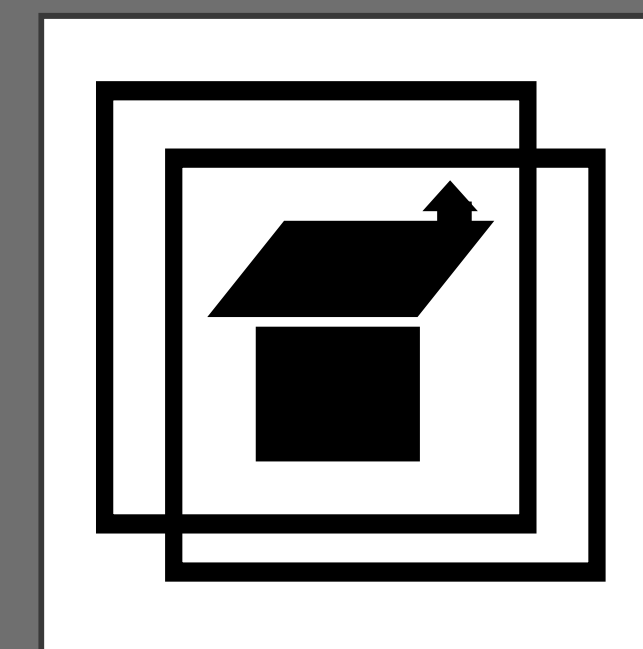


Harassment, Intimidation, & Bullying Prevention Training Program

Hainesport Board of Education
February 14, 2025

Presented by:

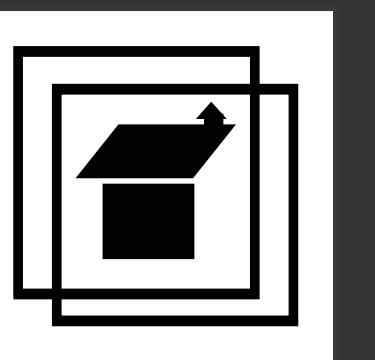
Strauss Esmay Associates, LLP
School Policy & Regulation Consultants
1886 Hinds Road – Suite 1
Toms River, NJ 08753
www.straussesmay.com



HIB Definition

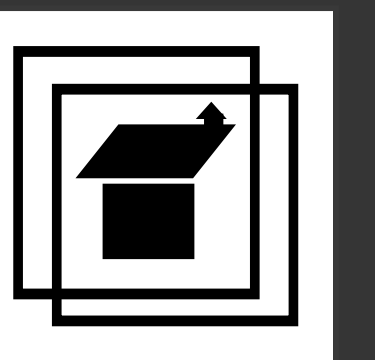
Harassment, intimidation, or bullying means any gesture, any written, verbal or physical act or any electronic communication, whether it is a single incident or a series of incidents, that is:

- reasonably perceived as being motivated by either any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability; or by any other distinguishing characteristic; and that
- takes place on school property, at any school-sponsored function, on a school bus, or off school grounds, as provided for in N.J.S.A. 18A:37-15.3;
- that substantially disrupts or interferes with the orderly operation of the school or the rights of other students; and that

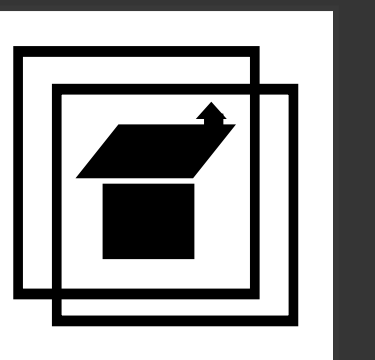


HIB Definition

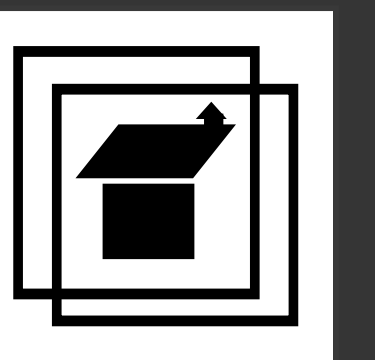
- a reasonable person should know under the circumstances, that the act(s) will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his/her person or damage to his/her property, or
- has the effect of insulting or demeaning any student or group of students, or
- creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.



Single Incident

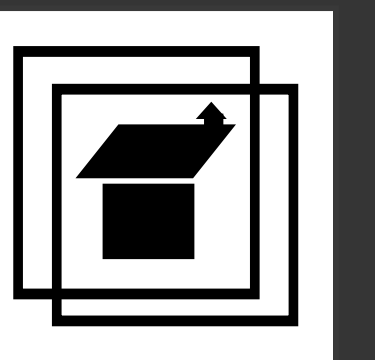


- Harassment, intimidation, or bullying means any gesture, any written, verbal or physical act or any electronic communication, whether it is a single incident or a series of incidents, that is:

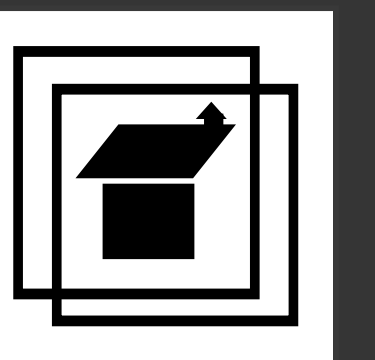


Single Incident

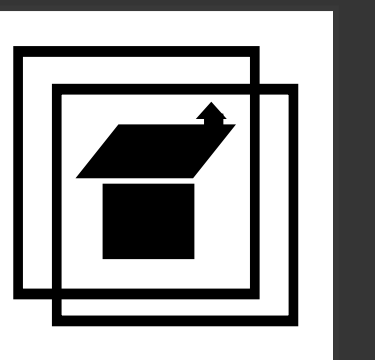
- The law states HIB can be a single incident.
- ALJ/Commissioner cases have not distinguished between a single incident and multiple incidents.
- Cases have not been overturned based on the fact the conduct only occurred once.
- Even if a single incident is determined not to be HIB, the incident must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



Motivation/Distinguishing Characteristic



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



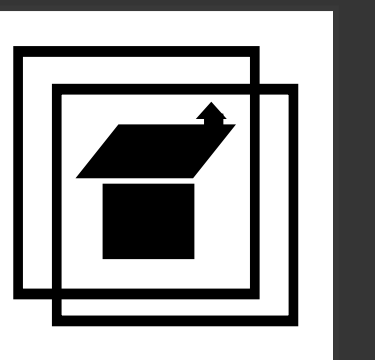
What is a "Distinguishing Characteristic"?

What constitutes a “distinguishing characteristic”?

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

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

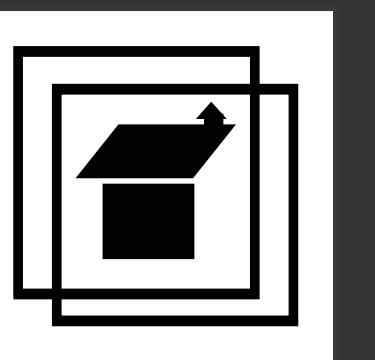
- A student called another student a “horse” and “fat.”
- A student noted that another student had dyed her hair and might have had head lice.
- A student called another student “gay” (as an insult) and said he “danced like a girl.”
- A student demeaned another student based on the eating habits of the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



Finding a "Distinguishing Characteristic"

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

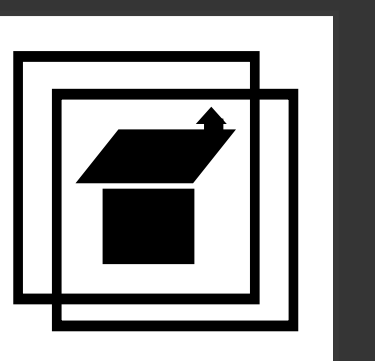
"Why did the alleged student bully choose this student target?"



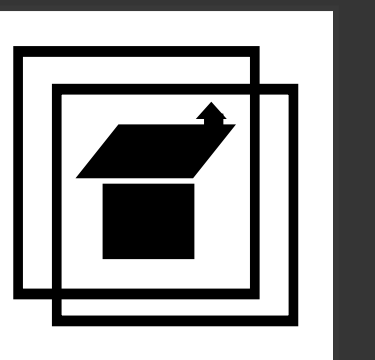
Other Distinguishing Characteristic

Other distinguishing characteristics may be:

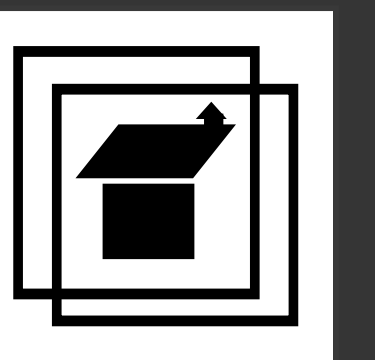
- Academically gifted children;
- Wearing glasses, hair color, hair style, etc.;
- Children living in nontraditional families;
- Overweight or obese children;
- Small or physically weak children;
- Children considered unattractive, unfashionable;
- Poor athletic ability;
- Academic stereotype;
- Socio-economic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



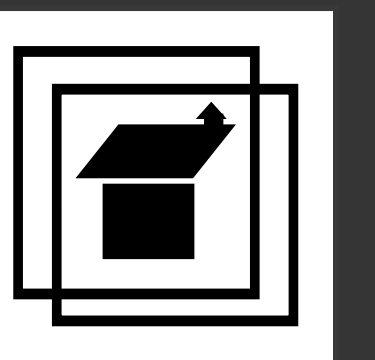
Location On or Off School Grounds



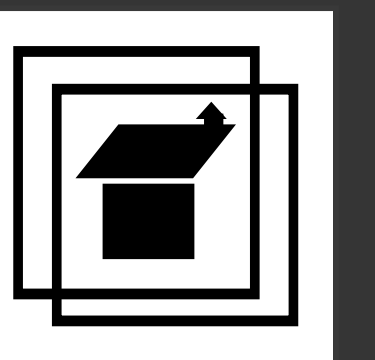
- takes place on school property, at any school-sponsored function, on a school bus, or off school grounds, as provided for in N.J.S.A. 18A:37-15.3;



Substantially Disrupts or Interferes

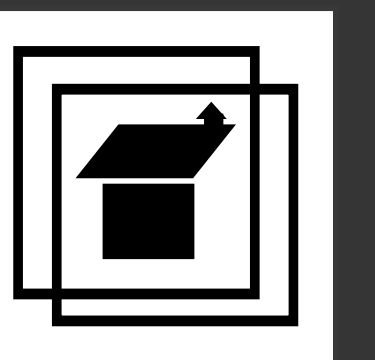


- that substantially disrupts or interferes with the orderly operation of the school or the rights of other students; and that

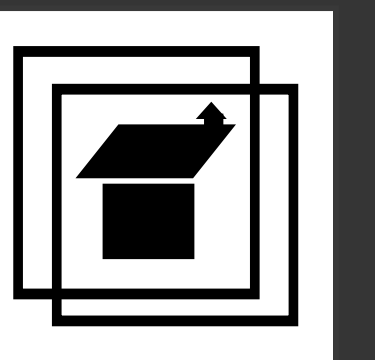


Substantial Disruption or Interference

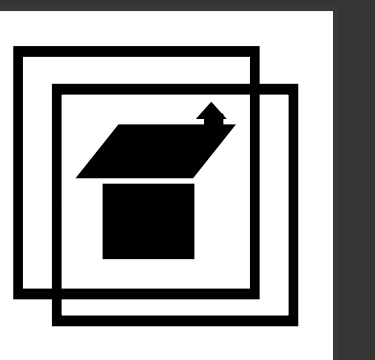
- ▶ Substantial disruption is one of the required elements for a HIB determination.
- ▶ Substantial disruption could be to only one student; does not have to be widespread disruption of entire class or entire school.
- ▶ Substantial disruption could be fear of bully or inability of student to focus on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



Determining Harm

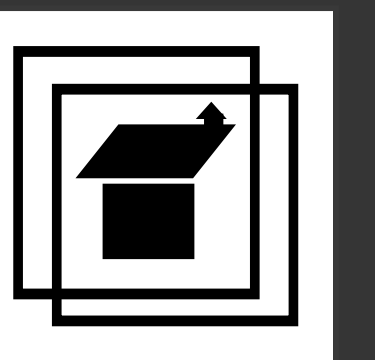


- a reasonable person should know under the circumstances, that the act(s) will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his/her person or damage to his/her property, or
- has the effect of insulting or demeaning any student or group of students, or
- creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.



Impact of Harm Reasonable Person Standard

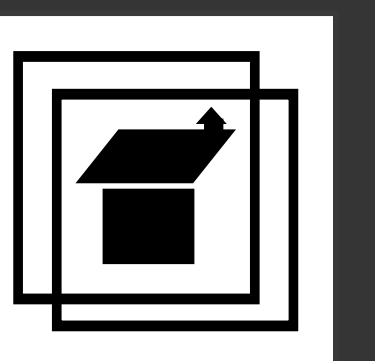
- Whether the act actually had a demonstrable negative impact on the target is not always a good criterion in determining whether an incident is HIB, as the wording of the ABR indicates the “reasonable person” standard of harm.
- Would a reasonable person committing the alleged act know or should know,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



Determining Harm

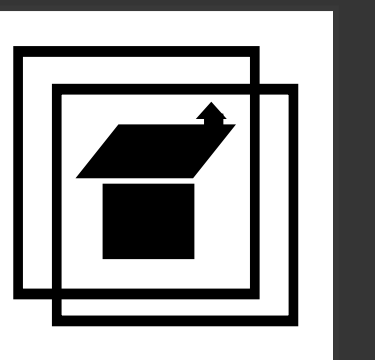
If a staff member observes clear HIB conduct, but yet the target tells the staff member the conduct does not offend or harm them:

- The staff member should still report the conduct to Principal for Principal to determine if there was harm.
- A HIB investigation is needed to be completed to make this harm determination.
 - a reasonable person should know under the circumstances conduct will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his/her person or damage to his/her property, or
 - has the effect of insulting or demeaning any student or group of students, or
 - creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.



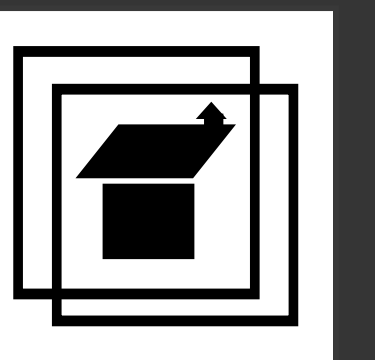
Posting of HIB Information on District Website

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



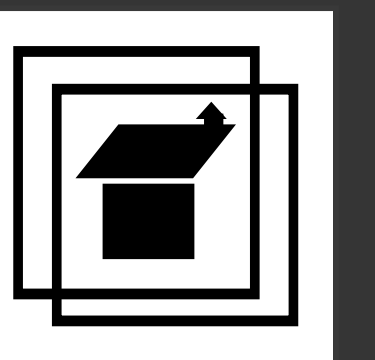
School Safety/School Climate Team

- The Board of Education shall form a School Safety/School Climate Team in each school in the district to achieve the purposes and perform the functions established in N.J.S.A. 18A:37-21.
- The School Safety/School Climate Team shall consist of the Principal or designee and the following members appointed by the Principal:
 - a teacher in the school;
 - the Anti-Bullying Specialist;
 - a parent of a student in the school; and
 - other members determined by the Principal.
- The team shall be chaired by the school Anti-Bullying Specialist.



Conflict vs Bullying

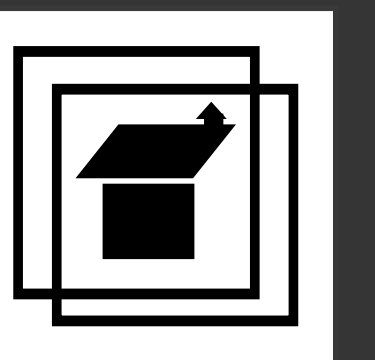
Is It Conflict or Is It Bullying?



Conflict vs. Bullying

Conflict

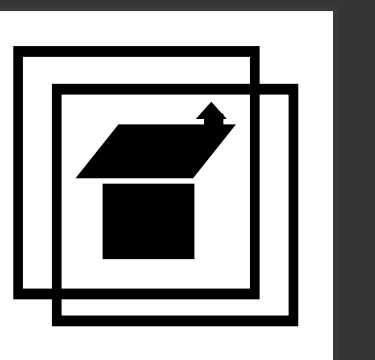
- Conflict is a mutually competitive or opposing action or engagement, including a disagreement, an argument, or a fight which is a normal part of human development.
- Conflict is a disagreement, argument, fight, or other action between people when they want different results and everyone is equally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



Conflict vs. Bullying

Bullying – Summary of ABR

- Reasonably perceived as being motivated by either any actual or perceived distinguishing characteristic;
- Location;
- Substantially disrupts or interferes with the orderly operation of the school or the rights of other students; and
- Harm
 - a reasonable person should know under the circumstances, that the act(s) will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his/her person or damage to his/her property, or
 - has the effect of insulting or demeaning any student or group of students, or
 - creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.



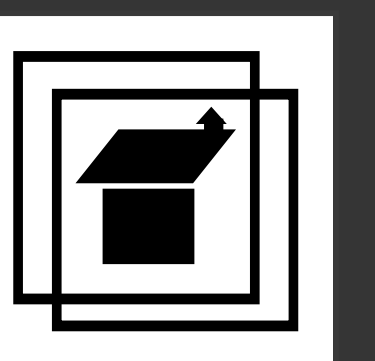
“Conflict” as Defined by Appellate Court and Commissioner of Education

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

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

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

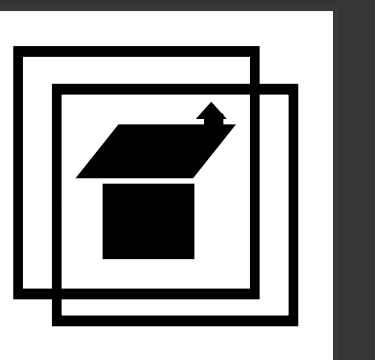
J.A.H. on behalf of minor child, C.H. v Pittsgrove Twp. Board of Education March 11, 2013



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

“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.”

R.A., on behalf of minor child, B.A. v. Board of Education of the Township of Hamilton, Mercer County, June 22, 2016



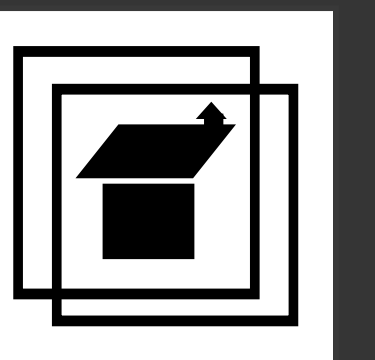
Conflict to Bullying - Bullying with Conflict

Conflict to Bullying

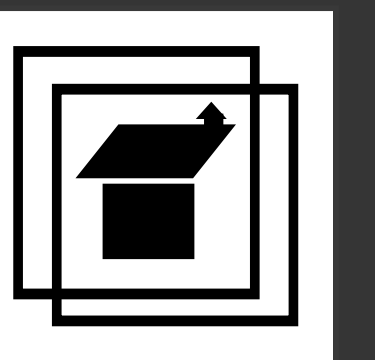
- A friendship ended in mutual resentment and hurtful words and one student moves on while the other student continues with spreading rumors or other HIB defined conduct toward the other student and even recruits friends to join in the conduct.

Bullying with Conflict

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

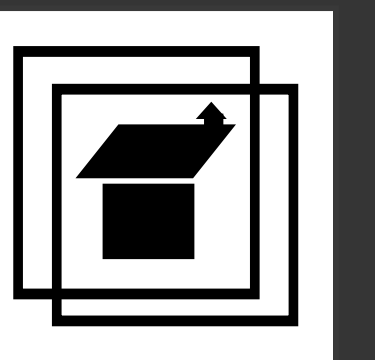


Teacher and Staff Responsibilities



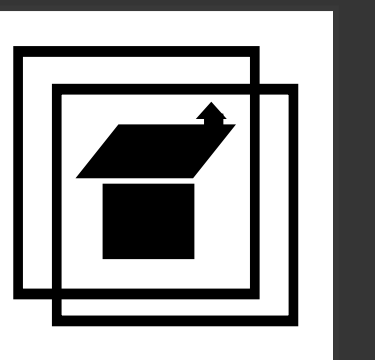
Reporting Requirements

- Any school employee, Board Member, contracted service provider, or volunteer who has witnessed or has reliable information that a student has been subject to harassment, intimidation, or bullying must report the incident to the Principal or designee both verbally and in writing.
 - Verbal report – Must be made on the same day of witnessing or receiving reliable information of possible HIB.
 - Written report – Must be submitted to the Principal within two school days of the verbal report. The written report must be completed using the HIB 338 Form for Local Educational Agency (LEA) Personnel. This report cannot be made anonymously by LEA members (teaching staff members, lunchroom monitors, school bus drivers, etc.).
- Any staff member who receives a report of HIB, or is found to have information regarding a HIB incident but does not make the required report, may be subject to disciplinary action.



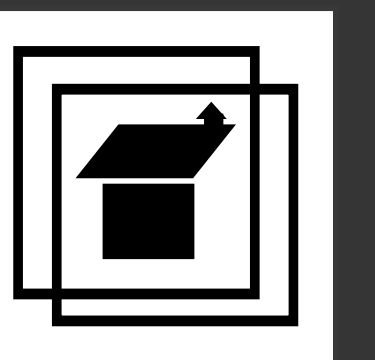
Professional Development

- Teachers and educational services professionals must have two hours of training within the five-year professional development cycle that emphasizes the critical role of prevention in mitigating the incidence and harmful effects of HIB, as well as the potential impact of HIB on suicide.
- Existing suicide training for teachers must have an anti-bullying component which includes:
 - Information on the relationship between the risk of suicide and incidents of HIB, and
 - Information on reducing the risk of suicide in students who are members of communities identified as having members at high risk of suicide.

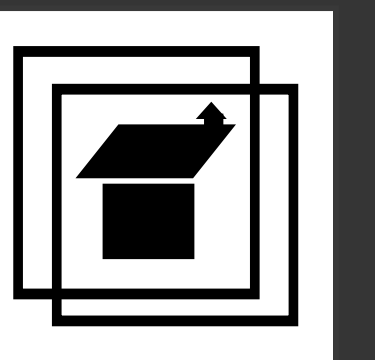


HIB Investigations Involving Staff Conduct

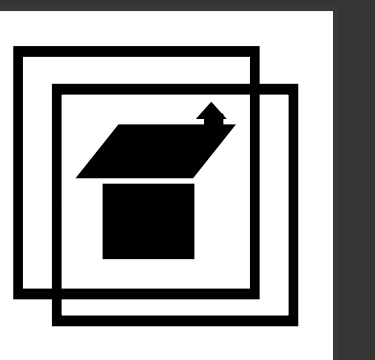
- The ABR applies to HIB committed by an adult or youth against a student; therefore, it is possible that a staff member may be identified as an alleged offender of HIB.
- All of the procedural requirements in the ABR apply regardless of whether the alleged offender is an adult or youth.
- Due process rights of staff accused of HIB:
 - Notification of the allegation(s)
 - Opportunity to respond to allegation(s)
 - Opportunity to request a hearing before the Board
 - Right to appeal
 - Protection against retaliation



Review of HIB Case Law



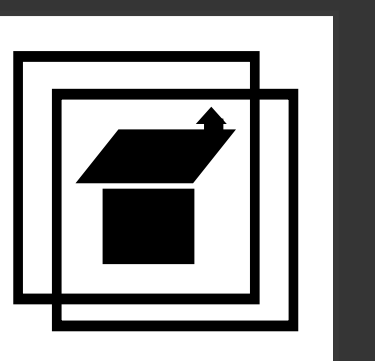
Distinguishing Characteristic



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

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

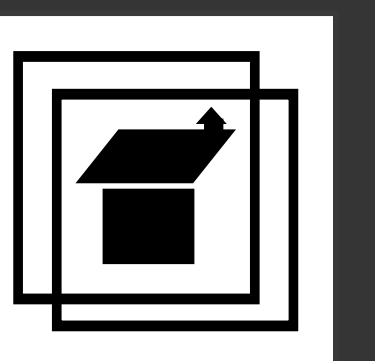
- A seventh-grade middle school student, K.N., reported to guidance and the ABS fellow male student, E.B., called her names like “fat” and “horse” on more than one occasion.
- The Board accepted a finding that E.B. admitted to his comments, which were also heard by other students, and determined E.B.’s conduct constituted HIB motivated by K.N.’s body image and appearance.
- The Principal imposed a consequence of two after-school detentions.
- The parent of E.B. argued the Board inappropriately applied the ABR.
- The ALJ indicated these comments resulted in K.N. visiting the guidance counselor’s office very upset and distraught by the ongoing name calling.



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

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

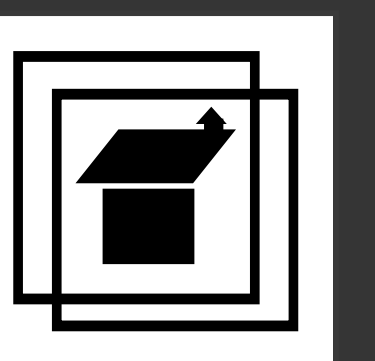
- Upon comparing the facts to the legal definition of HIB, the ALJ concluded:
 - the acts were motivated by K.N.’s body type;
 - the acts occurred on school property;
 - the conduct substantially interfered with the rights of K.N.; and
 - the comments would lead a reasonable person to know that repeatedly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



Distinguishing Characteristic/Vegetarian

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

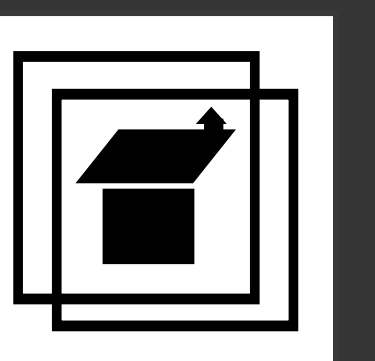
- An incident between two sixth-graders, C.C. and K.S., occurred in the cafeteria, wherein C.C. demeaned K.S. for identifying as a vegetarian.
 - “Vegetarians are idiots.”
 - “It’s not good to not eat meat” and “people who eat meat are smarter and have bigger brains.”
- The district conducted an investigation and concluded the incident was properly classified as HIB stemming from comments C.C. made regarding K.S.’s vegetarian lifestyle. As a result, C.C. was assigned five lunch detentions.
- The parent of C.C. appealed to the Commissioner disputing the finding of HIB and requesting the Commissioner overturn the finding on the grounds that C.C.’s act was not reasonably perceived as being motivated by a distinguishing characteristic.
- The ALJ found the issue is whether the state of being a vegetarian can constitute “any other distinguishing characteristic.”
- The ALJ concluded vegetarian was “any other distinguishing characteristic” and the fact the victim was a vegetarian was an identifiable motivation.
- The ALJ concluded the comments by the student constituted a violation of the HIB law and the Assistant Commissioner concurred with the ALJ.
- The Commissioner adopted the ALJ’s decision.



No Distinguishing Characteristic/Student Conflict

*R.A., on behalf of minor child, B.A., v. Board of Education of the Township Of Hamilton, Mercer County, DKT. NO. 143-6/15,
Commissioner of Education, 22 June 2016.*

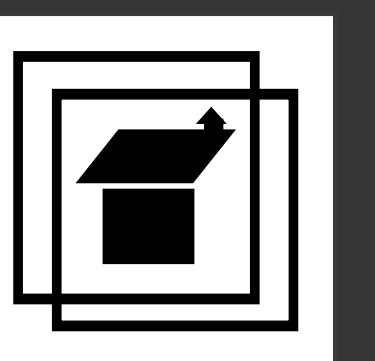
- The parent of student B.A. alleged there had been intermittent incidents involving a group of friends that B.A. perceived to be harassment, beginning when the girls were in sixth grade – after B.A. was invited to a birthday party when the other friends were not.
- The final incident took place when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



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

C.K. and M.K., on behalf of minor child, M.K., v. Board of Education of the Township of Voorhees, Camden County, DKT. NO. 353-11/15, Commissioner of Education, 23 March 2017.

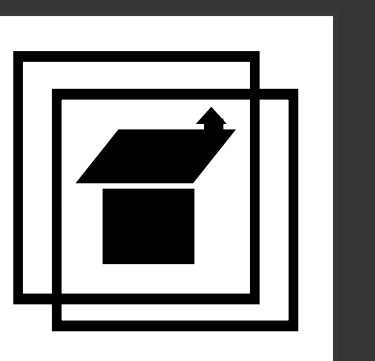
- A special needs student had a habit of indiscriminately seeking high fives from classmates and in the restroom the student reached under the stall partition and grabbed another student's leg and said "high five."
- The district determined the incident did not rise to the level of HIB because it was not motivated by an actual or perceived distinguishing characteristic.
- Parents of the student who was grabbed filed petition.
- The ALJ found the special needs student's conduct of grabbing a student's leg did not meet the definition of HIB as the conduct could not reasonably be perceived as being motivated by a distinguishing characteristic of the petitioners' daughter and did not have the effect of insulting or demeaning the student.



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

C.K. and M.K., on behalf of minor child, M.K., v. Board of Education of the Township of Voorhees, Camden County, DKT. NO. 353-11/15, Commissioner of Education, 23 March 2017.

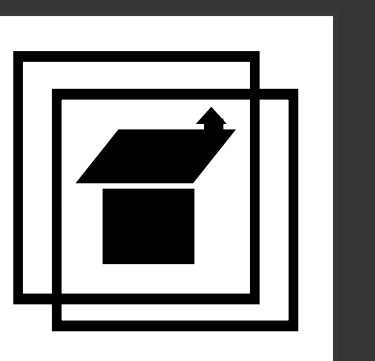
- The ALJ concluded:
 - the Board properly found the conduct alleged did not meet the statutory definition of a HIB violation under the Act;
 - the Board violated the Act's procedural requirement that a Board hearing shall be held within ten days of the petitioner's request;
 - the Board did not violate any other procedural requirements of the Act; and it is not necessary to order the Board to take any other remedial action in this matter because the corrective action directed by the County Office of Education was appropriate to address the Board's violation.
- The Commissioner concurred.



No Credible Evidence the Actions Were Based on the Student's IEP (1 of 2)

C.P., on behalf of minor child, L.P., v. Board of Education of the Township of Warren, Somerset County, DKT. NO. 210-8/16, Commissioner of Education, 16 February 2018.

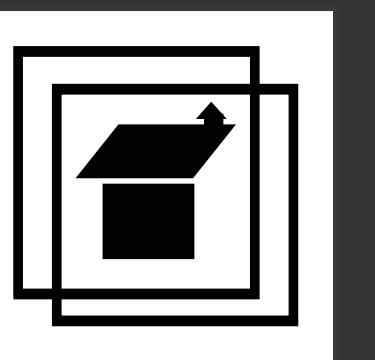
- An eighth-grade student, L.P., alleged she was the victim of HIB in two separate incidents involving her guidance counselor and language arts teacher.
- The first incident involved the language arts teacher, who allegedly spoke about L.P.'s poor grade in front of other students in the class.
- The second incident took place when L.P. went to her guidance counselor to talk about the first incident. L.P. said she went to the guidance counselor often “but felt that nobody had her back”, and when she approached the guidance counselor about the incident involving her teacher, the guidance counselor shut the door to her office and escalated her tone as if she was being interrogated.



No Credible Evidence the Actions Were Based on the Student's IEP (2 of 2)

*C.P., on behalf of minor child, L.P., v. Board of Education of the Township of Warren, Somerset County, DKT. NO. 210-8/16,
Commissioner of Education, 16 February 2018.*

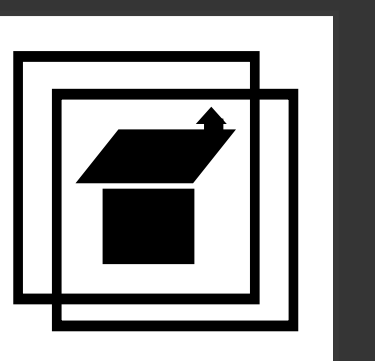
- The ABS investigated the incidents by interviewing both staff members, L.P., and other students and concluded there was no HIB in either allegation because the conduct was not motivated by a distinguishing characteristic.
- The parent appealed, arguing L.P.'s IEP was the distinguishing characteristic.
- The ALJ found the testimony of L.P. and the staff members were credible, however there was no credible evidence offered to prove the actions of the staff members constituted HIB.
- The ALJ stated there was nothing in the record that could be construed that any comment or action was based on a distinguishing characteristic or based upon L.P.'s IEP.
- The Commissioner adopted the ALJ's decision.



HIB Determination/Distinguishing Characteristic Was Student's Gender (1 of 2)

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

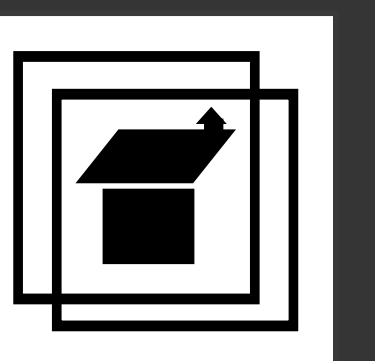
- S.W., a female middle school student, wrote a letter to her Vice Principal detailing harassing behavior by A.P. a male middle school student.
- The behavior included sexually explicit gestures directed at S.W. over the course of a couple months.
- The district's ABS investigated the matter, and during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



HIB Determination/Distinguishing Characteristic Was Student's Gender (2 of 2)

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

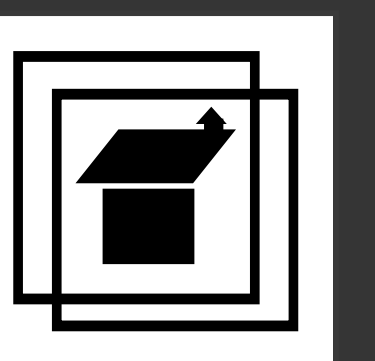
- A.P.'s mother claimed her son did not understand what his gestures meant and the district did not investigate properly because there were inconsistencies in what the Principal told her and what the ABS reported.
- The ALJ stated it was clear A.P. understood what the gestures meant from his interview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



Commissioner Rejects ALJ Determination to Overturn Board's HIB Decision (1 of 2)

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

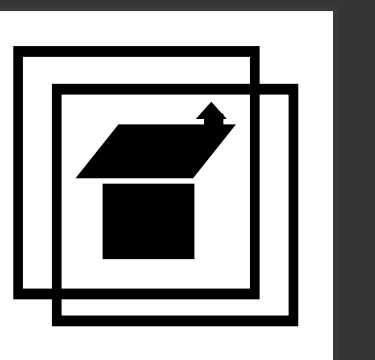
- An incident occurred on the school bus involving A.K., a second grader, and her classmate, N.V. A.K. made comments to N.V. regarding N.V.'s chosen name, hair, and clothing.
- N.V. reported A.K. and A.K. was told by staff members and her mother to stop asking questions and commenting on other students'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



Commissioner Rejects ALJ Determination to Overturn Board's HIB Decision (2 of 2)

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

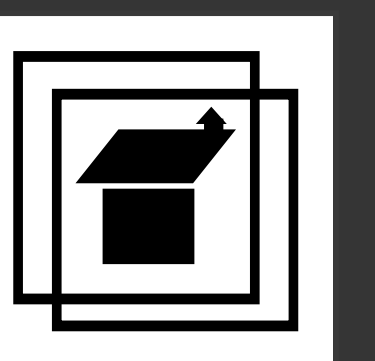
- A.K.'s parents argued the Board's decision was arbitrary, capricious, or unreasonable because it was not supported by substantial evidence.
- The ALJ concluded A.K.'s parents proved by preponderance of the evidence that the determination was arbitrary, capricious, or unreasonable and ordered the decision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



“Power Imbalance” is Not a Perceived or Actual Distinguishing Characteristic in HIB Law or Code (1 of 3)

Stephen Klapach v. Board of Education of the Borough of Fort Lee, Bergen County, DKT. NO. 79-4/20, Commissioner of Education, 06 April 2021.

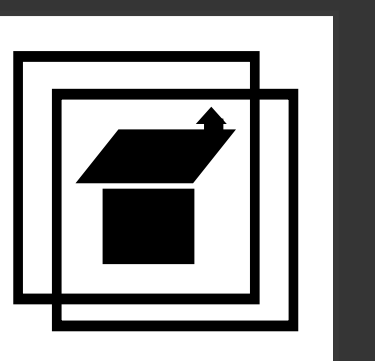
- The teacher was absent from school one day and was informed by the substitute teacher his seventh period class did not behave well.
- Several days later, the teacher told three students who misbehaved, including J.W., their class participation may be decreased for their behavior.
- J.W.'s mother emailed the teacher stating that the substitute was misinformed about J.W.'s behavior.
- The teacher read J.W.'s mother's email to his other science class in which J.W. was not a student.
- J.W. was informed by a student in that science class that the teacher read her mother's email in front of the class and immediately contacted her mother to pick her up at school. The mother came and met with the Vice Principal to discuss the incident.



“Power Imbalance” is Not a Perceived or Actual Distinguishing Characteristic in HIB Law or Code (2 of 3)

Stephen Klapach v. Board of Education of the Borough of Fort Lee, Bergen County, DKT. NO. 79-4/20, Commissioner of Education, 06 April 2021.

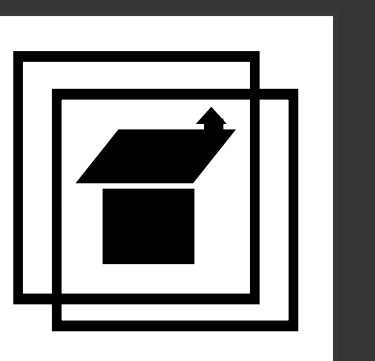
- A HIB investigation was opened against the teacher for reading the email and identifying J.W.’s mother as the author of the email.
- The Board concluded the teacher committed an act of HIB and the Teacher appealed the Board’s determination to the Commissioner.
- The ALJ stated the Board’s letter to the teacher informing him the HIB charges were sustained did not state how the teacher’s conduct was motivated by an actual or perceived characteristic of J.W.
- The ALJ rejected the Board’s determination the perceived or actual distinguishing characteristic was “power imbalance” and concluded “power imbalance” is not a distinguishing characteristic as defined in N.J.S.A. 18A:37-14, N.J.A.C. 6A:16-7.1(a)(i), (ii), and (iii), or the district’s Policy, rather it is something that should be considered regarding the incident.
- The ALJ held the Board’s determination should be overturned.



“Power Imbalance” is Not a Perceived or Actual Distinguishing Characteristic in HIB Law or Code (3 of 3)

Stephen Klapach v. Board of Education of the Borough of Fort Lee, Bergen County, DKT. NO. 79-4/20, Commissioner of Education, 06 April 2021.

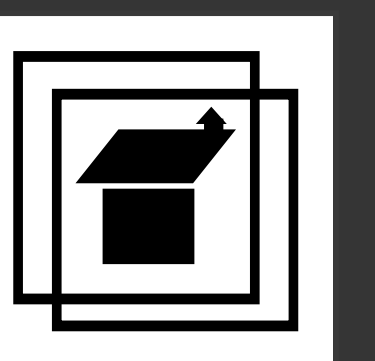
- The Commissioner stated power imbalance inherent in the relationship between a teacher and a student cannot, by itself, be a distinguishing characteristic sufficient to prove an act of HIB.
- The Commissioner explained the NJDOE clearly stated “the mere existence of a real or perceived power imbalance without fulfilment of other criteria is insufficient to find an incident of HIB.”
- The Commissioner explained because only students can be victims of HIB under the Act, status as a student cannot be sufficient to substantiate a HIB finding, or there would be no reason to include an additional requirement that the conduct be reasonably perceived as being motivated by a distinguishing characteristic.
- The Commissioner ultimately held the series of events at issue here are conflict, not bullying and adopted the initial decision of the ALJ.



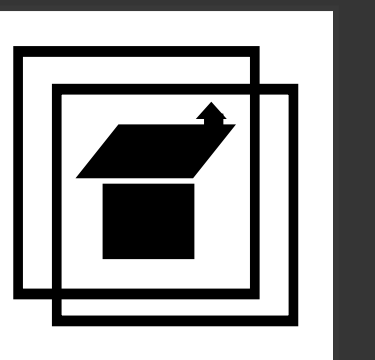
Must Be Link Between Conduct and Distinguishing Characteristic to Qualify as HIB

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

- In a high school music class, an incident occurred involving two eleventh grade students – J.S. and C.H.
- The teacher reported J.S. was making the harassing gesture of plugging her ears and saying “I’m going to need ear plugs to get through this part of the concert” while C.H. was singing a solo.
- The gesture and comment made C.H. so uncomfortable she moved to the back of the room.
- The district conducted an investigation and concluded J.S.’s conduct was HIB.
- On appeal, the Board voted to affirm the Superintendent’s HIB finding.
- J.S.’s father filed an appeal with the Commissioner.
- The ALJ stated there was no factual showing being weak or a female as a distinguishing characteristic motivated J.S.’s denigration of C.H.’s singing.
- The ALJ also stated the conduct arose out of a conflict in the students’ relationship, as the record showed a series of ups and downs between the two students.
- The ALJ concluded the Board had mistakenly classified the incident as HIB and overturned their decision. The Commissioner concurred.



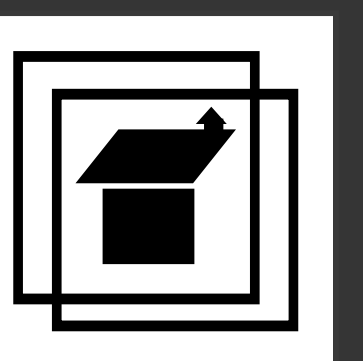
Athletic Teams



Conduct During Season Was Not Motivated by Distinguishing Characteristic/No HIB

L.P. and H.P., on behalf of minor child, L.P., vs. Board of Education of the West Morris Regional School District, Morris County, DKT. NO. 80-3/16, Commissioner of Education, July 2016.

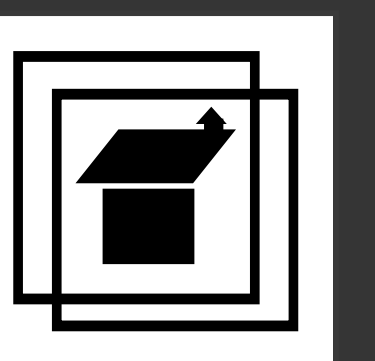
- Student L.P. accidentally injured a teammate at a fencing practice in November and was allegedly harassed by her teammates, specifically B.S., for the rest of the school year.
- After a full investigation, the district concluded there was no HIB since B.S.'s conduct was not motivated by a distinguishing characteristic.
- L.P.'s parents appealed the decision, stating L.P.'s being young, vulnerable, and a more skilled fencer was the distinguishing characteristic motivating B.S.'s behavior.
- The ALJ stated conduct that is motivated by a personal dispute such as specific roles on a sports team, albeit potentially harmful, does not fall within the definition of bullying under the ABR.
- The ALJ further explained L.P. and her parents may have viewed the matters as constituting "bullying" under a more common place or lay meaning of that term, and there might have even been a clear demonstration of poor sportsmanship, but not a violation of the ABR.
- The ALJ concluded it was reasonable for the Board to determine B.S.'s conduct was motivated by her relationship with L.P. and the dynamics of the fencing team, not a distinguishing characteristic protected by the ABR.
- The Commissioner concurred and adopted the ALJ's decision.



No HIB/Head Coach Did Not Retaliate Against Student (1 of 2)

*L.P. and H.P., on behalf of minor child, L.P. v. Board of Education of the West Morris Regional High School District, Morris County, DKT. No. 213-8/16 & 236-8/16,
Commissioner of Education, 29 March 2018.*

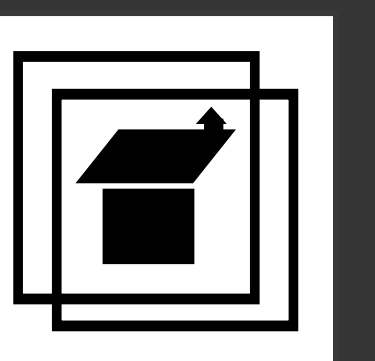
- Student L.P. alleged the head coach of the fencing team committed HIB by retaliating against L.P. because L.P. previously filed a HIB claim against B.S., the team captain, in which L.P. noted the coach was absent from practice when another fencer was injured.
- L.P.'s allegations stated the coach changed her criteria for strip assignments to prevent L.P. from being on the "A strip," and the coach did not make L.P. a team captain in retaliation of L.P.'s HIB complaint filed against B.S. the year before.
- The district investigated and found there was no HIB, because the coach did not change her criteria for strip assignments from the previous season.
- The Board concurred, and the parents appealed to the Commissioner.



No HIB/Head Coach Did Not Retaliate Against Student (2 of 2)

L.P. and H.P., on behalf of minor child, L.P. v. Board of Education of the West Morris Regional High School District, Morris County, DKT. No. 213-8/16 & 236-8/16, Commissioner of Education, 29 March 2018.

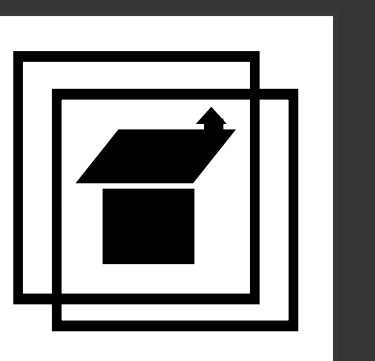
- The ALJ stated the coach's testimony regarding her criteria for strip assignments was credible and did not support L.P.'s allegations; the coach has the discretion to change strip assignments and is not wedded to any criteria.
- The ALJ also stated the coach held an extra practice solely for L.P. so that she would be eligible for competition, proving the coach was not singling L.P. out in a negative way, but rather supporting her above and beyond what was necessary.
- The ALJ ultimately felt the HIB complaint against the coach was a response by L.P. and her parents to the fact she was not assigned to A strip or selected as a team captain.
- The ALJ concluded there was no HIB, the investigation was done properly, and the claims by L.P. were pure conjecture and disproved by all the evidence and testimony.
- The ALJ dismissed the petition and the Commissioner adopted that decision.



Athletic Coach is Entitled to Full Board Hearing (1 of 2)

Stephen Gible v. Board of Education of the Hunterdon Central Regional School District, Hunterdon County, DKT. NO. 20-2/15, Commissioner of Education, 13 July 2016

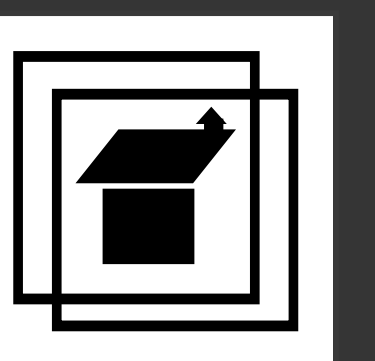
- The Wrestling Coach made a disparaging comment in front of the team about an individual team member who was a special education student “I hope you don’t have access to any weapons or keys to the gun closet.”
- The child called his mother and requested to be picked up early from wrestling camp.
- After an investigation by the district, the Board confirmed HIB had occurred.
- The Board told the Coach he was allotted a maximum of 20 minutes at the appeal hearing, and he could not call any witnesses.
- In lieu of this the Coach declined to attend the meeting and appealed the determination on the grounds his due process rights had been violated.



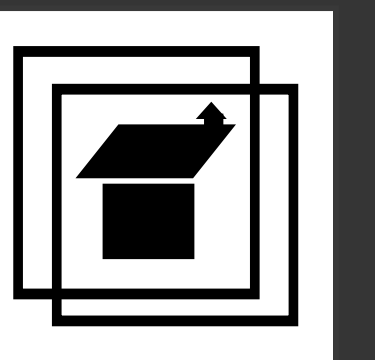
Athletic Coach is Entitled to Full Board Hearing (1 of 2)

Stephen Gible v. Board of Education of the Hunterdon Central Regional School District, Hunterdon County, DKT. NO. 20-2/15, Commissioner of Education, 13 July 2016.

- Upon appeal to the Commissioner, the ALJ found the due process rights of the Coach had been violated and stated the Commissioner previously recognized staff members who have a bullying charge levied against them are entitled to the full due process rights afforded under the statute.
- The ALJ stated the HIB determination should be reversed and cleared from the Coach's record.
- The Commissioner concurred with the ALJ that the Coach was entitled to the same due process rights as a parent or student; however, the Commissioner modified the ALJ's conclusion and remanded the matter back to the Board to provide the Coach with a proper hearing before the Board.



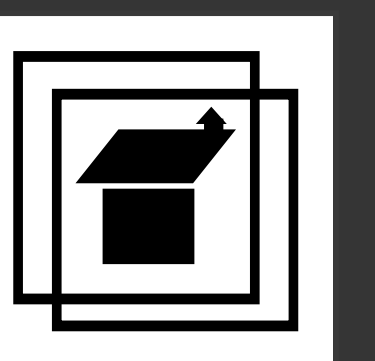
Miscellaneous



HIB Finding Does Not Require an Analysis of the Actual Motivation or Intent of the Aggressor (1 of 3)

*Janan Wehbeh v. Board of Education of the Township of Verona, Essex County, DKT. NO. 154-6/18,
Commissioner of Education, 04 February 2020.*

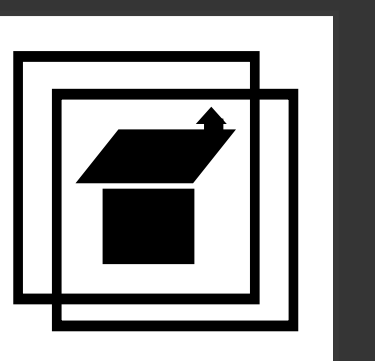
- Student J.G. met with her Chemistry teacher to discuss enrolling in AP Chemistry in the next school year.
- The teacher recommended J.G. not take the course because of its difficulty and because, in the teacher's opinion, J.G. was already having difficulties in her current honors chemistry class.
- The teacher left the decision to enroll or not to enroll in the course with J.G.
- J.G.'s mother met with the Principal and J.G.'s guidance counselor on the same day of the conversation, alleging:
 - the teacher bullied her students by emphasizing how difficult the AP chemistry course was and by telling them the course "will kill you."
 - the teacher told J.G. everyone who takes chemistry has anxiety and J.G. would not be allowed extra time to take quizzes and tests every day.
 - the teacher disrespected J.G. by making disparaging remarks, which J.G.'s mother saw as mocking her daughter's anxiety disorder, and the teacher's remarks caused emotional upset to J.G.
- J.G. and her mother filed a HIB complaint, claiming the teacher made verbal remarks about J.G.'s ability to handle the requirements of the AP course.
- J.G. and her mother claim the teacher's remarks touched upon J.G.'s disability (anxiety and panic disorders) for which J.G. was categorized as a special education student and given a 504 plan.



HIB Finding Does Not Require an Analysis of the Actual Motivation or Intent of the Aggressor (2 of 3)

*Janan Wehbeh v. Board of Education of the Township of Verona, Essex County, DKT. NO. 154-6/18,
Commissioner of Education, 04 February 2020.*

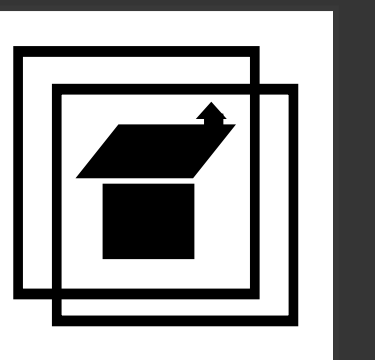
- The Principal opened a HIB investigation and after conducting interviews of the teacher and J.G., the ABS concluded there was evidence supporting the teacher committed an act of HIB against J.G., with J.G.'s anxiety and 504 status being motivating factors. The conduct minimized J.G.'s mental disability, interfered with J.G.'s rights to access education, created a hostile educational environment, and caused J.G. emotional harm.
- The Superintendent recommended a finding of HIB to the Board, and the Board voted to affirm the finding.
- A letter informing the teacher of the finding stated she “unintentionally engaged in bullying behavior” and “had no awareness of the potential negative impact on the victim.”
- The teacher appealed the Board's decision, arguing N.J.S.A. 18A:37-14 only applies to intentional conduct and as such, to assert an intentional act of bullying can be committed “unintentionally” was absurd.
- The ALJ concluded an aggressor's intent to harm is an element of N.J.S.A. 18A:37-14, and in order to establish an occurrence of HIB, it is necessary to demonstrate the aggressor's intent to harm or threaten.
- The ALJ reversed the Board's HIB finding.



HIB Finding Does Not Require an Analysis of the Actual Motivation or Intent of the Aggressor (3 of 3)

*Janan Wehbeh v. Board of Education of the Township of Verona, Essex County, DKT. NO. 154-6/18,
Commissioner of Education, 04 February 2020.*

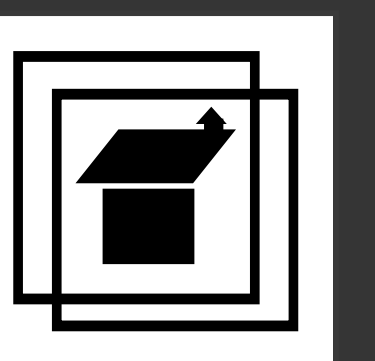
- The Commissioner rejected the ALJ's decision, stating the ALJ incorrectly interpreted N.J.S.A. 18A:37-14.a. as the third requirement in the statute and the fourth requirement being a choice between subsections b. and c.
- The Commissioner explained that the fourth criterium is a demonstration of any of the subsections a., b., or c. can support a finding of HIB.
- The Commissioner stated the statute does not require an analysis of the actual motivation of the aggressor.
- The Commissioner remanded the petition back to the ALJ for further fact finding for an analysis of whether J.G. reasonably perceived the teacher's comments to be motivated by her disability.



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

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

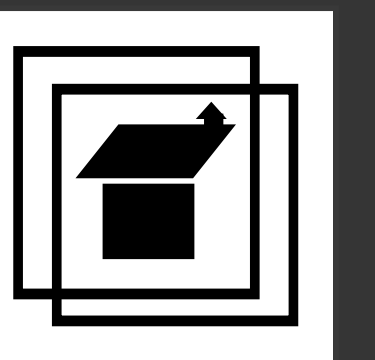
- Parents alleged their daughter, S.N.F., was subject to acts of HIB by a teacher.
- The teacher felt length of S.N.F.'s skirt was unacceptable and told her to call home to get a change of clothes.
- S.N.F. was unable to reach home, so she was allowed to return to class, wherein the teacher remarked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



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

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

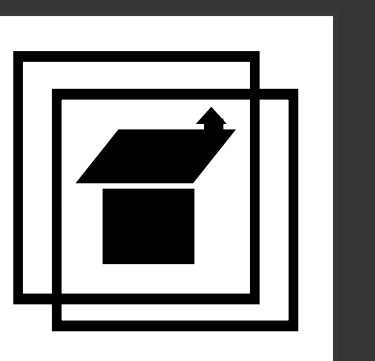
- The parents filed two complaints with Commissioner alleging the teacher's conduct constituted HIB and they alleged the HIB investigation was conducted improperly as the investigator failed to interview witnesses who observed the teacher harass and demean S.N.F.
- The parents further asserted the alleged cheating incident constituted HIB guaranteeing S.N.F. would fail the second marking period.
- The Board asserted this matter concerned two separate teacher-student interactions concerning violation of school rules.
- The ALJ concluded the teacher's interaction with the student was merely disciplining the student for violation of school rules and the Commissioner concurred.



HIB Encompasses Sexual Harassment (1 of 2)

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

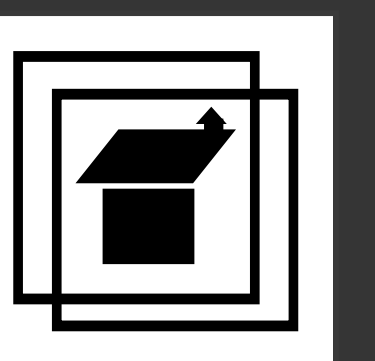
- An eighth-grade male student, P.H., “attempted to engage in sexual activity” with a seventh grade female student, E.R., on school property. Students who witnessed this incident reported to school officials.
- School officials did not conduct an investigation and when contacted by E.R.’s parents, school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



HIB Encompasses Sexual Harassment (2 of 2)

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

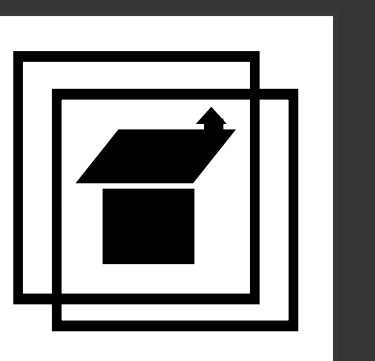
- The ALJ indicated that all requirements of the ABR were met by P.H.'s words and actions toward E.R.:
 - P.H., the allegedly heterosexual male student, engaged in actions reasonably perceived as being motivated by E.R.'s gender (female) and sexual orientation (heterosexual);
 - the actions took place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



Commissioner Finds HIB Conduct Did Not Substantially Disrupt the Orderly Operation of the School or the Rights of Other Students (1 of 3)

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

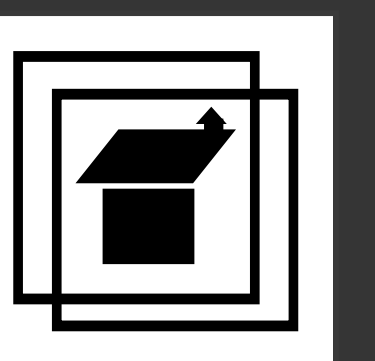
- The father alleged a HIB investigation involving his son, D.K., as a victim was not conducted properly, the district did not interview all witnesses, and the district covered up the aggressors' actions.
- The father also alleged the district should have permitted him to obtain all the angles of the bus video surveillance system used as evidence in making the HIB determination.
- 1st Incident – The father alleged D.K. was assisting a younger student on the bus and another student said “why you got to be a know it all, I hope you get brain damage,” and then bumped D.K. with his backpack.
- 2nd Incident – During homeroom, a student stated to D.K., who was wearing a yellow shirt, “you’re already yellow, you’re Asian” (D.K. is of Korean descent) and then the student referred to D.K. as “a dumbass Asian.”



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

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

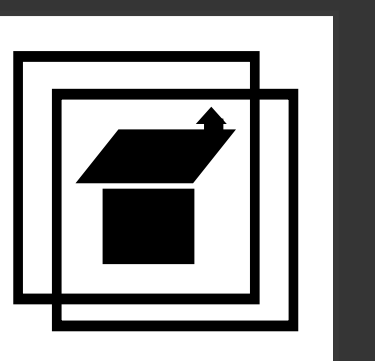
- The ALJ determined the 1st incident was not HIB and it was a conflict between the two students regarding their comparative math skills.
- The ALJ also determined the 2nd incident took place on school property, had the effect of being insulting or demeaning, and was motivated by D.K.'s race.
- However,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



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

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

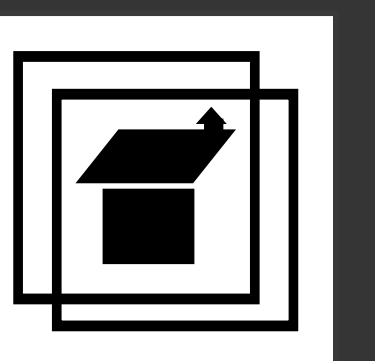
- The Commissioner concurred with the ALJ, but modified the ruling to clarify the second incident was motivated by an actual or perceived characteristic, D.K.'s Korean heritage.
- However, the Commissioner stated the comments were not problematic for D.K.'s learning experience and other students did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



The Anti-Bullying Bill of Rights Act Only Applies to Individuals Not Organizations (1 of 2)

Columbia High School Baseball Boosters, Inc. v. Board of Education of the South Orange-Maplewood School District, Essex County, DKT. NO. 42-3/17, Commissioner of Education, 13 November 2017.

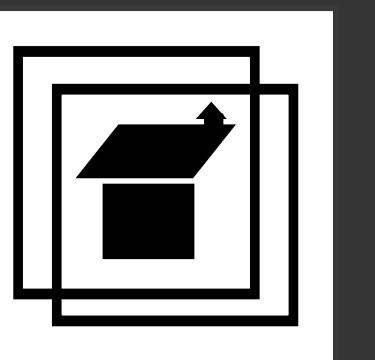
- The Booster Club intentionally did not invite one of the team members and their family to the end-of-year banquet.
- None of the individual members of the Booster Club Board of Trustees were recognized or appointed by the Board of Education.
- This student filed a HIB claim against the Booster Club alleging he was not invited to the banquet in retaliation for him filing a formal complaint against the baseball team coaching staff.
- The district investigated the claim and determined the Booster Club was guilty of HIB. The Board concurred with the district's HIB determination and the Booster Club appealed to the Commissioner.



The Anti-Bullying Bill of Rights Act Only Applies to Individuals Not Organizations (2 of 2)

Columbia High School Baseball Boosters, Inc. v. Board of Education of the South Orange-Maplewood School District, Essex County, DKT. NO. 42-3/17, Commissioner of Education, 13 November 2017.

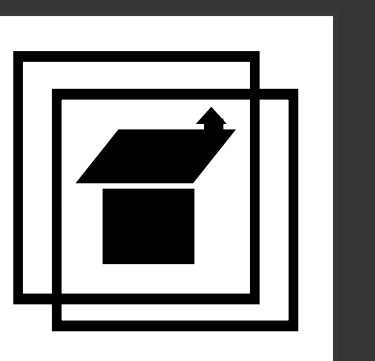
- The ALJ stated the ABR and Board Policy list the adults to whom the HIB Policy applies and a Booster Club is not covered by the ABR because the Booster Club organization is not “volunteers.”
- The Commissioner concurred, indicating the Board’s HIB determination had to be overturned because the Booster Club is an organization and organizations as a whole are not covered by the ABR.
- However, the Commissioner stated individual Booster Club members are not exempt from the ABR and there must be a determination, on a case-by-case basis, as to whether individual members fall into one of the categories of individuals with certain responsibilities under the ABR.



Commissioner Reverses Decision and Upholds Board's Policy and HIB Determination (1 of 2)

J.P. on behalf of minor child, D.P. v. Board of Education of the Gloucester County Vocational Technical School District, Gloucester County, DKT. NO. 241-9/18, Commissioner of Education, 13 March 2020.

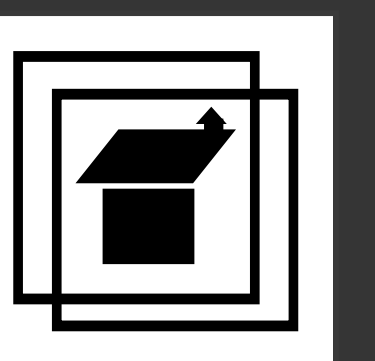
- The HIB specialist received an email from A.G.'s mother explaining A.G. was “not himself and seemed down” because some boys have been calling him “gay” and laughing at A.G.
- Based on this email, an investigation commenced. During one of the interviews, A.G. stated he did not want to return to that class because he felt uncomfortable.
- The ALJ indicated the definition of HIB requires an initial finding that a reasonable person knew or should have known that the conduct would have the effect of harming another student.
 - And only upon concluding the person knew or should have known can a Board determine if the conduct had the effect of insulting or demeaning the student as per N.J.S.A. 18A:37-14.b or created a hostile environment as per N.J.S.A. 18A:37-14.c.
- The Board argued that an affirmative determination of N.J.S.A.18:37-14.a, b, or c is enough for a Board to determine a violation of the HIB law.



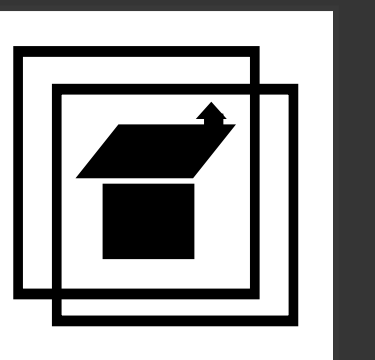
Commissioner Reverses Decision and Upholds Board's Policy and HIB Determination (2 of 2)

J.P. on behalf of minor child, D.P. v. Board of Education of the Gloucester County Vocational Technical School District, Gloucester County, DKT. NO. 241-9/18, Commissioner of Education, 13 March 2020.

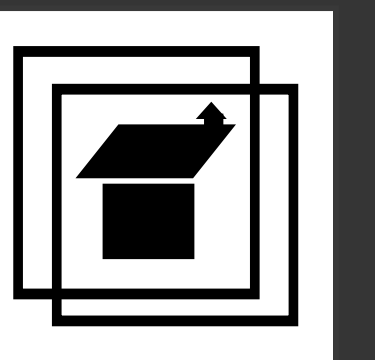
- The ALJ concluded the Board determined the student, D.P., committed an act of HIB in violation of the law because he admitted calling the victim student “gay,” but the Board failed to consider his explanation and circumstances surrounding his comments and the fact that his comments were not motivated by any actual or perceived characteristic, such as the sexual orientation of the victim student.
- The Commissioner reversed the ALJ's decision and determined the Board's Policy 5512 conformed to the ABR as only one of the three criteria in N.J.S.A. 18A:37-14.a, b, or c is required to be present and N.J.S.A. 18A:37-14.a is not a threshold issue that needs to be determined in the affirmative before considering N.J.S.A. 18A:37-14.b or c.
- The Commissioner indicated there is sufficient evidence in the record to support the Board's decision that a student commenting on or misstating another student's sexual orientation could reasonably be perceived as being motivated by that characteristic, that the comments disrupted the other student's education and the comments were insulting or demeaning.



Break Before Second Session

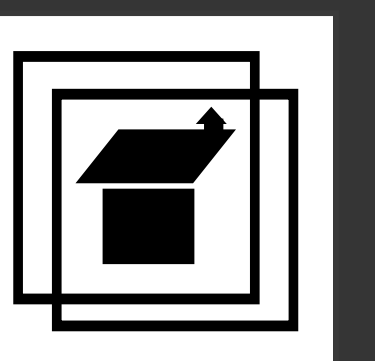


Principal's Preliminary Determination



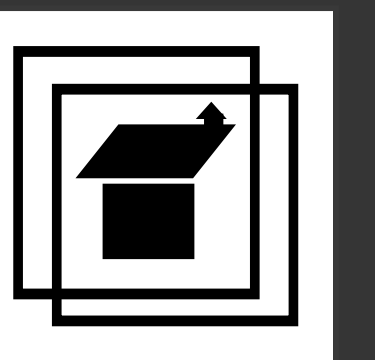
Policy Option – Principal's Preliminary Determination

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



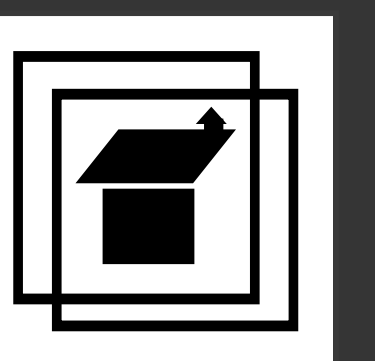
Policy Option – Principal's Preliminary Determination

- All preliminary determinations not to conduct a HIB investigation shall be recorded in writing on the “HIB 338 Form.”
- The written record of parental notification as described before must be filled out for every preliminary determination made as well.
- The Principal shall notify the Superintendent in writing of the preliminary determination by submitting the “HIB 338 Form” to the Superintendent.



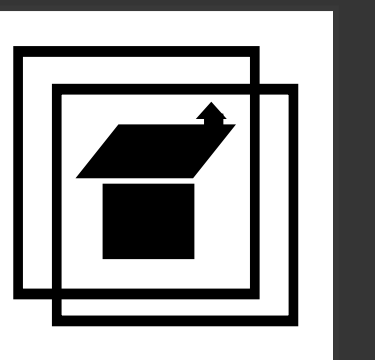
Policy Option – Principal's Preliminary Determination

- In accordance with the recent revisions to the statute, N.J.S.A. 18A:37-15.b.(5), the Principal must report any preliminary determination to the Superintendent so the Superintendent can either reject or accept the Principal's determination.
 - The Superintendent shall notify the Principal in writing when the Superintendent rejects or accepts the Principal's preliminary determination by returning the completed "HIB 338 Form" to the Principal.
 - If the Superintendent concurs with the Principal's preliminary determination the Principal shall notify the parent's in writing of the determination within two school days.
 - The district shall provide the parents with a reasonable time period in which to appeal the preliminary determination to the Board. In accordance with N.J.A.C. 6A:16-7.7 the determination may be appealed to the Board, pursuant to Board policies and procedures governing pupil grievances.
- In accordance with the recent revisions to the statute, N.J.S.A. 18A:37-15.b.(6)(a), if the Superintendent rejects the preliminary determination, a HIB investigation shall commence and be completed within ten school days from the Principal receiving the Superintendent's written rejection of the preliminary determination.

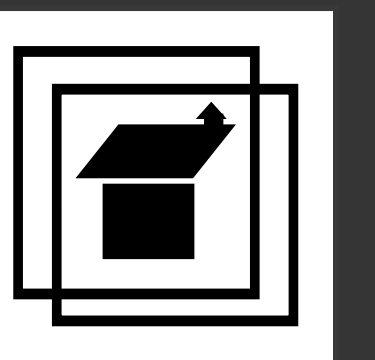


Policy Option – Principal's Preliminary Determination

- In accordance with the recent revisions to the statute, N.J.S.A. 18A:17-46, the Superintendent must report to the Board, annually, the number of times a preliminary determination was made that an incident or complaint was outside the scope of HIB for the purposes of the State's monitoring of the school district.
- Parents may appeal the Principal's preliminary determination directly to the Board.
 - Board Hearing shall be held within ten business days of receipt of the request for a Board Hearing.

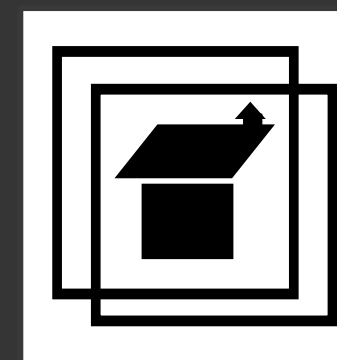


Reporting an Act of HIB

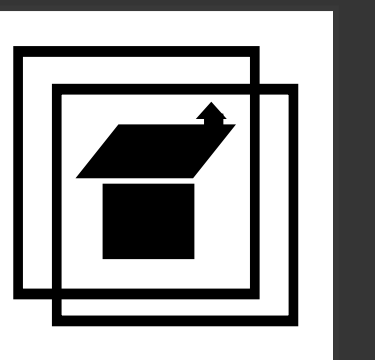


Reporting Alleged HIB Acts

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



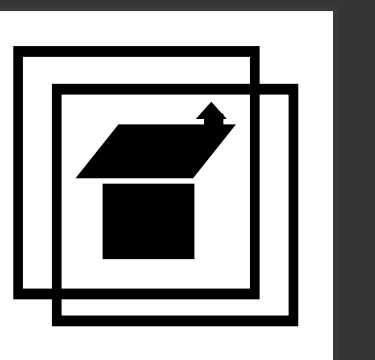
Investigations



HIB Investigation

Principal's Role Upon Receiving Report

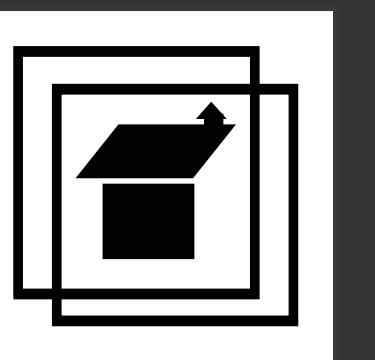
- Initiate investigation within one school day of the verbal report through the ABS.
 - Principal shall coordinate investigation with ABS and not lead or complete the investigation.
- Inform parents of alleged aggressor(s) and alleged target that there is an incident and an investigation will be conducted.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



HIB Investigation

Principal's Role Upon Receiving Report

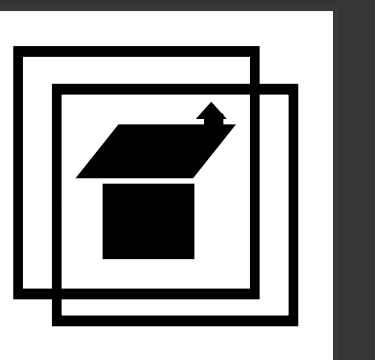
- In accordance with the recent revisions to the statute, N.J.S.A. 18A:37-15.b.(5), the Principal must now document in writing (date, time, and manner of notification) the initial notification that was provided to the interested parents to alert them that there was a potential HIB and an ensuing investigation.



HIB Investigation

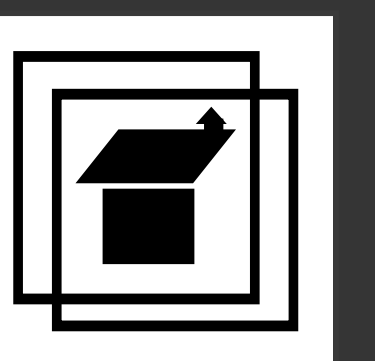
Principal's Role Upon Receiving Report

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



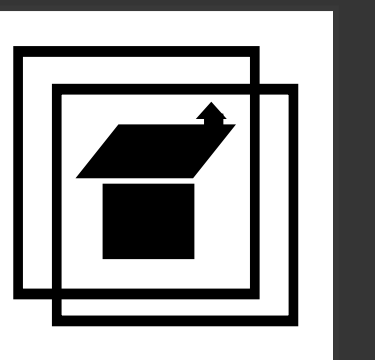
Receiving the Incident Report

- When the Principal receives a verbal report, the Principal should request the individual keep the incident confidential while the investigation is ongoing.
 - Important because if “off the record” discussions ensue about the incident it could prevent others from coming forward about the current incident or future incidents AND/OR it could cause others to come forward with false information about the current incident.
 - The Principal shall submit the “HIB 338 Form” in accordance with the recent revisions to the statute, N.J.S.A. 18A:37-15.b.(5) to the Superintendent.
- The ABS should begin the investigation process upon receiving the written “HIB 338 Form” from the Principal and begin the retention of records process regarding the incident:
 - The “HIB 338 Form” shall be signed and dated by the person submitting it.



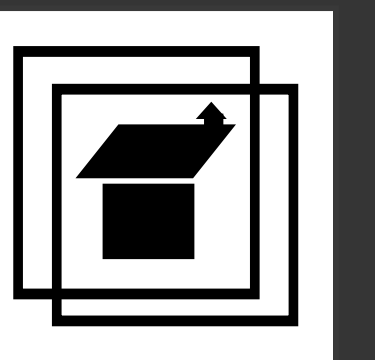
HIB Investigation

- Role of the ABS
 - Lead and conduct each investigation.
 - Complete investigation within 10 school days of written report and submit the written findings to the Principal.
- Principal shall proceed in accordance with code of student conduct as appropriate, based on the investigation.
- The original report may be amended if additional information relative to the investigation is received after the 10-day investigation period.
 - District should have procedure to consider additional information that is received after the 10 school day investigation period.



HIB Investigations Involving Adult Conduct

- Investigations of complaints concerning adult conduct shall not be investigated by a member of the same bargaining unit as the individual who is the subject of the investigation.
- The ABS should not participate in an investigation regarding their supervisor or anyone at a higher administrative level.

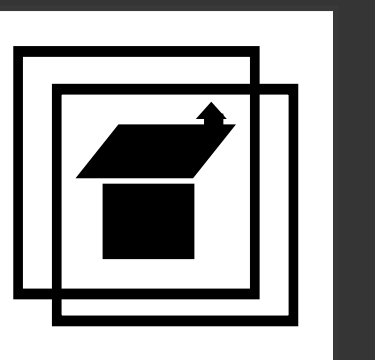


Investigating Complaints of Alleged HIB

“Initial Step”_{NJDOE}

Ensure Student Safety

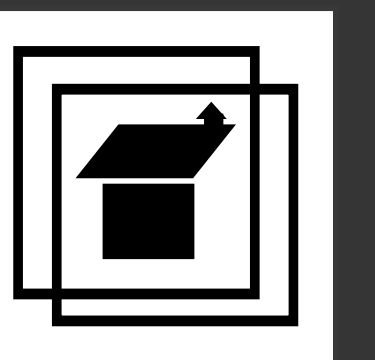
- The most important aspect of the investigation is to make sure the behavior immediately stops in order for the student or students who are the victims to be safe.



Investigating Complaints of Alleged HIB

“Evidence Preservation”

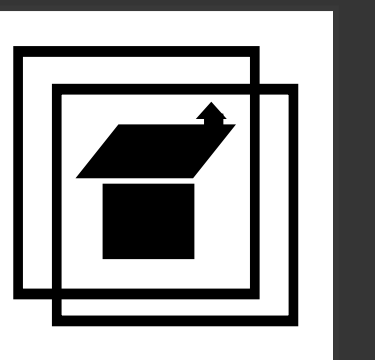
- Evidence Protocol:
 - Collect any evidence of the incident that has been brought to your attention.
 - Written evidence (i.e. text messages, notes passed in class, comments on social media)
 - or any other physical items (i.e. photos, videos)
- Make sure this evidence is safe-guarded and entered into the record of the incident.
- Evidence preservation is important if there is a review of the investigation process or an appeal of the decision to the Board, Commissioner, or Court.



Investigating Complaints of Alleged HIB

“Concluding the Investigation”

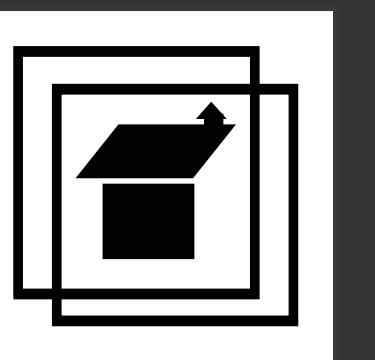
- Conclude the investigation when all fact finding has been completed and there is adequate information to make a determination.
- Based on the findings, the report shall conclude whether:
 - The incident met the criteria of the HIB definition.
 - School staff followed the Board-approved HIB policy/procedures.
 - Reasonable actions have been taken to ensure the victim(s) is safe and attending school and to remediate the offender’s behavior consistent with the ABR, the BOE’s policies, and the code of student conduct.
 - Notify and consult with the Principal of the findings and determinations, and, in coordination with the Principal, prepare the report of the investigation for the Superintendent.



Post-Investigation Monitoring

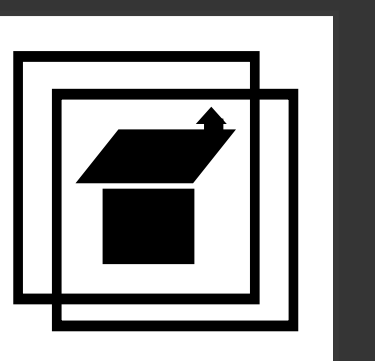
While the matter is pending review by the Superintendent, the Principal shall monitor the situation to ensure:

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



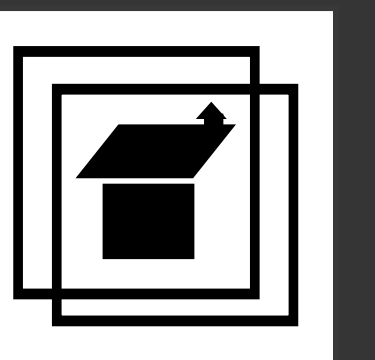
Parent Involvement

- Minus the statutory requirement of notifying parents upon receiving a report and commencing a HIB investigation, there is no requirement to involve the parent during the active investigation.
 - If a parent insists their child not be interviewed or if interviewed the child will not answer questions, the parent should be informed the ABS will have no other option but to believe what others report.
 - District may have informal practice to offer parent invitation to meeting – parent shall not comment unless requested by ABS.
 - If a parent was a witness or a bystander, they should be interviewed (stress confidentiality with parent).
 - If the parent is the reporter of the incident, they should be treated as any other reporter - document the facts, gather any evidence the parent may have, and then their involvement ends.
- Periodic updates of the progress being made are appropriate, but not required during the ten days of active investigation.

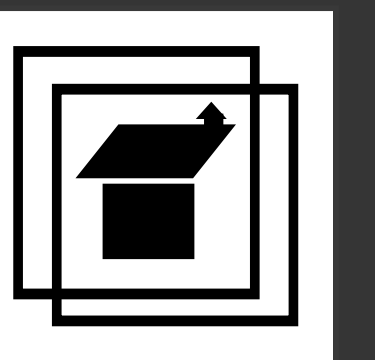


Overlapping Role of the ABS & the AAO

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

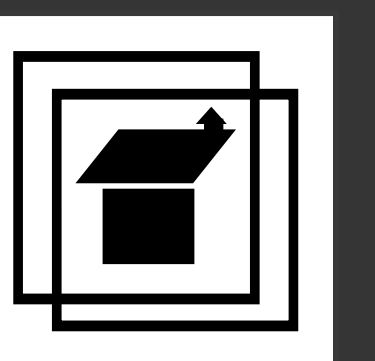


Written Notification and Appeals Process



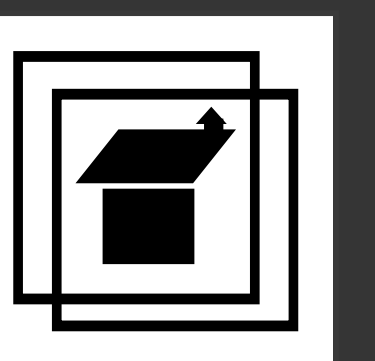
Written Notification and Appeal Process

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

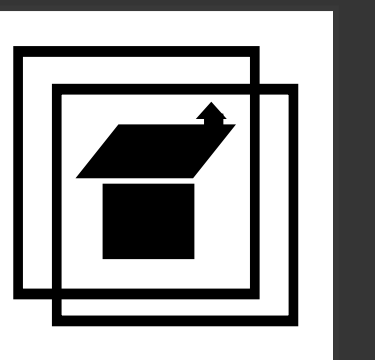


Written Notification and Appeal Process

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

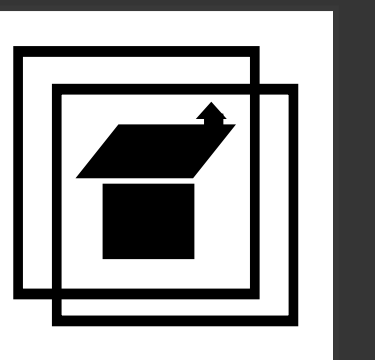


Consequences and Remedial Action



Consequences and Remedial Action

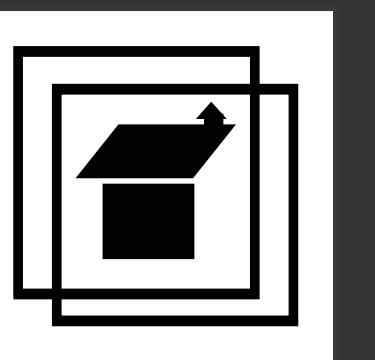
- The recent revisions to N.J.S.A. 18A:37-15.b.(4) now provides a detailed suggested consequence or remedial action.
 - The statute breaks the suggested consequences and remedial actions down by “first offense,” “second offense,” and a “third or subsequent offenses.”
 - “For the third and each subsequent act, a copy of the results of the investigation shall be placed in the student’s record, and the Principal, in consultation with the appropriate school staff, shall develop an individual student intervention plan which shall be approved by the Superintendent of Schools or the Superintendent’s designee, and may include remedial actions including counseling or behavioral intervention services, or progressive discipline, or both, and may require the student, accompanied by a parent to complete in a satisfactory manner a class or training program to reduce harassment, intimidation, or bullying behavior.”
- These actions are not mandated; they are merely suggestions.



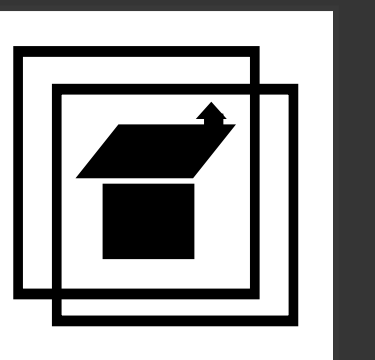
Reprisal, Retaliation, and False Accusation

Reprisal, Retaliation and False Accusation

- A Board member, school employee, student, volunteer, or contracted service provider who have contact with students shall not engage in reprisal, retaliation, or false accusation against a victim, witness, or one with reliable information about an act of HIB.
- Consequences and appropriate remedial action shall be determined by the administration.

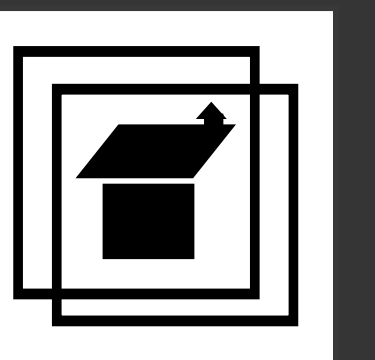


Policy 5541 – Anti-Hazing



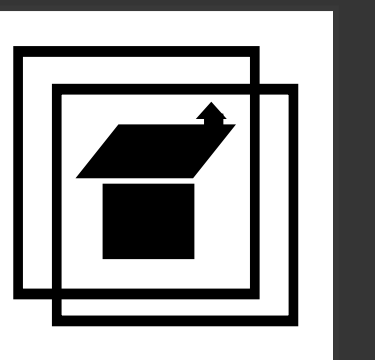
Policy 5541 - Anti-Hazing

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



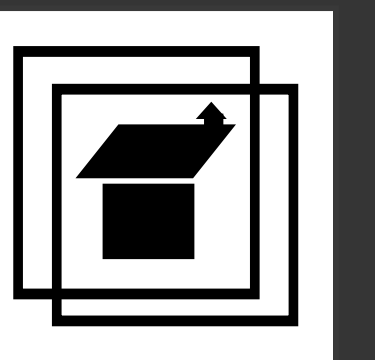
Policy 5541 - Anti-Hazing

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



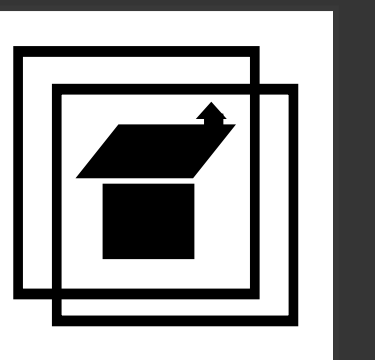
Policy 5541 - Anti-Hazing

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



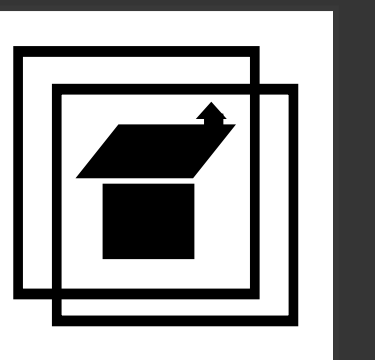
Policy 5541 - Anti-Hazing

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



Procedure/Investigation

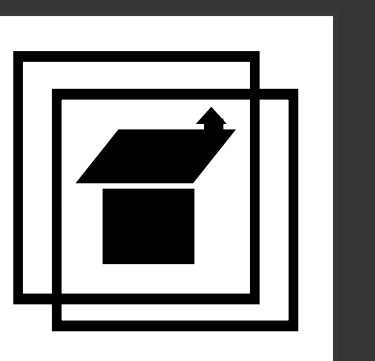
Cases



Any Allegation of HIB Must Be Investigated (1 of 2)

*D.M., on behalf of minor child K.B., v. Board of Education of the Township of West Milford, Passaic County,
Commissioner of Education, DKT. NO. 70-3/14, 24 November 2014.*

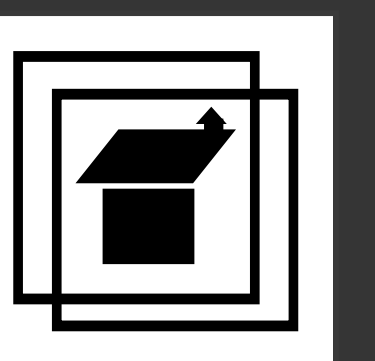
- K.B., a fifth-grade student, was harassed by classmates to the point her parent felt K.B. could not continue to attend the school and withdrew her.
- K.B.'s parent claimed the Board violated the ABR by failing to investigate K.B.'s claims and sought an order compelling the district to conduct the mandated investigation.
- The Board denied K.B. was subject to bullying, and contended neither the parent nor K.B. ever filed a report concerning an incident of HIB and filed to dismiss the petition.
- The ALJ granted the district's motion to dismiss because the parent failed to provide the district with a written report to start an investigation.
- The ALJ concluded the Board exercised reasonable managerial discretion in a reasonable and practicable matter.



Any Allegation of HIB Must Be Investigated (1 of 2)

*D.M., on behalf of minor child K.B., v. Board of Education of the Township of West Milford, Passaic County,
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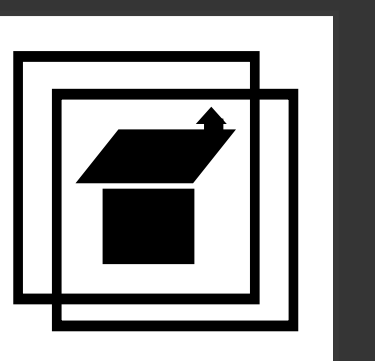
- The Commissioner found the district had an obligation to conduct a HIB investigation in accordance with the requirements of the ABR, despite the fact the parent did not fill out the district HIB Form.
- The Commissioner indicated there is nothing in the statute that states a parent must submit a written form before a HIB investigation shall be initiated, and the district can not require a written report to initiate an investigation.
- In addition, the Commissioner stated the district's argument the matter was appropriately resolved through the peer mediation process did not satisfy the requirement to investigate and indicated peer mediation may follow the completion of an investigation, but may not preempt the investigation.
- The Commissioner was not persuaded by the district's argument it was not required to initiate a HIB investigation because the parent withdrew the student from the district.
- The Commissioner rejected the ALJ's decision and concluded all alleged acts of HIB require an investigation by an ABS and ordered the district to conduct an investigation.



Investigation Unable to Identify Aggressor(s)/No HIB

*G..J., on behalf of minor child, S.J., v. Board of Education of the Township of Plumsted, Ocean County, DKT. NO. 44-2/16,
Commissioner of Education, 22 November 2016.*

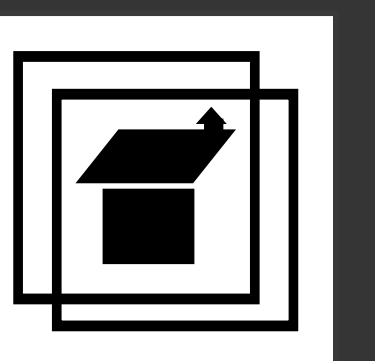
- A tenth-grade student, S.J., reported he had been harassed and bullied by way of a series of internet postings targeting him.
- The district notified the parents the investigation could not sustain any charges of HIB because the district was unable to identify any of the parties responsible for the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



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

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

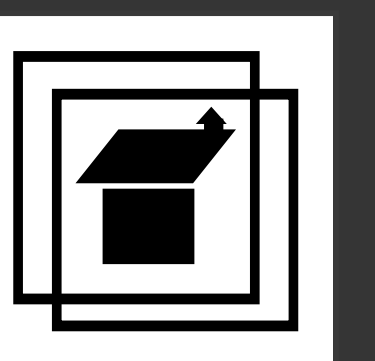
- M.B., a seventh-grade student, received posts on her social media page stating, “You’re mean. I hate you. You should die. Stop trying to be popular. You’re ugly. You’re fat. Only losers like you. I wish I could kill you. You’re annoying. No popular people like you,” and on the following day, the same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



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

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

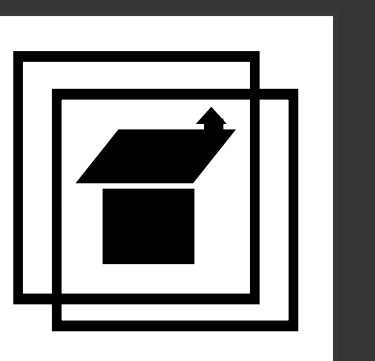
- M.B. and her parents never received written notification of the results of the HIB investigation, and the parents filed a claim with the County Office of Education (COE), alleging school officials failed to adequately address the HIB incident.
- The COE concluded the district neglected to provide the written results of the investigation to the parents pursuant to N.J.S.A. 18A:37-15(b)(6)(d); the district correctly determined the incident did not meet the statutory definition of HIB; and the district took appropriate remedial measures for addressing the incident.
- The parents filed an appeal to the Commissioner of Education seeking to reverse the COE's conclusion the incident did not fall under the statutory definition of HIB.



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

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

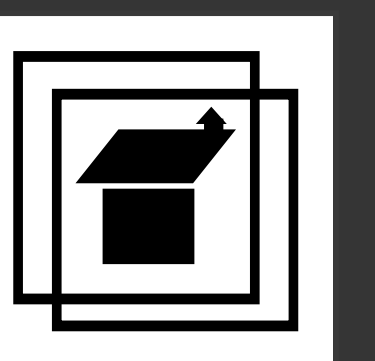
- The ALJ found several procedural errors:
 - There was no evidence the investigation results were reported to the Superintendent within two days of the completion of the investigation as required by N.J.S.A. 18A:37-15(b)(6)(b);
 - The district admitted it did not send the 5-day letter to the parents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



Board's Decision Regarding HIB Entitled to a Presumption of Correctness (Superintendent Overruled HIB Investigation Results) (1 of 2)

*E.W. and D.W., on behalf of minor child, A.W., v. Board of Education of the Bridgewater-Raritan Regional School District, Somerset County, DKT. NO. 176-7/14,
Commissioner of Education, 23 October 2017.*

- A seventh-grade class was studying the Holocaust and while working on a project requiring the use of scissors, student A.W. said to classmate J.S. (who is Jewish) “if you throw those scissors at me, you are going back to the concentration camps.” J.S. then stabbed A.W.’s water bottle with the scissors stating he was “so angry and couldn’t think straight.”
- The HIB specialist's investigation initially recommended A.W.’s conduct be considered a conduct violation, not HIB.
- The Interim Superintendent rejected the HIB specialist’s view, reversed the investigation’s determination, and was supported by the Board that A.W.’s conduct was an act of HIB.
- A.W.’s parents appealed the Board’s determination.



Board's Decision Regarding HIB Entitled to a Presumption of Correctness (Superintendent Overruled HIB Investigation Results) (2 of 2)

E.W. and D.W., on behalf of minor child, A.W., v. Board of Education of the Bridgewater-Raritan Regional School District, Somerset County, DKT. NO. 176-7/14, Commissioner of Education, 23 October 2017.

- The ALJ indicated A.W.'s fear that J.S. would harm her with scissors immediately before her comment was reasonable.
- However, the ALJ explained A.W.'s fear was not relevant for determining whether the Board's decision should be overturned.
- The ALJ stated there was no doubt A.W. understood her remark and she should have been reasonably aware of the potential impact of such a comment to J.S.
- The ALJ concluded the Board's decision was not arbitrary, capricious, or unreasonable and may not be overturned unless decisively flawed.
- The Commissioner concurred with the ALJ's final decision finding when a Board of Education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed.

