



How to Analyze Potential Cases of Harassment, Intimidation & Bullying

A Concise Approach to Implementing the Statutory Mandate



PARKER McCAY
COUNSEL WHEN IT MATTERS.™

Statutory Definition of HIB

- **“Harassment, intimidation or bullying” means any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being 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, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:**



Statutory Definition of HIB

- a. A reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
- b. Has the effect of insulting or demeaning any student or group of students; or
- c. Creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

[N.J.S.A. 18A:37-14.]



Analytical Framework for Determining HIB – The Five Statutory “Elements”

Element 1

- 1. Type of Conduct: *“any gesture, any written, verbal or physical act, or any electronic communication”*
 - Very Broad – Essentially covers any and all types of conduct, so long as the other statutory elements are met.



Analytical Framework for Determining HIB – The Five Statutory “Elements”

Element 2

- **2. Perpetrator’s Motivation:** the conduct must be *“reasonably perceived as being motivated either by any actual or perceived characteristic, such as...”*
 - Stated Characteristics: *“...race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability...”*
 - “Other” Characteristics: *“or by other any distinguishing characteristic...”*



Analytical Framework for Determining HIB – The Five Statutory “Elements”

Element 3

- 3. Location of the Action: *“...that takes place on school property, at any school sponsored function, on a school bus, or off school grounds as provided for in N.J.S.A. 18A:37-15.3...”*



Analytical Framework for Determining HIB – The Five Statutory “Elements”

Element 4

- 4. **Nexus Requirement**: “... *that substantially disrupts or interferes with the orderly operation of the school or the rights of other students...*”

- There must be a nexus to the school environment. According to the statute, the HIB must *substantially disrupt or interfere* with either:
 - a) the orderly operations of the school, or
 - b) the rights of other students.



Analytical Framework for Determining HIB – The Five Statutory “Elements”

Element 5

- 5. **“Effects” Prongs:** (must have at least one) *“...and that...”*
 - a) *“a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming the student or damaging the student’s property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property,”*
 - b) *“has the effect of insulting or demeaning any student or group of students, or”*
 - c) *“creates a hostile educational environment for the student by interfering with a student’s education or by severely or pervasively causing physical or emotional harm to the student.”*



Does Not Cover All Aggressive/Violent Conduct or Peer Disputes

“The statutory definition of ‘bullying’ does not include all violent or aggressive conduct against a student. The definition, both before and after adoption of the 2010 Anti-Bullying Act refers to conduct that is ‘reasonably perceived as being motivated’ by a ‘distinguishing characteristic’ of the victim, such as, ‘race, color, religion, ancestry, mental, physical, or sensory [disability].’ N.J.S.A. 18A:37-14. The statute has not limited ‘distinguishing characteristic’ to those specifically enumerated, but it has consistently required such a perceived motivation. Thus, harmful or demeaning conduct motivated only by another reason, for example, a dispute about relationships or personal belongings, or aggressive conduct without identifiable motivation, does not come within the statutory definition of bullying.”

K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337, 357 (App. Div. 2012).



Recent Legislative Updates – P.L. 2021, c. 338

- Signed into law on January 10, 2022 – certain provisions went into effect immediately and the rest were effective as of July 9, 2022
- Impacts parental rights and responsibilities, school district protocols and reporting obligations
- Defines range of potential responses to acts of HIB
- Creates new state-level position – School Climate State Coordinator



Recent Legislative Updates – P.L. 2021, c. 338

- If school district policy permits preliminary determination to be made on whether to launch HIB investigation, then:
 - Superintendent must annually report to Board information on the number of times an incident was determined to be outside definition of HIB and not investigated
 - NJDOE will review this information as part of state monitoring process
 - Superintendent must be notified in writing of each determination and has authority to order HIB investigation



Recent Legislative Updates – P.L. 2021, c. 338

- Provides consequences that school districts may adopt in responding to first, second, or subsequent acts of HIB by a student
 - First and second offenses: copy of investigation placed in student record, student may be subject to remedial measures (counseling, behavior intervention services, etc.)
 - Third and subsequent offenses: same as first offense PLUS school principal is required to develop an individual student intervention plan to be approved by superintendent
 - Superintendent and principal to consult law enforcement, as appropriate, if the student's behavior may constitute a possible violation of the New Jersey Code of Criminal Justice
- School districts are not required to use these specific responses, but their HIB policies still must contain consequences and appropriate remedial action



Recent Legislative Updates – P.L. 2021, c. 338

- District must keep written record of date, time, and manner whenever it notifies parent or guardian about alleged HIB incident
- Written reports of alleged HIB filed by staff member or contracted service provider must be filed on a numbered form developed by NJDOE
- Form must be submitted promptly by the principal to superintendent EVEN IF determination not to do HIB investigation was made
 - Must be kept on file at the school, but NOT part of student record unless incident results in discipline for other reasons or is otherwise required to be maintained



Recent Legislative Updates – P.L. 2021, c. 338

- School districts must make NJDOE numbered forms available online for parents or guardians to confidentially report HIB incidents
- The school district and each school in the district with a website must post on its homepage the current version of the document “Guidance for Parents on the Anti-Bullying Bill of Rights Act” developed by NJDOE



Stakeholders

- ❖ **Players – key is student victim!**
 - ❖ **Student to Student**
 - ❖ **Staff to Student**
 - ❖ **Volunteer to Student**
 - ❖ **Contracted Service Provider to Student**
- ❖ **NOT covered under the Act**
 - ❖ **Staff to Staff**
 - ❖ **Administration to Staff**
 - ❖ **Student to Staff**
 - ❖ **Parent to Parent**



Roles of School Personnel Implementing the Act

- **Anti-Bullying Coordinator (District-Wide)**
 - **Appointed by Superintendent**
 - **Superintendent must make every effort to appoint an employee of the school district as the anti-bullying coordinator**
 - **Coordinates and strengthens district HIB policy to prevent, identify and address HIB**
 - **Collaborates with anti-bullying specialists, board of education and Superintendent**
 - **Meets at least twice a school year with the anti-bullying specialists**
 - **Provides data, in collaboration with the Superintendent to the NJDOE**
 - **Performs other related duties**



Roles of School Personnel Implementing the Act (continued)

- **Anti-Bullying Specialist (School)**
 - **Appointed by the principal from currently employed staff**
 - **Guidance counselor, school psychologist or other school staff trained as an anti-bullying specialists**
 - **Chairs the School Safety Team**
 - **Leads the investigation of reported HIB incidents**
 - **Acts as the primary school official responsible for preventing, identifying and addressing incidents of HIB in the school**
 - **Assists the principal in appropriately applying the range of ways for responding to HIB established by the Board's HIB Policy**
 - **Provides input to the school Board on annual re-evaluation, reassessment, and review of policy**



Roles of School Personnel Implementing the Act (continued)

- **School Safety Team (School)**
 - **Goal is to develop, foster, and maintain a positive school climate:**
 - Meets at least 2 times per school year
 - Receives copies of complaints of HIB
 - Receives copies of investigative reports
 - Identifies and addresses patterns of HIB
 - Educates the school community to prevent and address HIB
 - Participates in training (both required and requested)
 - Collaborates with Anti-Bullying Coordinator in data collection and development of policies to prevent and address HIB
 - Other duties related to HIB requested by principal or anti bullying coordinator
 - **Consists of the principal (or designee, preferably a senior administrator) and following principal appointees:**
 - A teacher in the school
 - The school Anti-Bullying Specialist (serves as chief)
 - A parent of a student in the school; and
 - Other members determined by the principal



Training Requirements

- **N.J.S.A. 18A:6-112**
 - **Teacher's mandatory 2 hours instruction in suicide prevention must now include relationship between suicide prevention and HIB**
- **N.J.S.A. 18A:25-8.2**
 - **School leader training must now include training in HIB prevention**
- **N.J.S.A. 18A:37-15(c)**
 - **Requires that District annually conduct re-evaluation, reassessment and review of HIB policy**
- **N.J.S.A. 18A:37-17**
 - **Training for all school employees (PT and FT) and school volunteers must now include HIB prevention on basis of protected categories**
 - **Develop processes for discussing HIB policy with students**



Responses to HIB

- **Range of School Responses to HIB**

- **Responses to Offender:**

- **Note:**

- P.L. 2021, c. 338 sets forth specific consequences that school districts may adopt in responding to first, second, or subsequent acts of HIB by a student

- **Individual responses:**

- Positive behavioral Supports (i.e., peer mentoring, short-term counseling, life skills group)

- **Disciplinary Actions:**

- E.g. – Detention, in-school suspension, out-of- school suspension, expulsion

- **Classroom Responses:**

- Classroom discussions of an incident of HIB; role playing; research projects; observing and discussing audio-visual materials; skill building lessons on courtesy, tolerance, assertiveness and/or conflict management

- **School Responses:**

- Theme days, learning station programs, parent programs, factsheet/newsletters for parents/students

- **District-wide responses:**

- Community involvement in policy review, professional development programs, adoption of curricula and school wide programs



Responses to HIB (continued)

- **Range of School Responses to HIB acts (continued)**
 - **Responses for Victim – As per Board Policy**
 - Counseling, peer mediation with Counselor, teachers aides, hallway monitors, playground monitors, schedule changes, before and after school supervision, school transfers, therapy
- **Manner of HIB policy publication**
 - **Website publication**
 - Link to HIB policy prominently posed on home page of school district's website and annual distribution of HIB policy to students
 - **Website contact information**
 - District website home page must post name, phone, address, e-mail of District Anti-Bullying Coordinator
 - School website home page needs name, phone, address, e-mail of School Anti-Bullying Specialist and District Anti-Bullying Coordinator
 - Contact information must be on Department of Education's website



Retaliation; Immunity; Failure to Report

- **Employee Issues**
 - **N.J.S.A. 18A:37-16**
 - **Board members, employees, students, volunteers:**
 - **May not retaliate against a victim**
 - **Must report acts of HIB to individual designated in policy, or any school administrator**
 - **If they properly report an act of HIB, they are immune from civil liability**
 - **A school administrator who receives a report and fails to take appropriate action, may be subject to disciplinary action**



What constitutes retaliation in the context of HIB?

- R.N. v. Board of Education of the South Orange Maplewood School District, Essex County (EDU 09346-16)
 - Petitioner alleged violations of the Anti-Bullying Bill of Rights Act committed by baseball coaches against his son A.N.
 - Petitioner alleged that his then minor son, who was a starter on the baseball team in the year prior, was cut from the team in retaliation for petitioner's involvement with prior HIB allegations against the baseball coaches.
 - Commissioner determined that petitioner's allegations of retaliation implicating his rights under the Act and the board's policy on HIB remained unresolved and required further exploration of the facts and proper adjudication.



What constitutes retaliation in the context of HIB?

- L.P. and H.P. o/b/o minor child L.P. v. Board of Education of the West Morris Regional High School District (EDU 14255-16 and EDU 14256-16)
 - Student had filed a HIB complaint against the Fencing Team captain the year prior to this allegation.
 - Student alleged her "assignment" on the Fencing Team was due to her prior HIB complaint against her teammate.
 - ALJ determined that fencing coach did not change her criteria for "strip assignments" for the 2015- 2016 school year and did not keep L.P. off of the "A strip" because L.P. had filed an HIB complaint against the team captain the year before.
 - Coach did not retaliate against L.P. during the 2015- 2016 school year in violation of the Anti-Bullying Bill of Rights Act.
 - Petition was dismissed. Commissioner concurred, adopted the ALJ decision and dismissed the petition of appeal.



What constitutes retaliation in the context of HIB?

- Columbia High School Baseball Boosters v. Board of Education of the South Orange-Maplewood School District (EDU 4046-17)
 - The case involved a challenge by the booster club to the board's determination that the club committed an act of HIB when it disinvited one of the baseball team members to the end of the year banquet in retaliation for the student's complaints of HIB against the baseball coaches.
 - Commissioner and ALJ agreed that the booster club, as an entity, is not subject to the Anti-Bullying Bill of Rights Act, as it is not a board member, school employee, contracted service provider, student or volunteer as set forth in the Act. As such, the booster club cannot be deemed to have violated the Act and the matter was dismissed.
 - Instead of making a finding of HIB against the booster club itself, the board should have initiated a HIB investigation to determine whether any of the booster club members violated the Act, including whether any of the members constituted a volunteer under N.J.S.A. 18A:37-16a, and if so, whether any of the members engaged in retaliation against the student athlete in violation of the Act.



Reporting and Investigation Procedures/Timelines

■ HIB reporting & Notification Procedures

- Anonymous reporting allowed, but formal disciplinary action can't be based solely on anonymous report
- Verbal reporting to principal same day when a BOE member, school employee, volunteer and contracted service provider witnessed or received reliable information that a HIB has occurred.
- Student reporting required in another section of law – as such not held to “same day” requirement



Reporting and Investigation Procedures/Timelines

- All BOE members, school employees, volunteers and contracted service provider must also submit a report in writing to the principal within 2 school days of any verbal report
 - Under P.L. 2021, c. 338, this report must be on a numbered form developed by NJDOE
 - Written report should be made by the same person who made the verbal report
 - In other words, the principal should NOT author written report based on the verbal report that was received
- Principal must inform parents of all students involved in alleged incident and may discuss available counseling or intervention services
 - Under P.L. 2021, c. 338, principal/district must keep written record of date, time, and manner whenever notifying parent or guardian about alleged HIB incident



Reporting and Investigation Procedures/Timelines (continued)

■ Investigation Procedures

- Shall be initiated by principal within one school day of the report (verbal?) of the incident – be safe and do it within 1 school day of the verbal report!
- Shall be conducted by the School Anti-Bullying Specialist – principal may appoint others to assist
- Shall be completed within 10 school days of the written report or from the date of the written notification from the superintendent to the principal to initiate an investigation– don't wait until the last minute!
 - In the event that there is information relative to the investigation that is anticipated but not yet received by the end of the 10-day period, the school anti-bullying specialist may amend the original report of the results of the investigation to reflect the information
- Results shall be reported to Superintendent within 2 school days of completion
- Superintendent has discretion to provide intervention services, establish training programs to reduce HIB, enhance school climate, impose discipline or counseling



Reporting and Investigation Procedures/Timelines (continued)

- **Investigation procedures (continued)** –
 - **Must report results of ALL investigations (HIB & non-HIBs) to Board at next Board meeting following completion of investigation, along with information on any services provided, training established, discipline imposed, and the Superintendent's decision and/or recommendation.**
 - **Board must issue a decision on the report at its next meeting. Decision must be in writing either affirming, modifying, or rejecting the Superintendent's decision.**
 - The board's decision may be appealed to the Commissioner of Education no later than 90 days after the issuance of the board's decision
- **Electronic Violence & Vandalism Reporting System** – **Do you have to report to EVVRS?? – Yes, but for confirmed HIBs only**

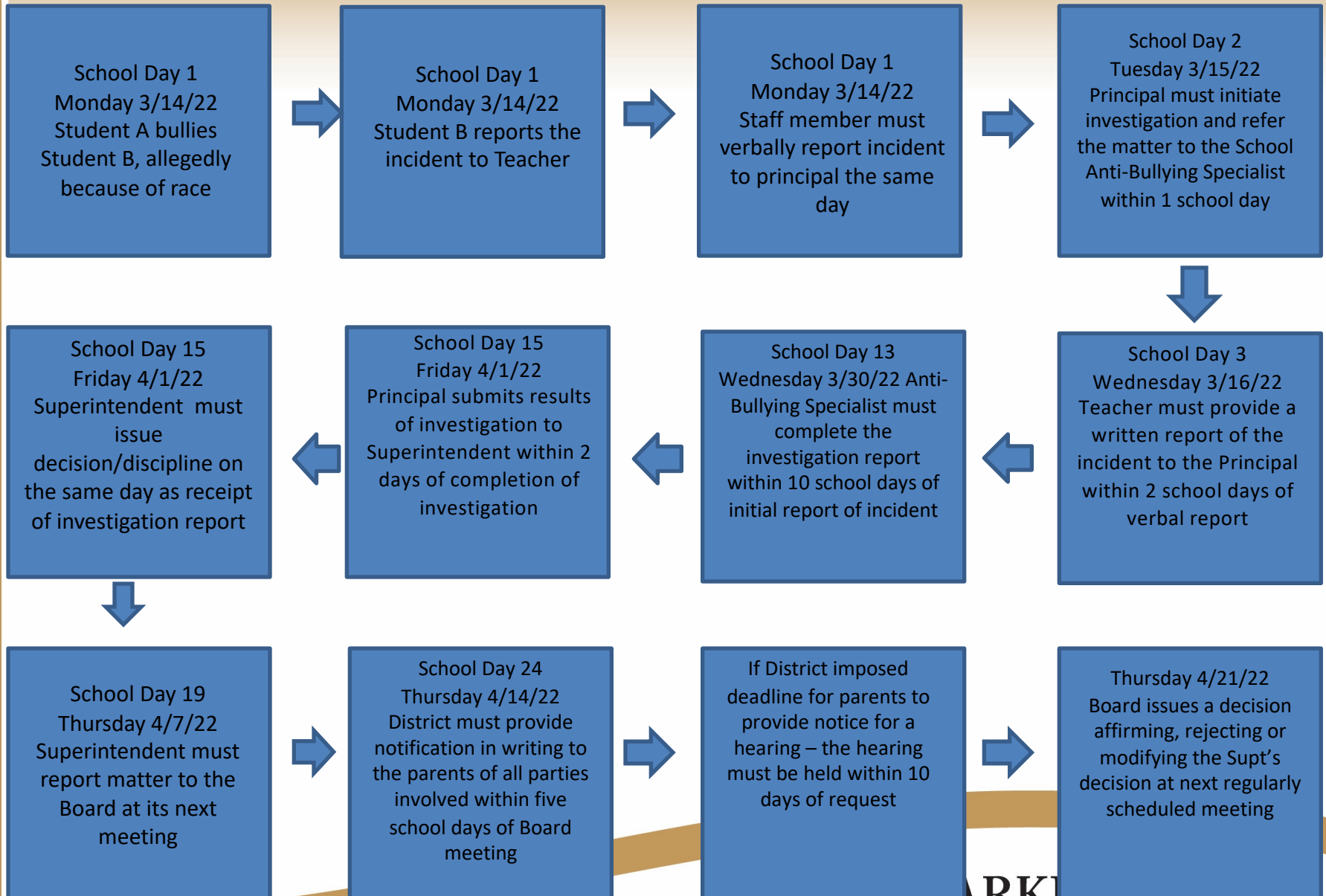


Reporting & Investigation Procedures/Timelines (continued)

- Investigation procedures – Reporting Results
 - Parents of students who are parties to investigation are entitled to information about:
 - Nature of investigation;
 - Outcome of investigation (i.e., HIB or not HIB)
 - Whether discipline was imposed (i.e., Yes or No)
 - Whether services were provided (i.e., Yes or No)
 - Such information must be provided to parents in writing within 5 school days after the results of the investigation are reported to the board.
 - Parents may request a hearing before the Board after receiving the information, and the hearing must be held within 10 days of receiving the information.



Example of HIB Timelines in Action



When to Investigate Harassment, Intimidation, Bullying

- **How much discretion do we have when a HIB report is filed?**
 - If we know that the incident is not a HIB, can we choose not to investigate?
 - Once the word “bullying” is used, does an investigation have to take place?
- **The New Jersey Anti-Bullying Task Force, in its January 3, 2013 Interim Report, provided a preliminary recommendation that:**
 - The Principal should be given the discretion to determine, based on the totality of the facts available, whether the reported incident meets the minimum standard of HIB.
 - In instances where the Principal determines, based on the initial fact finding, that the reported incident does not meet that standards, the HIB investigation should not be required.
- **Best Practice – When in doubt, investigate it as a HIB, especially if the word “bullying” is used or insinuated by the person reporting**
- **You are looking for “indicia of bad motivation”**



Can a Parent Prevent Their Child from being Interviewed?

- **“Under No Circumstances are you allowed to talk to my kid without my permission”**
- **NO RIGHT TO PREVENT INTERVIEW OR BE PRESENT – See Goss v. Lopez (1975 U.S. Supreme Court case)**
- **Per the NJ School Search Policy Manual from the State Attorney General’s Office:**
 - **“A school official must have leeway to question students regarding activities that constitute either a violation of the law or violation of school rules.” This latitude is necessary to maintain discipline, determine whether a student should be excluded from school, and to decide whether further protection is needed for the student questioned or others.**
 - **Unlike police officers, school officials acting independently may routinely question students about suspected school rule infractions or even criminal law violations without first having to reach out to parents or legal guardians, provided that police officers do not attend or otherwise participate in the questioning.**



How does this operate with the Code of Conduct?

- **Examine the motivation for the complained-of conduct**
 - Was it motivated by any actual or perceived ‘distinguishing characteristic’ of the victim? This can include, but is not limited to, race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability. If the answer is yes, then this should be handled under the District’s HIB procedures.
 - Harmful or demeaning conduct motivated only by another reason, for example, a dispute about relationships or personal belongings, or aggressive conduct without identifiable motivation, does not come within the statutory definition of bullying. This should be handled under the code of conduct.
- **Can impose discipline – “The Principal, upon receiving a verbal or written report, may take interim measures to ensure the safety, health, and welfare of all parties pending the findings of the investigation.”**
- **Just because it isn’t HIB does not mean that you are unable to respond or take action!**



MANDATORY REPORTING OBLIGATIONS

- **NJAC 6A:16-11.1**
 - **Employees, volunteers, interns must immediately notify DCP&P (agency formerly known as DYFS) of any alleged or suspected instance of missing, abused or neglected children**
 - Includes any instance where you may have reason to believe a child is missing, abused or neglected
 - “Abused” includes:
 - Any inappropriate sexual relationship between a student and a staff member AND
 - Any unwanted or inappropriate physical contact/touching of a student
 - **MUST also notify law enforcement authorities at the same time of any alleged or suspected instance of missing, abused or neglected children**

Conduct Away from School Grounds

N.J.S.A. 18A:37-15.3 – District HIB policies apply to conduct occurring off school grounds, in cases in which a school employee is made aware of such actions, if it meets the statutory definition of HIB:

-The alleged HIB has substantially disrupted or interfered with the orderly operation of the school or the rights of other pupils;

and either

A reasonable person should know that the alleged behavior will have the effect of physically or emotionally harming a pupil; or

The alleged behavior has the effect of insulting or demeaning any pupil; or

The alleged behavior created a hostile environment for the pupil by interfering with a pupil's education.



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Discipline for *Conduct Away from School Grounds*

Can impose a “consequence” on a student for conduct away from school grounds:

1. “... only when it is **reasonably necessary for the student's physical or emotional safety, security and well-being** or for reasons relating to the safety, security and well-being of other students, staff or school grounds”;

and

2. “... only when the conduct that is the subject of the proposed consequence **materially and substantially interferes with the requirements of appropriate discipline in the operation of the school.**”

N.J.A.C. 6A:16-7.5(a).



Conduct Away from School Grounds continued....

- Under the regulation, the term “consequence” has been interpreted by the Appellate Division to include both rights and student privileges.
 - G.D.M. o/b/o B.M.M. v. Ramapo Indian Hills Reg’l High Sch. Dist. Bd. of Educ.
- Thus, the two-prong *nexus* requirement of N.J.A.C. 6A:16-7.5(a)1 and (a)2 must be satisfied in order to:
 - Suspend or expel a student (and possibly give detention)
 - Temporarily or permanently revoke participation in extracurricular activities
 - Revoke student parking privileges



Recent HIB Case Law

- R.H. and M.H., o/b/o A.H. v. BOE of the Borough of Sayreville, Commissioner Decision Docket No. 198-21 (September 23, 2021)
 - 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.



R.H. and M.H., o/b/o A.H. v. BOE of the Borough of Sayreville

- 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
- 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



R.H. and M.H., o/b/o A.H. v. BOE of the Borough of Sayreville

- A.H.'s social media post caused a substantial disruption to the school. 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.
- 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.



J.P. o/b/o D.P. v. Bd. Of Ed. of the Gloucester County Vo-Tech School District (March 13, 2020)

- Commissioner held that board did not act in an arbitrary, capricious, or unreasonable manner when it determined that student committed an act of HIB when he called another student “gay.”
- Student admitted using the language but contended that he used the term in a joking manner and did not intend it to be demeaning. In-school suspension imposed as discipline.



J.P. o/b/o D.P. v. Bd. Of Ed. of the Gloucester County Vo-Tech School District

- Record contained sufficient credible evidence to support the Board's decision that commenting on or misstating another student's sexual orientation could reasonably be perceived as being motivated by that characteristic.
- A board can find an act of HIB even if the individual did not intend to cause harm.
- D.P.'s comments substantially disrupted A.G.'s education, and were insulting or demeaning.



Janan Wehbeh v. Bd. Of Ed. of the Township of Verona, Commissioner (February 4, 2020)

- Tenured chemistry teacher found to have committed an unintentional act of HIB through conversation with student about enrollment in AP Chemistry program
- Teacher's recommendation was that student not enroll in the course, but left decision up to the student
 - Key factors - course difficulty and student's prior performance in honors chemistry course taught by teacher
- Student diagnosed with anxiety and panic disorder; had 504 plan



J.B. o/b/o J.B. v. Bd. of Ed. of the No. Valley Reg. H.S. District (April 13, 2021)

- Parent alleged that soccer coach bullied her son because of his commitment to academics.
- After review of the ABS report which found no HIB violation, the Board concluded that the HIB investigation failed to demonstrate that the student was a protected class member or possessed an actual or perceived distinguishing characteristic which served as motivation for the alleged bullying.
- Parent asserted that student's commitment to academics and his status as a student were distinguishing characteristics.



J.B. o/b/o J.B. v. Bd. of Ed. of the No. Valley Reg. H.S. District

- ALJ determined that the facts in this case failed to reveal that the coach targeted the student for his academic commitment
- Former coach's questionable treatment of his players was largely universal; not all aggressive, harmful, or demeaning conduct constitutes a HIB
- Student's status as a student alone is not a distinguishing characteristic under the Act
- ALJ concluded that the Board did not act in an arbitrary, capricious, or unreasonable manner in finding that no HIB occurred
 - Commissioner agreed and dismissed the petition



Takeaways from Recent HIB Case Law

- Must meet all three elements of the HIB definition to constitute an act of HIB.
- 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.
- Teachers, counselors, coaches and school administrators can commit acts of HIB but cannot be victims.
- Not all aggressive, harmful and demeaning conduct constitutes HIB.
- When incidents occur or are spread on social media, harm is increased.



Takeaways from Recent HIB Case Law

- Teachers, counselors, coaches and school administrators can be personally liable if they do not address acts of HIB.
- Teacher and school administrator retirees can see a reduction in pension from HIB violations.
- Deference to board of education decision, ALJ fact determinations, Commissioner decision.
- The Anti Bullying Bill of Rights Act does not create an independent cause of action.



Takeaways from Recent HIB Case Law

- Statutory and regulatory framework of the Anti-Bullying Bill of Rights Act (ABRA) for adjudicating allegations of HIB satisfies constitutional due process requirements.
- ABRA does not require trial-like adversary due process proceedings; no discovery, no right to confront and cross-examine witnesses, etc.; Legislature could have included such procedures but did not.
- 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.



Cases Dealing with LGBTQ+ Status

- Greater likelihood to be target for HIB
- Issue complicated by need to avoid potential “outing” of student to parents, others
- Need to address aggressors who claim First Amendment right to express religious views



Taking Into Account the Circumstances of Incident when Contacting Parents

■ Best Practice

- When applicable, inform parent or guardian that the alleged HIB involves perceived sexual orientation or gender identity/expression, but do not share actual sexual orientation or gender identity/expression as part of HIB notice
- Be aware of other sensitive issues that may arise (interracial relationships, disputes related to religion, etc.)
- Ask the student about any issues in the home that the district should be aware when notifying parents and consider student requests regarding parental notice



Hypothetical Number 1

- Students make fun of another student with speech disability because she pronounces words differently
- Student admits that the victim “has a speech problem and the girls were making fun of her and since they were doing it and I was bored, I did it also, I made fun of her speech.”
- Administrator completed investigation and report →
Would you find HIB?



Hypothetical Number 1 Continued

- Administrator completed investigation and report
 - Parents were not provided information on the HIB investigation
- HIB report was given to the Board's HIB Committee → recommended affirming the finding
- Full Board approved report. No formal written decision was provided
- Did District follow proper HIB procedure?



Hypothetical Number 2

- Student 1 tells the class that Student 2 dyed her hair because she had head lice
- Student 1 claimed it was not done to hurt Student 2's feelings → he was just telling the truth
- HIB?



Hypothetical Number 3

- Student 1's account:
 - He is told on bus:
 - To stop “Acting like you know everything”;
 - “You act like you know it all”;
 - I hope you “fail the math test tomorrow” and that your “brain would get damaged”
- Other Students' account
 - Student 1 was inquiring about everyone's grades on the math quizzes in an effort to “make us all feel dumb”
 - Student 1 wouldn't stop talking about math
 - Did tell Student 1 that he “acts like he knows it all”
- HIB?



Hypothetical Number 4

- Student 1 and 2 are friends with Student 3
- At lunch, Student 1 and 2 comment that they feel Student 3 might be anorexic because her eating habits have changed
- Student 1 and Student 2 take Student 3's "iPod out of her hands to send a message to Student 3's boyfriend that stated that Student 3 was not eating."
- Student 3 felt hurt and cries in the bathroom
- HIB investigator finds that Student 1 and 2 had good intentions but went too far by "harping on the subject"
- HIB?



Civil Liability – NJLAD Bullying

“We do not suggest, however, that isolated schoolyard insults or classroom taunts are actionable. Rather, in the educational context, to state a claim under the LAD, an aggrieved student must allege discriminatory conduct that would not have occurred "but for" the student's protected characteristic, that a reasonable student of the same age, maturity level, and protected characteristic would consider sufficiently severe or pervasive enough to create an intimidating, hostile, or offensive school environment, and that the school district failed to reasonably address such conduct.”

L.W. ex rel. L.G. v. Toms River Regional Schools Bd. of Educ., 189 N.J. 381 (N.J. 2007).



Civil Liability – Title IX Bullying

“On the contrary, the recipient must merely respond to known peer harassment in a manner that is not clearly unreasonable. This is not a mere “reasonableness” standard, as the dissent assumes. In an appropriate case, there is no reason why courts, on a motion to dismiss, for summary judgment, or for a directed verdict, could not identify a response as not “clearly unreasonable” as a matter of law.”

Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 640-641 (1999).

