2026 Legal Update on Harassment, Intimidation and Bullying

Presented to the Mountain Lakes Board of Education

November 16, 2026

Vittorio S. LaPira, Esq.
Fogarty, Hara, LaPira & Cherry, LLC
21-00 Route 208 South
Fair Lawn, New Jersey 07410
201-791-3340
vlapira@fhlclaw.com
www.fhlclaw.com

Harassment, Intimidation, and Bullying

Policy 5512

What constitutes HIB?

The conduct must meet all of the following criteria…

It is one or more acts;

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

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

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

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

Has at least one of the following impacts…

and one of these three:

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

It insults or demeans a student; or

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

Analyzing the HIB Factors

"Reasonably Perceived"

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

Actual Motivation/Intent Not Required

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

S.P. o/b/o E.P. v. 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. 10815-24 (Commissioner, March 7, 2025)

Motivated by

Actual or Perceived Characteristic

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

Other Distinguishing Characteristic

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

"Substantial Disruption or Interference"

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

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"

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

"Substantial Disruption or Interference"

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

Evidentiary Requirements

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

M.E. v. Board of Education of Bridgewater-Raritan School District,
OAL Dkt. No. EDU 13112-24 (Commissioner, May 6, 2026)



Questions?

Lance and Percy only have **one question** … Can they have treats?