

Harassment, Intimidation, and Bullying

Presented to the Madison Board of Education

October 13, 2026

Stephen R. Fogarty, Esq.

Fogarty, Hara, LaPira & Cherry, LLC

21-00 Route 208 South

Fair Lawn, New Jersey 07410

201-791-3340

sfogarty@fhlclaw.com

www.fhlclaw.com

Agenda

- Harassment, Intimidation, and Bullying
- What Constitutes HIB?
- HIB Factors
- When and Where can an HIB Occur?
- “Substantial Disruption or Interference”
- Timelines and Procedures
- Principal’s Preliminary Decision
- Final Board Determination
- Sharing Information with Parents
- Commissioner Decisions
- Coordination of HIB and Criminal Investigations
- NJ DOE’s Resources

Harassment, Intimidation, and Bullying

Policy 5512

What constitutes HIB?

The conduct must meet all of the following criteria...

It is one or more acts;

That occurs on school property, on a school bus, at a school-sponsored function, or off school grounds but has a nexus with the school;

In the form of written, verbal, or electronic communication, or a physical act;

That is “reasonably perceived” as being motivated by an actual or perceived characteristic or other distinguishing characteristic;

Which substantially disrupts or interferes with the operation of the school or the rights of other students;
and

Has at least one of the following impacts...

and one of these three:

A reasonable person should know it would physically or emotionally harm a student, damage a student's property, or place a student in reasonable fear of such;

It insults or demeans a student; or

It creates a hostile educational environment by interfering with a student's education, or by severely or pervasively causing physical or emotional harm to a student.

Analyzing the HIB Factors

“Reasonably Perceived”

- ◆ The act does not have to be *actually* motivated by any characteristic of the victim.
- ◆ The critical question is whether the victim or witnesses *felt* that the victim was targeted based on the characteristic.
- ◆ If the answer is yes, the question becomes whether that belief was *reasonable*.

Actual Motivation/Intent Not Required

- ◆ Parents appealed the determination that their son committed an act of HIB.
- ◆ Offender called a student “retard” during class, which caused him to believe he was being called stupid. Victim had a Section 504 Plan and reported that he receives help that other students do not receive. He was embarrassed in front of his classmates.
- ◆ The parents of the Offender felt that his actual intent should have been considered and that he did not know that it would be offensive. They also argued that it was prompted by the victim allegedly poking him or stabbing him with a pencil.
- ◆ The Commissioner upheld the Board and ALJ’s decisions that the Offender committed an act of HIB, noting that actual intent is not necessary.
- ◆ **Key Quote:** “The statute requires an analysis of how the actor’s motivation is perceived and whether that perception is reasonable. It does not require an analysis of the actual motivation of the actor.”

S.P. o/b/o E.P. v. Board of Education of Montgomery,
OAL Dkt. No. EDU 12772-23 (February 7, 2025)

HIB Found – Offender’s Defenses Rejected

- ◊ A female seventh-grade student said, to a male student, “shut up midget” and “oh, you would be the Jewish monkey.” The offending student admitted during the investigation that she was annoyed by the student’s singing and dancing during class, was having “a bad day,” and lashed out at him. Offending student also wrote a letter of apology to the victim.
- ◊ Victim said that in general he had been targeted based on his height and religion and did not want to come to school (and was thus “not fully available for learning”).
- ◊ The Anti-Bullying Specialist, and then the Board, following a hearing, found that the conduct constituted an act of HIB. Parents appealed and claimed that the school district “made a litany of administrative and factual errors during the investigation.” Also claimed that the statements were not based upon any distinguishing characteristics (!) and that the “Jewish monkey” reference was to an Israeli rock band.
- ◊ ALJ concluded that the conduct satisfied the definition of HIB; petitioners failed to demonstrate that the Board’s investigation or conclusions was/were arbitrary, capricious, or unreasonable; and any alleged administrative errors had no substantive impact on the case. ALJ confirmed that “intent is irrelevant,” but it is the “perception of the victim that controls.”

Teacher Did Not Know Student Had a Disability, No HIB Finding as a Result

- ◆ Alleged victim (a general education student) was in music class and played several wrong notes on her recorder. Teacher, frustrated, stated that he “was trying not to lose his temper.” When teacher was talking to another student, he called the student by a different name than his real name. Alleged victim insisted that the teacher call the other student by his real name and said that *she* was trying not to lose *her* temper. Teacher and alleged victim got into a loud argument, and when alleged victim attempted to return to her seat, teacher grabbed the student by the arm and asked her if she had “lost her mind.” Parents filed an HIB claim, alleging that it was due to the child’s disability (ADHD). Investigation determined that while this incident substantially disrupted the student’s rights and put her in fear of harm, it was not reasonably perceived as being motivated by a distinguishing characteristic.
- ◆ **Key quote:** The “teacher did not know that N.R. had ADHD or was on medication and that the teacher would have no way of concluding that N.R. had ADHD because she did not have an IEP or a 504 Plan. While [the school] did not find that an incident of HIB occurred, the teacher did receive the proper consequences for his actions. Here, it was not arbitrary, capricious, or unreasonable for the Board to conclude that the actions of the teacher were not based on a distinguishing characteristic.”

Motivated by

Actual or Perceived Characteristic

- Race
- Color
- Religion
- Ancestry
- National origin
- Gender
- Sexual orientation
- Gender identity and expression
- Mental, physical, or sensory disability

Other Distinguishing Characteristic

- Hair color
- Piercings
- Glasses
- Braces
- Intelligence
- Weight
- Physical features

“Personal History” between the Victim and Offender is *not* a Distinguishing Characteristic (not HIB)

- ◆ Parent alleged that a lunch aide bullied her child when, “on several separate occasions, [the] aide made [the student] sit by herself at lunch, miss recess for doing nothing wrong, and cry,” and alleged that the aide “singled out” her child due to the aide’s personal history with the parent. The school district investigated, stated that the “student was reprimanded for not following school rules,” and that the “Student was not targeted for any real or perceived characteristics.” Still, the District took steps to ensure that the aide no longer interacted with the student. The Board upheld the Anti-Bullying Specialist’s decision. After the parent appealed, both the administrative law judge and the Commissioner upheld the decision.
- ◆ **Key quote:** “Petitioner fails to identify a distinguishing characteristic of A.P. that might have motivated the lunchroom aide’s behavior. Further, even if true, the lunch aide targeting A.P. due to the aide’s personal history with petitioner, while inappropriate, does not constitute a distinguishing characteristic under N.J.S.A. 18A:37-14.”

Liar is not a distinguishing characteristic

- ◆ Parents appealed the board's determination that J.L. committed an act of HIB by calling a peer a liar and that the Board be ordered to place the student out of district as a result of the reversal of the determination.
- ◆ J.L. reportedly called E.Q. a liar in and out of school based on something that was sent over chat.
- ◆ The ABS and Board found the comment was an act of HIB.
- ◆ The ALJ overturned the Board decision—there was no evidence that the comment was based on an actual or distinguishing characteristic of the victim (being a liar).
- ◆ The Commissioner affirmed and also found that the remedy sought through by parent – placement out of district due to the ALJ's overturning of the decision – was not an available remedy under the Act.

Anger is not a distinguishing characteristic

- ◇ During a game of kickball, Victim I approached D.M. and stated, “You have anger issues, you weird ass b****.” In response, D.M. stated, “Shut your black ass up.”
- ◇ Victim I alleged that D.M. committed an act of HIB by commenting on race, which caused her to be upset, cry and be fearful.
- ◇ D.M. then alleged that Victim II committed an act of HIB by referring to him as angry.
- ◇ The allegation against D.M. (race) was founded. The allegation against Victim I (anger) was unfounded.
- ◇ The ALJ upheld the decision that the first HIB was founded and the second HIB was unfounded because anger is not a distinguishing characteristic. D.M. did not have anger issues that were known to anyone, was not classified due to anger issues, and no classmates described D.M. as angry.
- ◇ D.M. also did not report any disruption. He attended school, felt safe, and had a normal day after the incident.

Gender is distinguishing characteristic even where prior relationship could also be motivation

- ◆ M.H. (offender) is the former boyfriend of A.V. (victim). M.H. talked badly about the victim including that she was hooking up with his friends, took pictures of her at least 1-2 times per week and shared with male peers, stares at her, and spoke loudly about her so she could overhear it and socially isolate her. The investigator found it was HIB based on gender and the Board affirmed.
- ◆ The ALJ overturned, finding that the motivation was peer conflict based on the past relationship.
- ◆ The Commissioner overturned, finding that the Board's decision was not arbitrary, capricious, or unreasonable and the ALJ substituted his own judgment for the Board's. The Commissioner found it was entirely reasonable for the Board to conclude that a reasonable person would consider M.H.'s conduct of spreading sexual rumors about A.V., publicly discussing her alleged sexual behavior, displaying images of her to their peers, regularly photographing her discreetly, and attempting to isolate her by speaking negatively about her with peers, to be motivated by A.V.'s gender. If the conduct was only motivated by the breakup, it would not be HIB, but that is not the finding the Board made.

Where and When can an HIB Occur?

On school
property

On a school
bus

At a school-
sponsored
function

Off school
grounds

- ◆ Although HIB can occur off school grounds, the District can only impose discipline for off-campus conduct if the following restrictions are met:
 1. The discipline must be consistent with board policies concerning “Student Discipline/Code of Conduct”;
 2. The discipline must be reasonably necessary for the physical or emotional safety, security, and well-being of the student, other students, staff, or school property in accordance with N.J.S.A. 18A:25-2 (authority over pupils) and N.J.S.A. 18A:37-2 (causes for suspension and expulsion of pupils); and
 3. The conduct must have materially and substantially interfered with the requirements of appropriate discipline in the operation of the school.

Snapchat messages were HIB

- ◆ Parents appealed the finding that the offender committed an act of HIB when sending snapchat messages **after school** that referenced the weight and appearance of the victim.
- ◆ The ALJ affirmed the findings. In finding that the messages were HIB, the ALJ found the offender's testimony was not credible. The offender could not remember if the messages were from her, even though her interview during the investigation and answers to interrogatories admitted the comments, and she was shown copies of screenshots of them. In addition, her mother and boyfriend testified that the statements were from her.
- ◆ The ALJ found that the statements were HIB, they insulted and harmed the victim and impacted her education. In addition, the board's policy and the statute address HIB that occurs off-campus.

“Substantial Disruption or Interference”

- ◆ “Congress shall make no law . . . abridging the freedom of speech.”
- ◆ Students do not lose their right to free speech in school.
- ◆ The United States Supreme Court explained in *Tinker v. Des Moines Independent Community School District* that students do not lose their free speech rights in school, and they can only face discipline for speech and expression where the conduct “materially disrupts classwork or involves substantial disorder or invasion of the rights of others”

“Substantial Disruption or Interference”

- ◆ *Tinker* explains there must be evidence of “interference, actual or nascent, with the schools’ work or of collision with the rights of other students to be secure and to be let alone.”
- ◆ There must be a specific and significant fear of disruption, not just some remote apprehension of disturbance. In other words, there must be something more than a mere desire to avoid the discomfort or unpleasantness that often accompanies an unpopular opinion.
- ◆ “Undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.”

“Substantial Disruption or Interference”

- ◆ This also applies to off-campus speech.
- ◆ In *Mahanoy Area School District v. B.L.*, the Supreme Court noted the “school’s regulatory interests remain significant in some off-campus circumstances” including, among others “serious or severe bullying or harassment targeting particular individuals.”
- ◆ But there is still going to have to be a substantial disruption or interference for the school to act.
- ◆ If there is no possibility that a substantial disruption or interference exists, an investigation could violate a student’s First Amendment rights—especially if the conduct occurred away from school.

“Substantial Disruption or Interference”

- ◆ The first case to address this in New Jersey was *Bridgewater-Raritan*.
- ◆ An eighth-grade student attempted to engage in sexual activity with a seventh-grade peer on the school bus in front of several other students, invited her over to his house to engage in sexual activity, and asked her to strip over video chat for him. The Commissioner of Education held that such conduct met this standard of **substantial interference**.
- ◆ The aggressor substantially interfered with the orderly operation of the school because such “**lewd, indecent, offensive**” conduct did not comport with “the essential lessons of civil, mature conduct” that is to be conveyed in a school.
- ◆ He also substantially interfered with the rights of the victim to be **secure** and to be let alone, and the rights of the student witnesses who were **so affected** by his behavior that they reported it to school officials themselves.

“Substantial Disruption or Interference”

- ◆ *Examples of Substantial Disruption to the school:*

- ◆ Classroom or instructional disruption — teaching or learning is interrupted repeatedly or intensely over time.
- ◆ Staff or administrative intervention — significant staff time and attention required.
- ◆ Spread beyond initial students — conflict affects additional students, peer groups, or school climate.
- ◆ Operational adjustments — schedules, supervision, or safety procedures are modified.
- ◆ Safety or disciplinary actions — formal measures taken reflecting serious or repeated impact on school operations or safety.

“Substantial Disruption or Interference”

- ◆ *Examples of substantial interference with the rights of other students:*
 - ◆ Student avoidance or withdrawal — student withdraws from school, classes, or activities.
 - ◆ Academic impact — student’s grades, participation, or engagement are affected.
 - ◆ Emotional or psychological impact — student experiences fear, anxiety, distress, or emotional harm of significant intensity or duration.
 - ◆ Compromised rights to safety or learning — student feels unsafe or unable to learn.
 - ◆ Social isolation or humiliation — peer relationships or social standing are negatively affected.

Finding Snapchat Thread Posts Constituted HIB Did Not Violate Student's First Amendment Rights

- ◆ Petitioner's child was involved in authoring several comments in a Snapchat thread with vulgar and demeaning messages targeting another student, mocking her appearance, weight, and sexual orientation. Another student shared it with school staff. The victim, though not part of the chat, learned of the remarks and was deeply affected—crying, anxious, and fearful about attending high school with students involved in the incident. The reporting student also experienced distress and was signed out of school shortly after reporting the thread.
- ◆ The school investigated and concluded that the behavior met the criteria for HIB, and Petitioner's child received a six-day suspension—the most severe among the students involved—due to the frequency and intensity of his comments. Parents challenged the school's HIB determination, arguing that his actions lacked malicious intent.
- ◆ The ALJ and Commissioner upheld the school's decision. The ruling emphasized that intent is not the sole factor in HIB cases—what matters is the impact on the victim and the disruption to the school environment. The Commissioner found that the Board acted reasonably and within its authority. The parents also argued that this violated his First Amendment rights because the comments were made off-campus and in a private Snapchat thread. But the ALJ and Commissioner disagreed, finding that this was distinct and different from *Mahanoy Area School District v. B.L.*, 594 U.S. 180 (2021), the U.S. Supreme Court case (which *did not* involve bullying).
- ◆ **Key quote:** "...the Snapchat posts involved students who attended CMS and substantially disrupted and interfered with the orderly operations of the school, coupled with the rights and wellbeing of the victim and other students."
- ◆ The Parents appealed further and the Appellate Division upheld the Commissioner's decision.

The act must be inappropriate in *one* of the following ways:

- ◇ **A reasonable person should know**, under the circumstances, that the act will either:
 - ◇ Have the effect of physically or emotionally harming a student;
 - ◇ Damage a student's property; or
 - ◇ Place a student in reasonable fear of physical or emotional harm or property damage;
- ◇ **The act has the effect** of insulting or demeaning any student or group of students; or
- ◇ **The act creates a hostile educational environment** for the student by:
 - ◇ Interfering with the student's education; or
 - ◇ Severely or pervasively harming the student, physically or emotionally.

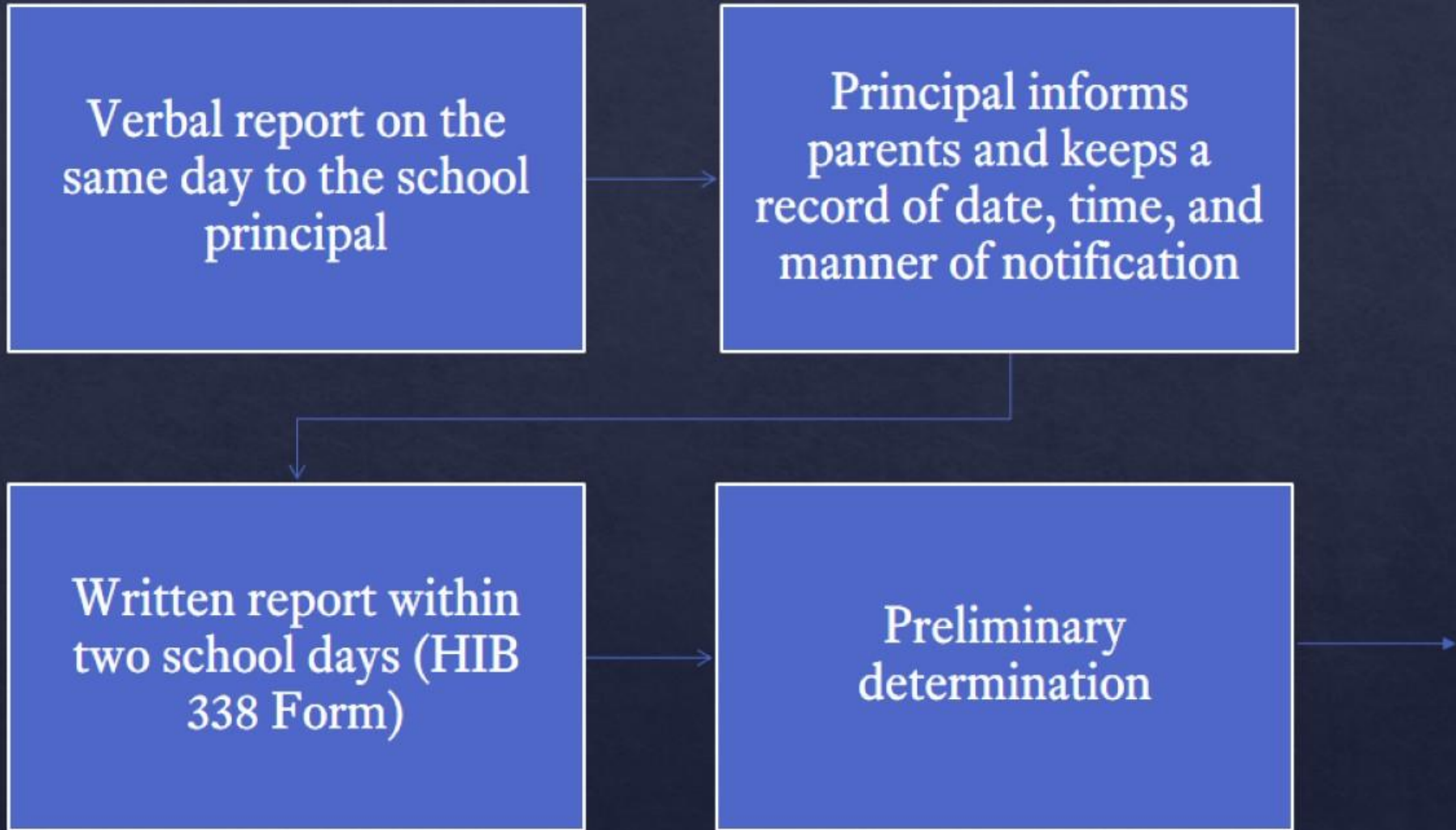
Timelines and Procedures Upon Receipt of Reliable Information of Possible HIB

Code of Conduct or HIB?

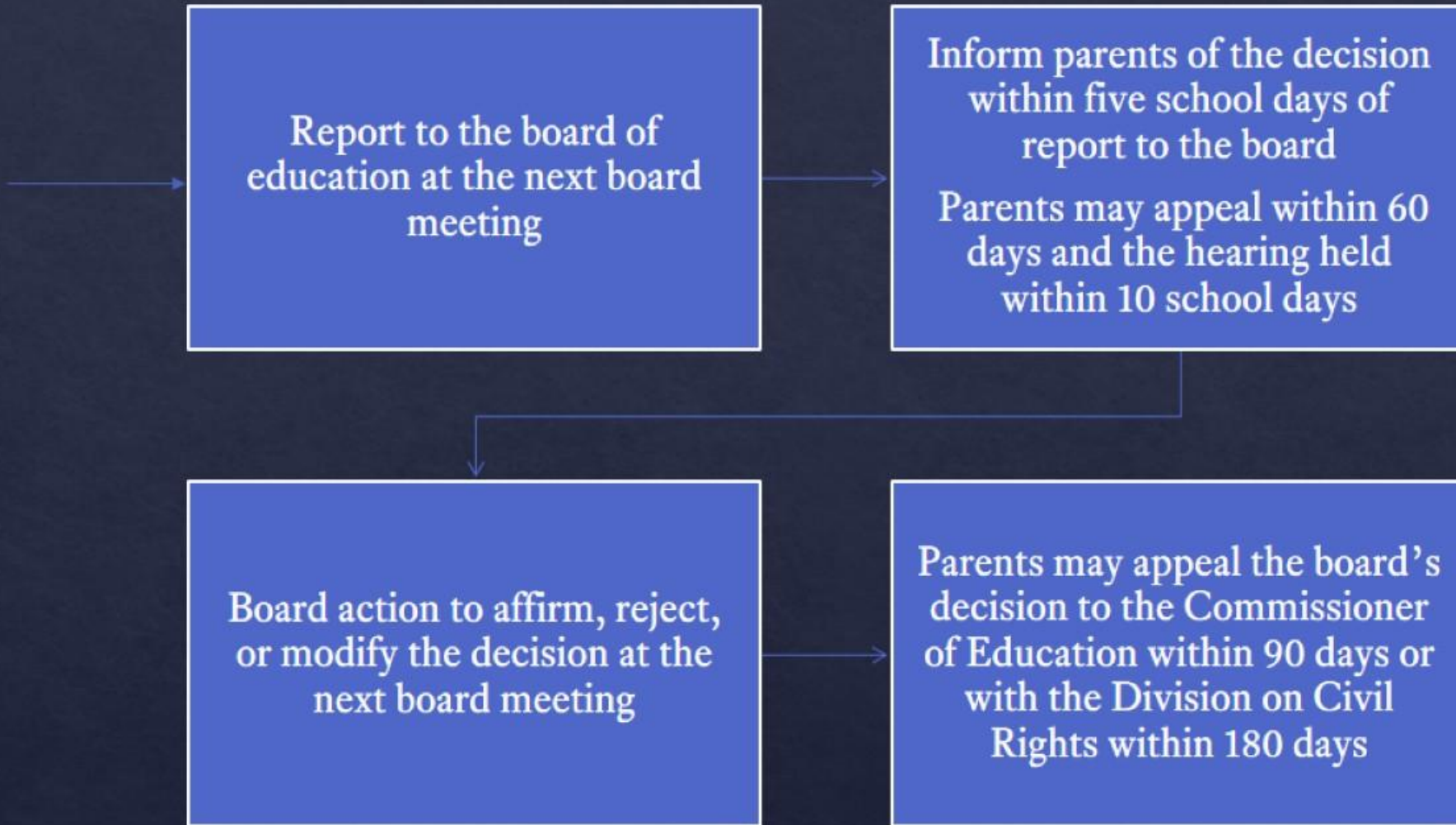
- ◆ Remember – An HIB has to be reported upon receipt of reliable information that an HIB may have occurred.
- ◆ Do you have reliable information that it was a possible HIB? Is there a distinguishing characteristic? Is there a substantial disruption to the school or the rights of other students?
- ◆ Report the code of conduct to the administration using typical procedures.
- ◆ If there is also a distinguishing characteristic report code of conduct to the administration directly.
 - ◆ Allows for monitoring if there is an impact in any other setting.
 - ◆ Allows for check-ins as needed with the student.
- ◆ If there is a distinguishing characteristic and an impact do a verbal report of possible HIB to administration on the same day. If that information is not present, wait to see if it becomes present before reporting (verbally and the written report).
- ◆ Complete written report within two school days --- You can use that time to help establish if there is a substantial disruption.
 - ◆ The code of conduct investigation may give information about whether there is a substantial disruption.

Not HIB, but District did not follow timelines

- ◊ On September 23, 2024, the parent alleged that a classmate said “a monkey is a black person” in front of her child, C.W.
- ◊ The student told her teacher on September 23, 2024, and the parent asked the teacher and another teacher to conduct an HIB investigation.
- ◊ On September 25, 2024, the vice principal advised the parent how to fill out the HIB 338 form.
- ◊ On September 26, 2024, the district opened an investigation and notified the parent on September 27, 2024.
- ◊ The district investigated, could not confirm the comment was made, and determined the HIB complaint was unfounded.
- ◊ The ALJ affirmed.
- ◊ The Commissioner affirmed the finding but noted the district did not meet the procedural requirement—reporting verbally to the principal on the date of reliable information of a possible HIB.







Principal's Preliminary Determination

- ◊ If all of the reported information is true, could it be a HIB?
- ◊ If there is no distinguishing characteristic it cannot be a HIB, and the Principal can determine not to move forward with an investigation.
- ◊ What if there is no substantial disruption?
 - ◊ What does the HIB 338 form report?
 - ◊ What information has been gathered from the code of conduct investigation?
 - ◊ What has the student or parent reported?
 - ◊ What has the teacher(s) reported?
- ◊ If there is no substantial disruption reported, it cannot be a HIB, and the Principal can determine not to move forward with the investigation.
- ◊ The parents are informed of the determination and can appeal.
- ◊ The parents could also share additional information that causes the Principal to decide to move forward with the investigation.
- ◊ 338 Form must still be completed and reviewed by the Superintendent who may require an HIB investigation take place.

Final Board of Education Determination

- ◆ The Anti-Bullying Bill of Rights Act (“ABBRA”) contemplates a two-tier sequence of decision making with the Board as the final arbiter of HIB decisions.
- ◆ Commissioner of Education concluded that the ABBRA permits the Board to consider information provided by parents at an HIB hearing. Commissioner concluded that the statute does not limit presentation of information only from the anti-bullying specialist.
- ◆ The Superintendent may disagree with the ABS, and the Board may disagree with the Superintendent. The Superintendent’s preliminary decision on whether HIB occurred is not entitled to deference. This means that while the Superintendent’s preliminary decision is considered by the Board, the Board makes its own independent judgment.
- ◆ It is the Board’s decision that is presumed to be valid unless the Board acted arbitrarily, capriciously or unreasonably based on the evidence.

N.T. and M.T. o/b/o A.T. v. Bd. of Ed. of the Borough of Paramus, Agency Ref. No. 240-7/25, OAL Dkt. No.: EDU 13922-25 (Respondent’s Motion for Summary Judgment Granted, September 10, 2026)

Sharing Information with Parents

- ◆ The principal must inform the parents of all the students involved in the alleged incident and may discuss, as appropriate, the availability of counseling and other intervention services.
- ◆ The law does not say exactly what the principal must share with the parents, but...
 - ◆ Parents should at least be informed as to whether their child is considered to be the alleged offender or victim.
 - ◆ Consider providing some factual detail, **but remember** that the investigation has not yet been completed, and **you do not want to compromise the investigation.**
- ◆ The principal must keep a written record of the date, time, and manner of notification to the parents.

Sharing Information with Parents

- ◆ Parents of students who are parties to the investigation are entitled to information about the investigation, in accordance with Federal and State law and regulations, including:
- ◆ The nature of the investigation;
- ◆ Whether evidence of HIB was found; and
- ◆ Whether discipline was imposed or services were provided to address the incident.
- ◆ This information must be provided within five school days after the results of the investigation are reported to the Board.
- ◆ After the second Board meeting, when the Board votes to affirm, reject, or modify the Superintendent's decision, the Board must issue a written decision.

Recent HIB Cases

(Commissioner Decisions)

Ninety-Day Rule Enforced

- ◆ The petitioners received a letter from the Board on June 19, 2025, upholding an HIB determination against their child. They filed an appeal with the Commissioner on September 19, 2025—92 days later. The petitioners asked for leniency, citing employment issues and delays in retaining an attorney.
- ◆ The ALJ dismissed the petition as untimely because it was filed beyond the **strict 90-day jurisdictional limitation**. The ALJ noted that personal scheduling and employment issues do not constitute compelling circumstances to relax the rule. The Commissioner adopted the Initial Decision and dismissed the petition.
- ◆ **Key Legal Concept:** Appeals of a district board of education's decision must be filed within 90 days. This limitation is—almost always—strictly enforced. Relaxation of this rule is extraordinary and is generally reserved for substantial constitutional issues or matters of significant public interest, not personal delays.

No Identifiable Perpetrator – Does Not Matter

- ◊ A student's sweatshirt honoring her deceased father was deliberately cut in the school locker room, destroying the word "Dad." The Superintendent and Board overturned an initial HIB finding, arguing that HIB cannot be established without a confirmed offender, and that the loss of a parent is a "life event," not a distinguishing characteristic.
- ◊ The ALJ affirmed the Board's decision, concluding that "loss of a father" was not a distinguishing characteristic, and that without identifying the perpetrator, motivation could not be proven. The Commissioner adopted in part and rejected in part, **reversing the Board's determination that there was no HIB**. The Commissioner held that a perpetrator does not need to be identified for a student to be recognized as a victim of HIB. Further, the Commissioner ruled that **the loss of a parent is a distinguishing characteristic**.
- ◊ "Nothing in the Act requires that an offender be identified, and a student may be a victim of an act of HIB—and receive appropriate services related thereto—even if there is no offender to be punished."
- ◊ "The fact that A.A.'s father is deceased distinguishes her from the majority of her classmates, not solely as a 'life circumstance,' but in a profound and meaningful way. The Commissioner finds that the Board disregarded this reality, and therefore also finds that it was arbitrary, capricious, and unreasonable for the Board to determine that A.A.'s loss of her father was not a distinguishing characteristic."
- ◊ **Also:** "A student has a right to attend school and school activities without suffering damage to their property, and the conduct at issue here substantially interfered with A.A.'s rights in that regard."

No Distinguishing Characteristic

- ◆ During recess, two classmates physically restrained A.H., a fourth-grade student, on a bench for about one minute. While holding her, her classmates asked, “Why do you wear makeup?” and “Why are you sassy?”
- ◆ The district determined this was not HIB because no witness tied the incident to an actual or perceived characteristic. The parents appealed, contending the physical restraint alone should have been enough to establish HIB.
- ◆ The Commissioner agreed that the incident was not HIB. Physical aggression, standing alone, does not satisfy the portion of the HIB definition which requires a distinguishing characteristic.

“Board Game”

- ◊ A seventh-grade student called a female classmate “board game” in May 2025. Initially the girl did not know what that meant, but another student explained that it referred to her flat chest and backside.
- ◊ When interviewed, the alleged offender said that he made the statement because of name-calling that he was the victim of the prior school year. There was no previous report of the student alleging HIB. The district found that the “board game” statement was HIB because it referred to the victim’s gender and physical appearance. She also reported the language to the school counselor and requested to have a schedule change because she was no longer comfortable.
- ◊ On appeal, the parent argued that a hearing was necessary to determine the offender’s motive and the context of the statement. The Commissioner rejected this, determining that the issue was “whether it is reasonable that a fourteen-year-old girl would perceive” the comment as “motivated by an actual or perceived characteristic.” Under the circumstances, it was reasonable and the victim’s initial ignorance of the meaning “does not invalidate this.”
 - ◊ The Commissioner also rejected the argument that the student’s motivation was events from the prior school year, explaining that the proper focus was on the events of the 2024-2025 school year.

Lack of Standing to Challenge HIB Decision

- ◆ An 18-year-old high school student filed an HIB report regarding comments made by another student about her appearance at a crew practice (the other student made comments to petitioner **based on her appearance** while standing a couple of inches away from her). The Board found the incident **did not constitute HIB**. The student subsequently entered the military, and her mother attempted to pursue the appeal on her behalf, despite lacking any legal documentation appointing her as her adult daughter's agent.
- ◆ The ALJ dismissed the appeal due to a lack of standing. Because the student was an adult (18 years old), the mother could not pursue the case on her behalf without a legally recognized agency appointment.
- ◆ Key quote: “A party must have a palpable stake in the outcome of the litigation to have standing to pursue a case.”

Board Presumption of Correctness

- ◆ A parent filed HIB complaints alleging that another preschooler inappropriately touched and hit his three-year-old daughter. A thorough investigation, which included a review of school video footage and interviews with staff, found no evidence of physical contact or interactions between the two children. The Board ultimately found the allegations **unsubstantiated**.
 - ◆ Note that when questioned, the student said that the alleged offender makes her sad because “[he] hurt my hand, leg and feet.” When asked how the alleged offender hurt her foot, she said “[he] drew on my legs.” But the teachers and staff reported that the students had no interactions on that day and did not sit next to each other or even at the same table.
- ◆ Parents appealed, and the ALJ dismissed the petition, concluding that the Board conducted a proper investigation and its decision that no HIB occurred was not arbitrary, capricious, or unreasonable given **the lack of corroboration**.
- ◆ After Petitioner filed exceptions, the Commissioner adopted the Initial Decision and dismissed the petition.

Evidentiary Requirements

- ◆ Two students were working together on a group project about the Middle East. The alleged offender asked the alleged victim what sect of Islam she was, and she responded, “Sunni,” to which the other student said, “Good, because all Shia are terrorists.” The alleged victim said that she felt “targeted” and that the other student was “targeting all Muslims.” She was very upset and did not want to return to school (also had a panic attack and became anxious, nervous, and depressed). The alleged victim also said that the other student said that “there is no Palestine.” Although they alleged that her grades suffered, her grades actually improved over the next year and could not show any connection between the incidents and her grades. The Anti-Bullying Specialist initially found HIB, but the Superintendent overturned it, determining there was no corroborating evidence from the other students present that the anti-Muslim statement was actually made.
- ◆ The ALJ affirmed the Board’s decision, finding **insufficient credible evidence to prove the alleged offensive statement was made**. Additionally, the ALJ concluded that a student **merely asking another student what religious sect they belong to does not constitute HIB**. There was no “qualifying language” here.
- ◆ **Key concepts:** An alleged HIB incident **generally** requires **corroborating evidence**. A board’s decision to overturn an investigator’s HIB finding is not arbitrary or capricious **if it is rationally based on a lack of corroborating witness testimony**. Furthermore, discussing political topics does not **inherently** meet the definition of HIB without evidence of targeted, demeaning behavior.

Parents Cannot be Victims of HIB

- ◆ A parent alleged the Board committed an act of HIB by publicly playing a 2022 video of the parent confronting a school bus driver during a presentation on bus safety at a public meeting (for which he was charged with motor vehicle violations and criminal charges). The parent claimed the Board intended to humiliate him and retaliate for his political affiliations. Notably, the parent's child **was not identifiable** in the video. Additionally, the presentation did not identify the parent or the child. Parent claimed that his children were targets of HIB behavior. The Assistant Superintendent confirmed that the intent of showing the video was to exhibit what they actually deal with, and that precautions were taken to conceal the parent's identity.
- ◆ The ALJ granted summary decision for the Board, finding the parent is not a protected person under the Act. There was no evidence the video was directed at the student or motivated by the student's distinguishing characteristics. "The Act, however, is designed to protect students' welfare, not their parents.'"

Coordination of HIB and Criminal Investigations

- ◆ The Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials (MOA) includes a section titled, “Coordination of HIB and Criminal Investigations,” in section 4.4.5 of the MOA.
- ◆ This section provides guidance and rules for when student conduct is being investigated both by law enforcement officials as a violation of the criminal code and school officials as a violation of the ABBRA.
- ◆ Law enforcement officials may request a suspension or stay of the district’s HIB investigation if the conduct is being investigated by law enforcement.
- ◆ School officials will immediately memorialize the request from law enforcement and provide notice to the parents of the alleged perpetrator(s) and alleged target(s) of law enforcement’s request.

Coordination of HIB and Criminal Investigations (cont.)

- ◆ If the parent objects to the suspension or stay of the district's HIB investigation and law enforcement wants to enforce the stay over the parent's objections, law enforcement must seek appropriate legal assistance from the County Prosecutor's Office to obtain a formal court order compelling the stay.
- ◆ The district's HIB investigation must remain open during law enforcement's investigation. Upon completion of law enforcement's investigation, the anti-bullying specialist must immediately resume the school's HIB investigation.

Excellent Resources from the New Jersey Department of Education: <https://www.nj.gov/education/safety/sandp/hib>

◆ Including:

- ◆ HIB Definition
- ◆ Relevant Statutes and Regulations
- ◆ Information for Families and Caregivers
- ◆ Information for Schools and School Districts

◆ Reports:

- ◆ HIB Report Forms
- ◆ HIB 338 Forms in Multiple Languages

Questions?