



NJ HIB LAW Chart - 2011-2020

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Case Name, Date (most recent first) & Jurisdiction	Issues	Case Summary	Decision & Analysis
<p><u>Janan Wehbeh v. Board of Education of the Township of Verona</u> EDU 10981-18, Initial Decision (December 24, 2019) Commissioner disagrees with ALJ and remands for further proceedings (February 4, 2020)</p>	<p>–</p>	<ul style="list-style-type: none"> – Tenured chemistry teacher appealed BOE’s decision to affirm the results of administration’s HIB investigation regarding teacher’s conversation with students interested in enrolling in Advanced Placement chemistry course. – Teacher’s recommendation was that the student not enroll in the course, but left the decision up to the student; the teacher discouraged the student because of the course’s degree of difficulty and the student’s prior performance in an honors chemistry course taught by the teacher. – Student diagnosed with anxiety and panic disorders and had a 504 plan that assisted her in meeting her educational goals; – HIB investigation summary determined that the petitioner unintentionally engaged in bullying behavior and had no awareness of the potential negative impact on the student. 	<ul style="list-style-type: none"> – ALJ concluded that to establish an occurrence of HIB, the alleged bully’s intent to harm must be demonstrated; an actor cannot “unintentionally” commit an act of HIB; Board determined that petitioner had unintentionally engaged in bullying behavior; the intent required was lacking. – ALJ granted petitioner’s motion for summary decision. – The Commissioner disagreed with the ALJ’s conclusion that an act of HIB cannot be “unintentionally” committed. – Commissioner noted that ALJ found several disputed factual issues, including whether or not teacher should have known under the circumstances that her words, actions or gestures would have the effect of physically or emotionally harming the student.

		<ul style="list-style-type: none"> - BOE affirmed the findings of the investigation. - Parties filed cross motions for summary decision. 	<ul style="list-style-type: none"> - The Commissioner concluded that disputed issues of fact must be resolved before reaching a determination regarding whether the Board’s decision was arbitrary, capricious or unreasonable. - Matter was remanded to the OAL for further proceedings consistent with the Commissioner’s decision. - Many references in the analysis to the Department of Education publication; December 2012 Guidance for Parents on the Anti-Bullying Bill of Rights Act document, both pro and con as to necessary intent. - Department of Education Guidance, while intended to be instructive for the public, does not replace the Commissioner’s decisions as the definitive interpretation of the law. - HIB can occur when the victim reasonably perceives that the action was motivated by a desire to do harm. - Even if the issue were resolved in teacher’s favor with a finding that a reasonable person would not have known that her action would emotionally harm the student, a finding of HIB could still be supported if either of the other two criteria – that the act had the effect of insulting or demeaning the student or that it created a hostile educational environment for the student – was proven.
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<p><u>J.B. o/b/o R.B. v. Bd. Of Ed. of the Bergen County Vocational Technical School District</u>, EDU 10790-19, Initial Decision (November 12, 2019) Commissioner remands for further proceedings (December 17, 2019)</p>	<p>–</p>	<ul style="list-style-type: none"> – Parent filed a petition alleging that the board failed to make accommodations for his daughter’s religious observance in violation of board policy. Parents also alleged that guidance counselor’s comment, “What’s more important to you, your religion or your schoolwork?” constituted an act of HIB. – Parent advised that the board did not investigate his complaint on 8/6/18. – Parent filed petition 7/16/19. 	<ul style="list-style-type: none"> – ALJ determined that parent filed petition 7/16/19, well past the 90 day filing deadline. ALJ found filing to be untimely and dismissed the complaint. – The Commissioner disagreed, concluding that record did not contain sufficient evidence to make a decision. Reversed and remanded. – Commissioner remands to OAL for further proceedings, concluding that the record did not contain sufficient information to render a decision. Necessary letters are not part of the record and identities of some of the parties making decisions are inconsistent and unclear. Unclear whether the board issued a decision.
<p><u>C.S. o/b/o minor child J.S. v. Board of Education of the Township of Lacey</u> EDU 03693-15, Initial Decision (September 5, 2019) Commissioner concurs and adopts, (October 16, 2019)</p>	<p>–</p>	<ul style="list-style-type: none"> – Petitioner, now an adult, appealed BOE determination that she committed an act of HIB when she reacted to a fellow student’s vocal performance in music class by plugging her ears and allegedly saying “I’m going to need ear plugs to get through this part of the concert.” Petitioner claimed that she had trouble with noise hypersensitivity, and that her actions had nothing to do with the other student. – Board contended that it had properly conducted an HIB investigation and based its finding on two potential distinguishing characteristics; sexual orientation and status as a “weaker and more vulnerable female.” Students had a past personal relationship with “some form of undetailed intimate characteristics.” Record replete with the ups and downs of the girls’ relationship. – Parties filed opposing motions for summary decision. 	<ul style="list-style-type: none"> – Commissioner concurs with ALJ determination that alleged conduct – plugging her ears and making gestures about needing earplugs while another student was singing a solo in music class – did not meet the statutory definition of HIB. Alleged conduct appears to stem from the students’ past relationship and was not motivated by any actual or perceived distinguishing characteristic. – Board set forth two potential distinguishing characteristics; perceived sexual orientation and weaker and more vulnerable female. Insufficient evidence presented. Nothing in conduct during chorus class raised the issue of sexual orientation or “a perception related to a sexual characteristic”, nor were the alleged words and/or actions related to the “perceived status of a weaker and emotionally vulnerable female.” – Board determination that an act of HIB occurred is reversed.

			<ul style="list-style-type: none"> – “harmful or demeaning conduct motivated only by 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.” – No legal authority to recover monetary damages in this forum.
<p><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)</p> <p>Appellate Division affirms. Dkt. No. A 5074-17T3 October 15, 2019</p>	<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"> ○ Pulling her papers from her in front of the class to check her work and test scores and ○ 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. – The Commissioner and ALJ agreed that the board of education determination that the 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. – October 15, 2019 – Appellate Division affirms Commissioner. Petitioner did not overcome the

			<p>presumptive validity of the Commissioner’s final decision. Did not establish that the board’s determination was arbitrary, unreasonable or capricious. Insufficient facts to support the conclusion that the teacher's actions were motivated by student’s ADHD or other personal characteristics. Even if the court were to presume that teacher was insensitive or even unkind, no evidence that it was prompted by any actual or perceived characteristic.</p>
<p><u>K.P. o/b/o I.M. v. Bd. of Ed. of Twp. of Saddle Brook</u>, EDU 04624, Initial Decision (July 24, 2019), Commissioner concurs and adopts (September 5, 2019)</p>	–	<ul style="list-style-type: none"> – Parent filed an HIB complaint alleging that a student told her daughter that she was “ugly and [a] bad dancer.” – Principal made preliminary determination that matter, as alleged, did not constitute HIB. Board did not conduct a full HIB investigation. – Parent filed an appeal, asserting that her daughter had been the victim of HIB and that the Board failed to conduct the investigation required under the Act. – Board contended that no investigation was conducted because the allegations, even if true, did not constitute a violation of the Act. The Board filed a motion for summary judgment. 	<ul style="list-style-type: none"> – The Commissioner agreed with ALJ that BOE was not arbitrary, capricious or unreasonable in making a preliminary determination that alleged conduct did not meet the statutory definition of HIB. Board did not conduct an HIB investigation. – Board policy set forth a process by which to make a preliminary determination prior to launching into a full HIB investigation, as per administrative code. (See HIB code amendments - 7/1/18) Board followed its process. – Parent did not allege that I.M. had a distinguishing characteristic, that the comments were motivated by a distinguishing characteristic or that the alleged statement substantially disrupted or interfered with the orderly operations of the school.
<p><u>Tamaika DeFalco v. Bd. Of Ed. of Twp. of Hamilton</u>, EDU 2365-18, Initial Decision (June 25, 2019), Commissioner concurs and adopts, (July 26, 2019)</p>	–	<ul style="list-style-type: none"> – Tenured Spanish teacher appealed BOE’s determination that she had committed an act of HIB upon a special education student in her class. – BOE determined that teacher committed an act of HIB when, in the presence of other 	<ul style="list-style-type: none"> – The Commissioner concurred with ALJ's determination that the teacher's allegations were without merit. – BOE determination that teacher committed an act of HIB when she, in the presence of other students, directed a classified student to visit the child study

		<p>students and an in-class aide, she inappropriately directed the classified student to visit the child study team or guidance office if he was unable or unwilling to perform work in her class.</p> <ul style="list-style-type: none"> – Discipline - Letter in teacher’s file, remedial training on HIB, building positive relationships in the classroom. – Teacher requested that the Commissioner enter an order vacating the Board’s determination of HIB. – Board contended that it had complied with the ABRA and that its actions were not arbitrary, capricious or unreasonable. – Board filed a motion for a summary decision, which was opposed by the teacher. 	<p>team, caseworker, guidance office or In-School Alternative Program if student were unable or unwilling to work in class was not arbitrary, capricious or unreasonable.</p> <ul style="list-style-type: none"> – Statements pointed out the classified student’s mental or sensory disability, placed the student in reasonable fear of emotional harm, insulted and demeaned him and created a hostile educational environment. – Staff members accused of committing an act of HIB have the same due process and hearing rights provided to parents and guardians of students. – ABRA does not require a trial-type adversarial proceeding; provisions for discovery, cross-examination could have been included by the Legislature but were not. May hear from the ABS. – Arbitrary and capricious standards apply to staff as well as students. Teacher had argued over the preponderance of evidence.
<p><u>Ruth Young-Edri v. Bd. Of Ed. of City of Elizabeth</u>, EDU 17812-18, Initial Decision (May 30, 2019) Commissioner concurs, (July 8/ 2019)</p>	<p>–</p>	<ul style="list-style-type: none"> – Teacher alleged that BOE failed to comply with the due process requirements of the ABRA when it determined that she had committed an act of HIB upon a student in her class. – Teacher requested that the charges against her be dismissed, or – in the alternative – remanded to the BOE for full due process including a hearing. – Petitioner filed a motion for summary decision, which was opposed by the Board. 	<ul style="list-style-type: none"> – Commissioner agrees with ALJ that BOE failed to comply with the due process protections of the ABRA when it determined that a teacher had committed an act of HIB against a student in her class. Matter remanded to BOE for full due process. – Teacher not provided with written summary of the investigation within 5 days, investigation results not shared with CSA, no CSA decision, no BOE decision – Staff members accused of committing an act of HIB are entitled to the same due process guaranteed to students.

			<ul style="list-style-type: none"> – ALJ - Staff member entitled to information as set forth in <i>J.L. v. Bridgewater BOE</i>, No. A-22022-16 (App. Div. 10/16/18) – ALJ – ABRA does not require a full adversarial hearing; executive session, may hear from the ABS. Full adversarial hearing – appeal to Commissioner –
<p><u>M.S. and N.S. o/b/o J.S. v. Bd. Of Ed. of Twp. of Hainesport</u> EDU 08878-16, Initial Decision (March 28, 2019) adopted by Commissioner (June 18, 2019)</p>	<p>–</p>	<ul style="list-style-type: none"> – Parents challenged BOE determination that their daughter committed an act of HIB against an elementary school classmate. – Parents sought determination that BOE decision was arbitrary, capricious or unreasonable, and requested the removal of the HIB finding from daughter’s student records. – Board contended that its actions were in compliance with the requirements of the ABRA, and that the HIB investigation was conducted properly. The parties filed cross motions for summary decision. 	<ul style="list-style-type: none"> – The Commissioner agreed with ALJ that BOE finding of HIB was not arbitrary, capricious or unreasonable. – While conduct was part of a long-standing and ongoing conflict, the student told the victim in front of members of his class, that he was weak, a weakling, commented on his athletic ability, and told the victim that “you can’t catch, you suck.” – Comments were motivated by the distinguishing characteristic of being weak, were demeaning and caused embarrassment to the victim. Adjudicated bully was given a one day in-school suspension; schedule was adjusted to limit contact with the victim. – “Commissioner emphasizes that overturning a BOE’s finding of HIB presents a high hurdle, requiring clear evidence that the board acted indiscriminately or in bad faith in reaching its determination.” – ALJ – “While some finder of fact might conclude otherwise, where there is more than one reasonable way to understand a set of facts, it cannot be said that the choice of one reasonable interpretation over the other...amounts to an unreasonable choice.”

<p><u>Fischetti and Becht v. South Orange – Maplewood BOE, ... and Randy Nathan</u>, 2019 WL 2293432 App. Div., Dkt. No. A-0778-18T2, (May 29, 2019)</p> <p>On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-4755-17 (August 17, 2018)</p>	<p>–</p>	<ul style="list-style-type: none"> – Plaintiffs, former baseball coaches at Columbia High School in Maplewood, alleged that Randy Nathan, the father of a former player, maliciously filed and pursued an HIB complaint against them. – Plaintiffs assert that Nathan defamed them by spreading malicious rumors about their style of coaching the baseball team. Nathan is entitled to defend these allegations by showing statements deemed defamatory were true or believed to be true, potentially subverting an element of defamation. – Plaintiffs were named defendants in another lawsuit brought by a former player, David DeFranco, alleging violations of the ABRA. During discovery in this litigation, racially and religiously insensitive text messages exchanged by plaintiff were recovered from their personal phones. Through subpoena, Nathan sought these messages for use in this litigation. 	<ul style="list-style-type: none"> – App. Div. affirms trial court denial of motion to quash subpoena served by Randy Nathan; sought alleged racially and religiously insensitive text messages exchanged by plaintiff; part of other settled litigation. Judge did not abuse her discretion. – Text messages highly relevant to the litigation, may lead to other admissible evidence, may show statements deemed defamatory are true or believed to be true, style of baseball coaching, may be relevant to plaintiffs’ credibility.
<p><u>L.K. and T.K. o/b/o A.K. v. Bd. Of Ed. of Twp. of Mansfield</u> – EDU 07067-16, Initial Decision (January 22, 2019) reversed, Commissioner (April 22, 2019)</p>	<p>–</p>	<ul style="list-style-type: none"> – Petitioners challenged the determination of the respondent Board that their daughter committed an act of HIB against an elementary school classmate. – Petitioners sought a determination that the Board’s decision was arbitrary, capricious or 	<ul style="list-style-type: none"> – The Commissioner determined that BOE finding of HIB was not arbitrary, capricious or unreasonable. Student repeatedly questioned 7 year old student re: name, hair, clothing student wore. Victim identified as a male in the previous year and was now identified as a female. Student was repeatedly

		<p>unreasonable, and requested the removal of the HIB finding from their daughter’s student records.</p> <ul style="list-style-type: none"> – Board contended that its actions were in compliance with the requirements of the Act, and that the HIB investigation was conducted properly. The parties filed cross motions for summary decision. 	<p>counseled that the behavior was not appropriate and was unacceptable but continued behavior. Student received counseling and one recess detention.</p> <ul style="list-style-type: none"> – Conduct was motivated by victim’s gender identity and expression, took place on school bus and school grounds, and interfered with victim’s rights and rights of other students. – Victim did not want to ride on the same bus with the student. Behavior was demeaning, caused emotional harm and created a hostile educational environment. <p>ALJ initially determined:</p> <ul style="list-style-type: none"> – CSA did not provide parents with timely, appropriate information regarding the investigation, – Investigation was neither thorough nor complete, as required by the Board policy, and caused the Board to make a decision based on incomplete and questionable facts. – CSA advised the board that age was not a relevant factor, an incorrect statement of the law. BOE determination was based on faulty information, making its finding arbitrary and capricious. <p>The Commissioner disagreed and dismissed the petition.</p>
<p><u>Robert Taylor o/b/o H.T. v. Metuchen Public School District</u> – 2019 WL 1418124 U.S. District Court of New Jersey Civil Action No. 18-cv-1842 (D.N.J. (March 28, 2019)</p>	<p>–</p>	<ul style="list-style-type: none"> – Parents filed complaints alleging various state and federal civil rights claims stemming from an HIB finding regarding 3rd grade students who encouraged posting of caricature of student sweatshirt incident on Facebook. 	<ul style="list-style-type: none"> – District Court dismisses parent’s complaint alleging various state and federal civil rights claims stemming from an HIB finding regarding 3rd grade student who encouraged posting of caricature of student sweatshirt incident on Facebook.

		<ul style="list-style-type: none"> - Student served recess detention and issued an apology. - Board affirmed HIB finding, hearing held before the board, parent appealed to Commissioner, withdrew appeal, filed federal lawsuit. 	<ul style="list-style-type: none"> - No denial of procedural due process, no deprived educational opportunities or reputational liberty interests. - No denial of substantive due process; fundamental right to a public education. - No deprivation of freedom of speech rights; encouraging publication of caricature resulted in substantial and material disruption to the work and discipline of the school. ABRA - No civil rights conspiracy; no supporting facts pleaded. - No deprivation of any right or privilege.
<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> <p>Affirmed. Appellate Division Dkt. No. A2022-16T1 October 16, 2018</p> <p>Petition for certification denied. New Jersey Supreme Court, March 8, 2019</p>	<ul style="list-style-type: none"> - SD Procedural Errors - Arbitrary & Capricious Finding 	<ul style="list-style-type: none"> - Board of education determined that a 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, and changing bus seating. - Parents 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 the 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 the principal's letter constituted a written decision. ● Board failure to provide the required information to the parents after the Superintendent reports to the board. ● Board incorrectly advised the parents that there was a 10 day limitation on requesting an appeal before the board.

			<ul style="list-style-type: none"> – 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 the principal’s letter constituted a written decision. ● Board failed to provide required information to parents after the Superintendent reported to the board. However, given the communication among the parties, failure to include the discipline in the principal’s letter was de minimis. – 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>October 16, 2018 – Appellate Division reverses and remands</p> <p>Commissioner decision to remand the matter back to the board for a full and proper hearing to assess whether an act of HIB occurred is consistent with the</p>
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			<p>legislative intent and is not arbitrary, capricious or unreasonable. A remand proceeding will satisfy the Act's requirement and implement the procedural safeguards contemplated by the Act.</p> <p>Prior to the remand hearing, the Board shall provide petitioner with the full record of the HIB allegations including the underlying investigative report, any additional written reports or summaries and the letter from the parents to the superintendent. Only upon the receipt of a complete record can the board satisfy the requirements of <i>N.J.S.A. 18A:37-15(b)(6)(a)</i> to - <i>15(b)(6)(f)</i>.</p> <p>A remand to the board to develop a complete and thorough record is the proper remedy in this case.</p> <p>8, 2019 - Petition for certification denied. New Jersey Supreme Court</p>
<p><u>B.E. o/b/o minor child F.E. v. Bd. of Ed. of the Twp. of Piscataway</u> – EDU 11838-18, Initial Decision (November 20, 2018) reversed and remanded for a hearing, Commissioner January 4, 2019</p>	<p>–</p>	<ul style="list-style-type: none"> – Petitioner appealed the decision of the Board to suspend students for one year based upon incidents that included cyberbullying and disruption of school activities. – Prior to the commencement of the 2018-2019 school year, petitioner withdrew student from Piscataway High School (PHS) and enrolled him in a private school in Edison, New Jersey. – Board filed a motion to dismiss the petition for lack of jurisdiction. Petitioner claimed that he retained standing to challenge the findings of the Board and the discipline imposed, notwithstanding the decision to enroll students in a private school. Board contended that once a student was 	<ul style="list-style-type: none"> – Commissioner reverses ALJ and remands for an OAL hearing. – The Commissioner has jurisdiction to hear a challenge to a one year suspension based on cyberbullying and disruption of school activities even after parents had withdrawn students from the school district. – Parents had withdrawn student from Piscataway and enrolled student in private school in Edison; challenged the long term suspension – The Board argued that once a parent withdraws a student, the Commissioner has no jurisdiction. ALJ agreed – The Commissioner remanded to OAL for a hearing. Commissioner

		<p>disenrolled, the Commissioner and the Office of Administrative Law lost jurisdiction over this matter.</p> <ul style="list-style-type: none"> – Parents sought review of the merits of the Board’s decision which resulted in student’s suspension. 	
<p><u>Fable v. Doros and Heller</u> 2018 WL 6816385 App. Div. Dkt. No. A-2576-17T4, (December 28, 2018)</p> <p>On appeal from Superior Court of New Jersey, Bergen County, Dkt. No. L-7258-16 (June 20, 2017)</p>	–	<ul style="list-style-type: none"> – Board member filed complaint, asserting defamation and tortious interference with prospective economic and business relations. Allegations focused on defendants’ statements and conduct in September 2013 regarding plaintiff’s views on the random drug testing of students. – Board member supported random drug testing in Northern Valley Reg. BOE. Accused of violating the School Ethics Act and publicly shaming students. – Petitions and fliers opposing her re-election to the BOE encouraged students to file HIB complaints against her. No HIB violations found. 	<ul style="list-style-type: none"> – Appellate Division affirms Law Division order (6/20/17) dismissing complaint; defamation, tortious interference, intentional and negligent infliction of emotional distress. – Defamation claims properly dismissed as conduct complained about was barred by the one year statute of limitations on defamation claims. <i>N.J.S.A. 2A:14</i>
<p><u>A.J. o/b/o D.J. and W.G. o/b/o J.M. v. Bd. of Ed. of Pinelands Reg. Sch. Dist.</u> – EDU 07634-15, Initial Decision (November 16, 2018) concurred, Commissioner (December 17, 2018)</p>	–	<ul style="list-style-type: none"> – Parents challenged board determination that their sons, D.J. and J.M., committed acts of HIB against a middle school classmate. D.J and J.M. targeted victim with derogatory language and comments, (d...-sucker, queer, gay, “p-word”, bitch, a..hole, etc.) causing changes in victim’s demeanor, lowering of his grades, social isolation, increased absenteeism and withdrawal from the gifted class which all three students attended. 	<ul style="list-style-type: none"> – Commissioner concurred with ALJ findings and conclusions that that BOE finding of HIB was not arbitrary, capricious or unreasonable. – Board acted within the scope of its authority, properly conducted a HIB investigation, followed the statutory requirements and its policy and reached a rational, evidence-based determination.

		<ul style="list-style-type: none"> – Board initiated an HIB investigation after a complaint from student witnesses. 	
<p><u>D.B. by C.B. and C.B. individually v. Jersey City Bd. Of Ed.</u> – 2018 WL 6424126, App. Div. Dkt. No. A-2095-17T2, 12/7/18</p> <p>On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Dkt. No. L-3334-16</p>	–	<ul style="list-style-type: none"> – Allegations that child was subjected to bullying, harassment and discriminatory treatment by school district. – Count 1 - Sought judgment under ABRA. – Count 2 – Sought judgment for age discrimination under the New Jersey Law Against Discrimination (NJLAD) 	<ul style="list-style-type: none"> – App. Div. affirms Law Division order dismissing complaint; remand to allow filing of amended complaint. – No private right of action under the ABRA; – The Commissioner has jurisdiction to hear complaints under the ABRA. – No showing of age discrimination
<p><u>N.M. o/b/o H.M. v. Bd. Of Ed. of School District of the Chathams</u> EDU 17732-17, Initial Decision (October 16, 2018) aff'd and modified Comm. 11/29/18</p>		<p>Board of Education found that no HIB occurred in 3 of 4 alleged incidents of HIB</p> <p>“Cookies can make you fatter than you are” – not HIB, lack of evidence “Everyone should leave the community pool” – not HIB “Your father never loved you” - HIB</p> <p>Student made derogatory comments about student’s deceased father in video chat and told student “You’re f...ing stupid” – board found no HIB, ALJ concurred, Commissioner reversed and modified; met the definition of HIB. Student’s known status as a special education student was a distinguishing characteristic; insulted, demeaned, caused anxiety, depression that resulted in home instruction.</p>	<ul style="list-style-type: none"> – Commissioner concurred with ALJ determination that BOE finding of no HIB in 3 of 4 incidents was not arbitrary, capricious or unreasonable. Commissioner modified ALJ decision; HIB was substantiated in 5th incident. – “Cookies can make you fatter than you are” – not HIB, lack of evidence – “Everyone should leave the community pool” – not HIB – “Your father never loved you” - HIB – Incident in which student made derogatory comments about student’s deceased father in video chat and told student “You’re f...ing stupid” met the definition of HIB. – Student’s known status as a special education student was a distinguishing characteristic; insulted,

			demeaned, caused anxiety, depression that resulted in home instruction.
<p><u>W.D. and J.D o/b/o G.D. v. Bd. Of Ed. of Twp. of Jefferson</u>, EDU 10587-17, Initial Decision (July 13, 2018) aff'd. Commissioner (November 26, 2018)</p>		<ul style="list-style-type: none"> – Board determined that students were mutually engaged in conflict. – Matter involved online exchange among a group of fifth grade female friends; extraordinarily offensive and vile language towards each other; egregious words, sexual references, use of the “N word”. Girls, including the victim, viewed it as “pranking”. – No showing of substantial disruption or interference with student’s rights or academic program – Parents argued that use of the “N word” in and of itself should constitute HIB. 	<ul style="list-style-type: none"> – The Commissioner agreed with the administrative law judge that BOE finding of no HIB was not arbitrary, capricious or unreasonable. Board determined that students were mutually engaged in conflict. – The evidence in the record did not support the petitioners’ position that G.D.’s rights were substantially disrupted, and the Commissioner was unpersuaded by petitioners’ arguments pertaining to the same. When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was “patently arbitrary, without rational basis or induced by improper motives.” Furthermore, “where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration”; the Commissioner will not therefore substitute his judgment for that of the board.
<p><u>L.P. and H.P. o/b/o . BOE of West Morris Reg. HS District</u>, EDU 04462-16, Initial Decision (June 10, 2016), Concurrence Commissioner (July 25, 2016)</p> <p>Affirmed.</p>	<ul style="list-style-type: none"> – Distinguishing Characteristic – Student Conflict 	<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 level of HIB – Alleged incidents were not corroborated 	<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. – <i><u>A Distinguishing Characteristic is NOT a dispute between students such as:</u></i>

<p>Appellate Division Dkt. No. A0161-16T4 August 15, 2018</p>			<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>August 15, 2018 – Affirmed substantially for the reasons set forth in the Commissioner’s opinion. Sufficient credible evidence in the record to support the Commissioner and ALJ decisions. Commissioner decision not arbitrary capricious or unreasonable. Record is devoid of any evidence that the acts of HIB alleged constituted HIB or were motivated by a distinguishing characteristic, actual, perceived or reasonably perceived.</p>
<p><u>J.G. o/b/o K.C. v. Hackettstown Public School District</u>, Civil Action No. 18-cv-2365 (PGS) (DEA) U.S. District Court (D.N.J., 8/08/18)</p>		<p>The Board of Education found that student committed an “unintentional HIB offense” when she used the term “pig” in referring to a police officer role in class. Student served a one day in-school suspension.</p> <p>HIB violation did not appeal to the Commissioner. Parent filed a suit in federal court.</p>	<p>School district’s motion to dismiss denied in matter involving HS student’s claims that she was discriminated against and her constitutional rights were violated when she was suspended for bullying.</p> <ul style="list-style-type: none"> – While claims related to bullying investigation, they arose under a federal statute, state law, U.S. and N.J. Constitutions, not “under the school laws” of N.J. No failure to exhaust administrative remedies. – “Pig” comment may constitute protected speech that was allegedly wrongfully infringed – Racially charged language by school administrator “light enough skin to pass”, the “N” word, etc., in front of and directed towards student, may have created a hostile school environment. – Homophobic slurs (“fag”) toward student by school administrator may have created a hostile environment under the NJLAD, discriminated against student based on sexual orientation.

<p><u>R.N. v. Board of Education of the South Orange-Maplewood School District, Essex County</u> EDU 09346-16 Initial Decision (May 11, 2018) rev'd and remanded Commissioner (June 22, 2018)</p>	<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 baseball coaches against his son A.N. – 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. 	<ul style="list-style-type: none"> – ALJ determined that petitioner failed to assert claims on his behalf and only sought relief for alleged violations of the ABBR against his now adult son. – 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. 	<ul style="list-style-type: none"> – The Commissioner rejected the decision of the ALJ which remanded matter to the board to prepare a written decision. – ALJ determined that a letter from board attorney did not constitute a written decision; an “irreparable” procedural defect. – The 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>. – The 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

		<ul style="list-style-type: none"> - Some of the measures were realized, but in the meantime B.Y. transferred to another school. 	<p>board's ultimate HIB determination was arbitrary, capricious or unreasonable.</p>
<p><u>J.B. o/b/o minor child M.B. v. Board of Education of the Borough of Haddonfield, Camden County, EDU 04045-16 Initial Decision (April 20, 2018), adopted as modified Commissioner (June 4, 2018)</u></p>	<ul style="list-style-type: none"> - Cyberbullying - SD Failure to Follow HIB Required Process - BOE Did Not Issue a Decision 	<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 website, "Bitch skanky hoe bag." - 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"> - 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.

		<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. <p>– 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 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.</p>	
<p><u>Gibble v. Hunterdon Central Reg'l SD</u></p> <p><u>S.G. v. Bd. Of Ed. of Hunterdon Regional School District</u>, 2018 WL 1095324, Appellate Division Dkt. No. A-5199-15T3, Decided March 1, 2018</p> <p>Certification denied, New Jersey Supreme Court, June 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 	<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>witnesses before the BOE regarding the HIB claim.</p> <ul style="list-style-type: none"> ● Coach lost his coaching position. <p>– SD Claims-</p> <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 the same). – The Coach did not attend the meeting. 	<p>7/13/16 - Commissioner concurred with the ALJ finding that staff members accused of HIB are entitled to Due 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>– 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> <p>– New Jersey Supreme Court denies petition for certification.</p> <p>18 – Board of education, on remand, holds two (2) days of hearings. After the conclusion of hearing, the board of education reverses itself and finds no HIB violation by coach.</p>
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<p><u>L.B. o/b/o J.B. v. Roselle Board of Education 2018 WL 2016647 OAL Dkt. No. EDS 05079-16 (April 13, 2018)</u></p>	<ul style="list-style-type: none"> - Special Education - HIB Considerations in Placement / Plan - Student Medical Expert Determinations re: Alleged Bullying Incidents 	<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 disturbed as he developed fears associated with school over a period of time to the extent that he was unable to attend school. - 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. 	<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 School in Somerset, including transportation, and was awarded one school year plus six months of compensatory education.
<p><u>S.R. and M.R. o/b/o J.R. v. Franklin Township Board of Education 2018 WL 2016648, OAL Dkt. No. EDS 9122-17 (April 9, 2018)</u></p>	<ul style="list-style-type: none"> - Special Education - HIB in Consideration of Services / Plan 	<ul style="list-style-type: none"> - Matter involved a 13 year old student who was eligible for special education and related services. - Students suffered from autism, generalized anxiety disorder and ADHD. - The Parents 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 plans were appropriate at the start of the year, the school district should have done more. - While the 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.

			<ul style="list-style-type: none"> – 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 the greatest opportunity to interact with his peers. – 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, EDU 14255-16 and EDU 14256-16, Initial Decision (February 12, 2018) concurred and adopted Commissioner (March 29, 2018)</u></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"> o Saying “F-you”, o Made hand gestures which denoted “oral sex”; o Would hold the front of his pants and refer to his genital area as “bananas” and o Would waive his middle finger and make faces. - 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"> - .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 - The Commissioner and ALJ agreed that the 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's 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. 	<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

		<ul style="list-style-type: none"> - C.P. alleged that these acts were acts of HIB with the distinguishing characteristic being L.P.'s IEP. 	<p>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>.</p> <ul style="list-style-type: none"> - 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 IEP. - The petition was dismissed. - The Commissioner and ALJ agreed that the 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"> o Instructing R.E. to retrieve balls that had been thrown into a pond, o Guilting R.E. to miss a family vacation to attend baseball practice, o Threatening to demote R.E. to junior varsity, and o Forcing R.E. to carry his catchers' gear with no intention of letting him play, o Unfair playing time, o Teasing or name-calling, insulting and demeaning comments, o Publicly humiliating a player, 	<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"> o 1) a student; o 2) a "white, healthy male student athlete"; or o 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

		<ul style="list-style-type: none"> ○ Favoritism, ○ Profanity and ○ Being too hard on players. 	<p>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.</p> <ul style="list-style-type: none"> – 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 Division has called “aggressive conduct without identifiable motivation,” conduct that, while inappropriate and undesirable, is not covered by the HIB statute. – 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. – The Commissioner and ALJ agreed that the board of education determination that student was not a victim of HIB was not arbitrary, capricious or unreasonable.
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<p><u>G.A. by L.A. v St. Mary of the Lakes School and the Catholic Diocese of Trenton</u>, 2017 WL 6507730, Appellate Division Dkt. No. A-0638-16T1 (December 20, 2017)</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</u>, EDU 12994-15, EDU 13587-15 Consolidated Initial Decision (October 5, 2017) adopted Commissioner (November 17, 2017)</p>	<ul style="list-style-type: none"> – Claims Against Teachers / Substitute – Distinguishing Characteristic 	<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 staff members, and a substitute teacher. – 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, 	<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. – 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.

		<ul style="list-style-type: none"> - 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"> - 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 N.J.S.A. 18A:37-14. The petition was dismissed. - The Commissioner and ALJ agreed that the 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>	<ul style="list-style-type: none"> - Booster Clubs - Volunteers 	<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. - 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. 	<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 booster club as it was not "staff, school employees, students or volunteers" and granted summary decision to the club. - 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 <i>person</i> 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

			<p>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.</p> <ul style="list-style-type: none"> – 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 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.
<p><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)</p>	<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 the 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.

<p><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)</p>	<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 an 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"> – The Commissioner and ALJ agreed that the 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 rights of other students or the orderly operation of the school. – 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
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			found no basis to reverse the board's decision, concurring with the ALJ.
<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)	<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 the district should not declassify the 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.
<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)	<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 the findings and reported the matter to the board of education. – 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 	<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, 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. – Commissioner and ALJ agreed that petition should be dismissed for failure to file a timely appeal within ninety days.

		<p>she was found guilty of committing an act of HIB.</p> <ul style="list-style-type: none"> – 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><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 specialist, the charter school determined that the incident was a “back and forth” situation and was not HIB. – L.C.’s mother, T.N., did not like the way the investigation was handled and filed a grievance seeking improvement in the 	<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>practices for identifying, investigating and resolving HIB allegations at the charter school.</p> <ul style="list-style-type: none"> – 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 2016-2017 and sparingly during 2015-2016. – Parent and child alleged bullying by peers in middle school and high school but no documentation of alleged bullying existed in student records. 	<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.

		<ul style="list-style-type: none"> - 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>	<ul style="list-style-type: none"> - 	<ul style="list-style-type: none"> - Plaintiffs alleged that they were retaliated against because of their educational advocacy on behalf of D.V., a minor, and that D.V. was the victim of sexual orientation bullying. 	<ul style="list-style-type: none"> - Summary judgment granted to school district. - No evidence that call to DYFS regarding reports of student's uncle showering with student was retaliatory for educational advocacy on behalf of

			<p>autistic student. Good faith report of potential abuse.</p> <ul style="list-style-type: none"> – No evidence that student was subject to severe or pervasive sexual discriminatory mistreatment; only one instance of sexual orientation bullying. – No evidence that other bullying directed to student was caused by his perceived sexual orientation, nor that school district did not act reasonably to end the sexual orientation harassment. Only one sexual orientation bullying incident in class. – School district not liable for sex discrimination under Title IX. No evidence that school district was deliberately indifferent to student's complaints of bullying.
<p><u>C.K. and M.K. o/b/o M.K. v. Bd. of Ed. of the Twp. of Voorhees</u>, EDU 20510-10, Initial Decision () adopted as modified, Commissioner (March 23, 2017)</p>	<ul style="list-style-type: none"> – Lack of Perceived Characteristic – SD Missed Deadline – Improper Use of "Discretion" by Principal - Lack of BOE policy 	<ul style="list-style-type: none"> – Board of education's determined that special 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. 	<ul style="list-style-type: none"> – Board of education's determination that the acts did not constitute an act of HIB, was not arbitrary, capricious or unreasonable. – No evidence in the record that student's actions, while not appropriate, were motivated by any actual or perceived characteristic. – However, the 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

			<p>criteria in the Act, depends on the HIB policy adopted by the local board of education.</p> <ul style="list-style-type: none"> – 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, 2016), aff’d Commissioner (February 13, 2017)</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. The Commissioner agreed and dismissed the petition.
<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"> ○ The fact that students have graduated is not relevant to whether the alleged conduct constituted HIB. ○ 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.

			<ul style="list-style-type: none"> – 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 a 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"> ○ Finding that no act of HIB occurred. 	<ul style="list-style-type: none"> – The Commissioner and ALJ agreed that the board of education determination that student was not a victim of HIB was not arbitrary, capricious or unreasonable.
<p><u>S.J. v. BOE of Plumsted</u>, EDU 405 – Agency Dkt. No. 44-2/16; Commissioner Decision (November 22, 2016)</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 	<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.

		<p>had insufficient evidence to substantiate a HIB claim.</p> <ul style="list-style-type: none"> – 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. – BOE advised family to let SD know if additional information became available, and the investigation would be reopened. – Parents appealed. 	<ul style="list-style-type: none"> – 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"> ○ Prepared a HIB Report ○ Met with S.J. and his parents to discuss the investigation” – The BOE followed all hearing and appeal protocols in this case. <ul style="list-style-type: none"> ○ “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 	<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.” 	<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.

	<p>Control - <u>Pickering</u> Analysis</p>	<ul style="list-style-type: none"> - 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: - 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. 	<ul style="list-style-type: none"> - 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 its employees.’ <i>Pickering</i> - <i>“... 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> - <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.
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<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 the 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 motivated by an actual or perceived characteristic - 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. 	<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. - The 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><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 the board's IEP for 10 year old student which did not include transportation services. - Student was classified as emotionally disturbed (ED) with Oppositional Defiant 	<ul style="list-style-type: none"> - ALJ determined that the 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

		<p>Disorder (ODD) with the route to school being approximately one-half mile.</p> <ul style="list-style-type: none"> - Student was involved in a bullying incident in the prior school district. 	<p>receive FAPE and benefit from the educational program.</p>
<p><u>Dunkley v. BOE of Greater Egg Harbor SD, 2016 WL 6134518 (D.N.J. 2016)(Oct. 20, 2016)</u></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. Dkt. No 14-4640, 836 F.3d 235 (3rd Cir. 2016) (September 6, 2016)</u></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 specifically that she was sexually assaulted after teacher allowed her to leave classroom with unidentified adult. 	<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 that created or increased danger to student. 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

			<p>likely to occur, was clearly established at time of teacher's actions.</p> <p>– Distinguished from <u>Morrow v Blackhawk</u> decision – state created danger in a school setting.</p>
<p><u>In the Matter of Tenure Charges of Howard Smith, Wayne Township BOE</u></p> <p>8/26/16 Arbitrator: Joel M. Weisblatt</p>	<p>– HIB Claim Against Adult</p>	<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. ● 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. <p><u>6 "Other Incidents" in 8th grade middle school health class taught by Teacher</u></p> <ul style="list-style-type: none"> ● HIB #1 <ul style="list-style-type: none"> ○ Teacher stated "I take shits bigger than you" to a student. ○ Teacher admitted making this comment 	<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> <ul style="list-style-type: none"> ● 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." <p><u>HIB Incidents</u></p> <ul style="list-style-type: none"> ● HIB #1 is undisputed occurrence (teacher claims he was being "playful") - Letter of Reprimand ● HIB #2 is believed to have occurred by Arbitrator <ul style="list-style-type: none"> ○ Credible witness testimony ● HIB #3 not proven to have occurred by SD ● HIB #4 is believed to have occurred by Arbitrator <ul style="list-style-type: none"> ○ Credible witness testimony

		<ul style="list-style-type: none"> ○ References the student's small stature ● HIB #2 <ul style="list-style-type: none"> ○ 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 <ul style="list-style-type: none"> ○ 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 <ul style="list-style-type: none"> ○ 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 large number of boys <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. 	<ul style="list-style-type: none"> ○ "Such a comment is inexcusable as it raises issues of sexual harassment and intimidation to a student in a very vulnerable setting." <p><u>ale</u></p> <ul style="list-style-type: none"> ● 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." <p> Holding: Sustained. Teacher is Dismissed.</p>
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<p><u>S.C. o/b/o K.C. v. Bd. of Ed. of the Twp. of Montgomery</u>, EDU 18290-15, Initial Decision (June 29, 2016) aff'd Commissioner (August 11, 2016)</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>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>R.A. v. Hamilton BOE, (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 hallway and additional name-calling. 	<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 conflict that is not about a characteristic of the targeted student.”
<p>G.C. o/b/o v. BOE of Twp of Montgomery, Commissioner 2016: April 22</p>	<ul style="list-style-type: none"> - 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.

<p><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).</p>	<p>– Claim Against Staff</p>	<p>– 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.</p>	<p>– District court granted school district’s motion for summary judgment. Court of Appeals affirmed holding:</p> <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. <p>– 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.</p> <p>– 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.</p> <p>– Neither did the teacher’s abusive verbal comment rise to a level that would “shock the conscience.”</p>
<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>	<p>– Special Education</p>	<p>– BOE placed classified student (SLD) in an alternative interim placement due to terroristic threats alleged to have been made.</p>	<p>– 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.</p>

		<ul style="list-style-type: none"> 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 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 of Cedar Grove, EDU 00619-14</u> Initial Decision (March 26, 2015) aff’d Commissioner (June 23, 2015)</p>	<ul style="list-style-type: none"> HIB Claim Against Adults / Coach Due Process 	<ul style="list-style-type: none"> Football coaches were accused of HIB for: <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 	<p><u>HOLDING:</u></p> <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</u> (June 1, 2015)</p>	<ul style="list-style-type: none"> Special Education & HIB 	<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"> ALJ concluded that the SD did not act in a manner that was arbitrary, capricious or unreasonable. Student’s Petition dismissed.

		<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. 	
<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>	<ul style="list-style-type: none"> - Distinguishing Characteristic 	<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 college and will become a drug dealer - 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. 	<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 Conduct, suspension was within the range of responses allowed - 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. 	<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.

		<ul style="list-style-type: none"> – SD argued that it had implemented the approved HIB policies and procedures and that its punishment was appropriate. 	
<p><u><i>E.R. v. Bridgewater-Raritan BOE</i></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.
<p><u><i>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.</i></u>, Docket No. HNT-L-95-13 Law Division, Somerset County (Ciccione J.S.C.) (March 12, 2014)</p>	<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

			<ul style="list-style-type: none"> 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 6047-12, Initial Decision (July 8, 2013) aff’d Commissioner (October 7, 2013)	<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 HIB policy not a due process violation. – 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.

			<ul style="list-style-type: none"> – Similar conduct in the future may result in more severe sanctions. Commissioner 2016: June 6.
<u>K.T. o/b/o K.H. and T.D. v. Board of Educ. of Deerfield Twp.</u> (Comm’r Dec. July 30, 2013)	<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
<u>G.A. v. Mansfield BOE</u> (Comm. Dec. June 24, 2013)	<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
<u>R.G.B. v. Ridgewood BOE</u> (Comm. Dec. June 24, 2013)	<ul style="list-style-type: none"> – Distinguishing Characteristic 	<ul style="list-style-type: none"> – Student called classmate “fat”, “fat ass” and “horse”;; – 7th and 8th grades 	<ul style="list-style-type: none"> – Upheld HIB finding
<u>J.A.H. o/b/o C.H. v. Board of Ed. of Twp. of Pittsgrove</u> (Comm’r Dec. April 25, 2013)	<ul style="list-style-type: none"> – Imbalance of Power – Lack of Distinguishing Characteristic 	<ul style="list-style-type: none"> – 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. 	<ul style="list-style-type: none"> – 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 <ul style="list-style-type: none"> – Implies need to identify a POWER IMBALANCE – Pointed to ongoing unresolved conflict between students – Not one-sided as would be required for HIB

<p><u>J.M.C. v. East Brunswick BOE</u> (Comm. Dec. Jan. 9, 2013)</p>	<ul style="list-style-type: none"> - Distinguishing Characteristic 	<ul style="list-style-type: none"> - 6th grader said another classmate “danced like a girl” - 3 day suspension 	<ul style="list-style-type: none"> - Upheld HIB finding and discipline
<p><u>L.W. v. Toms River Bd. of Ed.</u> (2013) - NJ Division on Civil Rights</p>	<ul style="list-style-type: none"> - SD failure to Act 	<ul style="list-style-type: none"> - 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 	<ul style="list-style-type: none"> - Awarded \$116,000; - Damages included pain & suffering, interest, attorney fees, and a fine paid to the state
<p><u>Rosenstein v. Board of Education of the Borough of Ramsey</u>, No. L-010993-09 (N.J. Sup. Ct. Law Div. 2012)</p>	<ul style="list-style-type: none"> - Harassment/Injuries: Physical assault, resulting in paralysis 	<ul style="list-style-type: none"> - 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 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. - Complications from plaintiff’s paralysis, including scoliosis, led to 19 surgeries and a complete spinal fusion. - He nearly died several times. 	<p>Settlement: \$4.2 million</p>
<p><u>K.L. v. Evesham School District</u> (App. Div. 2011)</p>	<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> 	
<p>Lenape Valley Reg’l Bd. of Ed. (2009)</p>	<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
<p><u>R.R. v. Shore Regional</u> 1970 decision New Jersey</p>	<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 his education – District imposed suspension 	<ul style="list-style-type: none"> – Established precedent – right to discipline for conduct away from school grounds