

# HIB Decisions Issued by the Commissioner of Education

(October 2023-July 2025)

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This PowerPoint is a sampling of the most substantive harassment, intimidation, and bullying (HIB) decisions issued by the Commissioner of Education (from October 2023 through July 2025).

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# Navigating the Document

HIB decisions are listed from oldest to the most recent. NJSBA's Legal Department will periodically update this PowerPoint with new HIB decisions. As this PowerPoint is updated, new slides will be added to the *end* of the document.

The first slide for every decision (the title page) has the caption of the decision. Users can click on any word in the caption for a link to the full text of the decision.

Users can also access decisions issued by the Commissioner of Education through the [New Jersey Department of Education's website](#).



*L.R. o/b/o M.R.*

*v.*

*Board of Education of the Borough of Paramus*

(decided October 13, 2023)

## ***L.R. o/b/o M.R.***

**Facts:** M.R. posted a picture of the character Stewie Griffin from Family Guy on social media, but claimed that it did not refer to the victim and explained that it was an “inside joke.” The victim received a text message with a picture of Stewie Griffin and a picture of the victim stating, “Hey Stewie, what do you call someone with a big head?” The investigation revealed that M.R. and two other students used “Stewie Griffin” as a code word for the victim due to the size of her forehead. Following the incident, the victim missed several days of school and transferred to other classes to avoid being around M.R. The Anti-Bullying Specialist (ABS) determined that M.R. committed an act of HIB that was motivated by a distinguishing characteristic. The superintendent agreed and the board affirmed the superintendent’s recommendation. M.R. appealed.

# *L.R. o/b/o M.R.*

**Administrative Law Judge:** Determined that L.R. failed to demonstrate the existence of any genuine issue of material fact and also found that the board's decision that M.R. committed an act of HIB was not arbitrary, capricious, or unreasonable. Therefore, the Administrative Law Judge granted the board's motion for summary decision and dismissed the petition.

**Commissioner:** Concurred with the Administrative Law Judge that the board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination. The Commissioner affirmed and adopted the Administrative Law Judge's decision granting summary decision to the board and dismissed the petition.

# *L.R. o/b/o M.R.*

**Takeaways:** An act of HIB can be committed based on an image on social media that is not seemingly targeted at an individual (but may actually be targeted at someone by virtue of an “inside joke” between a circle of friends).



*N.M. o/b/o E.M.*

*v.*

*Board of Education of the Township of Voorhees*

(decided October 13, 2023)

## ***N.M. o/b/o E.M.***

**Facts:** During kickball, a student, T.B., “acted aggressively” toward E.M. (pushed him and called him a “racist”), which resulted in an HIB investigation. Following this incident, the same student called E.M. “small” for not playing tackle football. The HIB investigation concluded that the kickball incident was not motivated by a distinguishing characteristic, and did not constitute HIB. The parent appealed.

# **N.M. o/b/o E.M.**

**Administrative Law Judge:** Determined that there were no material facts at issue and the matter was ripe for summary decision.

The Administrative Law Judge noted that: N.M. did not provide any evidence about E.M.'s size relative to the other student involved, or any of his peers; and N.M. failed to prove that T.B.'s conduct during kickball was motivated by E.M.'s size or any other distinguishing characteristic. Therefore, the conduct did not satisfy the statutory definition of HIB and the board's decision was not arbitrary, capricious, or unreasonable.

# *N.M. o/b/o E.M.*

**Commissioner:** Concurred with the Administrative Law Judge that the board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination that the alleged action (during kickball) was **not** motivated by a distinguishing characteristic. The Commissioner affirmed and adopted the Administrative Law Judge's decision granting summary decision to the board and dismissed the petition.

The evidence failed to establish that the comments allegedly made three days later to E.M. regarding his small size were in any way related to the incident during kickball.

# *N.M. o/b/o E.M.*

**Takeaways:** Subsequent behavior/action (or comments) involving or implicating a distinguishing characteristic cannot be used (in and of itself) to support a finding that earlier conduct/action (or comments) was motivated by a distinguishing characteristic.

*A.D. o/b/o A.D.*

*v.*

*Board of Education of the Township of River Edge*

(decided October 27, 2023)

## *A.D. o/b/o A.D.*

**Facts:** A.D., a third-grade student, told a classmate that she (A.D.) “hates black people.” The classmate then repeated A.D.’s comment to a third student (who is black). The classmate who initially heard the comment, and the third student (to whom the statement was repeated), reported A.D.’s statement to a teacher. The board found that A.D. committed an act of HIB (and that the statement was insulting/demeaning), and A.D. appealed.

In the appeal, A.D. argued that: the board failed to follow the investigative procedures in its HIB policy; and her statement was misconstrued as she was not referring to the victim, but instead, used the phrase “hates black people” to describe her feelings towards African American employees of the aftercare program she attended who “yell at her.”

# *A.D. o/b/o A.D.*

**Administrative Law Judge:** The board's HIB determination was not arbitrary, capricious, or unreasonable.

There is no question that A.D. made the statement in question, which included a racial description, and, although A.D. did not intend to insult her classmate (but rather to express her dislike for the African American personnel working in the aftercare program), the victim was upset by the remark and reported that she did not want to attend school, felt unsafe at recess and lunch, and felt fear from knowing that a classmate disliked her because of the color of her skin. The incident also caused a disruption at school.



# *A.D. o/b/o A.D.*

**Commissioner:** Concurred with the Administrative Law Judge that the board did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determination and affirmed and adopted the Administrative Law Judge's decision.

The Commissioner explained that the Anti-Bullying Bill of Rights Act only 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, nor does the actor need to have actual knowledge of the effect that her actions will have**, or to specifically intend to bring about that effect.

# *A.D. o/b/o A.D.*

## Takeaways:

- Even if not directed at a person (and only repeated to them), conduct/speech can still constitute HIB.
- An individual can commit an act of HIB even if they did not intend to do so (and even if they did not have actual knowledge of the effect of their actions).

*I.R. o/b/o J.R.*

*v.*

*Board of Education of the Twp. of  
East Brunswick*

(decided November 2, 2023)

## *I.R. o/b/o J.R.*

**Facts:** The fathers of two eighth-grade students filed separate HIB incident reports regarding the other's child.

In the first report, the father of N.C. alleged that his daughter had been “subject to name-calling and derogatory social media posts related to her weight and physical appearance” by J.R.

In the second report, the father of J.R. alleged that his daughter had been the target of a physical attack by N.C., and that J.R. “has been ‘the victim of physical attacks by the members of [N.C.’s friend] group” while at school.

# I.R. o/b/o J.R.

The ABS conducted an investigation, and issued two separate written reports:

- Regarding N.C.'s allegations, the ABS determined that J.R. committed HIB when she created and disseminated a meme regarding N.C.'s **weight and appearance**.
- As for J.R.'s allegations, the ABS determined that she was not the victim of HIB when N.C. started a fight with her (J.R.) in retaliation for the meme, and because “there was an absence of a distinguishing characteristic motivating the incident.”

## *I.R. o/b/o J.R.*

The superintendent agreed with the ABS's determinations, and the board affirmed the superintendent's recommendations.

The decisions were appealed to the Commissioner.

**Administrative Law Judge:** *Reversed* the determination that J.R. committed an act of HIB, and *affirmed* the board's determination that J.R. was not the victim of HIB.

## I.R. o/b/o J.R.

Although the record demonstrated that J.R. made comments to N.C. about her weight, the board's **written** decision was based **solely** on the incident regarding the meme.

Importantly, the record (1) did not support a determination that J.R. created the meme and/or (2) contain an admission that J.R. showed the meme to any other student(s).

As a result, the Administrative Law Judge **reversed** the determination that J.R. committed an act of HIB.

The Administrative Law Judge additionally agreed that N.C. did not commit HIB when she physically attacked J.R. as N.C.'s actions were not "reasonably perceived as being motivated either by any actual or perceived characteristic."

## *I.R. o/b/o J.R.*

**Commissioner:** The board's decision that J.R. committed an act of HIB was, contrary to the Administrative Law Judge's determination, supported by the record, and was **not** arbitrary, capricious, or unreasonable.

In **rejecting** the Administrative Law Judge's determination, the Commissioner reasoned that, even if J.R. did not admit to creating the meme, N.C. reported (during the investigation) that she saw J.R. showing it other students.



## *I.R. o/b/o J.R.*

The record was also replete with J.R.'s admissions that she called N.C. “fat” on numerous occasions (and were in the HIB complaint, and in the investigation which formed the basis for the ABS’s determination).

The Commissioner additionally **affirmed** the determination that J.R. was not the victim of HIB.

# I.R. o/b/o J.R.

## Takeaways:

- Weight and appearance are distinguishing characteristics.
- “Retaliatory” conduct is not necessarily HIB *unless* it is motivated by an actual or perceived distinguishing characteristic.
- To the fullest extent possible, determination letters must clearly set forth ***all*** the facts upon which HIB determinations are made.

*R.R. o/b/o A.R.*

*v.*

*Board of Education of the Borough of Ramsey*

(decided March 8, 2024)

## ***R.R. o/b/o A.R.***

**Facts:** During recess, A.R. told an African American classmate that she is black, and “black is bad.” The victim was upset by the comment, cried, and told several friends that A.R. made “racist” comments about her. During the HIB investigation, A.R. maintained that that he told the victim, “you smell” and “you’re bad,” and further stated that “if he happened to say something racist” to the victim, “he didn’t mean to.” The victim acknowledged that she did not hear the full sentence that A.R. spoke to her.

The ABS concluded that A.R. had made racially motivated, insulting, or demeaning comments to the victim which created a hostile educational environment, and the board upheld the ABS’s findings and conclusions.

R.R. filed an appeal.

## ***R.R. o/b/o A.R.***

**Administrative Law Judge:** An action by a board of education is entitled to a presumption of correctness.

Upon considering both the victim and A.R.'s version of the interaction, it was reasonable and rational for the ABS to have found the victim's explanation more consistent with the other evidence collected during the investigation.

Even though A.R.'s parent was sincere in his testimony and steadfastly denied that his son ever said "you're Black" and "black is bad" to the victim, maintaining that the victim simply misheard what was said, the Administrative Law Judge found that R.R. failed to meet his burden of demonstrating that the board acted arbitrarily, capriciously, or unreasonably when it determined that A.R. committed an act of HIB.

## ***R.R. o/b/o A.R.***

**Commissioner:** Concurred with the Administrative Law Judge that R.R. failed to satisfy his heavy burden of demonstrating that the board acted arbitrarily, capriciously, or unreasonably when it determined that A.R. committed an act of HIB.

The experienced ABS conducted a thorough, non-biased investigation of the HIB allegation during which she considered all relevant circumstances including, but not limited to, A.R.'s version of events and the victim's acknowledgment that she did not hear the full sentence that A.R. spoke to her.

## R.R. o/b/o A.R.

Although the ABS agreed that the event was a “he said she said,” the ABS found the victim to be more persuasive in her version of the incident than A.R.

The fact that the record leaves room for two different opinions does not mean that the board’s decision was not supported by sufficient credible evidence.

**Takeaways:** The fact that record may involve a “he-said she-said” is an insufficient reason to overturn the board’s decision ***so long as*** the board has not acted arbitrarily, capriciously, or unreasonably.

*K.W. and S.W. o/b/o A.W.*

*v.*

*Board of Education of the School District of the  
Chathams*

(decided March 15, 2024)



## ***K.W. and S.W. o/b/o A.W.***

**Facts:** A.W. posted the word “NIGERs” to a SnapChat group (“Nice Fellers”) using an artificial intelligence (AI) Chat Bot app that could create words. A.W. used the AI Chat Bot app to create the word “NIGERs” multiple times. A word cannot be created with the AI Chat Bot app unless there is input or a prompt from a user. The SnapChat group consisted of several ninth-grade boys, one of whom (S.R.) is black.

The incident was reported by a teacher who overheard S.R. and another member of the chat group talking about what was posted.

The ABS conducted an investigation and determined that A.W. committed an act of HIB. The board upheld the ABS’s determination, and an appeal followed.

# *K.W. and S.W. o/b/o A.W.*

**Administrative Law Judge:** K.W. and S.W. failed to demonstrate that the board's determination of HIB was arbitrary, capricious, or unreasonable.

- The posting of the word “NIGERs” was an intentional act that could ***not*** be accidentally generated.
- A reasonable person should know that posting the word to a group chat where one of the members is a black would have the effect of emotionally harming a student, or placing a student in reasonable fear of emotional harm to his person.
- The post had the effect of insulting or demeaning S.R.
- The post created a hostile educational environment for S.R. by interfering with his education by causing him to lose focus and not be able to concentrate on his studies.

# *K.W. and S.W. o/b/o A.W.*

**Commissioner:** Concurred with the Administrative Law Judge that K.W. and S.W. failed to demonstrate that the board's determination that A.W. committed an act of HIB was arbitrary, capricious, or unreasonable.

**Takeaways:** AI generated comments or words (and arguably pictures) can form the basis for a finding of HIB!

*H.P. o/b/o R.S.*

*v.*

*Board of Education of the Borough of Tenaflly*

(decided March 26, 2024)

# *H.P. o/b/o R.S.*

**Facts:** R.S. and S.S. were both freshmen. R.S. is a boy from Korea and S.S. is a Jewish girl from Israel. On January 9, 2023, S.S. reported to a guidance counselor that R.S. sent insulting and threatening comments via Instagram on January 7, 2023. The insulting and threatening comments included: “U literally run lik the people from the holocaust getting chased by Germans”; “ur forehead is big as ur life bout getting injected by germans”; “no wonder y hitler ain’t liking u only”; “Monday ill kill u”; “I’ll fucking disform ur face”; “and I have the rights to beat ur lil ass up”; “u stupid...I’m going to get physical on u...hit ur face with my shoulder...even worse...my elbow...I can break ur calves since u have skinny ones...and u don’t fucking work out.”

## *H.P. o/b/o R.S.*

In the course of the ABS's investigation, R.S. alleged that his messages to S.S. were in response to sarcastic comments made about him and his soccer skills.

Although the ABS found that both the victim and R.S. made unfavorable comments to each other about who was better at soccer, R.S. made comments threatening to hurt the victim and also made antisemitic comments about her religion. Therefore, it was determined that R.S.'s comments created a substantial disruption/interference for S.S. and met the statutory definition of HIB.

Following an (untimely) hearing, the board upheld the ABS's determination, and an appeal followed.

# *H.P. o/b/o R.S.*

**Administrative Law Judge:** H.P. cannot prove that the board's determination was arbitrary, capricious, or unreasonable.

- There is no question that R.S.'s statements were specifically targeted at the victim's religion.
- No reasonable person could conclude that these messages were not inherently based on the victim's religion even if earlier communications were sports "trash talk."
- R.S. escalated the "trash talk" exchanges into hate speech through his chosen words.
- Students need to learn that words have power.
- S.S.'s earlier statements or retorts is not a defense to an act of HIB, and R.S. cannot negate his conduct by belatedly claiming that the victim's retorts subjected him to HIB.

## *H.P. o/b/o R.S.*

The Administrative Law Judge additionally determined that while the board violated the time requirements for a hearing, and must be required to comply prospectively and/or to retrain its staff responsible for implementing the provisions of the Anti-Bullying Bill of Rights Act, that failure does not undermine the substantive HIB determination.



# H.P. o/b/o R.S.

**Commissioner:** Concurred with the Administrative Law Judge that H.P. failed to demonstrate that the board's determination that R.S. committed an act of HIB was not arbitrary, capricious, or unreasonable.

Additionally concurred that the board failed to comply with *N.J.S.A.* 18A:37-15(b)(d) because the hearing requested by H.P. was not held within ten days.

- However, the failure to comply with the timeframe is an *insufficient* reason for the Commissioner to reverse the board's substantive HIB determination.

# *H.P. o/b/o R.S.*

## Takeaways:

- Words have power!
- Intent is irrelevant.
- It is not a defense for the perpetrator to argue that their behavior or conduct occurred because they were subjected to HIB first (but they can file their own complaint).
- Failure to comply with certain procedural timeframes will not necessarily disturb a substantive HIB determination.

*C.S. o/b/o C.S.*

*v.*

*Bd. of Ed. of the Bridgewater-Raritan Reg. School  
District*

(decided April 29, 2024)

## C.S. o/b/o C.S.

**Facts:** In sixth grade, C.S. brought a nerf gun to school and was suspended for 45-days. The next school year, when C.S. was in seventh grade, seven HIB complaints were filed. Six of the seven referred to instances in which C.S. was called a “school shooter,” and the seventh related to an incident in which C.S. was targeted due to being Jewish.

The board investigated the incidents and determined that the six in which C.S. was referred to as “school shooter,” or words of similar effect were used, were not instances of HIB; instead, they were treated as Code of Student Conduct violations.

Petitioner (C.S.) challenged the board’s decision to conduct a Code of Student Conduct investigation rather than HIB investigations.

# C.S. o/b/o C.S.

**Administrative Law Judge:** The district's decision to address the matters pursuant to its Code of Student Conduct policy, and not as acts of HIB, was ***not*** arbitrary, capricious, or unreasonable.

- The name-calling in the present matter was not based upon C.S.'s distinguishing characteristics as defined in the Anti-Bullying Bill of Rights Act (ABR) or case law.
- The facts and inferences in the record do not substantiate a negative inference from C.S.'s decision to bring in a nerf gun with his mental facilities or that his fellow students were making such a connection.
- While C.S. may disagree with the board's determination, C.S. presents no evidence that this determination was made in bad faith or in utter disregard of the existing information.

# C.S. o/b/o C.S.

**Commissioner:** Concurs with the Administrative Law Judge that the comments made to Petitioner's child were not based on a distinguishing characteristic, and that the district's decision to address the matter under its Code of Conduct rather than as an act of HIB was not arbitrary, capricious, or unreasonable.

# C.S. o/b/o C.S.

## Takeaways:

- Referring to a student as a “school shooter,” without evidence of linkage to their “mental facilities,” is not a distinguishing characteristic.
- The board’s decision to investigate a matter as a Code of Student Conduct violation, and not as HIB, will not be overturned unless it is arbitrary, capricious, or unreasonable.

*R.P. o/b/o S.P.*

*v.*

*Bd. of Ed. of the Westwood Regional School District*

(decided May 6, 2024)



## R.P. o/b/o S.P.

**Facts:** On May 2, 2023, the board confirmed that acts of HIB had been perpetrated *against* S.P. On July 28, 2023, R.P. mailed a petition of appeal to the Office of Controversies and Disputes (C & D), and it was received on August 9, 2023. After being advised that the petition would not be processed until proof that the petition was served on the board, and the full name of Petitioner and his minor child was provided to C & D, an amended petition was mailed on October 27, 2023, and received by C & D on November 6, 2023. The board filed a motion to dismiss, arguing that it was submitted more than 90 days after the issuance of the final decision (*N.J.A.C. 6A:3-1.3(i)*).

# R.P. o/b/o S.P.

**Administrative Law Judge:** Dismissed the petition of appeal as **untimely**.

- As required by *N.J.A.C. 6A:3-1.3*, the petition of appeal was required to be filed no later than July 31, 2023, which was 90 days from the issuance of the board's final decision in the HIB matter (on May 2, 2023).
- However, the appeal was not filed until November 6, 2023, after R.P.'s attorney perfected the submission by providing proof of service to the board (which was 188 days since the board's determination, and 89 days since petitioner's attorney was first notified of the deficiency in the original filing).

## ***R.P. o/b/o S.P.***

- Even if the appeal had been marked “FILED” on the date it was received by C & D (on August 9, 2023), it was still received beyond July 31, 2023.
- There is insufficient evidence to demonstrate that the ninety-day deadline as delineated in N.J.A.C. 6A:3-1.3 should be relaxed (as permitted by *N.J.A.C. 6A:3-1.16*).

# R.P. o/b/o S.P.

**Commissioner:** Concurred with the Administrative Law Judge that the petition was untimely filed, and additionally noted that even if it had been received by July 31, 2023, the filing was deficient and, therefore, would not have been “filed.”

**Takeaways:** A petition of appeal must be **filed** “no later than the 90th day from the date of receipt of the notice of a final order ... or other action” by a board of education.

- “**Filing**” or “**filed**” means “*receipt* ... by an appropriate office of the Department [of Education].”

*E.H. and B.H. o/b/o J.H.*

*v.*

*Bd. of Ed. of the Township of Jefferson*

(decided May 30, 2024)

## *E.H. and B.H. o/b/o J.H.*

**Facts:** J.H., a fifth-grade student, placed his hands in a female classmate's lap (twice), touching her private area. Although J.H. initially did not recall his actions, he apologized after watching a video of the incident.

After the board confirmed the determination that J.H.'s actions constituted HIB, J.H.'s parents filed an appeal and argued that the finding should be removed from their son's student record because **he did not fully understand or intend his conduct, as he suffers from disruptive mood dysregulation disorder and other disabilities** (ADHD, central auditory processing disorder, autism, sensory processing disorder, and childhood emotional disorder).

# *E.H. and B.H. o/b/o J.H.*

**Administrative Law Judge:** The conduct satisfied the statutory definition of HIB.

- The incident undeniably took place on school grounds (it was recorded on a video camera in the school hallway);
- The female victim could reasonably perceive J.H.'s actions, i.e. touching the area of her “private parts,” to be motivated by her gender;
- The victim reported being scared and uncomfortable because of J.H.'s physical contact;

## *E.H. and B.H. o/b/o J.H.*

- The victim was reluctant to attend school the next day and requested to be excused from a group activity, and this interfered with her rights and education; and
- There is no doubt that a reasonable person should know that touching a student in a private area would result in emotional harm or insult, and J.H.'s reactions upon observing his own conduct on video demonstrated that he recognized the nature of his behavior, as he apologized.

Because the board's determination had a rational basis, and evidentiary support existed to support that determination, the Administrative Law Judge dismissed the petition of appeal.



## ***E.H. and B.H. o/b/o J.H.***

**Commissioner of Education:** The Commissioner of Education concurred with the Administrative Law Judge that the board did not act arbitrarily, capriciously, or unreasonably in finding that an act of HIB had been committed.

**Takeaways:** Students with disabilities can commit acts of HIB, and a board's decision (finding or not finding HIB) will not be overturned unless it is arbitrary, capricious, or unreasonable.

*A.P. o/b/o A.P.*

*v.*

*Bd. of Ed. of the City of Burlington*

(decided August 23, 2024)

# A.P. o/b/o A.P.

**Facts/Procedural History:** On several separate occasions, a lunch aide made A.P. sit by herself at lunch, miss recess for “doing nothing wrong,” and made her cry. In addition, and per A.P.’s parent/guardian, the lunchroom aide singled out A.P. due to the lunchroom aide’s “personal history” with A.P.’s parent/guardian.

Although not found to be HIB (because, per the investigation, the student was reprimanded for not following the rules and *not* because of any real or perceived characteristic of A.P.), the ABS recommended that the lunchroom aide should not interact with A.P. at lunch and recess.

A.P. appealed.

# A.P. o/b/o A.P.

**Administrative Law Judge:** The board's decision was not arbitrary, capricious, or unreasonable.

- A.P.'s allegations did not meet the legal standards of the HIB statute.
- In order to constitute HIB, the alleged behavior must reasonably be perceived as being **motivated by an actual or perceived distinguishing characteristic *of the victim* (A.P.)**.
  - This critical element is ***missing*** from this case.

# *A.P. o/b/o A.P.*

- A.P. argued that the lunchroom aide targeted A.P. because of an **acrimonious relationship between A.P.'s parent/guardian and the aide, who were long-time acquaintances.**
- In addition, the district's investigation determined that A.P. was being disciplined/punished for not following school rules, **and not because of any distinguishing characteristic of A.P.**

# *A.P. o/b/o A.P.*

- The lunchroom aide's actions did not permit a finding of HIB because her behavior ***was not motivated by an actual or perceived characteristic of A.P.***; therefore, the board's actions were not arbitrary, capricious, or unreasonable.

# A.P. o/b/o A.P.

**Commissioner of Education: Concurred** with the Administrative Law Judge that the board's determination was not arbitrary, capricious, or unreasonable.

- “Even if the lunch aide targeted A.P. due to the aide's personal history with [A.P.'s parent/guardian], while inappropriate, does not constitute a distinguishing characteristic under *N.J.S.A. 18A:37-14*.”
- Absent a distinguishing characteristic, the lunch aide's conduct cannot satisfy the first prong required for a finding of HIB.

# *A.P. o/b/o A.P.*

**Takeaways:** HIB can be committed by a student against another student, or by a staff member against a student. In order to satisfy the definition of HIB, the behavior/conduct must be motivated by an actual or perceived distinguishing characteristic of **the victim**, and an acrimonious relationship between a staff member and a student's/child's parent is not a distinguishing characteristic.



*R.F. o/b/o O.F.*

*v.*

*Bd. of Ed. of the Township of Montclair*

(decided October 10, 2024)

## ***R.F. o/b/o O.F.***

**Facts:** On October 11, 2022, R.F. reported that O.F., a fifth-grade student, had been taunted and kicked in his private area by classmates in the bathroom/on the playground on a number of occasions. After an HIB investigation was initiated, R.F. filed a formal HIB complaint on October 20, 2022, which included several other “complaints” and reports of “HIB”/misconduct by other students directed at O.F.

Although an initial investigation was completed, it was re-opened based on alternative theories of motivating characteristics (and new complaints/issues). R.F. was then advised that the investigation had been concluded, and that there was insufficient evidence to support a finding of HIB.

## *R.F. o/b/o O.F.*

An appeal hearing was scheduled before the board, but then adjourned due to R.F.'s retention of new counsel and request for discovery, and the district's decision to appoint, or consider appointing, an independent investigator.

Ultimately, the board affirmed the decision that “an HIB did not occur.”

R.F. appealed.

# R.F. o/b/o O.F.

**Administrative Law Judge:** The board's determination was not arbitrary, capricious, or unreasonable.

In granting the board's motion for summary decision, the Administrative Law Judge found:

- The statutory elements of HIB were ***not*** satisfied because the alleged misconduct was **not** substantiated;
- The board conducted a prompt and thorough investigation in compliance with the Anti-Bullying Bill of Rights; and
- R.F.'s claims related to other HIB matters, as well as his related theories regarding retaliation by the board, are beyond the scope of this matter.

# R.F. o/b/o O.F.

**Commissioner of Education:** *Agreed* with the Administrative Law Judge that the board's determination was not arbitrary, capricious, or unreasonable.

- Because the board could not substantiate the allegations, it is not possible for the statutory definition of HIB to be satisfied.
- Even if the Commissioner of Education would have decided the outcome differently, that is an insufficient reason to overturn the board's decision so long as the board **has not acted dishonestly or in bad faith.**

## ***R.F. o/b/o O.F.***

*Disagreed* with the Administrative Law Judge's finding that the board fully complied with the ABR's procedural requirements, as the evidence demonstrated less than strict compliance.

- Nonetheless, both R.F. and the board contributed to the delays (for completion of the investigation, and the date of the hearing), which alone do not render the board's determination arbitrary, capricious, or unreasonable.

*Agreed* with the Administrative Law Judge's that the other HIB matters filed by R.F. are beyond the scope of these proceedings.

# R.F. o/b/o O.F.

**Takeaways:** Failure to strictly comply with ABR timeframes does ***not*** mean that a decision, without more, is arbitrary, capricious, or unreasonable.

Based on the language in this decision, it appears that delays which interfere with a student/parent's **due process** rights *could* be regarded as arbitrary, capricious, or unreasonable.

*J.W. o/b/o J.W. (J.J.)*

*v.*

*Bd. of Ed. of the Borough of Upper Saddle River*

(decided October 10, 2024)



## *J.W. o/b/o J.W. (J.J.)*

**Facts:** J.W. alleged that his son (J.J.) was bullied on March 30, 2023, when a classmate (I.T.) told J.J. that his “skin looks like poop because of the color of it.” J.W. additionally alleged that J.J. has been a target of ongoing HIB by I.T., beginning in 2019. Specifically, J.W. alleged that I.T.: lowered his shoulder and rammed into J.J., knocking him to the ground on his back; tackled J.J. without provocation; stabbed J.J. in the ribs with pencils; threatened to stab J.J. in the eye while holding a sharpened pencil near J.J.’s eye; verbally harassed J.J. during the after-school program; and made a colorist comment to J.J. about having a black eye.

## *J.W. o/b/o J.W. (J.J.)*

The ABS conducted an investigation which revealed, among other things, that none of the student witnesses recalled the incident; the adult witnesses reported that no incident occurred; and that I.T. was absent from school on March 30, 2023.

The board affirmed the CSA's determination that "the incident is not an HIB qualifying event."

J.W. appealed.

## J.W. o/b/o J.W. (J.J.)

**Administrative Law Judge:** The board's determination was not arbitrary, capricious, or unreasonable, and the board's motion for summary decision was granted.

The Administrative Law Judge also noted that because the board's June 26, 2023, determination only addressed the March 30, 2023, incident, J.W. "is precluded from making any claims regarding earlier incidents *as part of this matter.*"

- As to those earlier incidents, and despite the board's argument, they are not untimely and *can* be separately pursued because the 90-day timeline within which to file an appeal has not begun (because the board has not issued a written decision regarding those incidents).

## J.W. o/b/o J.W. (J.J.)

**Commissioner of Education:** *Agreed* with the Administrative Law Judge that, given the witness statements and the attendance report, the board's determination was not arbitrary, capricious, or unreasonable.

*Agreed* with the Administrative Law Judge that J.W. is **not** time-barred from making any HIB claims concerning incidents that predate March 30, 2023, because the board has not issued a written decision on those allegations.

## J.W. o/b/o J.W. (J.J.)

However, the Commissioner of Education *disagreed* with the Administrative Law Judge that J.W. is precluded from making claims in this matter regarding the board's handling of alleged HIB acts by I.T. against J.W. on dates other than March 30, 2023.

Therefore, the board is **not** entitled to summary decision on J.W.'s claims regarding the HIB allegations on dates other than March 30, 2023 (and the contention that the board ignored and failed to investigate prior HIB complaints).

**Remanded.**

## *J.W. o/b/o J.W. (J.J.)*

**Takeaways:** Unless and until the board issues a written decision regarding claimed HIB allegations, the 90-day timeframe within which to file an appeal of the board's decision (with the Commissioner of Education) does not begin.

*P.P. o/b/o S.P.*

*v.*

*Bd. of Ed. of the Camden County Technical Schools*

(decided November 13, 2024)

## *P.P. o/b/o S.P.*

**Facts:** In November 2022, A.W. threw food at S.P. in the school cafeteria. An HIB investigation determined that the incident constituted HIB, and consequences were issued to A.W. In January 2023, A.W.'s mother filed a HIB complaint against S.P., and alleged that he made “threatening gestures” and engaged in “name calling against A.W.” An HIB investigation found that S.P.'s conduct did not constitute HIB. Shortly thereafter, P.P. filed a HIB complaint on behalf of her son (S.P.), alleging that, by filing an HIB complaint against her son (S.P.), A.W. **retaliated** against S.P. for his initial (and founded) HIB complaint against A.W.

The board determined that, although S.P.'s actions did not meet the statutory definition of HIB, the HIB complaint filed by A.W./A.W.'s mother was “legitimate, warranted [an] investigation, and was not retaliatory.” P.P. appealed.



# *P.P. o/b/o S.P.*

**Administrative Law Judge:** The board's decision was not arbitrary, capricious or unreasonable.

- The testimony of the school principal, who was also a member of the HIB investigation team, provided “a reasonable, plausible, and sound justification why” it was determined that the HIB complaint filed by A.W.’s parents (against S.P.) did not constitute retaliation against S.P.
- In order to find HIB, there needed “to be a distinguishing characteristic and disruption in the education of the student present,” and neither element was found in the course of the HIB investigation.

# *P.P. o/b/o S.P.*

**Commissioner of Education:** Concurred with the Administrative Law Judge that the board did not act in an arbitrary, capricious, or unreasonable manner in finding that the filing of the HIB complaint by A.W./A.W.'s mother against S.P. was not retaliatory.

- The record lacks evidence to support P.P.'s contention that the HIB complaint filed against S.P. was retaliatory in violation of *N.J.S.A. 18A:37-16*, and there is no indication that the board's decision lacked a rational basis or was induced by improper motives.

## ***P.P. o/b/o S.P.***

**Takeaways:** The filing of an HIB complaint by a previously adjudicated perpetrator against the victim of the initial HIB complaint, ***even if unsubstantiated and fails to meet the statutory definition of HIB***, will not necessarily be regarded as retaliatory ***so long as*** it is a legitimate complaint, and warrants an HIB investigation.

*J.R. o/b/o T.R.*

*v.*

*Bd. of Ed. of the Township of Long Hill*

(decided December 9, 2024)

## *J.R. o/b/o T.R.*

**Facts:** A student shared a Snapchat thread with the building principal that was made outside of school/off school grounds, and involved both district and non-district students. In the thread, “a number of students,” including T.R. (a male 8th grader) made “demeaning” comments about a female student/classmate that was not on the thread.

The comments made by the students, including those made by T.R., “were vulgar in nature, and attacked the female student’s appearance, weight, and sexual orientation.”

## *J.R. o/b/o T.R.*

T.R.'s comments included, without limitation: the victim “looks like medusa with her new hair”; “her and [another student] probably weigh as much as our whole friend group combined”; “nobody can ever say she wakes up on the wrong side of the bed because she wakes up on both”; “she takes up more storage than my PC has”; and “why would she even take mirror pics like you can’t even see part of her cause it goes past the mirror.”

T.R. admitted to making the statements attributed to him, but did not remember some of them.

## *J.R. o/b/o T.R.*

The building principal determined that T.R. violated various requirements of Section 2 (“Behavior”) and Section 3 (“Respect”) of the Code of Conduct, and imposed a 6-day out of school suspension. Other district students were also disciplined, but the severity of their discipline depended on the number and severity of their comments.

An HIB investigation was then initiated, and it was determined that T.R.’s actions constituted HIB.

Following a board hearing, the board upheld the determination that T.R. had committed an act of HIB.

J.R. appealed.

# *J.R. o/b/o T.R.*

**Administrative Law Judge:** J.R. failed to sustain her burden of establishing that the board acted in an arbitrary, capricious, or unreasonable manner in finding that T.R. committed an act of HIB.

Although T.R. believed “that his comments would never get back to [the victim] 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.”

The HIB statute requires “only that a reasonable person should know there would be a harmful effect, not that the actor knows there would be such an effect.”



## *J.R. o/b/o T.R.*

In addition, the imposed 6-day out-of-school suspension did not violate T.R.'s First Amendment rights, and the out-of-school suspension cannot be said to be arbitrary, capricious, or unreasonable.

In this case, T.R.'s comments were unrelated to any public concern or community interest and contributed nothing to the “marketplace of ideas”; T.R.'s posts targeted another student with offensive and insulting comments about her physical appearance; and T.R.'s comments “materially disrupt[ed] classwork or involve[d] substantial disorder or invasion of the rights of others.”

# *J.R. o/b/o T.R.*

**Commissioner of Education:** Concurs with the Administrative Law Judge that **neither** the board's determination that T.R. committed an act of HIB, **nor** the imposition of a 6-day suspension was arbitrary, capricious, or unreasonable, or in violation of T.R.'s First Amendment rights.

# J.R. o/b/o T.R.

## Takeaways:

- Social media activity by students off school grounds and outside of school hours **can** constitute HIB even if the victim is not part of the activity, and only learns of it after the fact.
  - Students do not have First Amendment rights with regard to their off-campus/outside of school speech **when** it substantially disrupts school activities or threatens harm to the rights of other students (and therefore justifies the school's action).
- The perpetrator's subjective intent or understanding is not relevant!

*R.M. and J.M. o/b/o O.M.*

*v.*

*Bd. of Ed. of the Boro. of Mountain Lakes*

(decided December 9, 2024)

## *R.M. and J.M. o/b/o O.M.*

**Facts:** While walking up a ramp, the victim heard “students” call her “the n-word from behind.” The victim then asked the students if they had a problem, and told them she would knock their teeth out. The victim then went into the bathroom, and called her mother. The victim’s conversation with her mother was overheard by a staff member.

An HIB complaint was subsequently filed, and O.M. and another student were named as the offenders. During their interviews, both O.M. and student #2 said that, while walking behind the victim, **student #2** said, “move, move, move,” because they were trying to avoid being seen by a teacher. Both offenders also denied using the n-word. The victim and the teacher who overheard the conversation between the victim and her mother were also interviewed.

## ***R.M. and J.M. o/b/o O.M.***

The investigation concluded that an act of HIB had occurred, and the students were given a 3-day out of school suspension.

During a hearing before the board, O.M. told the board that ***he, not student #2***, said, “Move, [victim], move.”

The board then vacated the HIB finding, and remanded the matter to the administration for further investigation.

As part of the second investigation, O.M. disclosed, as he did during the hearing, that ***he***, not student #2, said, “Move, [victim], move.”

## *R.M. and J.M. o/b/o O.M.*

When questioned about the inconsistency between his statements, O.M. responded: “I am not sure why I said two different things”; “**They are both correct**”; and then refused to answer further questions.

Student #2 confirmed that O.M. was the speaker, and said, “Move, [victim], move.”

The victim reported that she heard O.M. and student #2 say the n-word but was **not** “100% sure what else they said, but it was something like walk [n-word] walk or go [n-word] go.”

The second investigation again concluded that O.M. committed an act of HIB against the victim.

## *R.M. and J.M. o/b/o O.M.*

In finding HIB, it was determined that the victim/her version of the events was credible; O.M. was not credible, and he and student #2 “made up the testimony, “Move, [victim], move” to avoid responsibility; and O.M. said, “Walk, [n-word], walk or Go, [n-word], go.”

The board affirmed the finding of HIB.

R.M. and J.M. appealed and **argued** that the HIB investigation was incomplete as the board failed to interview additional witnesses who they believe were in the hallway during the incident, and also argued that the investigation did not produce sufficient evidence to support the finding of HIB.



## ***R.M. and J.M. o/b/o O.M.***

**Administrative Law Judge:** Granted the board's motion for summary decision, "concluding that the action that the [b]oard took to determine whether O.M. engaged in HIB conduct was not arbitrary, capricious, or unreasonable."

The board properly conducted the required investigation, and the findings from the investigation supported the board's determination that O.M. engaged in HIB.

## *R.M. and J.M. o/b/o O.M.*

**Commissioner of Education:** Concurs with the Administrative Law Judge's conclusion that the board's HIB determination was not arbitrary, capricious, or unreasonable.

"Given the written statements, interview notes, remand upon the discovery of new testimony, and the review of video surveillance of the alleged incident, the Commissioner concurs with the [Administrative Law Judge] that the [b]oard properly undertook the required investigation."

## ***R.M. and J.M. o/b/o O.M.***

“ ... [f]or the Commissioner to hold that interviewing other witnesses would have been more reasonable than the investigative steps the board took would require the Commissioner to substitute his judgment for that of the [b]oard’s, which is impermissible.”

“Furthermore, any testimony indicating that the alleged offenders did not say the n-word would, at most, balance the other evidence on the record from [the victim] and [the teacher] that O.M. did say the n-word.”

## *R.M. and J.M. o/b/o O.M.*

“While evidence may leave room for two opinions regarding whether O.M. said the n-word, it is insufficient to overturn the [b]oard’s decision, since it does not demonstrate that the [b]oard’s decision was arbitrary, capricious, or unreasonable.”

“The [Administrative Law Judge] correctly concluded that [the superintendent’s] findings, as reported to the [b]oard, supported the [b]oard’s determination that O.M. committed HIB,” and those findings “are sufficiently supported by the record.”

# *R.M. and J.M. o/b/o O.M.*

**Takeaways:** Where there is room for two opinions, board action will not be deemed not arbitrary or capricious when exercised honestly and upon due consideration of all relevant facts and circumstances.

The Commissioner of Education will not substitute his judgment for that of the board!

*G.W. and K.W. o/b/o M.W.*

*v.*

*Bd. of Ed. of the Boro. of Ringwood*

(decided December 19, 2024)

## ***G.W. and K.W. o/b/o M.W.***

**Facts:** After their child, a sixth-grade special education student, was provided a reading assignment, G.W. and K.W. filed a HIB complaint against their child's teacher.

The board determined that M.W., who was not interviewed because his parents refused to provide consent, was not the victim of HIB. G.W. and K.W. appealed.

After Petitioners' counsel withdrew, M.W.'s father (G.W.) initially took over management of the case, and then later indicated that M.W.'s mother (K.W.) would do so.

## ***G.W. and K.W. o/b/o M.W.***

**Administrative Law Judge:** Granted the board's *unopposed* motion for summary decision, finding that the record was devoid of evidence supporting a finding of HIB.

**Commissioner of Education:** ***Remanded*** the matter to the Office of Administrative Law so that Petitioners, who were previously represented by counsel, could be provided with a complete copy of the case file and have a renewed opportunity to file an opposition to the board's motion for summary decision.



## ***G.W. and K.W. o/b/o M.W.***

**Administrative Law Judge:** After Petitioners again failed to file an opposition, **granted** the board's ***second*** motion for summary decision, concluding that “a required element of HIB – that the conduct substantially disrupt or interfere with the orderly operation of the school or the rights of other students – had not been established, thereby precluding a finding of HIB.”

**Commissioner of Education:** Concurs with the findings and conclusions of the Administrative Law Judge on remand.

*R.F. o/b/o O.F.*

*v.*

*Bd. of Ed. of the Town. of Montclair*

(decided January 10, 2025)

## *R.F o/b/o O.F.*

**Facts (HIB-058):** R.F. (parent) filed an HIB complaint alleging that their 5th grade student, O.F., was bullied when two fellow classmates, B.K. and B.M., excluded him from a game of Jenga during indoor recess.

The board initiated an HIB investigation, and referred the matter to an independent investigator. Although the independent investigator concluded that B.K. and B.M. refused to play Jenga with O.F., there was insufficient proof that their refusal was based on a real or perceived characteristic of O.F., or that they knew or should have known that the refusal would result in harm to O.F.

The board affirmed the determination that the conduct did **not** satisfy the definition of HIB.

## R.F o/b/o O.F.

**Facts (HIB-066):** In their HIB complaint *against O.F.*, B.K.'s parents noted that they instructed B.K. to stay away from O.F. "given their past issues." Nonetheless, O.F. "continued to instigate contact with B.K., harass B.K., and interfere with B.K.'s freedom and rights at school." They also alleged that O.F. threw Jenga pieces at B.K. and B.M.'s Jenga tower, and tried to knock it down because they refused to let him play.

An independent investigator determined that while O.F. antagonized B.K., made inappropriate comments, and pinched and scratched B.K., the conduct did not constitute HIB because O.F.'s actions **were not** motivated by a distinguishing characteristic. The independent investigator also determined that **retaliation** was **not** the basis for the complaint.

## ***R.F o/b/o O.F.***

Nonetheless, the board determined that O.F. committed HIB because he targeted B.K. and B.M. and instigated conflicts, but ***then*** claimed to be the victim. The board additionally found that after “O.F.’s HIB allegations were unfounded,” he “substantially interfered with B.K.’s rights by making repeated allegations against him,” and that, as a result, “B.K. was uncomfortable being around O.F. because he feared false accusations.”

The superintendent ***reversed*** the board’s HIB finding, and B.K. appealed.

Following a hearing, the board ***reinstated*** its HIB finding against O.F.

O.F.’s parents appealed the determination that he committed an act of HIB (066), and the determination that O.F. was *not* the victim of HIB (058).

# *R.F o/b/o O.F.*

**Administrative Law Judge:** Agreed that the matter was ripe for summary decision, as there were no material facts in dispute.

- **HIB-058:** The board's investigation complied with the Anti-Bullying Bill of Rights Act (ABR); the independent investigator appropriately concluded that B.K. and B.M.'s refusal to play Jenga was not based on a distinguishing characteristic of O.F.; and B.K. and B.M.'s refusal did not substantially disrupt the rights of other students or the operation of the school.
  - Therefore, the board's determination that O.F. was not the victim of HIB was not arbitrary, capricious or unreasonable.

# R.F o/b/o O.F.

- **HIB-066:** The board's HIB finding against O.F. was not arbitrary, capricious, or unreasonable.
  - Even though the independent investigator found that O.F.'s actions were not motivated by a distinguishing characteristic, O.F. *did* violate the board's HIB policy by falsely accusing B.K. of HIB.
  - The Administrative Law Judge also rejected the argument that the board acted arbitrarily or capriciously by reaching different determinations through the HIB process, and for not affording him (O.F.) the right to be present at the hearing for B.K.'s HIB hearing.

# R.F o/b/o O.F.

**Commissioner of Education:** Affirmed the determinations that the board did *not* act arbitrarily, capriciously, or unreasonably.

- **HIB-058:** The board's investigation was sufficiently thorough, and the independent investigator found insufficient evidence to show that B.K. and B.M.'s refusal to play Jenga with O.F. was motivated by a distinguishing characteristic, or could reasonably be perceived as being motivated by a distinguishing characteristic.
  - As a result, the statutory criteria for HIB were not met.



# R.F o/b/o O.F.

- **HIB-066:** The ABR requires each district's HIB policy to include “consequences and appropriate remedial action for a person found to have falsely accused another as a means of retaliation or as a means of harassment, intimidation or bullying.”
  - The use of the term “or” indicates that a false accusation as a means of retaliation is sufficient for a finding that a district's HIB policy has been violated; **it is not necessary for the false accusation to also meet the definition of HIB outlined elsewhere in the ABR.**
  - 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)*.

# *R.F o/b/o O.F.*

**Takeaways:** A finding that a *retaliatory* HIB accusation is false is sufficient, without more, to find that the district's HIB policy has been violated.

- A false HIB accusation *as a means of retaliation* does not otherwise need to satisfy the definition of HIB (it is enough that it was deemed false).

*J.R. o/b/o P.R.*

*v.*

*Board of Education of Westampton*

(decided January 21, 2025)



## *J.R. o/b/o P.R.*

**Facts:** M.W. physically assaulted his classmate, P.R., when they were in second grade. M.W. is eligible for special education and related services under a classification category of “Emotional Regulation Impairment.” Shortly after this incident, the district placed M.W. in an out-of-district school through his Individualized Education Program. M.W. returned to an in-district program in fifth grade and was in P.R.’s school again. M.W. made comments to P.R. that she perceived as threatening and, as a result, she did not attend school for about five weeks. P.R. was diagnosed with anxiety and the district developed a 504 Plan for her that included: counseling, teacher aides, hallway and playground monitors, supervision during and after school, and therapy.

## *J.R. o/b/o P.R.*

The parent requested an HIB investigation related to M.W.'s comments. Following the investigation, the board determined that M.W.'s comments did not meet the definition of HIB and the parent appealed.

## *J.R. o/b/o P.R.*

**Administrative Law Judge:** Dismissed the matter, with prejudice, as moot because the district was already providing P.R. with the relief available under the Anti-bullying Bill of Rights Act (counseling, therapy, etc.). The Administrative Law Judge explained, “A judgment in [P.R.’s] favor will not result in changes in the services being provided to her. For this reason...a due process hearing on a challenge to the HIB decisions of the board would be a hypothetical exercise.”

## ***J.R. o/b/o P.R.***

**Commissioner of Education:** Disagreed with the Administrative Law Judge that the matter was moot because under the Anti-Bullying Bill of Rights Act, the parent is entitled to “a determination of whether the district’s finding that her child was not the victim of acts of HIB was arbitrary, capricious, or unreasonable.”

Here, the Commissioner of Education concluded that the board’s determination that P.R. was not the victim of HIB was not arbitrary, capricious, or unreasonable because M.W.’s conduct was not motivated by a distinguishing characteristic. The parent argued that the distinguishing characteristic was M.W.’s belief that P.R. caused his disciplinary issues, which the Commissioner rejected.

## *J.R. o/b/o P.R.*

“Conduct – even harmful or demeaning conduct – that is motivated only by a personal dispute does not come within the statutory definition of bullying.”



*S.P. o/b/o E.P.*

*v.*

*Bd. of Ed. of the Twp. of Montgomery*

(decided February 7, 2025)

## *S.P. o/b/o E.P.*

**Facts:** E.P. and G.P. were fifth grade classmates. While working with their book club groups, E.P. left his group and went to G.P.'s group. G.P. asked E.P. to move several times, but E.P. refused to leave. G.P. then “took a pencil and poked/stabbed E.P. on the left inner thigh.” E.P. became upset, and called G.P., who has a 504 plan, a “retard.” Another student, L.B., “came to see what was happening,” and stood on G.P.'s leg. When the classroom teacher “came over to investigate the conflict,” L.B. got off of G.P.'s leg, began to walk away, and called G.P. a “retard.”

## *S.P. o/b/o E.P.*

Following a report from the classroom teacher, an HIB investigation found that the incident substantially disrupted or interfered with the orderly operation of the school or rights of other students; the offenders (E.P. and L.B.) knew that the action would physically or emotionally cause harm to G.P.; G.P. felt targeted based on his disability; and the incident was reasonably perceived as being motivated by a distinguishing characteristic. E.P. and L.B. were found to have committed an act of HIB, and this finding was affirmed by the board. S.P., on behalf of **E.P.**, appealed the decision and, following a hearing, the board's decision was affirmed.

S.P., on behalf of E.P., filed a petition of appeal.

## *S.P. o/b/o E.P.*

**Administrative Law Judge:** Granted the board's motion for summary decision as the following facts were uncontested: E.P. called G.P. a "retard" during class; E.P. admitted to "saying the word retarded [in order] to make G.P. upset"; G.P. was, in fact, upset by the comment because he thought E.P. was calling him stupid, and he was embarrassed that E.P. made this comment in front of the class; and G.P. is aware that he receives accommodations that other students do not receive (through a 504 plan), and E.P.'s comments "insulted and demeaned" G.P.

## *S.P. o/b/o E.P.*

The Administrative Law Judge expressly rejected the argument that the HIB finding must be reversed because “E.P. was not motivated by G.P.’s actual or perceived characteristics when E.P. called G.P. a retard[,] and did not intend to harass, intimidate, or bully G.P.”

- Per the Administrative Law Judge, “E.P.’s actual motivation during the HIB incident is not a factor in the statutory analysis ... .”

## *S.P. o/b/o E.P.*

Regarding the claim that E.P.'s comment was only made in response to being poked/stabbed in the leg by G.P., the Administrative Law Judge stated that S.P. “does not provide any legal authority, whether statute, regulation, or case law, supporting the theory that an unanticipated event would remove the subsequent conduct from the” purview of the ABR.

- Moreover, G.P.'s conduct did not implicate the ABR, but rather the district's code of conduct (and was addressed by the district pursuant to the code of conduct).

# S.P. o/b/o E.P.

**Commissioner of Education:** *Concurs* with the Administrative Law Judge that S.P. “failed to satisfy his heavy burden of demonstrating that the [b]oard acted arbitrarily, capriciously, or unreasonably when it determined that E.P. committed an act of HIB.”

Agrees with the Administrative Law Judge that E.P.’s conduct satisfies the statutory definition of HIB.

- Regarding the first element, the record supports the conclusion that G.P. reasonably perceived that E.P.’s conduct toward him was motivated by his disability, which is a distinguishing characteristic.

## *S.P. o/b/o E.P.*

- As for the second element, the record supports the conclusion that E.P.'s conduct interfered with G.P.'s right to a safe and civil environment at school.
- With regard to the third element, the record supports the conclusion that a reasonable person should know, under the circumstances, that calling another student who receives extra help in class a “retard” has the effect of emotionally harming that student, and that such conduct is insulting and demeaning.
  - Even assuming E.P.'s actions were prompted by a pencil poke or stab in his leg by G.P. and were intended to make other kids laugh, that does ***not*** excuse his conduct.



# *S.P. o/b/o E.P.*

**Takeaways:** A predicate code of conduct violation will not alleviate subsequent/retaliatory conduct from constituting HIB if it satisfies the statutory definition.

*Obasi*

*v.*

*Bd. of Ed. of the South Orange-Maplewood School  
District*

(decided March 3, 2025)

# Obasi

**Facts:** A report was made that Obasi, a teacher, “raised her voice to and threaten[ed] physical harm” to a student, S.R.

An HIB investigation revealed: S.R. is a student with disabilities, and Obasi “got in her face ... telling [her] [she is] a bad child”; per S.R., Obasi then asked the class if S.R. was a “bad child” and then called S.R. “a baby”; Obasi then said she was going “take her earrings off and beat” S.R.; a student and S.R.’s case manager (a special education teacher) confirmed that Obasi made the statements as reported by S.R.; and per S.R.’s mother, Obasi told S.R. – in an **unreported “past incident”** - that she “should spend a week in the hood because she wouldn’t make it because she is the only white kid in her class” (but S.R. is black).

# Obasi

The investigative report found that Obasi’s statement that she would “**pull off her earrings and beat S.R.**” violated the board’s policy prohibiting the use of corporal punishment, and also met the definition of HIB as “[i]t was reasonabl[y] ... perceived to [be] motivated ... by the fact that [Obasi] believed S.R. to be a ‘bad child.’”

After being advised of the board’s decision, Obasi filed a petition of appeal with the Commissioner of Education to compel the board to provide her with a hearing.

The board subsequently agreed to schedule a hearing, and Obasi’s petition of appeal was dismissed.

# Obasi

Following a hearing, the board **affirmed** the HIB finding.

*However, in its determination letter, the board referenced the comment that Obasi made in the “past incident” and found that, “**The statement is reasonably perceived as being motivated by race and the suggestion that the student is not ‘black enough,’ a racial trope that the student acts white and not her race.**”*

Obasi appealed.

**Administrative Law Judge:** The board's determination that Obasi committed an act of HIB *was* arbitrary, capricious, and unreasonable.

- With regard to Obasi's alleged racial comment, there is nothing in the record to indicate who was present when Obasi made the comment, to whom it was made, when it was made, where it was made, or when or how S.R.'s mother was notified of the alleged racial comment.
  - There is also nothing in the record to indicate that the alleged comment was ever the subject of an HIB complaint or otherwise investigated.

# Obasi

- Moreover, the investigator's report "does **not** reference ... the alleged racial comment that '[S.R.] should spend a week in the hood because she wouldn't make it because she is the only white kid in her class.'"
  - "Instead, the investigator **concluded** ... that Obasi violated the HIB policy because Obasi's comment that she would "pull of [sic] her earrings and beat" S.R. was "reasonabl[y] ... perceived to [be] motivated by the fact that [Obasi] believed S.R. to be [a] '**bad child.**'"
- "Perhaps recognizing that 'bad child' is not a distinguishing characteristic or an actual or perceived characteristic, ... and would therefore not satisfy the statutory requirement, the board substituted race as the distinguishing characteristic in its determination letter."

- 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.
  - “To allow it would negate the protections, including notice and due process, afforded to those accused of HIB, and would prevent the prompt investigation and consequences and remedial action required by the Anti-Bullying Bill of Rights Act, **because an alleged HIB violation could merely be mentioned at some later date and be utilized as a basis for finding a HIB violation irrespective of the conduct or incident that is the subject of a current HIB investigation.**”



# Obasi

- Although the board's final HIB determination was based upon race as the “distinguishing characteristic,” the alleged racial comment relied upon by the board was **not** previously reported and was **never** investigated by the board. **Moreover, the investigator cited “bad child” as the distinguishing characteristic.**
- Per the Administrative Law Judge, “bad child” is not a distinguishing characteristic and therefore does not satisfy the HIB requirement.
- The board's determination that Obasi violated the school district's HIB policy was arbitrary and capricious, and must be **reversed**.

# Obasi

**Commissioner of Education:** *Concurs* with the Administrative Law Judge that the board's determination that Obasi committed an act of HIB was arbitrary, capricious, and unreasonable; Obasi's motion for summary decision should be granted; and the HIB determination reversed.

- The Commissioner of Education also directed the board to remove any references to the HIB determination from Obasi's personnel file.

## Takeaways:

- “Bad child” is not a distinguishing characteristic within the meaning of the Anti-Bullying Bill of Rights.
- An alleged comment or statement – not matter how discriminatory – that is never the subject of an HIB complaint and/or is not investigated as a potential HIB violation, cannot be used as a basis for a finding of HIB.
- The board’s determination letter must always be consistent with the investigation’s findings and conclusions.

*H.R. o/b/o N.R.*

*v.*

*Bd. of Ed. of the Township of Long Hill*

(decided March 7, 2025)

## *H.R. o/b/o N.R.*

**Facts:** After, N.R. – a sixth-grade student – “played several wrong notes” in music class, her teacher purportedly expressed frustration, and said he was “trying not to lose his temper.” Shortly thereafter, the teacher spoke to a male student and called him “a name other than his real name,” but the exact name used is unclear. N.R. then “insisted that the teacher call the student by his real name and said she was trying not to lose her temper.” During this exchange, both N.R. and the teacher were speaking in raised voices. When N.R. attempted to return to her seat, the teacher grabbed N.R. by her arm and asked her if she had “lost her mind.”

## *H.R. o/b/o N.R.*

H.R. filed an HIB complaint and alleged that she had previously informed the teacher that N.R. had Attention Deficit Hyperactivity Disorder (ADHD) and was on medication, and that the teacher violated N.R.'s rights under the ABR because of her diagnosis.

Of note, and on the date of the incident, N.R. did not have an Individualized Education Program (IEP) or a 504 plan, and had ***never*** been referred to the child study team or to the 504 team to determine eligibility for services.

## *H.R. o/b/o N.R.*

An HIB investigation found that while the incident took place on school property (music class) and substantially disrupted N.R.'s rights, the conduct was **not** reasonably perceived as being motivated by any actual or perceived characteristic, or by any other distinguishing characteristic.

The investigation further found that, on the date of the incident, the teacher did **not** know that N.R. had ADHD and/or that she was on medication.

Although not found to be HIB, the teacher's actions were still deemed unacceptable, and "proper consequences were administered."

H.R. appealed the board's final determination (of no HIB).

# *H.R. o/b/o N.R.*

**Administrative Law Judge:** The board's decision was not arbitrary, capricious, or unreasonable.

- Not only did the board comply with its requirements under the ABR to, among other things, conduct an investigation, but its investigation revealed that the teacher did not know or have any way of concluding that N.R. had ADHD because she did not have an IEP or a 504 Plan.
  - Because the teacher's conduct was not based on a distinguishing characteristic of N.R., it was appropriate for the board to determine that HIB had not occurred.
    - Moreover, and while the investigation did not find that HIB occurred, the teacher received “proper consequences” for his actions.



## *H.R. o/b/o N.R.*

**Commissioner of Education:** *Concurs* with the Administrative Law Judge's conclusion that "no violation of the [ABR] occurred because the teacher's actions were not based on a distinguishing characteristic" of N.R., and *concurs* that the board's decision to affirm the investigation report (not finding HIB) was not arbitrary, capricious, or unreasonable.

# *H.R. o/b/o N.R.*

**Takeaway:** A parental report of a medical condition to a teaching staff member *without* a determination from/by the district about eligibility for services may not be enough for a teacher to “know” of a medical condition.

*M.A.T. o/b/o M.T.*

*v.*

*Bd. of Ed. of the Township of Holland*

(decided March 17, 2025)

# ***M.A.T. o/b/o M.T.***

**Facts:** (1) The board found that M.T. (a 5th grade student) committed an act of HIB when he used the word “garbage” in the vicinity of another student, S.V. (also a 5th grade student), knowing that she “was sensitive to that word” and that it “triggered an emotional response from her.” The characteristic identified for M.T.’s motivating factor was “other,” and noted S.V.’s “personality and sensitivity to the word ‘garbage.’”

(2) The board also found that S.V. did **not** commit an act of HIB against M.T. when she repeatedly sat next to him despite being “admonished” to keep her distance from him, and being asked to “please move away.”

M.A.T. appealed both determinations.

# *M.A.T. o/b/o M.T.*

## Administrative Law Judge:

- (1) M.T. did **not** commit an act of HIB because S.V.’s personality and alleged sensitivity to the word “garbage” are not distinguishing characteristics, particularly when her sensitivity to the word depended on who she was talking to (and whether she “liked” that person).
- M.T. did not call S.V. “garbage,” indicate that S.V. smelled like garbage, or otherwise use the word to refer to S.V. specifically.
    - Rather, M.T. would engage in conversations with others about garbage in the vicinity of S.V., i.e., he would discuss taking out the garbage at home.

## *M.A.T. o/b/o M.T.*

- In addition, S.V. did not respond negatively when other students used the word “garbage,” and selectively decided who was “nice” and could say the word without triggering an emotional response from her.
  - A distinguishing characteristic **cannot** be fluid and selectively determined by the alleged victim.
- While M.T. intended to distress S.V., which was inappropriate, his conduct did **not** rise to the level of HIB.
  - As a result, the Administrative Law Judge ordered that the HIB finding be removed from M.T.’s records.

## ***M.A.T. o/b/o M.T.***

**(2)** As to the board's determination that S.V. did not commit an act of HIB against M.T., the Administrative Law Judge found that S.V.'s conduct could not reasonably be perceived to be motivated by a distinguishing characteristic.

- Even though S.V. was told not to sit near M.T. yet deliberately did so (twice), her conduct was not motivated by a distinguishing characteristic of M.T.
- Therefore, the board's decision was not arbitrary, capricious, or unreasonable.

# M.A.T. o/b/o M.T.

**Commissioner of Education:** *Concurs* with the Administrative Law Judge that the board's decision that M.T. committed an act of HIB (against S.V.) was arbitrary, capricious, and unreasonable.

- While a broad range of characteristics may constitute a distinguishing characteristic, the board was arbitrary, capricious, and unreasonable in finding that S.V.'s sensitivity to a specific term was a distinguishing characteristic.
  - In the absence of a distinguishing characteristic, conduct – even harmful or demeaning conduct – that is motivated only by a personal dispute does not come within the statutory definition of bullying.

*Concurs* with the Administrative Law Judge that S.V. did not commit an act of HIB against M.T.



# *M.A.T. o/b/o M.T.*

**Takeaways:** Sensitivity to a particular term is not a distinguishing characteristic.

- Harmful or demeaning conduct that is motivated only by a personal dispute/disagreement and *not* by a distinguishing characteristic does not fall within the definition of HIB.

*S.H. and J.H. o/b/o G.H.*

*v.*

*Bd. of Ed. of the West Essex Regional School District*

(decided March 24, 2025)

## ***S.H. and J.H. o/b/o G.H.***

**Facts:** The parents of a middle school student reported that, per their child, “so many people’ call black students ‘monkeys’...”. The HIB investigator interviewed the child, who identified the victim. The victim, who is black, informed the investigator that G.H. – a seventh-grade student – called her a monkey in the hallways. During his interview, G.H. admitted to calling the victim a monkey in the hallways. As part of the investigation and at the board hearing, S.H. and J.H. admitted that their son called the victim a monkey, and conceded it was a racial epithet. However, S.H. and J.H. ***maintained that he made this comment in response to being called a terrorist***. Importantly, no one – neither G.H., S.H., nor J.H. – filed a HIB report for the “terrorist” comment.

S.H. and J.H. appealed the board’s HIB determination that G.H. committed an act of HIB.

## *S.H. and J.H. o/b/o G.H.*

**Administrative Law Judge:** Given the undisputed material facts of this case – especially G.H.’s ***admitted*** use of a racial epithet toward a black child in school – the board’s HIB finding was ***not*** arbitrary, capricious, or unreasonable, and the board is entitled to summary decision.

- Whether G.H. knew that calling a black student a monkey would have the effect of emotionally harming the student is ***irrelevant***.
- In addition, G.H. cannot negate his conduct by blaming the victim for first making an offensive remark.
  - G.H.’s recourse was to file his own HIB complaint against the victim.

## *S.H. and J.H. o/b/o G.H.*

**Commissioner of Education:** *Concurs* with the Administrative Law Judge that S.H. and J.H. failed to satisfy their burden of demonstrating that the board acted arbitrarily, capriciously, or unreasonably when it determined that G.H. committed an act of HIB.

- S.H. and J.H. have not shown that the board's determination was arbitrary, without rational basis, or induced by improper motives.
- Nor have S.H. and J.H. demonstrated that the board acted in bad faith or in utter disregard of the circumstances before it at any point during the HIB investigation.

## *S.H. and J.H. o/b/o G.H.*

**Concurs** with the Administrative Law Judge that G.H.’s conduct satisfies the statutory definition of HIB, and that G.H.’s actual intent or motivation is **not** a necessary component of HIB under the ABR.

- The pertinent statutory inquiry is ***whether the victim reasonably perceived that G.H.’s conduct toward her was racially motivated.***
- Any factual disputes concerning whether G.H. acted in response to being called a “terrorist” are immaterial and do not preclude the granting of summary decision to the board.
- Even assuming G.H.’s actions had been prompted by a comment made by the victim, that would **not** excuse or otherwise mitigate his conduct.

# *S.H. and J.H. o/b/o G.H.*

**Takeaways:** If a statement or comment satisfies the definition of HIB, why it may have been directed at the victim is irrelevant.

- HIB determinations can be made without regard to the immediately preceding acts or comments, even if those immediately preceding acts or comments can be the subject of a separate HIB investigation and determination.

*J.G. o/b/o S.G.*

*v.*

*Bd. of Ed. of the Borough of Bergenfield*

(decided March 31, 2025)



## *J.G. o/b/o S.G.*

**Facts:** S.G., a second-grade student, and her friend approached the victim and asked her to return a piece that was missing from S.G.'s Lego house. When the victim (who was standing with her friend) did not return it, S.G. started calling the victim “stealer” more than 20 times. When the victim asked S.G. to stop, she refused, and continued calling her “stealer” and moved closer and closer to her. Eventually, the victim and the friend that was with her began crying. A lunch monitor separated the four students and sent them to the principal's office.

The next day, the victim's parents filed a HIB complaint, and stated that the victim was called names over a period of months and was fearful of going to school. As part of the HIB investigation, multiple students disclosed that S.G. previously called the victim “ugly” and “fat,” and was rude to her.

# J.G. o/b/o S.G.

Following an investigation, the ABS determined that the incident substantially disrupted or interfered with the orderly operation of the rights of the victim; S.G. knew the action would physically or emotionally cause harm to the victim; the victim was fearful of physical or emotional harm; the incident insulted or demeaned the victim; the incident interfered with the victim's education; the incident caused a hostile educational environment; and the incident was motivated by ***the victim's appearance***.

The Superintendent adopted the findings, conclusions, and recommendations of the report, and the board affirmed the superintendent's recommendation

J.G. appealed.

# J.G. o/b/o S.G.

**Administrative Law Judge:** Granted the board's motion for summary decision.

Based on the record, the Administrative Law Judge concluded that the incident constituted HIB because there was a substantial disruption of the rights of the victim; S.G. knew her actions would cause the victim emotional harm; the victim was fearful and it interfered with the victim's education; and the entire incident ***was motivated by the victim's appearance.***

The Administrative Law Judge further concluded that the board did not act arbitrarily, capriciously, or unreasonably in finding that the conduct satisfied the definition of HIB.

# J.G. o/b/o S.G.

**Commissioner of Education:** *Concurs* with the Administrative Law Judge's conclusion that the student's conduct satisfied the definition of HIB, and *concurs* that the board's decision to affirm the investigation report was not arbitrary, capricious, or unreasonable.

**Takeaways:** If cited as the distinguishing characteristic in the HIB report, previous name-calling based on a student's physical appearance ("fat" or "ugly") can support a determination that present name-calling *seemingly* unrelated to a student's physical appearance ("stealer") occurred because of the student's physical appearance.

*M.D. o/b/o N.D.*

*v.*

*Bd. of Ed. of the Town of Westfield*

(decided April 28, 2025)

## ***M.D. o/b/o N.D.***

**Facts:** Following an investigation, the board determined that N.D. committed an act of HIB when he followed the female victim while she was walking home from school; told her that she was pretty; repeatedly asked her for hugs; and asked if he could lift up her backpack to see how heavy it was. The victim reported that she “became fearful” during the incident, and repeatedly asked N.D. to stop following her; eventually, N.D. turned around. N.D. did not recall the incident when questioned.

Importantly, the HIB investigation concluded that the incident did ***not*** substantially affect the operation of the school or the rights of other students.

M.D. appealed the board’s HIB determination.

# M.D. o/b/o N.D.

**Administrative Law Judge:** Granted the board's motion for summary decision, and found that the board's decision was **not** arbitrary, capricious, or unreasonable.

- As to the “second element” of HIB - that the incident created a “substantial interruption in the ordinary operation of the school or in the disruption of the victim’s education or the rights of other students” – the Administrative Law Judge found, “The incident was limited but the victim was **uncomfortable, fearful, and reported the incident.**”
  - Therefore, it “interfered with her education and created a hostile educational environment for [the victim].”

# *M.D. o/b/o N.D.*

**Commissioner of Education:** *Rejects* the Administrative Law Judge's conclusion that the board's HIB determination was not arbitrary, capricious, or unreasonable.

- According to documents in the record, the HIB investigation concluded that the incident did ***not*** substantially affect the operation of the school or the rights of other students.
  - The board's decision fails to provide any explanation **for why it disagreed or disregarded the findings contained in the investigation report** or how N.D.'s conduct met the statutory criteria; therefore, the board's decision ***lacks a rational basis***.



# *M.D. o/b/o N.D.*

- While N.D.'s actions were clearly inappropriate, they do not constitute HIB under the “very specific definition” in the law.
  - The finding that the victim “was uncomfortable, fearful, and reported the incident,” does **not** constitute a substantial disruption of the orderly operation of the school or the rights of other students.
    - There was no evidence that the alleged victim was “not fully available for learning” as a result of the incident, and the fact that she reported the incident does not, in and of itself, satisfy the “second element” of the HIB statute.
- The conclusion that the incident “interfered with [the victim’s] education and created a hostile educational environment,” thereby satisfying the “substantial disruption” requirement, is **not** supported by the record.

# M.D. o/b/o N.D.

## Takeaways:

- The mere reporting of an alleged incident of HIB does not, in and of itself, satisfy the requirement that the conduct “substantially disrupts or interferes with the orderly operation of the school or the rights of other students.”
- In addition, the fact that a victim may have been “uncomfortable” or “fearful” also does **not appear** to constitute a substantial disruption of the orderly operation of the school or the rights of other students *unless* there is a demonstrable showing that the victim was “not fully available for learning.”

*R.Z. and L.D. o/b/o L.Z.*

*v.*

*Bd. of Ed. of the Northern Valley Regional High  
School District*

(decided April 28, 2025)

## ***R.Z. and L.D. o/b/o L.Z.***

**Facts:** In January 2023, L.Z.'s parents reported that, over the course of multiple basketball seasons, the varsity boys' basketball coach engaged in a pattern and practice of abusive and retaliatory behavior against L.Z. (and others), and that L.Z. was specifically targeted because of his learning disability and "status as a special education student." After an initial HIB investigation was completed, it was determined that a number of the allegations were credible; there was evidence of a substantial disruption, hostile/harmful environment or an interference to the rights of the alleged victim; but **"the investigation did not reasonably substantiate a distinguishing characteristic served as the motivating factor in this case."**

## ***R.Z. and L.D. o/b/o L.Z.***

In mid-May 2023, which was prior to petitioners' requested hearing before the board, the superintendent reopened the investigation so that the coach could be interviewed. A revised investigative report was issued on June 2, 2023, with "nominal changes." Although petitioners were offered the opportunity to participate in a hearing before the board, they initially declined and opted to file a petition of appeal. However, petitioners later accepted an invitation to participate in a hearing, and it was held on June 12, 2023. Thereafter, the board upheld the findings in the HIB report, and petitioners filed another petition of appeal.

## ***R.Z. and L.D. o/b/o L.Z.***

**Administrative Law Judge:** Granted the board's motion for summary decision.

(1) R.Z. and L.D. failed to demonstrate that the board's determination that the coach's actions were **not** motivated by L.Z.'s learning disability was arbitrary, capricious, and unreasonable.

- The ABS reasonably determined that the evidence demonstrated that the coach's behavior towards L.Z. was motivated by multiple other factors, both personal to L.Z. (but not due to his learning disability) and his family, as well as his coaching style ("old- school coach"), and then the board reasonably affirmed that determination.

## ***R.Z. and L.D. o/b/o L.Z.***

- There is “literally nothing in the investigation to demonstrate that L.Z. was singled out due to his learning disability.”
  - Instead, and per the investigation and the coach’s own statements, L.Z. was criticized and benched for multiple other reasons.
  - While L.Z. and his family may have other remedies in other forums, that does not mean that the coach’s actions violated the HIB statute.

## ***R.Z. and L.D. o/b/o L.Z.***

(2) R.Z. and L.D. failed to demonstrate that the purported procedural violations of *N.J.S.A. 18A:37-15(b)(6)* substantively impacted the case.

- One can clearly infer that the investigation was reopened to include the coach's interview, and no one's rights were compromised by that delay, particularly given that the basketball season was over.
- Despite the “unconventional manner” in which the investigation was handled, “there was no substantive harm and that there is no reason to reverse the [b]oard's decision.”



## ***R.Z. and L.D. o/b/o L.Z.***

**Commissioner of Education:** Agrees with the Administrative Law Judge that R.Z and L.D. did not establish that the board acted arbitrarily, capriciously, or unreasonably in determining that the coach's actions were ***not*** motivated by L.Z.'s learning disability, and agrees that the purported procedural violations of *N.J.S.A. 18A:37-15(b)(6)* did not substantively impact the case and do not warrant a reversal of the board's decision.

# ***R.Z. and L.D. o/b/o L.Z.***

## **Takeaways:**

- Unless it can be shown that an adult/coach's conduct is motivated by a distinguishing characteristic of the victim, even if their conduct is wholly inappropriate, a violation of the Anti-Bullying Bill of Rights Act will not be sustained (but disciplinary action may be imposed).
- Procedural violations of a board's HIB policy will not necessarily result in a reversal of the board's decision.

*D.M. o/b/o Z.E.*

*v.*

*Bd. of Ed. of the City of Ventnor*

(decided May 8, 2025)

# D.M. o/b/o Z.E.

## Timeline of Facts:

- Feb. 15, 2022: D.M. reported that Z.E., a 3rd grade student, “had been kicked and told to shut up” by two classmates (B and N).
  - A video recording of the incident did not show any evidence to support the claim.
- Feb. 17, 2022: D.M. reported that Z.E., whom D.M. identified as an African American student, was called an “ugly animal.”
  - An investigation revealed that a student was reading the name of a book – “Ugly Animals” – which Z.E. overheard and misunderstood as being directed toward her.
- Feb. 22, 2022: D.M. reported that she (Mom) had a “heightened conflict” in her neighborhood when she accused other children of “ding dong ditching.”

## ***D.M. o/b/o Z.E.***

- Feb. 23, 2022: D.M. reported that, despite “seating arrangements,” B sat next to Z.E. on the bus and “was beginning to start trouble.”
  - Z.E. arrived safely to school without incident.
- March 2, 2022: While standing in the cafeteria line, B bumped into Z.E., and Z.E. punched B in retaliation.
  - It was unclear whether the initiating push was intentional.

An HIB complaint was filed by B against Z.E., and also filed by Z.E. against B and N. Z.E.’s complaint cited all of the foregoing incidents, and additionally noted that she was subjected to rude remarks regarding her clothing during origami class.

- To the extent certain claims had already been resolved by an investigation, Z.E. asked that they be “reopened.”

## ***D.M. o/b/o Z.E.***

Following an investigation, it was determined that the incidents complained of on behalf of Z.E. did not meet the definition of HIB, but that disciplinary action was warranted for violations of the code of conduct (and had already taken place).

- The investigator also determined that there “is an ongoing conflict” between Z.E. and B “where both parties have been the initiator of ... conflicts and disciplinary incidents.”

After the board affirmed the findings from the HIB investigation, and confirmed that the conduct did not satisfy the definition of HIB, D.M. appealed.

# *D.M. o/b/o Z.E.*

**Administrative Law Judge:** Granted the board's motion for summary decision.

- Although there have been “interactions” between Z.E. and B, “[n]othing has been asserted that B was motivated ... due to a distinguishing characteristic such as race, color, or religion.”
  - There is also nothing in the record – including in the statements of the alleged perpetrators, alleged victims, and/or the student or adult witnesses – that the conduct was initiated or occurred because of a distinguishing characteristic.

## ***D.M. o/b/o Z.E.***

D.M.'s “broadly assert[ed] claims of discrimination and systemic oppression within the school district ... do not dispel the reasonable determination by the [board], based upon the undisputed information presented to it, to adopt the determination that there was no HIB, but rather a code of conduct issue between the students.”

“ ... with the absence of any facts to show motivation by any other students to bully or harass Z.E. due to a distinguishing characteristic such as race or color, it was reasonable for the [board] to affirm the determination that there was no HIB, but acknowledge the conflict between Z.E. and B. which was addressed through code of conduct disciplinary measures.”



# D.M. o/b/o Z.E.

**Commissioner of Education:** *Concurs* with the Administrative Law Judge's conclusion that the board's HIB decision was not arbitrary, capricious, or unreasonable, as there was no evidence that the complained of conduct was motivated by a distinguishing characteristic and, instead, involved ongoing conflict between students properly addressed through the district's code of conduct.

- As a result, the initial decision granting the board's motion for summary decision is adopted as the final decision.

**A.M. and A.M. o/b/o B.M.**

**v.**

**Bd. of Ed. of the Somerset Hills School District**

(decided May 23, 2025)

## ***A.M. and A.M. o/b/o B.M.***

**Facts:** Following reports from parents that B.M. – a second-grade student diagnosed with ADHD, anxiety, and oppositional defiant disorder, and with a 504 plan – was targeting H.B. due to her “disabling condition” (autism), an HIB investigation was initiated. The investigation revealed: per H.B., B.M. is “mean a lot of the time” and does “inappropriate stuff”; B.M. admitted that he is a member of, and started, the “hating [H.B.] club” because “kids don’t like [H.B.]” and she is “annoying”; B.M. tried to get H.B. to “play a game where you fight people”; B.M. pushed H.B.; and other students are “afraid” to take H.B.’s side because of what B.M. may do to them physically. The HIB investigation found that B.M. “knowingly engaged in racist, homophobic, or other stereotyping behavior with the specific objective of hurting, intimidating or bullying,” and H.B.’s autism diagnosis was noted as the distinguishing characteristic.

## *A.M. and A.M. o/b/o B.M.*

After the superintendent “endorsed” the results of the investigation, and the board affirmed the determination that B.M. committed HIB, an appeal was filed.

**Administrative Law Judge:** The board’s decision was *not* arbitrary, capricious, or unreasonable.

- “Whether the board failed to adequately address B.M.’s [own] needs as a student with disabilities ... cannot form a basis for a grant of summary decision to petitioners” because students with disabilities can commit acts of HIB.

## ***A.M. and A.M. o/b/o B.M.***

- Regarding the first element of HIB – whether the action is reasonably perceived as being motivated either by any actual or perceived characteristic – the Administrative Law Judge stated, “While petitioners argue that the evidence does not demonstrate that B.M. was motivated by H.B.’s autism diagnosis, **which is stated in the HIB report**, an analysis of his *actual motivation* is not required.”
- As for the second element of HIB – the conduct substantially disrupted the orderly operation of the school – “it is plain that B.M.’s behavior disrupted or interfered with the orderly operation of the school, as students reported, via their parents, the disruption caused by B.M.’s treatment of H.B.”

## ***A.M. and A.M. o/b/o B.M.***

- With regard to the third element of HIB - a finding that the act at issue is one that “a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student,” “has the effect of insulting or demeaning a student,” or “creates a hostile educational environment” – the board found that B.M. engaged in verbal, physical, and emotional behavior that was intended to hurt, intimidate, or harass H.B.

**Procedural Violations:** Although the Administrative Law Judge conceded that the HIB investigative report was not issued in the time period required by the law, “petitioners have not demonstrated how they were ***prejudiced*** by this.”

# ***A.M. and A.M. o/b/o B.M.***

- As in other matters where procedural violations were noted, “petitioners were not prejudiced, as they were advised of the allegation and investigation; they were provided the redacted HIB report, which included the students’ interview statements; and they had a full opportunity to address the matter, while represented by their counsel, before the board.”

**First Amendment:** Despite petitioners' argument that “B.M.’s alleged statement, ‘I hate you,’ cannot legitimately form the basis for an HIB since it was protected speech,” the Administrative Law Judge found that B.M.’s statement substantially interfered with H.B.’s right to be secure and free from emotional harm and contributed to the disruption of the orderly operation of the school.

## ***A.M. and A.M. o/b/o B.M.***

- Even if the statement was not considered, there is still sufficient other evidence of his negative behavior toward H.B.

**Conclusion:** Petitioners have not demonstrated by a preponderance of the evidence that the board's determination was arbitrary, capricious, or unreasonable.



## ***A.M. and A.M. o/b/o B.M.***

**Commissioner of Education:** ***Concurs*** that the board's decision that B.M. targeted H.B. due to her distinguishing characteristic of autism was not arbitrary, capricious, or unreasonable; ***concurs*** that petitioners did not establish that the board acted in an arbitrary, capricious, or unreasonable manner in determining that B.M. committed an HIB violation; ***concurs*** with the Administrative Law Judge that although the board did not issue an HIB report within the requisite number of days, petitioners were not prejudiced as they were advised of the allegation and investigation, provided with the redacted HIB report, and had a full opportunity to appear before the board whilst represented by counsel; and ***agrees*** with the Administrative Law Judge that the board did not violate B.M.'s First Amendment rights by determining that he committed HIB.

## ***A.M. and A.M. o/b/o B.M.***

**Takeaways:** Procedural violations of the ABR will not necessarily invalidate the board's findings ***as long as*** the aggrieved party was not **prejudiced** by the non-compliance with the ABR.

*M.C. and K.C. o/b/o L.C.*

*v.*

*Bd. of Ed. of the City of South Amboy*

(decided May 23, 2025)

## ***M.C. and K.C. o/b/o L.C.***

**Facts:** While L.C., a fifth-grade student, was in class, he drew a picture and labeled it “monkey”; posted the picture on a computer behind a black classmate’s (target) seat; and then directed the target’s attention to the drawing. The classmate took offense to the comment, and asked L.C. why he was calling him a monkey. An HIB investigation was conducted and confirmed that the picture was hung behind the target’s head; two witnesses saw L.C. place the picture behind the target’s head; the classroom environment was disrupted; and there was “a characteristic of race.” As a result, it was determined to constitute HIB.

Petitioners appealed the board’s determination, and claimed that the HIB investigation was “incomplete,” and that L.C. was unaware of the racial connotations of the word “monkey” because black students used it and the board failed to correct this practice.

# *M.C. and K.C. o/b/o L.C.*

**Administrative Law Judge:** All elements required to establish a violation under the ABR have been satisfied; petitioners have ***not*** established that the board acted in an arbitrary, capricious or unreasonable manner in concluding that L.C.'s actions constituted HIB; and petitioners failed to demonstrate that the board acted in bad faith, or in utter disregard of the circumstances before it.

- The distinguishing characteristic in this case was the student's race;
- This incident interfered with the student's right to be free from negative, verbal attacks;
- A reasonable person should know, under these circumstances, that the incident would have the effect of emotionally harming the student; and
- Clearly this incident had the effect of insulting or demeaning any student.

# *M.C. and K.C. o/b/o L.C.*

**Commissioner of Education:** *Concurs* that petitioners failed to satisfy their burden of establishing that the board acted arbitrarily, capriciously, or unreasonably when it determined that L.C. committed an act of HIB, and *concurs* that petitioners have not demonstrated that the board acted in bad faith or in utter disregard of the circumstances before it.

- L.C.'s drawing a picture and labeling it "monkey," placing it behind the target student's head, and verbally calling the same student a "monkey" on school property satisfies the statutory definition of HIB, and the Administrative Law Judge's decision was adequately supported by sufficient, competent, and credible evidence.

*Y.H. and S.H. o/b/o A.H.*

*v.*

*Bd. of Ed. of the Town. of West Orange*

(decided June 9, 2025)

## *Y.H. and S.H. o/b/o A.H.*

**Facts:** After the Superintendent issued a letter advising that A.H. committed an act of HIB, petitioners requested a hearing. Despite their request, the board held a meeting and affirmed the Superintendent's HIB determination. Importantly, petitioners did not appear at the board's meeting, nor were they afforded a hearing before the board affirmed the Superintendent's determination.

Following the filing of a petition of appeal, the board conceded that it did not hold a hearing, and requested that the matter be remanded so that the hearing could be conducted. Petitioners opposed the request for remand; sought reversal of the board's HIB determination; and sought expungement of the HIB matter from A.H.'s student record.



# Y.H. and S.H. o/b/o A.H.

**Administrative Law Judge:** Granted the board's request for remand.

- In granting the request, the Administrative Law Judge distinguished the present case from *Sadloch v. Bd. of Ed. of the Twp. of Cedar Grove*.
  - In *Sadloch*, the Administrative Law Judge concluded, as here, that the board failed to adhere to the procedural requirements under the Anti-Bullying Bill of Rights.
  - *However*, remand was **not** appropriate because the “state of the record” and the board’s “lack of documentation” would not allow it to determine whether an act of HIB occurred.

## ***Y.H. and S.H. o/b/o A.H.***

- In this case, and unlike in *Sadloch*, there is no lack of documentation or an inability of the board to reach a determination about whether A.H. committed an act of HIB because the executive summary of the incident contains specific statements made by A.H.; explains why those statements constitute HIB conduct; and mentions that five witnesses heard A.H. make some of the statements.
- Because there is ample information in the record to decide the HIB charge, and because petitioners did not receive a hearing, the appropriate remedy is to remand the matter to the board for a hearing pursuant to *N.J.S.A. 18A:37-15(b)(6)(d)*.

## *Y.H. and S.H. o/b/o A.H.*

**Commissioner of Education:** Even though the board failed to comply with the procedural requirements of the Anti-Bullying Bill of Rights, the Commissioner of Education ***concurs*** with the Administrative Law Judge that, given that there is ample information in the record to make a determination on the HIB charge, and because petitioners did not receive a hearing before the board, the appropriate remedy is to remand the matter.

- If the board affirms its HIB decision at or after the hearing, petitioners can ***then*** file a new petition of appeal.

# *Y.H. and S.H. o/b/o A.H.*

**Takeaways:** If a petition of appeal is filed before a board of education conducts a hearing (if requested), the matter *can* be remanded *provided* that there is a sufficient record/documentation from which the board can render a determination.

- If there is an insufficient record or documentation, then the appropriate remedy *can* be to vacate the finding, and to expunge the incident from the student's record.

**C.H. o/b/o P.H.**

**v.**

**Bd. of Ed. of the Town of Secaucus**

(decided July 11, 2025)

## C.H. o/b/o J.H.

**Facts:** P.H., an almost 12 y/o seventh grade student, called a male student a “midget” and “Jewish monkey” during physical education class. During the HIB investigation, P.H. admitted that she was annoyed by the student singing and dancing during physical education class; was having a bad day; and lashed out at him. P.H. also admitted that she made a mistake, and wrote an apology email to the victim.

Following an investigation (and a hearing), the board affirmed the ABS’s finding that P.H. committed an act of HIB.

C.H. appealed the board’s HIB determination, and argued that the board “made a litany of administrative and factual errors during the investigation.”

# C.H. o/b/o J.H.

**Administrative Law Judge:** Petitioner provided “no cognizable evidence to support his assertion that P.H. did not commit an act of HIB, and certainly no logical narrative supporting that position.”

- P.H.’s intent is irrelevant, and a reasonable person could very easily conclude that P.H.’s motivation in both calling A.V. a “Jewish monkey” and a “midget” was “motivated by an actual or perceived characteristic.”
- The only evidence supplied supports a conclusion that this event “substantially disrupt(ed) or interfere(d) with the orderly operation of the school or the rights of other students (A.V. went to see the guidance counselor twice on the day the incident occurred, and his mother reported it the next day).

## *C.H. o/b/o J.H.*

- The evidence presented is that P.H.’s conduct, no matter the intent, had “the effect of insulting or demeaning” A.V.
- P.H.’s conduct indeed created a hostile educational environment by interfering with A.V.’s education to the degree that he expressed a desire to change classes to avoid P.H., not attend school and/or be homeschooled

Based on the foregoing, petitioner has not demonstrated that the board’s investigation and/or the board’s conclusions were arbitrary, capricious, or unreasonable.



## C.H. o/b/o J.H.

As for the ***purported procedural violations***, “there was nothing about those actions ... that substantively impacted the case,” or deprived C.H. of his ability to challenge the board’s HIB determination.

Petitioners “were afforded a full and fair opportunity to defend against the HIB allegations, and any alleged administrative errors had no substantive impact on the case and that there is no reason to reverse the board’s decision.”

# C.H. o/b/o J.H.

**Commissioner of Education:** *Concurs* with the Administrative Law Judge that petitioner did not establish that the board acted in an arbitrary, capricious, or unreasonable manner when it determined that P.H. committed an act of HIB.

Further *concurs* that the alleged administrative errors by the board had no substantive impact on the case that would warrant a reversal of the board's decision.

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