



NJPSAFE

LEGAL ONE —

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

Understanding New Jersey's Anti-Bullying Bill of Rights

April 24, 2023

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Presentation Materials

Today's document(s) can be accessed at

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HIB Defined

- 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

HIB Defined

- **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
 - ***“Other Distinguishing Characteristic” is broadly interpreted***
 - *Vegetarianism, lice, quiet, new kid, etc.*
 - *HOWEVER, need evidence to support conclusion regarding characteristic, can’t simply check “Other”*

HIB Defined

The Gesture, Act or Communication:

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

- Substantial disruption only has to be for one student. Can be dramatic or more subtle (change in demeanor, increased fear/anxiety)
- Needs to be more than a momentary annoyance

HIB Defined

- One of these three:
 - Has effect of--or creates reasonable fear of-- physical/emotional harm to student or damage to student's property, or
 - 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.

Unpacking the HIB Definition

Bullying v. Conflict

- During a conflict, name-calling, threats and other conduct that might look like bullying can occur. However, a conflict and bullying are very different.
- Unlike bullying, during a conflict people are equally involved in some type of disagreement. Conflict is considered mutual, meaning everyone is more or less evenly involved.
 - HIB is primarily one-sided, but not always 100% one-sided
 - Incident may be HIB first, then become conflict or vice versa

Unpacking the HIB Definition

- Substantial Disruption
 - More than mere annoyance
 - Lasting harm, beyond that moment
 - Investigation itself is not substantial disruption
- Look for Lasting Changes from Student's Baseline (e.g., outgoing to quiet, heightened emotions, change in routine at school)
- Speak with those knowledgeable about Student

Some Students Are More Resilient

- If the target is resilient, the behavior may not be HIB (D.K. v. Readington SD , Nov. 11, 2016)
 - School spirit day, student did not wear yellow
 - Another student commented on this and made negative comment that alluded to the student being Asian
 - Other students on the bus called the student a “no it all” and said they hoped the student would fall and get brain damage
 - Found NOT to be HIB, no substantial disruption for comment about being yellow, and comments on bus were part of ongoing student conflict

The Road to HIB May be Paved with Good Intentions!

- The Road to HIB may be paved with good intentions! (K.C. v. Montgomery Twp. SD, Aug. 11, 2016) –
 - Students were concerned about a friend and thought she might have a possible eating disorder
 - When student denied having a problem, her friends then went to her boyfriend, spoke to others
 - Determined that student’s friends committed HIB despite their good intentions
 - Students **should have known** of foreseeable harm

HIB Investigation Process

- Incident reported to staff member by parent, student, staff member, contracted service provider
- Staff member reports same day to principal
- Principal launches HIB investigation within 1 school day
- Parents Notified
- Investigation completed within 10 school days
- Report completed within 2 school days of completion of investigation

HIB Investigation Process

- Parents notified in writing within 5 days of BOE being informed
- Parents have right to hearing before BOE, and must be provided within 10 days of request
- BOE votes at next meeting to affirm, reject, or modify decision reached
- Parent retains rights to appeal decision to Commissioner, and rights to pursue discrimination claims under state and federal law

Revised HIB Law

- P.L. 2021, c.338
- Effective with 2022-23 School Year
- New State Reporting Forms – 338 Forms
- Mandated Inclusion in Student Record
- Student Intervention Plan – 3rd confirmed HIB
- Heightened Scrutiny for Preliminary Determinations
- New Provisions on Parental Accountability

Revised HIB Law

- Requires districts to include on website the current version of the NJDOE document – Guidance for Parents on the Anti-Bullying Bill of Rights
- Creates position of School Climate State Coordinator in NJDOE
- See NJDOE website for additional resources - <https://www.state.nj.us/education/students/safety/behavior/hib/>

NJDOE Forms for Reporting HIB

- See NJDOE Broadcast Email – 8/29/22
 - [Implementing Amendments to the Anti-Bullying Bill of Rights Act](#)
 - Includes [Revised Model Policy](#)

New Jersey Cyber Harassment Statute

January 17, 2014; P.L. 2013, c.272.

- “A person commits the crime of cyber-harassment if, while making a communication in an online capacity via any electronic device or through a social networking site and with the purpose to harass another, the person:
 - Threatens to inflict injury or physical harm to any person or property of any person;
 - Knowingly sends, posts, comments, requests, suggests, or proposes any lewd, indecent, or obscene material to or about a person with the intent to emotionally harm a reasonable person or place a reasonable person in fear of physical or emotional harm to his person; or
 - Threatens to commit any crime against the person or the person’s property”

Student Confidentiality

- Strong protections for student confidentiality under state and federal law
- Cannot share specific discipline imposed on another student
- Cannot share names of student witnesses
- Need to redact personally identifiable information from reports provided to parents/guardians

Parents and Schools as Partners

- Critical to share information as soon as possible if you become aware of any changes in your child's baseline behavior
- Important to monitor your child's social media use – See Cyberbullying Research Center website - <https://cyberbullying.org/>
- School officials may need to act quickly to keep everyone safe, including interviewing students immediately – See Goss v. Lopez (1975) outlining parental due process rights

Key Points to Remember

- Once staff members learns of alleged incident that meets HIB definition, incident must be investigated.
- It is important to understand the larger context, or history, between students involved in an alleged HIB incident.
- Intent to harm is not required for HIB.
- Even if behavior is manifestation of disability, if it meets HIB definition, then still labeled as HIB. Disability factors into response.
- School officials are not permitted to share specific information regarding discipline imposed on other students.
- An incident does not have to be HIB to be taken seriously.
- Addressing Code of Conduct violations and student conflicts, protecting student safety, and supporting students' social and emotional needs, all can occur without a confirmed HIB

Conclusion

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