******

**FREDON TOWNSHIP BOARD OF EDUCATION**

**Fredon Township School**

**Newton, N.J.**

**February 13, 2017**

***Anti-Bullying Bill of Rights Act***

***Where Are We Now?***

***The Role of the Board***

***Michael F. Kaelber, Esq., Director***

***Legal and Labor Relations Services Department, NJSBA***

***New Jersey Anti-Bullying Case Law***

HIB Findings

1. J.M.C. o/b/o A.C. v. Board of Education of the Township of East Brunswick, EDU 4144-12, Initial Decision (November 27, 2012), aff’d Commissioner (January 9, 2013)

Board of education’s determination that student’s conduct constituted an incidence of HIB pursuant to N.J.S.A. 18A:37-14 and the school district’s HIB policy and consequence imposed for such action was not arbitrary, capricious or unreasonable. Sixth grade student insulted and demeaned a fellow classmate in gym class by saying that he “danced like a girl” and called him “gay.” Comments pertained to student’s gender and sexual orientation, were verbal acts motivated by distinguishing characteristics and substantially interfered with the rights of another student. Student was given a three day detention, consistent with the student’s age and the fact that this was a first offense under the code of student conduct.

|  |
| --- |
| Nothing contained in this document should be construed as legal advice. This document is for informational purposes only. Please consult your board attorney for legal advice. © 2017 New Jersey School Boards Association413 West State Street, Trenton, New Jersey 08618All rights reserved. No part of this document may be reproduced in any form or by any means without permission in writing from NJSBA. |

1. W.C.L. and A.L. o/b/o L.L. v. Board of Education of the Borough of Tenafly, EDU 3223-12, Initial Decision (November 26, 2012), aff’d Commissioner (January 10, 2013)

Board of education determination that student’s conduct constituted an incidence of HIB pursuant to N.J.S.A. 18A:37-14 and consequence imposed for such action was not arbitrary, capricious or unreasonable. Board’s actions were consistent with the letter and spirit of the Anti-Bullying Bill of Rights Act. Fourth grade student embarrassed and offended a classmate by explaining to others in the class that she had dyed her hair because she had head lice. Student was given a learning assignment, reading and discussing a book entitled “Just Kidding” at lunch with anti-bullying specialist. No other discipline was imposed. Parents sought written apology from school personnel, removal of reference from student’s records, $50,000 in compensatory damages for emotional distress and counsel fees; private high school, university admission.

1. Woi Chang Lim and Linwen Mao as Parents and Guardians Ad Litem of L.L. v. Sandra Massaro, Lynn Trager, Board of Education of the Borough of Tenafly and Christopher Cerf, United States District Court of New Jersey, Filed 12/10/13

Rutherford Institute joins in lawsuit to declare Anti-Bullying Bill of Rights Act unconstitutional stating that the law has a chilling effect on students’ rights to free speech protected by the First Amendment. Seek to have the Act declared null and void.

Claims against board of education members, superintendent and anti-bullying specialist settled. “Friendly hearing” scheduled for August 7, 2015 with Tenafly and the Tenafly defendants.

1. L.B.T. o/b/o K.T. v. Board of Education of the Freehold Regional School District, EDU 7894-12, Initial Decision (January 2013), aff’d Commissioner (March 7, 2013)

Commissioner determined that board of education acted properly when it found that incidents between two swim team members at swim team competitions, swim team parties and events and online did not constitute HIB as defined by the Anti-Bullying Bill of Rights Act and applicable board policy. Disagreement reflected a dispute between the girls regarding their respective roles on the swim team and was more of a personal vendetta; no acts of HIB as defined in the law occurred. No distinguishing characteristics. “Mutuality”. Board responded to all complaints in a timely manner, seriously evaluated the merits of petitioner’s concerns and took extraordinary measures to address the disagreement.

1. J. A.H. o/b/o C.H. v. Board of Education of the Township of Pittsgrove, EDU 10826-12, Initial Decision (March 11, 2013), aff’d Commissioner (April 25, 2013)

Board of education found that shoving a crumbled piece of paper down another student’s sweatshirt was designed to antagonize the victim, disturbing the educational environment. ALJ and Commissioner overturned the board’s decision. No distinguishing characteristics found. Part of an ongoing unresolved conflict between the two students. Element of “mutually” involved. Relied on DOE Guidelines document.

1. E.G.M. o/b/o J.M. v. Board of Education of the Township of Mahwah, EDU 2119-13, Initial Decision (April 9, 2013), aff’d Commissioner (May 21, 2013)

Parents’ petition of appeal of board of education’s determination that school bus incident involving their daughter, a kindergarten student, and other girls, did not constitute HIB, not filed in a timely manner and was time-barred. Parent was notified by letter of board’s decision on July 5, 2012, did not file petition until January 8, 2013, well outside the 90-day limitation period.

1. R.G.B. o/b/o E.B. v. Board of Education of the Village of Ridgewood, EDU 14213-12 (May 15, 2013), aff’d Commissioner (June 24, 2013)

Board of education’s determination that student’s conduct constituted an incidence of HIB pursuant to N.J.S.A. 18A:37-14 and the school’s HIB policy and consequence imposed for such action was not arbitrary, capricious or unreasonable. Seventh grade student insulted and demeaned middle school classmate by calling her names including “fat” and/or “fat ass,” “house,” or “a house” and referred to same student by using the name of another student after the classmate dyed her hair. Comments pertained to student’s appearance and body type, were verbal acts motivated by distinguishing characteristics, were hurtful and upsetting and substantially interfered with the rights of another student. Student was given two after-school detentions, consistent with the student’s age and the fact that this was his first offense. Actions of school personnel were consistent with the letter and spirit of the law.

1. G.A. o/b/o K.A. v. Board of Education of the Township of Mansfield, EDU 8816-12, Initial Decision ( ), aff’d Commissioner June 24, 2013

Board of education’s determination that student’s conduct constituted an incidence of HIB pursuant to N.J.S.A. 18A:37-14 and the school district’s HIB policy and consequence imposed for such action was not arbitrary, capricious or unreasonable. Sixth grade student was one of several students who called another student on the school bus names, including “faggot”, and suggested that the student engaged in sexual aggression. Comments pertained to student’s gender and sexual orientation, were verbal acts motivated by distinguishing characteristics, were hurtful and unkind, and substantially interfered with the rights of another student. Student was assigned to lunch and recess detention, consistent with his age and the fact that this was his first offense. School personnel promptly responded to the HIB complaint and handled the process consistent with the law.

1. T.R. and T.R. o/b/o E.R. v. Board of Education of the Bridgewater-Raritan Regional School District, EDU 66-13, Initial Decision (June 6, 2013), rev’d Commissioner (July 22, 2013)

Commissioner rejects ALJ’s determination that parents’ petition of appeal of board’s determination that conduct directed toward their daughter, E.R. by another student, did not constitute HIB, was time barred. Commissioner determined that the triggering event for the 90-day filing deadline arose on August 31, 2012 when parents received the board’s letter denying their appeal of the HIB determination. Commissioner rejects ALJ’s finding that the 90 day period began to run on August 28, 2012, the date of the meeting where the board voted on the HIB determination. Matter remanded to the OAL for a hearing on the merits.

1. K.T o/b/o K.H. and T.D. v. Board of Education of the Township of Deerfield, EDU 489-13, Initial Decision (  ) rev'd and remanded Commissioner (July 30, 2013)

Commissioner rejects ALJ determination that board of education exercised reasonable managerial discretion and met its burden of proof in determining that kindergarten teacher did not commit an act of HIB. Teacher forced African-American kindergarten student to eat a bagel which had been retrieved from the trash can, albeit still enclosed in plastic, in front of the other students in the class. Fact that independent investigation by Department of Children and Families, Institutional Abuse Investigation Unit (IAIU) found no evidence of neglect or abuse was not dispositive. ALJ failed to apply appropriate standard of review to board's motion for summary decision, applying a "default" standard of review, whereby the unopposed motion for summary decision was automatically granted. Per the comprehensive statutory scheme, completion of an internal HIB investigation is not discretionary. All alleged acts of HIB require an internal investigation. Matter remanded to OAL.

1. R.C.F. and A.L.F. o/b/o S.N.F. v. Board of Education of the Borough of South Plainfield, EDU 8049-12, Initial Decision (August 2, 2013), aff’d Commissioner (September 18, 2013)

Board of education’s determination that in-class support teacher’s interaction with student did not constitute HIB within the intendment of the Anti-Bullying Bill of Rights Act was neither arbitrary nor capricious. In-class support teacher’s handling of possible dress code violation (skirt length) and alleged cheating on a math test and related verbal interactions were nothing more than disciplining a student for violation of school rules and did not constitute HIB. There was no indication that the teacher’s actions and subsequent verbal interaction were motivated by a distinguishing characteristic. The school district responded promptly and appropriately to petitioner’s HIB complaint.

1. G.T.S., o/b/o S.A.S., EDU 12505-12, Initial Decision (October 16, 2013), aff’d Commissioner (December 2, 2013)

Commissioner grants board’s motion for summary dismissal of petition brought by parent; parent sought to reverse the district’s determination that his daughter violated its anti-bullying and harassment policy and to expunge her student disciplinary record in connection with the HIB investigation of an incident which occurred in March 2012. Among other allegations, S.A.S. admitted to having made an insulting comment about agreeing “to bring the watermelon” in front of an African-American student. Commissioner found that there was no disciplinary record in the student’s educational file to expunge. Further, the student is currently attending college, and there is no evidence to suggest that the board conveyed any finding related to the HIB incident to any higher educational institution. The Board’s actions in investigating the March 2012 incident and subsequently requiring the student to participate in sensitivity and awareness training were in compliance with the district HIB policy. A determination of whether the student engaged in the alleged HIB incident is moot, as resolution would not further a remedy.

1. J.M. o/b/o T.M. v. Board of Education of the Town of Tinton Falls, EDU 7871-13, Initial Decision (December 12, 2013) remanded Commissioner (January 23, 2014)

Petitioner sought a finding that head cheerleading coach engaged in acts of harassment, intimidation, bullying and retaliation, and that the coach be relieved of her coaching duties. Board relieved coach from her coaching duties. ALJ concluded that matter was moot as relief sought already had occurred. Commissioner disagreed, finding that matter not mooted by departure of coach from position. Issue of HIB and surrounding facts still in controversy. Matter remanded to OAL for proceedings to determine whether coach’s conduct constituted harassment, bullying or intimidation.

Initial decision on remand (February 23, 2015) aff’d Commissioner (April 2, 2015)

On remand, ALJ determined that no credible evidence existed that board acted in an arbitrary or capricious manner. No evidence that coach’s actions were motivated by any actual or perceived distinguishing characteristic; such as race, religion, gender sexual orientation or mental or physical disability. Board reviewed the matter at a subcommittee meeting, full board affirmed. Matter “appealed” to Monmouth County Department of Education which found that district failed to investigate HIB complaint in a timely manner, but once investigation was begun, all was done in a timely manner. Commissioner concurred with ALJ that board did not act in an arbitrary or capricious manner and that no acts of HIB occurred.

1. G.H. and E.H. o/b/o K.H. v. Board of Education of the Borough of Franklin Lakes, EDU 13204-13 Initial Decision (February 24, 2014) aff’d Commissioner (April 14, 2014)

Board determined that eighth grade student participated in an act of harassment, intimidation and bullying (HIB) when he was among a group of boys who chanted “kool-aid” to tease and taunt an African American classmate in the hallways and locker room. Use of the word “kool-aid” was directed at a fellow student because of his race, thereby insulting and demeaning him. Commissioner concurred with the Administrative Law Judge that the Board’s decision to impose a one-day suspension on K.H. for violating N.J.S.A. 18A:37-14 and the Board’s Harassment, Intimidation and Bullying policy was not arbitrary, capricious or unreasonable. Parent’s argument that K.H.’s action did not constitute HIB because it was a single incident dismissed as it ignored the plain language of the statute.

1. V.E. and L.B. o/b/o P.B. v. Totowa Board of Education, EDS 7823-14. Decision denying Emergent Relief (July 3, 2014)

Special education student was removed from school in connection with an HIB complaint. Parent filed for emergent relief on June 25, 2014, asking that accusations be dismissed and student returned to school. Emergent relief deemed not warranted as relief relates to a disciplinary removal after charges of HIB were substantiated against the student. Any relief regarding the HIB allegations and substantiation is not ripe for adjudication as HIB has an entirely separate appeal process. As to the question as to whether his actions were a manifestation of his disability, petitioner failed to prove irreparable harm. Particularly relevant was the fact that school was no longer in session.

1. M.P. o/b/o K.K. v. Board of Education of the Morris Hills Regional School District, EDS 02805-14 Initial Decision (June 18, 2014) aff’d Commissioner (July 29, 2014)

Petitioner appealed imposition of two-day Saturday detention regarding possession of stolen cell phone found in bathroom. Student’s suspension was for violating student code of conduct by not immediately going to the office and turning the cell phone over to school officials. Parent alleged student was a victim of HIB based on twitter comments involving the cell phone incident. Investigation took place; school administration determined that incident did not rise to HIB. Incident occurred on October 3, 2013; petition filed January 12, 2014, well beyond the 90 day filing period. Petition dismissed for failure to file in a timely manner.

1. D.J. v. Morris School District Board of Education, EDU 5934-14, Initial Decision (October 6, 2014) aff’d Commissioner (August 7, 2015)

Matter dismissed because relief sought is unavailable, the issues are moot, petitioner is barred by collateral estoppel and res judicata. Petitioner graduated from high school; all events in which she wanted to participate are gone. Matter began as an emergent relief application in May, 2014 where students sought an order reversing discipline imposed related to a January fight with another female student on school grounds. Student was removed from school for the remainder of the school year and was excluded from all extracurricular activities including the prom, graduation ceremonies and project graduation. Emergent relief was denied.

In an amended complaint, student argued that the bulk of her problems at the high school stemmed from the school’s mishandling of the HIB policy, claims and investigations. Student sought that certain school administrators, staff and personnel be reassigned and retrained in HIB policies, that her disciplinary record be cleared to reflect that she is not a bully, that the other student be similarly disciplined and that she be compensated for not being able to attend her prom and other graduation activities.

On remand, ALJ determined that D.J. exhibited inappropriate behavior multiple times from October 2013 through February 2014, acting as the aggressor in five separate incidents. Board’s decision to impose a long term suspension was based on valid and reasonable concerns. Board’s determination to suspend petitioner was appropriate and not arbitrary, capricious or unreasonable. Commissioner concurred.

1. Morency v. Bd. of Ed. of the Twp. of Hamilton, EDU 810-14 Initial Decision (September 25, 2014) aff’d Commissioner (October 29, 2014)

Petitioner sought, a declaratory ruling directing the respondent Board to issue a written decision stating that it rejected its superintendent’s decision affirming a finding that the petitioner was in violation of the Anti-Bullying Bill of Rights Act (Act), N.J.S.A. 18A:37-13 et seq. Superintendent found that parent violated the Act when she allegedly accused several students of smoking marijuana off-campus during the summer. Petitioner was effectively granted the relief she sought when the Board rejected the superintendent’s finding that petitioner had violated the Act, and notified both the petitioner and the parent who had initiated the HIB complaint of its decision, in writing, on September 19 and October 7, 2013, respectively. Commissioner concurred with the ALJ that the matter was appropriately dismissed as moot.

1. T.R. and T.R. o/b/o E.R. v. Board of Education of the Bridgewater-Raritan Regional School District, EDU 66-13, Initial Decision (June 6, 2013) rev’d Commissioner (July 22, 2013) decision on remand (November 10, 2014)

Commissioner concurs with ALJ that Board’s determination that E.R. was not the victim of HIB must be overturned as arbitrary, capricious and unreasonable. School’s HIB investigation concluded that there had been no bullying and described the alleged incidents as “adolescent sexual curiosity.” Commissioner rejects the board’s contention that since the term “sexual harassment” is not specifically contained in the Act, acts of sexual harassment cannot form the bases for a finding of HIB. HIB includes sexual harassment when all other elements of the definition have been met. Board directed to comply with all reporting and other statutory and regulatory requirements applicable to incidents of HIB.

Decision on reconsideration (May 6, 2015)

Commissioner grants board’s motion for reconsideration because error in mailing prevented board from submitting exceptions. On reconsideration, Commissioner still concurs that board’s determination that E.R. was not the victim of HIB must be overturned as arbitrary, capricious and unreasonable. All four elements of the definition of HIB were clearly established. Nothing in the Act supports the board’s notion that “sexual harassment” could not form the basis for a finding of HIB because the term is not contained in the Act. Board directed to comply with all reporting and other statutory and regulatory requirement applicable to incidents of HIB.

1. D.M. o/b/o K.B. v. Board of Education of the Township of West Milford, EDU 4873-14 Initial Decision ( ) rev’d and remanded Commissioner (November 24, 2014)

Commissioner rejects ALJ determination granting board’s motion for summary judgment. Parent alleged that fifth grade daughter was the victim of bullying in October 2013 and January 2014, to the point that daughter was unable to continue to attend the school. Parent alleged that board failed to investigate the incident. Board denied that the student was subjected to bullying and that neither the parent nor daughter filed an HIB report.

ALJ failed to apply the appropriate standard of review to the board’s motion for summary decision, applying a “default” standard of review, whereby the unopposed motion for summary decision was automatically granted. Per the comprehensive statutory scheme, completion of an internal HIB investigation by the school anti-bullying specialist is not discretionary, it is mandated. All alleged acts of HIB require an internal investigation whether or not the petitioner filled out the district’s HIB form. The fact that the matter was settled by peer mediation does not eliminate the investigation requirement; nor does the fact that the parent withdrew the student from school.

Commissioner directed the board to conduct the required HIB investigation and issue a report in compliance with the Act. Determinations regarding petitioner’s other requests must await completion of the report.

1. C.C. o/b/o S.C. v. Board of Education of the Township of Jefferson, EDU 10872-14 Initial Decision (April 6, 2015) aff’d Commissioner (May 12, 2015)

ALJ determined that S.C.’s actions constituted HIB, as defined by law. S.C. engaged in verbal acts that were reasonably perceived to be motivated by distinguishing characteristics of height, intelligence, and sports proficiency. They were made in front of other students and made G.C. feel bad, sad, scared and insulted, creating a hostile educational environment that interfered with G.C.’s education. Cruel words will not be tolerated in a school environment. Comments included “short, loser, dumb, no good in basketball, will not make it to the NBA, will drop out of high school, will not get into college and will become a drug dealer. Student was given one-half day of in-school suspension and a denial of three days recess.

C.C. filed a complaint with the Morris County Office of the Department of Education. The Executive County Superintendent issued a Complaint Investigation Report, determining that the board approved HIB policy contained all required components, the board implemented the HIB policies and procedures, under the HIB policy and code of student conduct, suspension was within the range of responses allowed. While board’s suspension proceeding policy was not fully implemented, it was not fatal to the process. Commissioner agreed that board’s decision was not arbitrary, capricious or unreasonable.

1. M.S. o/b/o A.S. v. Board of Education of the Township of Cranbury, EDU 2571-15 Initial Decision ( ) aff’d Commissioner (June 19, 2015)

Board determined that student engaged in behavior that fell under the school district’s HIB policy. Petitioner was advised that she could request a hearing before the board, requested same, and had a hearing on September 30, 2014 where the board affirmed the Superintendent’s determination that the student had committed acts of HIB. Board’s written decision was received by parent and student October 14, 2014. Petitioner submitted an incomplete appeal form on December 30, 2014 and was advised that if the incomplete petition were corrected in a timely manner, the December 30 filing date would be allowed. Perfected petition was not filed until January 30, 2015. ALJ determined that appeal was not filed within the 90 day time limit. Petition was dismissed. Commissioner agreed.

1. Edward Sadloch, Charles Manzo, Brian Gogertz, Michael Weber and David Sinisi v. Board of Education of the Township of Cedar Grove, EDU 00619-14 Initial Decision (March 26, 2015) aff’d Commissioner (June 23, 2015)

Football coaches challenged a determination by the board of education that they engaged in conduct that constituted HIB. Behaviors included extra conditioning, covering a player’s jersey with question marks, criticizing his hair, referring to student athletes in a negative demeaning way. ABS investigated and determined that Weber’s actions covering the jersey with question marks constituted HIB: Superintendent advised the board, which determined that both Weber and Gogerty violated Board’s HIB policy. Board failed to put the rationale for its decision in writing. No written decision by the board presented; only board minutes which revealed no determination relative to HIB. Coaches received suspension ranging from the duration of the football season, to one or two games. None of the disciplinary letters mentioned HIB.

Coaches Sadlock, Sinisi and Manzo entitled to relief sought as no finding by the board or school district administration that they committed an act of HIB. Any documents that suggest such are to be expunged from their personnel files. Coaches Gogerty and Weber are also entitled to dismissal of the HIB charges against them because of the violations of the board in its investigatory and due process obligation. Requirement of written information to parents and guardians of students must be held to extend to staff members and volunteers who are implicated in a bullying investigation. Gogerty and Weber never afforded an opportunity to appear before the board, never provided a written summary of the investigation of the charges, never given a written decision from the board explaining the rationale. Any reference to HIB should be expunged from the volunteer files of Weber and Gogerty.

1. [G.C. o/b/o C.C. v. Board of Education of the Township of Montgomery, Commissioner 2016: April 22.](http://www.state.nj.us/education/legal/commissioner/2016/apr/152-16.pdf)

Board of education did not act in an arbitrary or capricious manner when it determined that a sixth grade student’s comments in the cafeteria about his classmate’s vegetarian lifestyle constituted an act of harassment, intimidation and bullying (HIB). The student was disciplined by the assignment of five (5) lunch-time detentions. Comments were made regarding the victim’s decision not to eat meat including “it’s not good to not eat meat”, “he should eat meat because he’d be smarter and have bigger brains” and “vegetarians are idiots.” Comments constituted verbal communications that were reasonably perceived to be motivated by a distinguishing characteristic, vegetarianism, which substantially interfered with the rights of the victim and had the effect of insulting and demeaning him. The parents failed to meet their burden of proof that the board of education acted in an arbitrary, capricious or unreasonable manner when it concluded that the student’s comments constituted HIB under the New Jersey Anti-Bullying Bill of Rights Act. The Commissioner concurred.

1. R.A. o/b/o B.A. v. Board of Education of the Township of Hamilton, EDU 10485-15 Initial Decision (May 12, 2016) aff’d Commissioner (June 22, 2016)

Board of education’s determination that incidents among middle school girls did not constitute HIB was not arbitrary, capricious or unreasonable. Incidents in question were student conflict and did not rise to the level of HIB. No distinguishing characteric motivated the girls’ conduct. Allegations over a two year period included attending a birthday party to which the other girls were not invited, and not attending a baseball game with the name-calling, throwing a blown-up paper bag in her face, glaring stares, stomping and kicking of her lunch bag, kicking it into the hallway and additional name-calling.

“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.”

1. L.P. and H.P. o/b/o L.P. v. Board of Education of the West Morris Regional High School District, EDU 04462-16, Initial Decision (June 10, 2016)

ALJ determined that board of education’s determination that a series of alleged acts between a senior woman fencer and a freshman woman fencer did not constitute acts of HIB was not arbitrary, capricious or against the weight of the evidence. Freshman female fencer could not prove that alleged incidents occurred or constituted acts of HIB.

“The events between L.P. and the other female fencing team members as set forth are not even alleged to have been “motivated either by 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.” N.J.S.A. 18A:37-14. It was reasonable for the Board to conclude that the circumstances, which certainly showed a conflict between L.P. and the girls, did not rise to the level of bullying under the Act, even to the extent that any of the incidents had been corroborated, which they were not. As noted above, 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. I understand and appreciate that petitioners might be viewing 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 sportmanship, but the Act sets forth a specific legislative definition and regulatory response.”

1. S.C. o/b/o K.C. v. Bd. of Ed. of the Twp. of Montgomery, EDU 18290-15, Initial Decision (June 29, 2016) aff’d Commissioner (August 11, 2016)

Commissioner and ALJ agreed that board of education did not act in an arbitrary, capricious or unreasonable manner when it determined that comments made among three female students at lunch constituted an act of HIB. Student made verbal communication that victim was anorexic because her eating habits had changed, took the victim’s iPOD and texted a boy she was dating that she was anorexic. Victim reported that she was placed in an awkward position of having to explain the message to her boyfriend, felt hurt and cried in the bathroom. Comments were reasonably perceived to be motivated by a distinguishing characteristic, a perceived eating disorder, anorexia, which substantially interfered with the victim’s rights and had the effect of insulting or demeaning her. The parents failed to meet their burden of proof. Argument that finding by anti-bullying specialist that student’s intentions were good should preclude HIB finding were not persuasive.

1. D.D.K. o/b/o D.K. v. Bd of Ed. of the Twp of Readington, EDU 07682-15, Initial Decision (October 6, 2016) aff’d with modification Commissioner (November 16, 2016)

Commissioner and ALJ determined that board of education did not act in an arbitrary and capricious manner when it determined that student was not a victim of HIB. Case involved two separate incidents from May 2014 when alleged victim was a seventh grade student. Incident one involved students on the school bus referring to the alleged victim as a “know it all.” Investigation of school bus incident determined that this was a conflict between students regarding their comparative math abilities and was not reasonably perceived to be motivated by an actual or perceived characteristic. Allegation that student was referred to as “smarty pants” and a “dumb ass Asian” were not substantied. Incident two involved a homeroom incident on Spirit Day where a student “joked” to the alleged victim, who was wearing a yellow shirt, saying “you’re already yellow, you’re Asian.” While the comments were motivated by race and color, occurring on school property, and, whether intentional or unintentional, had the effect of insulting or demeaning the alleged victim, it did not substantially disrupt or interfere with the orderly operations of the school or the rights of other students and as such was not an act of HIB. The alleged victim’s response was to say “fortunately, this was not problematic for my learning experience, but it ticked me off at the time.” The parent failed to meet his burden of proof.

1. G.J. o/b/o S.J. v. Bd. of Ed. of the Twp. of Plumsted, EDU 04045-16, Initial Decision (October 19, 2016) aff’d Commissioner (November 22, 2016)

Commissioner and ALJ determined that board of education did not act an arbitrary, capricious or unreasonable manner when it determined that no findings of HIB had occurred. Matter involved a series of inappropriate internet postings, photographs, pictures with overlaid text about the alleged victim, the content of which constituted HIB. Neither the board’s investigation nor the board’s technology team could identify the parties responsible for the internet posts. The County Prosecutor’s Office was brought in to investigate but could not identify the responsible parties. The board of education complied with all substantive and procedural requirements of the HIB law; all investigations, reports and hearings were properly completed. The parent failed to meet his burden of proof.

1. J.L. o/b/o A.L. v. Bd. of Ed. of the Bridgewater-Raritan Regional School District, EDU 11604-15, Initial Decision (October 24, 2016) aff’d in part, reversed in part Commissioner (December 9, 2016)

Board of education determined that seven year old student committed an act of HIB when she, as one of several girls on the school bus, made fun of a classmate because of her speech disability. Recommended action included a verbal reprimand, telephoning the parents, changed bus seating. Parent sought reversal of HIB determination and removal of any reference to incident from student’s record.

ALJ determined that board committed three procedural errors making the HIB determination arbitrary and capricious. ALJ ordered that HIB determination be reversed and all reference to HIB be removed from the student’s record. The three procedural errors were:

* Board failure to issue a written decision affirming, rejecting or modifying the Superintendent’s decision. Neither board minutes nor principal’s letter constituted a written decision.
* Board failure to provide the required information to the parents after the Superintendent report to the board.
* Board incorrectly advised the parents that there was a 10 day limitation on requsting an appeal before the board.

ALJ determined that the board’s use of a committee to review the HIB matter and subsequently report to the board was a procedurally acceptable practice.

Commissioner agreed that:

* Board’s use of an HIB committee to review the matter and report to the board was an appropriate practice.
* Board failed to issue a written decision affirming, rejecting or modifying the Superintendent’s decision. Neither board minutes nor principal’s letter constituted a written decision.
* Board failed to provide required information to parents after the Superintendent report to the board. However, given the communication among the parties, failure to include the discipline in the principal’s letter was deminimus.

Commissioner disagreed with the ALJ on:

* Advising the parties that there was a 10 day limitation on requesting a hearing was unreasonable given the lack of timelines in the statute. A board set timeline would not violate the parent’s due process rights under the Act.
* HIB finding should not be reversed. Matter should be remanded for a hearing.
1. M.R. o/b/o M.R. v. Bd. of Ed. of the Ramapo Indian Hills Regional High School District, EDU 05308-16, Initial Decision (November 7, 2016), aff’d with modification Commissioner (December 21, 2016)

Commissioner and ALJ agreed that board of education determination that student was not a victim of HIB was not arbitrary, capricious or unreasonable. Cheerleading coach responded with a “strong bullying tone” after he received a text message from student on the afternoon of a scheduled basketball game that she could not attend the game because her friends had planned a holiday part for that night. The student and three other cheerleaders were initially thrown off the team but were reinstated following the launch of an HIB investigation. The student alleged that the coach’s behavior towards her and the other three girls at half time of the next game made her feel singled out and fearful that she was becoming a target and that the cheerleading team had became a hostile environment. The board found no evidence that the action of the coach were motivated by any actual or perceived characteristic; no act of HIB occurred.

1. R.S. o/b/o G.M. v. State Operated School District of the City of Paterson, EDU 14769-15, Initial Decision (December 2, 2016), rev’d and remanded Commissioner (January 13, 2017)

Parent challenged board of education’s determination that student was not the victim of acts of HIB. Parent alleged that daughter was bullied based on her diagnosis of Autism Spectrum Disorder and Selective Mutism. Alleged acts of HIB included grabbing the student by her shoulder, grabbing her phone, preventing her from entering gym class and blocking her from going in her locker. ALJ determined that matter was moot as student and all alleged perpetrators have graduated from the district schools. Commissioner disagreed. The fact that students have graduated is not relevant to whether the alleged conduct constituted HIB. Parent’s challenge to the HIB investigation, and the district’s finding that the alleged conduct did not rise to the leval of HIB has not been addressed. Matter is remanded to the OAL for further proceedings to resolve the underlying claim on the merits.

Special Education

1. Stephen Gibble v. Board of Education of the Hunterdon Central Regional School District, EDU 2767-15, Initial Decision ( ) modified and remanded for hearing Commissioner (July 13, 2016)

Matter involved former wrestling coach, who was found by the board of education to have committed an act of HIB. The wrestling coach on two occasions during a summer wrestling camp, stated to a student wrestler, who was a special education student, that he hoped the student “did not have access to any weapons or keys to the gun closet.” ALJ determined that the Board failed to comply with the investigatory process outlined in the Act and granted summary judgment in favor of the coach, ordering all references of HIB to be removed from the coach’s file. Commissioner agreed with ALJ that staff members who are accused of committing an act of HIB are entitled to the due process guaranteed by the Act, including the right to a hearing before the board. Commissioner found that the ALJ erred in dismissing the case and removing all references to HIB from the coach’s file. Matter remanded for a hearing.

1. L.T. and L.T. o/b/o K.T. v. Neptune Township Bd. of Ed., EDS 11709-11 (March 1, 2012)

Student found eligible for special education and related services. Board of education ordered to develop an IEP for fourteen year old eighth grader that provides FAPE through a program individualized to the student’s unique needs and designed to give her meaningful educational benefit. Student was sexually molested at school during her sixth grade year and was bullied, harassed and indirectly threatened during her seventh grade year. Student has PTSD and depressive disorder as well as fear and anxiety associated with school problems.

1. B.V. o/b/o D.V. v. Pennsauken Board of Education, EDS 7217-12 (June 5, 2012)

Emergent relief for home instruction granted for fifth grade student who is eligible for special education and related services. Decision on the merits as to specialized program for autistic students, including placement at the YALE school, denied. Student alleged various incidents of bullying. School district investigation concluded no evidence of HIB relative to any of the incidents. Student associated the school with trauma, felt threatened and was afraid to go back; regardless of whether the bullying was real or perceived, student believed it occurred.

1. F.F. and L.F. o/b/o N.F. v. Matawan-Aberdeen Board of Education and Matawan-Aberdeen Board of Education v. F.F. and L.F. o/b/o N.F., EDS 2287-12 (July 26, 2012) EDS 3765-12 (July 26, 2012) (Consolidated)

Student’s program and placement, proposed by the Board through the current IEP, were reasonably calculated to provide student with a meaningful educational benefit in the least restrictive environment, providing FAPE. Parent’s request for home instruction through online courses denied. Eleventh grade student who suffered from situational and anxiety had been on home instruction since the eighth grade due to anxiety associated with a fear of bullying. Student had been bullied in the middle school and experienced bullying and harassment incidents near the end of her ninth grade year. The current school environment, includes a new superintendent, deputy superintendent, and special education director, and implementation of the district’s new comprehensive HIB policy under the Anti-Bullying Bill of Rights Act. The current school environment under the protection of the Anti-Bullying Bill of Rights Act and the district’s HIB policy would provide FAPE in the least restrictive environment.

1. C.P. o/b/o D.V. v. Fair Lawn Board of Education, EDS 11788-11 (August 21, 2012)

Student’s IEP, proposed by the district, was reasonably designed to confer a meaningful educational benefit and provide FAPE in the least-restrictive environment. Parent’s request for tuition and expenses for unilaterally placed private school setting and continued placement at school district expense denied. Bullying alleged, not proven. Parent complained that student was being bullied in the middle school environment. Student would not identify alleged bullies for fear of retaliation. Investigation by principal and teachers did not identify any incidents of bullying. Student did not appear to be victimized in any way by teasing or bullying and appeared to have a good relationship with fellow students.

1. L.H. and M.H. o/b/o J.H. v. Deerfield Township Board of Education, EDS 9879-11 (October 12, 2012)

Student’s IEP was appropriate and provided FAPE. In-district program provided an appropriate program and placement and enabled student to achieve meaningful educational progress. District is encouraged to consider appropriate modifications to student’s goals and objectives. Parent’s request for out-of-district program and placement denied. Allegations that student was bullied in school turned out to be the reverse. Student was more of an instigator, or at a minimum, a teaser, in the single reported incident. No evidence to suggest that behavior had been repetitive.

1. C.P. v. Fair Lawn Bd. of Ed., Civil Action No. 12-cv-05694 (SDW) (MCA) (D.N.J. May 1, 2014) (not for publication).

Court affirms ruling that parent is not entitled to reimbursement for the monies she expended paying for child with Attention Deficit Hyperactivity Disorder and language-based learning disabilities, to attend private school after she unilaterally removed him from public schools due to her concerns that lack of progress and bullying were not adequately addressed by the District. ALJ determined that it was "clear from the record developed at hearing that the child made 'more than trivial' progress, albeit slowly, and that accordingly, the program delivered FAPE, and was reasonably calculated to continue to do so. Court must accept the ALJ's credibility findings unless extrinsic evidence requires otherwise. Court affirms the ALJ's decision and denies Plaintiff's Summary Judgment Motion and also denies Plaintiff's Motion to Supplement the Record.

1. V.E. & L.B. o/b/o P.B. v. Totowa Board of Education, OAL Dkt. No. EDS 7823-14, Agency Ref. No. 2014-21292 (July 3, 2014)

Petitioner, parent of a sixth grader, filed a petition for emergent relief in reference to a disciplinary removal after charges of HIB were substantiated against the student and a decision was made that his actions were not a manifestation of his disability. The ALJ concluded that emergent relief was not warranted because there is an entirely separate appeal process that must be followed in HIB cases.

1. M.K. o/b/o J.P. v. Hawthorne Board of Education, EDS 18538-13 (July 30, 2014)

Parent’s request for out-of-district placement at Sage Day School and challenge to student’s IEP dismissed. Board of education offered FAPE even when student refused to attend school. No evidence that student was denied a meaningful education benefit. Numerous incidents of bullying alleged; none confirmed. When school district investigated the incidents, student either denied that the incident occurred, acknowledged that none of the criteria for HIB were met, or failed to complete the required forms. Parent’s procedural claim was without merit as it ignored the fact that student unilaterally elected to stay out of school.

Tenure Cases

1. In the Matter of the Tenure Hearing of Steven E. Roth, EDS 15145-115, Initial Decision (May 11, 2012), aff’d Commissioner June 25, 2012, aff’d App. Div. Dkt. No. A-5742-11T2 (July 1, 2013)

Special Education teacher disparaged, confronted and intimidated special education student in geometry classroom setting. Remarks included that no one in the public would care that the student was “special” and chastised the student for objecting to the use of the term. Teacher referred to the Special Services School District name and the fact that the student would never make it back to “regular ed.” Teacher’s actions were surreptiously recorded on a cell phone; resulting video was used in evidence. ALJ found that teacher’s conduct violated school district’s HIB policy and constituted unbecoming conduct. Given teacher’s successful teaching history, his honest concern for student and severe remorse, ALJ recommended 120 days forfeiture of pay, suspension without pay for the rest of the 2011-2012 school year, withholding of salary increment for the 2012-2013 and 2013-2014 school years, completion of anger management training at teacher’s expense and written apologies to student, his parents and all other student present. Commissioner of Education found that penalty of dismissal was warranted; use of intimidation, ridicule and disparagement has no place in the school environment.

1. In re Tenure Hearing of Cory Forman, Dkt. No. A-0317-12T2 (July 12, 2013), affirming EDU 10976-11, Initial Decision (April 12, 2012) modified as to penalty, Commissioner (August 9, 2012)

Appellate Division upholds determination by Commissioner that dismissal of teacher who had engaged in unbecoming conduct was too harsh a penalty given the circumstances, despite ALJ’s recommended penalty of dismissal; court applied deferential standard, and penalty does not shock sense of fairness. Loss of respondent’s increment for one year, along with the 120 days salary withheld. Special education and physical education teacher gave student “light slap,” and joked about giving student “100s” for the rest of the year, and tolerated student provocation and horseplay. Proven conduct does not establish respondent’s unfitness to discharge the duties of his position, nor was respondent’s behavior “premeditated, cruel or vicious, or done with the intent to punish” as per In re Fulcomer-1967 appellate division case. ALJ had determined that “given the current precedent and the ongoing efforts through the anti-bullying laws to change how students conduct themselves. In relation to each other, that the loss of tenure was appropriate. Commissioner disagreed, stating that while the anti-bullying legislation was important, the Fulcomer analysis was still the basis for removal and was not satisfied in this case.

1. In the Matter of the Tenure Hearing of Jose DaCosta, April 1, 2013 (#124-13) Arbitrator Decision

Teacher found guilty as charged of conduct unbecoming – dismissed from employment. Eight of ten charges involved allegations of HIB against students and violation of school district’s HIB policies. Charges deemed proven by the arbitrator although no specific discussion of HIB.

1. In the Matter of the Tenure Hearing of Alan Carr, EDS 10917-12, Initial Decision (April 5, 2013) modified as to penalty, Commissioner (May 15, 2013)

Tenured teacher, Supervisor of Health and Physical Education and Athletic Director recommended by ALJ to be terminated from his status as tenured employee. School district alleged that employee engaged in conduct unbecoming in an incident involving the placing of a bag of dog feces on the automobile of his former wife, a school district employee and violated the school district’s HIB policies. Matter not within the contemplation of the school district’s HIB policy or HIB statute. Commissioner concerned with ALJ finding of conduct unbecoming of a teacher, but found recommended penalty of dismissal to be unduly harsh, given all circumstances. Commissioner ordered forfeiture of 120 days pay, an additional suspension for six months without pay and forfeiture of one future salary increment.

1. In the Matter of the Tenure Hearing of King, July 22, 2013 (#276-13) Arbitrator Decision (Brent, arbitrator)

Arbitrator dismisses tenure charges; although teacher was culpable for serious shortcomings in his teaching, they were not for racism or purposeful humiliation of students. Teacher told student her “people came a long way out of busting out of those chains: and made political comments about same-sex marriage and Latino and single parent households. Teacher claimed incidents were to bolster the students’ self-esteem, not harm them. Arbitrator held that board’s finding that he committed HIB was invalid since HIB applies to student-student interaction, not faculty – student interactions. The inapplicability of HIB standards for remarks by teachers to students, absence of persuasive evidence that teacher intended to intimidate or humiliate students and the insufficient nexus between the remarks that precipitated a prior increment withholding and the incidents considered, mandate/dismissal of the charges. Teacher ordered returned to his position – reinstatement to be without back pay as period of suspension deemed to be unpaid. Tenure Hearing of King, Freehold, Arb 2013: July 22, (Brent, arbitrator)

1. In the Matter of the Tenure Hearing of Maren Sugarman, September 17, 2013 (#331-13) Arbitration Decision (Klein, arbitrator)

Teacher found guilty as charged of conduct unbecoming when she slapped a student across the face, inflicting corporal punishment in violation of N.J.S.A. 18A:6-1. This incident embarrassed and humiliated the student leading to the need of the student to switch schools. Teacher argued extenuating personal circumstances including lack of sleep, attempted suicide by her 15 year old daughter and PTSD from her experiences being bullied as a child.

1. In the Matter of the Tenure Hearing of Brigette Geiger and In the Matter of the Tenure Hearing of Sharon Jones, EDU 5974-12 and EDU 6047-12, Initial Decision (July 8, 2013) aff’d Commissioner (October 7, 2013)

Commissioner concluded that tenure charges of unbecoming conduct against two tenured physical education teachers were substantiated and teachers must be removed from their tenured employment. Teachers exhibited a lack of professional judgment when they participated in a racially derogatory verbal exchange in reference to a group of African American students. The exchange took place in the girls’ locker room, during school hours, and was witnessed by several students. The teachers’ remarks fell well below the acceptable standard of conduct for an educational institution and created ongoing concern about the negative impacts on the school environment. Teachers unsuccessfully argued that board’s violation of the investigatory procedures required by its own Harassment, Intimidation and Bullying (HIB) policy violated their rights to due process and resulted in the absence of scrutiny of the students’ allegations impeded their ability to cross-examine and impeach witnesses because reports were not generated, statements not memorialized and witnesses never sequestered, prejudicing their cases.

Appellate Division upheld tenure charges against two experienced physical education teachers for use of racial epithets regarding students. Denial of counsel during interview, failure to follow HIB policy not a due process violation. Penalty of dismissal inconsistent with prior decisions. Matter remanded to determine penalty. *In re Tenure Hearing of Geiger*, Dkt. No. A-1049-1372, Appellate Division, November 18, 2015

U.S. Court of Appeals – Third Citcuit

1. Morrow v. Blackhawk School District, 719 F.3d 160 (3rd Cir. 2013) June 5, 2013

Court of Appeals determined, en banc, that school did not have a “special relationship” with students that would give rise to a constitutional duty to protect them from harm from fellow students. Injuries were not the result of any affirmative action by the school district; school district was not liable under the “state-created danger” doctrine. Students had been subjected to a series of threats and physical assaults by a fellow student. School officials advised the parents that they could not guarantee their children’s safety and advised the parents to consider another school for their children. Allegations did not establish the special relationship or the state created danger that must exist before a constitutional duty to protect arises under the Fourteenth Amendment of the U.S. Constitution.

1. Monn v. Gettysburg Area Sch. Dist., No. 13-2730, (3rd Cir. January 21, 2014)

Court of Appeals affirms District Court dismissal of plaintiffs’ claims. Parents of allegedly bullied middle school students claimed that school district officials, after being notified of the bullying, did not act to prevent the bullying of the students. The appellants asserted claims under 42 U.S.C. § 1983 for violations of the First, Fourth, and Fourteenth Amendments. The District Court dismissed all of these claims. No affirmative retaliatory actions by the school district alleged or proven. No special relationship existed between plaintiffs and the state nor was any state created danger existed in this case. The bullying of the children by other students did not give rise to a procedural due process claim; no constitutional duty to protect children from bullying by other children.

1. MS v. Maple Newtown School District, Dkt. No. 15-1277; 2015 *U.S. App. Lexis* 22420 (December 22, 2015)

Claims under the Rehabilitation Act and ADA that school district refused to place a student and her harassers in separate classrooms and retaliated against the mother’s complaints, could have been remedied under the IDEA administrative process. Exhaustion of IDEA remedies required.

1. [Bridges v. Scranton Area School District](http://law.justia.com/cases/federal/appellate-courts/ca3/14-4565/14-4565-2016-03-14.html), Dkt. No. 14-4565, 2016 *U.S. App. Lexis* 4667 (3d Cir., March 14, 2016).

Third Circuit determined that school district did not have a duty to provide student with a school free from the bullying of peers and the verbal abuse of his teacher. State’s failure to protect an individual against private violence does not constitute a violation of due process, absent a “special relationship” or a state-created danger, neither of which exist in a peer harassment allegation. Neither did the teacher’s abusive verbal comment rise to a level that would “shock the conscience.”

Federal District Court – New Jersey

1. Thomas G/A/L K.T. v. East Orange Board of Education, Civ. No. 2:12-01446 (D.N.J. February 6, 2014

Plaintiffs brought various state and federal statutory constitutional and common law claims against board of education and superintendent based on defendant’s alleged failure to prevent students from bullying K.T. Numerous HIB complaints filed regarding teasing about K.T.’s mother’s weight and aunt’s disability, profanity directed against K.T., threats of physical violence, etc. None were substantiated after investigation by anti-bullying specialist. NJLAD claim dismissed – no evidence that K.T. was bullied based on gender, no protected status based on Southern-American heritage. No constitutional rights shown to be violated. No fundamental right to a public education under the United States Constitution. No “discriminatory enforcement” of the Anti-Bullying Bill of Rights Act. No state created danger, no negligent infliction of emotional distress. Anti-Bullying Bill of Rights Act does not create or alter tort liability; cannot be a basis for a claim of negligent infliction of emotional distress.

1. Omari George, a minor, Daryl George and Brenda George v. Board of Education of the Township of Millburn, Richard Bindow, William Miron and Michelle Piths, 34 F. Supp. 3d 442 (D.N.J. 2014) (July 23, 2014)

Defendants motion for summary judgment on all claims granted in part, denied in part. A jury could find, that the board knew or should have known of the racist bullying experienced by the student. Vice principal could be found to have actual or constructive knowledge of the harassment based on student filed reports. Jury could find that school’s response to harassment was not reasonable. No constitutional right that protects students from being bullied because they are freshman or sophomores. No evidence that board approved a practice, policy or custom allowing Millburn High School administrators to turn a blind eye on student to student racial harassment. Vice principal could be liable in her personal and official capacity by failing to adequately address student’s race-based harassment complaint.

New Jersey Superior Court

1. Hassan H. Salah M.D. v. H. Victor Gilson Ed.D., and City of Bridgeton Board of Education, Dkt. No. A-3617-11T2, April 19, 2013

Appellate Division affirms Law Division summary judgment dismissing plaintiff’s complaint alleging that defendants violated his due process rights and free speech rights under the New Jersey Constitution and that superintendent of schools libeled, slandered and defamed him. Doctor gave mother a note on a prescription pad to give to school personnel that said, “Under my care, patient has physical, medical evidence of being abused/bullied in school. I urge the school and board of education to take their responsibility to make the child safe in school environment.” Superintendent responded to the letter suggesting that the accusation was offensive and irresponsible and outlining what steps the school district had taken to date. Several additional exchanges followed, leading to the litigation. Failure to file a notice of tort claim and a threatening letter did not constitute “substantial compliance” with the TCA. The record did not demonstrate any procedural deprivation of protected rights. A reasonable and properly constructed trier of fact could not conclude that plaintiff was challenged in his excess of free speech.

1. V.B. v. Flemington-Raritan Regional Board of Education and Hunterdon Central Regional Board of Education; Hunterdon Central and Flemington-Raritan Regional v. C.W., J.A., and K.I., Docket No. HNT-L-95-13 Law Division, Somerset County (Ciccone J.S.C.) March 12, 2014

Superior Court judge allows two school districts to pursue claims against alleged bullies and their parents under the Joint Tortfeasor Contribution Law; if the districts were found to be responsible for damages under the Anti-Bullying Bill of Rights Act and the Law Against Discrimination, the parents could be required to contribute to the damages award. A school board that is sued under the Act for potentially negligent conduct can raise a negligence claim for contribution against parents who are not part of the original suit. A final determination of liability will depend on the totality of the circumstances, including whether the parents knew of the bullying and if so whether their responses fell within the parameters of protected parent decision-making. Parents of alleged bullies’ motion to dismiss claim was denied.

1. State of New Jersey v. Emilio Perez, Dkt. No. A-2414-13T2, App. Div. (July 10, 2015)

Appellate Division affirms Law Division conviction for harassment and forfeiture of public office. Teacher, in the course of his employment at vocational high school verbally harassed several students making anti-Jewish, anti-African American and homophobic comments as well as other racist and religious slurs. Teacher was convicted in Municipal Court of harassing two students. After a trial de novo on the record, Law Division judge found defendant guilty of only one charge of harassment. Appellate Division determined that there was sufficient credible evidence to support the Law Division judge’s determination. Defendant’s repeated slurs and abusive conduct, antithetical to his role as a teacher, were intended for the purpose to alarm, annoy and harass. Prosecutor’s decision not to apply for a waiver of forfeiture was not an abuse of discretion. Teacher “grossly” violated the duties of his office by verbally abusing students in his classroom. School board and victims sought forfeiture based on his “harassing and bullying” behavior.

New Jersey Division of Civil Rights

1. Under a [settlement agreement](http://nj.gov/oag/newsreleases13/pr20130918a.html), Old Bridge Board agreed to $75,000 payout to resolve allegations the school district did not effectively address alleged harassment and bullying of the former student that went on for approximately four years, took place on the school bus and on the Internet, and included name-calling, derogatory comments and physical contact, and focused on student’s perceived sexual orientation and Jewish faith. May have been as many as 50 students who she alleged participated in bullying her son at one time or another; in some instances, no action was taken because administrators were unable to obtain reliable information about who was involved; in other cases 12 students received discipline ranging from a verbal warning to after-school detention to in-school suspension. Division’s Finding of Probable Cause cited Old Bridge schools for dealing with the problem only through “after-the-fact” discipline, without any prevention measures or attempts at broader outreach to students. Settlement also requires schools to have and distribute to all staff, parents and students a written anti-discrimination policy, a written discrimination complaint procedure, and a written policy on student harassment, intimidation and bullying, and to implement a bias-based harassment prevention program that includes an awareness component for all students at the middle and high school levels, and an awareness and training component for all staff and administration, and is to be separate and apart from any prevention program designed to address bullying generally. (Sept 18, 2013)
2. Franklin Parent/Guardian o/b/o/ Minor v. Franklin Township Bd. of Educ., (OAL DKT. NO. CRT04889-13; DCR DKT NO. PHOSRE-03029; August 11, 2014)

Settlement agreement entered into by the district awarded $75,000 to an African-American victim of bullying and allocated $2,500 to the creation of an anti-bullying awareness program to be used in the 2014-15 school year. The allegations of bullying included race-based name calling that lasted from 3rd through 6th grades. The Division of Civil Rights opined that responding to individual incidents of harassment may not be sufficient where district administrators are aware of an overall pattern of harassment.

Miscellaneous Cases Where HIB was a Factor

1. J.K. o/b/o P.B. v. Board of Education of the Township of Springfield, EDU 09972-09, Initial Decision (October 13, 2011), aff’d Commissioner February 9, 2012

Parent sought reimbursement for student’s senior year tuition at out-of-district high school. Parent had unilaterally withdrawn son from board’s high school, alleging that Board failed to address persistent issues of HIB during student’s junior year. ALJ concluded that actions of the board to investigate and the measures to remediate the alleged bullying were insufficient, found the unilateral placement of the student was appropriate and recommended that parent be granted tuition reimbursement. Commissioner disagreed finding no credible evidence that the bullying actually took place, that no proof was shown to indicate that the board failed to take actions reasonably calculated to end the conduct and that parent failed to exhaust available administrative remedies. District responded to all incidents, met with the parties, counseled against repetitive interaction within the school environment and school activities. Mediation was offered and rejected. Transfer to a neighboring choice school was rejected. The board’s attempt at remediation and prevention were reasonable in light of the totality of the circumstances.

1. K.L. v. Evesham Twp. Bd. of Ed., A-1771-10T3, December 12, 2011

Parent had sought access to school records regarding alleged incidents of bullying against his children. Appellate Division affirmed trial court in part, reversed in part and remanded for a determination of attorney fees. School personnel notes in question were privileged from disclosure under the attorney work product doctrine. Parent partially prevailed as, after plaintiff filed this lawsuit, the Board released one redacted document to plaintiff that reported the disciplining of another student for violent conduct against plaintiff's son. No determination made as to whether the incidents report advised that the notes were accurately described as “bullying.” Disputes about relationships or personal belongings or aggressive conduct without identifiable motivation, do not come within the statutory definition of bullying.

1. Howell Township Board of Education v. J.D. and T.D. o/b/o A.D., EDS 02772-11 (March 17, 2011)

Emergency relief granted for placement of student in CHANGE program based on pattern of inappropriate and dangerous behavior. Student behavior included physical altercations, sexual harassment and bullying of female students and use of racist and threatening language.

1. Mentor v. Hillside Board of Education, 428 Fed. Appx. 222 (3d. Cr. 2011) (May 23, 2011)

Court of Appeals affirmed District Court’s dismissal of bus and cafeteria aide’s claim of racial discrimination and retaliation under Title VII. Aide was transferred because, despite the school’s intervention and remediation regarding her daughter being bullied in class by another student, the aide confronted the parent of the alleged bully. Termination was based on budgetary constraints.

1. M.E.T. o/b/o K.T. v. Board of Education of the Township of Berkeley Heights, EDU 13228-09 Initial Decision (July 13, 2010) aff’d Commissioner (August 11, 2010)

Summary judgment granted to board on parent’s request that district provide tuition payments for student to attend private Arts Academy in Michigan. Parents failed to substantiate allegations that school administrators and local police department engaged in persistent harassment, intimidation and bullying of student causing a substantial disruption in her school environment and her ability to learn. Alleged HIB occurred in aftermath of Facebook comment made by the student expressing suicidal thoughts. Commissioner has granted reimbursement of tuition payments where school district failed to adequately address in-school peer harassment. Here there was no factual basis for a cause of action to provide tuition payments.

1. F.J. o/b/o A.J. v. Fairfield Township Board of Education, EDS 806-10, Initial Decision (May 28, 2010), aff’d Commissioner (July 12, 2010)

Parent’s request to transfer son, an eleven year old, sixth grade student to another school district denied. Student was assaulted on the school bus by another student. Assaulting student was disciplined in accordance with school district policy, suspended. The two students have not had any additional altercations since the incident, either in or out of school; no further violence, harassment, cyberbullying, belittling or other offensive conduct. No evidence of bullying was found. District has an anti-bullying policy and its staff is trained in bullying prevention. Petitioner may go to a charter or choice school or seek a different bus.

1. H.S. and N.S. o/b/o A.S. v. Moorestown Township Board of Education, EDS 10210-07 (March 20, 2008)

Student deemed eligible for special education and related services. Student believed he had been bullied at school including being pushed by a student, suffering a concussion and post-traumatic stress disorder. Student has an inability to attend school due to his fear of bullying. Student’s fear to attend school in Moorestown is real and would be traumatic. IEP team ordered to develop an IEP as soon as possible.

1. L.S. o/b/o C.S. v. Central Jersey Arts Community School Board of Education, EDS 09573-07 (October 11, 2007)

Parents sought out of district placement for twelve year old, sixth grade special education student. Parent alleged, but could not prove, that because of the bullying that the student experienced, he was exposed to a hostile educational environment and denied FAPE. Parent failed to demonstrate that resource room services, the one-on-one aide, together with educational strategies, modification and goals set forth in the IEP were not appropriate. Principal represented that an anti-bullying program with zero tolerance was in effect.

1. V.W. o/b/o E.B. v. State Operated School District of the City of Newark, EDU 5509-06 Initial Decision (July 25, 2006) aff’d Commissioner (September 7, 2006)

Commissioner determined parent failed to prove that the district acted arbitrarily, capriciously, or unreasonably, or denied student due process, where district transferred student to an alternative educational program for disciplinary and academic reasons. Among other incidents which led to that transfer, student grabbed and pushed the heads of two female students toward his groin area. While the actions were unwelcome, disruptive and immature and wholly inappropriate, they were not HIB. Neither the teacher nor the female student considered the action to be sexually motivated or demeaning.

1. S.S. and W.S. o/b/o J.S. v. Board of Education of Hasbrouck Heights, EDU 3683-04 Initial Decision (September 6, 2005), aff’d Commissioner (October 13, 2005)

Commissioner upheld board imposition of a one-day suspension for belittling and ridiculing a special education student despite the fact that both victim and aggressor shared a Jewish background. Aggressor added a yarmulke and curls to student’s portrait while in art class. Nature of the offense, its foreseeable effect on the victim and failure of the petitioner to apologize for his actions warranted the one day suspension.

1. M.D.G. o/b/o C.J. v. Board of Education of the City of Atlantic City, EDU 6450-04 Initial Decision (April 27, 2005) aff’d Commissioner (May 26, 2005)

Commissioner determined that, notwithstanding the fact that student who was the victim of an assault is no longer enrolled, district maintained a duty to effectuate full compliance with N.J.S.A. 18A:37-15 directing that each district adopt policy prohibiting harassment, intimidation or bullying. District ordered to conduct in-service training. ALJ determined that Board’s agents and representatives failed to promptly and thoroughly investigate the alleged incident of harassment, intimidation and bullying (HIB). While no immediate remedy was available to petitioner, ALJ ordered Board to comply with N.J.S.A. 18A:37-15 by conducting inservice programs.

1. J.B. and A.B. o/b/o P.B., EDS 02622-055 (August 1, 2005)

School district directed to modify student’s IEP including setting forth reasonable guidelines and directions for teachers and parents regarding homework completion, use of a paraprofessional to assist in the completion and turning in of homework assignments in a timely fashion as well as resource room assistance. District has a clear affirmative legal responsibility to address bullying conduct. Parents and students should be sure to alert the school should that occur, particularly at the bus stop.

1. Shore Regional High School v. P.S. o/b/o P.N., 381 F.3d 194 (3d Cir. 2004)

Court of Appeals reverses District Court finding that school district offered FAPE. District Court did not give due weight to the ALJ decision. Student had been bullied in elementary and middle school and was the victim of relentless physical and verbal harassment as well as social isolation by classmates. Despite repeated complaints the school administration failed to remedy the situation. While a psychiatrist diagnosed student with depression, student was identified as eligible for special education services due to perceptual impairment. CST Manager believed that bullying was a primary factor in student’s poor work. In eighth grade the harassment had been so severe that student attempted suicide. The school district changed the student’s classification to emotionally disturbed. After a request for a transfer to a neighboring high school was denied, parents unilaterally placed student in the requested high school. ALJ concluded that school district could not provide FAPE because of the legitimate and real fear that the same harassers that followed the student in elementary and middle school would continue to bully him in high school. ALJ ordered Shore Regional to reimburse for out of district tuition, costs and attorney fees.

Recent Reports

Violence and Vandalism in the Schools Report 2011-2012, 2012-2013, 2013-2014

<http://www.state.nj.us/education/schools/vandv/index.htm>

Interim Report of New Jersey Anti Bullying Task Force – 1/26/13

<http://www.state.nj.us/education/students/safety/behavior/hib/task/>

Annual Report of New Jersey Anti Bullying Task Force – 1/26/14

<http://www.state.nj.us/education/students/safety/behavior/hib/task/Annual> Report 14.pdf

Annual Report of New Jersey Anti Bullying Task Force – 1/26/15

<http://www.state.nj.us/education/students/safety/behavior/hib/task/Annual> Report 15.pdf

Legal/Outlines/Fredon Twp. Bullying the Law and Clients 2017