

The Anti-Bullying Bill of Rights Act:

Implications and Requirements for Public School Districts

Presented to the Parents of the Wyckoff Public School District by:

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The Original Law

- The **Harassment, Intimidation and Bullying Prevention Statute** was *originally* enacted in 2001, and was revised in both 2006 and 2008 (*to address electronic communications and notice of policy to the public*).
- The original legislative rationale (*N.J.S.A. 18A:37-13*):
 - A **safe and civil environment** in school is necessary for students to learn and achieve high academic standards;
 - **Harassment, intimidation or bullying** (“HIB”), like other disruptive or violent behaviors, is conduct that **disrupts both a student's ability to learn and a school's ability to educate its students in a safe environment**; and
 - Since students learn by example, school administrators, faculty, staff, and volunteers should be commended for demonstrating appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment, intimidation or bullying.

New Legislative Findings

- The Legislature specifically stated in *N.J.S.A. 18A:37-13.1* that the Anti-Bullying Bill of Rights is necessary for a number of reasons, including:
 - **32% of students aged 12 through 18 were bullied** in the previous school year.
 - Source: 2009 study by the US DOJ and DOE entitled "*Indicators of School Crime and Safety*"
 - **25% of the responding public schools** indicated that bullying was a **daily or weekly problem**;
 - Source: 2009 study by the US DOJ and DOE entitled "*Indicators of School Crime and Safety*"
 - The percentage of students bullied in New Jersey is **1 percentage point higher than the national median**.
 - Source: 2009 study by the US Centers for Disease Control and Prevention entitled "*Youth Risk Behavior Surveillance*"

New Legislative Findings

- Additional Findings:
 - Significant **research** has emerged since the original law was enacted.
 - School districts, students, parents, teachers, principals, other school staff and board members would **benefit** from the establishment of **clearer standards*** on:
 - What constitutes HIB; and
 - How to prevent, report, investigate and respond to HIB.
 - The Legislature intends to **strengthen** the standards and procedures for preventing, reporting, investigating and responding to incidents of HIB (on and off school premises).

New Legislative Findings

- Additional Findings:
 - **Fiscal responsibility** requires New Jersey to take a smarter, clearer approach to fight school bullying by ensuring that existing resources are better managed and used to make our schools safer for students.
 - Existing personnel and resources shall be utilized in every possible instance to accomplish **the goals of increased prevention, reporting, and responsiveness** to incidents of HIB, including in the appointment of **school anti-bullying specialists** and **district anti-bullying coordinators**.
 - Strengthening standards for preventing, reporting, investigating, and responding to incidents of HIB will help to **reduce the risk of suicide** among students.

The New Jersey Law Against Discrimination

- The **New Jersey Law Against Discrimination (“LAD”)** prohibits discrimination based on race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, familial status, disability, nationality, sex (including pregnancy), gender identity or expression, atypical hereditary cellular or blood trait, or genetic information.
- Liability under the LAD for bullying was confirmed in the New Jersey Supreme Court case of ***L.W. v. Toms River Regional Sch. Bd. of Educ.***, 189 N.J. 381 (2007).
 - Landmark case in whether or not a District’s response is adequate to address victims of HIB.
 - It changed the way Districts looked at how to approach the prevention of HIB and the District’s responses to HIB.

L.W. v. Toms River

- The NJ Supreme Court held that the LAD recognizes a cause of action against a school district for student-on-student affectional or sexual orientation harassment.
- A district may be liable for such harassment when it **knew or should have known** of the harassment, but **failed to take actions reasonably calculated to end the offensive conduct**. It held that to determine liability:
 - A “factfinder must determine whether the district, with **actual or constructive knowledge** of the maltreatment, **took actions reasonably calculated to end the harassment**.”
 - The **reasonableness** of the response must be determined under on the **totality of the circumstances** on a case-by-case basis.
 - The **cumulative effect of all incidents of HIB** against the student and of all **efforts by the district to curtail the maltreatment** will be considered.
 - Each successive episode has its predecessors, such that **the impact of the separate incidents may accumulate and the environment created may exceed the sum of the individual episodes**.

Themes to Remember

- A main goal is the **prevention** of HIB, and the new law’s procedures and policy requirements should assist with that goal.
- The distinction between **Harassment, Intimidation and Bullying** within the meaning of the law, and harassment, intimidation and bullying that does not fall within the statutory definition.
 - Not every episode of “bullying” will fall under this law, but there are **disciplinary consequences nonetheless**.

The Law: Definitions

- **“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 *N.J.S.A. 18A:37-15.3*, that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
 - 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;
 - Has the effect of insulting or demeaning any student or group of students; or
 - 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.

The Law: Definitions

- **Breaking it down:**
 - **WHAT: Any gesture, any written, verbal or physical act, or any electronic communication,**
 - **“Electronic communication”** means a communication transmitted by means of an electronic device, including, but not limited to, a telephone, cellular phone, computer, or pager.
 - This includes e-mail, text messages, Facebook, Twitter, Tumblr, other social networking sites and the like.
 - Whether it be a **single incident or a series of incidents**, [new]
 - **WHO AND WHY:** 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,**

The Law: Definitions

- **Breaking it down (continued):**
 - **WHERE AND WHEN:** 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*,
 - **HOW:** that **substantially disrupts or interferes with** the orderly **operation of the school** or the **rights of other students** [new]

AND

- Meets **one** of the following **three additional criteria:**
 - If the actions are such that a reasonable person should know, under the circumstances, will either: (1) have the effect of **physically or emotionally harming** a student OR **damaging the student's property**, or (2) placing the student in *reasonable fear* of **physical or emotional** harm; OR
 - Has the effect of **insulting or demeaning** any student or group of students; OR
 - 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 [new].

The Law: Definitions

- **Breaking it down (continued):**
 - **Considerations:**
 - Not all conduct that is considered **“classic bullying”** fits under this definition.
 - Example: Student A threatens Student B with physical harm every day for a week unless he gives up his lunch money. **It is not motivated by** any actual or perceived characteristics. **This is not “Bullying” under the statute.**
 - So what? It still violates the code of conduct and requires both a response and consequences for the aggressor. If the District's policy does not have an expanded definition of HIB, then the policy does not apply, and that means that the **strict reporting requirements** will not apply.

The Law: Policy Requirements

- School districts must all have Anti-HIB policies, and those policies must meet the following standards:
 - The school district **shall** adopt the policy through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators, and community representatives.
- Mandatory Policy Language
 - A statement **prohibiting** HIB of a student;
 - A definition of HIB **no less inclusive than*** that set forth in *N.J.S.A. 18A:37-14*.
 - A description of the **type of behavior expected** from each student;

The Law: Policy Requirements

- Mandatory Policy Language (continued)
 - **Consequences and appropriate remedial action** for a person who commits an act of HIB
 - **Remedial action** must take into account the nature of the behavior, the developmental age of the student and the student's history of problem behaviors and performance. This may include behavioral assessment or evaluation including, but not limited to, a referral to the Child Study Team, as appropriate, as well as supportive interventions and referral services.
 - **Consequences** for a student who commits an act of HIB must be varied and graded according to the nature of the behavior, the developmental age of the student and the student's history of problem behaviors and performance. Any disciplinary consequences must be consistent with the laws regarding the suspension and expulsion of students.
 - The law specifically requires appropriate consequences and remedial action for any **staff member** who commits an act of HIB.

The Law: Policy Requirements

- Mandatory Policy Language (continued)
 - A procedure for **reporting** an act of HIB, including a provision that permits **anonymous reports**.
 - Formal disciplinary action **solely** on the basis of an anonymous report is not specifically permitted.
 - New Reporting Requirements:
 - All acts of HIB shall be reported **verbally to the school principal on the same day** when the school employee or contracted service provider witnessed or received reliable information regarding any such incident. **The principal shall inform the parents or guardians of all students involved** in the alleged incident, and may discuss, as appropriate, the availability of counseling and other intervention services.
 - All acts of HIB shall be reported **in writing to the school principal within two school days** of when the school employee or contracted service provider witnessed or received reliable information that a student had been subject to HIB.

The Law: Policy Requirements

- Mandatory Policy Language (continued)
 - A procedure for **prompt investigation** of reports of violations and complaints.
 - The **most significant changes** in the new Anti-Bullying Bill of Rights Act are the detailed investigation requirements and timelines.
 - The range of ways in which a school will respond once an incident of HIB must be identified
 - New: These responses shall be defined by the **Principal** in conjunction with the school **Anti-Bullying Specialist**, but shall include an appropriate combination of counseling, support services, intervention services, and other programs, as defined by the Commissioner.

The Law: Policy Requirements

- Mandatory Policy Language (continued)
 - A statement that **prohibits reprisal or retaliation** against any person who reports an act of HIB and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation;
 - Consequences and appropriate remedial action for a person found to have **falsely accused another** as a means of retaliation or as a means of HIB;
 - A statement of how the policy is to be publicized, including notice that the policy applies to participation in school-sponsored functions;
 - A requirement that a **link to the policy** be prominently posted on the **home page of the school district's website** and **distributed annually to parents and guardians** who have children enrolled in a school in the school district; and

The Law: Policy Requirements

- Mandatory Policy Language (continued)
 - A requirement that the name, school phone number, school address and school email address of the **District Anti-Bullying Coordinator** be listed on the home page of the school district's website and that on the home page of each school's website the name, school phone number, school address and school email address of the **School Anti-Bullying Specialist** and the **District Anti-Bullying Coordinator** be listed.
 - The information concerning the District Anti-Bullying Coordinator and the School Anti-Bullying Specialists shall also be maintained on the NJDOE website.
 - Districts must **annually review** the policy and transmit it to the Commissioner of Education annually.

Policy on Off-Campus Conduct

- Each Anti-HIB policy shall include provisions for appropriate responses to HIB, as defined, that occurs **off school grounds**, in cases in which a school employee is **made aware of such actions**. The responses to HIB that occurs off school grounds shall be consistent with the board of education's code of student conduct and other provisions of the Board's policy on HIB.
- Must still meet applicable disciplinary standards:
 - Exercised 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 or well-being of other students, staff or school grounds, pursuant to *N.J.S.A. 18A:25-2* and *N.J.S.A. 18A:37-2*; and
 - Exercised only when the conduct which is the subject of the proposed consequence **materially and substantially interferes with** the requirements of appropriate discipline in the operation of the school.

Reporting Timelines

- **Reporting Timelines**
 - All acts of HIB shall be reported **verbally to the school principal on the same day** when the school employee or contracted service provider witnessed or received reliable information regarding any such incident. **The principal shall inform the parents or guardians of all students involved** in the alleged incident, and may discuss, as appropriate, the availability of counseling and other intervention services.
 - All acts of HIB shall be reported **in writing to the school principal within two school days** of when the school employee or contracted service provider witnessed or received reliable information that a student had been subject to HIB.

Investigating Timelines

- **Investigating Timelines: Initial Investigation**
 - The investigation shall be initiated by the Principal or the Principal's designee **within one school day** of the report of the incident and shall be conducted by a **School Anti-Bullying Specialist**. The Principal may appoint other personnel to assist in the investigation.
 - The investigation shall be completed ASAP, but not later than **10 school days** *from the date of the written report* of the incident HIB. 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.

Investigating Timelines

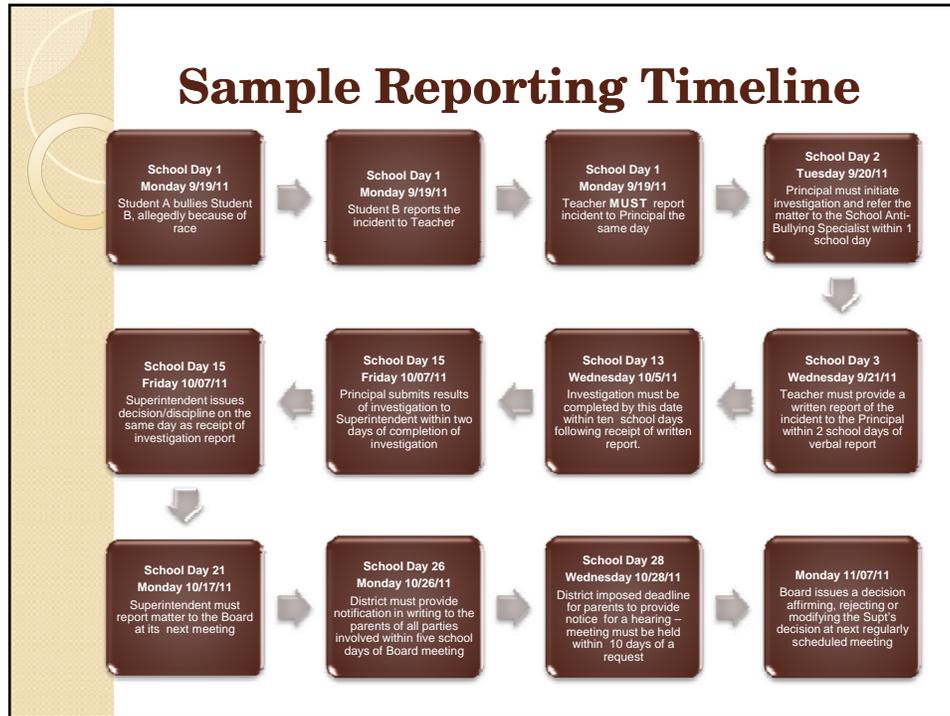
- **Investigating Timelines: Superintendent**
 - The results of the investigation shall be reported to the Superintendent of Schools **within two school days** of the completion of the investigation, and in accordance with regulations* promulgated by the State Board of Education.
 - The Superintendent issues a **decision** and may decide, as a result of the findings, to do the following:
 - Provide intervention services,
 - Establish training programs to reduce HIB and/or enhance the school climate,
 - Impose discipline,
 - Order counseling, or
 - Take or recommend other appropriate action;

Investigating Timelines

- **Investigating Timelines: Board of Education**
 - The results of each investigation shall be **reported to the board of education** no later than the next scheduled board meeting after the investigation has been completed, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent;
 - The Board must, **within 5 school days** after the results of the investigation are reported to the Board, provide **parents or guardians of the students who are parties to the investigation** with information about the investigation, in accordance with federal and State law and regulation, including:
 - The nature of the investigation,
 - Whether the district found evidence of HIB; and
 - Whether discipline was imposed or services provided to address the incident of HIB
 - At the **next board of education meeting** following its receipt of the report, the **Board shall issue a decision**, in writing, to affirm, reject, or modify the Superintendent's decision.

Parental Rights of Appeal

- **Following First Notification**
 - A parent or guardian may **request a hearing before the Board** after receiving the information, and the hearing shall be held **within 10 days of the request**. The Board shall meet in executive session for the hearing to protect the confidentiality of the students. At the hearing the board may hear from the School Anti-Bullying Specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents
- **After the Board's Decision**
 - The board's decision may be appealed to the Commissioner of Education, in accordance with the procedures set forth in law and regulation, **no later than 90 days after the issuance of the board's decision**; and
 - **Note:** Parents can also file complaints with the Division on Civil Rights within 180 days of the occurrence of any act of HIB if they fall under a protected class under the LAD.



New Positions

- **School Anti-Bullying Specialist**
 - Appointed by the Principal in each school.
 - Typically a school guidance counselor, school psychologist, or another individual similarly trained; otherwise another individual from currently employed school personnel.
 - Responsible for chairing the **School Safety Team**.
 - Responsible for **leading the investigation** of incidents of HIB in the school; and
 - Acts as the primary school official responsible for **preventing, identifying, and addressing** incidents of HIB in the school.

New Positions (continued)

- **District Anti-Bullying Coordinator**
 - Appointed by the Superintendent and should be a current school employee rather than a new employee. Responsibilities include:
 - **Coordinating and strengthening** the school district's policies to prevent, identify, and address HIB of students;
 - **Collaborating** with school anti-bullying specialists in the district, the board of education, and the Superintendent of Schools to prevent, identify, and respond to HIB of students;
 - **Provide data**, in collaboration with the superintendent of schools, to the Department of Education regarding HIB of students; and
 - Executing such **other duties** related to school HIB as requested by the Superintendent of Schools.
 - **Meeting** at least **twice a school year** with the school anti-bullying specialists in the district to discuss and strengthen procedures and policies to prevent, identify, and address HIB in the district.

The School Safety Team

- The law requires that each school have a School Safety Team to **develop, foster, and maintain a positive school climate** by focusing on the on-going, systemic process and practices in the school and to address school climate issues such as HIB.
- Shall meet **at least two times** per school year.
- Shall consist of the **Principal** or his/her designee who, if possible, shall be a senior administrator in the school and the following individuals appointed by the Principal:
 - A teacher in the school;
 - A school Anti-Bullying Specialist;
 - A parent of a student in the school; and
 - Other members to be determined by the Principal.
- The **School Anti-Bullying Specialist** shall serve as the chair of the School Safety Team.

School Safety Team Duties

- **Receive any complaints of HIB** of students that have been reported to the Principal (*parent member does not participate*);
- **Receive copies of any report** prepared after an investigation of an incident of HIB (*parent member does not participate*);
- **Identify and address patterns of HIB** of students in the school (*parent member does not participate*);
- **Review and strengthen school climate** and the policies of the school in order to prevent and address HIB of students;
- **Educate the community**, including students, teachers, administrative staff, and parents, to prevent and address HIB of students;
- **Participate in the training** required pursuant to the provisions of the Anti-Bullying Bill of Rights Act and other training which the Principal or the District Anti-Bullying Coordinator may request;
- **Collaborate** with the District Anti-Bullying Coordinator in the collection of district-wide data and in the development of District policies to prevent and address HIB of students; and
- Execute such other duties related to HIB as requested by the Principal or District Anti-Bullying Coordinator.
- School Safety Team members shall be provided **professional development opportunities** that address effective practices of successful school climate programs or approaches.

Other Aspects of the Law

- **Resources:** NJ Department of Education publishes a Model Policy and Guidance Documents located at <http://www.state.nj.us/education/parents/bully.pdf>.
- **Reprisal, Retaliation, False Accusation** (*N.J.S.A. 18A:37-16*); New provisions add board members and contracted service providers to these requirements:
 - A member of a board of education, school employee, student or volunteer **shall not engage in reprisal, retaliation or false accusation** against a victim, witness or one with reliable information about an act of HIB.
 - A member of a board of education, school employee, contracted service provider, student or volunteer who has witnessed, or has reliable information that a student has been subject to 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.
 - A member of a board of education or a school employee who promptly reports an incident of HIB to the appropriate school official designated by the school district's policy, or to any school administrator or safe schools resource officer, and who makes this report in compliance with the procedures in the district's policy, is immune from a cause of action for damages arising from any failure to remedy the reported incident.
- Also new: A school administrator who receives a report of HIB from a district employee, and **fails to initiate or conduct an investigation**, or who should have known of an incident of HIB and **fails to take sufficient action** to minimize or eliminate the HIB, **may be subject to disciplinary action**.

Other Aspects of the Law

- **Establishment of Bullying Prevention Programs**
- Schools and school districts **shall annually establish, implement, document, and assess** bullying prevention programs or approaches, and other initiatives involving school staff, students, administrators, volunteers, parents, law enforcement and community members. The programs or approaches shall be designed to create school-wide conditions to prevent and address harassment, intimidation, and bullying.
- A school district may apply to the NJDOE for a grant to be used for programs or approaches established pursuant to this subsection (to the extent funds are appropriated for these purposes)
- A school district shall:
 - Provide training on the school district's HIB policies to school employees and volunteers who have significant contact with students;
 - Ensure that the training includes instruction on preventing bullying on the basis of the protected categories enumerated in the Anti-Bullying Bill of Rights Act and other distinguishing characteristics that may incite incidents of discrimination, harassment, intimidation, or bullying; and
 - Develop a process for discussing the district's HIB policy with students.
- Information regarding the school district policy against HIB shall be **incorporated into a school's employee training program** and shall be provided to full-time and part-time staff, volunteers who have significant contact with students, and those persons contracted by the district to provide services to students.

Other Aspects of the Law

- **NJDOE Inservice Workshops and Training Programs**
- The Commissioner of Education is tasked with establishing inservice workshops and training programs to train selected public school employees to act as district anti-bullying coordinators and school anti-bullying specialists, and to ensure that such workshops and training are available through the NJDOE website.
 - Districts must provide time for such training.
- Upon completion of the initial inservice training program, the Commissioner shall ensure that programs and workshops that reflect the most current information on HIB in schools are prepared and made available to District Anti-Bullying Coordinators and school Anti-Bullying Specialists at regular intervals.
- The Commissioner shall establish an online tutorial on HIB designed to include best practices on the prevention of HIB.

Other Legislative Changes

- *N.J.S.A.* 18A:6-112, which relates to suicide prevention, now requires professional development to address the **link between HIB and the risk of suicide**.
- *N.J.S.A.* 18A:12-33 (**new board member training**) requires training (only once) in HIB for new board members and re-elected board members within one year of election.
- *N.J.S.A.* 18A:37-2, which lists the different reasons for which students may be suspended, was **updated to specifically include HIB**.

Other Legislative Changes

- *N.J.S.A.* 18A:37-23 requires all **candidates for administrative and supervisory certificates** to have completed a program in HIB prevention beginning with the 2012–2013 school year.
- *N.J.S.A.* 52:17B-71.8 requires **Safe School Resource Officers** to have training in protecting students from HIB.
- *N.J.S.A.* 18A:37-29: The legislature, recognizing the importance of character education, established the week beginning with the first Monday in October as the **Week of Respect**. Districts shall observe the week by providing age-appropriate instruction focusing on preventing HIB.

Sample Reporting Timeline

