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OAL Dkt. No. EDU 03570-22
Agency Dkt. No. 78-4/22

New Jersey Commissioner of Education

Final Decision

J.R., on behalf of minor child, T.R.,

Petitioner,

v.

Board of Education of the Township of Long Hill, Morris County, and Michael Viturello, Principal,

Respondents.

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

Upon review, the Commissioner concurs with the Administrative Law Judge that neither respondents' determination that T.R. committed an act of harassment, intimidation, and bullying, nor the imposition of a six-day suspension, was arbitrary, capricious, or unreasonable, or in violation of T.R.'s First Amendment rights.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.[1]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 9, 2024
Date of Mailing: December 11, 2024

[1] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.*2 :4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. EDU 03570-22
AGENCY DKT. NO. 78-4/22

J.R. ON BEHALF OF MINOR CHILD T.R.,
Petitioner,
v.
TOWNSHIP OF LONG HILL BOARD OF EDUCATION, MORRIS COUNTY AND MICHAEL VITURELLO, PRINCIPAL,
Respondents.

Jerald F. Oleske, Esq., for petitioner (Oleske & Oleske, attorneys)

Douglas M. Silvestro, Esq., for respondent (The Busch Law Group, attorneys)

Record Closed: July 18, 2024 Decided: October 28, 2024

BEFORE **MARGARET M. MONACO**, ALJ:

STATEMENT OF THE CASE

Petitioner J.R., on behalf of her son, T.R., challenges the Harassment, Intimidation and Bullying (HIB) determination, and the six-day suspension imposed, by the Township of Long Hill Board of Education (the Board).

PROCEDURAL HISTORY

On April 12, 2022, petitioner filed a Petition of Appeal with the Commissioner of Education (the Commissioner) contesting the Board's HIB determination and six-day suspension. On May 2, 2022, respondents filed an Answer to Petition of Appeal, and the Department of Education transmitted the matter to the Office of Administrative Law, where it was filed for determination as a contested case. A prehearing conference was held on June 23, 2022, during which the hearing was scheduled for December 1, 2, and 5, 2022. The hearing was adjourned to afford respondents the opportunity to file a motion for summary decision. Subsequently, the parties filed cross-motions for summary decision, which I denied by Order dated May 2, 2023. The hearing was held on October 18, 2023, and January 16, 2024, after which the record remained open for the receipt of transcripts of the hearing and post-hearing submissions. The parties filed briefs in support of their respective positions, and the record closed upon receipt of the last submission.

FACTUAL DISCUSSION

At the hearing, petitioner offered testimony by T.R. and his mother, J.R. Michael Viturello and Melissa Backer testified on behalf of the Board. In addition, the parties submitted various joint exhibits and a Joint Statement of Undisputed Facts (Stip.).

Based upon a review of the testimony and the documentary evidence presented and having had the opportunity to observe the demeanor and assess the credibility of the witnesses who testified, I **FIND** the following pertinent **FACTS** and accept as **FACT** the testimony set forth below.

During the relevant period, T.R. was an 8th grade student at the District's Central Middle School (CMS). (Stip. at ¶ 1.)

Michael Viturello (Viturello) is the principal of CMS, a position that he has held for seven years.

Melissa Backer (Backer) has been an assistant principal with the District since 2016. She is also the anti-bullying specialist for all three District buildings, including CMS.

On November 10, 2021, a CMS student (Jane)[1] shared a Snapchat with Viturello. (Stip. at ¶ 3.) Jane had initially brought the matter to the attention of the school counselor. The Snapchat thread contained a number of students from CMS, including T.R., making demeaning comments regarding another CMS student (Susan). (Ibid.; see J-7; J-13.) The comments, including those made by T.R., were vulgar in nature and attacked Susan's appearance, weight, and sexual orientation. (Stip. at ¶ 4; see J-7; J-13.) Viturello described that Jane was "very concerned about . . . all the information that was being shared by students [and] comments that were being made about" Susan.

The comments made by T.R., with some minor exceptions, were generally directed at Susan. (Stip. at ¶ 8.) T.R. knew at the time of the conversation that the other participants were also referring to Susan. (Id. at ¶ 9.) Susan was not a direct participant of the November 9, 2021 Snapchat thread. (Id. at ¶ 10.) Some of the other participants who engaged in the conversation were students who, at that time, attended CMS. (Id. at ¶ 11.) The Snapchat thread also included students from other middle schools located in nearby towns outside of the District. (Ibid.)

In the afternoon on November 10, 2021, Viturello contacted Susan's parents. (See J-14 at R148.) The purpose of that contact was to "make them aware . . . that something pretty significant happened outside of school[.]" Viturello spoke to Susan's mother, who was aware that an incident had occurred with comments made about her daughter and was "very concerned[.]" Susan's mother shared that Susan was "very concerned about just the group in general making comments about her, she was very self-conscious, [and] she was anxious about it," including the involvement of many non-District students.

Jane, the witness who initially reported the incident to CMS staff, reported that she was fearful of retaliation by her classmates for informing adults and school staff of the Snapchat thread. (Stip. at ¶ 18.) Jane's parents signed Jane out of school the day after

[1] Fictitious names are used to identify the student reporter (Jane) and the alleged victim (Susan).

she reported the Snapchat thread to school staff, and Jane remained homeschooled for the remainder of the 2021–2022 school year. (Id. at ¶ 19.) Viturello spoke with Jane's mother, who was "very concerned about the entire situation" and conveyed her intention to withdraw Jane from school due to the Snapchat situation.

On November 11, 2021, Viturello met with all CMS students, including T.R., who had made negative comments about Susan. (See Stip. at ¶ 5; J-14 at R148.) During a meeting with Viturello, T.R. admitted to making all of the statements attributed to him, although he indicated that he did not remember some of them. (Stip. at ¶ 6.)

The CMS "Student Manual and Code of Conduct" sets forth in detail the type of behavior expected of CMS students. (Stip. at ¶ 15; see J-9, page 8.) In September 2021, T.R. was present during a Grade Level Meeting at which Viturello reviewed the CMS "Student Manual and Code of Conduct." (Id. at ¶ 12; see J-9; J-10.) At that Grade Level Meeting, Viturello also explained that the Code of Conduct was available on the school's website for review. (Id. at ¶ 13.) On September 10, 2021, T.R. was sent an e-mail from Viturello that attached a copy of the slide presentation used at the Grade Level Meeting, along with the CMS "Student Manual and Code of Conduct." (See Id. at ¶ 14; J-10.)

Viturello made an initial review of the within matter and determined that T.R. had, at the very least, violated various requirements of Section 2 ("Behavior") of the CMS Code of Conduct in that he failed, without limitation, to: (a) "[m]ake appropriate decisions" and (b) "[c]ommunicate with others in a positive manner without teasing, name calling, or profanity." (Id. at ¶ 16; see J- 9, Sec. 2, page 8; J-4.) Viturello also determined that T.R. had, at the very least, violated various requirements of Section 3 ("Respect") of the Code of Conduct, in that he failed, without limitation, to "[b]e respectful of different cultures, religions, ethnic and racial groups, gender identities and sexual orientations, and physical and mental differences." (Id. at ¶ 17; see J- 9, Sec. 3, page 9; J-4.)

As a result of the conduct, on or about November 11, 2021, Viturello imposed a six-day out-of-school suspension (OSS) to T.R. and other students involved in the Snapchat thread. Viturello also initiated a HIB investigation. (See Stip. at ¶ 7 and ¶ 21; J-2.) On November 11, 2021, Viturello contacted T.R.'s parents regarding the situation.

(See J-4; J-14 at R148.) By letters dated November 12, 2021, Viturello notified T.R.'s parents of the foregoing events, his initial determination, the imposition of the OSS, and the pending HIB investigation. (See Stip. at ¶ 22; J-3; J-4.)

Viturello described that seven District students were involved in the inappropriate Snapchat comments and their comments ranged in frequency and severity. The students who made more frequent or more significant comments were disciplined with greater consequences than those who had less frequent or less significant comments on the Snapchat chain. T.R. received the highest level of discipline (i.e., a six-day OSS) based on his comments. He was not the only student to receive that level of discipline.

On November 12, 2021, T.R.'s mother notified school staff that she was afraid of leaving T.R. alone that morning and that T.R. presented with suicidal ideation in prior years. (Stip. at ¶ 23.) In response, Backer, the school counsellor, and the school social worker made a home visit. School staff conducted a risk assessment and wellness visit of T.R. at his home, and he was cleared to return to school after the evaluation. (Ibid.; see J-14).

The HIB investigation was conducted by Viturello and Backer. (Stip. at ¶ 24.) Backer interviewed Susan the day after the incident was reported. Susan was aware of the substance of the Snapchat, and Susan advised that she became aware of the Snapchat about her from a friend. Backer testified that Susan was "clearly very upset, she was crying, she expressed concern about going to the high school because these students had been previously making fun of her from our District and another district and she was embarrassed." Susan also relayed that "she avoids going to certain areas because she doesn't want to be around" these students. After interviewing Susan, Backer and Viturello interviewed witnesses and the alleged offenders.

Susan was provided with counseling through the District for the remainder of the year. (Stip. at ¶ 20.)

During a meeting with Viturello and Backer on November 15, 2021, T.R.'s parents personally reviewed all of the Snapchat comments made by T.R. for which he received discipline and were the subject of the HIB investigation. (See Stip. at ¶ 25; J-14.)

The HIB investigation was completed on or around November 19, 2021. (Stip. at ¶ 26; see J-1.)[2] Backer concluded that the acts committed by T.R. constituted HIB within the meaning of the Board's Policy and State law. (Id. at ¶ 28; see J-1.) Backer completed an Investigation Report Form in which she checked the boxes finding that T.R.'s behavior met the listed HIB criteria. (J-1 at R013.)

Backer determined that T.R.'s behavior "[i]s 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." (J-1 at R013.) Backer explained that she checked that box "because the content included several perceived characteristics about [Susan's] appearance, and mainly her weight and . . . also . . . her sexuality."

Backer checked the box that the conduct "[t]akes place on school property, at any school-sponsored function, on a school bus, or off school grounds" (J-1 at R013), and stated that the conduct took place off school grounds.

Backer checked the box finding that T.R.'s behavior "[s]ubstantially disrupts or interferes with the orderly operation of the school or the rights of other students[.]" (J-1 at R013.) Backer explained that "based on the comments [T.R.] made, [Susan] was visually very upset about the content that was said about her, . . . [Jane was] signed out of school after sharing the information about the Snapchat and then T.R. himself was in distress" resulting in school staff conducting a risk assessment. In addition, there was an interference with the operation of the school as a whole, and the incident "had a substantial interference with the school day." Backer explained that "there were about 25 students that were involved on the Snapchat, so clearly it was spoken about within the

[2] T.R. is designated as student "A-2" and "AP2" in the HIB Investigation Report and as "TR" in the summaries of student chat comments in the report. (Stip. at ¶ 27.)

middle school halls"; "[t]here were a lot of students that were interviewed"; and "there were a lot of staff members that were involved in the interview process and the HIB investigation[.]"

Backer checked the box finding that "a reasonable person should know, under the circumstances, [that T.R.'s behavior] 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[.]" (J-1 at R013.) Backer explained, "[m]aking fun of someone's appearance, [and] their sexuality, . . . a normal person would understand that . . . would be hurtful to that person and could cause emotional harm." Backer believed that a reasonable 8th grader would know under the circumstances that the conduct that T.R. admitted to would have the effect of physically or emotionally harming a student. She testified that "a reasonable 8th grade student would be aware that there are negative implications associated with that kind of language," and a "reasonable person would think that using that language with a group of 25 plus students would get back to that student." She noted that the school educates students about the internet, including matters such as the digital footprint, how it follows them, and that anything put on the internet is traceable.

Backer checked the box finding that T.R.'s behavior "has the effect of insulting or demeaning any student or group of students" (J-1 at R013) "[b]ecause the content had to do with [Susan's] physical appearance, weight and also sexuality." During Backer's interview with Susan, Susan relayed that she was insulted or demeaned.

Backer checked the box finding that T.R.'s behavior "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." (J-1 at R013.) Backer explained that Susan conveyed "that she didn't want to go to the high school where these students were going to be attending."

In the form, Backer also checked the box that the "[a]ggressor's actions determined to be . . . [i]ntentional, but not designed to harass, intimidate, or bully," i.e., "[t]he student knowingly engaged in harassing, intimidating, or bullying behavior but was not aware of

the potential negative impact on the target." (J-1 at R013.) Backer testified that "an 8th Grade student is aware that the type of content he engaged in would hurt someone, so the intent, it was hurtful," but she did "not believe that [T.R.] woke up that day and decided he wanted to harass, intimidate or bully the victim." Backer believed that T.R.'s conduct "was intentional as in he knowingly engaged in behavior that he knew was wrong and hurtful, but [she did not] believe that he wanted to harass, bully or intimidate or be involved in an investigation, [and she did not] think he was thinking that through when he was involved." Backer did not believe that T.R. "had an intention of hurting" Susan, and she did not believe that T.R. "was thinking clearly about the ramifications." However, Backer articulated that "a reasonable person would know—should know that . . . type of language would be harmful to somebody."

As Viturello had already imposed a six-day OSS on T.R. for the Code of Conduct violations, Backer recommended additional remedial measures, including meeting with a school counselor, a reflective writing assignment, and an in-home risk assessment supplemented by an additional parent meeting. (Id. at ¶ 29; see J-1 at R014.)

On or around November 19, 2021, Viturello approved the HIB Investigation Report without modification. (Stip. at ¶ 30.) He reviewed the report and agreed Backer's determination that the incident was "Confirmed Bullying." (See J-1 at R013.) Viturello agreed with Backer's determination that the criteria checked on the form had been met. Viturello described that T.R.'s conduct was reasonably perceived as being motivated by the victim's weight and sexuality, and the conduct took place off school grounds.

Viturello agreed with Backer's determination that T.R.'s behavior substantially disrupted and interfered with the orderly operations of the school or the rights of other students. He explained that Susan "was very anxious about the situation, was very impacted, [and] needed multiple counseling sessions[.]" Susan also shared that she was fearful of going to the high school because the incident involved not only Long Hill students but students in surrounding towns. In addition, Jane was "very concerned about retribution" from the students involved in the conduct, and she was signed out of the school in the first few days after the incident. Viturello also spoke with T.R.'s mother, who was concerned about T.R.'s mental health based on his involvement in the incident.

Viturello testified that "there was a great impact to the school in general and many individuals involved." "There was impact on all the students who were suspended and their involvement and also the witnesses," noting that "there were witnesses in the Snapchat that asked for it to stop[.]"

Viturello agreed with Backer's determination that a "reasonable person should know, under the circumstances, [that T.R.'s behavior] will have the effect of physically or emotionally harming" Susan. Viturello described that the District educates students about social media in general, and the dangers of social media, including a 7th grade course called Digital Literacy in which the Library Media Specialist educates students about their digital footprint and the impact they could have on other people. Viturello believed that an 8th grader in the District in the Fall of 2021 would have understood that "when you have a conversation like that, there's a very good chance that it's not going to remain isolated when there's over two dozen people on it." Viturello explained that, although it was Snapchat, there were over two dozen students on it and "knowing middle school students, it's very reasonable to understand that someone's going to share a conversation that was more than one comment." Participants can also screenshot or camera-shot the information posted on Snapchat "so the information travels."

Based on the comments, Viturello agreed with Backer's determination that T.R.'s behavior had the effect of insulting or demeaning Susan. He also agreed with Backer's determination that T.R.'s behavior "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." Viturello noted that Susan needed counseling, and Jane left the school.

On or around November 22, 2021, Viturello forwarded the HIB Investigation Report to the then Superintendent of Schools, Dr. Anne Mucci. (Stip. at ¶ 30.) On or around November 22, 2021, Dr. Mucci approved the HIB Investigation Report without modification. (Id. at ¶ 31; see J-5.) The parents were notified of Dr. Mucci's decision via letter dated November 22, 2021. (Id. at ¶ 32; see J-5.) That letter also informed the parents of their right to request a hearing before the Board regarding the HIB determination.

The parents, through counsel, requested a Board hearing via e-mail on November 29, 2021. (Stip. at ¶ 33; see J-18.) On or about January 13, 2022, a hearing was held before the Board. (Id. at ¶ 34; see J-17.) At that Board hearing, the Board agreed with the recommendation of the Superintendent and upheld the determination that T.R. had committed an act of HIB. (Id. at ¶ 35; see J-17.) Counsel for petitioner was notified of the Board's decision by letter dated January 19, 2022. (Id. at ¶ 36; see J-17.) That letter (J-17) states in pertinent part:

> For reasons set forth below, the Board affirmed the decision of the Superintendent that [T.R.] committed an act of HIB and that the discipline imposed was not unreasonable.
>
> The allegations and findings for the HIB complaint are set forth in the investigation report, a copy of which was previously been provided to you. The Board agreed with the findings of the report and affirmed the decision of the Superintendent . . . . The Board agreed that [T.R.'s] actions met the legal definition of HIB.
>
> Specifically, the Board determined that [T.R.'s] comments made online were clearly targeting a student's perceived characteristics including but not limited to the student's appearance, hygiene, sexuality, mental state/disability and more. While [T.R.] may have thought that his comments would not have been shared with [Susan], such a belief was not reasonable given the vast number of students participating in the chat, including students from other school districts and even counties, many of whom [T.R.] admittedly did not know. Moreover, [Susan] was made aware of the comments, and thus was insulted/demeaned as contemplated by the HIB law.
>
> The Board also found that there was a substantial disruption to the school environment as well as the rights of multiple students as the contents of the chat were widely shared and discussed in school. Moreover, . . . both [Susan] and [Jane] have been noticeably and severely impacted by [T.R.'s]. individual actions as well as those attributed to the group of students that engaged in the chat along with [T.R.]. Such disruption was more than sufficient to trigger the Board's authority and responsibility to address the electronic communication occurring off school grounds pursuant to N.J.S.A. 18A:37-15.3, and N.J.A.C. 6A:16-7.5. It must be

> noted that the latter regulation grants schools the authority to issue discipline not just based on the aggressor's safety or well-being as you argued at the hearing, but also "for reasons relating to the safety, security and well-being of other students, staff or school grounds," which reasons were clearly implicated in this case.

Petitioner filed a Petition of Appeal dated April 8, 2022, contesting the Board's determination. (See Stip. at ¶ 37; J-11.)

In addition to the evidence that forms the foundation of the aforesaid findings of fact, a summary of other pertinent testimony follows.

The Testimony

T.R. currently attends the same high school as Susan and Jane and described that he is now "friendly" with Susan. T.R. acknowledged that he knew that it was not okay to bully people while in school, but articulated his understanding that the type of acts that would involve bullying were "more in person, like physical things or saying stuff to people's face." He also did not believe that there would be issues with bullying outside of school. T.R. indicated that "20 something people" were in the chat group, including students from surrounding towns, and T.R. agreed that hurtful things were said during the chat group, including comments about Susan's appearance. T.R. articulated his understanding that, when using Snapchat, "we were talking in a private group that no one else could . . . publicly see and that after 24 hours, it automatically deletes the chats." T.R. testified that he thought that what was said would never get back to Susan "because it automatically deletes and it's private," and "in that group . . . there was not really people who were close friends with her[.]"

T.R. described that he was "devastated" and "felt really horrible about what [he] had said" when he found out that it was brought to Susan's attention that derogatory comments had been said about her. T.R. testified that he "wouldn't have ever said anything like that to her face," and he "would have never said anything like that" if he had any thought that it would possibly get back to Susan. T.R. acknowledged that he "never should have done something like that," and he "felt like a horrible person" and "really

bad[.]" The incident physically affected him. T.R. alerted his parents that he was feeling terrible and that the incident was affecting him physically. T.R. apologized to Susan a couple of days after he was suspended. (See J-22.) According to T.R., they had a conversation and they continued to have friendly conversations after that. T.R. testified that, based on his discussion with Susan, she did not know what exactly was said about her, Susan asked him to tell her what people were saying, and he declined to do so. T.R.'s parents disciplined T.R. for the incident; the parents took his phone away and grounded him. The parents also limited T.R.'s screen time when he got his phone back, and the parents "would go through [his] phone a lot to make sure nothing else was happening."

T.R. articulated that he felt that the HIB determination was a "misrepresentation" of who he is as a person, and the comments he made then are not a representation of him as an entire person. T.R. testified that he has never said or done anything with the intent of hurting someone and that such actions are not part of his character. T.R. admitted that he deserved to be punished because he said "some horrible things," but did not "think that it was right to say that [he] was bullying." T.R. described that he did not want a letter in his file to affect him in the future regarding a potential college or job.

T.R.'s mother, J.R., confirmed that T.R. was disciplined at home for the incident, which also included making T.R. watch a video on being an upstander and bullying. J.R. acknowledged that T.R.'s comments were "terrible" and "very inappropriate." She did not believe that it was fair that T.R.'s actions have been categorized as bullying because "it gives the perception that he was intentionally cruel, intentionally tried to harm someone . . . or hurt their feelings or make them feel terrible about themselves or intimidate them." T.R. expressed to her that, using Snapchat, he never thought that his comments would ever get back to Susan. J.R. described that the incident impacted T.R. She testified that T.R. "was devasted"; he "cried a lot"; he "felt terrible that it got out and was shared, that [Susan] was aware of it"; and T.R. "thought he was a really terrible person." The six-day OSS "exacerbated the situation" because T.R. had never heard of anyone getting an OSS, and T.R. thought that he was "a really terrible person" and did "something that was so awful to . . . warrant such a punishment." J.R. described her disagreement with the

six-day OSS and expressed concern about future employers becoming aware of the HIB determination.

LEGAL DISCUSSION AND CONCLUSIONS

The Legislature enacted the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13, et seq., (the Act) to promote "a safe and civil environment in school" by preventing "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. The Act is designed "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises[.]" N.J.S.A. 18A:37-13.1(f).

The Act defines HIB to include:

> [A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in . . . [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.]

The Act requires school districts to adopt policies that prohibit HIB and include procedures for reporting and investigating complaints of HIB and "consequences and appropriate remedial action for a person who commits an act" of HIB. N.J.S.A.18A:37-15(b); see N.J.A.C. 6A:16-7.7. The district's policy "shall include provisions for appropriate responses to [HIB] . . . that occurs off school grounds, in cases in which a school employee is made aware of such actions." N.J.S.A.18A:37-15.3. "The responses to [HIB] . . . that occurs off school grounds shall be consistent with the board of education's code of student conduct and other provisions of the board's policy on . . . [HIB]." Ibid. See N.J.A.C. 6A:16-7.1(a) ("Each district board of education shall develop, adopt, disseminate, and implement a code of student conduct that establishes standards, policies, and procedures for positive student development and student behavioral expectations on school grounds and, as appropriate, for conduct away from school grounds"); N.J.A.C. 6A:16-7.5(a) ("School authorities have the right to impose a consequence on a student for conduct away from school grounds that is consistent with the district board of education's code of student conduct, pursuant to N.J.A.C. 6A:16-7.1"); N.J.A.C. 6A:16-7.5(b) ("School authorities shall respond to harassment, intimidation, or bullying that occurs off school grounds, pursuant to N.J.S.A. 18A:37-14 and 15.3 and N.J.A.C. 6A:16-1.3, 7.1, and 7.7"). The principal in each school must appoint a school anti-bullying specialist, who shall "lead the investigation" of HIB incidents in the school and "act as the primary school official responsible for preventing, identifying, and addressing" HIB incidents in the school. N.J.S.A. 18A:37-20(a).

Although a school district is given "local control over the content of [its] policy," N.J.S.A. 18A:37-15(b) dictates certain time limits and requirements regarding the reporting, the investigation and the determination of HIB complaints that must, at a minimum, be included in the district's policy. In this regard, all acts of HIB must 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 an

alleged HIB incident, and such acts of HIB must 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. N.J.S.A. 18A:37-15(b)(5). In turn, the principal must "inform the parents or guardians of all students involved in the alleged incident[.]" Ibid. The HIB "investigation shall be initiated by the principal or the principal's designee within one school day of the report of the incident and shall be conducted by a school anti-bullying specialist." N.J.S.A. 18A:37-15(b)(6)(a). The investigation must be completed "not later than 10 school days from the date of the written report" of the HIB incident. Ibid. The results of the investigation must be "reported to the superintendent of schools within two school days of the completion of the investigation[.]" N.J.S.A. 18A:37- 15(b)(6)(b). The results of the investigation must also be "reported to the board of education no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent." N.J.S.A. 18A:37-15(b)(6)(c). The board must issue a decision, in writing, to affirm, reject, or modify the superintendent's decision "at the next board of education meeting following its receipt of the report," which may be appealed to the Commissioner of Education. N.J.S.A. 18A:37-15(b)(6)(e).

"[P]arents or guardians of the students who are parties to the investigation shall be entitled to receive information about the investigation, in accordance with federal and State law and regulation, including the nature of the investigation, whether the district found evidence of . . . [HIB], or whether discipline was imposed or services provided to address the incident of . . . [HIB]." N.J.S.A.18A:37-15(b)(6)(d). That "information shall be provided in writing within 5 school days after the results of the investigation are reported to the board." Ibid. "A parent or guardian may request a hearing before the board after receiving the information[.]" Ibid. The board must convene a hearing within ten days of receiving such a request, and the board must "meet in executive session for the hearing to protect the confidentiality of the students." Ibid. During the hearing, "the board may hear from the school anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents[.]" Ibid.

It is well settled that actions within a school board's authority are entitled to a presumption of validity and will not be overturned in the absence of an affirmative showing that the decision was arbitrary, capricious, or unreasonable. Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581 (1966). Stated differently, the exercise of a school board's discretionary powers may not be disturbed unless shown to be "patently arbitrary, without rational basis or induced by improper motives." Kopera v. West Orange Bd. of Educ., 60 N.J. Super. 288, 294 (App. Div. 1960). The scope of the Commissioner's review is limited. The Commissioner's role is not to substitute his or her judgment for that of the Board, but to assess whether the Board had a reasonable basis for its conclusions. Id. at 295-96. And "[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 Envtl. Prot., 122 N.J. Super. 184, 199–200 (Ch. Div. 1973), aff'd, 131 N.J. Super. 37 (App Div. 1974).

Against this backdrop, petitioner does not allege any procedural violations regarding the Board's HIB determination and no such violations are apparent from the record. Petitioner contends that the Board's HIB determination is arbitrary, capricious and unreasonable because it was predicated on the Board's HIB Policy, which altered the language of N.J.S.A. 18A:37-14. Specifically, petitioner argues that the Board's Policy inserted the word "or" at the end of subsection (a) and, therefore, converted the "reasonable person" element of the statute from an essential element of HIB to only one of three possible elements. Petitioner avers that subsection (a), that a reasonable person should know the act will have a harmful effect, is a required finding to constitute an act of HIB, followed by a combination of subsection (b) or (c).

Our courts have articulated the principles governing statutory construction. The "overriding objective in determining the meaning of a statute is to 'effectuate the legislative intent in light of the language used and the objects sought to be achieved.'" McCann v. Clerk of Jersey City, 167 N.J. 311, 320 (2001) (citation omitted). The Supreme Court explained in Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012) (citations omitted):

> The objective of all statutory interpretation is to discern and effectuate the intent of the Legislature. To achieve that objective, we begin by looking at the statute's plain language, ascribing to the words used "their ordinary meaning and significance." We do not view the statutory words in isolation but "in context with related provisions so as to give sense to the legislation as a whole." If the Legislature's intent is clear on the face of the statute, then we must apply the law as written. It is not our function to rewrite a plainly written statute or to presume that the Legislature meant something other than what it conveyed in its clearly expressed language.

"If the plain language leads to a clear and unambiguous result, then [the] interpretive process is over." Richardson v. Bd. of Trs. Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007). It is not the function of this forum "to 'rewrite a plainly-written enactment,' or to presume that the drafter intended a meaning other than the one 'expressed by way of the plain language.'" U.S. Bank, N.A. v Hough, 210 N.J. 187, 199 (2012) (citation omitted).

Succinctly stated, the plain and unambiguous language of N.J.S.A. 18A:37-14 does not support petitioner's position. Rather, as the Commissioner explained in Wehbeh v. Verona Bd. of Educ., EDU 10981-18, Comm'r, (February 4, 2020) https://www.nj.gov/education/legal:

> [A] finding of HIB requires three elements. First, the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic and, second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. The third condition is that one of the three criteria enumerated in the Act regarding the effect of the conduct must also be satisfied. (Emphasis added.)

See also N.U. v. Mansfield Bd. of Educ., EDU 09701-20, Comm'r, (August 10, 2022) https://www.nj.gov/education/legal; R.H. and M.H. o/b/o A.H. v. Sayreville Bd. of Educ., EDU 09435-17 and EDU 14833-17 (consolidated), Comm'r, (September 23, 2021) https://www.nj.gov/education/legal; Klapach v. Fort Lee Bd. of Educ., EDU 5069-20, Comm'r, (April 6, 2021) https://www.nj.gov/education/legal. The conduct must also take

place on school property, at a school-sponsored function, on a school bus or off school grounds as provided by N.J.S.A. 18A:37-15.3.

Indeed, the Commissioner in Wehbeh specifically rejected petitioner's asserted construction of the statute:

> The Initial Decision incorrectly views subsection (a), that a reasonable person should know the act will have a harmful effect, as the third requirement, with an additional fourth requirement being a choice between subsections (b) and (c). As a matter of standard statutory construction, the term "or" between subsections (b) and (c) also applies to subsection (a), such that a demonstration of any of these three criteria can support a finding of HIB.
>
> [Id. at footnote 2.]

Turning to the evidence, I **CONCLUDE** that petitioner failed to sustain her burden of establishing that the Board acted in an arbitrary, capricious, or unreasonable manner in finding that T.R. committed an act of HIB.

Regarding the first element, in defining HIB as an action "that is reasonably perceived as being motivated either by any actual or perceived characteristic," N.J.S.A. 18A:37-14, "the statute requires an analysis of how the actor's motivation is perceived and whether that perception is reasonable[;] [i]t does not require an analysis of the actual motivation of the actor." R.H. and M.H.; Wehbeh. Here, it was not arbitrary, capricious, or unreasonable for the Board to conclude that a reasonable person would consider T.R.'s Snapchat posts to be motivated by the target student's distinguishing or perceived characteristics regarding her appearance, including her weight and sexuality.[3]

Regarding the second element, there is ample evidence in the record that T.R.'s Snapchat posts caused a substantial disruption to or interference with "the orderly operation of the school or the rights of other students[.]" Viturello testified that the victim,

[3] T.R.'s comments include, among others, that the target student "looks like medusa with her new hair"; "her and [another student] probably weigh as much as our whole friend group combined"; "nobody can ever say she wakes up on the wrong side of the bed because she wakes up on both"; "she takes up more storage than my PC has"; and "why would she even take mirror pics like you can't even see part of her cause it goes past the mirror." (See J-1 at R006; J-7; J-13.)

Susan, "was very anxious about the situation, was very impacted, [and] needed multiple counseling sessions[.]" She also expressed fear of going to the high school because the incident involved not only Long Hill students but students in surrounding towns. Similarly, Backer testified that Susan "was visually very upset" about the comments said about her, she was crying and embarrassed, and she expressed concern about going to the high school. In addition, Viturello testified that the student who reported the information, Jane, was "very concerned about retribution" from the students involved in the conduct. Indeed, Jane's parents signed her out of the school after she reported the incident and Jane remand homeschooled for the remainder of the 2021–2022 school year. Viturello testified that he spoke with T.R.'s mother, who was concerned about T.R.'s mental health based on his involvement in the incident. This resulted in school staff conducting a risk assessment at T.R.'s home. Backer further testified that there was an interference with operation of the school as a whole and the incident "had a substantial interference with the school day." She described that "there were about 25 students that were involved on the Snapchat, so clearly it was spoken about within the middle school halls"; "[t]here were a lot of students that were interviewed"; and "there were a lot of staff members that were involved in the interview process and the HIB investigation[.]" Accordingly, given this evidence, the Board was not arbitrary, capricious, or unreasonable in finding a substantial disruption to the school environment and the rights of multiple students.

Regarding the third element, an act of HIB is one that "a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student," "has the effect of insulting or demeaning any student," or "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. Plainly, T.R.'s comments had the "effect of insulting or demeaning" Susan. Backer further explained that the conduct created a hostile education environment as Susan relayed that she did not want to go to the high school where the involved students would be attending, and Viturello noted that Susan needed counseling and Jane left the school. In short, given this evidence, the Board was not arbitrary, capricious, or unreasonable in finding that T.R.'s conduct satisfied N.J.S.A. 18A:37-14(b) and (c).

The crux of petitioner's argument focuses on whether "a reasonable person should know, under the circumstances, [that T.R.'s comments] will have the effect of physically or emotionally harming a student[.]" N.J.S.A. 18A:37-14(a). Apart from the fact that, even if this issue is resolved in petitioner's favor, the HIB finding is supported by the other two alternative criteria, I am unpersuaded by petitioner's argument. Although T.R. testified regarding his belief that his comments would never get back to Susan based on his understanding that he was talking in a private group on Snapchat, and the chats are automatically deleted after twenty-four hours, the governing standard is objective, not subjective. The pertinent inquiry is what a reasonable person should know under the circumstances, not what T.R. knew. In other words, the statute does not "require the actor to have actual knowledge of the effect that [his/her] actions will have, or to specifically intend to bring about that effect." Wehbeh. Rather, it requires "only that a reasonable person should know there would be a harmful effect, not that the actor knows there would be such an effect." Ibid.

There is no doubt that a reasonable person should and would know that T.R.'s social media posts would have the effect of emotionally harming Susan based on the insulting and demeaning content of the comments. T.R.'s subjective intention to keep his comments private is not controlling. Further, a reasonable 8th grade student would be aware of the ability to screenshot texts or pictures and, thus, should know, under the circumstances, that the posted insults may not remain confined to the Snapchat participants and might be revealed to Susan even if the Snapchat posts later disappeared. Given the ease under which electronic communications may be copied or shown to other persons, it is certainly reasonable to expect a thirteen-year-old student to understand that someone could disseminate his comments regardless of the forum in which they were posted. In this regard, Viturello testified that although it was Snapchat, there were over two dozen students on it, and "knowing middle school students, it's very reasonable to understand that someone's going to share a conversation that was more than one comment." He further noted that participants can screenshot or camera-shot the information posted on Snapchat "so the information travels." Backer explained, "[m]aking fun of someone's appearance, [and] their sexuality, . . . a normal person would understand that . . . would be hurtful to that person and could cause emotional harm." Backer believed that a reasonable 8th grader would know under the circumstances that the conduct that

T.R. admitted to would have the effect of physically or emotionally harming a student. She testified that "a reasonable 8th grade student would be aware that there are negative implications associated with that kind of language," and a "reasonable person would think that using that language with a group of 25 plus students would get back to that student." Simply put, the evidence fails to establish that the Board's conclusion that "a reasonable person should know, under the circumstances, [that T.R.'s comments] will have the effect of physically or emotionally harming" Susan was arbitrary, capricious, or unreasonable.

N.J.S.A. 18A:37-15.3 provides that conduct may be considered HIB when it takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in N.J.S.A. 18A:37-15.3. In turn, N.J.S.A. 18A:37-15.3 instructs that HIB policies adopted by a school district board of education "shall include provisions for appropriate responses to [HIB] . . . that occurs off school grounds, in cases in which a school employee is made aware of such actions." Additionally, N.J.A.C. 6A:16-7.5 directs:

> (a) School authorities have the right to impose a consequence on a student for conduct away from school grounds that is consistent with the district board of education's code of student conduct, pursuant to N.J.A.C. 6A:16-7.1.
>
> 1. This authority shall be exercised only when it is reasonably necessary for the student's physical or emotional safety, security and well-being or for reasons relating to the safety, security and well-being of other students, staff or school grounds, pursuant to N.J.S.A. 18A:25-2 and 18A:37-2.
>
> 2. This authority shall be exercised only when the conduct that is the subject of the proposed consequence materially and substantially interferes with the requirements of appropriate discipline in the operation of the school.
>
> 3. The consequence pursuant to (a) above shall be handled in accordance with the district board of education's approved code of student conduct, pursuant to N.J.A.C. 6A:16-7.1, and as appropriate, in accordance with N.J.A.C. 6A:16-7.2, 7.3, or 7.4.

> (b) School authorities shall respond to harassment, intimidation, or bullying that occurs off school grounds, pursuant to N.J.S.A. 18A:37-14 and 15.3 and N.J.A.C. 6A:16-1.3, 7.1, and 7.7.

Accordingly, a board of education is required to investigate HIB complaints even if they occur outside of school. Here, the Board received an HIB complaint involving Snapchat posts that occurred outside of school hours, so it was required to investigate the allegations. As the Snapchat posts involved students who attended CMS and substantially disrupted and interfered with the orderly operations of the school and the rights and wellbeing of the victim and other students, the Board was not arbitrary, capricious, or unreasonable in investigating the conduct that occurred off school grounds, finding that it met the definition of HIB, and imposing consequences for the unwarranted conduct.

In sum, the elements of the legal definition of an act of HIB have been satisfied in this case, and the Board's decision to uphold the HIB determination is not arbitrary, capricious or unreasonable.

Finally, I **CONCLUDE** that the imposed six-day OSS did not violate T.R.'s First Amendment rights, and the OSS cannot be said to be arbitrary, capricious, or unreasonable.

Initially, it is observed that the six-day OSS was imposed on or about November 21, 2021, based on Viturello's determination that T.R. had violated various requirements of the CMS Code of Conduct. Since the imposed consequence consisted of a short-term suspension, no formal appeal hearing before the Board was required, and petitioner's remedy consisted of an appeal to the Commissioner. See N.J.A.C. 6A:16-7.2. Here, petitioner filed her Petition of Appeal on or about April 12, 2022, which is beyond the required 90-day appeal period. See N.J.A.C. 6A: 3-1.3(i). However, given that HIB Investigation Report also lists the six-day OSS as a consequence for the HIB violation (J-1 at R014), I will consider petitioner's argument in the context of the Board's HIB determination.

In Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969), the United States Supreme Court recognized that "conduct by the student, in class or out of it, which for any reason -- whether it stems from time, place, or type of behavior -- materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech." Id. at 513. More recently, the Supreme Court addressed a student's First Amendment rights in the context of off-campus speech in Mahanoy Area Sch. Dist. v. B.L., 594 U.S. 180 (2021).

In Mahanoy, a public high school student used, and transmitted to her Snapchat friends, outside of school hours and away from the school, vulgar language and gestures criticizing the school's cheerleading team after she did not make the varsity cheerleading team. Id. at 183-184. In response, the school suspended the student from the junior varsity cheerleading squad for the upcoming year. Id. at 185.

The Court in Mahanoy made clear that "schools have a special interest in regulating speech that 'materially disrupts classwork or involves substantial disorder or invasion of the rights of others.'" 594 U.S. at 188 (quoting Tinker, 594 U.S. at 513). The Court held that "[t]hese special characteristics call for special leeway when schools regulate speech that occurs under its supervision." Id. at 188. The Court rejected the notion that "the special characteristics that give schools additional license to regulate student speech always disappear when a school regulates speech that takes place off campus," and recognized that "[t]he school's regulatory interests remain significant in some off-campus circumstances." Ibid. The Court declined to adopt a specific list of off-campus behavior that may call for school regulation, believing that it "would deny the off-campus applicability of Tinker's highly general statement about the nature of a school's special interests." Id. at 189. The Court explained:

> Particularly given the advent of computer-based learning, we hesitate to determine precisely which of many school-related off-campus activities belong on such a list. Neither do we now know how such a list might vary, depending upon a student's age, the nature of the school's off-campus activity, or the impact upon the school itself. Thus, we do not now set forth a broad, highly general First Amendment rule stating just what counts as "off campus" speech and whether or how ordinary

> First Amendment standards must give way off campus to a school's special need to prevent, e.g., substantial disruption of learning-related activities or the protection of those who make up a school community.
>
> [Id. at 189.]

The Court identified "three features of off-campus speech that often, even if not always, distinguish schools' efforts to regulate that speech from their efforts to regulate on-campus speech," and that "[t]hose features diminish the strength of the unique educational characteristics that might call for special First Amendment leeway." Id. at 189. "First, a school, in relation to off-campus speech, will rarely stand in loco parentis," and thus, "off-campus speech will normally fall within the zone of parental, rather than school-related, responsibility." Ibid. "Second, from the student speaker's perspective, regulations of off-campus speech, when coupled with regulations of on-campus speech, include all the speech a student utters during the full 24-hour day," meaning that "courts must be more skeptical of a school's efforts to regulate off-campus speech, for doing so may mean the student cannot engage in that kind of speech at all." Id. at 189-190. "Third, the school itself has an interest in protecting a student's unpopular expression, especially when the expression takes place off campus" in that "America's public schools are the nurseries of democracy [and] [o]ur representative democracy only works if we protect the 'marketplace of ideas.'" Id. at 190. In this regard, the Court held:

> Given the many different kinds of off-campus speech, the different potential school-related and circumstance-specific justifications, and the differing extent to which those justifications may call for First Amendment leeway, we can, as a general matter, say little more than this: Taken together, these three features of much off-campus speech mean that the leeway the First Amendment grants to schools in light of their special characteristics is diminished. We leave for future cases to decide where, when, and how these features mean the speaker's off-campus location will make the critical difference.
>
> [Ibid.]

Regarding the student's Snapchat posts, the Court stated:

> Putting aside the vulgar language, the listener would hear criticism, of the team, the team's coaches, and the school—in a word or two, criticism of the rules of a community of which B.L. forms a part. This criticism did not involve features that would place it outside the First Amendment's ordinary protection. B.L.'s posts, while crude, did not amount to fighting words. And while B.L. used vulgarity, her speech was not obscene as this Court has understood that term. To the contrary, B.L. uttered the kind of pure speech to which, were she an adult, the First Amendment would provide strong protection . . . . ("The inappropriate . . . character of a statement is irrelevant to the question whether it deals with a matter of public concern").
>
> Consider too when, where, and how B.L. spoke. Her posts appeared outside of school hours from a location outside the school. She did not identify the school in her posts or target any member of the school community with vulgar or abusive language. B.L. also transmitted her speech through a personal cellphone, to an audience consisting of her private circle of Snapchat friends. These features of her speech, while risking transmission to the school itself, nonetheless . . . diminish the school's interest in punishing B.L.'s utterance.
>
> [Id. at 190-191; Citations omitted and Emphasis added.]

In concluding that the student's First Amendment rights had been violated because the school's special interest in regulating some off-campus student speech was not sufficient to overcome the student's First Amendment interests, the Court, among other things, found "no evidence in the record of the sort of 'substantial disruption' of a school activity or a threatened harm to the rights of others that might justify the school's action." Id. at 192. Rather, the record revealed "that discussion of the matter took, at most, 5 to 10 minutes of an Algebra class 'for just a couple of days' and that some members of the cheerleading team were 'upset' about the content of B.L.'s Snapchats." Ibid.

The facts of this case are markedly distinguishable from those existing in Mahanoy. T.R.'s comments were unrelated to any public concern or community interest and contributed nothing to the "marketplace of ideas." Further, in contrast to the social media posts in Mahanoy, T.R.'s posts targeted another student, Susan, with offensive and

insulting comments about her physical appearance. See Doe v. Hopkinton Public Schools, 19 F. 4th 493, 506 (1st Cir. 2021) ("'bullying is the type of conduct that implicates the governmental interest in protecting against the invasion of the rights of others, as described in Tinker.'") (Citations omitted.) And T.R.'s comments "materially disrupt[ed] classwork or involve[d] substantial disorder or invasion of the rights of others." Tinker, 594 U.S. at 513; Mahanoy 594 U.S. at 188. As noted, multiple students were affected by the Snapchat posts. Susan was very upset about the comments and expressed concern about going to the high school, necessitating the provision of counselling; Jane left the school; and T.R. himself required a mental health risk assessment. Additionally, the Snapchat posts were talked about in the middle school halls and caused a substantial disruption to the school. See R.H. and M.H. (wherein the Commissioner rejected the petitioner's argument that Mahanoy prevented the Board from regulating her speech and held that "the impact of the social media post on the school violated the HIB statute and is within the school's authority to regulate.").

The Board's HIB Policy (J-23), along with its separate Conduct/Discipline Policy (J-8), address the right and authority of the chief school administrator to impose a consequence on a student for conduct away from school grounds, which essentially reiterates the provisions of N.J.A.C. 6A:16-7.5. As previously addressed, the Snapchat posts involved students who attended CMS and substantially disrupted and interfered with the orderly operations of the school, coupled with the rights and wellbeing of the victim and other students. Accordingly, I **CONCLUDE** that the school had the authority to impose a consequence for T.R.'s conduct, and the imposition of the six-day OSS was consistent with the governing law and not arbitrary, capricious, or unreasonable.

ORDER

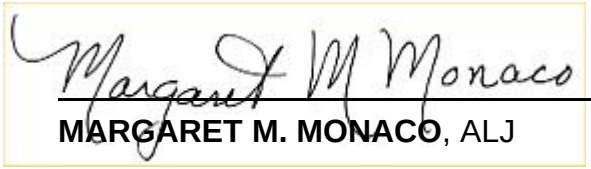
Based upon the foregoing, I **ORDER** that the Petition of Appeal be and hereby is **DISMISSED**.

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

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

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

October 28, 2024
DATE



MARGARET M. MONACO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

jb

APPENDIX

List of Witnesses

For Petitioner:

T.R.

J.R

For Respondents:

Michael Viturello

Melissa Backer

List of Exhibits in Evidence

Joint:

J-1 HIB Investigation Report

J-2 E-mails dated November 11 and 12, 2021

J-3 Letter from Principal Viturello to T.R.'s parents dated November 12, 2021

J-4 Letter from Principal Viturello to T.R.'s parents dated November 12, 2021

J-5 Letter from Superintendent Mucci to T.R.'s parents dated November 22, 2021

J-6 Letter from Douglas M. Silvestro, Esq., to Jerald F. Oleske, Esq., dated November 23, 2021

J-7 Screenshots of Snapchat messages

J-8 Board Policy 5131 - Conduct/Discipline

J-9 Central Middle School 2021–2022 Student Manual and Code of Conduct

J-10 E-mail dated September 10, 2021

J-11 Petition of Appeal

J-12 Answer to Petition of Appeal

J-13 T.R.'s Statements in Snapchat

J-14 E-mail dated December 6, 2021 and Incident Notes Log

J-15 No exhibit admitted

J-16 No exhibit admitted

J-17 Letter from Douglas M. Silvestro, Esq., to Jerald F. Oleske, Esq., dated January 19, 2022

J-18 E-mails dated November 29, 2021

J-19 E-mail dated November 28, 2021

J-20 Letter from Kristen Duesel Oleske, Esq., and Jerald F. Oleske, Esq., to Principal Viturello dated November 18, 2021

J-21 Joint Statement of Undisputed Facts

J-22 Text messages

J-23 Board Policy 5131.1- Harassment, Intimidation and Bullying