

Harassment, Intimidation, and Bullying

Presented to the
Montgomery Township Board of Education
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Agenda

1. Defining HIB
2. Administrators' duties
 - Reporting and investigation timelines
 - Sharing information with parents
3. Anti-Bullying Specialist's duties
 - Conducting the investigation
 - Drafting the investigation report
4. Board involvement with HIB
5. Recent amendments to the HIB statute

Harassment, Intimidation, and Bullying

Defined

“Harassment, Intimidation, and Bullying”

“The Legislature finds and declares that: a safe and civil environment in school is necessary for students to learn and achieve high academic standards; harassment, intimidation or bullying, 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.”

“Harassment, Intimidation, and Bullying”

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:

- (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.

The conduct must meet all of the following criteria...

It is one or more acts;

That occurs on school property, on a school bus, at a school-sponsored function, or off school grounds but has a nexus with the school;

In the form of written, verbal, or electronic communication, or a physical act;

That is “reasonably perceived” as being motivated by an actual or perceived characteristic or other distinguishing characteristic;

Which substantially disrupts or interferes with the operation of the school or the rights of other students; and

Has at least one of the following impacts...

A reasonable person should know it would physically or emotionally harm a student, damage a student's property, or place a student in reasonable fear of such;

It insults or demeans a student; or

It creates a hostile educational environment by interfering with a student's education, or by severely or pervasively causing physical or emotional harm to a student.

An “act” is a gesture, a written, verbal, or physical act, or electronic communication

Verbal

- Name calling
- Taunting
- Teasing
- Threatening

Physical

- Hitting
- Punching
- Shoving
- Spitting
- Taking or damaging personal property

Psychological

- Spreading rumors
- Purposely excluding people from activities
- Breaking up friendships or other relationships

Electronic Communication

- Communication transmitted by means of an electronic device, including email, text messages, social media messages, etc.

“Reasonably Perceived”

- The act does not have to be *actually* motivated by an actual or perceived characteristic or other distinguishing characteristic.
- The critical question is whether the evidence shows that the victim or witnesses *felt* that a student was targeted based on the characteristic.
- If the answer is yes, then the question then becomes whether that belief is *reasonable*.

“Motivated By”

Actual or Perceived Characteristic

- Race
- Color
- Religion
- Ancestry
- National origin
- Gender
- Sexual orientation
- Gender identity and expression
- Mental, physical, or sensory disability

Other Distinguishing Characteristic

- Definitely: hair color, piercings, glasses, braces, intelligence, weight, physical features
- Possibly: grade level, political beliefs, social standing, socioeconomic status
- Probably not: comparative strength, age, or popularity between students

“Substantial Disruption or Interference”

- The act must “substantially disrupt or interfere with the orderly operation of the school or the rights of other students.”
 - Has the student’s attendance been affected?
 - Does the student need to be moved to a different class?
 - Is the student acting differently?
 - Did the incident disrupt the learning environment?
 - Did the incident affect the rights of other students?
 - Does the student have physical manifestations as a result?

The act must be inappropriate in *one* of the following ways...

1. **A reasonable person should know**, under the circumstances, that the act will either:
 - a. Have the effect of physically or emotionally harming the student;
 - b. Damage the student's property; or
 - c. Place the student in reasonable fear of physical or emotional harm;
2. **The act has the effect** of insulting or demeaning any student or group of students; or
3. **The act creates a hostile educational environment** for the student by:
 - a. Interfering with the student's education; or
 - b. Severely or pervasively harming the student, physically or emotionally.

Where and when can an act of HIB occur?

1. On school grounds;
2. On a school bus;
3. At any school-sponsored function; or
4. Off school property, when a school employee is made aware of such act, including:
 - a) Any other physical location; or
 - b) Over the Internet outside of the boundaries of the school day/school grounds (e.g., on social media or a messaging platform, over video chat, etc.).

Although a finding of HIB can be found for conduct off school property, imposition of discipline is subject to the following restrictions:

- Only when discipline 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 property pursuant to N.J.S.A. 18A:25.2 and N.J.S.A. 18A:37.2; and
- 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. N.J.A.C. 6A:16-7.5(a)(1)(2).

Administrators' Duties



Reporting Timelines

- All acts of HIB shall be reported...
 - To the school principal
 - Verbally on the same day and
 - In writing within two school days
 - As when the Board member, school employee, volunteer, or contracted service provider witnessed or received reliable information that a student has been subjected to an act of HIB.

Preliminary Determination

- A board of education may revise its HIB policy to include a process by which the Principal, or his/her designee, in consultation with the ABS, makes a preliminary determination as to whether a reported incident or complaint is a report of an act of HIB if all facts reported are deemed true prior to initiating an investigation.
- Primarily involves a review of the “actual or perceived characteristic” criteria.
- If the Principal determines that the reported incident or complaint does not constitute a violation of the Harassment, Intimidation and Bullying Act, the incident or complaint shall be treated as an alleged violation of the code of conduct.
- The Principal can only make a preliminary determination if it is permitted in the Board’s policy. Board Policy 5512, does not permit the Principal to make a preliminary determination, thereby requiring that all complaints be investigated under the HIB policy.

Investigation Timelines

First Level – Initial Investigation

- The investigation shall be initiated by the principal (or designee) within **one** school day of the report.
 - The investigation shall be conducted by the Anti-Bullying Specialist (“ABS”) in coordination with the principal.
 - The principal may appoint other personnel to assist in the investigation.
- The investigation shall be completed as soon as possible, but no later than **ten** school days from the date of the written HIB report.
 - In the event there is information relative to the investigation that is anticipated but not yet received by the end of the ten-day period, the ABS may amend the investigation report to reflect that information.

Investigation Timelines

Second Level – Superintendent’s Review

- The results of the investigation shall be reported to the Superintendent within **two** school days of the completion of the investigation.
- The Superintendent may decide, as a result of the findings, to do any of the following:
 - Provide intervention services;
 - Establish training programs to reduce instances of HIB and/or enhance the school climate;
 - Impose discipline;
 - Order counseling services; and/or
 - Take or recommend some other appropriate action, including seeking further information.

Investigation Timelines

Third Level – Board of Education’s Review

- The results of the investigation shall be reported to the Board 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.

Post-Investigation Procedures

1. Sharing Information with Parents

- Within **five** school days after the results of the investigation are reported to the Board, the parents of the students who are parties to the investigation shall be provided with written information about the investigation, including:
 - The nature of the investigation;
 - Whether the District found evidence of HIB; and
 - Whether discipline was imposed or services provided to address the act of HIB.
- Upon request, parents are entitled to the investigation materials, provided all other students' names are redacted.

Post-Investigation Procedures

2. Board of Education Hearing/Decision

- A parent may request a hearing before the Board within **sixty** calendar days of receiving the written information about the investigation.
- If a hearing is requested, the hearing shall be held within **ten** days of the request.
 - The Board shall meet in executive session for the hearing to protect the confidentiality of the students involved.
 - At the hearing, the Board may hear from the ABS about the recommendations for discipline or services, and any programs instituted to reduce acts of HIB.
- At the next Board meeting following its receipt of the report or following a hearing, the Board shall issue a written decision to affirm, reject, or modify the Superintendent's decision.

Post-Investigation Procedures

3. Appeal of Board Level Decision

- The Board's decision may be appealed to the Commissioner of Education no later than **ninety** days after the issuance of the Board's decision.
- Parents can also file complaints with the Division on Civil Rights within **180** days of any act of HIB if the child falls under a protected class pursuant to the New Jersey Law Against Discrimination.

Sharing Information with Parents

Before the Investigation Begins

- The principal must inform the parents of all the students involved in the alleged incident and may discuss, as appropriate, the availability of counseling and other intervention services.
- The law does not say exactly what the principal must share with the parents, but...
 - Parents should at least be informed as to whether their child is considered to be the alleged offender or victim.
 - Consider providing some factual detail, **but remember** that the investigation has not yet been completed, and **you do not want to compromise the investigation.**
- The principal must keep a written record of the date, time, and manner of notification to the parents.

Sharing Information with Parents

After the Investigation Begins

- Parents of students who are parties to the investigation are entitled to information about the investigation, in accordance with federal and State law and regulations, including:
 - The nature of the investigation;
 - Whether evidence of HIB was found; and
 - Whether discipline was imposed or services were provided to address the incident.
- This information must be provided within **five** school days after the results of the investigation are reported to the Board.
- After the second Board meeting, when the Board votes to affirm, reject, or modify the Superintendent's decision, the Board must issue a written decision.

Board Involvement with HIB

Board Involvement with HIB – Reporting Potential HIB

- All Board members (as well as all employees, volunteers, and contracted service providers who have contact with students) must verbally report any alleged violations of the Board's HIB Policy to the Principal or the Principal's designee on the same day when the individual witnessed or received reliable information regarding the incident of alleged HIB.
- Within two school days of the verbal report, the individual who made the report must submit a report in writing to the Principal.
- A Board member or school employee who promptly reports an incident of HIB to the appropriate school official designated in the HIB Policy, or to any school administrator or safe schools resource officer, and who makes the report in compliance with the procedures in the HIB Policy, receives immunity from any lawsuit which seeks damages for a failure to remedy the report incident of HIB.

Board Involvement with HIB – Results of the HIB Investigation

- If the Principal or designee determines that the reported incident, assuming the facts reported are true, is a report within the scope of the definition of HIB, an investigation will be initiated.
- The Board does not become involved again until the conclusion of the investigation.
- The Superintendent must report the results of each HIB investigation to the Board no later than the date of the next regularly scheduled Board meeting following the completion of the investigation.
- The Superintendent's report must include information on any consequences imposed under the Code of Student Conduct, any services provided, training established, or other action taken or recommended by the Superintendent.

Board Involvement with HIB – Board Hearing

- After the Superintendent reports the results of the investigation to the Board, information about the investigation must be provided to the involved offenders and targets/victims within five school days including:
 - The nature of the investigation;
 - Whether the District found evidence of HIB; and
 - Whether consequences were imposed or services provided to address the incident of HIB.
- Providing this information triggers the ability of the offender or the target/victim to request a hearing before the Board.
- An appeal before the Board can also be requested in accordance with the pupil grievance policy when the Principal or designee makes a preliminary determination that a complaint is not within the scope of the HIB statute.

Board Involvement with HIB – Board Hearing

- The request for a hearing must be filed with the Board Secretary within sixty calendar days after the written information regarding the information is provided.
- The Board must hold the hearing within ten business days of receipt of the request for a hearing.
- The hearing occurs in executive session to protect the confidentiality of the students involved.
- At the hearing, the Board may hear testimony and consider information provided by the anti-bullying specialist and others, as appropriate, regarding the incident, the findings from the investigation of the incident, recommendations for consequences or services, and any programs instituted to reduce such incidents, prior to rendering a determination.
- For a hearing of a decision following an investigation, the Board must decide whether to affirm, modify, or reverse the Superintendent's decision.

Board Involvement with HIB - Decision

- At the next regularly scheduled Board meeting following the Board's receipt of the Superintendent's report on the results of the investigation or following a hearing, the Board must issue a written decision to affirm, reject, or modify the Superintendent's decision.
- The Board's decision can be appealed to the Commissioner of Education or the Division on Civil Rights if the student qualifies as a member of a protected group pursuant to the New Jersey Law Against Discrimination.

Board Involvement with HIB – Policy Review

- The District must annually conduct a reevaluation, reassessment, and review of its HIB Policy, making any necessary revisions and additions.
- In doing so, the Board must include input from the anti-bullying specialists.
- If the Board adopts revisions to the HIB Policy, it must transmit a copy of the revised HIB Policy to the Executive County Superintendent within thirty days.
- A link to the HIB Policy must also appear prominently on the home page of the District's website as well as each school's website and be distributed annually to all staff, students, and parents.
- The Board must also annually examine the training needs of school employees and volunteers who have significant contact with students for the effective implementation of the HIB policies, procedures, programs and initiatives.

HIB and Cyber Harassment Amendments

P.L. 2021, c. 338 (Jan. 10, 2022)

Anti-Bullying Bill of Rights Act Amendments

The following amendments became effective on July 9, 2022.

The first two amendments apply to **preliminary determinations** by the Principal, which are authorized by Board Policy 5512.

1. The Superintendent may **disagree** with the preliminary determination that the reported incident does not meet the HIB threshold and require the Principal to conduct an investigation. The Superintendent must notify the principal of this determination **in writing**.
2. The Superintendent must give an **annual report** to the Board of the number of times a principal made a preliminary determination that an alleged incident did not meet the HIB threshold.

Anti-Bullying Bill of Rights Act Amendments

3. The Superintendent and Principal must consult **law enforcement**, as appropriate, pursuant to the Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials, if a student's behavior may constitute a possible violation of the New Jersey Code of Criminal Justice.
4. Consequences for first and second offenses may be remedial action, including counseling or behavior intervention services, or discipline, or both. For third and subsequent offenses, the Principal must develop an **individual intervention plan**, which must be approved by the Superintendent or the Superintendent's designee, that may include remedial action, progressive discipline, or both, and may require the student, accompanied by the parent/guardian, to complete a class or training program to reduce HIB behavior. On all occasions, **a copy of the investigation results must be placed in the student's record.**

Anti-Bullying Bill of Rights Act Amendments

5. Districts must provide a means for parents/guardians to confidentially report acts of HIB using an **online numbered form** that will be developed by the DOE.
6. Written reports to the Principal must also be on a **numbered form** that will be developed by the DOE. The form must be completed even if a preliminary determination is made that the report does not meet the HIB threshold, and **kept on file**, but not in any student record, unless the incident results in discipline or the law otherwise requires it to be contained in a student's record.
7. The Principal must keep a **written record** of the date, time, and manner of all **notifications** to parents/guardians.

Anti-Bullying Bill of Rights Act Amendments

8. The Amendments also established the position of **School Climate State Coordinator** to serve as a resource to parents, students, and educators. This individual will distribute updated versions of the NJDOE guidance document on the Anti-Bullying Bill of Rights Act to school districts.
9. The District must post the current version of that guidance document on its *homepage*. The District must also post the contact information for the School Climate State Coordinator on its website in the same location that it posts its HIB Policy.

Liability for Cyber Harassment

The following amendments went into effect *immediately*.

- The amendments in P.L. 2021, c. 338 also provide for civil liability for a parent or guardian who demonstrates **willful or wanton disregard in the exercise of supervision and control** over the conduct of a minor over whom they have legal custody and who is adjudicated delinquent of cyber harassment (a fourth-degree crime).
- The New Jersey Code of Criminal Justice was also amended to increase the **fin**es that may be assessed against a parent or guardian who fails to comply with a condition of the sentence of a minor for cyber harassment (e.g., jointly attending a class or training program on cyber harassment). The fine may be up to \$100 for the first offense and \$500 for each subsequent offense.

The End

Questions?