



NJ HIB LAW Chart - 2011-2018

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Case Name, Date (most recent first) & Jurisdiction	Issues	Case Summary	Decision & Analysis
<p><u>Gibble v. Hunterdon Central Reg'l SD</u></p> <p>2018 WL 1095324, Appellate Division Dkt. No. A-5199-15T3, Decided March 1, 2018</p>	<ul style="list-style-type: none"> – HIB Claim Against Adult / Coach – Due Process – Civil Rights Violations – Age Discrimination 	<ul style="list-style-type: none"> – A Hunterdon Central Wrestling Coach, who was volunteering as a Coach at a Wrestling Camp hosted by Rutgers University, was accused of making inappropriate comments to a student who would ultimately be an incoming Freshman to the high school where the adult was the Wrestling Coach. – A HIB Claim was ultimately filed against the Coach. – Coach Claims - <ul style="list-style-type: none"> • Denied the HIB occurred • Denied Due Process by the SD <ul style="list-style-type: none"> – SD did not follow proper HIB investigative procedures – Coach was not allowed to have a hearing or present witnesses before the BOE regarding the HIB claim. 	<p><u>11/17/14</u> - Coach was not reappointed by the SD as a Wrestling Coach (still employed as a teacher). The SD asserts that the Coach's removal from the wrestling coach position "... was taken as a result of many issues, and not a direct result of the HIB finding."</p> <p><u>2/4/15</u> - Coach appealed to the DOE Commissioner.</p> <p><u>4/12/16</u> – ALJ determined the SD failed to comply with the required investigatory process, the Coach was denied Due Process, and that any documents regarding the alleged violation of the SD's HIB policy be expunged from the Coach's personnel file.</p> <ul style="list-style-type: none"> – Coach claims that he was fired from 2016 Spring Coaching position after one day based upon this HIB complaint and negative information provided by the SD. <p><u>7/13/16</u> - Commissioner concurred with the ALJ finding that staff members accused of HIB are entitled to Due</p>

		<ul style="list-style-type: none"> • Coach lost his coaching position. – SD Claims- <ul style="list-style-type: none"> • The SD conducted a proper HIB investigation after the student's parents contacted the SD about the allegations. • The Coach admitted to making the comments. • The SD concluded that the Coach had committed a HIB violation. • Claims that the Coach's Due Process was not violated. • The BOE advised the Coach that there was not a procedure in BOE policy or in the regulations for anyone other than a parent/guardian to request a hearing. <ul style="list-style-type: none"> – As a courtesy, the BOE allowed the Coach and his attorney to appear before the BOE. – The appearance was to be limited to 20 minutes, and the Coach would not be allowed to offer witnesses. (Coach's attorney objected to same). – The Coach did not attend the meeting. 	<p>Process. However, the Commissioner found that the ALJ erred in requiring that all references to HIB be removed from the Coach's personnel file. Case was remanded, with orders for the BOE to provide the Coach with a hearing on the HIB allegations before the BOE.</p> <ul style="list-style-type: none"> – The Coach appealed the Commissioner's Decision to now remand the case for a hearing before the BOE - pending at the time of the last chart update. – The Coach filed a lawsuit in January 2017 claiming the SD violated: <ul style="list-style-type: none"> – His Civil Rights under Federal & State Law – His Right of Equal Protection Under the 14th Amendment – Age Discrimination (The coach is 55 years old) <p>3/1/18 - Appellate Division affirms the Commissioner decision as it is consistent with the governing statute and is not arbitrary, capricious or unreasonable. Staff members are entitled to due process, which includes a hearing before the board of education. The relevant issue is whether the staff member should get a hearing before the board of education and the remand will accomplish that fact. The hearing should be meaningful and should be consistent with the procedures for hearings involving students. <i>N.J.S.A. 18A:37-15(b)(6)(d)</i></p>
<u>R.N. v. Board of Education of the South Orange-</u>	<ul style="list-style-type: none"> – Coaches – Retaliation Claim 	<ul style="list-style-type: none"> – Petitioner alleged violations of the Anti-Bullying Bill of Rights Act committed by 	<ul style="list-style-type: none"> – ALJ determined that petitioner failed to assert claims on his behalf and only sought relief for alleged

<p><u>Maplewood School District, Essex County</u> EDU 09346-16 Initial Decision (May 11, 2018) rev'd and remanded Commissioner (June 22, 2018)</p>		<p>baseball coaches against his son A.N.</p> <ul style="list-style-type: none"> – Petitioner alleged that his then minor son, who was a starter on the baseball team in the year prior, was cut from the team in retaliation for petitioner’s involvement with prior HIB allegations against the baseball coaches. 	<p>violations of the ABBR against his now adult son.</p> <ul style="list-style-type: none"> – Petitioner did not name son as a party. – ALJ determined that R.N. could not bring a valid claim on behalf of another adult. – Commissioner disagreed with ALJ’s finding that petitioner lacked standing and remanded the matter to the OAL for further proceedings. – Commissioner determined that petitioner’s allegations of retaliation implicating his rights under the Act and the board’s policy on HIB remained unresolved and required further exploration of the facts and proper adjudication.
<p><u>H.C. o/b/o B.Y. v. Board of Education of the Borough of Metuchen, Middlesex County</u> EDU 05202-17 Initial Decision (May 8, 2018) rejected and remanded Commissioner (June 22, 2018)</p>	<ul style="list-style-type: none"> – Procedural Requirement of Written Decision by BOE or BEO Attorney 	<ul style="list-style-type: none"> – Matter involved an incident when an eight year old student was reported to have said some things to and acted towards a classmate during a game of tag that investigators determined to be an act of HIB. – Demeaning references were made about the victim’s weight during the game of tag and special rules were made to “humble” the victim. – The victim was distressed by the interaction. – Investigators found the matter to fall under the HIB statute – Discipline was invoked – a required apology, three day recess suspension and attendance at counseling. – Some of the measures were realized, but in the meantime B.Y. transferred to another school. 	<ul style="list-style-type: none"> – Commissioner rejected decision of the ALJ which remanded matter to the board to prepare a written decision. – ALJ determined that letter from board attorney did not constitute a written decision; an “irreparable” procedural defect. – Commissioner determined that the board attorney letter, an authorized agent of the board, explicitly set forth the board’s consideration of the matter and its decision to affirm, reject or modify the CSA’s determination, complying with <i>N.J.S.A. 18A: 37-15 (b) (6) (e)</i>. – Commissioner determined that factual issues existed that could only be resolved by a hearing before the OAL, including whether certain procedural violations did occur or whether the board’s ultimate HIB determination was arbitrary, capricious or unreasonable.
<p><u>J.B. o/b/o minor child M.B. v. Board of Education of the Borough of Haddonfield, Camden County,</u> EDU 04045-16 Initial Decision (April 20, 2018), adopted as modified</p>	<ul style="list-style-type: none"> – Cyberbullying – SD Failure to Follow HIB Required Process – BOE Did Not Issue a 	<ul style="list-style-type: none"> – M.B. was a 7th grade student when C.B. posted on M.B.’s social media page a message stating, “You’re ugly. You’re fat. Only losers like you. I wish I could kill you. You’re annoying. No popular people like you.” – The next day, C.B. posted on the same 	<ul style="list-style-type: none"> – Commissioner and ALJ agreed that matter should be returned to the board to remedy noncompliance with the procedures set forth at <i>N.J.S.A. 18A:37-15</i> – The board must now afford petitioners an opportunity for a hearing and then issue a written decision as to whether M.B. was a victim of HIB.

<p>Commissioner (June 4, 2018)</p>	<p>Decision</p>	<p>website, “Bitch skanky hoe bag.”</p> <ul style="list-style-type: none"> – The anti-bullying specialist concluded that the incidents did not meet the statutory definition of HIB and the principal proposed such remedial measures as a “new lunch table” and “meetings with counselor” – Petitioner did not receive the results of the investigation in writing but did become aware of the results in May 2013. – While the anti-bullying specialist investigated the HIB complaint and reported her findings to the principal, who then instituted some remedial measures, there was no showing that the results were reported to the superintendent within two days. – Petitioners did not receive information regarding the HIB investigation in writing. – The results were never reported to the board – The board never issued a written decision. – In September 2013 petitioners filed with the Camden County Office of Education a complaint that the HMS office did not adequately address the alleged HIB incidents. The CCOE determined that <ul style="list-style-type: none"> • The district did not comply with the procedures of <i>N.J.S.A. 18A:37-15</i>. • The district correctly determined that the incident did not meet the statutory definition of HIB. • The district took appropriate remedial measures. – The board’s argument that the petition was not timely filed (90 day rule) was rejected. Since there was no decision from the board, the time for appeal did not begin to run. Fact 	
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		that petitioner chose to file a complaint with the Camden County Executive Superintendent did not change that fact. Substantive determinations by the ALJ were stricken from the record.	
<u>S.A. and C.A. o/b/o minor child G.A. v. Board of Education of the Township of Moorestown, Burlington County</u> , EDU 09703-16 Initial Decision (January 24, 2018) adopted Commissioner (April 23, 2018)	<ul style="list-style-type: none"> - Special Ed Student - Staff Claim - Distinguishing Characteristic 	<ul style="list-style-type: none"> - Matter involved allegations that sixth grade student had been the victim of acts of HIB at the hands of her special education teacher. - Allegations included: <ul style="list-style-type: none"> o Pulling her papers from her in front of the class to check her work and test scores and o Seeking her out at the end of the class to give her special study guides. - Such actions caused the student discomfort and upset. - Student was eligible for special education services based on her ADHD and had an IEP which required that she receive in class support in her academic classes, including checks of her work. 	<ul style="list-style-type: none"> - Student was not classified as having an emotional disability nor was there any evidence of a connection between her ADHD and her negative response to having her work checked. - There was nothing to show that the teacher's actions were motivated by her disability other than the relationship between special education teacher and student. - The teacher's conduct could not reasonably be perceived as being motivated by the student's disability or any other distinguishing characteristic. - Additionally, the alleged conduct did not substantially disrupt or interfere with the orderly operation of the school or the rights of the student. - Commissioner and ALJ agreed that board of education determination that teacher had not engaged in behavior that constituted an act of HIB was not arbitrary, capricious or unreasonable. - The alleged conduct failed to meet the statutory definition of HIB as the teacher's conduct was not motivated by the student's status as a special education student. - No distinguishing characteristic was found.
<u>L.B. o/b/o J.B. v. Roselle Board of Education</u> 2018 WL 2016647 OAL Dkt. No. EDS 05079-16 (April 13, 2018)	<ul style="list-style-type: none"> - Special Education - HIB Considerations in Placement / Plan 	<ul style="list-style-type: none"> - Student had a major depressive disorder and a generalized anxiety disorder and was deemed other health impaired. - Student was also deemed emotionally 	<ul style="list-style-type: none"> - School district failed to provide FAPE in the LRE for a multiply handicapped now 19 year old student. - ALJ ordered that student be placed at the New Roads

	<ul style="list-style-type: none"> - Student Medical Expert Determinations re: Alleged Bullying Incidents 	<p>disturbed as he developed fears associated with school over a period of time to the extent that he was unable to attend school.</p> <ul style="list-style-type: none"> - Allegations were made of bullying in the 2014-2015 school year. - There was no direct evidence of bullying; no witnesses testified to seeing such conduct. - School district determined that each incident of alleged bullying was unfounded. - However, four psychiatrists and one psychologist credited the student's accounts in regard to bullying as the conditions which impacted him in the 2015-2016 school year. 	<p>School in Somerset, including transportation, and was awarded one school year plus six months of compensatory education.</p>
<p><u>S.R. and M.R. o/b/o J.R. v. Franklin Township Board of Education</u> 2018 WL 2016648, OAL Dkt. No. EDS 9122-17 (April 9, 2018)</p>	<ul style="list-style-type: none"> - Special Education - HIB in Consideration of Services / Plan 	<ul style="list-style-type: none"> - Matter involved 13 year old student who was eligible for special education and related services. - Student suffered from autism, generalized anxiety disorder and ADHD. - Parent alleged that student was the continued target of HIB for the 2016-2017 school year and was unable to make meaningful educational progress. 	<ul style="list-style-type: none"> - While ALJ concluded that IEP and 504 plan were appropriate at the start of the year, school district should have done more. - While student perceived that he was being bullied, parents did not reference bullying in any communications with school staff. - No actual HIB complaints were filed. - Teachers did not witness bullying or believed student was being bullied. - There was never an HIB investigation into any incident involving the student. - However, the staff noted the student's difficulties with other students and should have investigated the "push down" incident and student's claims of being teased as HIB. - ALJ determined that the Main Road School was an appropriate placement; educational progress was made and the school was the LRE, giving the student

			<p>the greatest opportunity to interact with his peers.</p> <ul style="list-style-type: none"> – However, the failure to provide measurable goals and objectives in the area of social skills and social speech to address his disabilities was a failure to provide FAPE. – Student to receive a new IEP and compensatory education including weekly social skills and counseling. –
<p><u>L.P. and H.P. o/b/o minor child L.P. v. Board of Education of the West Morris Regional High School District</u>, EDU 14255-16 and EDU 14256-16, Initial Decision (February 12, 2018) concurred and adopted Commissioner (March 29, 2018)</p>	<ul style="list-style-type: none"> – Coach – Retaliation Claim 	<ul style="list-style-type: none"> – Student had filed a complaint against the Fencing Team captain the year prior to this allegation. – Student alleged her "assignment" on the Fencing Team was due to her prior complaint against her teammate. 	<ul style="list-style-type: none"> – ALJ determined that fencing coach did not change her criteria for “strip assignments” for the 2015-2016 school year and did not keep L.P. off of the “A strip” because L.P. had filed an HIB complaint against the team captain the year before. – Coach did not retaliate against L.P. during the 2015-2016 school year in violation of the Anti-Bullying Bill of Rights Act. – Petition was dismissed. Commissioner concurred, adopted the ALJ decision and dismissed the petition of appeal.
<p><u>R.P. o/b/o minor child A.P. v. Board of Education of the Township of Hamilton, Atlantic County</u>, EDU 09436-17, Initial Decision (February 13, 2018), concurred Commissioner (March 29, 2018)</p>	<ul style="list-style-type: none"> – Sexual Harassment – Gender as Distinguishing Characteristic 	<ul style="list-style-type: none"> – Matter involved fourth grade male student, who, on multiple occasions during the school year, made comments and gestures in front of a ten year old female student, that included: <ul style="list-style-type: none"> ○ Saying “F-you”, ○ Made hand gestures which denoted “oral sex”; ○ Would hold the front of his pants and refer to his genital area as “bananas” and ○ Would waive his middle finger 	<ul style="list-style-type: none"> – .ALJ determined that actions were reasonably perceived to be motivated by victim’s gender. – Victim felt uncomfortable and was upset by the actions, conduct had an emotional impact on the victim, was demeaning in nature and caused a disturbance in her educational rights. – Student’s conduct met the criteria for HIB and school’s determination and response was appropriate; – Board did not act in an arbitrary, capricious or unreasonable manner

		<p style="text-align: center;">and make faces.</p> <ul style="list-style-type: none"> - Investigation was conducted in accordance with the school’s HIB policy and disciplinary action was taken in accordance with the HIB policy and disciplinary policy. - A two day internal suspension was imposed. 	<ul style="list-style-type: none"> - Commissioner and ALJ agreed that board of education determination that student had engaged in behavior that constituted an act of HIB was not arbitrary, capricious or unreasonable. - Board of education determination was upheld.
<p><u>C.P. o/b/o minor child L.P. v. Board of Education of the Township of Warren,</u> EDU 13907-16, Initial Decision (January 16, 2018) affirmed Commissioner (February 16, 2018)</p>	<ul style="list-style-type: none"> - Teacher Claim - Distinguishing Characteristic 	<ul style="list-style-type: none"> - Allegations of HIB were directed toward C.P.’s high language arts teacher and guidance counselor. - Incidents in question included a conversation regarding L.P.’s grade in front of the class and that “the teacher should be encouraging” and a belief that the high language arts teacher had “aggression towards her” creating a situation where she “dreaded school.” - The discussions with the guidance counselor included a discussion of the student’s language arts grade in front of the class and a petition/survey regarding the language arts teacher. L.P. ran to the bathroom and cried because the guidance counselor was “mean” and had “hurt” her feelings. - C.P. alleged that these acts were acts of HIB with the distinguishing characteristic being L.P.’s IEP. 	<ul style="list-style-type: none"> - The ALJ determined that the actions complained of were that of an interaction involving a student, a teacher and ultimately a guidance counselor. - The Board investigated the two HIB complaints in a timely manner and in accordance with the statutory timelines determining that the acts complained of were not acts of HIB. - There was nothing in the record that intimated or could be construed as any comment or action that was based on “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.” - Although petitioner alleges that L.P.’s distinguishing characteristic is that she has an Individualized Education Program (IEP), there is no evidence to suggest that the alleged actions were in any way motivated by that alleged distinguishing characteristic, as required by <i>N.J.S.A. 18A:37-14</i>. - The Commissioner agrees with the ALJ that the board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determinations; - Particularly that the alleged actions by the teacher and the guidance counselor were not motivated by any actual or perceived characteristic of the student. - No evidence was presented to suggest that the alleged actions of the teacher or guidance counselor were motivated by the fact that the student had an

			<p>IEP.</p> <ul style="list-style-type: none"> – The petition was dismissed. – Commissioner and ALJ agreed that board of education determination that student was not a victim of HIB was not arbitrary, capricious or unreasonable.
<p><u>Joseph Ehrhard and Robert Ehrhard v. Board of Education of the Hunterdon Central Regional School District</u> EDU 00188-14 Initial Decision (September 28, 2017) concurred by the Commissioner (December 21, 2017)</p>	<ul style="list-style-type: none"> – Coaches – "Student" is not a Distinguishing Characteristic 	<ul style="list-style-type: none"> – The conduct at issue by baseball coaches Raymond and Augusta involved such incidents as: <ul style="list-style-type: none"> ○ Instructing R.E. to retrieve balls that had been thrown into a pond, ○ Guilting R.E. to miss a family vacation to attend baseball practice, ○ Threatening to demote R.E. to junior varsity, and ○ Forcing R.E. to carry his catchers' gear with no intention of letting him play, ○ Unfair playing time, ○ Teasing or name-calling, insulting and demeaning comments, ○ Publicly humiliating a player, ○ Favoritism, ○ Profanity and ○ Being too hard on players. 	<ul style="list-style-type: none"> – The ALJ determined that the alleged conduct failed to meet the statutory definition of HIB. – There were no facts to support that the alleged bullying was motivated by a “distinguishing characteristic” of R.E. – Petitioners suggest that the alleged conduct may have been motivated by R.E.’s status as: <ul style="list-style-type: none"> ○ 1) a student; ○ 2) a “white, healthy male student athlete”; or ○ 3) a perceived “meek or weak” member of the baseball team. – Status as a “student” does not qualify as a distinguishing characteristic, as the HIB statute only applies to misconduct against students—the “distinguishing characteristic” must be more specific than simply being a student with the imbalance of power that exists by nature of the position of an adult teacher or coach and a minor child. – Additionally, there is no support for the argument that R.E. was targeted because he was a “white, healthy male student athlete.” – Finally, while being “meek or weak” could qualify as a “distinguishing characteristic,” petitioners have not set forth any facts to support this theory. – In fact, according to J.E., Coach Raymond exhibited “bullying” conduct to everyone from assistant coaches to members of the grounds crew. – These actions are more akin to what the Appellate

			<p>Division has called “aggressive conduct without identifiable motivation,” conduct that, while inappropriate and undesirable, is not covered by the HIB statute.</p> <ul style="list-style-type: none"> – The Commissioner agreed with the ALJ that the Board did not act in an arbitrary, capricious or unreasonable manner in rendering its HIB determination, as the alleged conduct failed to meet the statutory definition of HIB. – There was no evidence in the record that the alleged actions were motivated by a distinguishing characteristic of R.E., as required by <i>N.J.S.A. 18A:37-14</i>. – The Commissioner adopted the decision of the ALJ and the petition was dismissed. – Commissioner and ALJ agreed that board of education determination that student was not a victim of HIB was not arbitrary, capricious or unreasonable.
<p><u>G.A. by L.A. v St. Mary of the Lakes School and the Catholic Diocese of Trenton, 2017 WL 6507730, Appellate Division Dkt. No. A-0638-16T1 (December 20, 2017)</u></p>	<ul style="list-style-type: none"> – Parochial School – Application of NJLAD – Sexual Harassment 	<ul style="list-style-type: none"> – Complaint alleged that two older children bullied the minor plaintiff and subjected the child to serious verbal sexual harassment during three years of school attendance. 	<ul style="list-style-type: none"> – Appellate Division affirms Law Division order dismissing a complaint for failure to state a cause of action alleging that defendants violated the New Jersey Law Against Discrimination (NJLAD). – To agree with plaintiffs’ strained interpretation of <i>N.J.S.A. 10:5-12(l)</i> would render meaningless the explicit exemption for parochial schools from the NJLAD’s definition of place of public accommodation.
<p><u>T.T. o/b/o minor child G.C. v. Board of Education of the Toms River Regional School District, EDU 12994-15, EDU</u></p>	<ul style="list-style-type: none"> – Claims Against Teachers / Substitute 	<ul style="list-style-type: none"> – The allegations of HIB involved three separate incidents wherein G.C. purportedly was the victim of HIB at the hands of various teaching 	<ul style="list-style-type: none"> – The ALJ determined that none of the three alleged instances of HIB met the definition of HIB as spelled out in the Anti-Bullying Bill of Rights Act.

<p>13587-15 Consolidated Initial Decision (October 5, 2017) adopted Commissioner (November 17, 2017)</p>	<p>– Distinguishing Characteristic</p>	<p>staff members, and a substitute teacher.</p> <ul style="list-style-type: none"> – The building principal, who was trained to also serve as the anti-bullying specialist, investigated all three instances of alleged HIB. – In one instance, a play director sarcastically asked those assembled if people were recording G.C. stating that her mother would let her chew gum with braces. – In the second, a teacher skeptically quipped that she guessed she could accept G.C.'s answer in a mini quiz when presented by G.C. with support found in a book for the given answer, – In the third, a substitute sent G.C. to the office for talking in class and made a comment about G.C. doing whatever she wants. – G.C. was made to write an apology. – In all three instances the principal determined that no act of HIB occurred and, ultimately, the board or education agreed. 	<ul style="list-style-type: none"> – None of the actions taken appear to be motivated by any actual or perceived characteristic. – To the extent that the petitioners allege that their advocacy on behalf of G.C. is the qualifying distinguishing characteristic, the record is devoid of evidence that such advocacy motivated the actions in any of the three incidents at issue here. – The Commissioner agrees with the ALJ that the Board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination. – There is no evidence in the record that the alleged actions were motivated by a distinguishing characteristic of G.C. – Although petitioner appears to allege that G.C.'s distinguishing characteristic is that she has a mother who advocates for her, there is no indication of this in the record; – Further, petitioner's exceptions do not demonstrate that – even if the advocacy of G.C.'s mother was a distinguishing characteristic – the alleged actions were motivated by said characteristic, as required by <i>N.J.S.A. 18A:37-14</i>. The petition was dismissed. – Commissioner and ALJ agreed that board of education determination that student was not a victim of HIB was not arbitrary, capricious or unreasonable.
<p><u>Columbia High School Baseball Boosters v. Board of Education of the South Orange-Maplewood School District</u> EDU 4046-17 Initial Decision (August 14, 2017) affirmed as modified Commissioner (November 13, 2017)</p>	<p>– Booster Clubs</p>	<ul style="list-style-type: none"> – The case involved a challenge by the booster club to the board's determination that the club committed an act of HIB when it disinvited one of the baseball team members to the end of the year banquet in retaliation for the student's complaints of HIB against the baseball coaches. 	<ul style="list-style-type: none"> – Commissioner and ALJ agreed that the booster club, as an entity, is not subject to the Anti-Bullying Bill of Rights Act, as it is not a board member, school employee, contracted service provider, student or volunteer as set forth in the Act. As such, the booster club cannot be deemed to have violated the Act and the matter was dismissed. – The ALJ determined that the Act did not apply to the

		<ul style="list-style-type: none"> - The board found that the booster club was a volunteer in the district by virtue of its involvement with the district, and with the baseball team in particular. 	<p>booster club as it was not “staff, school employees, students or volunteers” and granted summary decision to the club.</p> <ul style="list-style-type: none"> - The Commissioner agreed that the club could not be found to have violated the Act, noting that the Act indicated that HIB policies must include “consequences and appropriate remedial action for a <u>person</u> who commits an act of harassment, intimidation or bullying.” N.J.S.A. 18A:37-15b(4) (emphasis added). - However, there is nothing in the Act to suggest that it intended to lump a group of individuals together when there is an allegation of HIB; instead it is more appropriate to evaluate the actions of each individual. Instead of making a finding of HIB against the booster club itself, the board should have initiated an HIB investigation to determine whether any of the booster club members violated the Act, including whether any of the members constituted a volunteer under N.J.S.A. 18A:37-16a, and if so, whether any of the members engaged in retaliation against the student athlete in violation of the Act. - The Commissioner added that, based on the circumstances in this case, it was not appropriate at this juncture to remand this matter to the OAL to determine whether any of the individual booster club members violated the Act. - Certainly if any individual members were accused of violating the Act, they would have been given notice of the allegations and entitled to the due process guaranteed by the Act, including a right to a hearing before the board. - Conducting a hearing now at the OAL concerning the
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			conduct of the individual booster club members would be beyond the scope of the HIB investigation that was conducted and decided at the board level.
<u>B.R. o/b/o V.R. v. Edison Township Board of Education</u> 2017 WL 6551562 OAL Dkt. No. EDS 02063-17 (November 8, 2017)	<ul style="list-style-type: none"> – Special Education – HIB Allegations as Consideration for Placement / Plan 	<ul style="list-style-type: none"> – Petitioner filed for due process hearing on behalf of daughter seeking a 1:1 aide for the entire school day and whole-school cameras due to safety concerns because student was blind and was allegedly being bullied. – Alternatively, the parent asked for an out-of-district placement. 	<ul style="list-style-type: none"> – Petition alleged harassment and bullying but failed to state a special education claim under the IDEA. It did not allege that the student was denied FAPE or failed to make meaningful educational progress. – Petition was dismissed.
<u>E.W. and D.W. o/b/o A.W. v. Board of Education of the Bridgewater-Raritan Regional School District</u> , EDU 09963-14 Initial Decision (September 6, 2017) adopted with modifications Commissioner (October 23, 2017)	<ul style="list-style-type: none"> – Superintendent / BOE Overturns ABS Decision – Distinguishing Characteristic 	<ul style="list-style-type: none"> – The matter involved an incident between two seventh grade students during social studies class. – The class had been studying the Holocaust and were working on a project which involved cutting and pasting. – J.S., a Jewish student, reported that A.W. said to him, “if you throw those scissors at me you are going back to the concentration camp.” – In angry response to the remark, J.S. stabbed A.W.’s water bottle. – The anti-bullying specialist determined that this was a code of conduct violation, not an act of HIB. – The interim superintendent rejected that determination, found it to be an act of HIB and referred it to the board of education, which affirmed the HIB determination. – A one day in-school suspension and an HIB writing project were imposed as discipline. 	<ul style="list-style-type: none"> – Commissioner and ALJ agreed that board of education determination that student had engaged in behavior that constituted an act of HIB was not arbitrary, capricious or unreasonable. – The ALJ determined that the board’s determination that an act of HIB occurred was not strained and was entitled to deference. – Plaintiffs argued that greater deference should be given to the findings of the anti-bullying specialist, but had no precedent for that argument. – Petitioners also argued that the Anti Bullying Bill of Rights Act was infirm under due process and first amendment principles. – However, the Commissioner does not have jurisdiction to consider those arguments, which would more properly be a subject for judicial review. – The Commissioner concurred with the ALJ’s determinations with modifications. – The threshold requirement for an act to be considered an act of HIB is that the conduct be reasonably perceived as motivated by any actual or perceived enumerated characteristic, and that the conduct substantially disrupts or interferes with the

			<p>rights of other students or the orderly operation of the school.</p> <ul style="list-style-type: none"> – In addition, one of the three criteria set forth in the sct must also be met. – In this matter, the Board found that A.W.’s statement could reasonably be perceived as being motivated by J.S.’s religion, interfered with J.S.’s rights, and had the effect of insulting or demeaning him. – Nothing in the record indicates that the board – in determining that A.W.’s statement constituted an act of HIB – operated in an arbitrary, capricious or unreasonable manner; therefore, the Commissioner found no basis to reverse the board’s decision, concurring with the ALJ.
<p><u>E.P. o/b/o E.P. v. North Arlington Board of Education</u> 2017 WL 3879345 OAL Dkt. No. EDS 12524-16, EDS 13086-16 (August 29, 2017)</p>	<ul style="list-style-type: none"> – Special Education – HIB as Consideration for Declassification of a Student 	<ul style="list-style-type: none"> – Petitioner filed for due process on behalf of minor student contending that district should not declassify daughter and that she was eligible for special education and related services under the category of preschool disabled. – Petitioner sought a variety of programs and services. – Concerns were expressed about bullying issues, but nothing specifically was expressed, alleged or proven. 	<ul style="list-style-type: none"> – Education provided by the school district was reasonably calculated to provide FAPE in the LRE. – Determination to declassify was appropriate under the circumstances of this case and did not deny the student FAPE.
<p><u>Valerie Kenny v. Board of Education of the Borough of Moonachie</u>, EDU 09284-17, Initial Decision (August 17, 2017) concurred Commissioner (September 27, 2017)</p>	<ul style="list-style-type: none"> – Missed Appeal Deadline – Filing Grievance Does Not Toll 90 Day Filing Deadline 	<ul style="list-style-type: none"> – Tenured teacher contended that Board improperly found her guilty of HIB and sought to have her personnel file expunged of any reference to HIB. – Teacher was accused of bullying a student with disabilities in December 2016. – The matter was investigated by the anti-bullying specialist, who determined that an act of HIB had occurred. – The HIB investigative report was submitted to the superintendent of schools, who affirmed 	<ul style="list-style-type: none"> – The ALJ determined that the board’s HIB determination was issued in January 2017 and communicated to the teacher on January 24, 2017. – The teacher’s petition of appeal was not filed until June 13, 2017, well past the ninety day filing deadline. – The fact that the teacher chose to pursue a remedy through the contractual grievance process did not toll the ninety day filing deadline. – The ALJ found no exceptional circumstances or compelling reasons to relax the ninety day rule,

		<p>the findings and reported the matter to the board of education.</p> <ul style="list-style-type: none"> – On January 19, 2017, the board of education affirmed the superintendent’s determination, with notification to the teacher being made on January 24, 2017 that she was found guilty of committing an act of HIB. – On January 25, 2017, the Moonachie Education Association sought relief for the teacher through the contractual grievance process; a four step process which was ultimately denied at the board level and proceeded to binding arbitration. – The teacher received notice of the board’s decision on the grievance on March 21, 2017. 	<p>pursuant to <i>N.J.A.C. 6A:3-1.16</i> and recommended that the petition be dismissed for failure to file a timely appeal within ninety days.</p> <ul style="list-style-type: none"> – Commissioner and ALJ agreed that petition should be dismissed for failure to file a timely appeal within ninety days.
<p><u>L.B. o/b/o S.C. v. Hamilton Township Board of Education</u>, 2017 WL 2870631, OAL Dkt. No. EDS 08561 -17 (June 22, 2017)</p>	<ul style="list-style-type: none"> – Special Education – Discipline – Acts Determined Not to Be Manifestation of a Disability 	<ul style="list-style-type: none"> – Decision on emergent relief. Board of education voted to deny participation in graduation ceremony to student with a specific learning disability (SLD) who engaged in acts of HIB through online postings which contained derogatory sexual remarks regarding female students and targeted a transgender student. – A behavioral manifestation determination was performed and indicated that the student’s behavior was not a manifestation of his disability. 	<ul style="list-style-type: none"> – Emergent relief denied. – Board’s action in denying participation in graduation was not arbitrary, capricious or unreasonable.
<p><u>T.N. o/b/o L.C. v. Board of Trustees of the Ethical Community Charter School</u>, EDU 18839-15, Initial Decision (June 9, 2017), adopted Commissioner (July 18, 2017)</p>	<ul style="list-style-type: none"> – Missed Appeal Deadline – Charter School Case 	<ul style="list-style-type: none"> – L.C. was a gender non-conforming student enrolled in the charter school with allegations of bullying by another student from March 2014 through the end of the 2013-2014 school year. – Allegations of bullying included hitting L.C. and telling L.C. that he was a “freak, gay, and had no friends.” – After the investigation by the anti-bullying 	<ul style="list-style-type: none"> – Commissioner and ALJ agreed that petition should be dismissed for failure to file a timely appeal within ninety days. – The ALJ found no exceptional circumstances or compelling reasons to relax the ninety day rule, pursuant to <i>N.J.A.C. 6A:3-1.16</i> and recommended that the petition be dismissed for failure to file a timely appeal within ninety days. – The Commissioner concurred.

		<p>specialist, the charter school determined that the incident was a “back and forth” situation and was not HIB.</p> <ul style="list-style-type: none"> – L.C.’s mother, T.N., did not like the way the investigation was handled and filed a grievance seeking improvement in the practices for identifying, investigating and resolving HIB allegations at the charter school. – The board communicated its findings and final decision to T.N. on July 15, 2015. – T.N. filed her petition of appeal on October 27, 2015, 105 days after the final decision was rendered. 	
<p><u>Washington Township Board of Education v. C.L. and A.L. o/b/o N.L.</u>, 2017 WL 2332545 OAL Dkt. No. EDS 06855-17 (May 21, 2017)</p>	<ul style="list-style-type: none"> – Special Education – HIB Considerations for Student Evaluations 	<ul style="list-style-type: none"> – Student was receiving district approved homebound instruction based on parental request. – Letters from medical provider indicated that student had a “stress related anxiety thought to be due to school precipitated events” as reported by mother. – Parents suggested that student was bullied at school. – District denied that student was bullied at school. 	<ul style="list-style-type: none"> – Emergent relief granted to school district to conduct evaluation of student (learning, psychological, social and psychiatric) and to speak with student’s outside providers to determine whether student is eligible for special education and related services.
<p><u>Middletown Township Board of Education v. A.T. and J.T. o/b/o S.T.</u>, 2017 WL 2332546 OAL Dkt. No. EDS 18512-17 (May 19, 2017)</p>	<ul style="list-style-type: none"> – Special Education – HIB Allegations in consideration for Out of District Placement 	<ul style="list-style-type: none"> – Board of education filed due process petition against parents and adult student seeking order that school district has offered FAPE. – Student was classified as emotionally disturbed (ED) in September 2015. – Student alleges that due to her mental health issues she needs a therapeutic school and that attending either of the district high schools would exacerbate her mental health issues. – Student did not attend school at all during 	<ul style="list-style-type: none"> – ALJ concluded that the district had met its burden and offered FAPE. – No proof from student that needs could not be met in the school district’s offered program.

		<p>2016-2017 and sparingly during 2015-2016.</p> <ul style="list-style-type: none"> – Parent and child alleged bullying by peers in middle school and high school but no documentation of alleged bullying existed in student records. – No record of any HIB reports filed in school district. 	
<p><u>Chiodi, Borrelli and Bittner v. Eitner</u>, EDU 13721-16, EDU 13722-16 and EDU 13723-16 (Consolidated) Initial Decision (February 13, 2017), adopted Commissioner (March 30, 2017)</p>	<ul style="list-style-type: none"> – Staff claim against Superintendent re: HIB issues – Lack of Jurisdiction 	<ul style="list-style-type: none"> – Teachers in the Waterford Township school district filed verified petition seeking to have the superintendent’s certificate revoked on the grounds that he engaged in conduct unbecoming, age discrimination, invasion of privacy and a violation of the district’s HIB policies. 	<ul style="list-style-type: none"> – ALJ determined and Commissioner agreed that Commissioner did not have jurisdiction over any of these claims as they did not arise under the school laws. – The authority to revise or suspend certificates of teachers or administrators lies exclusively with the State Board of Examiners. – While HIB issues were alleged, no appeal of an HIB determination is implicated, nor would an allegation be appropriate as the statute does not contemplate HIB complaints from school employees, only students. – The petition was dismissed.
<p><u>C.J. o/b/o minor children v. Bd. of Ed. of Twp. of Willingboro</u>, EDU 08020-2016, Initial Decision (February 14, 2017), adopted Commissioner March 30, 2017)</p>	<ul style="list-style-type: none"> – Sp Ed Student Wants Transfer Due to Alleged HIB – Failure to File a claim 	<ul style="list-style-type: none"> – Parent sought out of district placement for her four children, alleging that they are being abused and bullied and are afraid to go to school. – One child is eligible for special education services and is the subject of a separate action. – Parent has not taken any action to have the other children classified and has not filed any HIB petitions with the school district. 	<ul style="list-style-type: none"> – While there appears to be a claim arising under the Anti Bullying Bill of Rights, the procedural requirements for raising a claim within the school district have not been followed for the board. – The ALJ recommended that the petition be dismissed. – The Commissioner agreed.
<p><u>D.V. by and through B.V. v. Pennsauken School District</u>, 247 F.Supp.3d 464 (D.N.J. 2017) (March 29, 2017)</p>	–	–	–
<p><u>C.K. and M.K. o/b/o M.K. v.</u></p>	– Lack of Perceived	– Board of education’s determined that special	– Board of education’s determination that the acts did

<p><u>Bd. of Ed. of the Twp. of Voorhees</u>, EDU 20510-10, Initial Decision () adopted as modified, Commissioner (March 23, 2017)</p>	<p>Characteristic</p> <ul style="list-style-type: none"> - SD Missed Deadline - Improper Use of "Discretion" by Principal - Lack of BOE policy 	<p>education student's action, reaching under a partition separating two bathroom stalls in the girl's restroom, grabbing another student's leg and asking for a "high five" did not constitute an act of HIB.</p>	<p>not constitute an act of HIB, was not arbitrary, capricious or unreasonable.</p> <ul style="list-style-type: none"> - No evidence in the record that student's actions, while not appropriate, were motivated by any actual or perceived characteristic. - However, board failed to conduct a timely hearing within ten days of petitioner's request and initially failed to investigate the matter in March 2015. - The initial failure to investigate was a result of the board's misapplication of the "principal's discretion." - Guidance issued by the Department provides that the principal or his/her designee may exercise his/her discretion in determining whether the allegations meet the threshold definition of HIB <i>before</i> initiating an investigation. - However, whether a principal or his/her designee will initiate an investigation upon receipt of <i>all</i> reports of alleged HIB, or will initiate an investigation <i>only</i> in those cases where the allegation meet the criteria in the Act, depends on the HIB policy adopted by the local board of education. - The board's HIB policy did not provide for such discretion. No remand was necessary as the outcome would remain the same; the student's conduct was not reasonably perceived as being motivated either by an actual or perceived characteristic. - Corrective action ordered by the Camden County Office of Education was an appropriate remedy and ensures that the board conducts HIB investigations in accordance with the Board's policy and the Act; initiates and completes investigations in accordance with the provisions of the Act, and safeguards the due process rights of all parties involved.
<p><u>D.V. o/b/o N.V. v. Bd. of Ed. of the Township of Edison</u>, EDU 12094-16, Initial Decision (December 30,</p>	<ul style="list-style-type: none"> - Abandonment of Appeal 	<ul style="list-style-type: none"> - Grandparent alleged board allowed acts of HIB during student's participation in an unaffiliated lacrosse program operated by the township recreation department. 	<ul style="list-style-type: none"> - Petitioner failed to attend OAL hearing, ALJ concluded matter had been abandoned. Commissioner agreed and dismissed the petition.

<p>2016), aff'd Commissioner (February 13, 2017)</p>			
<p><u>R.S. o/b/o G.M. v. State Operated School District of the City of Paterson</u>, EDU 14769-15, Initial Decision (December 2, 2016), rev'd and remanded Commissioner (January 13, 2017)</p>	<ul style="list-style-type: none"> - Effect of Graduation on HIB Process 	<ul style="list-style-type: none"> - Parent challenged board of education's determination that student was not the victim of acts of HIB. - Parent alleged that daughter was bullied based on her diagnosis of Autism Spectrum Disorder and Selective Mutism. - Alleged acts of HIB included grabbing the student by her shoulder, grabbing her phone, preventing her from entering gym class and blocking her from going in her locker. 	<ul style="list-style-type: none"> - ALJ determined that matter was moot as student and all alleged perpetrators have graduated from the district schools. - Commissioner disagreed. <ul style="list-style-type: none"> o The fact that students have graduated is not relevant to whether the alleged conduct constituted HIB. o Parent's challenge to the HIB investigation, and the district's finding that the alleged conduct did not rise to the level of HIB has not been addressed. - Matter is remanded to the OAL for further proceedings to resolve the underlying claim on the merits.
<p><u>M.R. o/b/o M.R. v. Bd. of Ed. of the Ramapo Indian Hills Regional High School District</u>, EDU 05308-16, Initial Decision (November 7, 2016), aff'd with modification Commissioner (December 21, 2016)</p>	<ul style="list-style-type: none"> - Coach HIB Claim - Lack of Distinguishing Characteristic 	<ul style="list-style-type: none"> - Cheerleading coach responded with a "strong bullying tone" after he received a text message from student on the afternoon of a scheduled basketball game that she could not attend the game because her friends had planned a holiday part for that night. - The student and three other cheerleaders were initially thrown off the team but were reinstated following the launch of an HIB investigation. - The student alleged that the coach's behavior towards her and the other three girls at half time of the next game made her feel singled out and fearful that she was becoming a target and that the cheerleading team had become a hostile environment. - The board found no evidence that the action of the coach were motivated by any actual or perceived characteristic; <ul style="list-style-type: none"> o Finding that no act of HIB 	<ul style="list-style-type: none"> - Commissioner and ALJ agreed that board of education determination that student was not a victim of HIB was not arbitrary, capricious or unreasonable.

		occurred.	
<p><u>J.L. o/b/o A.L. v. Bd. of Ed. of the Bridgewater-Raritan Regional School District</u>, EDU 11604-15, Initial Decision (October 24, 2016) aff'd in part, reversed in part Commissioner (December 9, 2016)</p>	<ul style="list-style-type: none"> - SD Procedural Errors - Arbitrary & Capricious Finding 	<p style="text-align: center;">-</p> <ul style="list-style-type: none"> - Board of education determined that seven year old student committed an act of HIB when she, as one of several girls on the school bus, made fun of a classmate because of her speech disability. - Recommended action included a verbal reprimand, telephoning the parents, changed bus seating. - Parent sought reversal of HIB determination and removal of any reference to incident from student's record. 	<ul style="list-style-type: none"> - ALJ determined that board committed three procedural errors making the HIB determination arbitrary and capricious. - ALJ ordered that HIB determination be reversed and all reference to HIB be removed from the student's record. - The three procedural errors were: <ul style="list-style-type: none"> • Board failure to issue a written decision affirming, rejecting or modifying the Superintendent's decision. Neither board minutes nor principal's letter constituted a written decision. • Board failure to provide the required information to the parents after the Superintendent report to the board. • Board incorrectly advised the parents that there was a 10 day limitation on requesting an appeal before the board. - ALJ determined that the board's use of a committee to review the HIB matter and subsequently report to the board was a procedurally acceptable practice. - Commissioner agreed that: <ul style="list-style-type: none"> • Board's use of an HIB committee to review the matter and report to the board was an appropriate practice. • Board failed to issue a written decision affirming, rejecting or modifying the Superintendent's decision. Neither board minutes nor principal's letter constituted a written decision. • Board failed to provide required information

			<p>to parents after the Superintendent report to the board. However, given the communication among the parties, failure to include the discipline in the principal's letter was de minimus.</p> <ul style="list-style-type: none"> - Commissioner disagreed with the ALJ on: <ul style="list-style-type: none"> • Advising the parties that there was a 10 day limitation on requesting a hearing was unreasonable given the lack of timelines in the statute. A board set timeline would not violate the parent's due process rights under the Act. • HIB finding should not be reversed. Matter should be remanded for a board of education hearing and a proper written decision.
<p><u>S.J. v. BOE of Plumsted, EDU 405 – Agency Dkt. No. 44-2/16; C.D. (November 22, 2016)</u></p>	<ul style="list-style-type: none"> - Cyberbullying - HIB Investigation Procedure 	<ul style="list-style-type: none"> - In January of 2015, a 10TH Grader was harassed on-line. - SD and Ocean County Prosecutor's Office could not identify any of the responsible parties. - On February 19, 2015 , the SD BOE determined that after its investigation, it had insufficient evidence to substantiate a HIB claim. - The BOE notified the parents in writing on April 20, 2015. - On October 14, 2015, the Petitioner appeared at the BOE meeting and made a statement regarding this incident. - On November 9, 2015, the BOE met with the family to further discuss the matter. Father formally requested an appeal of the findings. - An Appeal Hearing was conducted before the BOE on November 18, 2015. - BOE reiterated that there was insufficient information to ID the responsible party. 	<p><u>HOLDING:</u> Affirmed</p> <ul style="list-style-type: none"> - Petitioner has burden of proof to show that the SD failed to comply with the HIB Act requirements. - SD timely conducted an investigation of the Internet postings: - Interviews of 9 students, the victim and his father. - SD's IT Dept. and Prosecutor's Office could not identify the perpetrator(s). - "Undisputed facts indicate that the BOE complied with all substantive and procedural requirements of the Act. - After both investigations failed to ID the individuals responsible for the Internet postings, the BOE: <ul style="list-style-type: none"> o Prepared a HIB Report o Met with S.J. and his parents to discuss

		<ul style="list-style-type: none"> - BOE advised family to let SD know if additional information became available, and the investigation would be reopened. - Parents appealed. 	<p style="text-align: center;">the investigation”</p> <ul style="list-style-type: none"> - The BOE followed all hearing and appeal protocols in this case. <ul style="list-style-type: none"> o “Among the obligations of a BOE is to respond to a complaint of HIB, and to issue a written decision affirming, rejecting or modifying a superintendent’s decision which the parents/guardians have 90 days to appeal to the Commissioner of Education.” - The SD’s actions in this case were not arbitrary, capricious or unreasonable.
<p><u>Melynk v. Teaneck BOE</u> <u>2:16-CV-00188-MCA-MAH</u> 11/22/16</p>	<ul style="list-style-type: none"> - HIB Claim Against Adult - Adult 1st & 4th Amendment Rights vs. SD Right to Control - <u>Pickering</u> Analysis 	<ul style="list-style-type: none"> - Tenured teacher of Literature and Creative Writing, as part of an approved curriculum for her Creative Writing Class, led a discussion of the essay “Six to Eight Black Men.” - The essay concerns the Dutch holiday tradition of people dressing up the Zwarte Piet character, a black man, who accompanies Santa Claus. - The teacher, who is of Dutch ancestry and still has relatives living in the Netherlands told the class that the tradition still persists, and showed pictures of her relatives dressed in black face. - A black student said he found the picture offensive - Teacher responded that it was a reflection of culture difference and that the Dutch had abolished slavery long before the U.S. - The student reported the events to a teacher, who then told an Administrator. - The ABS conducted an investigation and determined that: 	<ul style="list-style-type: none"> - Teacher sued on 1/12/16 alleging: <ul style="list-style-type: none"> - Violation of her 1st Amendment Right to Free Speech - Violation of her 14th Amendment Rights, challenging that the HIB policy violates Due Process. - The SD filed a Motion to Dismiss the lawsuit - Motion To Dismiss Granted. <p><u>RATIONALE:</u></p> <p><u>1ST Amendment Issues</u></p> <ul style="list-style-type: none"> - The teacher’s in-classroom expression was not protected speech under the 1st Amendment - She was <u>not</u> speaking as a matter of public concern. <ul style="list-style-type: none"> - citing <u>Pickering</u> - “... public employees’ protected speech is limited to circumstances where an employee is speaking as a citizen on a matter of public concern.” - “In a public school context, courts must balance ‘the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer in promoting the efficiency of the public services it performs through

		<ul style="list-style-type: none"> - The picture was reasonably perceived as motivated by race or color; and - It created a hostile environment for the student <p><u>Discipline</u></p> <ul style="list-style-type: none"> - Teacher given a letter wherein she was told that she had violated the HIB Policy. - The consequence for the HIB violation was a written reprimand. - Teacher filed a grievance under the CBA, that went to Arbitration - 1/31/15 – Arbitrator found in favor of teacher and ordered SD to remove the written reprimand from the teacher’s personnel file. - 5/29/15 – NJ Superior Court confirmed the Arbitrator’s decision. 	<p>its employees.” <i>Pickering</i></p> <ul style="list-style-type: none"> - “... courts have found that in-classroom speech made by an educator pursuant as part of a curriculum is not speech on a matter of public concern.” - <i>The teacher’s classroom “was a private forum engaged in the exclusive purpose of educating her students. Public school classrooms, during school hours are typically regarded as non-public forums.”</i> <p><u>14th Amendment Issues</u></p> <ul style="list-style-type: none"> - The HIB Policy is not unreasonably broad or vague, and did not violate the teacher’s rights - “A public high school is free to regulate school-sponsored speech made during the course of regular classroom use.
<p><u>D.K. v. Readington BOE,</u> OAL DKT. NO. EDU 07682-15 (November 11, 2016)</p>	<ul style="list-style-type: none"> - Student Conflict - Substantial Disruption 	<ul style="list-style-type: none"> - Parent of 7th grader made 2 HIB allegations <ul style="list-style-type: none"> - Students on the school bus allegedly referred to the 7th grader as a “know it all”, “smarty pants”, and a “dumb ass Asian”. - While in homeroom, a student told the alleged victim, who was wearing a yellow shirt, that “you’re already yellow, you’re Asian.” - The SD determined that neither incident was HIB because: <ul style="list-style-type: none"> - First Allegation <ul style="list-style-type: none"> • The “smarty pants” and “dumb ass Asian” comments were not substantiated • The “know it all” comment was a student conflict issue regarding comparative abilities in math, and not 	<ul style="list-style-type: none"> - ALJ concluded that the Petitioner failed to meet his burden of proof that the BOE acted in an arbitrary manner in finding that the student was not the target of HIB in either incident. - Commissioner affirmed. <ul style="list-style-type: none"> - Decision noted that the Petitioner failed to meet his burden of proof by a preponderance of the evidence. - After the “yellow” incident, the alleged victim had commented that although the comment may have “ticked him off” at the time, it “was not problematic for my learning experience.”

		<p>motivated by an actual or perceived characteristic</p> <ul style="list-style-type: none"> - Second Allegation <ul style="list-style-type: none"> • Although the comment was motivated by the student's race and color, the incident was found to not have substantially disrupted or interfered with the orderly operations of the school or the rights of students. 	
<p><u>L.S. o/b/o B.S. v. Beverly City Board of Education</u>, 2016 WL 654589, OAL Dkt. No. EDS 8774-16 (October 31, 2016)</p>	<ul style="list-style-type: none"> - Special Education - HIB Considerations in IEP 	<ul style="list-style-type: none"> - Parent filed a due process petition opposing board's IEP for 10 year old student which did not include transportation services. - Student was classified as emotionally disturbed (ED) with Oppositional Defiant Disorder (ODD) with the route to school being approximately one-half mile. - Student was involved in a bullying incident in prior school district. 	<ul style="list-style-type: none"> - ALJ determined that district was not required to provide transportation services as part of the IEP. - Transportation was not a required related service and no indication that it would be necessary to receive FAPE and benefit from the educational program.
<p><u>Dunkley v. BOE of Greater Egg Harbor SD</u>, 2016 WL 6134518 (D.N.J. 2016)(Oct. 20, 2016)</p>	<ul style="list-style-type: none"> - Student 1st Amendment Rights 	<ul style="list-style-type: none"> - HS student claimed 1st Amendment Right Defense after SD suspended him and filed a formal juvenile complaint with the Prosecutor's Office <ul style="list-style-type: none"> - Student made disparaging comments about other students - Out of School YouTube Videos - Out of School Twitter Posts - SD determined HIB 	<ul style="list-style-type: none"> - District Court held that the student's speech constituted HIB, and that the school was required by the Anti-Bullying Act to regulate such speech.
<p><u>L.R. parent and natural guardian of N.R., a minor v. School District of Philadelphia, et. als.</u> Dkt. No 14-4640, 836 F.3d 235 (3rd Cir. 2016) (September 6,</p>	<ul style="list-style-type: none"> - Claim Against Staff - Lack of Supervision 	<ul style="list-style-type: none"> - Parent of kindergarten student brought Sec. 1983 action against school district, school reform commission, and teacher, alleging a violation of student's 14th amendment rights under the state-created danger theory, and 	<ul style="list-style-type: none"> - The United States District Court for the Eastern District of Pennsylvania denied defendants' motion to dismiss. 60 F. Supp. 3d 584. Court of Appeals affirmed, holding: <ol style="list-style-type: none"> 1. Teacher made affirmative use of authority

2016)		specifically that she was sexually assaulted after teacher allowed her to leave classroom with unidentified adult.	<p>that created or increased danger to student.</p> <ol style="list-style-type: none"> 2. Risk of harm presented by releasing student from classroom to unidentified adult was obvious. 3. Risk of harm presented by releasing student from classroom to unidentified adult was so obvious to rise to the level of deliberate indifference. 4. Student and teacher had sufficient relationship to find that student was foreseeable victim. 5. Right at issue, student's right to not be removed from safe environment and placed intone in which it was clear that harm was likely to occur, was clearly established at time of teacher's actions. <p>– Distinguished from <u>Morrow v Blackhawk</u> decision – state created danger in a school setting.</p>
<p><i>In the Matter of Tenure Charges of Howard Smith, Wayne Township BOE</i></p> <p>8/26/16 Arbitrator: Joel M. Weisblatt</p>	– HIB Claim Against Adult	<p>BOE filed Charges of Conduct Unbecoming and Other Just Cause against tenured Physical Education / Health teacher alleging that he engaged in a physical altercation with a high school student during the 2014-15 school year, and a series of incidents during the 2015-16 school year involving charges of HIB of several students.</p> <p><u>SD Allegations</u></p> <p><u>2/18/15 - Locker Room incident</u></p> <ul style="list-style-type: none"> • Video evidence of Teacher yelling and being aggressive with hands in the altercation with the HS student. • Teacher is significantly taller and heavier than the student. 	<p><u>Locker Room Incident</u></p> <p>The video does not support the Teacher's self-defense claim. The Teacher "may have been initially startled, perhaps even provoked, by the confrontation but his response, as caught on video, was quite inappropriate for a teacher; his verbal and physical interaction with the student crossed the line into unacceptable conduct."</p> <p>"Neither party (Teacher and student involved) is relieved of all responsibility however, the Teacher must be held to a somewhat higher standard, responsible to reduce rather than escalate any conflict with students."</p> <p>The discipline agreement the SD and Teacher entered into imposed significant penalties on the teacher for the locker room incident.</p>

- Teacher failed to attempt to de-escalate the situation.
- Just after the incident, video tape shows the Teacher walking through the locker room and bumping the student on the shoulder.

2015-16 "Other Incidents" in 8th grade middle school health class taught by Teacher

- HIB #1
 - Teacher stated "I take shits bigger than you" to a student.
 - Teacher admitted making this comment
 - References the student's small stature
- HIB #2
 - Male student asked a question about vaginal discharge
 - Teacher responded that the male student should know what it is because he has it
 - Comment suggests student is female and/or has an STD
- HIB #3
 - Students were watching a video about anorexia, which included a female removing her sweatshirt to reveal the effects of the disease
 - Teacher told student that "he would never get closer to seeing a naked woman in his lifetime."
- HIB #4
 - Teacher suggested to a 14 year old student that she should be taking birth control pills
 - Comment insinuated to the student that she was sexually active with a

- Shows "both parties perceived that incident to be severe misconduct" by the Teacher
- "Clear notice" to the Teacher that "further Unbecoming Conduct would have severe consequences."

HIB Incidents

- HIB #1 is undisputed occurrence (teacher claims he was being "playful") - Letter of Reprimand
- HIB #2 is believed to have occurred by Arbitrator
 - Credible witness testimony
- HIB #3 not proven to have occurred by SD
- HIB #4 is believed to have occurred by Arbitrator
 - Credible witness testimony
 - "Such a comment is inexcusable as it raises issues of sexual harassment and intimidation to a student in a very vulnerable setting."

Rationale

- SD engaged in Progressive Discipline.
- Teacher was on notice that his behavior was unacceptable.
- "The Teacher's acts of misconduct during the 2015-16 school year are most troubling. They appear to establish a pattern of a loss of control over the need for the teacher to conduct himself within the bounds of reasonable expectations for the position."
- "Efforts at Progressive Discipline did not appear to be effective."

Holding: Sustained. Teacher is Dismissed.

		<p>large number of boys</p> <p><u>Prior Corrective Measures</u></p> <ul style="list-style-type: none"> ○ Suspension without pay ○ Letter of Reprimand ○ Increment Withholding ○ Loss of all coaching assignments ○ Forfeited 30 accumulated sick days ○ Corrective Action Plan ○ Anger Management training <p><u>Teacher Response</u></p> <ul style="list-style-type: none"> ● Self-Defense to 2/18/15 Locker Room claim. ● He has already been disciplined for the locker room and HIB #1 incidents ● Denies the occurrence of HIB #2, #3 and #4 	
<p><u>S.C. o/b/o K.C. v. Bd. of Ed. of the Twp. of Montgomery, EDU 18290-15, Initial Decision (June 29, 2016) aff'd Commissioner (August 11, 2016)</u></p>	<ul style="list-style-type: none"> – Distinguishing Characteristic – Intent of Alleged Aggressor 	<ul style="list-style-type: none"> – Student made verbal communication that victim was anorexic because her eating habits had changed, took the victim's iPod and texted a boy she was dating that she was anorexic. – Victim reported that she was placed in an awkward position of having to explain the message to her boyfriend, felt hurt and cried in the bathroom. 	<ul style="list-style-type: none"> – Commissioner and ALJ agreed that board of education did not act in an arbitrary, capricious or unreasonable manner when it determined that comments made among three female students at lunch constituted an act of HIB. – Comments were reasonably perceived to be motivated by a distinguishing characteristic, a perceived eating disorder, anorexia, which substantially interfered with the victim's rights and had the effect of insulting or demeaning her. – The parents failed to meet their burden of proof. – Argument that finding by anti-bullying specialist that student's intentions were good should preclude HIB finding were not persuasive.
<p><u>L.P. and H.P. o/b/o . BOE of West Morris Reg. HS District, EDU 04462-16, Initial Decision (June 10, 2016), Concurrence</u></p>	<ul style="list-style-type: none"> – Distinguishing Characteristic 	<ul style="list-style-type: none"> – Freshman fencer could not prove that the alleged incidents occurred or constitute acts of HIB <ul style="list-style-type: none"> – Although the circumstances showed a "conflict", it did not rise to the 	<ul style="list-style-type: none"> – Affirmed BOE's determination that a series of alleged acts between Senior and Freshman female fencers did not constitute HIB – BOE's determination was <u>not</u> arbitrary, capricious or against the weight of the evidence.

<p>Commissioner (July 25, 2016)</p>	<ul style="list-style-type: none"> - Student Conflict 	<ul style="list-style-type: none"> level of HIB - Alleged incidents were not corroborated 	<ul style="list-style-type: none"> - <u>A Distinguishing Characteristic is NOT a dispute between students such as:</u> <ul style="list-style-type: none"> - <u>A relationship falling apart between former friends</u> - <u>A fight over a piece of property</u> - <u>Some form of personal vendetta of one against another</u>
<p><u>P.B. and M.B. o/b/o H.B. v. Washington Township Board of Education</u>, 2016 WL 3974370, OAL Dkt. No. EDS 10957-13 (July 14, 2016)</p>	<ul style="list-style-type: none"> - Special Education - HIB Issues as Consideration for Out of District Placement 	<ul style="list-style-type: none"> - Parent filed for due process under the IDEA on behalf of a 10 year old student who was classified eligible for special education and related services as “multiply disabled” (autism and other health impaired). - Parents disagreed on the nature of the disability, whether the district offered FAPE and the placement necessary for the student to benefit from his education. - The parents requested an out of district placement, extended school year and compensatory education. - Case analysis included determination that student was bullied by his peers, but nothing formal was on the record. 	<ul style="list-style-type: none"> - ALJ determined that district failed to provide an appropriate IEP and program for 2012-2013 and 2013-2014. - The IEP was not reasonably calculated to enable student to receive meaningful educational benefit. - District did not offer FAPE in the LRE. - Private placement would be appropriate; two years compensatory education awarded.
<p><u>R.A. v. Hamilton BOE</u>, (Comm. Dec. #)(June 22, 2016)</p>	<ul style="list-style-type: none"> - Distinguishing Characteristic - Student Conflict 	<ul style="list-style-type: none"> - School Board investigated HIB Claim <ul style="list-style-type: none"> - SD determined that the student conflicts were not as a result of a distinguishing characteristic. - Allegations over a two year period included attending a birthday party to which the other girls were not invited, and not attending a baseball game with the name-calling, throwing a blown-up paper bag in her face, glaring stares, stomping and kicking of her lunch bag, kicking it into the 	<ul style="list-style-type: none"> - Commissioner of Education found that the School Board was not arbitrary, capricious, or unreasonable when it found that sporadic student conflicts did not rise to harassment. - “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. This is because a personal breakdown in a relationship between students is a mutual non-power based

		hallway and additional name-calling.	conflict that is not about a characteristic of the targeted student.”
<u>G.C. o/b/o v. BOE of Twp of Montgomery</u> , Commissioner 2016: April 22	– Distinguishing Characteristic	<ul style="list-style-type: none"> – 6th Grader made comments in the cafeteria about his classmate’s vegetarian lifestyle – Comments included: <ul style="list-style-type: none"> – It’s not good to not eat meat – He should eat meat because he’d be smarter and have bigger brains – Vegetarians are idiots – Student determined to have violated HIB Policy <ul style="list-style-type: none"> – Distinguishing Characteristic: Vegetarianism – Comments were verbal communications that substantially interfered with the student-victim’s rights – Comments insulted and demeaned the student-victim – Punishment: 5 lunch-time detentions 	<ul style="list-style-type: none"> – HIB finding upheld <ul style="list-style-type: none"> – BOE did <u>not</u> acted in an arbitrary, capricious or unreasonable manner when it concluded that the student’s comments constituted HIB under the NJ Anti-Bullying Bill of Rights Act.
<u>Bridges v. Scranton Area School District</u> , Dkt. No. 14-4565, 2016 <i>U.S. App. Lexis</i> 4667 (3d Cir., March 14, 2016).	– Claim Against Staff	– African–American elementary student and his parents brought § 1983 action against school district, alleging that district violated Title VI and their substantive due process rights under the Fourteenth Amendment with regard to alleged harassment of student by his peers and teacher.	<ul style="list-style-type: none"> – District court granted school district’s motion for summary judgment. Court of Appeals affirmed holding: <ul style="list-style-type: none"> • district and student did not have special relationship giving rise to duty to protect; • district did not deprive student of his due process rights under state-created danger theory; • alleged harassment by teacher did not violate student's due process rights; • district was not liable under § 1983 for failure to train; and • fact that teacher called student “gabber” could not support Title VI claim.

			<ul style="list-style-type: none"> – Third Circuit determined that school district did not have a duty to provide student with a school free from the bullying of peers and the verbal abuse of his teacher. – State’s failure to protect an individual against private violence does not constitute a violation of due process, absent a “special relationship” or a state-created danger, neither of which exist in a peer harassment allegation. – Neither did the teacher’s abusive verbal comment rise to a level that would “shock the conscience.”
<p><u>C.H. o/b/o M.H v. Salem City Board of Education</u>, 2016 WL 857806 OAL Dkt. No. EDS 01159-16 (March 1, 2016).</p>	<ul style="list-style-type: none"> – Special Education 	<ul style="list-style-type: none"> – BOE placed classified student (SLD) in an alternative interim placement due to terroristic threats alleged to have been made. – As part of the investigation, student was asked if he had ever been bullied in school and responded no. 	<ul style="list-style-type: none"> – Board of education decision to place classified student (SLD) in an alternative interim placement due to terroristic threats alleged to have been made overturned and student returned to placement at Salem City High School. – Board failed to prove any special circumstances for removal of student whose conduct has not been determined to be a result of his disability or that maintaining current placement is substantially likely to result in an injury to himself or others. As part of the investigation, student was asked if he had ever been bullied in school and responded no.
<p><u>V.B., et al v. Flemington-Raritan Regional BOE, et al.</u> (August 3, 2015)</p> <p>New Jersey</p>	<ul style="list-style-type: none"> – Parent Liability – Bully Liability 	<ul style="list-style-type: none"> – Students were bullied at their schools. Parents sued the School Districts. – The School Districts brought in the “Bullies” and their parents as Additional Defendants 	<ul style="list-style-type: none"> – Student bullies and/or the parents can be brought in by SD if particular criteria are met. – In this case, the SD ultimately withdrew their claims against the parents – Some of the students were kept in the case, others were dismissed.
<p><u>Sadloch, et al v. BOE of Twp</u></p>	<ul style="list-style-type: none"> – HIB Claim Against 	<ul style="list-style-type: none"> – Football coaches were accused of HIB for: 	<p><u>HOLDING:</u></p>

<p><u>of Cedar Grove</u>, EDU 00619-14 Initial Decision (March 26, 2015) aff'd Commissioner (June 23, 2015)</p>	<p>Adults / Coach</p> <ul style="list-style-type: none"> - Due Process 	<ul style="list-style-type: none"> - Extra Conditioning - Covering a player's jersey with question marks - Criticizing a player's hair - Referring to student athletes in a negative demeaning manner - ABS investigation determined that the act of covering a player's jersey in question marks constituted HIB - Coaches alleged that the BOE failed to put the rationale for its decision in writing - Coaches received suspensions (1 or 2 games) during the football season. The disciplinary letters did not mention HIB - Football coaches challenged BOE finding of HIB that their conduct constituted HIB 	<ul style="list-style-type: none"> - Coaches win – any documents suggesting they committed an act of HIB are to be expunged from the personnel files <p><u>RATIONALE:</u></p> <ul style="list-style-type: none"> - "Requirement of written information to parents and guardians of students must be held to extend to staff members and volunteers who are implicated in a HIB investigation." - Coaches were never given: <ul style="list-style-type: none"> - An opportunity to appear before the BOE - A written summary of the investigation of the charges - A written decision from the BOE explaining the rationale
<p><u>D.J. v. Morris SD BOE, OAL Dkt. No. EDU 16026-14 Agency Ref. No. 116-5/14 (June 1, 2015)</u></p>	<p>Special Education & HIB</p>	<ul style="list-style-type: none"> - Multiple HIB claims filed against D.J. were deemed to be substantiated. - Manifestation Determination meeting held <ul style="list-style-type: none"> - Determined that D.J.'s violent behavior was NOT a manifestation of her Specific Learning Disability (SLD). - Penalty was Suspension. - Student appealed her suspension and filed for emergent relief seeking an order reversing her school suspension, including her participation in prom and graduation ceremony. 	<ul style="list-style-type: none"> - ALJ concluded that the SD did not act in a manner that was arbitrary, capricious or unreasonable. - Student's Petition dismissed.
<p><u>C.C. o/b/o S.C. v. BOE Twp of Jefferson</u>, EDU 10872-14 Initial Decision (April 6, 2015) aff'd Commissioner (May 12, 2015)</p>	<p>Distinguishing Characteristic</p>	<ul style="list-style-type: none"> - S.C. (student) made comments in front of other students that made G.C. (student) feel bad, sad, scared and insulted <ul style="list-style-type: none"> - Comments included: short, loser, dumb, no good in basketball, will not make it to the NBA, will drop out of high school, will not get into 	<ul style="list-style-type: none"> - The Executive County Superintendent issued a Complaint Investigation Report, determining: <ul style="list-style-type: none"> - The Board approved HIB Policy contained all of the required components - The Board implemented the HIB policies and procedures - Under the HIB policy and Code of Student

		<p>college and will become a drug dealer</p> <ul style="list-style-type: none"> – SD determined the “distinguishing characteristics” to be: height, intelligence and sports proficiency – SD determined that a hostile education environment that interfered with G.C.’s education had been created by S.C. – Punishment: one-half day of in-school suspension and a denial of 3 days recess – S.C.’s guardian filed a complaint with the Morris County DOE. 	<p>Conduct, suspension was within the range of responses allowed</p> <ul style="list-style-type: none"> – The Board’s decisions was <u>not</u> arbitrary, capricious or unreasonable
<p><u>S.C. v. Jefferson Township BOE</u> (Commr. May 12, 2015)</p>	<ul style="list-style-type: none"> – SD’s ability to investigate HIB claims 	<ul style="list-style-type: none"> – Parents claimed their elementary school child was harmed by the HIB investigation by the BOE and certain staff members. – Child received one half-day suspension and was denied 3 recess periods. – Parents claimed SD actions were arbitrary, capricious or unreasonable. – SD argued that it had implemented the approved HIB policies and procedures and that its punishment was appropriate. 	<ul style="list-style-type: none"> – Petition was dismissed <ul style="list-style-type: none"> – The SD’s actions were not arbitrary, capricious or unreasonable. – The finding of HIB and choice of consequence was appropriate.
<p><u>E.R. v. Bridgewater-Raritan BOE</u> (Commr. Nov. 10, 2014)</p>	<ul style="list-style-type: none"> – HIB Investigation – Sexual Harassment 	<ul style="list-style-type: none"> – Parents filed a HIB complaint based on allegations that their 7th grade child had been subjected to repeated acts of sexual harassment by an 8th grade male student – SD did not conduct an investigation until after the parents called the Superintendent – School then conducted an HIB investigation and concluded that HIB did not occur, as the relevant acts were deemed “Adolescent Sexual Curiosity” – Parents appealed the SD’s determination 	<ul style="list-style-type: none"> – The BOE’s HIB determination was arbitrary, capricious and unreasonable. – The facts demonstrated that the BOE disregarded the circumstances and misapplied the Act in determining that HIB did not occur in this matter. – Since the student no longer attends the school, there is no specific relief to apply towards the child, but under these circumstances, the BOE must take appropriate measures, including conducting staff in-service programs, to ensure compliance with the Act. – The Commissioner found that the statutory definition of HIB encompasses sexual harassment where all other elements of the statutory definition

			have been satisfied.
<u>V.B. v. Flemington-Raritan Regional Board of Education and Hunterdon Central Regional Board of Education; Hunterdon Central and Flemington-Raritan Regional v. C.W., J.A., and K.I.</u> , Docket No. HNT-L-95-13 Law Division, Somerset County (Ciccione J.S.C.) (March 12, 2014)	<ul style="list-style-type: none"> - Claims Against Parents 	<ul style="list-style-type: none"> - SD attempted to pursue claims against bullies and their parents for HIB incidents. 	<ul style="list-style-type: none"> - Superior Court judge allows two school districts to pursue claims against alleged bullies and their parents under the Joint Tortfeasor Contribution Law; if the districts were found to be responsible for damages under the Anti-Bullying Bill of Rights Act and the Law Against Discrimination, the parents could be required to contribute to the damages award. - A school board that is sued under the Act for potentially negligent conduct can raise a negligence claim for contribution against parents who are not part of the original suit. - A final determination of liability will depend on the totality of the circumstances, including whether the parents knew of the bullying and if so whether their responses fell within the parameters of protected parent decision-making. - Parents of alleged bullies' motion to dismiss claim was denied. - Board's complaint against parents of bullies dismissed, August 4, 2015 -
<u>J.M. v. Tinton Falls BOE</u> (Commr. Jan. 23, 2014)	<ul style="list-style-type: none"> - Due Process 	<ul style="list-style-type: none"> - Student accused head cheerleader coach of HIB; BOE found no HIB - Coach was relieved of duties during appeal of BOE decision - BOE argued that case was moot; ALJ agreed 	<ul style="list-style-type: none"> - Commissioner Reversed - Parents' appeal should be decided on the merits
<u>In the Matter of the Tenure Hearing of Brigette Geiger and In the Matter of the Tenure Hearing of Sharon Jones</u> , EDU 5974-12 and EDU	<ul style="list-style-type: none"> - Claim Against Staff - Tenure Case 	<ul style="list-style-type: none"> - Two experienced physical education teachers used racial epithets regarding students. 	<ul style="list-style-type: none"> - Appellate Division upheld tenure charges against two experienced physical education teachers for use of racial epithets regarding students. - Denial of counsel during interview, failure to follow

<p>6047-12, Initial Decision (July 8, 2013) aff'd Commissioner (October 7, 2013)</p>			<p>HIB policy not a due process violation.</p> <ul style="list-style-type: none"> – Penalty of dismissal inconsistent with prior decisions. – Matter remanded to determine penalty. <i>In re Tenure Hearing of Geiger</i>, Dkt. No. A-1049-1372, Appellate Division, November 18, 2015 – Pursuant to the direction of the Appellate Division, and based on the precedent that existed at the time of the respondents racially derogatory comments, as well as the mitigating and aggravating factors, teachers shall forfeit the 120 days' salary that has already been withheld pursuant to <u>N.J.S.A. 18A:6-14</u>; shall be suspended for an additional six months without pay; and shall have their increments withheld for two years. – Similar conduct in the future may result in more severe sanctions. Commissioner 2016: June 6.
<p><u>K.T. o/b/o K.H. and T.D. v. Board of Educ. of Deerfield Twp.</u></p> <p>(Comm'r Dec. July 30, 2013)</p>	<ul style="list-style-type: none"> – HIB Claim Against Staff 	<ul style="list-style-type: none"> – Claimed daughter was victim of bullying by teacher – Alleged teacher made African-American kindergarten child eat bagel retrieved from trash can, in front of other students – Board pointed to independent investigation by DCF Institutional Abuse Investigation Unit finding no evidence of abuse; also noted bagel was enclosed in plastic packaging when removed 	<ul style="list-style-type: none"> – Commissioner reversed ALJ's ruling for district; – Found board has duty to investigate independently every allegation of bullying, failed to do so
<p><u>G.A. v. Mansfield BOE</u></p> <p>(Comm. Dec. June 24, 2013)</p>	<ul style="list-style-type: none"> – Distinguishing Characteristic – Due Process 	<ul style="list-style-type: none"> – 6th grader on bus used term "faggot" – Received 4 day suspension 	<ul style="list-style-type: none"> – Upheld HIB finding and penalty
<p><u>R.G.B. v. Ridgewood BOE</u></p>	<ul style="list-style-type: none"> – Distinguishing 	<ul style="list-style-type: none"> – Student called classmate "fat", "fat ass" and 	<ul style="list-style-type: none"> – Upheld HIB finding

<i>(Comm. Dec. June 24, 2013)</i>	Characteristic	"horse";; – 7 th and 8 th grades	
<u><i>J.A.H. o/b/o C.H. v. Board of Ed. of Twp. of Pittsgrove</i></u> <i>(Comm'r Dec. April 25, 2013)</i>	– Imbalance of Power – Lack of Distinguishing Characteristic	– Charges were based on a single incident in February 2012 in which C.H. shoved a piece of crumpled paper down another student's shirt.	– Commissioner for first time overturned a board of ed. decision that a student had engaged in HIB – ALJ and Commissioner both found that incident did not rise to HIB – Noted an ongoing conflict, & lack of any distinguishing characteristic – Also noted lack of ONE-SIDEDNESS – Implies need to identify a POWER IMBALANCE – Pointed to ongoing unresolved conflict between students – Not one-sided as would be required for HIB
<u><i>J.M.C. v. East Brunswick BOE</i></u> <i>(Comm. Dec. Jan. 9, 2013)</i>	– Distinguishing Characteristic	– 6 th grader said another classmate "danced like a girl" – 3 day suspension	– Upheld HIB finding and discipline
<u><i>L.W. v. Toms River Bd. of Ed.</i></u> <i>(2013) - NJ Division on Civil Rights</i>	– SD failure to Act	– Boy who was bullied for years without the district taking all reasonable steps to end the behavior – Crowd of students watching – demeaned L.W. and threatened to commit sexual acts – Threatened L.W., slapped him, whipped him with a silver chain	– Awarded \$116,000; – Damages included pain & suffering, interest, attorney fees, and a fine paid to the state
<u><i>Rosenstein v. Board of Education of the Borough of Ramsey</i></u> , No. L-010993-09 <i>(N.J. Sup. Ct. Law Div. 2012)</i>	– Harassment/Injuries: Physical assault, resulting in paralysis	– A 12 year-old student ended up paralyzed from the waist down soon after a bully punched him so hard in the abdomen that a blood clot formed in one of his major arteries and burst when it reached his spine. – Prior to the incident, the student had	Settlement: \$4.2 million

		<p>complained to school officials about being bullied, writing e-mails to the guidance counselor and assistant principal informing them that the bullying had increased, asking 23 for help to figure out coping mechanisms, and wanting to create a record in the event that the bullying continued.</p> <ul style="list-style-type: none"> – Complications from plaintiff's paralysis, including scoliosis, led to 19 surgeries and a complete spinal fusion. – He nearly died several times. 	
<u>K.L. v. Evesham School District</u> (App. Div. 2011)	<ul style="list-style-type: none"> – Distinguishing Characteristic 	<ul style="list-style-type: none"> – Explained Distinguishing Characteristic is NOT <ul style="list-style-type: none"> ○ <i>"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."</i> 	
Lenape Valley Reg'l Bd. of Ed. (2009)	<ul style="list-style-type: none"> – Race as Distinguishing Characteristic – Failure of School to Act 	<ul style="list-style-type: none"> – Biracial student harassed with racist slurs over the course of several years – School officials did little or nothing to abate the harassment, causing student to suffer emotional injuries – Filed civil rights claims 	<ul style="list-style-type: none"> – Case settled for \$275,000
<u>R.R. v. Shore Regional</u> 1970 decision New Jersey	<ul style="list-style-type: none"> – 24/7 Policy 	<ul style="list-style-type: none"> – Student disciplined for threatening another student with a knife – Incident occurred off school grounds, not at a school event – District determined that victimized student was fearful, caused substantial disruption to 	<ul style="list-style-type: none"> – Established precedent – right to discipline for conduct away from school grounds

		his education – District imposed suspension	
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