

**New Jersey Commissioner of Education  
Decision**

T.Y. and A.Y., on behalf of minor child, S.Y.,

Petitioner,

v.

Board of Education of the Gateway Regional High  
School District, Gloucester County,

Respondent.

**Synopsis**

Petitioners disputed the respondent Board's finding that their daughter, S.Y., committed an act of harassment, intimidation or bullying (HIB) against a fellow student pursuant to New Jersey's Anti-Bullying Bill of Rights Act, *N.J.S.A. 18A:37-13.2 et seq* (the Act). After an investigation by the school's anti-bullying specialist, the Board determined that S.Y. had committed an act of HIB against B.B. when she made racial comments that were reasonably perceived to be motivated by B.B.'s African American ancestry. The petitioners sought to reverse the Board's HIB determination, contending that the determination was arbitrary, unreasonable, and in disregard of the circumstances surrounding the alleged HIB incidents. The Board asserted that S.Y.'s conduct satisfied all of the elements of the statutory definition of HIB under the Act and must therefore be upheld, as its actions were not arbitrary, capricious or unreasonable.

The ALJ found, *inter alia*, that: an action by a board of education is entitled to a presumption of correctness unless it is proven to be arbitrary, capricious or unreasonable; under the Act, "harassment, intimidation, or bullying" is broadly defined as any gesture, any written, verbal, or physical act, or any electronic communication that is reasonably perceived as motivated by any actual or perceived distinguishing characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical, or sensory disability, that takes place on school property and substantially disrupts the orderly operation of the school; in the instant case, S.Y.'s actions constituted HIB as the term is defined by law; her racial comment at the lunch table and her injection of race into an encounter with B.B. in a crowded hallway were reasonably perceived by B.B. to be motivated by the distinguishing characteristic of race; the incidents occurred on school property during the regular school day and substantially interfered with the rights of another student; B.B. left the lunchroom upset and her reaction to S.Y.'s comments disrupted her next class to the extent that she had to be removed from class by her teacher. The ALJ concluded that the petitioners failed to meet their burden to prove that the Board's actions in determining that S.Y. committed acts of HIB against B.B. were arbitrary, capricious, or unreasonable; accordingly, the Board's HIB determination was affirmed, and the petition was dismissed.

Upon review, the Commissioner concurred with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

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.

178-23  
OAL Dkt. No. 03784-22  
Agency Dkt. No. 75-4/22

## New Jersey Commissioner of Education

### Final Decision

T.Y. and A.Y., on behalf of minor child, S.Y.,

Petitioner,

v.

Board of Education of the Gateway Regional  
High School District, Gloucester County,


Respondent.

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

Upon review, and for the reasons thoroughly detailed in the Initial Decision, the Commissioner concurs with the Administrative Law Judge that the Board's decision that S.Y. committed an act of harassment, intimidation, and bullying was not arbitrary, capricious, or unreasonable.

Accordingly, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>1</sup>

  
ANGELINA ALLEN McMILLAN, J.D.  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 15, 2023  
Date of Mailing: June 19, 2023

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<sup>1</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**

OAL DKT. NO. EDU 03784-22

AGENCY DKT. NO. 75-4/22

**T.Y. AND A.Y. ON BEHALF OF S.Y.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE  
GATEWAY REGIONAL HIGH SCHOOL  
DISTRICT, GLOUCESTER COUNTY,**

Respondent.

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**Jeremiah J. Atkins**, Esq., for petitioners (Hoffman and DiMuzio, attorneys)

**Kelli A. Prinz**, Esq., for respondent (D'Arcy Johnson Day, P.C., attorneys)

Record Closed: April 3, 2023

Decided: May 4, 2023

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

**STATEMENT OF THE CASE**

Petitioners, T.Y. and A.Y., challenged the determination of respondent, the Gateway Regional High School District Board of Education, (the Board) that their daughter, S.Y. engaged in behavior statutorily defined as harassment, intimidation, and bullying (HIB). Petitioners maintained that the respondent failed to consider the behavior of the alleged victim and compared the situation to a conflict between students rather than an act of HIB. Petitioners maintained that the Board's determination was arbitrary, unreasonable, and in utter disregard of the circumstances before it and must be reversed.

The Board replied that its actions complied with all the procedural mandates of the statute and its regulations. The Board further maintained that because its actions were not arbitrary, capricious, or unreasonable, its determination must be upheld.

### **PROCEDURAL HISTORY**

Petitioner filed a petition of appeal with the Commissioner of Education (the Commissioner) on April 5, 2022. After respondent filed its answer, the matter was transmitted to the Office of Administrative Law (OAL) on May 10, 2022.

A plenary hearing was conducted via Zoom platform on December 20, 2022. After receipt of the closing summations on April 3, 2023, the record closed.

### **FACTUAL DISCUSSION AND FINDINGS**

#### **TESTIMONY**

##### **Petitioners**

**S.Y.** is currently a tenth-grade student at Gateway. At the beginning of ninth grade, S.Y.'s friend O. asked if B.B. could sit at their lunch table and everyone agreed. B.B. was new, but she was friends with O.

S.Y. stated that when things did not go B.B.'s way, B.B. would say it was racially motivated. B.B. called the other girls racists. S.Y. described everyone else at the table getting ice cream and B.B. commented after not getting any that it was because she is black. After calling the other girls racist, she usually laughed. S.Y. did not take it seriously, and B.B. never appeared upset. B.B. would also call her "cracker." She would just say "cracker" over and over for no reason, but always seemed to be joking because she would be laughing. S.Y. laughed along and claimed it did not bother her at first, but it started to when it turned serious.

The first incident occurred when they were leaving history class and walking to physics class. S.Y. was annoyed because middle school students were blocking the

hallway. B.B. asked her if she was mad. When S.Y. said she was, B.B. asked her if it was because “I’m black” and S.Y. answered “yes” jokingly because that was the nature of their relationship. S.Y. described that comment as B.B.’s usual response to everything. S.Y.’s yes answer was sarcastic. She said it to appease B.B. and make her stop asking. During her interview, S.Y. told this to Ms. Little and Mr. Raba.

S.Y. also recalled the lunchtime finger incident. S.Y.’s friend, C., sent a picture of her bruised finger to S.Y. via Snap Chat application on her cell phone. S.Y. showed the picture of the bruised finger to the girls at the lunch table. When S.Y. said that C.’s finger was black and blue, B.B. chimed in with “like me.” S.Y. sarcastically answered “yes, like you.” She never said it’s black like B.B. S.Y. claimed it was B.B. who brought race into the conversation. According to S.Y., the mood at the table was happy, B.B. was laughing when she made her comment. After B.B. made the comment and S.Y. sarcastically responded, B.B. left the table but she came back laughing.

After these incidents, S.Y. and B.B. only saw each other in class, everyone from the lunch table moved to different tables.

All the girls at the table had been friends before B.B. started sitting at their lunch table. They never used the term “cracker” until B.B. joined the group. S.Y. claimed that B.B. used the term first, but then they all used it. Prior to her statement during this investigation, S.Y. never reported that the term “cracker” was being said at her lunch table.

T.Y. testified that after conversations with his daughter, he felt the HIB determination was wrong. He requested a meeting with Dr. Pierro, Mr. Raba, and Ms. Little. During the meeting, he took contemporaneous notes. (P-3.) He was surprised by Mr. Raba’s statement that even though S.Y. had no malicious intent, her statements were offensive to another student. T.Y. was also confused by the administrations’ lack of reaction when they were informed of the racial comments being made at the lunch table. After months of engaging in this behavior, how were the girls to know when the joking stopped, and the comments became HIB?

## **Respondents**

**S.J.** is B.B.'s mother. B.B. had just started school at Gateway at the beginning of the year. The family had moved from Camden; this was B.B.'s first year in a new school district.

S.J. had never heard B.B. mention S.Y.'s name until the incident. S.J. knew that the girls sat in the same group at lunch because B.B. said she did not want her lunch moved because of this incident. B.B. sat at this table because it is where her friend O. sat. B.B. had told her mother about two incidents where S.Y. had made comments to her about the color of her skin, which upset her. B.B. told her that S.Y. referred to another girl's black and blue finger as the color of B.B. and made a comment referring to being angry and being black.

Although B.B. was hurt by these comments, she did not have any difficulty going to school and her grades did not suffer. It can be a struggle for B.B. being a minority student, but S.J. attempted to reassure her daughter that she is beautiful. Her daughter does not like to talk about the incident.

S.J. had no knowledge of any racially related comments made by her daughter. Had she known, S.J. would not have condoned it. The school district kept her informed of the investigation but never mentioned anything about B.B. making racial comments.

**Aimee Little** is the Anti-Bullying Specialist (ABS) at Gateway Regional High School. She has served in that capacity since 2011. As the ABS, Ms. Little must be familiar with the Anti-Bullying Act, its regulations, and the Board's HIB Policy 5512. She also served as the primary investigator for HIB complaints.

The first time that Ms. Little met B.B. was during her investigation. She only knew of S.Y. because of a previous investigation that she conducted.

Ms. Little was made aware of the incident after school hours on a Friday by the vice principal, Mr. Raba, who received an email that B.B.'s teacher removed her from English class because she was upset.

The first step in any investigation is to secure the principal's approval. After the principal's approval, Ms. Little and Mr. Raba, working as a team, conduct the investigation. Mr. Raba asks the questions and Ms. Little types the answers on her computer. Ms. Little also observes the body language of the student being interviewed. The school instituted an online anonymous reporting system called "Stop It."

B.B. filed a "Stop It" report which was reviewed prior to her interview. She reported two primary incidents. The first one occurred on a Wednesday during a change of class when the hallway was crowded with students. B.B. was walking near S.Y., who was agitated by the crowds. B.B. asked her why she was so mad. According to B.B., S.Y. responded, "Shut up. That's why you're Black." Then on Friday during lunch, while a group of four students were looking at a picture of another girl's very black and blue finger, B.B. reported that S.Y. stated, "Look, it's black and blue like you, B.B."

According to Ms. Little, B.B. was not comfortable retelling this story. She was sitting on the edge of her seat and gripping her chair. Ms. Little described B.B. as being upset.

Part of the process is to identify the parties who witnessed the event. For the hallway incident, the parties were just S.Y. and B.B. Although the hallway was crowded with students, B.B. did not think anyone heard S.Y.'s comment. In the lunchroom there were four students sitting at the table when the comment was made. All four girls were interviewed.

After B.B., O. was the first witness interviewed. O.'s recollection matched B.B.'s. O. said that S.Y. referenced the bruised finger as being the same color as B.B.'s skin. This comment upset O., and she got up and left the table. She stated that she was shocked by the comment and did not know how to respond.

The questions posed to O. were generic. She was only told that there was a report on “Stop It” about an incident that occurred on Friday at the lunch table. O. easily recalled the bruised finger and volunteered S.Y.’s comment. In response to the question of how it made O. feel, she said upset and shocked and stated that B.B. was also upset.

J. was the other witness at the table, but she had little recollection. She recalled that people at the table looked upset. However, she also recalled laughter. After hearing B.B. calling S.Y. a racist, J. said that both girls were laughing. J. described B.B. as agitated and talking loudly. In response to a question of whether the laughter stemmed from joking and being funny or nervous laughter, J. thought B.B.’s laughter sounded more like nervous laughter.

S.Y. was the last girl interviewed. Her recollection of the comments about the picture differed from O. and B.B. S.Y. attributed the racial comment about the finger to being made by B.B.’s who asked, “black like me” and S.Y. responded “yes.” Ms. Little did not judge whether S.Y.’s comment was sarcastic or mean spirited.

S.Y. also recalled the hallway incident. She was annoyed by students blocking access as she walked to her next classroom. B.B. asked her if she was mad because B.B. is black and she responded yes, because you are black. The perception of this incident between the two girls was different.

S.Y. also volunteered that B.B. calls her a “cracker” but it did not bother her.

After S.Y.’s interview, Ms. Little and Mr. Raba had a second interview with B.B. They specifically asked B.B. about the “cracker” reference. B.B. admitted to using that term and to all the girls saying it at the lunch table. B.B. denied ever discussing her race with S.Y. B.B. admitted that all the girls joke about race at the lunch table. She also recalled the incident where she said that everyone got ice cream except the black girl. B.B. was upset about the ice cream but she did not want to make a big deal about it. She acknowledged saying “that’s because I’m black” but only to her friend O.



These four interviews comprised the totality of the investigation. The next step in the investigation was to review the statements in the context of the HIB criteria. In this instance, race was a motivating factor, the incidents occurred at school and disrupted B.B.'s school day by her removal from class. The incident met all the HIB criteria. After determining that the HIB criteria were satisfied, the findings were presented to the principal, Dr. Pierro, for his review and assessment.

As the ABS, Ms. Little wrote the HIB report. Her report was reviewed by the principal, Dr. Pierro and the superintendent, Dr. Whalen. After their approval, the report went to the Board for final approval.

Part of the interviews was to learn about the relationship among the girls, who sat together at the lunch table. B.B. stated that she was only close friends with O. With regards to the other girls, including S.Y., B.B. stated that they follow each other on social media, but do not see each other outside of school.

Ms. Little clarified that B.B. did not want to change her lunch table because she wanted to be with O. She was fearful that she would be moved from the lunch table and lose her only friend at the school. Ms. Little believed that because of this fear, B.B. downplayed the incident and how it made her feel.

Ms. Little receives annual training in conflicts versus bullying.

**Louis C. Raba** has been in public education for almost thirty years. He started his career as a teacher and for the last twenty years, he has been a school administrator. He has served as the assistant principal of Gateway Regional High School for the past seven years. He also serves as the Anti-Bullying Coordinator (ABC) for the district. Mr. Raba is a certified anti-bullying coordinator through New Jersey Public Schools Administrators (NJPSA). He attends yearly workshops on HIB investigations.

Before the incident in December 2021, Mr. Raba had no previous interaction with B.B. S.Y. had been a student at Gateway since seventh grade. Mr. Raba had never met her personally but knew she had a prior HIB violation during eighth grade.

Mr. Raba was alerted about the incident by another assistant principal, who sent him an email saying that B.B. was very upset about a racial comment made by S.Y., during the school day. B.B. was sent to his office and Mr. Raba briefly met with her that afternoon. When B.B. came into the office, she was crying. Because the timing was so close to dismissal, Mr. Raba asked her to go onto the “Stop It” platform and report what happened. Later that same day, B.B.’s mother called him to make sure he knew that her daughter was upset and asked what was going to be done.

On Monday, December 13, 2021, the guidance counselor helped B.B. complete the “Stop It” report. The “Stop It” report generates notification to the administration to begin the investigation process. Mr. Raba explained how he works as a team with the ABA, Ms. Little. At the conclusion of the interview, the student is asked to read their statement to make sure that it was transcribed correctly and accurately reflected their words. The students are encouraged to cross out words or make changes to the statement, if needed.

Mr. Raba recalled that B.B. did not consider S.Y. a close friend. They do not see each other outside of school. They do not text one another. B.B. stated that on multiple occasions S.Y. has said hurtful things to her. One of the incidents involved a situation when the girls were leaving class and walking in the hall. Mr. Raba and Ms. Little could not find any witnesses to the hallway exchange and relied on B.B.’s and S.Y.’s statements. The other issue occurred at the lunch table. The girls were looking at a picture of another girl’s bruised finger and S.Y. allegedly commented that the finger was black like B.B. There were two other girls present during the incident involving the finger.

B.B. appeared distressed and uncomfortable during her interview. They gave B.B. the option of changing her lunch table but B.B. refused. She wanted to continue to have lunch with O., who was her only friend in the school.

S.Y. was also interviewed. The best way that Mr. Raba could explain S.Y.’s comments was that the context was completely different from the way B.B. described it. The topic was the same, but the verbiage used by the girls was very different.

S.Y. alleged that B.B. called her a “cracker.” The use of the term was discussed but no HIB investigation was initiated. It was described that there were multiple girls at the table, including B.B., using the term to describe each other. Mr. Raba gave S.Y.’s parents the opportunity to request a HIB investigation over the use of the word “cracker” but they declined. S.Y. reported that the term was used at the table but that it did not bother her. The first mention of the girls at this lunch table using the term “cracker” was made by S.Y. during this HIB investigation.

Before determining that the matter between B.B. and S.Y. constituted a HIB, Mr. Raba and Ms. Little analyzed all three key components of the Anti-Bullying Act. The first component requires a distinguishing characteristic. This was met because the comments involved B.B.’s race. The second component, a disruption to the student’s school day, was met. B.B. was so upset she had to be removed from class and sent to the assistant principal’s office. Any time that a student is crying in a classroom and the teacher acknowledges it, there is a disruption to the learning environment. The third component involved whether the alleged behavior occurred. The determination was that certain things were said to B.B. involving her race that offended her and caused her distress.

The investigation consisted of four student interviews. The determination that the conduct constituted HIB was a collaborative decision involving Mr. Raba, Ms. Little, and the school principal, Mr. Pierro. The superintendent makes the final approval before it is sent to the Board.

The use of inappropriate language is a code of conduct violation. None of the girls were disciplined for a code of conduct violation for their talk at the lunch table. S.Y. was disciplined for a violation of HIB.

**Jeffrey Pierro** is in his eighth year as the principal of Gateway Regional High School. Dr. Pierro is familiar with the Board’s HIB policy and the district’s code of conduct policy. Although Dr. Pierro is familiar with HIB investigations, his role is to review the investigation report, discuss its findings with Mr. Raba and Ms. Little, and make the determination.

Dr. Pierro was present at a meeting with S.Y.'s father. He recalled that Mr. Y. disagreed with the results because he thought the situation was more of a back and forth among the girls. Dr. Pierro disagreed.

There was a discussion among Dr. Pierro, Mr. Raba, and Ms. Little about the use of the term "cracker" by the girls at the lunch table. Although such language was inappropriate, none of the girls reported it as offensive. All the students at the table could have been disciplined for a code of conduct violation but under the circumstances herein, no discipline was instituted against any of the girls for the use of the word "cracker."

**Shannon Whalen** is the superintendent of Gateway Regional, Westfield School District, and Notional Park School District. Dr. Whalen is familiar with the Board's 5512 HIB Policy and the District's code of conduct.

Generally, Dr. Whalen reviews HIB reports to make sure the required information is provided, and the procedures have been followed. However, after learning of the concerns of S.Y.'s father, Dr. Whalen discussed the matter with Dr. Pierro, Mr. Raba, and Ms. Little. She supported their findings and recommendations.

Dr. Whalen informed S.Y.'s family that they were welcome to attend the Board meeting in executive session and present any information they wanted the Board to consider. At the conclusion of the meeting, the Board held the matter so they could hear from the alleged victim's family. The Board's personnel committee held a zoom meeting with B.B.'s mother and thereafter rendered their decision to uphold the HIB determination at the January meeting.

Although Dr. Whalen played no role in the investigation, she did review the student summaries. When asked about B.B.'s alleged racial comments, Dr. Whalen said she recalled that statements were made by all the girls at the lunch table that were inappropriate. However, she had no concern about how the investigation was conducted.

Having heard the testimony presented at the hearing, and having reviewed the documentary evidence, I **FIND**:

On December 10, 2021, B.B. was removed from class by her teacher because she was upset. B.B.'s teacher, Jill Reichman reported to Assistant Principal, Dana DeGeorge that B.B. was upset because another student, S.Y., made racial comments to her. Ms. DeGeorge alerted Mr. Raba by email of the incident and sent B.B. to his office. (J-1.)

When B.B. appeared in Mr. Raba's office, she was crying. As it was near dismissal, Mr. Raba advised B.B. to make her report on "Stop It." B.B. was still upset when she got home, prompting her mother to call Mr. Raba.

On December 13, 2021, B.B., with the help of a guidance counselor, reported the incidents on "Stop It." All HIB incidents are referred to Ms. Little, the school's ABS and Mr. Rapa, the ABC, for investigation.

B.B. reported two incidents. The first incident occurred on December 8, 2021, as the students were walking in a crowded hallway between class periods. B.B. asked an agitated S.Y. why she was so angry. According to B.B., S.Y. told her to "shut up" and made a comment about her race. According to S.Y., B.B. asked her if she was angry because B.B. is black. No other student witnessed this exchange.

The second incident occurred on Friday, December 10, 2021, in the cafeteria, at the lunch table. S.Y. displayed a picture of a friend's finger that was badly bruised. There were two witnesses present at the lunch table. O. corroborated B.B.'s statement that S.Y. said the finger was turning black like B.B. Neither of the two witnesses corroborated S.Y.'s version. J. did not recall the finger conversation but corroborated that B.B. called S.Y. a racist.

The incident at the lunch table caused B.B. to be so upset that her teacher removed her from class and contacted an assistant principal. The assistant principal sent B.B. to the ABC's office. When B.B. returned home, her mother witnessed how affected she was by the incident and her mother contacted Mr. Raba, the ABC.

After the interviews of the four students, Ms. Little prepared the Investigative Findings Report Form. (J-3.) The incident was verbally reported to Mr. Raba on December 10, 2021, and reported on “Stop It” on December 13, 2021, which was the date the investigation began. The alleged victim B.B. is an African American female in ninth grade. The alleged offender S.Y. is a Caucasian female in ninth grade. The two incidents occurred during the school day and on school property. “Race” was deemed the motivational factor for the two HIB incidents.

The school principal, Jeffrey Pierro, reviewed the report and approved the HIB determination on December 17, 2021, and sent the report to the superintendent. A meeting occurred on December 20, 2021, with S.Y.’s father, Dr. Pierro, Mr. Raba, and Ms. Little in attendance. On December 21, 2021, Superintendent of Schools, Shannon M. Whalen, sent a letter to the parents of S.Y., informing them that the district investigation had concluded that S.Y. had engaged in conduct that fell under the definition of HIB, based on the perceived characteristic of race with the consequence of a one day in-school suspension. They were informed of their right to appeal the administration’s determination to the Board. (J-5.)

On December 22, 2021, the petitioners requested a hearing before the Board to appeal the HIB determination. On January 5, 2022, in executive session, the Board heard the petitioner’s appeal. At the conclusion of the hearing, the Board adjourned the meeting so it could hear testimony from the alleged victim’s mother. The Board reconvened in executive session at its next regularly scheduled meeting. After hearing from and questioning the alleged victim’s mother via Zoom platform, the Board voted to affirm the district’s finding that S.Y.’s conduct constituted an act of HIB.

### **CONCLUSIONS OF LAW**

In accordance with the Anti-Bullying Law, N.J.S.A. 18A:37-14, HIB is defined as:

[A]ny gesture, any written, verbal or physical act . . . 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 . . . or by any

other distinguishing characteristic . . . that takes place on school property . . . 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 a 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 be severely or pervasively causing physical or emotional harm to the student.

In accordance with N.J.A.C. 6A:16-7.7, Gateway developed, adopted, and implemented HIB Policy 5512 that mirrors the above statute. (J-4 at 014-105.)

I **CONCLUDE** that S.Y.'s actions constituted HIB as that term is defined by law. Her racial comment at the lunch table and injecting race into her encounter with B.B. in the crowded hallway were "reasonably perceived" by B.B. as being motivated by race, a "distinguishing characteristic." The incidents occurred on school property during the regular school day. S.Y.'s racial comments substantially interfered with the rights of another student. B.B. left the lunchroom upset and her physical reaction to S.Y.'s comments disrupted her next class to the extent that she had to be removed from class by her teacher. The racial statements could reasonably be perceived as offensive, insulting, and demeaning.

The regulations that accompany and amplify the requirements of the Anti-Bully Law state that consequences for students found to have violated the HIB policy should be "varied and graded according to the nature of the behavior . . . and the student's history of problem behaviors and performance." N.J.A.C. 6A:16-7.7(a)(2)(vi)(1). I **CONCLUDE** that the actions of school personnel relative to this incident were consistent with the letter and spirit of N.J.S.A. 18A:37-14 and N.J.A.C. 6A:16-7.7. S.Y. was not a chronic

troublemaker, and no one contends otherwise. But her comments were offensive, insulting, and unkind, and the school district's response was designed to redirect her behavior in a measured manner while recognizing this was a second offense.

Petitioners disagree, urging that the actions of the Board were unfair and one-sided. The Commissioner 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), <<http://njlaw.rutgers.edu/collections/oal/>> (citing Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581(1966)). 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). Our courts have held that "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." Bayshore 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, to prevail, the petitioner must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it. T.B.M., EDU 2780-07. It is a weighty burden; one which I **CONCLUDE** these petitioners have not met. This record has presented me with no evidence that would suggest that the actions of this Board, or its personnel, were taken in bad faith or in utter disregard of the circumstances presented.

Nor has the petitioner convinced me that the Board, through its administration, was biased or unfair to S.Y. in its investigation. The investigation was procedurally compliant with the requirements of N.J.A.C. 6A:16-7.7. Districts are required by law to adopt comprehensive policies prohibiting HIB and outlining expectations for student behavior; setting forth consequences for inappropriate behavior; and creating procedures for reporting HIB related concerns. Id. A school anti-bullying specialist must be assigned to each school, and the results of the HIB investigation shared with the Superintendent of Schools. The results of each investigation must likewise be shared with the Board of Education. Parents are entitled to receive information about the investigation, in writing,



within five school days after the results of the investigation have been reported to the board. The parent may request a hearing before the board, to be conducted within ten days of the request. N.J.S.A. 18A:37-15(b)(6). Comprehensive regulations promulgated by the Department of Education further guide districts in complying with these statutory requirements. N.J.A.C. 6A:16-7.7.

School personnel promptly responded to B.B.'s HIB complaint; began their investigation within one day; and completed it within ten school days, as required by law. N.J.S.A. 18A:37-15(b)(6)(a). T.Y. urged that the initial investigation of the complaint against his daughter failed to take into consideration the racial comments made by B.B. However, S.Y. freely admitted that she was not offended by B.B. calling her a "cracker" or any of the racial comments allegedly made by the students at the lunch table. B.B. was not only the new student, but she was also the only African American student at this lunch table. She sat at this table because she was clinging to her one and only friend at her new school. O., who was also friends with S.Y., corroborated B.B.'s interview statement and S.Y.'s racial comment. O. also told the investigators how the statement made her feel, lending credence to B.B.'s distress. O. stated she was so uncomfortable she got up and walked away. Even J. acknowledged to the investigators that B.B.'s laughter could have been nervous laughter. S.Y.'s interview and testimony appeared to deflect from her own conduct to portray B.B. as the instigator of her own distress. B.B.'s conduct away from the lunch table, apart from S.Y., and in her next class, demonstrated the harmful continuing affect that the comment caused her. B.B.'s distress caused her teacher to remove her from class and send her to the ABC to report a racial incident.

Petitioners argued that the decision in W.D. & J. v. Bd. of Educ. of Jefferson, 2020 N.J. Super. Unpub. LEXIS 1787, was like the situation between S.Y., B.B., and the other girls at the lunch table. I disagree. The girls in W.D. were all playing the same game, while texting in iMessage "group chat" outside of school. It appeared that this group of friends were of diverse ethnic backgrounds. The "pretend fight" they were engaging in was vulgar, crude, and inappropriate. After one of the participants used the "N-word" the game ended, leaving one of the participants, G.D., in tears. The ensuing HIB investigation did not find any disruption or interference with the school day or the rights of other students. The incident was deemed a conflict because the girls had been mutually

engaged and fully involved in using inappropriate, abhorrent, and egregious language as a game. The use of the “N-word” stemmed from this deplorable game where everyone had been an equal and willing participant. In addition, after the episode, G.D. appeared unaffected. The friendship among the group and the mutuality of the conduct sets the case, herein, apart from the scenario in W.D.

### **ORDER**

Based on the foregoing, I **ORDER** that the appeal 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.



May 3, 2023  
\_\_\_\_\_  
DATE

\_\_\_\_\_  
**KATHLEEN M. CALEMMO, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

KMC/tat

**APPENDIX**  
**WITNESSES**

**For Petitioner:**

S.Y.

T.Y.

**For Respondent:**

Aimee Little, ABS

Louis Raba, ABD

Principal Jeffrey Pierro

Superintendent Shannon Whalen

**EXHIBITS**

**Joint:**

- J-1 Email notification to Mr. Rabe, dated December 10, 2021
- J-2 Notification letter to S.Y.'s parents, dated December 14, 2021
- J-3 Investigation report with witness statements
- J-4 Policy 5512 – HIB
- J-5 Determination letter, dated December 21, 2021

**For Petitioner:**

- P-1 Gateway Regional School District Code of Conduct
- P-2 New Jersey Department of Education's Guidance for Parents on the Anti-Bullying Bill of Rights Act
- P-3 Handwritten notes, dated December 20, 2021

**For Respondent:**

None