State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SUMMARY DECISION
OAL DKT. NO. EDU 01240-24
AGENCY DKT. NO. 315-11/23

MABEL OBASI,
Petitioner,
v.
BOARD OF EDUCATION OF THE SOUTH ORANGE-MAPLEWOOD SCHOOL DISTRICT, ESSEX COUNTY,
Respondent.

Ronald J. Ricci, Esq., for petitioner (Ricci & Fava, LLC, attorneys)

Michelle M. Schott, Esq., for respondent (Flanagan, Barone & O'Brien, LLC, attorneys)

Record Closed: September 16, 2024 Decided: January 23, 2025

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Mabel Obasi (Obasi), a teacher, challenges the harassment, intimidation, or bullying (HIB) determination of respondent, Board of Education of the South Orange-Maplewood Board of Education, Essex County (Board).

On November 21, 2023, Obasi's Verified Petition of Appeal (Petition) was filed with the Commissioner of Education (Commissioner). On January 19, 2024, the Board filed an Answer and Separate Defenses to Petition of Appeal (Answer) with the Commissioner. The Department of Education transmitted the matter to the Office of Administrative Law (OAL), where it was filed for determination as a contested case on January 23, 2024. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -23. Prior to the hearing, the parties filed a Joint Statement of Facts with fifteen exhibits. On July 14, 2024, petitioner filed a motion for summary decision, consisting of a brief. On August 26, 2024, respondent submitted a brief in opposition to petitioner's motion. On September 16, 2024, petitioner submitted a letter brief in reply.

FINDINGS OF FACT

Stipulations of Fact

By way of a Joint Statement of Facts, dated July 12, 2024, the parties stipulated to the following facts:

> 1. On January 26, 2023, it was reported to Columbia High School Assistant Principal Terry Woolard (T.W.) that a teacher Mabel Obasi (M.O.) raised her voice to and threaten [sic] physical harm to one of her students (S.R.). [Exhibit A.]
>
> 2. It is undisputed that following the report, an HIB complaint arising out of the January 26, 2023 incident was filed against M.O. by the parents of S.R.
>
> 3. It is undisputed that an affirmative action complaint was also filed against M.O. by the parents of S.R. [Exhibit B.]
>
> 4. M.O. was suspended on January 30, 2024. As part of his responsibilities as the district HIB Coordinator and Affirmative Action Officer, Assistant Principal, Terry Woolard conducted a school investigation into the incident. As Assistant Superintendent of Access & Equity, Dr. Kevin Gilbert was also tasked to conduct investigations into those complaints and to "report on the findings in the incident involving....Mabel Obasi." [Exhibit C.]

5. The identification of those who were interviewed for the HIB investigation is set forth on page 1 of the May 8, 2023, under the "Investigation" section of the report of Dr. Kevin F. Gilbert, Assistant Superintendent of Access and Equity that was sent to Superintendent Dr. Ronald G. Taylor on May 8, 2023. [Exhibit C.]

6. The "Facts" and the "Investigation" sections set forth on pages 1 through 3 in the May 8, 2023 the [sic] investigation report identify information obtained from witnesses during the HIB investigation, emails from M.O. provided by her attorney, incident notes and report compiled by the HIB investigator, Assistant Vice Principal Terry Woolard. [Exhibit C.]

7. The "Facts" section of the investigation report includes the following:

a) Student S.R. is a student with disabilities who reported to Assistant Principals T.W. and M.B. that teacher M.O. "got in her face... telling [her] [she is] a bad child." [Exhibit C.]

b) S.R. also reported that M.O. then asked the class if S.R. was a "bad child" and "MO called SR a baby." [Exhibit C.]

c) M.O. then said she was going to "take her earrings off and beat" S.R.—M.O. did not admit to making that statement. [Exhibit C.]

d) The statements were confirmed by a student in the classroom and S.R.'s case manager P.M. [Exhibit C.]

e) The student who heard the comment about taking her earrings off and beating S.R. stated that he felt M.O. was a good teacher but that on this day she let "her motions [sic] get the best of her." [Exhibit C.]

f) Special education teacher P.M. reported to T.W. that he was present at the time of the above statements and confirmed they were made. [Exhibit C.]

g) After referring to comments made on January 26, 2023, the investigation report states: "This was not the first incident occurring between SR and MO. TW reported that MO has indicated in the past that '[SR] should spend a week in the hood because she wouldn't make it because she is the only white kid in her class.'["] S.R. is Black. [Exhibit C.]

h) The relationship between M.O. and S.R. appeared to begin to deteriorate around November 2022. [Exhibit C.]

i) M.O. reported that she had requested numerous times to have S.R. removed from her class as she alleged S.R. was a disruption to the class and that she was disrespectful. T.W. and Special Services Supervisor, C.M. acknowledged that M.O. had raise [sic] concerns about S.R.'s behavior. [Exhibit C.]

j) Several students confirmed that S.R. was disruptive at times. [Exhibit C.]

k) M.O. reported that due to S.R.'s creating distractions, she did allow S.R. to leave the classroom without permission from time to time. [Exhibit C.]

l) Meetings took place to attempt to resolve the issues between S.R. and M.O. [Exhibit C.]

m) The report states that "MO also, through her own admission, refused to engage in restorative practices following SR's violation of classroom rule[s]." The report indicates that at meetings held to address the deteriorating relationship between M.O. and S.R., meeting attendee Special Services Supervisor, Christian Mullen indicated that arrangements were made for how M.O. and S.R. would address problematic behaviors; M.O. stated she did not make any agreements in those meetings. [Exhibit C.]

8. The May 8, 2023 investigation report states in the "Conclusion" that "the fact that MO stated she would 'pull off her earrings and beat' SR meets the standard["] for a violation of the use of corporal punishment. [Exhibit C.]

9. The May 8, 2023 investigation report in the "Conclusion" also indicates that that statement also meets the 4 prong standard for a violation of HIB, including that "[i]t was reasonable [sic] perceived to motivated [sic] by the fact that MO believed SR to be a 'bad child.'" [Exhibit C.]

10. By letter of May 10, 2023, authored by Dr. Ronald G. Taylor, Superintendent of Schools, Ms. Obasi was advised of the district's determination that "the investigation into your actions on January 27, [sic] 2023, has been completed and you have been found in violation of SOMSD Policy #3217 Use

of Corporal Punishment, and SOMSD Policy #5512. [Exhibit D.]

11. On May 12, 2023 Ms. Obasi's attorney filed a "formal appeal [of the HIB] and a request for hearing before the Board of Education." [Exhibit E.]

12. A Verified Petition of Appeal was filed on or about July 31, 2023. [Exhibit F.] It is undisputed that following a conference with a Judge of the New Jersey Office of Administrative Law, the parties agreed that the Petition would be dismissed without prejudice as the Board agreed to afford Petitioner a hearing.

13. In a September 7, 2023 letter to Petitioner the District advised Petitioner of a September 19, 2023 date for the hearing. The date was later changed to October 5, 2023. The September 7, 2023 letter states as follows: "At the hearing, the Board may hear testimony from and consider information provided by the student(s), the parent(s), the school Anti-Bullying Specialist, District Anti-Bullying Coordinator and others, as appropriate, regarding the incident, the findings from the investigation of the incident, recommendations for consequences or services, and any programs instituted to reduce such incidents, prior to rendering a determination." [Exhibit G.]

14. The HIB investigation hearing took place on October 5, 2023. [Exhibit H.]

15. By letter dated October 19, 2023, the Board Secretary advised that "the Board determined to affirm the district's determination that the reported conduct constituted HIB." [Exhibit I.]

16. The HIB Investigation file includes: Emails produced to Superintendent Gilbert by Petitioner's attorney during the HIB investigation (Exhibit J); HIBster Reports with handwritten notes (Exhibit K); District emails and summaries of Student Interviews (Exhibit L); the District HIB Policy (Exhibit M); and Suspension Pending Investigation Letter to Petitioner (Exhibit N).

17. Following the October 5, 2023 hearing, as per the letter dated October 19, 2023 from the District to M.O., it was noted that "[a]t the hearing, your counsel argued that the conduct was not motivated by a distinguishing characteristic." [Exhibit

I.] It is undisputed that Counsel relied on M.O.'s "bad child" comment.

18. The October 19, 2023 letter states the following: "It was reported that Ms. Obasi referenced the student as the only white student in her class even though the student is black. Ms. Obasi had indicated that S.R. should spend a week in the hood because she wouldn't make it because she is the only white kid in her class. S.R. is black and has been adopted by two British parents. The statement is reasonably perceived as being motivated by race and the suggestion that the student is not 'black enough,' a racial trope that the student acts white and not her race. The student at one point in December missed three weeks of class prior to a parent meeting because she did not feel comfortable around the teacher. The harassment substantially disrupted and interfered with the rights of the student to be free from harassment." [Exhibit I.]

19. On or about November 21, 2023, Petitioner filed a Verified Petition of Appeal of the October 19, 2023 HIB determination. [Exhibit O.]

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. N.J.S.A. 18A:37-13.2 to -37, known as the "Anti-Bullying Bill of Rights 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. See also N.J.A.C. 6A:16-1.3.]

Each school district shall adopt a policy prohibiting HIB on school property, at a school-sponsored function, or on a school bus, through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators, and community representatives. N.J.S.A. 18A:37-15(a). A school district has local control over the content of the policy, except that the policy shall contain, at a minimum, the components set forth 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; (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).

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.

The procedure for prompt investigation of reports of violations and complaints shall, at a minimum, provide that:

> (a) the 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.[1] The principal may appoint additional personnel who are not school anti-bullying specialists to assist in the investigation. The investigation shall be completed as soon as possible, but not later than 10 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 paragraph (5) of this subsection. In the event that there is information relative to the investigation that is anticipated but not yet received by the end of the 10-day period, the school anti-bullying specialist may amend the original report of the results of the investigation to reflect the information;
>
> (b) the results of the investigation shall 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 harassment, intimidation, or bullying and enhance school climate, impose discipline, order counseling as a result of the findings of the investigation, or take or recommend other appropriate action including seeking further information;
>
> (c) 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;
>
> (d) 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

[1] See also N.J.A.C. 6A:16-7.7(a)(2)(ix).

> imposed or services provided to address the incident of [HIB]. This information shall be provided in writing within 5 school days after the results of the investigation are reported to the board. A parent or guardian may request a hearing before the board after receiving the information, and the hearing shall be held within 10 days of the request. The board shall meet in executive session for the hearing to protect the confidentiality of the students. 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;
>
> (e) at the next board of education meeting following its receipt of the report pursuant to subparagraph (c) of paragraph (6) of this subsection, the board shall issue a decision, in writing, to affirm, reject, or modify the superintendent's decision. 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 90 days after the issuance of the board's decision; and
>
> (f) a parent, student, guardian, or organization may file a complaint with the Division on Civil Rights within 180 days of the occurrence of any incident of [HIB] based on membership in a protected group as enumerated in the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.);
>
> [N.J.S.A. 18A:37-15(b)(6).]

A member of a board of education, school employee, contracted service provider, student, or volunteer who has witnessed or has reliable information that a student has been subject to HIB must report the incident to the appropriate school official designated by the school district's policy, or to any school administrator or safe schools resource officer, who must immediately initiate the school district's procedures concerning school bullying. N.J.S.A. 18A:37-16(b). See also N.J.A.C. 6A:16-7.7(c).

Motion for Summary Decision

On May 12, 2023, Obasi's attorney filed a formal appeal of the HIB determination and requested a hearing before the Board. The Board did not hold a hearing and Obasi filed a Verified Petition of Appeal with the Department, which was thereafter dismissed without prejudice because the Board agreed to afford Obasi a hearing. A virtual closed-

session hearing was held on October 5, 2023, and the minutes reflect that the Board heard from the anti-bullying specialist, the Board's attorney, Obasi, and her attorney, and the Board affirmed that that "the incident DID constitute HIB."

Petitioner argues that Obasi was deprived of the basic tenets of due process, that the Board's determination violates a number of statutory requirements, that no alleged conduct substantively constitutes HIB and the Board failed to address all HIB prongs in its analysis, that the Board has not and cannot establish that the alleged racial comment meets the definition of HIB, that the HIB finding was procedurally and substantively deficient, and that the HIB finding should be reversed and the HIB charge dismissed. Conversely, respondent argues that petitioner was provided due process, the procedural requirements for a HIB violation were met by the school district, Obasi's conduct constitutes HIB and all required prongs of the statute were met by the school district, the October 19, 2023 letter sufficiently advised Obasi of a HIB violation, the Investigation Report specifically reports that the alleged racial comment was made to S.R., the Board did not act arbitrarily, unreasonably, or in bad faith, and the request that the HIB finding be reversed should be denied.

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), affirmed, 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).

The Central Office Incident Alert Form (Incident Alert Form), ostensibly completed by Melissa Butler and Terry Woolard relative to the January 26, 2023 incident, reflects S.R.'s narrative as follows:

> (Student narrative shared - I left my 6th-period class, taught by Ms. Obasi and went to Mr. McCormick's room because Ms. Obasi would not listen to me. Mr. McCormick is [S.R.'s] case manager. I spoke with Mr. McCormick and then Mr. McCormick brought me back to class so I could attend class. Mr. McCormick asked Ms. Obasi to speak in the hallway. Ms. Obasi started raising her voice at me, getting in my face and telling me I'm a "bad child." Mr. McCormick asked her to calm down. She then invited us into the class and asked the class if I was a bad child. She said she's going to take her earrings off and beat me. Ms. Obasi said I'm 17, and she's 52 - old enough to be my grandma. She called me a baby. She said something about growing up in Nigeria that I didn't understand. Mr. McCormick then took me back to his room.) All of this information was verified by Mr. McCormick, who was also in the classroom throughout the entire incident.

The Incident Alert Form also reflects "[o]ther information based on our investigation" as follows:

> There have been two meetings with the parents based upon the relationship between the student and teacher. The student has been locked out of the classroom twice during the year by the teacher, therefore, the student feels uncomfortable attending this class and being around the teacher. A restorative circle meeting has already taken place between the teacher and student, along with Mr. McCormick, Mr. Mullen and Ms. Bennett being in attendance. "Ms. Obasi had also indicated in the past that [S.R.] should spend a week in the hood because she wouldn't make it because she is the only white kid in her class." [S.R.] actually is black and has been adopted by two British parents. The student at one point in December missed 3 weeks of class prior to a parent meeting, because she didn't feel comfortable around the teacher.

[Joint Statement of Facts, Exhibit A.]

There is no indication in the Incident Alert Form of who was present when Obasi "in the past" made the alleged comment that "[S.R.] should spend a week in the hood because she wouldn't make it because she is the only white kid in her class" (alleged racial comment), nor is there any indication to whom it was made, when it was made, or where it was made. Moreover, there is nothing in the record to reflect that the alleged racial comment was ever previously reported or investigated as HIB or otherwise.

S.R.'s mother filed an Affirmative Action/Harassment Complaint Form on January 31, 2023, alleging discrimination based on race and national/ethnic origin, describing the nature of the charge as follows:

> Ms. Obasi yelled at [S.R.] in the hallway that she was "a bad child" and "a baby." [S.R.] is developmentally disabled. Ms. Obasi asked the class if they agreed that [S.R.] was a bad child. Ms. Obasi told [S.R.] that, in her culture, [S.R.] would be beaten and declared that she was going to "beat this child," before removing her jacket and earrings to administer the beating. [S.R.] was removed from the room by Mr. McCormick, her Case Manager, who was present for the incident. Throughout this school year, Ms. Obasi has had difficulty connecting with [S.R.]. She once asked [S.R.] to leave the room and then locked her outside in the hallway. [S.R.] has an anxiety disorder. One of the things she is extremely anxious about is being locked outside the class during a lockdown. Ms. Obasi asked [S.R.] to leave the room on a subsequent occasion and [S.R.] refused, because she was afraid she would be locked out. Ms. Obasi then threatened to call security to have [S.R.] removed, which is against District policy. [S.R.] also feels shame acutely, and Ms. Obasi has shamed her by discussing her behavior with the entire class, including writing those behaviors on the board. Ms. Obasi attended a meeting with [S.R.], her ESS therapist and parent during which she acknowledged locking [S.R.] out, calling security and shaming her in front of the class. In that meeting Ms. Obasi agreed that she would speak to [S.R.] about behaviors privately or together with her therapist. She also agreed to let [S.R.] go to ESS when she felt herself becoming overwhelmed in the classroom. She did not acknowledge that calling security on a child was inappropriate and against District policy and insisted that it

> was her training. She did not abide by those agreements, continuing to shame [S.R.] and to refuse her requests to go to ESS. Ms. Obasi then refused a request for a restorative session with [S.R.]. Following a meeting with her supervisor Christin Mullen and classroom observations, Ms. Obasi began letting [S.R.] go to ESS on request. I was also told that Ms. Obasi has referred to [S.R.] as "the only white student in the class." [S.R.] is Black, with white parents, which Ms. Obasi knows.
>
> [Joint Statement of Facts, Exhibit B.]

Although the Affirmative Action/Harassment Complaint Form alleges discrimination based upon race and national/ethnic origin, the alleged racial comment is one that S.R.'s mother states that she was told, and there is no indication in the Affirmative Action/Harassment Complaint Form of who was present when Obasi made the alleged racial comment, to whom it was made, when it was made, where it was made, or when or how S.R.'s mother was notified of the alleged racial comment.

The Incident Queue Submission,[2] reported by S.R.'s mother ostensibly on January 30, 2023, states, in pertinent part, the following:

> [S.R.] asked to speak to Ms. Obasi in the hallway. While they were speaking, Ms. Obasi raised her voice to [S.R.], so [S.R.] went to see Mr. McCormick, her Case Manager. He suggested they go speak to Ms. Obasi together. Ms. Obasi yelled at [S.R.] in the hallway outside her classroom, calling her a baby and a bad child. She opened the classroom door and asked the class if they agreed that [S.R.] was a bad child. Then she told [S.R.] that she would beat her, as this is how she would be disciplined in her culture. She took off her jacket and earrings in order to administer the beating, at which time Mr. McCormick took [S.R.] to the office to report the incident.
>
> In previous incidents, Ms. Obasi has locked [S.R.] out of the room, which made her very anxious, as it's one of the things that most scares her in lockdown drills. She also threatened to call security to remove [S.R.] from her classroom. She has regularly shamed [S.R.], discussing her behavior with the class. These incidents were all reported to administration and

[2] The HIBster Report and Incident Queue Submission incorrectly reflect the date of the incident as January 27, 2023.

> her supervisor and multiple meetings have been held to try to address her classroom management. [S.R.] has a large number of absences from the class, as she has not felt safe there for most of this school year. [S.R.] is a special needs student and receives ESS services. This is a resource room class.
>
> It was also reported to me by administration yesterday that Ms. Obasi has referred to [S.R.] as the only white child in her class. [S.R.] is African American.
>
> [Joint Statement of Facts, Exhibit K.]

The Investigation Report, dated May 8, 2023, reflects that the following people were interviewed in connection with the January 26, 2023 incident: Obasi; S.R.'s parents; S.R.; Julie Bennett (S.R.'s ESS manager); and Philip McCormick (S.R.'s special education case manager). The Investigation Report also reflects that the investigator reviewed emails from Obasi, incident notes and a report compiled by Woolard (assistant principal), and student statements that had been provided to Sanchez (principal). The Investigation Report states, in part:

> On January 26, 2023, SR, who is a student with disabilities, reported to assistant principals TW and Ms. Melissa Butler (MB) that her teacher, MO, had raised her voice and "got in her face ... telling me I'm a bad child ..." The incident was witnessed by SR's special education case manager, PM. SR reported that MO then asked she and PM to come into the class and then asked the class if SR was a "bad child," at which point PM asked MO to calm down. MO then said that she was going to "take her earrings off and beat" SR. MO further stated that SR was 17 and that "she's 52 ... old enough to be [SR's] grandma ..." and then called SR a baby. PM verified the information to the assistant principals and confirmed this incident in the interview with me as well. . . .
>
> This was not the first incident occurring between SR and MO. TW reported that MO has indicated in the past that "[SR] should spend a week in the hood because she wouldn't make it because she is the only white kid in her class." It should be noted that SR is black and has been adopted by two British parents. In another incident, SR was locked outside of class in the hallway after being asked to leave by MO, which is concerning in that SR has an anxiety disorder and one of her biggest fears is getting locked outside of the classroom during

> a lockdown. This incident made her extremely anxious. A third incident involved SR refusing to leave when MO asked her to leave for fear she would be locked out. Because SR refused to leave, MO threatened to call security on her. Other incidents involved MO shaming SR in front of the classroom. All of these incidents led to SR missing three weeks of school at one point because she did not feel comfortable in the class with MO.
>
> [Joint Statement of Facts, Exhibit C.]

As noted, the Investigation Report reflects that Woolard (assistant principal) reported to the investigator that Obasi "has indicated in the past that [S.R.] should spend a week in the hood because she wouldn't make it because she is the only white kid in her class." However, there is no evidence that this alleged racial comment was ever reported or investigated at the time that it was made or that it was even investigated in connection with the January 26, 2023 incident. Additionally, it appears based on the Incident Queue Submission that S.R.'s mother was unaware of the alleged racial comment until January 29, 2023.

The Investigation Report concludes as follows:

> After conducting all the interviews and reviewing all the evidence presented to me, I find that MO violated SOMSD policies 3217 Use of Corporal Punishment and 5512 Harassment, Intimidation, and Bullying.
>
> SOMSD policy 3217 states that:
>
> . . . .
>
> The fact that MO stated that she would "pull of [sic] her earrings and beat" SR meets the standard of this violation. This comment was verified by a student and staff member.
>
> SOMSD policy 5512 states that:
>
> "Harassment, intimidation, or bullying" means a gesture, any written, verbal or physical act or electronic communication ... whether it be a single incident or a series of incidents that:

> 1. Is reasonably perceived as being motivated by either any actual or perceived characteristic such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity, and expression, or mental, physical, or sensory disability, or by any other distinguishing characteristic;
> 2. Takes place on school property, at any school sponsored function, on a school bus, or off school grounds ...
> 3. Substantially disrupts or interferes with the orderly operation of the school or rights of other students; and that
> a. A reasonable person should know, under the circumstances, that the act(s) 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/her person or damage to his/her property; or
> 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 ..."
>
> In addition to the aforementioned comment violating policy 3217, it also meets the standards of violating policy 5512:
>
> 1. It was a verbal threat made toward a student.
> 2. It was reasonable [sic] perceived to motivated [sic] by the fact that MO believed SR to be a "bad child." This was stated by MO and confirmed by student witnesses.
> 3. It took place at school in the classroom.
> 4. It substantially disrupted the orderly operation of school in that administration had to spend time diffusing the situation, find coverage for the class in that MO was sent home that day, and again on another day, and created a disruption in the learning of other students in the class. It also created a hostile educational environment for SR in that it added to her anxiety and interfered with her ability to come to school.

In addressing the HIB policy, the investigator's conclusion does not reference at all the alleged racial comment that "[SR] should spend a week in the hood because she wouldn't make it because she is the only white kid in her class." Instead, the investigator concluded—and Obasi was put on notice—that Obasi violated the HIB policy because Obasi's comment that she would "pull of [sic] her earrings and beat" S.R. was "reasonable [sic] perceived to motivated [sic] by the fact that MO believed SR to be 'bad child.'"

The Board's September 7, 2023 letter notifying petitioner that a hearing was scheduled "to appeal the decision of the investigation" stated, in pertinent part, the following:

> At the hearing, the Board may hear testimony from and consider information provided by the student(s), the parent(s), the school Anti-Bullying Specialist, District Anti-Bullying Coordinator and others, as appropriate, regarding the incident, the findings from the investigation of the incident, recommendations for consequences or services, and any programs instituted to reduce such incidents, prior to rendering a determination.
>
> [Joint Statement of Facts, Exhibit G.]

Accordingly, Obasi was also on notice that the Board may hear testimony and consider information "regarding the incident" and "the findings from the investigation of the incident" of January 26, 2023.

The Investigation Report concluded that Obasi violated the HIB policy because her comment that she would "pull of [sic] her earrings and beat" S.R. was "reasonable [sic] perceived to motivated [sic] by the fact that MO believed SR to be 'bad child.'" The July 2023 Verified Petition of Appeal, which was dismissed without prejudice when the Board agreed to afford Obasi a hearing, alleged, and Obasi/her attorney argued at the Board hearing, that the January 26, 2023 incident does not satisfy the HIB requirements because "bad child" is not a distinguishing characteristic. Thereafter, perhaps recognizing that "bad child" is not a distinguishing characteristic or an actual or perceived characteristic, like those referenced in the statute—to wit, race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability—and would therefore not satisfy the statutory requirement, the Board substituted race as the distinguishing characteristic.

The Board minutes reflect that "the Board hereby affirms the determination that the incident DID constitute HIB," and provide no further detail, but the Board's October 19, 2023 letter to Obasi states "[a]t the hearing, your counsel argued that the conduct was not motivated by a distinguishing characteristic" and in pertinent part, the following:

> After careful and thorough deliberation, and application of the HIB definition to the information presented, the Board determined to affirm the district's determination that the reported conduct constituted HIB. There was evidence that there was ongoing harassment motivated by race. It was reported that Ms. Obasi referenced the student as the only white student in her class even though the student is black. Ms. Obasi had indicated that [S.R.] should spend a week in the hood because she wouldn't make it because she is the only white kid in her class. [S.R.] is black and has been adopted by two British parents. The statement is reasonably perceived as being motivated by race and the suggestion that the student is not "black enough," a racial trope that the student acts white and not her race. The student at one point in December missed three weeks of class prior to a parent meeting because she did not feel comfortable around the teacher.[3] The harassment substantially disrupted and interfered with the rights of the student to be free from harassment.
>
> [Joint Statement of Facts, Exhibit I.]

It is evident from its October 19, 2023 letter that the Board relied upon the alleged racial comment—that was not previously reported and never investigated, and for which Obasi was afforded no timely notice when it was alleged to have been made—as evidence of "ongoing harassment motivated by race" and a violation of the HIB policy. Without question, there is a history of conflict and negative interaction between Obasi and S.R. that raises concerns. The Board argues that S.R. missed three weeks of school due to "ongoing harassment motivated by race," while Obasi's emails in November 2022 and December 2022 allege classroom disruptions as a result of S.R.'s behavior. However, S.R.'s conduct and whether it was a manifestation of her disability is not the subject of this decision, nor is whether Obasi violated any other policy or code of conduct or is

[3] The Board also substituted "[t]he student at one point in December missed three weeks of class prior to a parent meeting because she did not feel comfortable around the teacher" as the basis for "substantially disrupts or interferes with the orderly operation of the school" when the basis in the Investigation Report was that "administration had to spend time diffusing the situation, find coverage for the class in that MO was sent home that day, and again on another day, and created a disruption in the learning of other students in the class." (Joint Statement of Facts, Exhibit C and Exhibit I.)

subject to discipline. Rather, the sole issue is Obasi's appeal of the Board's HIB determination.

The Investigation Report concluded that there was a HIB violation based solely on the January 26, 2023 incident, and the May 10, 2023 letter advised Obasi that "the investigation into [her] actions on January 27, 2023,"[4] was completed, and she was found to be in violation of the HIB policy. Specifically, the Investigation Report concluded that there was a HIB violation because Obasi's comment on January 26, 2023, that she would "pull of [sic] her earrings and beat" S.R. was "reasonable [sic] perceived to motivated [sic] by the fact that MO believed SR to be 'bad child.'" As such, Obasi was put on notice that the distinguishing characteristic was "bad child"—not race. Race was not referenced at all in the investigator's conclusion, and there is no correlation between "bad child" and race, color, ancestry, or national origin.[5] Merely including in the Investigation Report an "in the past" alleged comment that was not previously reported and never investigated—and for which zero detail was provided—did not put Obasi on notice that her conduct on January 26, 2023, was determined to have been motivated by race or that the alleged racial comment formed the basis for the January 26, 2023 HIB finding.

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

[4] The correct date of the incident was January 26, 2023.
[5] Though not referenced in the conclusion, it is noted that there is likewise no correlation between "baby" and race, color, ancestry, or national origin.

> 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.

Finding a HIB violation based upon a previously unreported and uninvestigated allegation is contrary to the requirements of the Anti-Bullying Bill of Rights Act. To allow it would negate the protections, including notice and due process, afforded to those accused of HIB, and would prevent the prompt investigation and consequences and remedial action required by the Anti-Bullying Bill of Rights Act, because an alleged HIB violation could merely be mentioned at some later date and be utilized as a basis for finding a HIB violation irrespective of the conduct or incident that is the subject of a current HIB investigation. An alleged incident of HIB requires that basic information—incident date or time, what happened or how it occurred, location of the incident, who was involved, how the reporter was made aware of the incident, and if there were any witnesses—be reported, and yet none of that information was ever provided to Obasi or to the Board. Obasi was never charged with an HIB violation in connection with the alleged racial comment, and no action was ever taken by the school district with respect thereto, yet the comment and "race" now serves as the basis for the Board's finding of a HIB violation. Although respondent argues that the "Board Policies created in accordance with the Anti-Bullying Act were adhered to by the District," and that the Board provided due process to petitioner, the facts reflect otherwise. The Board's final HIB determination was based upon race as the "distinguishing characteristic," but the alleged racial comment relied upon by the Board was not previously reported and was never investigated, and I **CONCLUDE** that it should not serve as the basis for a finding of a HIB violation on January 26, 2023, when the reporting and investigation requirements of the Anti-Bullying Bill of Rights Act were not complied with. The Board also argues that there was other sufficient basis for the HIB determination, but none of the prior incidents were ever reported, investigated, or charged as HIB. No basis other than race was cited by

the Board in its October 19, 2023 letter, and none other than "bad child" was cited by the investigator as a result of the January 26, 2023 investigation, and I **CONCLUDE** that "bad child" is not a distinguishing characteristic and therefore does not satisfy the HIB requirement.

For the reasons set forth herein, I **CONCLUDE** that the Board's determination that Obasi violated the school district's HIB policy, which mirrors the Anti-Bullying Bill of Rights Act, was arbitrary and unreasonable and should be **REVERSED**.

ORDER

It is hereby **ORDERED** that summary decision is **GRANTED** in favor of the petitioner, and the Board's determination of a HIB violation is hereby **REVERSED**.

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

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

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **ACTING 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.

January 23, 2025

DATE

KELLY J. KIRK, ALJ

Date Received at Agency:

Date Mailed to Parties:

am

EXHIBITS

J-1 Joint Statement of Facts