

New Jersey Commissioner of Education
Final Decision

N.U. on behalf of minor child, M.U.,

Petitioner,

v.

Board of Education of the Town of Mansfield,
Burlington County,

Respondent.

Synopsis

Petitioner challenged the respondent Board's determination that M.U. committed an act of harassment, intimidation and bullying (HIB) in violation of New Jersey's Anti-Bullying Bill of Rights Act (Act), *N.J.S.A. 18A:37-13 et seq.*, when he told a fellow sixth grader who had just gotten a haircut that he looked like Donald Trump. The classmate took offense to the comment, and an HIB investigation ensued, resulting in a finding that M.U.'s conduct constituted HIB. The petitioner alleged that there was no HIB, and that the Board's investigation was incomplete and improperly conducted. A hearing in the matter was conducted at the Office of Administrative Law (OAL) in March 2020.

The ALJ found, *inter alia*, that: the Commissioner will not overturn a decision of a local board of education unless it is determined that the action taken was arbitrary, capricious or reasonable; and the Act defines HIB as any gesture, written, verbal or physical act, or electronic communication 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. The ALJ concluded that the petitioner did not meet her burden of proof that the Board acted in an arbitrary, capricious or unreasonable manner in concluding that M.U.'s actions constituted HIB under the Act. Accordingly, the ALJ ordered that the petition be dismissed.

Upon review, the Commissioner remanded the matter to the OAL, finding that the current record is not an adequate basis upon which to determine whether the Board's actions were arbitrary, capricious or unreasonable. A finding of HIB under the Act requires three elements: 1) the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic, 2) the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school, and 3) *one* of the three criteria enumerated in the Act regarding the effect of the conduct must also be satisfied. As the record addresses only the first required element, the case was remanded to the OAL for further proceedings consistent with these concerns.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

April 24, 2020

New Jersey Commissioner of Education

Decision

N.U., on behalf of minor child, M.U.,

Petitioner,

v.

Board of Education of the Town of
Mansfield, Burlington County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹

This matter concerns an alleged act of harassment, intimidation, and bullying (HIB) by M.U. The Board found that M.U. had committed an act of HIB and imposed an in-school suspension. Following the presentation of petitioner's case at a hearing, the ALJ granted the Board's oral motion to dismiss.

Upon review, the Commissioner disagrees with the ALJ's conclusion that the Board's motion for summary decision should be granted. The Anti-Bullying Bill of Rights Act (the Act) defines HIB as follows:

[A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender

¹ The record did not include a transcript of the hearing held at the OAL.

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.

Therefore, a finding of HIB under the Act requires three elements.² 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, Essex County*, Commissioner Decision No. 51-20, decided February 4, 2020.

The letter to N.U. from the school's principal, which the Board affirmed in its decision, indicates that the investigation found evidence of the first element – that M.U.'s conduct was reasonably perceived as being motivated by another student's distinguishing characteristic. However, the letter does not provide any information regarding the remaining

² The statute also requires that the conduct take place on school property, at a school-sponsored function, on a school bus, or off school grounds as provided for in *N.J.S.A.* 18A:37-15.3. This element appears to have been satisfied in this matter.

elements required to prove an act of HIB. Nor does the Initial Decision address these elements of the statute.

The Commissioner is mindful that when a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was “patently arbitrary, without rational basis or induced by improper motives.” *Kopera v. W. Orange Bd. of Educ.*, 60 N.J. Super. 288, 294 (App. Div. 1960). However, in the instant case, the Commissioner cannot determine whether the decision was arbitrary, capricious, or unreasonable based on the current record.

Accordingly, this matter is remanded to the OAL for further proceedings consistent with this decision.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: April 24, 2020
Date of Mailing: April 24, 2020



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. EDU 16045-18

AGENCY DKT. NO. 253-9/18

N.U. ON BEHALF OF M.U.,

Petitioner,

v.

**BOARD OF EDUCATION OF
THE TOWN OF MANSFIELD,
BURLINGTON COUNTY,**

Respondent.

Megan A. Oduyela, Esq. appearing for petitioner

Marc G. Mucciolo, Esq. appearing for respondent, (Methfessel & Werbel, P.C.
attorneys)

Record Closed: March 3, 2020

Decided: March 10, 2020

BEFORE **JEFFREY R. WILSON, ALJ:**

STATEMENT OF THE CASE

Petitioner, N.U. on behalf of her minor child, M.U., challenges respondent's, Board of Education of the Town of Mansfield, Burlington County (Board) Harassment Intimidation and Bullying (HIB) determination relative to M.U.

PROCEDURAL HISTORY

The petitioner filed a challenge of the Board's HIB determination and requested a hearing before the Office of Administrative Law (OAL). The matter was transmitted to the OAL on November 2, 2018, where it was filed on November 5, 2018, as a contested case. N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13. The petitioner filed an amended petition with the OAL on February 21, 2019. The Board filed its answer to the amended petition on March 11, 2019. The fair hearing was conducted on March 3, 2020. At the close of the petitioner's case, counsel for the respondent made an oral motion to dismiss the petition.

FACTUAL DISCUSSION AND FINDINGS

The following facts of this case are not in dispute; therefore, I **FIND** as **FACT** that on December 11, 2017, M.U. was eleven years old and in the sixth grade. On that date, he approached a fellow classmate who had just gotten a haircut and said that he looked like Donald Trump. The classmate took offense to the comment and the incident was reported. A HIB investigation was conducted at it was determined that M.U.'s conduct towards his classmate constituted HIB.

LEGAL ANALYSIS AND CONCLUSION

The Administrative Code does not provide guidelines for a motion to dismiss. However, pursuant to N.J.A.C. 1:1-1.3, in the absence of a specific rule, an administrative law judge may proceed in accordance with the New Jersey Court Rules, provided that the rules are compatible with the matter at hand.

Pursuant to N.J. Ct. R. 4:37-2(b), the test on a motion for involuntary dismissal has been characterized as follows: whether the evidence and legitimate inferences therefrom could sustain a judgment in favor of the claimant, that is, whether reasonable minds could differ on the evidence. If so, the motion must be denied. Dolson v. Anastasia, [55 N.J. 2, 258 A.2d 706 \(1969\)](#).

A motion for involuntary dismissal under N.J. Ct. R. 4:37-2(b) is also comparable to a motion for directed verdict or judgment of acquittal under N.J. Ct. R. 3:18-1, and the standard for deciding both motions is the same. Accepting as true all the evidence that supports the position of the claimant and affording the benefit of all inferences that can be deduced therefrom, if reasonable minds could differ the motion must be denied.

Pursuant to N.J. Ct. R. 3:18-1, at the close of the State's case or after the evidence of all parties has been closed, the court shall, on defendant's motion or its own initiative, order the entry of a judgment of acquittal of one or more offenses charged in the indictment or accusation if the evidence is insufficient to warrant a conviction. As to the standard to be applied in determining such a motion, the following classic statement found in State v. Reyes, 50 N.J. 454 (1967) remains fully viable:

. . . the question the trial judge must determine is whether, viewing the State's evidence in its entirety, be that evidence direct or circumstantial, and giving the State the benefit of all its favorable testimony as well as all of the favorable inferences which reasonably could be drawn therefrom, a reasonable jury could find guilt of the charge. . . .

Petitioner challenges the determination of the Board that M.U.'s conduct towards his classmate constituted HIB.

New Jersey enacted the Anti-Bullying Bill of Rights Act (Act) to "strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying" occurring both on and off of school grounds. N.J.S.A. 18A:37-13.1(f). Definitions relative to adoption of harassment and bullying prevention policies are found in N.J.S.A. 18A:37-14, which states in part:

"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.

Petitioner alleges that the HIB investigation was conducted improperly and was incomplete. Petitioner urges this tribunal to conclude that there was no HIB and that the HIB investigation was conducted improperly and was incomplete therefore the determination should be reversed.

The Board urges this tribunal to conclude that the Board was not arbitrary, capricious or unreasonable in its determination that the HIB investigation was conducted properly and that M.U.'s conduct did constitute HIB.

The Commissioner of Education will not overturn the decision of a local board in the absence of a finding 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), <<http://njlaw.rutgers.edu/collections/oal/>>. Further, the Commissioner will not substitute his judgment for that of the board of education, whose exercise of its discretion may not

be disturbed unless shown to be “patently arbitrary, without rational basis or induced by improper motives.” Kopera v. W. Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). New Jersey courts have held that “[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.” Bayshore Sewage Co. v. Dep’t of Env’tl. Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), *aff’d*, 131 N.J. Super. 37 (App. Div. 1974). Thus, in order to prevail, the petitioner must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it.

Based on the whole of the credible evidence presented, I **CONCLUDE** that petitioner has not met her burden of proof that the Board acted in an arbitrary, capricious or unreasonable manner in concluding that M.U.’s actions constituted harassment, intimidation or bullying under the Act. Furthermore, I **CONCLUDE** that the petitioner failed to demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it.

ORDER

Based on the foregoing, I **ORDER** that the petition be **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, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



March 10, 2020

DATE

JEFFREY R. WILSON, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

JRW/tat

APPENDIX

WITNESSES

For Petitioner:

N.U.

For Respondent:

None

EXHIBITS

For Petitioner:

None

For Respondent:

None