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*Law, Ethics and Governance for All Leaders, including an  
Overview of New and Emerging Issues*

# **Sexting, Cyberbullying and Media Manipulation and Their Dangerous Consequences**

## **HIB in the New Jersey Schools – Cyberbullying Update**

**January 28, 2025**

# Presenters

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# Overview of Topics

## **HIB in the New Jersey Schools – A Cyberbullying Update**

- **HIB – The New Jersey Definition**
- **HIB in the Schools – The Reporting and Investigation Process**
- **P.L. 2021 c. 338 (1/10/2022)**
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# **HIB – The New Jersey Definition**

## ***N.J.S.A. 18A:37-14***

Anti-Bullying Bill of Rights Act  
HIB Definition - N.J.S.A. 18A:37-14

**Definition of Harassment, Intimidation and Bullying  
(HIB)**

- Can include gestures, written, verbal & physical acts, & **electronic communication**
- May be single or series of incidents
- Can take place on school property, school-sponsored function or school bus, or off school grounds

Anti-Bullying Bill of Rights Act  
HIB Definition - *N.J.S.A. 18A:37-14*

**Definition of Harassment, Intimidation and Bullying  
(HIB)**

**The gesture, act or communication  
is reasonably perceived to be motivated  
by any actual or perceived characteristic:**

Race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, mental, physical or sensory disability or **any other distinguishing characteristic**

Anti-Bullying Bill of Rights Act  
HIB Definition - N.J.S.A. 18A:37-14

**Definition of Harassment, Intimidation and Bullying  
(HIB)**

**The Gesture, Act or Communication:**

**Substantially disrupts/interferes with the orderly operation of school or rights of other students and**

- Has effect of--or creates reasonable fear of-- physical/emotional harm to student or damage to student's property; or

Anti-Bullying Bill of Rights Act  
HIB Definition - *N.J.S.A. 18A:37-14*

**Definition of Harassment, Intimidation and Bullying  
(HIB)**

**The Gesture, Act or Communication:**

- Has effect of insulting/ demeaning any student or group of students; or
- Creates a hostile educational environment for the student by interfering with student's education or by severely or pervasively causing him/her physical or emotional harm.

# Anti-Bullying Bill of Rights Act

## HIB Definition - N.J.A.C. 6A:16-7.7 (b) 2

### Definition of Harassment, Intimidation and Bullying

Each district board of education shall have control over the content of the policy, except that the policy shall contain, at a minimum, the following components:

- i. A statement prohibiting harassment, intimidation, or bullying of a student;
- ii. *A definition of harassment, intimidation, or bullying no less inclusive than that set forth in the definition at N.J.S.A. 18A:37-14 and N.J.A.C. 6A:16-1.3;*
- iii. A statement that bullying is unwanted, aggressive behavior that may involve a real or perceived power imbalance;



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# **HIB in the Schools – The New Jersey Reporting and Investigation Process**

***N.J.S.A. 18A:37-15***

# HIB Reporting and Investigation Process – “Step by Step”

## N.J.S.A. 18A:37-15

### *Step 1 – HIB Incident Report*

- Any school employee (SE) or contracted service provider (CSP) who **witnesses or receives reliable information** regarding an act of HIB, must report it **verbally** and on the **same day** to the principal.
- All acts of HIB shall be reported **in writing** to the school principal **within two days** of when the SE or CSP witnessed or received reliable information that a student had been subject to an act of HIB.
- A member of a board of education, student or volunteer who has **witnessed or has reliable information** that a student has been subject to an act of HIB shall report the incident to the **appropriate school official designated by the school district's policy**, or to any school administrator or safe schools resource officer, who shall immediately initiate the school district's procedures concerning school bullying.
- It is recommended that a board of education member report the incident to the superintendent.

# HIB Reporting and Investigation Process – “Step by Step”

## N.J.S.A. 18A:37-15

### *Step 1 – HIB Incident Report*

- If a student or parent reports an incident to a staff member, board of education member or volunteer, the staff member, board of education member or volunteer must report it to the principal, superintendent or designated school official as appropriate.
- The verbal report and written time period requirements only apply to SEs and CSPs; others board policy
- ***If HIB is alleged, the principal cannot pre-screen unless allowed by local board of education policy.***
- ***Board of education policy may allow, with ABS consult, principal to make an initial determination as to HIB prior to investigation; parent/guardian appeal to BOE.***
- If an allegation describes facts, but does not specifically use HIB language, the principal should apply the HIB definition to determine course of action (e.g., HIB or other code of student conduct violation?)

# HIB Reporting and Investigation Process – “Step by Step”

## N.J.S.A. 18A:37-15

### *Step 2 – HIB Investigation*

- **Principal** - *Shall initiate each investigation, within one school day of the report, through the ABS*
  - Coordinates with ABS, but does not lead
  - As appropriate, appoints additional staff to assist with investigation
  - Informs parents of alleged offenders and alleged victims that there is an alleged incident, and may discuss, as appropriate counseling and other intervention services
    - Although not explicitly required in statute, best practice to notify same day, if possible
- **ABS** - Leads and conducts each investigation. Completes ASAP, but no later than 10 school days of written incident report.

# HIB Reporting and Investigation Process – “Step by Step”

## N.J.S.A. 18A:37-15

### *Step 3 – HIB Investigation Report*

- Report completed and submitted to CSA within 2 school days of investigation completion
- May amend the original report if information is not received within the 10-day period

### *Step 4 – CSA Decision*

- May decide to provide intervention services, establish training programs, impose discipline, order counseling or take or recommend other action

# HIB Reporting and Investigation Process – “Step by Step”

## N.J.S.A. 18A:37-15

### *Step 5 – CSA Report to BOE*

- Reports the results of each investigation along with information on services provided, training established, discipline imposed or other action taken or recommended by the CSA
- Reports made no later than the BOE meeting following the completion of each investigation

### *Step 6 – Parent/Guardian Notification*

- Parent/Guardian is provided with the following written information within 5 school days of the CSA’s report to the board of education:
  - § The nature of the investigation;
  - § Whether the district found evidence of HIB; and
  - § Whether discipline was imposed or services provided

# HIB Reporting and Investigation Process – “Step by Step”

## N.J.S.A. 18A:37-15

### *Step 7 – BOE Hearing*

- Parent/Guardian may request a hearing before the BOE within 60 calendar days after receipt of written information. If requested, the hearing must be held:
  - § Within 10 calendar days of the request; and
  - § In executive session
  - § Board may hear from ABS about the incident, recommendations for discipline or services and any programs to be instituted

### *Step 8 – BOE Decision*

- In every case, BOE must issue a written decision to affirm, reject or modify the CSA's decision
- Must occur at the BOE meeting following the CSA's report
- Must happen whether or not there was a BOE hearing with the parent

# HIB Reporting and Investigation Process – “Step by Step”

N.J.S.A. 18A:37-15

## *Step 9 – Appeal Process*

- Board of education’s decision may be appealed to the Commissioner of Education within 90 days of issuance of the board of education’s decision.
- Parent, student, guardian, or organization may file a complaint with the Division of Civil Rights within 180 days of the occurrence of any incident of HIB based on membership in a protected group as enumerated in the Law Against Discrimination.
- *Special Education due process appeal*



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**P.L. 2021 c. 338 (1/10/2022)**

# P.L. 2021, c.338 – S1790 (1/10/2022)

- Drafted in response to tragic death of 12-year-old student by suicide. Started out as Mallory's Law. Signed into law **January 10, 2022**
- Impacts parental rights and responsibilities, district protocols and reporting obligations, defines range of potential responses to acts of HIB and creates new State-level position
- Revises provisions required in school district's anti-bullying policy; provides for **civil liability of parent of minor adjudicated delinquent for cyber-harassment or harassment**; and increases certain fines against parents.
- **Cyber harassment** crime sections effective immediately; other provisions 7/1/2022

## P.L. 2021, c.338 – S1790 (1/10/2022)

- If student commits crime of “cyber-harassment,” creates option for municipal court to order that a **minor, under age 16, along with a parent or guardian, attend a class or training** to reduce tendency towards such behavior or raise awareness of dangers associated with cyber harassment.
- **Parent, of minor under 16** who is adjudicated delinquent for cyber-harassment, **who fails to abide by court ordered conditions is a disorderly person** and may be fined \$100 first offense, \$500 each subsequent offense.
- **Parent or guardian** having legal custody of a minor who demonstrates **willful or wanton disregard in the exercise of the supervision and control** of the conduct of a minor adjudicated delinquent of cyber-harassment (2C:33-4.1) or harassment (2C:33-4) **may be liable in a civil action.**

## P.L. 2021, c.338 – S1790 (1/10/2022)

- If school district policy permits a **preliminary determination by the principal** (*2018 regulation*) as to whether a reported incident is outside the scope of the definition of HIB, **superintendent** shall provide **annual report to BOE** of number of times a preliminary determination was made, for purposes of State monitoring.
- **Consequences and appropriate remedial action** for students who commit an act of HIB may include:
  - **First act of HIB** – copy of investigation results placed in student's record; student may be subject to remedial actions, including provision of counseling or behavioral intervention services, discipline or both, as determined by the principal in consultation with appropriate school staff.

# P.L. 2021, c.338 – S1790 (1/10/2022)

- **Second act of HIB** - copy of investigation results placed in student's record; student may be subject to remedial actions, including provision of counseling or behavioral intervention services, discipline or both, as determined by the principal in consultation with appropriate school staff.
- **Third and each subsequent act of HIB** - copy of investigation results placed in student's record and the principal, in consultation with appropriate school staff, shall develop an **individual student intervention plan** which shall be **approved by the superintendent of schools or designee** and may include remedial actions including counseling or behavioral intervention services, or progressive discipline, or both, and **may require the student, accompanied by a parent or guardian, to complete in a satisfactory manner, a class or training program to reduce HIB behavior.**

## P.L. 2021, c.338 – S1790 (1/10/2022)

- The **superintendent of schools or designee and the principal shall consult law enforcement** pursuant to the provisions of the Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials, if the student's behavior may constitute a possible violation of the New Jersey Code of Criminal Justice.
- **HIB Reporting Procedures**
  - Upon receiving an HIB report and notifying the parents, the **principal shall keep a written record** of the date, time, and manner of notification to the parents or guardians.

## P.L. 2021, c.338 – S1790 (1/10/2022)

- All written HIB reports (2 school days) shall be on a numbered form **developed by the NJ DOE**. Copy shall be promptly submitted **by the principal to the superintendent of schools**. See [NJ DOE Broadcast Emails 8/29/2022, 7/17/2023](#)  
[Implementing Amendments to the ABRA](#).
- **Form shall be completed even if preliminary determination is made** under the school district's policy that the reported incident or complaint is a report outside the scope of the HIB definition; **shall be kept on file at the school but shall not be included in any student record**, unless the incident results in **disciplinary action** or is otherwise required to be contained in a student's record under State or federal law.

## P.L. 2021, c.338 – S1790 (1/10/2022)

- **Redacted copy of the form** that removes all student identification information shall be **confidentially shared with the BOE** after the conclusion of the investigation, **if a hearing before the BOE is requested by a parent or guardian.**
- School district shall provide means for parent or guardian to complete an **online numbered form developed by the NJDOE to confidentially report** an HIB incident.

## P.L. 2021, c.338 – S1790 (1/10/2022)

- **Principal shall report to the superintendent if a preliminary determination is made** under the school district's policy that the reported incident or complaint is outside the scope of the HIB definition; **superintendent may require principal to conduct an investigation of the incident**, if the superintendent determines that an investigation is necessary **because the incident is within the scope of the HIB definition**. Superintendent shall notify the principal of this determination **in writing**.

## P.L. 2021, c.338 – S1790 (1/10/2022)

- **Prompt Investigation of Complaints** - If the superintendent requires principal to initiate an investigation, investigation shall be completed as soon as possible, **but not later than 10 school days from the date of the written notification** from the superintendent to the principal to initiate an investigation.
- **Policy** - Requirement that school district and each school in the district with a website, **post on its homepage** the current version of the document, **Guidance for Parents on the Anti-Bullying Bill of Rights Act**, developed by the NJ DOE (2011). The School Climate State Coordinator shall ensure that this **document is updated as needed** and then **promptly disseminated** to all school districts.

## P.L. 2021, c.338 – S1790 (1/10/2022)

- **School Climate State Coordinator** - established within the NJDOE to serve as a resource to parents, students and educators. **Jill Kuppel appointed** to the position. Myriad of duties and responsibilities. Annual reports to Commissioner, State Board and Legislature. Contact information posted on DOE website, local school district posts same place as anti-bullying policy.
- Communications received in the course of duties, including personally identifiable information regarding students, parents, and others from whom information is acquired, deemed confidential and shall not be disclosed, in accordance with State and federal law.



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# **NJ DOE Broadcast Emails Implementing C.338 Amendments to the Anti-Bullying Bill of Rights Act – 8/29/2022, 7/17/2023**

# NJ DOE Broadcast Email Implementing C.338 Amendments to the ABRA (8/29/2022)

- NJ DOE revised [Model Policy for Prohibiting HIB](#) reflecting the amendments to the Anti Bullying Bill of Rights Act. 32 pages
- Model policy contains a description of the new requirement, where any BOE members, school employees, volunteers and contracted service providers who have contact with students must submit a written report to the principal of a school using a numbered form developed by the NJDOE within two school days of being made aware of or witnessing any alleged acts of HIB. (Timeline not new)

# NJ DOE Broadcast Email Implementing C.338 Amendments to the ABRA (8/29/2022, 7/19/2023)

- New form, **HIB 338 Form**, developed in consultation with stakeholders. Designed to provide consistent reporting form to be used by all LEAs and APSSDs to report allegations of HIB.
- Two versions of the **HIB 338 Form**, [one for LEA Personnel](#) and [one for families and caregivers](#). LEAs are required to incorporate these exact forms into their procedures for reporting allegations of HIB.
- LEAs are required to provide a means for a caregiver to complete the **HIB 338 Form** for families and caregivers online and confidentially.
- [Release of HIB 338 Forms for the 2023-2024 School Year – 7/19/2023](#)  
Staff members may no longer report anonymously
- [HIB 338 Forms Now Available in Several Languages](#)

# NJ DOE Broadcast Email – Release of HIB 338 Forms for 2023-2024 – 7/19/2023

- **Most significant revision to HIB 338 Form for LEA Personnel** LEA **personnel cannot anonymously report allegations of HIB** and, in fact, must submit the HIB 338 Form to the principal within two school days of witnessing or receiving reliable information that a student has been subject to HIB (N.J.S.A. 18A:37- 15b(5)). Additional revisions include
  - A timestamp box to document the date and time the report is received.
  - A section where the individual completing the form can sign and date the document.
  - Language for families/caregivers who prefer to report anonymously to include their name in the list of witnesses so they may remain anonymous yet still contribute to the investigation.
  - Additional guidance on the use of the preliminary determination and specific next steps for each role



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# **New Jersey Anti-Bullying Task Force Report – 12/28/2023**

New Jersey Anti-Bullying Task Force P.L. 2019 c. 179,  
7/19/19 Report Recommendations– 12/28/2023

[New Jersey Anti-Bullying Task Force \(nj.gov\)](https://www.nj.gov/education/anti-bullying/)

## **Areas of Recommendation**

- **Definition of HIB**
- **Reporting Investigating and Staff Roles**
- **School Climate**
- **Role of Social Media**
- **Coaches**
- **Resources**

# New Jersey Anti-Bullying Task Force Report Recommendations– 12/28/2023

[New Jersey Anti-Bullying Task Force \(nj.gov\)](https://www.nj.gov/education/anti-bullying/)

## **General Recommendations**

- Increased role of the Department of Education in many areas; **development of professional learning opportunities, guidance and training**, support to school districts, SS/SCTs, ABCs;
- **School district school climate improvement plans**, reviewed by the BOE in May, update in December, part of QSAC
- DOE to revise the self assessment tool; HIB forms in primary languages; Annual school district HIB training for all SS/SCT members, ABC, coaches; **all staff on the role of social media in bullying.**
- Fund the Bullying Prevention Fund
- NJDOE streamline and consistently update and maintain comprehensive training and resources on the NJDOE HIB website. Resources should include online training and best practice guidance on all aspects of ABR implementation. Resources should be targeted to the roles played in implementation: administrators, ABSs, ABCs and School Safety/School Climate Team members.

# New Jersey Anti-Bullying Task Force Report Recommendations– 12/28/2023

[New Jersey Anti-Bullying Task Force \(nj.gov\)](https://www.nj.gov/education/anti-bullying/)

- **Role of Social Media**

- SS/The Task Force wishes to elevate the role of the Commission created by S-715/A-1992 and encourages the Commission to closely study both the role that social media plays in facilitating incidents of HIB in New Jersey and the impact of those incidents on young people.
- The Task Force further recommends that the Commission utilizes its findings to develop guidance and best practices to assist schools in navigating the role of social media in bullying.
- The State Board of Education review and update the New Jersey Student Learning Standards (social studies and media literacy) to ensure incorporation of age-appropriate media digital citizenship instruction for K-12.

# New Jersey Anti-Bullying Task Force Report Recommendations– 12/28/2023

[New Jersey Anti-Bullying Task Force \(nj.gov\)](https://www.nj.gov/education/anti-bullying/)

- **Role of Social Media**

- NJDOE, through the School Climate State Coordinator and related offices, offer an online portal through which school staff, parents, and caregivers can access additional resources, guidance, and professional learning opportunities around social media and young people.
- Districts implement training to support their staff in navigating the role of social media in HIB.
- **Funding be made available through the Bullying Prevention Fund** and/or other sources to assist schools in implementing training to address this issue effectively.



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# HIB – New Jersey Legislative Developments

# Legislative Proposal

- **A – 4736 Sponsors Katz, Peterpaul, Bagolie – Introduced 9/12/24 -**  
Expands ABRA definition of HIB, specifically electronic communication, to apply to the use of “**deceptive audio or visual media**” aka “**deep fakes**”
- Expands the law to apply to acts of harassment, intimidation, or bullying against teachers and staff members. *Teachers and staff members could be victims of HIB.*
- *“Deceptive audio or visual media” means any video recording, motion picture film, sound recording, electronic image, photograph, any technological representation of speech or conduct substantially derivative thereof, or any forgery or facsimile of a document or writing, that appears to a reasonable person to realistically depict any speech, conduct, or writing of a person who did not in fact engage in the speech, conduct, or writing, and the production of which was substantially dependent upon technical means, rather than the ability of another person to physically or verbally impersonate the person;*



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# **HIB in the New Jersey Schools Cyberbullying Case Law Update 2020 - 2025**

# HIB Protected Classes Case Law Update

## **HIB Cases Decided by the Commissioner**

- 2020 – 9
- 2021 – 12
- 2022 – 6
- 2023 – 14
- 2024 – 18
- 2025 – 1 to date

# Student Safety and Discipline in New Jersey Public Schools – 2022-2023 Report

[Student Safety and Discipline in New Jersey Public Schools Annual Report 2022-2023](#)

## **HIB Mode – 20,022 Investigations, 9011 Confirmed Incidents**

- **Verbal 7474** (6,222 - 2021-22; 885 – 2020-21; 3,677 – 2019-20; 5,866 – 2018-19)
- **Electronic 1694** (1,499 - 2021-22; 736 – 2020-21; 941 -2019-20; 1,267 – 2018-19)
- **Written 557** (597 - 2021-22; 217 - 2020-21; 285 - 2019-20; 414 - 2018-19)
- **Physical 1702** (1,563 – 2021-22; 103 – 2020-21; 943 – 2019-20; 1,438 – 2018-19)
- **Gesture 500** (509 – 2021-22; 55 – 2020-21; 361- 2019-20; 561 – 2018-19)

# New Jersey Anti-Bullying Case Law

*W.D. and J.D o/b/o G.D. v. Bd. Of Ed. of Twp. of Jefferson –  
Comm. 11/26/18, aff'd App. Div. 9/29/2020*

- App. Div. affirms Comm'r determination that BOE finding of no HIB was not arbitrary, capricious or unreasonable. Board determined that students were mutually engaged in conflict. Record contained sufficient credible evidence supporting the Commr's decision; not arbitrary, capricious or unreasonable.
- Online exchange among a group of fifth grade female friends; extraordinarily offensive and vile language towards each other; egregious words, sexual references, use of the "N word". Girls, including victim, viewed it as "pranking".
- No showing of substantial disruption or interference with student's rights or academic program.

# New Jersey Anti-Bullying Case Law

*W.D. and J.D o/b/o G.D. v. Bd. Of Ed. of Twp. of Jefferson –  
Comm. 11/26/18, aff'd App. Div. 9/29/2020*

- App. Div. - no evidence the incident interfered with student's ability to safely and effectively learn; no demonstration incident substantially disrupted or interfered with the orderly operation of the school or the student's rights.
- **If App. Div. “were to adopt petitioner’s position, that the single use of a racial slur is a per se violation of the Act, this court would effectively legislate, and give new meaning to the plain language of the Act. We are guided not to assume that role. See Watt v. Mayor and Council of Franklin, 21 N.J. 274, 277 (1956).”**

# HIB - First Amendment Defense Cases

## *R.H. and M.H., o/b/o A.H. v. BOE of the Borough of Sayreville, Commissioner 9/23/21*

- **Petitioners appealed two BOE HIB determinations. (1) BOE determined that A.H. committed an act of HIB when she created a social media post depicting a friend with a mud mask on her face with the caption, “When he says he’s only into black girls.” a one-day suspension was imposed, and A.H. was removed from student council. (2) BOE determined that A.H. was not the victim of HIB after incidents in which A.H. alleged that she had been called a racist by other students at school. ALJ affirmed both BOE decisions.**
- **Threshold requirement for a finding of HIB is that the conduct is reasonably perceived as motivated by an actual or perceived characteristic enumerated in the Act or another distinguishing characteristic, and that the conduct substantially disrupts or interferes with the rights of other students or the orderly operation of the school;**

# HIB - First Amendment Defense Cases

## *R.H. and M.H., o/b/o A.H. v. BOE of the Borough of Sayreville, Commissioner 9/23/2021*

- **A.H.'s conduct in creating a social media post that any reasonable person should know would have the effect of insulting or demeaning African American students, together with the substantial disruption it created in the operation of the school and the fact that A.H. was aware of the racist nature of the post when she created it, met the criteria for a finding of HIB;**
- **Post was made on a platform that enabled many Sayreville Middle School students to see the picture, thus bringing it into the school, where the *post caused a substantial disruption and interfered with the school's regular operations.***

# HIB - First Amendment Defense Cases

## *R.H. and M.H., o/b/o A.H. v. BOE of the Borough of Sayreville, Commissioner 9/23/2021*

- ***Levy v. Mahanoy* analysis.** A.H.'s social media post caused a substantial disruption to the school. While the disruption in *Mahanoy* only consisted of a short 5 to 10 minute discussion in Algebra class, the social media post at issue here resulted in students becoming very upset and emotional, creating the potential for altercations such that the principal had to monitor lunch hour for weeks to ensure student safety and to curtail the effects of the students talking about the post throughout the school.
- Speech involved here is distinct from the type cited in *Mahanoy*, i.e., speech expressing disagreement or criticism; instead, the **speech here was a racist photograph and remark which a reasonable person would perceive as offensive to black students.**

# HIB - First Amendment Defense Cases

## *R.H. and M.H., o/b/o A.H. v. BOE of the Borough of Sayreville, Commissioner 9/23/2021*

- **Commissioner rejected** the petitioner's **first amendment** argument that Mahanoy prevented the Board from regulating her speech and held that **"the impact of the social media post on the school violated the HIB statute and is within the school's authority to regulate."**
- A.H.'s claim that her classmates bullied her and called her a racist, was not supported by the evidence in the BOE investigation. **While "liked chocolate" comments may have been inappropriate, the evidence did not show that the comment substantially disrupted the school or the rights of A.H.**
- ALJ determined that BOE did not act in an arbitrary, capricious, or unreasonable manner in rendering its HIB determinations. **Commissioner concurred.**

# HIB - First Amendment Defense Cases

## *R.H and M.H. o/b/o A.H v. Borough of Sayreville BOE, U.S. Dist. Ct. NJ 5/12/2023*

- BOE brought motion to dismiss in lawsuit arising from school disciplinary measures taken against A.H., then an eighth-grade student at Sayreville Middle School, by the Sayreville BoE. Discipline was in response to a social media post made by student while off school grounds and outside school hours. **Parents contend** that, in light of the Supreme Court's recent decision in [\*Mahanoy Area School District v. B. L. by & through Levy\*, 141 S. Ct. 2038 \(2021\)](#), **disciplinary actions taken by the Board were violative of student's First Amendment rights**. Parents also assert that the disciplinary actions were taken by the Board pursuant to an unconstitutionally vague anti-bullying policy amounted to reverse racial discrimination.

# HIB - First Amendment Defense Cases

## *R.H and M.H. o/b/o A.H v. Borough of Sayreville BOE, U.S. Dist. Ct. NJ 5/12/2023*

- Plaintiffs' complaint (9/23/21) raised the following claims:
  - (I) declaratory judgment that the ABRA and the Board HIB Policy are unconstitutionally vague;
  - (II) violation of the First Amendment of the U.S. Constitution pursuant to [42 U.S.C. § 1983](#);
  - (III) violation of the New Jersey Constitution and the New Jersey Civil Rights Act ("NJCRA"), [N.J.S.A. 10:6-1, et seq.](#);
  - (IV) violation of the New Jersey Law Against Discrimination ("NJLAD"), [N.J.S.A. 10:5-1, et seq.](#)

Board moved to dismiss plaintiffs' claims. Plaintiffs responded. Board replied.

# HIB - First Amendment Defense Cases

*R.H and M.H. o/b/o A.H v. Borough of Sayreville BOE,  
U.S. Dist. Ct. NJ 5/12/2023*

- (l) *Declaratory judgment that the ABRA and the Board HIB Policy are unconstitutionally vague; - Dismissed* - Facts of the present case demonstrate that the neither the Act nor the Board Policy are impermissibly vague. ABRA and the Board HIB Policy are “specific enough to give fair notice to the students and to provide school officials with standards by which to enforce [them].” Plaintiffs’ claim that the ABRA and Board HIB Policy are impermissibly vague as applied to A.H. fails. **Plaintiffs’ First Amendment vagueness claim is dismissed with prejudice.**

# HIB - First Amendment Defense Cases

## *R.H and M.H. o/b/o A.H v. Borough of Sayreville BOE, U.S. Dist. Ct. NJ 5/12/2023*

- *(II) violation of the First Amendment of the U.S. Constitution pursuant to 42 U.S.C. § 1983; and (III) Violation of the New Jersey Constitution and the New Jersey Civil Rights Act (“NJ CRA”), N.J.S.A. 10:6-1, et seq.; - Motion to dismiss denied* - Alleged disturbance does not meet the *Tinker* demanding standard for regulation of student speech. See [\*Mahanoy Area School District, 141 S. Ct. at 2048\*](#), especially considering that with respect to “off-campus speech ... the leeway the First Amendment grants to schools in light of their special characteristics is diminished.” [\*Id. at 2046\*](#). Board's motion to dismiss Plaintiffs' First Amendment claims is denied.
- *Whether A.H.'s Instagram post caused a substantial disruption sufficient for regulation of the speech by the Board is ultimately an issue of fact that is inappropriate for resolution on the instant motion to dismiss. Should discovery further elucidate disruption to school activity caused by A.H.'s post, such evidence may place A.H.'s speech outside the protections afforded by the First Amendment.*

# HIB - First Amendment Defense Cases

*R.H and M.H. o/b/o A.H v. Borough of Sayreville BOE,  
U.S. Dist. Ct. NJ 5/12/2023*

- ***(IV) violation of the New Jersey Law Against Discrimination (“NJLAD”), N.J.S.A. 10:5-1, et seq.*** - Plaintiffs’ allegations fail to establish the first element of a *prima facie* case of race discrimination—namely, that the Board's disciplinary actions against A.H. and its purported inaction in response to her complaints of bullying following those disciplinary measures occurred because of her race. Because Plaintiffs’ allegations of discrimination are wholly conclusory and do not establish a causal nexus between the harm allegedly suffered by A.H. and A.H.’s race, plaintiffs fail to state claim pursuant to the NJLAD. Count IV is dismissed without prejudice. Plaintiffs may amend their complaint within 30 days.

# New Jersey Anti-Bullying Case Law

## *L.R. o/b/o M.R. v. BOE of the Borough of Paramus, Commissioner 10/13/2023*

- Pro se parent appealed BOE finding that student committed an act of HIB. On November 4, 2022, the victim, one of M.R.'s classmates, received a text message with a picture of the character Stewie Griffin from Family Guy and a picture of the victim stating "Hey Stewie, what do you call someone with a big head?"
- M.R. admitted to posting the TikTok video but denied that it referred to the victim and stated that the message was simply an inside joke between her and another student. Victim became upset and refused to return to school, missed several days of school and did not want to be in the same class as M.R.
- BOE investigation concluded that M.R. had committed an act of HIB. The victim's class schedule was changed but no discipline was imposed. Supt. affirmed HIB findings; behavior was motivated by a **distinguishing characteristic of the victim; the size of the student's forehead**

# New Jersey Anti-Bullying Case Law

## *L.R. o/b/o M.R. v. BOE of the Borough of Paramus, Commissioner 10/13/2023*

- ALJ found M.R. admitted posting the TikTok image of Stewie Griffin which the HIB investigation found referred to the victim in a derogatory manner; investigation revealed that M.R. and two other girls used “Stewie Griffin” as a code name for the victim due to the size of her forehead; and the hurtful social media messages caused the victim to miss several days of school and necessitated her transfer to other classes to avoid being in the same classroom with M.R. ALJ concluded that BOE decision finding HIB was not arbitrary, capricious, or unreasonable.
- Commissioner concurred that the BOE’s decision that M.R. committed an act of HIB was not arbitrary, capricious, or unreasonable. Petition dismissed.

# New Jersey Anti-Bullying Case Law

## *I.R. o/b/o J.R. v. BOE of the Township of East Brunswick, Commissioner 11/2/2023*

- Parent appealed two BOE HIB determinations involving daughter, an eighth-grade student. BOE determined: **(1) daughter committed an act of HIB when she created and disseminated a sheep meme regarding the weight and appearance of another student; and (2) daughter was not the victim of HIB when the other student started a fight with daughter in retaliation**
- ALJ reversed finding of HIB as factual inaccuracies did not support BOE conclusion; decision not entitled to a presumption of correctness. Daughter was not victim of an act of HIB when she was attacked by another student; **no distinguishing characteristic**. Code of Conduct.
- **Commissioner reversed ALJ - Sufficient evidence to support the BOE's finding of HIB; not arbitrary, capricious, or unreasonable. Record included testimony that daughter showed the sheep meme to other students and that daughter called the victim "fat," a "fat pig" and a "fat toddler" on several occasions. Commissioner affirmed ALJ's affirmance of BOE's finding that daughter was not the victim of HIB. No distinguishing characteristic.**

# New Jersey Anti-Bullying Case Law

## *K.W. and S.W. o/b/o A.W. v. BOE of the School District of the Chathams, Commissioner 3/15/2024*

- Parents appealed BOE decision that their son, a ninth grader, committed an act of HIB against a fellow classmate. Parents contended that the BOE's HIB determination was arbitrary, capricious, and unreasonable; sought an order reversing the decision and removal of any mention of the HIB finding from son's school record.
- **ALJ determined that HIB complaint resulted from student's posting of the word "N...Rs" to a SnapChat chat group multiple times using a Chat Bot artificial intelligence app that could create words; other members of the group posted the word "N...A." Chat group consisted of several ninth grade boys, one of whom is black; although student contends that he quickly deleted the post, a few of the other boys screenshot the post, thereby preserving its content; this electronic communication occurred on school property during school hours, disrupted the orderly operation of the school and triggered the HIB investigation;**

# New Jersey Anti-Bullying Case Law

*K.W. and S.W. o/b/o A.W. v. BOE of the School District of the Chathams, Commissioner 3/15/2024*

- **ALJ determined that the posting of the word “N...Rs” was an intentional act that could not be accidentally generated;** student should have known that posting the word “N...Rs” to a group chat where one of the members is black could have the effect of emotionally harming that student or placing him in reasonable fear of harm to his person; and the chat post was insulting and demeaning to the black member of the group. **The act was done intentionally, was directed at victim based upon his race, harmed the victim and disrupted school functions. All aspects of the statutory HIB definition were satisfied.**
- ALJ concluded that parents failed to demonstrate that BOE’s HIB determination was arbitrary, capricious, or unreasonable. Petition was dismissed. Commissioner concurred.

# New Jersey Anti-Bullying Case Law

*H.P. o/b/o R.S. v. BOE of the Borough of Tenafly, Commissioner  
3/26/2024*

- Parent appealed BOE decision that her freshman son committed an act of HIB against a fellow classmate. HIB complaint resulted from **antisemitic comments and threats of physical harm made by R.S. during an exchange on Instagram with a Jewish student in January 2023**; exchange followed text exchanges between R.S. and his classmate which included back-and-forth insults regarding the other's perceived soccer skills. R.S. alleged that the Instagram messages were in response to sarcastic comments made about his soccer abilities.
- ABS undertook investigation after the **victim met with her guidance counselor to report R.S.'s antisemitic comments and threats made through a private message on Instagram**; Crisis Team determined that R.S. needed a mental health clearance, which occurred.

# New Jersey Anti-Bullying Case Law

*H.P. o/b/o R.S. v. BOE of the Borough of Tenafly, Commissioner  
3/26/2024*

- **Instagram message was nasty, antisemitic and threatened the victim. ABS found that both the victim and R.S. made unfavorable comments to each other about who was better at soccer; however, R.S. made comments threatening to hurt the victim as well as antisemitic comments about her religion. ABS HIB report concluded that R.S.'s actions met all of the statutory requirements and constituted an act of HIB. R.S. received counseling and a very short suspension.**
- **ALJ concluded that R.S.'s statements were specifically targeted at the victim's religion, a distinguishing characteristic. Messages threatened physical harm on the victim with comparisons to Adolph Hitler and the Holocaust. Not just "trash talk". R.S. escalated "trash talk" exchanges into hate speech.**
- **ALJ concluded that BOE determination that R.S.'s conduct constituted HIB was not arbitrary, capricious or against the weight of the evidence. Commissioner concurred. BOE reminded to comply with 10 day hearing requirement.**

# HIB - First Amendment Defense Cases

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

- Parent challenged **BOE HIB determination, and six-day suspension** imposed upon eighth grade student. Student was part of a group of seven middle school students that made numerous demeaning comments about another middle school student on an **approximately 20 person Snapchat thread**; thread involved not only students in the middle school but students from outside the school district as well. **Comments were vulgar and attacked victim's appearance, weight and sexual orientation**. Victim was not a direct participant in the Snapchat thread.
- Comments were made known by a participant to the school counselor, who referred the matter to the principal. Reporting student was very concerned about retaliation. Parents signed reporting student out of school; home schooled for the rest of the school year.

# HIB - First Amendment Defense Cases

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

- Principal met with seven students who had participated in the negative comments in the Snapchat thread, found **violations of the Code of Conduct** and imposed varying levels of discipline depending on the frequency and significance of the comments. **T.R. received the highest level of discipline (six-day OSS) and was not the only student to receive that level of discipline.**
- Principal initiated HIB investigation with ABS; found that **T.R. had committed an act of HIB**. In addition to the six-day OSS, ABS recommended additional remedial measures, including meeting with a school counselor, a reflective writing assignment, and an in-home risk assessment supplemented by an additional parent meeting.
- ALJ - HIB is an act “that is reasonably perceived as being motivated either by any actual or perceived characteristic,” *N.J.S.A. 18A:37-14*, “the statute requires an analysis of how the actor’s motivation is perceived and whether that perception is reasonable; it does not require an analysis of the actual motivation of the actor.” See *R.H. and M.H. v. Sayreville; Wehbeh*.

# HIB - First Amendment Defense Cases

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

- ALJ - **T.R.'s comments included, among others** that the target student “looks like medusa with her new hair”; “her and [another student] probably weigh as much as our whole friend group combined”; “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.”
- ALJ - It was not arbitrary, capricious, or unreasonable for BOE to conclude that a reasonable person would consider T.R.’s Snapchat posts to be motivated by the victim’s appearance, weight and sexuality; distinguishing or perceived characteristics.
- There was ample evidence in the record that T.R.’s Snapchat posts caused a substantial disruption to or interference with “the orderly operation of the school or the rights of other students.”

# HIB - First Amendment Defense Cases

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

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

# HIB - First Amendment Defense Cases

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

- A **reasonable eighth-grade student** would know that the comments would be physically and emotionally harming to the victim and that using that language within a group of 25 students would get back to the victim. Conversations are shared and information can be screenshot or camera-shot; information among middle school students can travel and usually does.
- ALJ - parent failed to sustain her burden of establishing that the BOE acted in an arbitrary, capricious, or unreasonable manner in finding HIB.
- ALJ – **BOE’s finding of HIB and the six-day OSS discipline did not violate TR’s first amendment rights**; detailed First Amendment analysis, citing *Tinker v. Des Moines* (substantial disorder or invasion of rights of others test) and *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180 (2021)
- **Mahanoy – “First Amendment standards must give way off campus to a school’s special need to prevent, e.g., substantial disruption of learning-related activities or the protection of those who make up a school community.”**

# HIB - First Amendment Defense Cases

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

- The facts of this case are markedly distinguishable from those existing in Mahanoy. T.R.'s comments were unrelated to any public concern or community interest and contributed nothing to the "marketplace of ideas." Further, in contrast to the social media posts in Mahanoy, **T.R.'s posts targeted another student, Susan, with offensive and insulting comments about her physical appearance and "materially disrupt[ed] classwork or involve[d] substantial disorder or invasion of the rights of others."**
- **See R.H. and M.H.** - Commissioner rejected the petitioner's argument that Mahanoy prevented the Board from regulating her speech and held that "the impact of the social media post on the school violated the HIB statute and is within the school's authority to regulate."
- Commissioner concurs with ALJ - neither respondents' determination that T.R. committed an act of HIB nor the imposition of a six-day suspension, was arbitrary, capricious, or unreasonable, or in violation of T.R.'s First Amendment rights.

# New Jersey Anti-Bullying Case Law

## Takeaways from 2020 - 2025 HIB Case Law

- Must meet all three elements of the HIB definition to constitute an act of HIB. Must demonstrate to the Commissioner that you have gone through all three parts of the analysis.
- Not all aggressive, harmful and demeaning conduct constitutes HIB. Mutual non-power based conflict that is not about a characteristic of the targeted student is not HIB. Code of Conduct.
- Intent to harm is not required, only that a reasonable person should know that there would be a harmful effect, not that the actor knows there would be such an effect or intended such an effect.
- Student may be a victim of HIB even if they are not the intended target of the comment or action or part of the conversation; bystander, third party

# New Jersey Anti-Bullying Case Law

## Takeaways from 2020 - 2025 HIB Case Law

- Mere status as a teacher does not create an imbalance of power which could be a perceived characteristic. Power imbalance is not a perceived or actual characteristic as defined in the relevant statutes and regulations.
- Student's status as a student alone is not a distinguishing characteristic under ABRA.
- Teachers, counselors, coaches and school administrators can commit acts of HIB but cannot be victims.
- Teachers, counselors, coaches and school administrators can be personally liable if they do not address acts of HIB.
- Teachers, counselors, coaches and school administrator retirees can see a reduction in pension from HIB violations.
- Teachers, counselors, coaches and school administrators are entitled to same HIB due process guarantees as students.

# New Jersey Anti-Bullying Case Law

## Takeaways from 2020 - 2025 HIB Case Law

- Petitioners must follow all procedural requirements such as the 90 day filing rule and proceeding through the BOE appeal process, leading to a BOE decision which can be appealed to the Commissioner; board hearing
- ABRA does not require a trial-type adversarial due process proceeding; provisions for discovery, right to confront and cross-examine witnesses could have been included by the Legislature but were not. Not like long term suspensions.
- Statutory and regulatory framework of the Anti-Bullying Bill of Rights Act for adjudicating allegations of HIB satisfies constitutional due process requirements.

# New Jersey Anti-Bullying Case Law

## Takeaways from 2020 - 2025 HIB Case Law

- Deference to board of education decision, AUJ fact determinations, Commissioner decision. Overturning a BOE's finding of HIB presents a high hurdle, requiring clear evidence that the board acted indiscriminately or in bad faith in reaching its determination.
- Parents have the right to see HIB student records in order to prepare for a hearing before the board of education
- Teacher, who has been found to have committed an act of HIB against a student, may, through "discovery" in an appeal to the Commissioner, have access to student records and correspondence related to students, through counsel, with certain limitations.
- No private right of action under the ABRA; damages, attorney fees
- Appeals are from final board decisions, not ABS, Principal or Superintendent decisions. May appeal without hearing.

# Questions?