An Update on the Anti-Bullying Bill of Rights

Presented to the Montgomery Township Board of Education

February 24, 2026

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Harassment, Intimidation, and Bullying

Policy 5512

What constitutes HIB?

The conduct must meet ***all*** of the following criteria…

It is one or more acts;

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

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

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

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

Has at least one of the following impacts…

and *one* of these three:

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

It insults or demeans a student; or

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

"Reasonably Perceived"

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

Motivated by

Actual or Perceived Characteristic	Other Distinguishing Characteristic
• Race • Color • Religion • Ancestry • National origin • Gender • Sexual orientation • Gender identity and expression • Mental, physical, or sensory disability	• Hair color • Piercings • Glasses • Braces • Intelligence • Weight • Physical features

Alleged offender's lack of understanding of conduct does not change finding

- The Parents appealed a finding that their fifth grade son committed an act of HIB when he touched a female peer's private parts twice while sitting in the hallway.
- They alleged that his disability, including behavioral dysregulation, kept him from fully understanding his actions.
- The ALJ found, and the Commissioner affirmed, that the Board's decision that the conduct constituted HIB was not arbitrary, capricious, and unreasonable.
- The ALJ noted that the analysis is: What was the victim's perception of the actor's motivation? AND Was that perception reasonable? The actual motivation of the offender is not required. It was reasonable to conclude that the conduct was based on gender. In addition, she was scared, reluctant to attend school, and requested to be excused from a group activity, which interfered with her rights and education.

E.H. and B.H. o/b/o J.H. v. Township of Jefferson,
OAL Dkt. No. EDU 00642-24, Initial Decision (April 22, 2024) adopted, Comm'r (May 30, 2024)

"Substantial Disruption or Interference"

- The act must "substantially disrupt or interfere with the orderly operation of the school or the rights of other students."
  - This requires "evidence of **interference, *actual or nascent*, with the school's work or of the collision with the rights of other students to be secure and to be let alone."**
  - There must be "a **specific** and **significant** fear of disruption, not just some remote apprehension of disturbance." In other words, there must be something more than a mere desire to avoid the discomfort or unpleasantness that often accompanies an unpopular opinion.

Tinker v. Des Moines Independent Community Sch. Dist., 393 U.S. 503 (1969);
Saxe v. State Coll. Area Sch. Dist., 240 F.3d 200 (3d Cir. 2001)

"Substantial Disruption or Interference"

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

T.R. and T.R. o/b/o E.R. v. Bd. of Educ. of Bridgewater-Raritan Reg'l Sch. Dist.,
OAL Dkt. No. EDU 10208-13, Initial Decision (Sept. 25, 2014) adopted, Comm'r (Nov. 10, 2014)

"Substantial Disruption or Interference"

- As another example, this prong was met when a student repeatedly said "Kool-Aid" to his classmate, who was black, which the victim perceived to be directed at him because of his race.
- The victim told the offender, and other students, that he was offended by the comment; he left a sporting event early without explanation, which was unusual for him; and he told his mother, who is black, not to attend the school concert when he had previously welcomed his mother's attendance.
- The victim was so **embarrassed** and **uncomfortable** in the school and extracurricular settings as a result of the comments that he **"was not fully available for learning."**

G.H. and E.H. o/b/o K.H. v. Bd. of Educ. of Franklin Lakes,
OAL Dkt. No. EDU 13204-13, Initial Decision (Feb. 24, 2014) adopted, Comm'r (Apr. 10, 2014)

"Substantial Disruption or Interference"

- What to look for:
  - Has the student's attendance/grades been affected?
  - Does the student need to be moved to a different class?
  - Is the student acting differently?
  - Does the student have physical manifestations as a result?
  - Did the incident create disorder in the learning environment?
  - Did the incident affect the rights of the victim or other students?

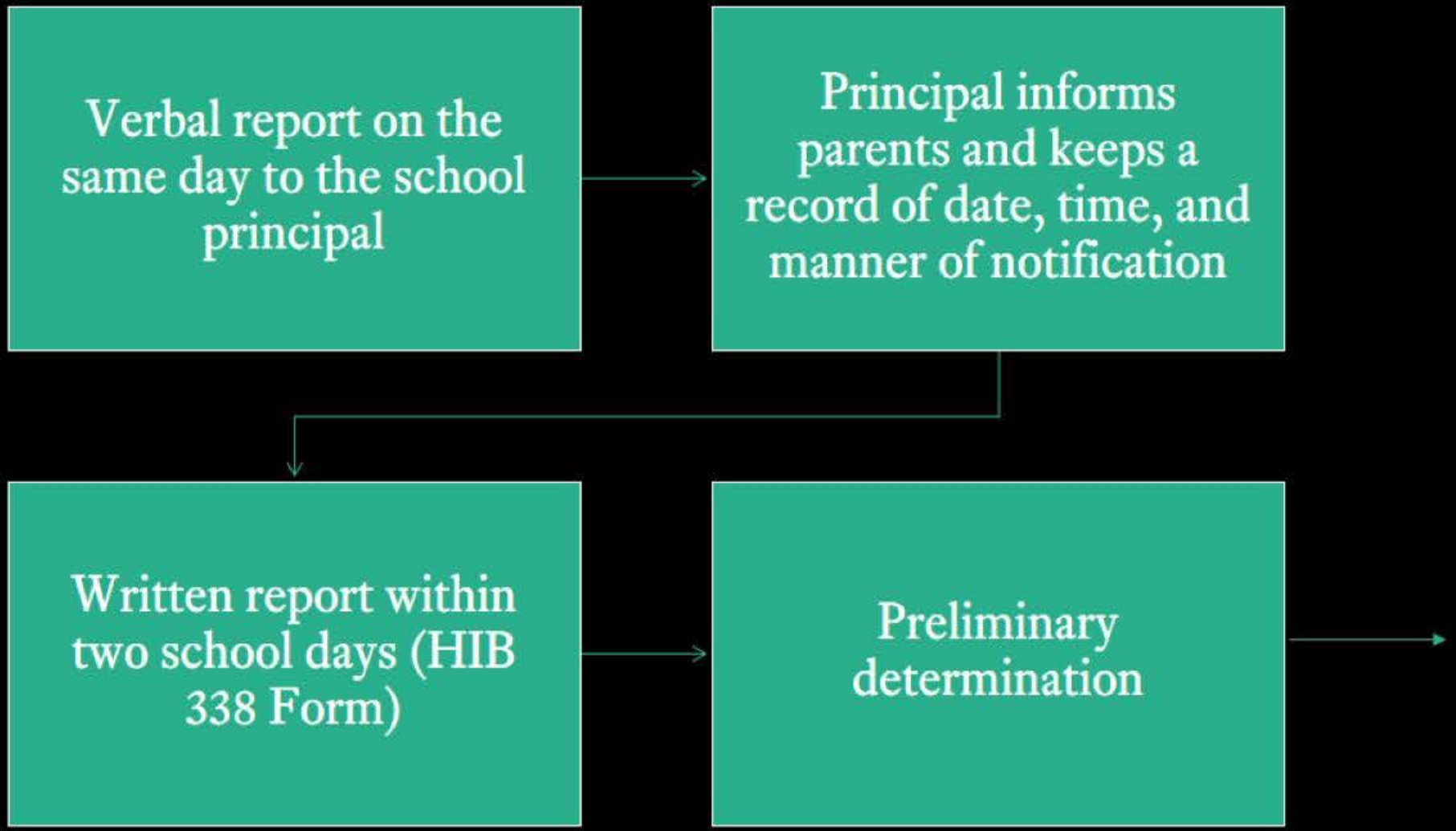
Where and When can a HIB Occur?

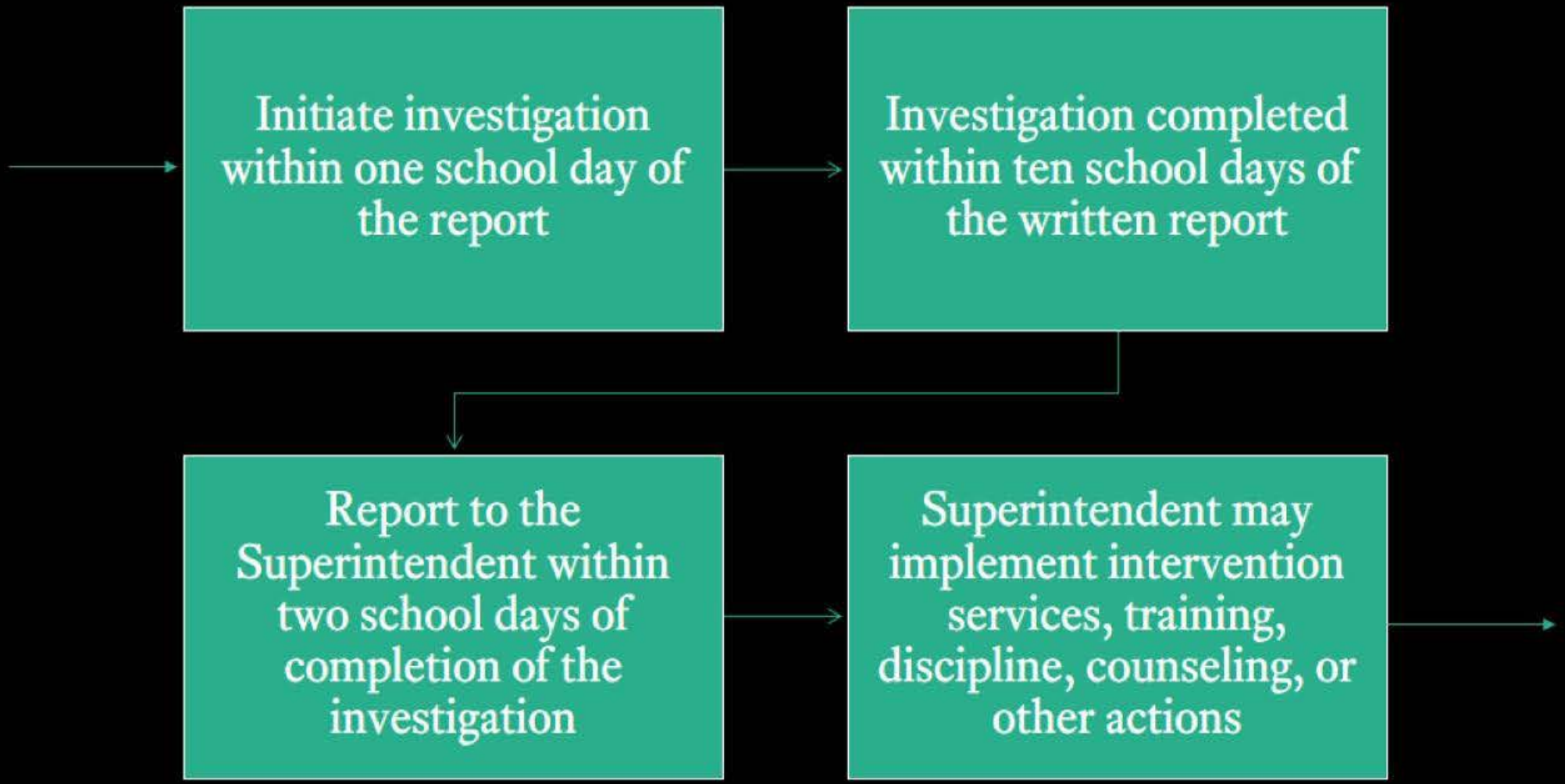
On school property	On a school bus	At a school-sponsored function	Off school grounds

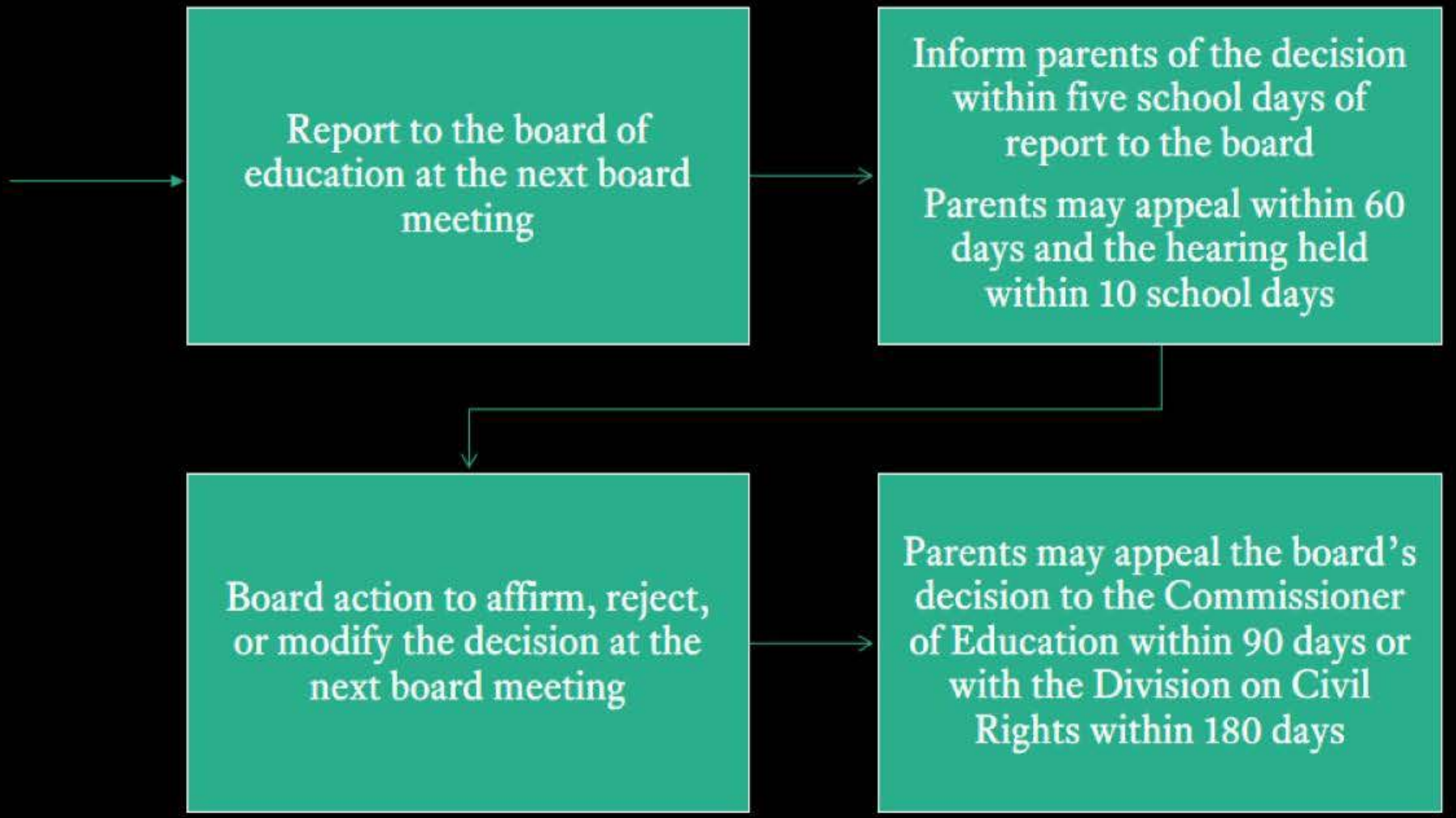
- Although HIB can occur off school grounds, the District can only impose discipline for off-campus conduct if the following restrictions are met:
  1. The discipline must be consistent with board policies concerning "Student Discipline/Code of Conduct";
  2. The discipline must be reasonably necessary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

N.J.A.C. 6A:16-7.5(a)

Timelines and Procedures Upon Receipt of Reliable Information of Possible HIB


Verbal report on the same day to the school principal
Principal informs parents and keeps a record of date, time, and manner of notification
Written report within two school days (HIB 338 Form)
Preliminary determination


Initiate investigation within one school day of the report
Investigation completed within ten school days of the written report
Report to the Superintendent within two school days of completion of the investigation
Superintendent may implement intervention services, training, discipline, counseling, or other actions


Report to the board of education at the next board meeting
Inform parents of the decision within five school days of report to the board
Parents may appeal within 60 days and the hearing held within 10 school days
Board action to affirm, reject, or modify the decision at the next board meeting
Parents may appeal the board's decision to the Commissioner of Education within 90 days or with the Division on Civil Rights within 180 days

Case Law Update

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

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

A.P. o/b/o A.P. v. Bd. of Educ. of the City of Burlington,
OAL Docket No. EDU 02104-24 (Commissioner, Aug. 23, 2024)

HIB Not Found, Procedural Violations Do Not Result in Invalidation of Board's Findings

- Parent alleged that his fifth-grade son was repeatedly taunted and kicked in the private area by classmates, and claimed that the incidents were motivated because the child was "good at math and science" and "because they know he was National Math Kangaroo champion two years in a row." Parent also argued the Board's investigation was delayed and retaliatory.
- The school district conducted multiple interviews, and even reopened the investigation after receiving new information where the parent added race and gender expression discrimination claims. The alleged offenders denied the incidents, and there were no witnesses to confirm the events. Still, the district implemented a safety plan and mediation. Parent appealed, but the Board ultimately found the allegations unsubstantiated and concluded no HIB occurred. The parent then appealed to the Commissioner.
- The ALJ found that the investigation met the procedural standards, and that the decision was not arbitrary, capricious, or unreasonable. The Commissioner found that the HIB decision was correct, but also found that the Board did not strictly follow the timelines (as a result of both parties contributing to delays). Still, those delays did not violate the student's due process rights or invalidate the Board's findings.
- **Key quote:** "Here, the record fails to support the conclusion that the Board acted dishonestly or in bad faith. The Board was confronted with a difficult situation wherein the alleged offenders denied that the incidents took place and no witnesses were identified. Thus, the Commissioner finds no reason to substitute his judgment for the Board's."

R.F. o/b/o O.F. v. Bd. of Educ. of the Twp. of Montclair,
OAL Dkt. No. EDU 09352-23 (Commissioner, October 10, 2024)

Commissioner Affirms Board's Finding of No HIB, but Parents Could Still Appeal Earlier Claims

- Petitioner claimed that on March 30, 2023, another student said that his child's "skin looks like poop because of the color of it," and also made additional allegations about physical and verbal harassment dating back to 2019, such as tackling, stabbing with pencils, and other threatening behavior.
- The Anti-Bullying Specialist interviewed six staff members and three students—no one could corroborate the March 30 incident. Because it was "inconclusive," the Board determined that there was no HIB. The Board upheld the ABS's determination. Parent appealed, and the ALJ and Commissioner agreed that the Board's decision was not arbitrary, capricious, or unreasonable. However, the Commissioner found that the earlier claims were not time-barred, because the "trigger" of a Board decision had not yet occurred. The matter was thus remanded to the ALJ for further findings.
- **Key quote:** "A written board decision triggers the 90-day limit to file a petition under N.J.S.A. 18A:3715(b)(6)(e). The record indicates that the Board has not issued a written decision on petitioner's other HIB allegations. With no event triggering the start of the 90-day limit, any argument made by the Board as to lack of timeliness of these claims must fail."

J.W. o/b/o J.W. v. Bd. of Educ. of the Borough of Upper Saddle River et al.,
OAL Dkt. No. EDU 10912-23 (Commissioner, October 10, 2024)

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

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

J.R., o/b/o T.R. v. Bd. of Educ. of the Twp. of Long Hill, et al.,
OAL Dkt. No. EDU 00881-23 (Commissioner, December 9, 2024)

Investigation Sufficient, HIB Upheld

- Victim complained that a fellow ninth grader engaged in HIB when he made a comment directed at the student that included the "N-word." Offender denied using the N-word and stated he said "move, move, move" or "move Nikki move." The initial investigation resulted in a finding of HIB, based upon race and color, and offender received three days of an out-of-school suspension. The Board heard an appeal, vacated the HIB finding, and remanded the matter for further investigation. Superintendent found the complainant to be credible. Importantly, there was a surveillance camera recording that caught the victim's "visceral reaction," and did not find the offender or witness accompanying him to be credible. Parents challenged the investigation's thoroughness, alleging that not enough victims were interviewed. ALJ and Commissioner rejected that argument, and upheld the HIB finding, which was not arbitrary, capricious, or unreasonable.
- **Key quote:** "Given the written statements, interview notes, remand upon the discovery of new testimony, and the review of video surveillance of the alleged incident, the Commissioner concurs with the ALJ that the Board properly undertook the required investigation."

R.M. and J.M., o/b/o O.M. v. Bd. of Educ. of the Borough of Mountain Lakes,
OAL Dkt. No. EDU 04986-24 (Commissioner, December 9, 2024)

Parents' Refusal to Allow Child to be Interviewed Doomed HIB Case Against Teacher

- A teacher assigned a sixth-grade special education student a story titled *An Engine Without Brakes*. The student, who had been diagnosed with ADHD, found the assignment distressing. His parents believed the story was inappropriate and filed a formal HIB complaint. The ABS interviewed the teacher and a paraprofessional, but the parents did not let the ABS interview their child. The ABS concluded that the incident did not meet the legal criteria for HIB, as the assignment was part of a classroom exercise, not directed against a student, nor did it reference the student's ADHD diagnosis. Moreover, the ABS concluded that there was no substantial disruption to the school environment, and no documented emotional or psychological harm to the student that could be directly linked to the assignment. The Board of Education adopted that finding, and the parents appealed, launching a multi-year legal saga. Ultimately, the ALJ determined that this did not constitute a HIB. The Commissioner of Education adopted the ALJ's decision, affirming that the teacher's assignment did not constitute HIB and dismissing the appeal.
- **Key quote:** "Had the HIB investigators been allowed to interview M.W., it would have enabled the investigators to explore whether or not M.W. was adversely affected by the assignment of the article, whether the assignment substantially disrupted or interfered with the orderly operation of the school, and whether the assignment adversely affected the rights of other students."

G.W. and K.W. o/b/o M.W. v. Bd. of Educ. of the Borough of Ringwood,
OAL Dkt. No. 12842-24 (09628-20 on remand) (Commissioner, December 19, 2024)

Retaliation as basis for finding of HIB

- Student 1 (the National Math Kangaroo Champion) alleged that Students 2 and 3 committed an act of HIB by excluding him from playing Jenga. An independent investigator concluded that the conduct was not based on a distinguishing characteristic and did not meet the HIB criteria. The Board affirmed. Student 2's parents then initiated a HIB against Student 1, stating that they informed Student 2 to stay away from Student 1, that Student 1 was harassing Student 2, including throwing Jenga pieces at them when Students 2 and 3 would not play with him. The independent investigator found it was not HIB because it was not motivated by a distinguishing characteristic and that retaliation did not appear to be the basis of the complaint.
- The Board reversed the decision and found that Student 1 initiated issues and then reported himself as the victim. The Superintendent reversed that finding, then Student 2 appealed. The Board reinstated the findings. Student 1 appealed both decisions to the Commissioner. The ALJ and Commissioner found that Student 1 was not the victim of a HIB, and upheld the retaliation claim.
- **Key quote:** The Board's HIB policy must include "consequences and appropriate remedial action for a person found to have falsely accused another as a means of retaliation or as a means of harassment, intimidation or bullying."

R.F, o/b/o O.F. v. Bd. of Educ. of the Twp. of Montclair,
OAL Docket No. EDU 01405-24 and EDU 01408-24 (Consolidated), (Commissioner, January 10, 2025)

Actual Motivation/Intent Not Required

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

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

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

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

H.R. o/b/o N.R. v. Bd. of Educ. of the Twp. of Long Hill,
OAL Dkt. No. 10815-24 (Commissioner, March 7, 2025)

HIB Found – Offender's Defenses Rejected

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

C.H. o/b/o P.H. v. Bd. of Educ. of the Town of Secaucus and Sarah Sciscilo,
OAL Dkt. No. EDU 15753-24 (Commissioner, July 14, 2025)

Not HIB, but District did not follow timelines

- On September 23, 2024, the parent alleged that a classmate said "a monkey is a black person" in front of her child, C.W.
- The student told her teacher on September 23 and the parent asked the teacher and another teacher to conduct a HIB investigation.
- On September 25, 2024, the vice principal advised the parent how to fill out the HIB 338 form.
- On September 26, 2024, the district opened an investigation and notified the parent on September 27, 2024.
- The district investigated, could not confirm the comment was made, and found no HIB because there was no substantial disruption.
- The ALJ affirmed.
- The Commissioner affirmed the finding, but noted the district did not meet the procedural requirement—reporting verbally to the principal on the date of reliable information of a possible HIB.

C.W. o/b/o C.W. v. Bd. of Educ. of the Township of Mount Olive,
OAL Dkt. No. EDU 00362-25 (Commissioner, September 5, 2025)

HIB Found – Burden is on the Appealing Parent

- A student was speaking with a peer on the way to the bus and called the victim "acoustic" and "disabled." "Acoustic" was allegedly used in place of "autistic."
- The alleged offender denied that he used "acoustic" in place of "autistic." At least one witness confirmed the offender said, "that's so acoustic" and another indicated that the term is a substitution.
- The alleged offender also stated that the statement occurred at a non-school robotics competition, not on the way to the bus at school.
- The ABS found that the act was HIB. The ALJ affirmed, as did the Commissioner.
- The Commissioner noted that there was substantial evidence to support the findings, and the parent did not meet its burden to show that the board's decision was arbitrary, capricious, and unreasonable. The Commissioner also stated that where there is room for two opinions, that is insufficient to overturn the findings.

S.K. o/b/o S.K. v. Bd. of Educ. of the Township of Montgomery,
OAL Dkt. No. EDU 10786-24 (Commissioner, September 8, 2025)

Summary Decision not Appropriate; Remand

- In a fourth-grade library class while working on the computers, the offender allegedly sent multiple emails to a game developer that contained the "N-word." The offender claimed the victim dared him to do it. The ABS determined that it was HIB.
- The board filed a motion for summary decision and the parent opposed. The ALJ treated the opposition as a cross-motion for summary decision and granted the motion—finding that HIB did not occur because there was not a substantial disruption.
- The Board filed 21 exceptions to the decision, including that the opposition motion should not have been converted to a cross-motion and the board did not have an opportunity to oppose it.
- The Commissioner agreed and reversed and remanded for a hearing due to the contested facts, including the dispute on if there was a substantial disruption or interference with the orderly operation of the school or the rights of other students.

A.W. o/b/o J.W. v. Bd. of Educ. of the Township of Mount Olive,
OAL Dkt. No. EDU 12064-24 (Commissioner, September 8, 2025)

Questions?



(Lance's only question is "can I have more treats?")