

Hainesport Board of Education
Community/Parent Meeting
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New Jersey's Anti-Bullying Bill of Rights Act

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HIB Definition Most Commonly Used

- Intent to Cause Harm
 - Did the alleged student exhibiting bully behavior intend to harm the victim in their conduct or behavior
- Pervasive
 - Did it happen more than once

Was there an imbalance of power

- One party had to have power over the other



New Jersey's HIB Definition

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

- 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.



Single Incident



- 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:



Single Incident

- The law states HIB can be a single incident.
- ALJ/Commissioner cases have not distinguished between a single incident and multiple incidents.
- Cases have not been overturned based on the fact the conduct only occurred once.
- Even if a single incident is determined not to be HIB, the incident must still be addressed.



Motivation/Distinguishing Characteristic



- 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;



What is a "Distinguishing Characteristic"?

What constitutes a "distinguishing characteristic"?

- There is still room for interpretation and a wide range of opinions about the meaning of "distinguishing characteristic".

Among the incidents that have been determined by schools to be HIB, and upheld upon appeal to the ALJ/Commissioner, are incidents in which:

- A student called another student a "horse" and "fat."
- A student noted that another student had dyed her hair and might have had head lice.
- A student called another student "gay" (as an insult) and said he "danced like a girl."
- A student demeans another student based on the eating habits of the other student.



Finding a "Distinguishing Characteristic"

If a distinguishing characteristic is not already evident in the situation, the question to ask is...

"Why did the alleged student bully choose this student target?"



Other Distinguishing Characteristic

Other distinguishing characteristics may be:

- Academically gifted children;
- Wearing glasses, hair color, hair style, etc.;
- Children living in nontraditional families;
- Overweight or obese children;
- Small or physically weak children;
- Children considered unattractive, unfashionable;
- Poor athletic ability;
- Academic stereotype;
- Socio-economic status; or
- New student in school.



Location On or Off School Grounds



- 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;



Substantially Disrupts or Interferes



- that substantially disrupts or interferes with the orderly operation of the school or the rights of other students; and that



Substantial Disruption or Interference

- ▶ Substantial disruption is one of the required elements for a HIB determination.
- ▶ Substantial disruption could be to only one student; does not have to be widespread disruption of entire class or entire school.
- ▶ Substantial disruption could be fear of bully or inability of student to focus on school due to emotional harm, which may result in substantial disruption and/or interference.
- ▶ Strauss Esmay – Typically, if it is determined there was harm to a student there is a substantial disruption.



Determining Harm



- 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.



Impact of Harm Reasonable Person Standard

- Whether the act actually had a demonstrable negative impact on the target is not always a good criterion in determining whether an incident is HIB, as the wording of the ABR indicates the "reasonable person" standard of harm.
- Would a reasonable person committing the alleged act know or should know, under the circumstances, the act would cause harm?
- The behavior is wrong and needs to be stopped, regardless of negative impact a particular target.



Determining Harm

If a staff member observes clear HIB conduct, but yet the target tells the staff member the conduct does not offend or harm them:

- The staff member should still report the conduct to Principal for Principal to determine if there was harm.
- A HIB investigation is needed to be completed to make this harm determination.
 - a reasonable person should know under the circumstances conduct 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.



Conflict vs Bullying Is It Conflict or Is It Bullying?



Conflict vs. Bullying

Conflict

- Conflict is a mutually competitive or an opposing action or engagement, including a disagreement, an argument, or a fight which is a normal part of human development.
- Conflict is a disagreement, argument, fight or other action between people when they want different results and everyone is equally involved.
- Strategies like mediation and conflict resolution are appropriate responses to address conflict.
- Conflict has some level of mutuality, meaning all parties are on somewhat equal footing.
- In many cases, not finding a distinguishing characteristic that motivated the conduct often results in a determination of conflict.
- Conflict is a natural part of human relationships and interactions among students.



“Conflict” as Defined by Appellate Court and Commissioner of Education

“Thus, harmful or demeaning conduct motivated only by another reason, for example, a dispute about relationships or personal belongings, or aggressive conduct without identifiable motivation, does not come within the statutory definition of bullying.”

K.L. v. Evesham Board of Education, December 12, 2011

“The record confirmed that there was an ongoing conflict between C.H. and the other student that was not motivated by any distinguishing characteristics. There was an element of mutuality; it was not one-sided.”

J.A.H. on behalf of minor child, C.H. v Pittsgrove Twp. Board of Education March 11, 2013



Conflict to Bullying - Bullying with Conflict

Conflict to Bullying

- A friendship ended in mutual resentment and hurtful words and one student moves on while the other student continues with spreading rumors or other HIB defined conduct toward the other student and even recruits friends to join in the conduct.

Bullying with Conflict

- A student who is repeatedly tormented by the conduct of another student motivated by the student's distinguishing characteristic (body image) and becomes fed up and retaliates punching the student who was doing the tormenting.



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:17-46, the Superintendent must report to the Board, annually, the number of times a preliminary determination was made that an incident or complaint was outside the scope of HIB for the purposes of the State’s monitoring of the school district.
- Parents may appeal the Principal’s preliminary determination directly to the Board.
 - Board Hearing shall be held within ten business days of receipt of the request for a Board Hearing.



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.



HIB Investigation

Principal's Role Upon Receiving Report

- Initiate investigation within one school day of the verbal report through the ABS.
 - Principal shall coordinate investigation with ABS and not lead or complete the investigation.
- Inform parents of alleged aggressor(s) and alleged target that there is an incident and an investigation will be conducted.
- When providing notification to the parents of all students involved in the alleged HIB incident, the Principal shall take into account the circumstances of the incident when conveying the nature of the incident, including the actual or perceived category motivating the alleged offense.
- Although not explicitly required in statute or code, best practice would be to notify the parents the same day.



HIB Investigation

Principal's Role Upon Receiving Report

- As appropriate, the Principal may appoint additional staff to assist with the investigation.
- Principal shall proceed with investigation even if the parent, student, or visitor verbally reported the incident and did not complete a "HIB 338 Form".
- Staff member who received information from parent, student, or visitor must complete a "HIB 338 Form".



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.
- 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.



Consequences and Remedial Action

- The Principal, in conjunction with the school ABS, will define the range of ways in which a school will respond once an incident of HIB is identified.
- Responses to a person (not only a student) who commits an act of HIB must include both consequences and appropriate remedial action.
- School officials are responsible for taking all appropriate steps to understand and rectify the problem, which by law involves more than traditional punitive actions.



Procedure/Investigation

Cases



Any Allegation of HIB Must Be Investigated

D.M. v. Board of Education of the Township of West Milford, Passaic County, Commissioner of Education, DKT. NO. 70-3/14, 24 November 2014.

- The ALJ granted the district's motion to dismiss because the parent failed to provide the district with a written report to start an investigation.
- The ALJ concluded the district exercised its managerial discretion in a reasonable and practicable matter.
- The Commissioner found the district had an obligation to conduct a HIB investigation in accordance with the requirements of the ABR, despite the fact the parent did not fill out the district HIB Form.
- The Commissioner indicated there is nothing in the statute that states a parent must submit a written form before a HIB investigation shall be initiated, and the district can not require a written report to initiate an investigation.
- In addition, the Commissioner stated the district's argument the matter was appropriately resolved through the peer mediation process did not satisfy the requirement to investigate and indicated peer mediation may follow the completion of an investigation, but may not preempt the investigation.
- The Commissioner was not persuaded by the district's argument it was not required to initiate a HIB investigation because the parent withdrew the student from the district.
- The Commissioner rejected the ALJ's decision and concluded all alleged acts of HIB require an investigation by an ABS and ordered the district to conduct an investigation.



Investigation Unable to Identify Aggressor(s)/No HIB

G.J., on Behalf of Minor Child, S.J. v. Board of Education of the Township of Plumsted, Ocean County, DKT. NO. 44-2/16, Commissioner of Education, 22 November 2016.

- A student reported he was being bullied online, with pictures posted making fun of him.
- The District notified the parents the investigation could not sustain any charges of HIB because the district was unable to identify any of the parties responsible for the internet posts.
- The investigation included interviewing 9 students, extensive efforts by the Board's technology team, and involvement by the County Prosecutor's Office.
- The parent of the victim appealed and the Board advised the parent if additional information came to light which identified the individuals responsible for the postings, the investigation would be reopened.
- The ALJ concluded the Board followed all hearing and appeal protocols in this matter and the petitioner did not demonstrate the Board failed to comply with the ABR.
- The Commissioner adopted the ALJ's decision.



Parents Must be Notified of HIB Investigation Results So They May File an Appeal (1 of 3)

J.B., on behalf of minor child, M.B. v. Board of Education of the Borough of Haddonfield, Camden County, DKT. NO. 44-2/16, Commissioner of Education, 04 June 2018.

- On April 16, 2013, M.B., a seventh-grade student, received messages on a social media page stating, “You’re mean. I hate you. You should die. Stop trying to be popular. You’re ugly. You’re fat. Only losers like you. I wish I could kill you. You’re annoying. No popular people like you,” and on the following day, the same student sent M.B. a message referring to her in derogatory terms.
- M.B.’s parents promptly notified the Principal and the Anti-Bullying Specialist (ABS) subsequently investigated the incidents and on April, 29, 2013 the ABS’s report was given to the Principal.
- The ABS determined the conduct was not a HIB incident and the Principal proposed remedial measures.



Parents Must be Notified of HIB Investigation Results So They May File an Appeal (2 of 3)

J.B., on behalf of minor child, M.B. v. Board of Education of the Borough of Haddonfield, Camden County, DKT. NO. 44-2/16, Commissioner of Education, 04 June 2018.

- M.B. and her parents never received written notification of the results of the HIB investigation and the parents filed a claim with the County Office of Education (COE) alleging school officials failed to adequately address the HIB incident.
- The COE concluded the district neglected to provide the written results of the investigation to the parents pursuant to N.J.S.A. 18A:37-15(b)(6)(d); the parents were entitled to a hearing before the Board; and the ABS’s determination the incident was not HIB was correct.
- The parents filed an appeal to the Commissioner of Education seeking to reverse the COE’s conclusion the incident did not fall under the statutory definition of HIB.



Parents Must be Notified of HIB Investigation Results So They May File an Appeal (3 of 3)

J.B., on behalf of minor child, M.B. v. Board of Education of the Borough of Haddonfield, Camden County, DKT. NO. 44-2/16, Commissioner of Education, 04 June 2018.

- The ALJ found several procedural errors:
 - There was no evidence the investigation results were reported to the Superintendent within two days of the completion of the investigation as required by N.J.S.A. 18A:37-15(b)(6)(b);
 - The district admitted it did not send the 5-day letter to the parents after the Board received the Superintendent's initial report at a Board meeting;
 - It appeared the results of the investigation were not provided to the Board pursuant to N.J.S.A. 18A:37-15(b)(6)(c) and (d); and
 - The Board did not issue a written decision to the parents after their formal Board vote at the second Board meeting as required by N.J.S.A. 18A:37-15(e).
- The ALJ ordered the matter be returned to the Board for compliance with the proper procedures outlined in N.J.S.A. 18A:37-15 and for the Board to provide the parents the rights and remedies granted them by the statute.
- The Commissioner concurred.



District's Preliminary HIB Determination Not to Investigate Was Appropriate

See K.P., on behalf of minor child, I.M. v. Board of Education of the Township of Saddle Brook, Bergen County, DKT. NO. 17-1/19, Commissioner of Education, 05 September 2019.

- K.P. sent an email to the district stating a student told her daughter, I.M., that she was "ugly and a bad dancer".
- The district did not conduct a HIB investigation because the determined the allegation, even if true, did not constitute a HIB.
- K.P. filed an appeal alleging the district failed to investigate the matter in violation of the HIB law.
- The ALJ stated K.P. failed to allege or offer proof the statement the student allegedly made to her daughter, I.M., was motivated by an actual or perceived distinguishing characteristic such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical, or sensory disability.
- The ALJ explained there was no reasonable argument that being "ugly and a bad dancer" or expressing oneself as "ugly and a bad dancer", even if understood as true, constitutes such a distinguishing characteristic.
- The ALJ also stated K.P. failed to allege or offer any proof the statement the student made to her daughter substantially disrupted or interfered with the orderly operation of the school.
- The ALJ concluded the district did not violate the HIB law by failing to investigate this allegation and dismissed the petition.
- The Commissioner concurred and stated the district properly made a preliminary determination in accordance with the HIB law.



Distinguishing Characteristic



Calling Female Student “Fat” or “Horse” Violates HIB Law (1 of 2)

R.G.B., on behalf of minor child, E.B. v. Board of Education of the Village of Ridgewood, Bergen County, DKT. NO. 293-9/12, Commissioner of Education, 24 June 2013.

- Female middle school student reported to the ABS that a fellow male student called her names like “fat” and “horse.”
- ABS concluded the male student’s conduct constituted HIB motivated by the student’s “body image and appearance.”
- Parents of the male student argued the Board inappropriately applied the ABR.
- ALJ indicated these comments resulted in the female student visiting the guidance counselor’s office very upset and distraught by the ongoing name calling.



Calling Female Student “Fat” or “Horse” Violates HIB Law (2 of 2)

R.G.B., on behalf of minor child, E.B. v. Board of Education of the Village of Ridgewood, Bergen County, DKT. NO. 293-9/12, Commissioner of Education, 24 June 2013.

- Upon comparing the facts to the legal definition of HIB, the ALJ concluded:
 - the acts were motivated by the female student’s body type,
 - the acts occurred on school property,
 - the conduct substantially interfered with the rights of the female student, and
 - the comments would lead a reasonable person to know that repeatedly calling a teenage girl “fat” or “horse,” regardless of whether other students also called the girl by those names without objection, would have the effect of emotionally harming the female student.
- Commissioner concurred with the ALJ upholding the Board’s determination that the student’s conduct constituted HIB as the student on more than one occasion called the female classmate “horse” and “fat.”



Distinguishing Characteristic/Vegetarian

G.C., on behalf of minor child, C.C., v. Board Of Education Of The Township Of Montgomery, DKT. NO. 44-2/16, Commissioner of Education, 22 November, 2016.

- An incident between two sixth graders occurred in the cafeteria, wherein one student demeaned another due to the victim identifying as a vegetarian.
 - “Vegetarians are idiots.”
 - “It’s not good to not eat meat and that people who eat meat are smarter and have bigger brains.”
- These comments were reasonably perceived to be motivated by the classmate being a vegetarian.
- The district conducted an investigation and concluded the incident was properly classified as HIB stemming from comments he made regarding his classmate’s vegetarian lifestyle.
- The ALJ found the issue is whether the state of being a vegetarian can constitute “any other distinguishing characteristic.”
- The ALJ concluded vegetarian was “any other distinguishing characteristic” and the fact the victim was a vegetarian was an identifiable motivation.
- The ALJ concluded the comments by the student on October 2014 constituted a violation of the HIB law and the Assistant Commissioner concurred with the ALJ.
- The Commissioner adopted the ALJ’s decision.



No Distinguishing Characteristic/Student Conflict

R.A., on behalf of minor child, B.A., v. Board Of Education Of The Township Of Hamilton, 22 June 2016

- The petitioner alleged there had been intermittent incidents involving a group of friends that B.A. perceived to be harassment, beginning in 2013 when the girls were in sixth grade – after B.A. was invited to a birthday party when the other friends were not.
- The final incident took place in January 2015 when B.A.'s lunch bag was allegedly kicked out of a classroom by another student.
- The District's investigation was inconclusive as to the intent of the girls involved, there were no allegations a distinguishing characteristic of B.A., either actual or perceived, motivated the conduct by the girls.
- The ALJ stated a dispute between students such as a relationship falling apart between former friends, a fight over a piece of property, or some form of personal vendetta of one against another is not conduct based on a "distinguishing characteristic" of the victim and, thus, does not constitute a violation of the Act.
- The ALJ concluded the circumstances in this case showed personal conflict between B.A. and the other girls.
- The Commissioner adopted the ALJ's decision.



Special Needs Student was not Motivated by a Distinguishing Characteristic (1 of 2)

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.



HIB Determination/Distinguishing Characteristic Was Student's Gender (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-S/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.



HIB Determination/Distinguishing Characteristic Was Student's Gender (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-S/17, Commissioner of Education,
29 March 2018.

- 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.



Miscellaneous



Disciplining Student For Violation of School Rules Does Not Constitute HIB (1 of 2)

R.C.F. and A.L.F., on behalf of minor child, S.N.F. v. Board of Education of the Borough of South Plainfield, Middlesex County, Commissioner of Education, DKT. NO. 143-5/12, 18 September 2013.

- Parents alleged daughter was subject to acts of HIB by a teacher.
- Teacher felt length of student's skirt was unacceptable and told student to call home to get a change of clothes.
- The student was unable to reach home, so she was allowed to return to class, wherein the teacher remarked "they let you walk around all day like that?"
- On another occasion, the student asked a classmate about a problem on an algebra test and the same teacher accused her of cheating and gave her a "zero" grade.
- Upon completing a HIB investigation, the administration and Board determined the teacher's actions did not meet the legal definition of HIB.



Disciplining Student For Violation of School Rules Does Not Constitute HIB (2 of 2)

R.C.F. and A.L.F., on behalf of minor child, S.N.F. v. Board of Education of the Borough of South Plainfield, Middlesex County, Commissioner of Education, DKT. NO. 149-5/12, 18 September 2013.

- The parents filed two complaints with Commissioner alleging the teacher's conduct constituted HIB and they alleged the HIB investigation was conducted improperly as the investigator failed to interview witnesses who observed the teacher harass and demean the student.
- Parents further asserted the alleged cheating incident constituted HIB guaranteeing the student would fail the second marking period.
- The Board asserted this matter concerned two separate teacher-student interactions concerning violation of school rules.
- ALJ concluded the teacher's interaction with the student was merely disciplining the student for violation of school rules and 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 Finds HIB Conduct Did Not Substantially Disrupt the Orderly Operation of the School or the Rights of Other Students (1 of 3)

See D.D.K., on Behalf of Minor Child, D.K. v. Board of Education of the Township of Readington, Hunterdon County, and Barbara Sargent, DKT. NO. 86-4/15, Commissioner of Education, 11 November 2016.

- Father alleged HIB investigation involving his son as victim was not conducted properly, district did not interview all witnesses, and the District covered up aggressors' actions.
- Father also alleged district should have permitted the parent to obtain all the angles of a bus video surveillance system used a evidence in making the HIB determination.
- 1st Incident - parent alleged student was assisting a younger student and the other student said "why you got to be a know it all, I hope you get brain damage," and then bumped the petitioner's child with his backpack.
- 2nd Incident - student stated to the petitioning student, who was wearing a yellow shirt, "you're already yellow, you're Asian" (petitioning parent's child is of Korean descent) and then the student referred to the petitioning student as dumb.



Commissioner Finds HIB Conduct Did Not Substantially Disrupt the Orderly Operation of the School or the Rights of Other Students (2 of 3)

- ALJ determined the 1st incident was not HIB and it was a conflict between the two students regarding their comparative math skills.
- ALJ determined the 2nd incident concluded the incident took place on school property, had the effect of being insulting or demeaning, and was motivated by the student's race. However, there was no finding the incident substantially disrupted or interfered with the orderly operation of the school or the rights of the students because when questioned about it the student responded "fortunately, this was not problematic for my learning experience, but it ticked me off at the time."
- ALJ also upheld Board's affirmation as district's investigation was done in accordance with statute.



Commissioner Finds HIB Conduct Did Not Substantially Disrupt the Orderly Operation of the School or the Rights of Other Students (3 of 3)

- Commissioner concurred with the ALJ, but modified the ruling to clarify the second incident was motivated by an actual or perceived characteristic, the student's Korean heritage.
- However, the Commissioner stated the comments were not problematic for the student's learning experience and other students did not appear to be affected by the comments.
- The Commissioner indicated he is constrained to agree that the petitioning parent failed to demonstrate the comments substantially disrupted or interfered with the orderly operation of the school or the rights of other students.
- The Commissioner concurred with the ALJ's decision with such modification and the petition was dismissed.



Questions, Answers, and Discussion

