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*Law, **E**thics and **G**overnance for **A**ll **L**eaders, including an
Overview of **N**ew and **E**merging Issues*

HIB Law Update for Board Members

July 20, 2026

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Presentation Materials

Today's document(s) can be accessed at

<https://tinyurl.com/LO-MtOlive-260720PM>



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KEY ASPECTS OF HIB DEFINITION AND RELATED LEGAL CONSIDERATIONS

HIB Defined

- On or off school grounds
 - Could be single incident
- Distinguishing Characteristic
 - Reasonable Perception of Alleged Victim
 - Includes “Other”
- Substantial Disruption/Interference with Rights
 - Lasting impact, change from baseline behavior
- Harm (need 1 of 3)
 - Physical or emotional, self or property, actual or fear OR
 - Demeaning to student or group OR
 - Creates hostile educational environment

Unpacking the HIB Definition

Bullying v. Conflict

- During a conflict, name-calling, threats and other conduct that might look like bullying can occur. However, a conflict and bullying are very different.
- Unlike bullying, during a conflict people are equally involved in some type of disagreement. Conflict is considered mutual, meaning everyone is more or less evenly involved.
 - HIB is primarily one-sided, but not always 100% one-sided
 - Incident may be HIB first, then become conflict or vice versa

Retaliation as Violation of HIB Policy

- **A distinguishing characteristic is not required for a finding that levying false HIB accusations against a student as a means of retaliation** violated the Board's HIB Policy, as provided for by *N.J.S.A. 18A: 37-15(b)(9)*.
- No need to prove substantial disruption or specific harm if district is able to prove there was a knowingly false allegation as a means of retaliation.

Completing the 338 Form

- Every HIB investigation must have a 338 Form
- Parents should be asked to complete the 338 Form if they verbally report an alleged HIB incident
- If parent refuses or fails to complete the 338 Form, then a staff member who spoke with the parent must complete the form
- Even if parent says please don't investigate, once any staff member hears an allegation of HIB it must be investigated
- District does not have option for preliminary determination

Addressing Conduct Away from School Grounds

- Portal to Portal any student discipline
- Conduct at school functions (athletics, school dances/plays, field trips)
- At home, other locations
- On social media
- Key test
 - Likely to result in substantial disruption in school

Addressing Summer Conduct

- Are students in a summer school program?
- Is incident likely to result in substantial disruption when the school year starts
- Although you have 10 school days to complete investigation, difficult to get to the truth if you wait until school year starts

ROLE OF THE BOARD OF EDUCATION

Role of Board of Education

- Establish policies
- Ensure Personnel, Resources, Training
- Conduct Hearings if requested
- Vote on All HIB Investigation Results
 - One Board meeting – receive information
 - Subsequent Board meeting – Vote to approve, reject, or modify results
- Refer complaints to superintendent

Key Timelines in Process

- Staff member reports incident same day (no deadline for parent or student)
- Within one school day - Principal initiates investigation, refers to ABS
- Within 10 school days from initiation – Investigation completed (may be amended)
- Within 2 school days of completion – Investigation report submitted to supt.
- **Next BOE meeting – Board informed (no vote taken)**
- Within 5 school days of BOE being informed – Parent receives written notice*
- **Next BOE meeting after written notice to parent – BOE votes to affirm, modify, reject**
- Within 90 calendar days after BOE votes - Parent may appeal BOE decision to Commissioner

* Note that parent may ask for BOE hearing within 60 days of receiving notice that BOE has been informed – If requested hearing must be granted within 10 days

What is NOT the Role of the BOE

- Do not expect greater rights than other parents if your child is part of an HIB investigation
- Do not share confidential information related to an incident
- Do not use BOE position to pressure school officials regarding HIB investigation
- Do not allow personal connection to parties to influence your actions or vote
- Do not fail to report an alleged incident of HIB
 - Failure to promptly report could open a BOE member to a private cause of action, personal liability
- ***Do not independently investigate or rely on new allegations raised at BOE hearing that have not been investigated***
- ***Do not assume that the number of allegations and/or confirmed HIB incidents defines a “good” or “bad” school***

Code of Ethics for School Board Members

N.J.S.A. 18A:12-24.1, P.L. 2001, c. 178

- Uphold and enforce all laws, rules of the State Board of Education, court orders
- Make decisions for the educational welfare of children
- Authority rests with full board, no private actions that may compromise the board
- Board action to be confined to “policymaking, planning and appraisal”
- Not to administer schools, but to see that schools are well-run
- Authority rests with the board, not individual members; no personal promises or private action that could compromise the board

Code of Ethics and Confidentiality

- See N.J.S.A. 18A:12-24.1g
- *I will hold confidential all matters pertaining to the schools, which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.*

What Disclosures May Needlessly Injure?

- Does student/parent/staff have a reasonable expectation of privacy in the information in question?
 - Allegations against staff or students
 - Discipline against students and (most) discipline against staff members
 - Release of health information
 - Release of substance use information
 - Release of private data
 - Release of embarrassing information

HIB AND TECHNOLOGY

Electronic Communications

- Remember, even if staff members use personal device, may still be creating a student record
- May provide evidence of intent, state of mind, disputed facts
- Even if deleted from one device, may be on others
- IF potentially involves sexually explicit images, contact law enforcement and turn over – do not review

Social Media

- Greater potential for harm
- Difficult if not impossible to completely remove
- Even private chats where the target is not included may result in HIB
- Students (and adults) often emboldened to say things they would not say in person
- May be difficult to determine source of social media post

Artificial Intelligence

- Creative use of prompts may lead AI to produce harmful content that results in HIB
- Increasingly sophisticated deepfake technology may be used to target students or staff members
- Need to consider whether video/audio/images being used in investigation are authentic
- Algorithmic discrimination may lead AI to produce biased/discriminatory results that could cause harm for students:
 - Show me images of successful business people, student athletes, etc.

New State and Federal Deepfake Laws

- See LEGAL ONE Article - [What Schools Should Know About New State and Federal Laws on Deepfakes](#)
- Listen to the LEGAL ONE Podcast Episode on [AI, Deepfakes and the Law](#)
- NJ Law – P.L. 2025, c. 40
 - Includes civil and criminal penalties for those creating and knowingly or recklessly disseminating deepfake videos
- Federal Law – TAKE IT DOWN Act
 - In addition to creating new criminal and civil penalties for those creating deepfakes, includes provisions to require social media platforms to remove deepfake videos within 48 hours

Recent NJ Incident

- Montgomery
 - Shock in Somerset County as [Teen Allegedly Creates Fake Nude Images of Classmates](#)
 - He faces multiple charges, including:
 - Second-degree distribution of child sexual exploitation and abuse material
 - Third-degree possession of child sexual exploitation and abuse material
 - Fourth-degree cyber harassment New Jersey
 - The teen was arrested in March 2026 after a cyber tip from the National Center for Missing and Exploited Children led to a search warrant at his residence
 - Charges come under P.L. 2025, c. 40

Limiting Internet Enabled Devices

- NJDOE [webpage](#) addressing cell phone use
- See NJDOE [FAQ](#) on new law
- New law – P.L. 2025, c. 195
 - Beyond cell phones – e.g. smart watches, smart glasses
 - Every school district must adopt a board policy consistent with [NJDOE guidance](#) regarding student access to and use of internet enabled devices
 - Prohibits students from having devices “bell to bell” – from start to end of the school day
 - Permits more stringent policies that extend to other times (e.g. on bus, during after school activities)
 - Allows for limited exceptions

HIB CASE LAW UPDATE

HIB w/o Identified Offender & Loss of Parent as Characteristic

- See [A.H., on behalf of minor child, A.A. v. Board of Education of the High Point Regional High School District, Sussex County, 3/2/26 \(#72-26\)](#)
- The Commissioner reversed the Board and found that A.A. was the victim of HIB on December 26, 2023. **The Commissioner held that identifying an offender is not required to find that an act of HIB occurred. The Commissioner found that loss of a parent can constitute a distinguishing characteristic under the Act.**

Tenure Arbitration Case – Need to Follow Reporting Obligations

- [In the Matter of the Tenure Hearing of Mickelle P. Jackson, Board of Education of the City of Trenton, Mercer County, 2/6/26 \(#45-26\)](#)
 - Tenured Vice Principal failed to verbally report alleged HIB incident to principal
 - No investigation for 3 months
 - Tenure charges for conduct unbecoming brought
 - Arbitrator upheld charges, ordered VP be demoted to position of teacher, one year ban on reapplying for VP role
 - Case is currently on appeal

Untimely Appeal, Coach Sometimes Harsh with All Players – No Characteristic *A.P. and K.P. obo A.P. and T.P. v BOE of Twp. Of Franklin,* *Commissioner 10/10/25*

- Parents filed an HIB complaint against girls' basketball coach, 1/2/23, alleging that coach committed acts of HIB against two daughters by favoring black players. BOE found insufficient evidence to support a finding of HIB, 1/27/23. Parents appealed 10/24/24, stating that they waited to file as they did not want to jeopardize student's position on the softball team.
- ALJ determined that petition was untimely as it was filed 636 days after the BOE decision, in violation of the 90-day filing rule. *N.J.A.C. 6A:3-1.3(i)*. No exception for softball team reason. ABRA prohibits retaliation for filing an HIB complaint. *N.J.S.A. 18A:37-15(b)(8)*
- ALJ determined that HIB investigation revealed that basketball coach treated all players harshly. **Coach was a disciplinarian, sometimes harsh in his communication with players; strict, stern, and honest. Black players and white players were treated similarly; no evidence that race was a factor.** No distinguishing characteristic shown.

Untimely Appeal, Coach Sometimes Harsh with All Players – No Characteristic

*A.P. and K.P. obo A.P. and T.P. v BOE of Twp. Of Franklin,
Commissioner 10/10/25*

- ALJ – parents sought the removal of certain school administrators and a substitute teacher. Not a remedy available under the ABRA. Only the BOE has that authority.
- Commissioner concurs with ALJ. Appeal was untimely, no distinguishing characteristic found to have motivated coach's behavior, BOE did not act arbitrarily, without a rational basis, or induced by improper motives in determining that coach did not commit an act of HIB; parents' requested relief – the Commissioner's removal of school administrators and a substitute teacher from employment – cannot be pursued through HIB proceedings. Matters dismissed.

HIB Case Law BOE Decision Overturned – Finding Against Teacher Reversed *Obasi v. BOE of the South Orange-Maplewood School District, Commissioner 3/3/2025*

- Teacher appealed BOE determination that she committed an act of HIB when she raised her voice and threatened physical harm to one of her students, a student with a disability. Teacher told student that she was a “bad child” and that she would “take her earrings off and beat her.” BOE determined that threat was an act of corporal punishment, met the standard for HIB and was motivated by the fact that teacher considered the student a “bad child.”
- At the BOE hearing a new allegation was raised that had not been previously investigated that teacher allegedly said “student should spend a week in the hood because she wouldn’t make it because she is the only white kid in her class.”

HIB Case Law BOE Decision Overturned – Finding Against Teacher Reversed *Obasi v. BOE of the South Orange-Maplewood School District, Commissioner 3/3/2025*

- At the BOE hearing, the BOE substituted race as a distinguishing characteristic instead of “bad child.” The alleged racial comment —**that was not previously reported and never investigated, and for which teacher was afforded no timely notice when it was alleged to have been made**— was relied upon by BOE as evidence of “ongoing harassment motivated by race” and a violation of the HIB policy.
- ALJ determined that finding a HIB violation based upon a previously unreported and uninvestigated allegation is contrary to the requirements of the Anti-Bullying Bill of Rights Act.
- Commissioner concurs with the ALJ that BOE’s finding that teacher committed an act of HIB was arbitrary, capricious, and unreasonable. BOE’s determination is reversed and all references to the HIB determination are to be removed from the teacher’s file.

HIB Case Law – Social Media

J.R. o/b/o T.R. v. BOE of the Township of Long Hill, Commissioner 12/9/2024

- Victim was very anxious, visibly upset and crying, needed counseling sessions and was fearful of attending the high school next year. Reporting student feared retribution, home schooled. ABS testified that there was interference in the operation of the school and substantial interference with the school day; spoken about in the halls, many students and staff involved in the investigation.
- Comments were physically and emotional harming, insulting and demeaning and created a hostile educational environment.
- Although T.R. testified regarding his belief that his comments would never get back to Susan based on his understanding that he was talking in a private group on Snapchat, and the chats are automatically deleted after twenty-four hours, the governing standard is objective, not subjective.

HIB Case Law – Social Media

J.R. o/b/o T.R. v. BOE of the Township of Long Hill, Commissioner 12/9/2024

- HIB finding upheld by ALJ, Affirmed by Commissioner
- Parent challenged BOE HIB determination, and six-day suspension imposed upon eighth grade student. Student was part of a group of seven middle school students that made numerous demeaning comments about another middle school student on an approximately 20 person Snapchat thread; thread involved not only students in the middle school but students from outside the school district as well. Comments were vulgar and attacked victim's appearance, weight and sexual orientation. Victim was not a direct participant in the Snapchat thread. Comments included, among others, that the target student "looks like medusa with her new hair"; "her and [another student] probably weigh as much as our whole friend group combined."
- Comments were made known by a participant to the school counselor, who referred the matter to the principal.

Lunchroom Aide – Inappropriate, but not HIB

*A.P. o/b/o A.P. v. BOE of the City of Burlington, Commissioner
8/23/2024*

- BOE – no HIB. Lunchroom aide's actions **did not permit a finding of HIB because her behavior was not motivated by an actual or perceived distinguishing characteristic.** Allegations that on separate occasions, lunch aide made A.P. sit by herself at lunch, miss recess for doing nothing wrong, and cry. Acrimonious personal history.
- Student was reprimanded for not following school rules. ABS recommended that lunchroom aide not interact with A.P. at lunch or recess. Lunchroom aide was moved to a different lunch period. **A dispute about relationships or aggressive conduct without identifiable motivation, does not come within the statutory definition of bullying.**
- ALJ, Commissioner - BOE not arbitrary or capricious.

QUESTIONS???

Conclusion

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04



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*LEGAL ONE: HIB Law Update: Back to School WORKSHOP Edition

Participants will learn about major changes in state and federal statutes, regulations, guidance and case law that have a major impact on implementing New Jersey's Anti-Bullying Bill of Rights. This will include a review of new case law regarding parental, student and staff rights. Participants will also learn about new case law regarding the intersection of bullying and special education. Participants will also consider how to respond to growing trends regarding hate crimes and emerging forms of discrimination. Finally, participants will gain an understanding of the ever evolving use of social media and artificial intelligence to engage in cyberbullying, and the need for students AND staff members to understand social media boundaries.

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