

# Harassment, Intimidation, or Bullying Prevention Training Program

November 14, 2024

Presented by:

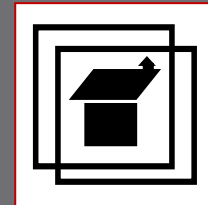
**Strauss Esmay Associates, LLP**

*School Policy & Regulation Consultants*

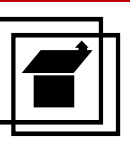
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# HIB Definition



# HIB Definition in the Rest of the World

- Imbalance of Power
- Pervasive
- Intent to Cause Harm



# HIB Definition in New Jersey

Harassment, intimidation, or bullying means any gesture, any written, verbal or physical act, or any electronic communication, whether it is a single incident or a series of incidents, that is:

- reasonably perceived as being motivated by either any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability; or by any other distinguishing characteristic; and 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



# HIB Definition in New Jersey

- a reasonable person should know under the circumstances, that the act(s) will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his/her person or damage to his/her property, or
- has the effect of insulting or demeaning any student or group of students, 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.



# Why is it important school staff members, students, and parents know and understand the NJABR definition of HIB?

- School staff members have a legal obligation to report alleged HIB conduct.
- School members need to know how to identify HIB conduct and distinguish it from normal peer conduct.
- School district has the obligation to investigate alleged reports of HIB in accordance with the timelines and requirements of the ABR.
- School district has the responsibility to provide consequences to the aggressor and remedial measures and supports to the target.



# Why is it important for a school district to follow the timelines and procedures in the ABR?

- The spirit of the law is to eliminate HIB conduct within our schools and among the students in the district.
- A school district that does not follow the timelines and required procedures outlined in the ABR expose the school to legal and financial liability.
- The district reduces the exposure when staff is provided training on identifying HIB under the ABR definition, completing a thorough investigation, and following the timelines and procedures in the ABR.



# Reducing the Liability and Exposure of the Board of Education

- The ABS, ABC, Principal, Superintendent, and the Board significantly reduce the district's liability and exposure when it follows the law, regardless of the outcome of an appeal to the Commissioner of Education and any Court.
- The worst thing to do is...

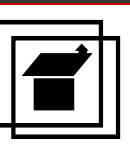
*NOTHING!*



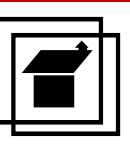


# Posting of HIB Information on District Website

- In accordance with the recent revisions to the statute, N.J.S.A. 18A:37-15.b.(13), the school district and each school in the district with a website must post, on its homepage, the current version of the document titled “Guidance for parents on the Anti-Bullying Bill of Rights Act”, developed by the Department of Education.
- In accordance with the recent revisions to the statute, N.J.S.A. 18A:37-37.3, the school district must post at the same location where the HIB Policy is available on their website, the contact information for the School Climate State Coordinator.

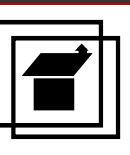


# Principal's Preliminary Determination



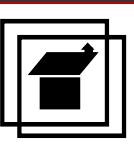
# Policy Option – Principal’s Preliminary Determination

- The Principal or designee, in consultation with the ABS, prior to initiating an investigation, must make a preliminary determination as to whether a reported incident or complaint, assuming all facts presented are true, is a report within the scope of N.J.S.A. 18A:37-14.
  - If the district has selected this option, the preliminary determination must be made prior to the investigation commencing.
- The Principal shall examine the submitted “HIB 338 Form” before making a decision as to whether or not to initiate an investigation of HIB.
- Should the Principal or designee, in consultation with the ABS, determine whether a reported incident or complaint, assuming all facts presented on the “HIB 338 Form” are true, is not a report within the scope of N.J.S.A. 18:37-14, the incident will be addressed through the Code of Student Conduct.



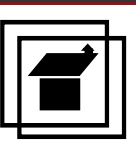
# Policy Option – Principal’s Preliminary Determination

- In accordance with the recent revisions to the statute, N.J.S.A. 18A:37-15.b.(5), the Principal must report any preliminary determination to the Superintendent so the Superintendent can either reject or accept the Principal’s determination.
  - The Superintendent shall notify the Principal in writing when the Superintendent rejects or accepts the Principal’s preliminary determination by returning the completed “HIB 338 Form” to the Principal.
  - If the Superintendent concurs with the Principal’s preliminary determination the Principal shall notify the parents in writing of the determination within \_\_\_\_\_ (two) school days.
- The district shall provide the parents with a reasonable time period in which to appeal the preliminary determination to the Board. In accordance with N.J.A.C. 6A:16-7.7 the determination may be appealed to the Board, pursuant to Board policies and procedures governing pupil grievances.
  - Board Hearing shall be held within \_\_\_\_\_ (ten) business days of receipt of the request for a Board Hearing.



# HIB Complaint and Investigation Process

- Step 1: The Verbal Report
  - Optional Principal's Preliminary Determination
- Step 2: Parent Notification
- Step 3: The Investigation Commences within 1 school day of Verbal
- Step 4: The Written Report Submitted within 2 days of Verbal Report
- Step 5: The Investigation Report Completed Within 10 School Days of Written Report – Submitted to Supt. within 2 School Days
- Step 6: Superintendent's Actions
- Step 7: Superintendent's Report to the Board of Education – First Board Meeting after Report Completed
- Step 8: Information to Parents – 5 Day Letter
- Step 9: Board Hearing – If Appealed – Held within 10 Business Days
- Step 10: Board of Education Vote to Accept, Reject, or Modify



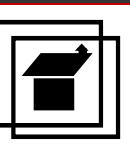
# Why are timelines and process important?

- Over the course of the last fourteen years since the passage of the “Anti-Bullying Bill of Rights Act” there have been over two-hundred Commissioner of Education decisions addressing parent appeals of HIB determinations.
- We have seen less than a handful be overturned based upon an improper determination made, i.e. whether the conduct investigated was or was not HIB.
- However, we have seen more Commissioner of Education cases overturned based upon a school district’s failure to adhere to the due process rules outlined in the statute and administrative code.
- If a district adheres to the due process rules outlined in the statute and administrative code their determination of HIB or not HIB is much more likely to be upheld by the Commissioner of Education.



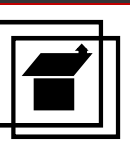
# Timelines in the HIB Process

1. Acts shall be reported verbally to the Principal on the same day witnessed or reliable information received. (See N.J.S.A. 18A:37-15.b.(5))
2. Principal shall inform parents of all students involved.  
(See N.J.S.A. 18A:37-15.b.(5))
3. All acts must be reported in writing to the Principal within two school days of witnessing or reliable information received. (See N.J.S.A. 18A:37-15.b.(5))



# Timelines in the HIB Process

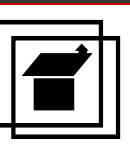
4. The investigation shall be initiated by the Principal within one school day of receiving the verbal report and investigation to be conducted by the school Anti-Bullying Specialist. (See N.J.S.A. 18A:37-15.b.(6)(a))
5. The investigation must be completed as soon as possible, but not later than ten school days from the receipt of the written report. (See N.J.S.A. 18A:37-15.b.(6)(a))





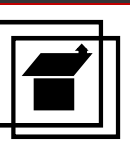
# Timelines in the HIB Process

6. The results of the investigation shall be reported to the Superintendent within two school days of the completion of the investigation. (See N.J.S.A. 18A:37-15.b.(6)(b))
  
7. The results of the investigation shall be reported to the Board of Education no later than the date of the Board meeting next following the completion of the investigation along with the information on any services provided, training established, along with the information on services provided, discipline imposed, or other action taken or recommended by the Superintendent. (See N.J.S.A. 18A:37-15.b.(6)(c). Also see cases – J.L. v. Bridgewater-Raritan Board of Education and J.B. v. Haddonfield Board of Education)



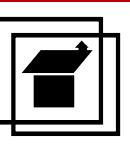
# Timelines in the HIB Process

8. Parents of students who are parties to the investigation shall receive information about the investigation to include the nature of the investigation, whether the district found HIB or whether discipline was imposed or services provided to address the incident. This information shall be provided in writing to the parents within five school days after the results of the investigation are reported to the Board. (See N.J.S.A. 18A:37-15.b.(6)(c). Also see cases – J.L. v. Bridgewater-Raritan Board of Education and J.B. v. Haddonfield Board of Education)
  
9. The parent may request a hearing before the Board after receiving the information above and the hearing must be conducted within ten business days of the request. (See N.J.S.A. 18A:37-15.b.(6)(d) and N.J.A.C. 6A:16-7.7a.2.xi.(2))

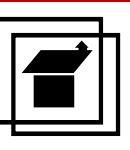


# Timelines in the HIB Process

10. At the next Board meeting following receipt of the report required by 7. above, the Board shall issue a decision, in writing, to affirm, reject, or modify the Superintendent's decision. The Board decision may be appealed to the Commissioner of Education no later than ninety days of the Board's decision. (See N.J.S.A. 18A:37-15.b.(6)(e). Also see cases – J.L. v. Bridgewater-Raritan Board of Education and J.B. v. Haddonfield Board of Education)

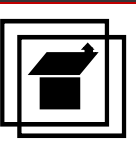


# Reporting an Act of HIB



# Reporting Alleged HIB Acts

- All Board members, school employees, volunteers, and contracted service providers who have contact with students who witness or receive reliable information regarding an alleged act of HIB committed by an adult or youth against a student, must report it verbally on the same day to the Principal or designee and shall submit a report in writing to the Principal within two school days of the verbal report.
- In accordance with the recently revised statute, N.J.S.A. 18A:37-15.b.(5) the written report must be on “HIB Form 338” developed by the NJDOE and available on their website.
  - Every time the Principal fills out this form, a copy must also be submitted to the Superintendent.
- Students, parents, and visitors are encouraged to report alleged HIB if they witness or receive reliable information regarding an alleged act of HIB.
- The recently revised statute, N.J.S.A. 18A:37-15.b.(5), now requires the district to provide a means for a parent to complete an online numbered form developed by the Department of Education to confidentially report an incident of HIB.

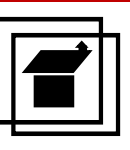


# Overlapping Role of the ABS & the AAO

- There may be some confusion between the role of the AAO and the role of the ABS when HIB incidents occur as certain incidents of HIB intersect with discrimination laws.
- The role of the AAO and ABS are similar in nature, with the following exceptions:
  - The AAO is concerned with discrimination based on protected class status (e.g., race, sex, religion, etc.)
  - The AAO must handle discrimination claims made against staff, in addition to those made against students.
  - The ABS is to address conduct against students only motivated by a distinguishing characteristic of a protected class.
- When a report of HIB is made that involves an allegation of conduct based on a protected class, the AAO and the ABS should be notified and they may collaborate to conduct a single investigation.

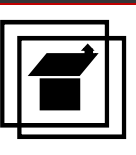


# Written Notification and Appeals Process



# Written Notification and Appeal Process

- In accordance with the recent revisions to the statute, N.J.S.A. 18A:37-15.b.(6)(b), which added the following bolded language to the statute section:
  - “The results of the investigation shall be reported to the Superintendent of Schools within two school days of the completion of the investigation, and in accordance with regulations promulgated by the State Board of Education pursuant to the ‘Administrative Procedure Act’, P.L.1968, c.410 (C.52:14B-1 et seq.), the Superintendent may decide to provide intervention services, establish training programs to reduce harassment, intimidation, or bullying and enhance school climate, impose discipline, order counseling as a result of the findings of the investigation, or take or recommendations other appropriate action **including seeking further information.**”
  - Strauss Esmay interprets this new language as providing the Superintendent the ability to reopen the investigation or start a new one after the original investigation results were reported to the Superintendent.
- The parent of the parties involved shall be provided with the following written information within five school days (5 Day Letter) of the Superintendent’s initial report to Board at the first Board meeting:
  - the nature of the investigation;
  - whether the district found evidence of HIB; and
  - whether discipline was imposed or services provided.



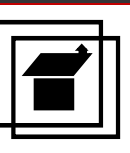


# Written Notification and Appeal Process

- A parent may request a hearing before the Board within 60 calendar days of receiving the written information (5 day letter). If requested, the hearing must be held:
  - within 10 business days of the request and in executive session.
- In every case, the Board must vote to affirm, reject, or modify the Superintendent's decision at the **next** scheduled Board meeting after receiving the initial report or following a hearing in executive session.
  - Board vote must occur whether or not there was a parent appeal Board hearing.
  - Board may establish a Committee to review the appeal, but any Committee recommendation must be approved by the full Board and a written determination shall be provided to the parents from the Board Secretary or designee.
- In accordance with the recent revisions to the statute, N.J.S.A. 18A:37-15.b.(5), a redacted copy of the "HIB 338 Form" must be shared with the Board of Education after the conclusion of the investigation, if a hearing is requested by a parent.
  - All student identification information must be redacted before the "HIB 338 Form" is provided to the Board.
- A Board cannot receive an initial report and vote at the same Board meeting.
- The Superintendent and Board Attorney should consult on what information to provide a parent with for the Board hearing.



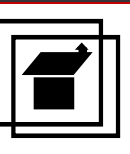
# Post Investigation Monitoring



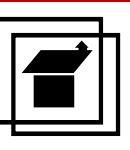
# Post-Investigation Monitoring

While the matter is pending review by the Superintendent, the Principal shall monitor the situation to ensure:

- The safety of student victim(s);
- The remediation of the HIB behavior by the offender; and
- The appropriate support for school staff and parents, if applicable.

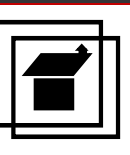


# Policy 5541 – Anti-Hazing



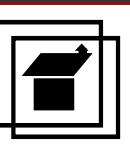
# Policy 5541 - Anti-Hazing

- P.L. 2021, c.208 designated as the “Timothy J. Piazza’s Law” was passed and approved on August 24, 2021 and went into effect on March 1, 2022.
- This new law requires public and nonpublic high schools and middle schools to adopt an anti-hazing policy
- The new statutes N.J.S.A. 18A:37-32.2 and 18A:37-32.3:
  - Outline the appropriate penalties for a violation of the district’s anti-hazing policy;
  - Requires the district’s anti-hazing policy be applied to conduct on or off school grounds; and
  - Requires notification of the district’s anti-hazing policy to the school community.



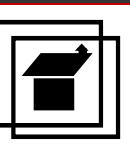
# Policy 5541 - Anti-Hazing

- Board of Education members, school employees, and contracted service providers are required to report an alleged incident of hazing that may take place or has taken place on or off school grounds to the Principal or designee on the same day when the individual witnessed or received reliable information regarding such an incident.
  - Students, parents, volunteers, or visitors are encouraged to report an incident of hazing.
- Any report of an alleged incident of hazing shall be immediately investigated by the Principal or designee.



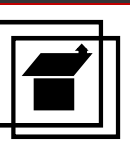
# Policy 5541 - Anti-Hazing

- A Principal or designee who receives a report of an alleged incident of hazing and fails to initiate or conduct an investigation and fails to minimize or eliminate the hazing may be subject to disciplinary action.
- The Superintendent or designee shall report to local law enforcement any hazing incident that rises to the level of mandatory reporting under the “Uniform Memorandum of Agreement Between Education Officials and Law Enforcement Officials” or any other agreement between local law enforcement and the school district pursuant to N.J.A.C. 6A:16-5.1(b).



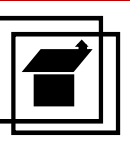
# Policy 5541 - Anti-Hazing

- Hazing allegations may very often implicate Policy Guide 5512 – Harassment, Intimidation, and Bullying.
- Therefore, there may be a need for a separate investigation to address the requirements outlined in Policy Guide 5512 and the Anti-Bullying Bill of Rights Act.
- Without the New Jersey Department of Education (NJDOE) providing more detail regarding a procedure to investigate claims of hazing, Strauss Esmay recommends hazing claims be investigated using the same procedures used for student code of conduct violations and Policy Guide 5600 – Student Code of Conduct.
- If the NJDOE releases additional guidance regarding this new law, Strauss Esmay will update Policy Guide 5541 accordingly.



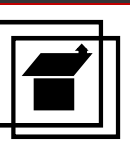


# Training

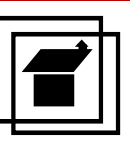


# Training Requirement

- The ABR is a very difficult statute, complicated by a very ambiguous definition of HIB.
- Districts should be sure all staff is provided professional development on the ABR.
- ABSs, ABCs, and building level administrators should be training so everyone is on the same page.



# HIB Case Law



# Staff Member Not Entitled to Cross Examine Witnesses at a Board Meeting (1 of 2)

*Tamaika DeFalco v. Board of Education of the Township of Hamilton, Mercer County, DKT. NO. 9-1/18, Commissioner of Education, 26 July 2019.*

- In the presence of several students and an aid, the tenured Teacher directed her student, B.L., to visit the Child Study Team or guidance office if he was unable or unwilling to perform classwork. B.L. was a classified student receiving special education services in the district.
- One week later, B.L. approached the district's HIB Coordinator and reported the Teacher's comments made him feel "uncomfortable and embarrassed".
- The district sent the Teacher a letter notifying her that a HIB investigation would be conducted.
- The investigation concluded the Teacher violated the HIB statute because:
  - The Teacher's conduct caused "substantial disruption or interference with orderly operation of school or the rights of other students";
  - Was "reasonably perceived as motivated by actual or perceived characteristic" because the Teacher was aware of B.L.'s IEP; and
  - Caused B.L. to suffer emotional harm given that the other students in the class were made aware of B.L.'s disability, laughed at B.L., and B.L. refused to return to class.
- The Teacher appealed the Superintendent's recommendation to the Board; the Board accepted the Superintendent's recommendation; and the Teacher appealed that decision to the Commissioner.
- The Teacher argued the district violated her due process rights because they did not provide her the opportunity to confront the district's witnesses and cross-examine them.



# Staff Member Not Entitled to Cross Examine Witnesses at a Board Meeting (2 of 2)

*Tamaika DeFalco v. Board of Education of the Township of Hamilton, Mercer County, DKT. NO. 9-1/18, Commissioner of Education, 26 July 2019.*

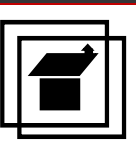
- The ALJ rejected this argument stating the due process/fundamental fairness requirement in a HIB inquiry is met by a process in which the staff member is made aware of the charges and evidence before the Board hearing and is then able to present to the Board their own documents, witness, and testimony.
- The ALJ explained given the nature of the law and the limited sanctions, which do not involve the loss of tenure, employment or future employment, a more “judicial” process is not mandated.
- The ALJ also explained there is no constitutional, statutory, or case law support for the proposition that in a proceeding such as a Board HIB determination, a right to cross-examine exists.
- The ALJ concluded the Board’s decision was not arbitrary, capricious, or unreasonable and must be upheld.
- The ALJ dismissed the Teacher’s appeal and the Commissioner concurred.



# Accused Only Entitled to Nature of HIB Investigation, HIB Determination, and Discipline Imposed for Board Hearing (1 of 2)

*Melanie Sohl v. Board of Education of the Town of Boonton, Morris County, DKT. NO. 102-5/20, Commissioner of Education, 18 May 2021.*

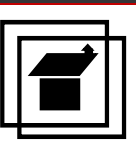
- G.T. alleged a Teacher references a “cupcake” and made other food-related comments to him in class.
- A HIB investigation was conducted and during the interviews, the Teacher did not recall making such comments.
- The Superintendent advised the Teacher an act of HIB had been confirmed and the Board would vote on the results at the February 10, 2020 meeting.
- The Teacher was given a letter of reprimand and an improvement plan.
- The Teacher requested a Board appeal be scheduled.
- The Teacher alleged she was never provided evidentiary materials or discover, witness statements, and a HIB finding report from the ABC prior to the appeal hearing.
- However, the Teacher was provided with information regarding the nature of the investigation, the district’s HIB determination, and the discipline that was imposed.



# Accused Only Entitled to Nature of HIB Investigation, HIB Determination, and Discipline Imposed for Board Hearing (2 of 2)

*Melanie Sohl v. Board of Education of the Town of Boonton, Morris County, DKT. NO. 102-5/20, Commissioner of Education, 18 May 2021.*

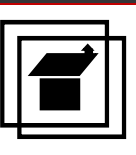
- The Board upheld the HIB determination after the appeal meeting.
- The Teacher argued her due process rights were violated because she never received crucial information about the HIB investigation, including, but not limited to, the evidence gathered during the course of the investigation prior to the Board appeal hearing and because the Board failed to produce any evidence in support of the Superintendent's determination.
- The ALJ concluded the Teacher's ABR due process rights were violated with respect to the mandates of N.J.S.A. 18A:37-15b(6)(d) and recommended this matter be remanded to the Board so the Teacher would have the opportunity to confront and cross-examine G.T. or any other witness.
- The Commissioner rejected the ALJ's decision as the Commissioner did not find procedural deficiencies with the district's HIB investigation; therefore, a remand to the Board for a new appeal hearing would be inappropriate.
- The Commissioner explained the letters the Teacher received more than satisfied the due process requirement.
- The Commissioner remanded the matter to the ALJ for a determination on the merits of the case and the Teacher would be provided the opportunity to challenge whether the Board's finding of HIB was arbitrary, capricious, or unreasonable in a subsequent appeal to the Board.



# Special Needs Student “High Fives” Were Not Motivated by a Distinguishing Characteristic

*See C.K. and M.K., on Behalf of Minor Child, M.K. v. Board of Education of the Township of Voorhees, Camden County, DKT. NO. 353-11/15, Commissioner of Education, 23 March 2017.*

- A special needs student had a habit of indiscriminately seeking high fives from classmates and in the restroom the student reached under the stall partition and grabbed another student’s leg and said “high five.”
- District determined incident did not rise to the level of HIB because it was not motivated by an actual or perceived distinguishing characteristic.
- Parent of the student who was grabbed filed petition.
- ALJ found the special needs student’s conduct of grabbing a student’s leg did not meet the definition of HIB as the conduct could not reasonably be perceived as being motivated by a distinguishing characteristic of the petitioner’s student and did not have the effect of insulting or demeaning the student.
- The ALJ concluded the Board had properly found the conduct did not meet the definition of HIB under the ABR. The Commissioner concurred.





# Commissioner Rejects ALJ Determination to Overturn Board's HIB Decision Based on Gender Identity – All Requirements of HIB Proven (1 of 2)

*See L.K. and T.K., on behalf of minor child, A.K. v. Board of Education of the Township of Mansfield, Burlington County, DKT. NO. 82-3/16, Commissioner of Education, 22 April 2019.*

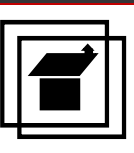
- An incident occurred on the school bus involving A.K., a second grader, and another student. A.K. made comments to another student, N.V., regarding the student's name, hair, and clothing.
- The student reported A.K. and A.K. was told by her teacher to stop asking questions and commenting on other students' dress and appearance.
- A.K. continued this conduct despite warnings from staff members and her mother and made comments to the student during lunch.
- The student's parents reported the student no longer felt safe riding the bus because of A.K.'s continued comments.
- District's HIB investigation determined A.K.'s conduct constituted HIB.
- The Board upheld the HIB determination and A.K.'s parents appealed the decision to the Commissioner.



# Commissioner Rejects ALJ Determination to Overturn Board's HIB Decision Based on Gender Identity – All Requirements of HIB Proven (2 of 2)

*See L.K. and T.K., on behalf of minor child, A.K. v. Board of Education of the Township of Mansfield, Burlington County, DKT. NO. 82-3/16, Commissioner of Education, 22 April 2019.*

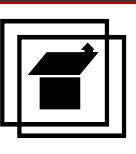
- A.K.'s parents argued the Board's decision was arbitrary, capricious, or unreasonable because it was not supported by substantial evidence.
- The ALJ concluded A.K.'s parents proved by preponderance of the evidence that the determination was arbitrary, capricious, or unreasonable and ordered the decision to be reversed.
- The Commissioner rejected the ALJ's determination stating it was clear:
  - A.K.'s conduct was motivated by the student's gender identity and expression;
  - Took place on the bus and on school grounds; interfered with the student's rights (because the student would no longer ride the bus);
  - Was demeaning;
  - Caused emotional harm; and
  - Created a hostile educational environment.
- The Commissioner restored the Board's finding of HIB.



# Must be Link Between Conduct (Fingers in Ears) and Distinguishing Characteristic to Qualify as HIB

*See C.S. on behalf of minor child, J.S. v. Board of Education of the Township of Lacey, Ocean County, DKT. NO. 34-2/15, Commissioner of Education, 16 October 2019.*

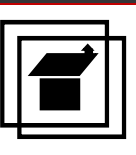
- In May 2014 in a high school music class, an incident occurred involving two eleventh grade students – J.S. and C.H.
- The Teacher reported J.S. was making the harassing gesture of placing her fingers in her ears while C.H. was singing a solo which made C.H. feel uncomfortable.
- The district conducted a HIB investigation and concluded J.S.'s conduct was HIB.
- On appeal, the Board voted to affirm the Superintendent's HIB finding.
- J.S.'s father filed an appeal with the Commissioner.
- The ALJ stated there was no factual showing being weak or a female as a distinguishing characteristic motivated J.S.'s denigration of C.H.'s singing.
- The ALJ also stated the conduct arose out of a conflict in the students' relationship, as the record showed a series of ups and downs between the two students.
- The ALJ concluded the Board had mistakenly classified the incident as HIB and overturned their decision. The Commissioner concurred.



# HIB Encompasses Sexual Harassment (1 of 2)

*T.R. and T.R., on behalf of minor child, E.R. v. Board of Education of the Bridgewater-Raritan Regional School District, Somerset County, DKT. NO. 355-12/12, Commissioner of Education, 06 May 2015.*

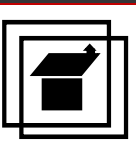
- Eighth grade male student “attempted to engage in sexual activity” with a seventh-grade female student on school property. Students who witnessed this incident reported to school officials.
- School officials did not conduct an investigation and when contacted by the female student’s parent, school officials indicated they “did speak to the male student and advised him if he did not discontinue his activities, he could end up a registered sex offender”.
- Male student continued to request sexual acts from the female student and the girl’s parent complained to school officials, who told the parent to talk with the male student’s parent about their concerns.
- Female student’s parent contacted the Superintendent, the school conducted a HIB investigation and reported the male student sexually harassed the female student on multiple occasions, but concluded there was no finding of HIB and documented the incident as “adolescent sexual curiosity.”



# HIB Encompasses Sexual Harassment (2 of 2)

*T.R. and T.R., on behalf of minor child, E.R. v. Board of Education of the Bridgewater-Raritan Regional School District, Somerset County, DKT. NO. 355-12/12, Commissioner of Education, 06 May 2015.*

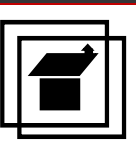
- ALJ indicated that all requirements of the ABR were met by the male student's words and actions toward the female student:
  - the allegedly heterosexual male student engaged in actions reasonably perceived as being motivated by the other student's gender (female) and sexual orientation (heterosexual).
  - the actions took place on school property, on a school bus, and/or off school grounds, and
  - male student's words and actions substantially disrupted and interfered with the orderly operation of the school and the rights of other students.
    - verbal statements and electronic communications to the female student substantially interfered with the student's rights to be secure and left alone.
    - students who witnessed this behavior were so affected by it that they reported the behavior to school officials.
  - there was harm inflicted upon the female student.
- The Commissioner adopted the ALJ's decision.



# Commissioner Will Not Substitute Their Judgment For Board's When Examining HIB Determination (1 of 2)

*See A.J., on behalf of minor child, J.J. v. Board of Education of the Township of Boonton, Morris County, DKT. NO. 158-7/19, Commissioner of Education, 10 July 2020.*

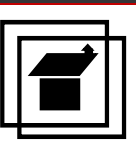
- J.J., a middle school student, was waiting with a small group of classmates out front of the school for the school bell to ring to enter the school. The group engaged in light conversation, while another student, not within the group, was standing with her back to the group and heard what she believed to be a racial slur uttered by someone in J.J.'s group.
- The female student did not know the identity of the student who made the comment, but became upset and reported the student to her guidance counselor.
- During the HIB investigation, J.J. denied ever saying the word as did the rest of the students interviewed.
- The Board conclude J.J. committed an act of HIB and the Board accepted the determination. J.J.'s parents appealed the Board's determination.



# Commissioner Will Not Substitute Their Judgment For Board's When Examining HIB Determination (2 of 2)

*See A.J., on behalf of minor child, J.J. v. Board of Education of the Township of Boonton, Morris County, DKT. NO. 158-7/19, Commissioner of Education, 10 July 2020.*

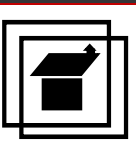
- The ALJ concluded the Board failed to establish J.J. said the word and ordered the HIB determination be overturned.
- The Commissioner rejected the ALJ's decision stating when a local board acts within its discretionary authority its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing the decision was "patently arbitrary, without rational basis, or induced by improper motives" and found the record contained sufficient, credible evidence to support the Board's determination.
- The Commissioner concluded J.J.'s parents failed to establish the Board acted in an arbitrary, capricious, or unreasonable manner and failed to prove the Board's HIB determination should be overturned.



# Distinguishing Characteristic is Student's Gender As Evidenced by Obscene Gestures (1 of 2)

*R.P., on behalf of minor child, A.P. v. Board of Education of the Township of Hamilton, Atlantic County, DKT. NO. 103-5/17, Commissioner of Education, 29 March 2018.*

- S.W. (female middle school student) wrote a letter to her Vice Principal detailing harassing behavior by another student, A.P. (male middle school student).
- The behavior included sexually explicit gestures directed at S.W. over the course of a couple months.
- The District's ABS investigated the matter, and during the interviews A.P. admitted to the alleged conduct.
- The administration concluded the incident constituted HIB because the conduct was motivated by S.W.'s gender and it caused her harm.
- The Board concurred and A.P.'s mother appealed to the Commissioner.





# Distinguishing Characteristic is Student's Gender As Evidenced by Obscene Gestures (2 of 2)

*R.P., on behalf of minor child, A.P. v. Board of Education of the Township of Hamilton, Atlantic County, DKT. NO. 103-5/17, Commissioner of Education, 29 March 2018.*

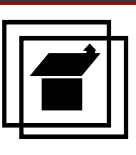
- On appeal to the Commissioner, A.P.'s mother claimed her son did not understand what his gestures meant and the District did not investigate properly because there were inconsistencies in what the Principal told her and what the ABS reported.
- The ALJ stated it was clear A.P. understood what the gestures meant from his interview with the ABS and regardless of what the Principal told his mother, the ABS' investigation was done properly and adhered to the law.
- The ALJ concluded the distinguishing characteristic that motivated A.P.'s actions was S.W.'s gender because of the nature of the gestures and it was clear A.P.'s conduct caused S.W. harm, from the letter that S.W. had written to the Vice Principal.
- The ALJ upheld the HIB determination and the Commissioner concurred.



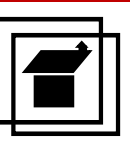
# Board is Required to Investigate HIB Complaints That Occur Off School Grounds

*See J.C. and C.C. on behalf of minor child, J.C., v. Board of Education of the Ramapo Indian Hills Regional High School District, Bergen County, DKT. NO. 179-7/19, Commissioner of Education, 20 August 2020.*

- J.C., a high school freshman, at a gathering off school grounds during non-school hours, removed the pants of J.K. while another boy, G.E. held down J.K. A photograph purportedly showing J.C. removing J.K.'s pants was taken and was distributed to some members of the student body. Also, during the incident, J.C. removed his own pants.
- The district concluded J.C. committed an act of HIB following the investigation.
- J.C.'s parents appealed the Board's HIB determination arguing the Board did not have the jurisdiction to investigate the HIB allegation as the incident occurred off campus.
- The ALJ rejected this argument stating the Board clearly has jurisdiction to conduct HIB investigations of conduct away from school grounds in accordance with N.J.A.C. 6A:16-7.5 which states in part 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, 1.7, and 7.7.
- The ALJ stated because the Board has jurisdiction to investigate the incident, the Commissioner could only overturn the Board's determination on a finding the Board acted in an arbitrary, capricious, or unreasonable manner.
- The ALJ found nothing the Board did, either while conducting the investigation or in reaching their determination, was arbitrary, capricious, or unreasonable.
- The Commissioner concurred with the ALJ.



# Questions and Discussion



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