases cited by petitioner related to distinguishing characteristics, the comments made by the aggressor to the victim were all based on the victim's distinguishing characteristics and stated clearly by the identified aggressor. Conversely, here, there was no identified aggressor or comments made to A.A. about her father. According to the Board, the ALJ properly determined that there was insufficient evidence to determine the aggressor's motivation. The Board also argues that there was no substantial disruption to the orderly operation of the school or the rights of other students, as required by the Act. Finally, the Board argues that the ALJ correctly concluded that there were no procedural deficiencies.

The Act defines HIB as:

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<sup>1</sup> Petitioner also notes that in *N.M. o/b/o H.M. v. Bd. of Educ. of the Sch. Dist. of the Chathams*, Commissioner Decision No. 280-18 (Nov. 29, 2018), a board of education found that comments one student made about another student's deceased father constituted HIB. However, that portion of the Board's determination was not appealed, and the Commissioner therefore did not review it or address whether having a deceased father could constitute a distinguishing characteristic. Accordingly, that decision has no precedential value here.

[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 sum, a finding of HIB requires three elements under the Act.<sup>2</sup> 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. Second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. Third, one of the three conditions set forth in subsections (a), (b), and (c) must be satisfied. *Wehbeh v. Bd. of Educ. of the Twp. of Verona, Essex Cnty.*, Commissioner Decision No. 510-20 (Feb. 4, 2020).

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<sup>2</sup> As the parties do not dispute that the incident occurred on school property, this element of the Act is deemed satisfied and it is not necessary to further address it herein.

Upon review, the Commissioner concurs with the ALJ that the Board correctly found that there was no identified offender, and that it would be inappropriate to confirm that B.K. was the aggressor in the incident at issue, as petitioner requested. However, this finding does not require the conclusion that there was no act of HIB. Nothing in the Act requires that an offender be identified, and a student may be a victim of an act of HIB – and receive appropriate services related thereto – even if there is no offender to be punished.

The Commissioner also disagrees with the ALJ and finds that the loss of a parent can constitute a distinguishing characteristic. The Act does not contain a definition of “distinguishing characteristic.” It enumerates some examples of distinguishing characteristics, but also includes a catchall for “any other distinguishing characteristic.” *N.J.S.A. 18A:37-14*. Prior Commissioner decisions have recognized that distinguishing characteristics are not limited to immutable characteristics like many of those enumerated in the Act. A student’s appearance at a given time can be a distinguishing characteristic,<sup>3</sup> as can a temporary health condition<sup>4</sup> or a student’s skill at sports.<sup>5</sup> In keeping with those prior cases, the Commissioner finds that the ALJ’s interpretation of what may constitute a distinguishing characteristic is too narrow. The fact that A.A.’s father is deceased distinguishes her from the majority of her classmates, not solely as a “life circumstance,” but in a profound and meaningful way. The Commissioner finds that the Board disregarded this reality, and therefore also finds that it was arbitrary, capricious, and

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<sup>3</sup> *R.G.B. o/b/o E.B. v. Bd. of Educ. of Ridgewood*, Commissioner Decision No. 242-13 (June 24, 2013).

<sup>4</sup> *W.C.L. and A.L. o/b/o L.L. v. Bd. of Educ. of Tenafly*, Commissioner Decision No. 15-13 (Jan. 10, 2013).

<sup>5</sup> *C.C. o/b/o S.C. v. Bd. of Educ. of Jefferson*, Commissioner Decision No. 153-15 (May 12, 2015).

unreasonable for the Board to determine that A.A.'s loss of her father was not a distinguishing characteristic.

The Commissioner further disagrees with the ALJ regarding her conclusion that there is insufficient evidence that the damage to A.A.'s property was motivated by A.A.'s loss of her father.<sup>6</sup> Prior Commissioner decisions have been clear that a HIB finding does not depend on the actual motivation of the actor. "In defining HIB as an action "that is *reasonably perceived* as being motivated either by any actual or perceived characteristic . . .", *N.J.S.A. 18A:37-14* (emphasis added), the statute 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, supra*. It is clear that A.A. perceived the damage to her sweatshirt as being motivated by the loss of her father. The question then becomes whether that perception was reasonable. The sweatshirt that was damaged was not any sweatshirt, but one that specifically referenced A.A.'s father; the portion of the sweatshirt that was damaged was the graphic about him.<sup>7</sup> The Commissioner therefore concludes that it was reasonable for A.A. to perceive that the damage was motivated by the loss of her father.

As to the second requirement for an act of HIB, the conduct must substantially disrupt or interfere with the orderly operation of the school or the rights of other students. The Board

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<sup>6</sup> The Commissioner notes that this conclusion was not part of the Board's decision. As such, the Commissioner's analysis herein does not address whether the Board's decision was arbitrary, capricious, or unreasonable – because there was no decision on this issue – but rather whether the ALJ's conclusion is legally appropriate.

<sup>7</sup> For this reason, the Commissioner also rejects the Board's attempt to distinguish prior case law because the perpetrators of the HIB acts in those matters made comments directly related to the student's appearance, health condition, or skill at sports. While the act at issue in this matter was not a verbal comment specifically about a distinguishing characteristic, the action was nonetheless directly related to A.A.'s deceased father.

argues that this criteria was not met because the incident occurred during the school's winter break and although A.A. left practice for the day afterwards, there is no evidence that she was unable to learn when she returned to school in January.<sup>8</sup> However, a student has a right to attend school and school activities without suffering damage to their property, and the conduct at issue here substantially interfered with A.A.'s rights in that regard.

As to the third requirement regarding the effect of the conduct,<sup>9</sup> the criteria of *N.J.S.A.* 18A:37-14(a) have clearly been met; there can be no question that a reasonable person would know that cutting a student's sweatshirt would cause physical damage. Moreover, a reasonable person should know that cutting a sweatshirt referencing a student's deceased father would have the effect of emotionally harming the student.

Accordingly, the Initial Decision is adopted in part and rejected in part. The Board's determination that A.A. was not the victim of an act of HIB on December 26, 2023 is reversed. All requests for relief that relate to student B.K. are denied.

IT IS SO ORDERED.<sup>10</sup>



COMMISSIONER OF EDUCATION

Date of Decision: March 2, 2026  
Date of Mailing: March 2, 2026

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<sup>8</sup> The Commissioner notes that the HIB report found that this element was met, and the Board's decision, as communicated to petitioner by the Superintendent, does not reject that finding. The Initial Decision also does not address this issue.

<sup>9</sup> As with the second element, the Board's decision did not reject the ABS's conclusion that the requirement was met, and the Initial Decision did not address this issue.

<sup>10</sup> 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 08773-24

AGENCY DKT. NO. 165-5/24

**A.H. ON BEHALF OF MINOR CHILD, A.A.,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE HIGH  
POINT REGIONAL HIGH SCHOOL**

**DISTRICT, SUSSEX COUNTY,**

Respondent.

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**David R. Giles**, Esq., for petitioner

**Christina Michelson**, Esq., for respondent (Methfessel & Werbel, PC, attorneys)

Record Closed: May 23, 2025

Decided: December 4, 2025

BEFORE **KELLY J. KIRK**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner, A.H., on behalf of minor child, A.A., challenges the harassment, intimidation, or bullying (HIB) determination of respondent, Board of Education of the High Point Regional High School District, Sussex County (Board).

By letter dated March 20, 2024, petitioner was notified that the Board affirmed the District's determination that the December 26, 2023, incident did not meet the legal definition of HIB. (Michelson Cert. 1, Exhibit F.) On May 27, 2024, A.H.'s Pro Se Petition of Appeal (Petition) was filed with the Commissioner of Education (Commissioner), alleging "that the act committed by alleged perpetrator, B.K., on December 26, 2023, meets the statutory definition of HIB; and requesting the following relief: that both A.A. and A.A.1.'s<sup>1</sup> student files be expunged of all claims of HIB brought against them by B.K.; that the Commissioner overturn the determination of HIB that was confirmed on March 20, 2024; that B.K. be confirmed as having committed an act of HIB on December 26, 2023, as the perpetrator and the victim being A.A.; that the commissioner acknowledge that there was enough proof to determine who was the perpetrator and recognize that a discernible distinguishing characteristic existed and that the school district's translation of such characteristic was narrow and did not fall within the legal parameters of the statute; that staff and teachers receive additional HIB training so they have a greater understanding of the scope of distinguishing characteristics and the legal standard of evidence to determine if a student has committed an act of HIB; and that B.K. be scheduled separately from A.A. and A.A.1. when possible. On June 19, 2024, the Board filed an Answer To Petition Of Appeal (Answer) with the Commissioner.

The Department of Education transmitted the matter to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the office, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the rules of procedure established by the Department of Education to hear and decide controversies and disputes arising under school laws, N.J.A.C. 6A:3-1.1 to -1.17. The matter was filed at the Office of Administrative Law on June 26, 2024.

On February 14, 2025, respondent filed a motion for summary decision, consisting of a brief, Certification of Exhibits (Michelson Cert. 1) with seven exhibits, and Certification of James Rice (Rice Cert.) with two exhibits. On April 1, 2025, petitioner filed a cross-

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<sup>1</sup> In other exhibits, A.A.1. is referred to as A.A.2.

motion for summary decision, consisting of a brief in opposition to respondent's motion for summary decision and in support of petitioner's cross-motion, Certification of A.H. (A.H. Cert.) with five exhibits, Certification of A.A. (A.A. Cert.) with one exhibit, and Certification of David Giles, Esq. (Giles Cert.) with four exhibits. On May 2, 2025, respondent filed a letter brief in reply to petitioner's opposition and in opposition to petitioner's cross-motion for summary decision. On May 16, 2025, petitioner filed a reply letter-brief (May 16 Reply) in reply to respondent's opposition to the cross-motion for summary decision and Certification of Exhibits (Michelson Cert. 2) with two exhibits. On or about May 23, 2025, respondent filed a sur-reply, consisting of a sur-reply letter-brief with one exhibit (May 23 Sur-Reply) and Certification of Exhibits (Michelson Cert. 3) with two exhibits.

### **FACTUAL DISCUSSION**

A December 26, 2023, Student Information Report, noted thereon to be "A.A.'s Statement" (A.A.'s Statement), reflects an incident in the girls' locker room "around 9am on 12/26" as follows:

I grabbed my sweatshirt and my hands went through a hole in the back, and I saw that dad was cut off in the back of it. Then I told coach bang and she went to [illegible]. When I said some to bang [redacted] left the locker room. When bang left I called my mom @ 10:49 am. [Redacted] came up to me and told me that [redacted] was in and out of the locker room [illegible] bangs office. bang told me something and I grabbed my stuff and went to the senior tables. When Ms. Cardinal came someone said something at someone at hp. when my mom came we went into the [illegible] office and later in the [illegible] I saw that the back of my phone was broke [sic] and it wasn't like that before practice.

[See Giles Cert., Exhibit A.]

A.A.'s Statement further reflects who was involved as "[redacted] told me info," and who else saw it happen as "No one. I'm not sure." (See Giles Cert., Exhibit A.)

A December 27, 2023, Student Information Reports reflects the following: incident happened in the “locker room” and “I don’t know how it got damaged.” (See Giles Cert., Exhibit A.) Another December 27, 2023, Student Information Report reflects “I don’t know what happend [sic] to the sweatshirt or who damaged it.” (See Giles Cert., Exhibit A.) Another December 27, 2023, Student Information Report reflects that an incident happened in the “locker room (girls)” and what happened was as follows:

[Redacted]’s sweatshirt was cut up by St. Elizabeth (likely). it was a sweatshirt memorializing her dad. the word dad was cut out directly and discarded somewhere unknown.

[See Giles Cert., Exhibit A.]

Said Student Information Report further reflects that it could have been avoided by “stop letting other teams in our locker room . . . [t]hey could have gone to a classroom,” and that the best way that the problem can be solved is “stop letting people into our locker room.” (See Giles Cert., Exhibit A.) Another Student Information Report reflects an incident happened in the “girls['] locker room by east gym,” and what happened was as follows:

[Redacted]’s sweatshirt was ripped/cut but I was not there and only heard of it afterwards. I was out running so I also did not see anyone come in or out of the locker room.

[See Giles Cert., Exhibit A.]

Another December 27, 2023, Student Information Report reflects an incident in “the girls['] locker room,” and that “[a]fter practice yesterday [redacted] grabbed her sweatshirt and it was cut in the back.” (See Giles Cert., Exhibit A.) Another December 27, 2023, Student Information Report reflects an incident in the “locker room” and “My friend [redacted]’s sweatshirt was ruined,” and “I don’t have any knowledge of what happened.” (See Giles Cert., Exhibit A.)

A January 2, 2024, Student Information Report, noted thereon to be “B.K. statement” (B.K. Statement), reflects that an incident happened in the “girls['] locker room”

at “practice?” involving “the wrestling team, Saint Elizabeth basketball.” It also reflects that B.K. was “not sure” who else saw it happen, and that what happened was as follows:

I went in the locker room to get the papers from Mrs. Bangs office. I saw saint elizabeth by the whiteboard so I had to go further to reach her office. I didn't find the papers I had to give to . . . so I went back out and asked bang where she put it. I got the papers and even this time, I went to the locker room and the basketball team was still in there. They were right by where . . . leaves her stuff when the team came out, the basketball team was gone and we all went to run. Before the run, I was talking to . . . at the basketball game about my A/C separation. then I came into the locker room to [redacted] crying and everyone saying stuff about what just happened. I was not in the locker room at the time she found out. I was in the locker room 3 times 2 times for the papers and once with [redacted] and [redacted] I had left before the team was talked to but when I came back for the girls basketball game with my friends, I found out that [redacted] and [redacted] had gone to the police station. [Redacted] had left her stuff in the open, this is what lockers are for. I have nothing against [redacted] its sic her mom and her sister. I would NEVER do this to any of them. I know what they've been through and what that sweatshirt means to all 3 of them. To sum it up, all that happened was I went into the locker room before practice with [redacted] and [redacted]. [Redacted] was not here at this time once [redacted] got to the school, we started to mop the mats. I don't know exactly when [redacted] got there but when she did, I was mopping the mats practice started and maybe halfway through [redacted] came into the wrestling room and saw me with my sling. He asked for the papers so I went into the locker room to see the [redacted] team standing in my way so I walked around to get into [redacted] office. I could not find them so I went back out to ask where they were more specifically and she told me by the printer, so I went back to the wrestling room with the papers after this, [redacted] talked to me in the gym where the basketball game was going on. after my talk with [redacted] I went into the locker room where I saw the wrestling team going for their run so I joined but I walked the entire time. After the run, I went into the locker room and saw [redacted] crying and everyone talking about what just happened [redacted] thought it got caught on something but everyone else knew it was cut. [Redacted] and I talked and I told her I would never do anything like that she believed me and I left to go home.

[See Giles Cert., Exhibit B.]

On January 5, 2024, a HIB 338 Form was completed by A.H. regarding the incident on December 26, 2023. (A.H. Cert., Exhibit C.) The listed student witnesses were “HP Girls Wrestling Team but more specifically because these girls attended practice on 12-26-23, ([redacted]), HP Basketball Varsity Girls St. Elizabeth Varsity Girls basketball players.” (A.H. Cert., Exhibit C.) The listed staff witnesses were “HP Wrestling Coach Bang, HP Basketball Smetana, and St. Elizabeth Basketball Coach.” (A.H. Cert., Exhibit C.) Other witnesses listed were “Newton Girls Basketball players and Kittatinny Girls Basketball players may have been in the locker room at time of incident.” (A.H. Cert., Exhibit C.) The HIB 338 Form describes the incident as follows:

[A.A.’s] property of sweatshirt and phone was intentionally destroyed. [A.A.] was attending wrestling practice and while practicing alleged offender [B.K.] obtained possession of [A.A.’s] personal property. Offender intentionally cut out the “Dad” in the sweatshirt and with physical force broke her phone. The Dad was the only word cut out as the shirt read, “A big piece of my heart lives in heaven and he is my dad.” The incident took place while the girls were wrestling. [B.K.] was hurt at match on 12-23-23 so didn’t practice the day of the incident. It was reported by other wrestlers that [B.K.] was in and out of locker room and was told to go to the Athletic Director’s office but may have never went. It was told also that [B.K.] knows where Coach Bang keeps the scissors. After practice, [A.A.] went into locker room to get dressed and as she put on her sweatshirt, her arm/hand went right thru hole. [A.A.] immediately took her sweatshirt and showed Coach Bang the damage. [A.A.] called me at 10:52 am and I immediately came to the school. While talking to school counselor [A.A.] noticed that her iPhone was broken. Counselor then notified Mr. Dexter who was now aware of [illegible] in the girls['] locker room.

[A.H. Cert., Exhibit C.]

James Rice is the Director of Safety and Security for High Point Regional High School and served as the Anti-Bullying Specialist (ABS) from on or about November 1, 2019, to February 1, 2024. (See Rice Cert.) On or about January 5, 2024, he was directed by Principal Jonathan Tallamy to assist Assistant Principal Rebecca Sarno with reinterviewing two specific students about an incident on December 26, 2023. (See Rice

Cert.) On January 8, 2024, Tallamy directed ABS Rice to initiate a HIB investigation. (See Rice Cert.)

An Incident Statement from Coach Erin Bang (Bang's Incident Statement), dated January 11, 2024, states:

John Gardner and I held practice from 9-11 in the girls wrestling room. After practice, before the girls went on their cardio run, it was brought to my attention that a student's sweatshirt was cut-up. I immediately took the student and the sweatshirt to Mr. Dexter. It's been so long since 12/26/23 I do not recall if I gave my keys to anyone.

Q. Tell me about finding a pair of scissors.

A. At the end of the day (Jan. 10, 2024) I went to the office looked in the desk for scissors and they were in the left hand drawer buried under binders, papers, and books.

[See Giles Cert., Exhibit A.]

A November 12, 2024, Wrestling Statement states:

I never directly saw Bang give her keys to [redacted] but I certainly saw [redacted] with the keys from the beginning-middle ish of practice. She was also injured that day and was not wrestling so she shouldn't have had anything in the locker room anyways. I saw her with the keys in the wrestling room.

[See Giles Cert., Exhibit A.]

A January 12, 2024, Incident Statement states:

I saw [redacted] ask coach bang for her keys i don't know what time exactly but it was more towards the beginning of practice. I believe i was in the wrestling room at the time and saw her go in the locker room to ask for the keys.

Also [redacted] on Wednesday, January 10 during lunch had told [redacted] and [redacted] (both freshmen) that she had blamed [redacted] for the sweatshirt, but was gonna go to the office that day and blame me for it instead. She is like starting to blame everyone for this, starting with [. . .] and me.

Bang [and] [redacted] were in the wrestling room walk [sic] towards her office while i was walking down the hall towards the wrestling room.

[See Giles Cert., Exhibit A.]

The High Point Regional High School Incident/Investigation Report (Rice Report), states as follows:

This investigation began on 12/26/2023 and was conducted by Administrative Personnel involving an incident that took place at a team practice. The incident reported was that [redacted] a female wrestling athlete, found her sweatshirt had been intentionally damaged sometime during the practice time. The sweatshirt was left in the girls['] locker room adjacent to the cheer room in the East Gymnasium. It was discovered that the sweatshirt, as well as other personal clothing and items belonging to [redacted] were left unsecured on the bench & top of the lockers in the area near the PE Teachers['] office side of the locker room. The damage was reported to me as the word "DAD" being cut from the sweatshirt (See picture).

I was advised that the female athletes and coaches were interviewed by AD Dexter and AP Sarno as part of their investigation. I was further advised that as part of this investigation, a search for the cutting item and review of the Security Camera System were conducted by AD Dexter. (See notes and statements from Administrative Personnel).

On 1/5/2024, I was directed by Principal Tallamy to assist AP Sarno & AD Dexter with re-interviewing 2 students in reference to the above mentioned investigation conducted by the Administration (AD Dexter & AP Sarno). AP Sarno advised me that she wanted us to speak with [redacted] and [redacted].

AP Sarno and I first spoke to [redacted], who said that she did enter the locker room during practice through the east gym entrance in order to get her inhaler. When asked about being alone in the locker room, [redacted] said that she was not alone, and that [redacted] was in the locker room near "Bang's office" (PE Teacher's [sic] office). [Redacted] said that she thought [redacted] might have been "talking to Ms. Bang". When asked about [redacted]'s sweatshirt, [redacted] said that she never saw the sweatshirt and didn't have any knowledge of how it got damaged. We asked [redacted] if she

had heard anyone talking about the incident or had seen anything on Social Media. [Redacted] said that she had not heard or seen anything. I asked [redacted] if she knew anything about how [redacted]'s sweatshirt was damaged, and she said no. [Redacted] did not provide a new written statement at this time as the information was consistent with the first interview.

AP Sarno and I then spoke to [redacted] who said that she arrived at practice and was helping with mopping the mats. [Redacted] said that she was injured and not cleared to practice. [Redacted] added that during practice, she had to go into "Bang's office" (PE Teachers['] office) to get paperwork for Mr. Meyer, the Athletic Trainer, and then she took the paperwork to Mr. Meyer. [Redacted] said that when the team did their run, she walked with Coach Bang's daughter. We asked [redacted] if she heard anyone talking about damaging the sweatshirt or saw anything on Social Media. [Redacted] said no. I asked [redacted] if she knew anything about how [redacted]'s sweatshirt was damaged, and she said no.

On 1/9/2024, AP Sarno and I spoke to [redacted] who was a wrestling team member that had not been interviewed yet. [Redacted] said that she was at the practice but did not notice anything until hearing about the damage to the sweatshirt at the end of the practice. I asked [redacted] if she had heard anyone talking about the incident or seen anything on social media about it. [Redacted] said that she heard rumors that [redacted] might be involved, but that she had not heard anything or seen anything other than that.

On 1/10/2024 in the afternoon, AP Sarno was met by Coach Erin Bang, Girl's [sic] Wrestling team, who turned over scissors that were just located in the PE Teachers['] office. Ms. Bang also advised AP Sarno that she had forgotten that she had given her keys to a student, [redacted], in order to get her paperwork from the PE Teacher's [sic] office. AP Sarno secured those scissors and turned them over to me the morning of 1/11/2024 as well as passing on the information about the keys. The scissors were in a zip lock plastic bag and I observed the blue fibers on the blade and when looking at the picture of the sweatshirt, noted that the fibers appear to be similar in fabric and color. The scissors were secured in my personal gun locker which only I have access to.

On 1/11/2024, I spoke with Ms. Bang about about [sic] the information received from AP Sarno and the finding of the scissors. I first asked Ms. Bang about her keys being given to a student. Ms. Bang said that she was dealing with a group

of girls at practice that were talking about this incident, and advising them to stop. During this conversation, Ms. Bang said that the girls reminded her that she had given [redacted] her keys during practice. Ms. Bang continued by saying that she was pissed at herself for forgetting and not mentioning this sooner. I asked Ms. Bang to explain about giving the keys to [redacted] and she said that she wasn't sure when it was, but that it wasn't at the end of practice. Ms. Bang continued by saying that she wasn't exactly sure how long [redacted] had the keys and thought about 5 minutes but definitely not longer than 10 minutes. Ms. Bang said that she got her keys back from [redacted]. I asked Ms. Bang if the office was open or locked at the end of practice when she came into the locker room. Ms. Bang said that it was locked at the end.

I then asked Ms. Bang about her finding the scissors and turning them into [sic] AP Sarno. Ms. Bang advised that she took it upon herself to conduct a second search of the PE Teachers['] office in the locker room. While going through the desk with the printer on it, she checked the left drawer and hidden behind some "stuff" in the back was a pair of scissors that had blue fabric on the blade. Ms. Bang said there were three pairs of office scissors throughout the office, but this was the only one that had fabric fibers.

I asked Ms. Bang to write a statement about what she had spoken to me about. Ms. Bang took the form with her because of her teaching responsibilities this next period starting in a few minutes. I asked Ms. Bang to return the statement as soon as possible. Ms. Bang returned to my office later and told me that she "spilled coffee" on the form that I gave her and could she have another one. I gave her another statement form. Ms. Bang returned the completed statement form a little while later. In the statement, Ms. Bang had written about how there was practice on 12/26/2023 and described the practice itself. Next, in a small sentence wrote that because of the length of time, she couldn't remember if she gave anyone the keys, and did not even address the finding of the scissors as requested. Ms. Bang was asked to stop by my office and address the question I had asked to be clarified about the scissors. Ms. Bang stopped by my office while I was dealing with another situation, and answered my question in a written manner. I was advised that while in the office, she made comments to others in the security office about not wanting to be involved in this incident. (see statement Bang)

I noted that during my interview with Ms. Bang, she was concise and direct in her recollection of both the incident involving the keys and finding the scissors. Ms. Bang

understood fully what we had spoken about, and that I wanted her written statement to address the two incidents that we had spoken about. I have no explanation for the sudden and unsolicited change in the information provided to me by Ms. Bang as part of this investigation. Ms. Bang did not speak with me further about this incident.

AP Sarno and I then spoke with [redacted] about the new information received. We first spoke about the possibility of her getting keys from Ms. Bang to open the office for the paperwork she needed. [Redacted] said that she did not get keys from Ms. Bang and that the office was already open. We talked some more about the keys and [redacted] added that she has never used Ms. Bang's keys. We then spoke about the scissors that had been located and I asked [redacted] if she had seen these before and she said no. We talked about the situation and the possible motivations the person who had done this might have had. I told [redacted] about where we were in the investigation. I then asked her if she had anything else that she wanted to tell us about this incident that she had not told us before. [Redacted] said no, then got up, stopped before going out, and said she had a question. [Redacted] asked why the scissors were just found and I again explained that they were located yesterday. [Redacted] again was going to leave, then stopped, and asked if she could ask another question. I told her of course and asked her to sit down again. [Redacted] sat down and advised us that another student, [redacted], had asked her about [redacted]'s family issues some time before 12/26/2023 and [redacted] said that she told her about the situation. [Redacted] also said that there were "a lot of people in the office including Coach Bang". At this point, I thanked her for that information and [redacted] left the office.

On 1/12/2024, AP Sarno and AD Dexter interviewed members of the Girl's [sic] Wrestling team about Ms. Bang's actions involving the giving of keys to [redacted]. Their interviews found two students who observed [redacted] with Ms. Bang's keys. (See Administration notes).

On 1/17/2024, AP Sarno and I spoke with [redacted] in reference to an email that [redacted] sent me about a friend of hers receiving a text message from [redacted] in reference to the sweatshirt. (see email and screen shot). [Redacted] told us that she received the text message on 1/2/2024 from [redacted]. [. . .] said that she is friends with both [redacted] and [redacted] and that she really didn't want to get involved in this, but felt that [redacted] needed to know. [Redacted] said that the text message was asking [redacted] if she had

heard about [redacted]'s sweatshirt and also [redacted] asked if [redacted] thought it was her ([redacted]). I asked if [redacted] was saying anything about the incident, and [redacted] said that [redacted] doesn't talk much about it. I asked if [redacted] was saying anything to her about the incident. [Redacted] said that [redacted] texted the same message to her on 1/4/2024, but [redacted] said she told her that [redacted] had not said anything to her. The last thing I asked [redacted] was that if she had heard anyone else talking about the incident or if she had seen anything on social media, [. . .] said that no one has talked to her about it.

As a result of this investigation, though a preponderance of the evidence received is directed at a specific student, [redacted] that information alone cannot positively confirm or deny that student's involvement beyond a reasonable doubt. Therefore, this incident will be listed as Closed - Pending. The investigation will be reopened if new information is received in the future.

[See Giles Cert., Exhibit A.]

The High Point Regional High School Harassment—Intimidation—Bullying Report (HIB Report) summarizes the investigation as follows:

On 1/8/2024, I was directed by Principal Tallamy to initiate a HIB investigation based on the receipt of a HIB 338 form submitted by Mrs. [redacted] mother of [redacted]. The form indicated that [redacted]'s sweatshirt and cell phone were damaged at a Girl's [sic] Wrestling team practice on 12/26/2023. The investigation by the Administration was initiated on the same day. (See notes and statements from Administration's investigation).

On 1/5/2024, I was asked to assist AP Sarno with re-interviewing specific students in reference to IR 10-23-24. I assisted AP Sarno with speaking to [redacted] and [redacted]. We first spoke to [redacted], who said that she did enter the locker room during practice through the east gym entrance in order to get her inhaler. When asked about being alone in the locker room, [redacted] said that she was not alone, and that [redacted] was in the locker room near "Bang's office" (PE Teacher's [sic] office). [Redacted] said that she thought [redacted] might have been "talking to Ms. Bang". When asked about [redacted]'s sweatshirt, [redacted] said that she never saw the sweatshirt and didn't have any knowledge of how it got damaged. We asked [redacted] if she had heard

anyone talking about the incident or had seen anything on Social Media. [Redacted] said that she had not heard or seen anything. I asked [redacted] if she knew anything about how [redacted]'s sweatshirt was damaged, and she said no. [Redacted] did not provide a new statement at this time.

We next spoke to [redacted], who said that she arrived at practice and was helping with mopping the mats. [Redacted] said that she was injured and not cleared to practice. [Redacted] added that during practice she had to go into "Bang's office" (PE Teachers['] office) to get paperwork for Mr. Meyer, the Athletic Trainer, and then she took the paperwork to Mr. Meyer. [Redacted] said that when the team did their run, she walked with Coach Bang's daughter. I asked [redacted] if she knew anything about how [redacted]'s sweatshirt was damaged, and she said no.

On 1/9/2024, AP Sarno and I spoke to [redacted] who was a wrestling team member that had not been interviewed yet. [Redacted] said that she was at the practice but did not notice anything until hearing about the damage to the sweatshirt at the end of practice. I asked [redacted] if she had heard anyone talking about the incident or seen anything on social media about it. [Redacted] said that she heard rumors that [redacted] might be involved, but that she had not heard anything or seen anything other than that.

On 1/11/2024, I spoke with Ms. Bang about about [sic] the information received from AP Sarno. I first asked Ms. Bang about her keys being given to a student. Ms. Bang said that she was dealing with a group of girls that were talking about this incident, and advising them to stop. During this conversation, Ms. Bang said that the girls reminded her that she had given [redacted] her keys during practice. Ms. Bang continued by saying that she was pissed at herself for forgetting and not mentioning this sooner. I asked Ms. Bang to explain about giving the keys to [redacted] and she said that she wasn't sure when it was, but that it wasn't at the end of practice. Ms. Bang continued by saying that she wasn't exactly sure how long [redacted] had the keys and thought about 5 minutes but definitely not longer than 10 minutes. Ms. Bang said that she got her keys back from [redacted]. I asked Ms. Bang if the office was open or locked at the end of practice when she came into the locker room. Ms. Bang said that it was locked at the end.

I then asked Ms. Bang about her finding the scissors and turning them into [sic] AP Sarno. Ms. Bang advised that she took it upon herself to search the PE Teachers['] office in that

locker room. While going through the desk with the printer on it, she checked the left drawer and in the back was a pair of scissors that had blue fabric similar to the fabric of the sweatshirt that was cut. Ms. Bang said there were three pairs of office scissors, but this was the only one that had fabric fibers.

I asked Ms. Bang to write a statement about what she had spoken about. Ms. Bang took the form and [I] asked her to return it after her teaching responsibilities this next period. Ms. Bang returned shortly after leaving my office and told me that she “spilled coffee” on the form I gave her and could she have another one. I gave her another form. A little while later, Ms. Bang returned the statement form. Ms. Bang had written about how there was practice on 12/26/2023 and described the practice, then in a small sentence wrote that because of time, she couldn't remember if she gave anyone the keys, and did not even address the finding of the scissors. Ms. Bang was asked to stop by my office and address the question I had asked to be clarified about the scissors. Ms. Bang stopped by my office while I was dealing with another situation, and answered my question. (see statement Bang)

On 1/12/2024, I was asked by Mrs. [redacted], [redacted]'s mother, if I could speak to [redacted]'s boyfriend, [redacted] as a potential witness to this investigation. I advised her I would. During that conversation, Mrs. [redacted] advised me that she feels [redacted] was targeted “because she doesn't have a Dad”. I advised Mrs. [redacted] I would note that.

AP Sarno and I then spoke with [redacted] and explained what I was investigating. [Redacted] said that he was [redacted]'s boyfriend, but that they broke up 2-3 days ago. [Redacted] offered that they broke up because of the stresses she was going through and she needed her space. [Redacted] said that she broke up with him. I asked [redacted] if he was aware of the incidents involving the girl's sic wrestling team and he said that he had heard from others about the sweatshirt and phone being damaged, and how [redacted]'s name was involved. [Redacted] said that [redacted] never spoke to him about it. I asked [redacted] if he had ever heard [redacted] talking with anyone about that incident and he said No. I asked [redacted] again, if [redacted] had ever told him anything about the damage to the sweatshirt and the cell phone. [Redacted] said that [redacted] had never spoken to him about that.

On 1/17/2024, AP Sarno and I spoke with [redacted] in reference to an email that [redacted] sent me about a friend

of hers receiving a text message from [redacted] in reference to the sweatshirt. (see email and screen shot). [Redacted] told us that she received the text message on 1/2/2024 from [redacted]. [Redacted] said that she is friends with both [redacted] and [redacted] and that she really didn't want to get involved in this, but felt that [redacted] needed to know. [Redacted] said that the text message was asking [redacted] if she had heard about [redacted]'s sweatshirt and also [redacted] asked if [redacted] thought it was her ([redacted]). I asked if [redacted] was saying anything about the incident, [redacted] said that [redacted] texted the same message to her on 1/4/2024, but [redacted] said she told her that [redacted] had not said anything to her. The last thing I asked [redacted] was that if she had heard anyone else talking about the incident or if she had seen anything on social media [ . . . ] said that no one has talked to her about it.

Based on the information received from AP Sarno and AD Dexter involving their investigation as well as my findings, I believe the incident itself has all of the distinguishing characteristics of a Harassment, Intimidation, and Bullying incident. The evidence gathered as well as the interviews that were conducted by both the Administration and myself do not confirm or deny the parents' accusation towards a specific student's involvement. The report will show a HIB incident did occur, but that at this time, there is no confirmation as to the identity of an Alleged Offender.

[See Giles Cert., Exhibit A.]

The HIB Report checks “yes” to “substantial disruption or interference with operations of school or rights of students,” “actual or perceived distinguishing characteristic,” and “physical or emotional harm to a student or his or her property or fear of harm to student or property,” and reflects the distinguishing characteristic as “Other (Loss of Father).” (See Giles Cert., Exhibit A.)

Superintendent Scott Ripley's January 29, 2024, Administrative Review of the HIB Report states:

While it is highly troubling and upsetting that a student who has recently lost a parent might have to endure a negative experience such as that which is described, there are two aspects of this ruling that inform my decision to overturn this positive HIB determination and to declare it to be a CODE OF

CONDUCT infraction with no confirmed offender. 1. There is no established offender. 2. The HIB legislation focuses on protected characteristics related to a person[']s identity rather than life events such as the loss of a parent. For these reasons I am overruling this HIB determination so as to formalize this incident as NOT falling under the statutory HIB requirements.

[See Giles Cert., Exhibit A.]

The February 27, 2024, Board meeting minutes reflect that the Board unanimously approved the following resolution: “It is recommended by the Superintendent that the Board of Education approves the Harassment, Intimidation and Bullying Report for the period January 24, through February 27, 2024. (Attachment A-4.)” (See Michelson Cert. 2, Exhibit H.)

The March 19, 2024, Board Executive Session minutes reflect, inter alia, that “Dr. Ripley discussed an HIB appeal that was heard last week by the Personnel & Policies Committee” and that “Mr. Dunn discussed opinions from the school attorney regarding the appeal.” (See Michelson Cert. 2, Exhibit I.)

By letter dated March 20, 2024, petitioner was notified that the Board affirmed the District’s determination that the December 26, 2023, incident did not meet the legal definition of HIB. (See Michelson Cert. 1, Exhibit F.) More specifically, the letter states that “due to the rationale provided in the original findings report and presented in our appeal meeting [there was no confirmed aggressor, nor was there a discernible distinguishing characteristic], this letter shall service as official notice that the Board affirms the district determination that the incident did not meet the legal definition of a HIB and that the HIB appeal is denied.” (Michelson Cert. 1, Exhibit F.)

## **LEGAL ANALYSIS AND CONCLUSION**

### **Anti-Bullying Bill of Rights Act**

The New Jersey Legislature has found and declared that a safe and civil environment in school is necessary for students to learn and achieve high academic

standards, and that harassment, intimidation, or bullying (HIB), like other disruptive or violent behaviors, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe environment. N.J.S.A. 18A:37-13. In enacting the "Anti-Bullying Bill of Rights Act," N.J.S.A. 18A:37-13.2 to -37.5 (the Act), it was the intent of the Legislature to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of HIB of students that occur in school and off school premises. N.J.S.A. 18A:37-13.1; N.J.S.A. 18A:37-13.2. Notwithstanding any provision of N.J.S.A. 52:14B-1 et seq. or any other law to the contrary, the commissioner may adopt such rules and regulations as the commissioner deems necessary to implement the provisions of the Act. N.J.S.A. 18A:37-32.1.

The Act defines HIB 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 by N.J.S.A. 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; N.J.A.C. 6A:16-1.3.]

Each school district must adopt a policy prohibiting HIB on school property, at a school-sponsored function, or on a school bus. N.J.S.A. 18A:37-15(a); N.J.A.C. 6A:16-7.7(a). A school district has local control over the content of the policy, except that the policy must contain, at a minimum, the thirteen components enumerated at N.J.S.A. 18A:37-15(b), which include, but are not limited to: (1) a statement prohibiting HIB of a student; (2) a definition of HIB no less inclusive than that set forth at N.J.S.A. 18A:37-14; (3) a description of the type of behavior expected from each student; (4) consequences and appropriate remedial action for a person who commits an act of HIB; (5) a procedure for reporting an act of HIB, including a provision that permits a person to report an act of HIB anonymously; however, this shall not be construed to permit formal disciplinary action solely on the basis of an anonymous report; (6) a procedure for prompt investigation of reports of violations and complaints, which must, at a minimum, comport with N.J.S.A. 18A:37-15(a)(6)(a) through (f); (7) the range of ways in which a school will respond once an incident of HIB is identified, which shall be defined by the principal in conjunction with the school anti-bullying specialist; (8) a statement that prohibits reprisal or retaliation against any person who reports an act of HIB and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation; and (9) consequences and appropriate remedial action for a person found to have falsely accused another as a means of retaliation or as a means of HIB. N.J.S.A. 18A:37-15(b). See also N.J.A.C. 6A:16-7.7(a)(2). A school district is not prohibited from adopting a policy that includes components that are more stringent than the aforesaid components. N.J.S.A. 18A:37-15(f); N.J.A.C. 6A:16-7.7(b).

The superintendent of schools shall appoint a district anti-bullying coordinator. N.J.S.A. 18A:37-20(b). The principal in each school in a school district shall appoint a school anti-bullying specialist. N.J.S.A. 18A:37-20(a). The school anti-bullying specialist shall (1) chair the school safety team; (2) lead the investigation of HIB in the school; and (3) act as the primary school official responsible for preventing, identifying, and addressing incidents of HIB in the school. Ibid.

All acts of HIB shall be reported verbally to the school principal on the same day when the school employee or contracted service provider witnessed or received reliable information regarding any such incident. N.J.S.A. 18A:37-15(b)(5). See also N.J.A.C.

6A:16-5.3(a). The principal shall inform the parents or guardians of all students involved in the alleged incident, and may discuss, as appropriate, the availability of counseling and other intervention services. N.J.S.A. 18A:37-15(b)(5). The principal shall keep a written record of the date, time, and manner of notification to the parents or guardians. Ibid. All acts of HIB shall be reported in writing to the school principal within two school days of when the school employee or contracted service provider witnessed or received reliable information that a student had been subject to HIB. Ibid. The written report shall be on a numbered form developed by the Department of Education, and a copy of the form shall be submitted promptly by the principal to the superintendent of schools. Ibid. The form shall be completed even if a preliminary determination is made under the school district's policy that the reported incident or complaint is a report outside the scope of the definition of HIB pursuant to N.J.S.A. 18A:37-14, and shall be kept on file at the school but shall not be included in any student record, unless the incident results in disciplinary action or is otherwise required to be contained in a student's record under State or federal law. Ibid. A redacted copy of the form that removes all student identification information shall be confidentially shared with the board of education after the conclusion of the investigation, if a hearing is requested by a parent or guardian pursuant to N.J.S.A. 18A:37-15(b)(6)(d). Ibid. The school district shall provide a means for a parent or guardian to complete an online numbered form developed by the Department of Education to confidentially report an incident of HIB. Ibid. The principal shall report to the superintendent if a preliminary determination is made under the school district's policy that the reported incident or complaint is a report outside the scope of the definition of HIB, and the superintendent may require the principal to conduct an investigation of the incident, if the superintendent determines that an investigation is necessary because the incident is within the scope of the definition of HIB. Ibid. The superintendent shall notify the principal of this determination in writing. Ibid.

An investigation shall be initiated by the principal or the principal's designee within one school day of the report of the incident and shall be conducted by a school anti-bullying specialist. N.J.S.A. 18A:37-15(b)(6)(a). The investigation shall be completed as soon as possible, but not later than ten school days from the date of the written report of the incident of HIB, or from the date of the written notification from the superintendent to the principal to initiate an investigation pursuant to N.J.S.A. 18A:37-15(b)(5). Ibid. The

results of the investigation must be reported to the superintendent of schools within two school days of the completion of the investigation, and in accordance with regulations promulgated by the State Board of Education pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), 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. N.J.S.A. 18A:37-15(b)(6)(b). The results of each 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).

Parents or guardians of the students who are parties to the investigation shall be entitled to receive information about the investigation, in accordance with federal and State law and regulation, including the nature of the investigation, whether the district found evidence of HIB, or whether discipline was imposed or services provided to address the incident of HIB. N.J.S.A. 18A:37-15(b)(6)(d). This information shall be provided in writing within five school days after the results of the investigation are reported to the board. Ibid. A parent or guardian may request a hearing before the board after receiving the information, and the hearing shall be held within ten days of the request. Ibid. The board shall meet in executive session for the hearing to protect the confidentiality of the students. Ibid. At the hearing the board may hear from the school anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents. Ibid. At the next board of education meeting following its receipt of the report, the board shall issue a decision, in writing, to affirm, reject, or modify the superintendent’s decision. N.J.S.A. 18A:37-15(b)(6)(e). The board’s decision may be appealed to the Commissioner of Education, in accordance with the procedures set forth in law and regulation, no later than ninety days after the issuance of the board’s decision. Ibid.

The Act does not explain the meaning of a “distinguishing characteristic.” However, the dictionary (Webster’s Ninth Collegiate Dictionary) defines the word “distinguish” as “. . . to perceive a difference in . . . to mark as separate or different . . . to

separate into kinds, classes or categories . . . to set above or apart from others . . . to single out. . .” The same dictionary defines the word “characteristic” as “. . . something that identifies a person or thing or class. . . .”

Additionally, as noted by the Appellate Division in K.L. v. Evesham Township Board of Education, 423 N.J. Super. 337 (App. Div. 2011):

The statutory definition of “bullying” does not include all violent or aggressive conduct against a student. The definition, both before and after adoption of the 2010 Anti-Bullying Act, refers to conduct that is “reasonably perceived as being motivated” by a “distinguishing characteristic” of the victim, such as, “race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory [disability].” N.J.S.A. 18A:37-14. The statute has not limited “distinguishing characteristic” to those specifically enumerated, but it has consistently required such a perceived motivation.

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.

[Id. at 350–51 (footnote omitted).]

Thus, an incident may even be physically, psychologically, or socially harmful, but still not meet the HIB criteria.

### Summary Decision

Applications for summary decision after a matter has been transmitted to the OAL shall be filed with the administrative law judge (ALJ) in accordance with applicable rules of the OAL. N.J.A.C. 6A:3-1.12(b). A contested case before the OAL “can be summarily disposed of before an ALJ without a plenary hearing in instances where the undisputed material facts, as developed on motion or otherwise, indicate that a particular disposition is required as a matter of law.” In re Robros Recycling Corp., 226 N.J. Super. 343, 350 (App. Div.), certif. denied, 113 N.J. 638 (1988).

N.J.A.C. 1:1-12.5(b) provides, in pertinent part:

The motion for summary decision shall be served with briefs and with or without supporting affidavits. The 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. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.

Here, there is no genuine issue as to any material fact, and I **CONCLUDE** that this matter is appropriate for summary decision.

The Board affirmed the District's determination that the December 26, 2023, incident did not meet the legal definition of HIB because there was no confirmed aggressor and no discernible distinguishing characteristic. Petitioner argues that "the Superintendent's decision to overturn ABS Rice's conclusion that A.A. was a victim of HIB should be reversed and it should be determined that B.K. committed an act of HIB when she destroyed A.A.'s sweatshirt and phone." Petitioner further argues that A.A.'s loss of her father to suicide is a distinguishing characteristic under the Act. Conversely, respondent argues that the Board's determination was not arbitrary, capricious, or unreasonable and that the Board correctly applied the statutory definition of HIB in its determination.

Regarding the first issue of "no confirmed aggressor," the ABS and/or other school personnel reviewed the cameras, conducted interviews, and obtained statements, and the ABS conducted an investigation. The ABS, Superintendent, and Board all concluded that, based upon the evidence, the perpetrator could not be conclusively identified. I disagree with petitioner that a preponderance standard applies when the Act reflects no such standard by which school personnel are bound in an investigation. This is not a typical situation where the victim was involved in and/or witnessed the incident, or where the reporter witnessed the incident or received information from an individual who

witnessed the incident. The fact remains that there was no video recording of, and no witnesses to, the sweatshirt and phone being damaged. Other High Point Regional High School students and opposing team players from other schools also had access to the locker room, so even if it appears overwhelmingly more likely that B.K. was the individual who damaged the sweatshirt and phone in the locker room because she had access to the office where the scissors were found ten days later, and because she had a conflict with A.A.2. and/or A.H., it simply cannot be proven that no other individual had access to the office, and the scissors were not located until two weeks after the incident. A.A. asserts that B.K. “would have known where the scissors were because they were used by the girls wrestling team to cut tape used on the wrestling mats,” but that information was not limited to B.K. See A.A. Cert. Additionally, A.A. asserts that she “noticed that B.K. was wearing tight leggings and, on the pocket on her leg, I could see the outline of something that looked the same shape as the piece of material that was cut out of my sweatshirt.” See A.A. Cert. However, this information did not appear in A.A.’s Statement in December 2023 or on the January 2024 HIB 338 Form—and while possible that this information was inadvertently never disclosed by A.A. during the investigation, it nevertheless cannot have informed the Board’s decision.

Regarding the second issue of “no discernible distinguishing characteristic,” the parties’ respective arguments focus upon the sweatshirt—which had a graphic (heart with wings) and the words “A big piece of my heart lives in Heaven... and he is my Dad!”—and whether a piece of the sweatshirt was removed and missing. I disagree with respondent’s assertion that the word “Dad” is damaged but still attached to the sweatshirt. While somewhat difficult to distinguish the front inside of the sweatshirt from the back outside of the sweatshirt in the area that was damaged on the photograph attached to the May 23 Sur-Reply, said photograph reflects that the cut material is folded over and down, and were it to be unfolded, it would not cover the entire damaged area. The second photograph, attached to the Rice Cert., just above the photograph relied upon by respondent, more clearly reflects that “Dad” is in fact missing—though a much larger portion of the sweatshirt was cut but still attached to the sweatshirt. Nevertheless, I ascribe no significance thereto in terms of the legal question at hand.

A.A. lost her father to suicide in 2019. (See A.H. Cert.) Without question, intentionally damaging someone else's property is unacceptable, and intentionally damaging property clearly of sentimental value or honoring a lost parent is particularly reprehensible. The HIB Report reflects that on January 12, 2024, A.H. advised ABS Rice that she felt A.A. was targeted "because she doesn't have a Dad," and ABS Rice advised A.H. that he would note that. ABS Rice ultimately concluded that "loss of father" was a distinguishing characteristic, but the Superintendent and Board disagreed. The Act requires a distinguishing characteristic—such as race, color, religion, ancestry, national origin, sexual orientation, gender identity and expression, mental disability, physical disability, sensory disability—or other difference, and A.A.'s loss of her father to suicide in 2019 is not akin to the distinguishing characteristics contemplated by the Act. To expand "distinguishing characteristic" to this degree would effectively negate the Act's requirement of an actual or perceived characteristic or other such distinguishing characteristic, because it would allow essentially any life circumstance to be utilized as a "distinguishing characteristic," as opposed to a characteristic of the individual alleged to be the victim of HIB. Nevertheless, even if "loss of father" were a distinguishing characteristic, the act must be "reasonably" perceived as being motivated thereby. Here, there is insufficient evidence that the property damage to the phone and sweatshirt was "motivated by" A.A.'s loss of her father.

There is no confirmed perpetrator, so the motivation of the perpetrator cannot be ascertained. Petitioner asserts that the perpetrator was B.K., and that B.K. had a conflict with A.A.2., and that B.K. was the only student who knew that A.A.'s father had died by suicide. However, this requires one to assume that in four years, no other individual had obtained that information, and that B.K. had kept that information in confidence—despite the recent conflict and termination of the friendship. Further, the Rice Report reflects that it was reported to ABS Rice that some time before December 26, 2023, another student was told about the situation. Nevertheless, even accepting for purposes of the motion and cross-motion that B.K. was the perpetrator, B.K. and A.A.2. had been best friends and there was no prior history of HIB among B.K., A.A.2. or A.A., despite that B.K. knew that the girls had lost their father to suicide. Petitioner also asserts that A.A. had no conflict with B.K., and according to A.H., "B.K. was actually upset at A.A.2. and me because although A.A.2. and she had been best friends, their friendship recently ended

and she blamed me,” and according to B.K., B.K. has “nothing against [redacted] its [sic] her mom and her sister.” (See A.H. Cert., See B.K. Statement.) Thus, it would instead appear that damaging the phone and sweatshirt was motivated by B.K.’s recent conflict and terminated friendship with A.A.2.

A HIB investigation is conducted to determine whether the incident complained about is HIB under the Act and, if so, the appropriate remedial action. The appeal from the March 20, 2024, letter notifying petitioner of the Board’s determination is an appeal of the Board’s determination that the incident was not HIB under the Act, and the standard of review for the Board’s action is arbitrary, capricious, and unreasonable. The appeal is not a de novo investigation whereby the Commissioner or an administrative law judge may determine the perpetrator in an incident where school officials did not, and no student was the subject of discipline for an acknowledged Code of Conduct violation, and no student or individual was charged with any crime.

An administrative agency, including a school board, is subject to having its decisions or actions reviewed under an arbitrary and capricious standard. Zimmerman v. Sussex Cnty. Educ. Servs. Comm’n, 237 N.J. 465, 480 (2019). The decision of a board acting within the scope of its authority 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. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). Similarly, the action of a board which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives. Kopera v. Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). An action is not arbitrary and capricious if “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 (Ch. Div. 1973), aff’d, 131 N.J. Super. 37 (App. Div. 1974). However, a determination predicated on unsupported findings is the essence of arbitrary and capricious action. In re Application of Boardwalk Regency Corp. for Casino License, 180 N.J. Super. 324, 334 (App. Div. 1981), modified on other grounds, 90 N.J. 361 (1982).

Consistent with ABS Rice’s investigation, the HIB 338 Form and other statements all reflect numerous individuals who may have been in the locker room at the time of the incident, including guest players from other schools, and Bang’s Incident Statement and the information she later reported to ABS Rice is of questionable reliability. While there may have been a conflict between B.K. and A.H. or A.A.2., and while it may seem improbable that a guest sports team player would randomly damage another student’s phone and sweatshirt, it was not established by the investigation that B.K. caused the damage. That the Petition refers to an “alleged perpetrator” is problematic because it acknowledges the unfortunate but insurmountable truth that there were no witnesses, no video, and no proof that B.K. caused the damage—irrespective of access or motive or any other circumstances pointing to B.K. Even ABS Rice, who, unlike the Superintendent and the Board, concluded that the incident was HIB, did not confirm the identity of the perpetrator. The Act clearly contemplates the identification of a perpetrator because it requires consequences and appropriate remedial action for a person who commits an act of HIB. N.J.S.A. 18A:37-15(b)(4). Additionally, by law, the ABS leads the investigation of HIB and acts as the primary school official responsible for preventing, identifying, and addressing incidents of HIB. As such, what would have been arbitrary, capricious, and unreasonable is if the Board had acted in the manner in which petitioner now requests: “that B.K. be confirmed as having committed an act of HIB on December 26, 2023, as the perpetrator and the victim being A.A.” To do so would unlawfully usurp the authority of the individuals designated under the Act to investigate. The Board’s sole function under the Act is to affirm, reject, or modify the superintendent’s decision on whether the incident was HIB. Simply put, there is no legal basis for the Board to supplant a determination by the ABS and Superintendent that the identity of the individual who caused the damage could not be confirmed. Accordingly, I **CONCLUDE** that the Board’s determination of “no confirmed aggressor” was not arbitrary, capricious, or unreasonable.

While the property damage was egregious, and a code of conduct violation as per the Superintendent—and possibly a Code of Criminal Justice violation—it does not meet the requirements for HIB. The damaged sweatshirt does not prove that A.A. was singled out because she lost her father five years prior. No perpetrator was identified, and “loss of father” is not a distinguishing characteristic, and even if it were, there is insufficient evidence to establish that the conduct was “motivated by” A.A.’s loss of her father. This

is especially true if the perpetrator was B.K., given that B.K. had previously been best friends with A.A.2., and their friendship recently ended. Accordingly, I **CONCLUDE** that the Board's determination that there was no "discernible distinguishing characteristic" was not arbitrary, capricious, or unreasonable.

In sum, the Act requires that the Board "issue a decision, in writing, to affirm, reject, or modify the superintendent's decision." N.J.S.A. 18A:37-15(b)(6)(e). Here, the meeting minutes reflect that the Board voted to affirm the Superintendent's decision, and based upon the record, I **CONCLUDE** that the Board's determination was not arbitrary, capricious, or unreasonable. I further **CONCLUDE** that the Petition should be dismissed. That said, the foregoing should not be construed to condone or excuse the conduct, which was unequivocally reprehensible, or to be dismissive of the emotional impact upon A.A. and her family.

To the extent that petitioner alleged procedural violations, any such violation does not alter the foregoing conclusions. Further, based upon the Petition, it appears that there were subsequent HIB complaints filed by B.K. against A.A. and A.A.2. However, even if the other relief sought by petitioner was to be granted, there is no legal authority to order that "both A.A. and A.A.1's student files be expunged of all claims of HIB brought against them by B.K." If there were any subsequent HIB complaints not the subject of the December 26, 2023, investigation, such complaints would have been separately investigated and adjudicated. The documents and certifications are specific to the December 26, 2023, incident, and the Board action under review was likewise related only to the December 26, 2023, incident.

### **ORDER**

It is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED**, petitioner's cross-motion for summary decision is **DENIED**, and 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 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.

December 4, 2025



\_\_\_\_\_  
DATE

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**KELLY J. KIRK, ALJ**

Date Received at Agency:

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Date Mailed to Parties:

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