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**NEW JERSEY SCHOOL BOARDS ASSOCIATION**

**GOVERNANCE 4**

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

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

***2016-2017***

HIB Findings

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

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

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

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

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

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

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

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

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

“A dispute between students such as a relationship falling apart between former friends, a fight over a piece of property or some form of personal vendetta of one against another is not conduct based on a “distinguishing characteristic” of the victim and thus, does not constitute a violation of the Act. This is because a personal breakdown in a relationship between students is a mutual non-power based conflict that is not about a characteristic of the targeted student.”

1. L.P. and H.P. o/b/o L.P. v. Board of Education of the West Morris Regional High School District, EDU 04462-16, Initial Decision (June 10, 2016), aff’d Commissioner (July 25, 2016)

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

“The events between L.P. and the other female fencing team members as set forth are not even alleged to have been “motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic.” N.J.S.A. 18A:37-14. It was reasonable for the Board to conclude that the circumstances, which certainly showed a conflict between L.P. and the girls, did not rise to the level of bullying under the Act, even to the extent that any of the incidents had been corroborated, which they were not. As noted above, a dispute between students such as a relationship falling apart between former friends, a fight over a piece of property, or some form of personal vendetta of one against another is not conduct based on a “distinguishing characteristic” of the victim and, thus, does not constitute a violation of the Act. I understand and appreciate that petitioners might be viewing the matters as constituting “bullying” under a more common place or lay meaning of that term, and there might have even been a clear demonstration of poor sportmanship, but the Act sets forth a specific legislative definition and regulatory response.”

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

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

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

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

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

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

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

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

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

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

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

Commissioner agreed that:

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

Commissioner disagreed with the ALJ on:

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

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

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

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

1. D.V. o/b/o N.V. v. Bd. of Ed. of the Township of Edison, EDU 12094-16, Initial Decision (December 30, 2016), aff’d Commissioner (February 13, 2017)

Grandparent alleged board allowed acts of HIB during student’s participation in an unaffiliated lacrosse program operated by the township recreation department. Petitioner failed to attend OAL hearing, ALJ concluded matter had been abandoned. Commissioner agreed and dismissed the petition.

1. C.K. and M.K. o/b/o M.K. v. Bd. of Ed. of the Twp. of Voorhees, EDU 20510-10, Initial Decision ( ) adopted as modified, Commissioner (March 23, 2017)

Board of education’s determination that special education student’s action, reaching under a partition separating two bathroom stalls in the girl’s restroom, grabbing another student’s leg and asking for a “high five” did not constitute an act of HIB, was not arbitrary, capricious or unreasonable. No evidence in the record that student’s actions, while not appropriate, were motivated by any actual or perceived characteristic. However, board failed to conduct a timely hearing within ten days of petitioner’s request and initially failed to investigate the matter in March 2015. The initial failure to investigate was a result of the board’s misapplication of the “principal’s discretion.” Guidance issued by the Department provides that the principal or his/her designee may exercise his/her discretion in determining whether the allegations meet the threshold definition of HIB *before* initiating an investigation. However, whether a principal or his/her designee will initiate an investigation upon receipt of *all* reports of alleged HIB, or will initiate an investigation *only* in those cases where the allegation meet the criteria in the Act, depends on the HIB policy adopted by the local board of education.

The board’s HIB policy did not provide for such discretion . No remand was necessary as the outcome would remain the same; the student’s conduct was not reasonably perceived as being motivated either by an actual or perceived characteristic.

Corrective action ordered by the Camden County Office of Education was an appropriate remedy and ensures that the board conducts HIB investigations in accordance with the Board’s policy and the Act; initiates and completes investigations in accordance with the provisions of the Act, and safeguards the due process rights of all parties involved.

1. C.J. o/b/o minor children v. Bd. of Ed. of Twp. of Willingboro, EDU 08020-2016, Initial Decision (February 14, 2017), adopted Commissioner March 30, 2017)

Parent sought out of district placement for her four children, alleging that they are being abused and bullied and are afraid to go to school. One child is eligible for special education services and is the subject of a separate action. Parent has not taken any action to have the other children classified and has not filed any HIB petitions with the school district. While there appears to be a claim arising under the Anti Bullying Bill of Rights, the procedural requirements for raising a claim within the school district have not been followed for the board. The ALJ recommended that the petition be dismissed. The Commissioner agreed.

1. Chiodi, Borrelli and Bittner v. Eitner, EDU 13721-16, EDU 13722-16 and EDU 13723-16 (Consolidated) Initial Decision (February 13, 2017), adopted Commissioner (March 30, 2017)

Teachers in the Waterford Township school district filed verified petition seeking to have the superintendent’s certificate revoked on the grounds that he engaged in conduct unbecoming, age discrimination, invasion of privacy and a violation of the district’s HIB policies. ALJ determined and Commissioner agreed that Commissioner did not have jurisdiction over any of these claims as they did not arise under the school laws. The authority to revise or suspend certificates of teachers or administrators lies exclusively with the State Board of Examiners. While HIB issues were alleged, no appeal of an HIB determination is implicated, nor would an allegation be appropriate as the statute does not contemplate HIB complaints from school employees, only students. The petition was dismissed.

Special Education

1. Stephen Gibble v. Board of Education of the Hunterdon Central Regional School District, EDU 2767-15, Initial Decision (April 12, 2016) modified and remanded for hearing Commissioner (July 13, 2016)

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

Tenure Cases

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

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

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

Pursuant to the direction of the Appellate Division, and based on the precedent that existed at the time of the respondents racially derogatory comments, as well as the mitigating and aggravating factors, teachers shall forfeit the 120 days’ salary that has already been withheld pursuant to N.J.S.A. 18A:6-14; shall be suspended for an additional six months without pay; and shall have their increments withheld for two years. Similar conduct in the future may result in more severe sanctions. Commissioner 2016: June 6.

U.S. Court of Appeals – Third Citcuit

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

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