



**NJPSAFE**

— LEGAL ONE —

# Anti-Bullying Bill of Rights: Overview & Update

*May 31, 2017*

*Long Hill Township Schools*

*David Nash, Esq.*

LEGAL ONE Director

# Disclaimer

*This presentation is intended as a summary of law only, and is not meant as legal advice. Please consult your attorney to obtain legal advice.*



# Topics to be covered

- HIB Definition
- Conflict v. Bullying
- Investigation Requirements / Best Practices
- Parent and Student Rights
- Everyone's Role
- Unique Challenges – Cyber, LGBTQ
- Case Law
- Proposed Code Revisions

# DEFINITION OF HARASSMENT, INTIMIDATION OR BULLYING

“Harassment, intimidation or bullying” means:

- Any gesture
- Any written, verbal or physical act, or 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
- That takes place on school property, at any school-sponsored function, on a school bus, or off school grounds

# DEFINITION OF HARASSMENT, INTIMIDATION OR BULLYING

The HIB must **substantially disrupt or interfere** with the orderly operation of the school or the rights of other students and:

- A reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging a 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.

# Protected Characteristics

- Employers--including parochial schools and public school districts--may not discriminate against staff or students based on:
  - Race
  - Creed
  - Color
  - National origin
  - Ancestry
  - Age
  - Genetic information
  - Pregnancy
  - Sex
  - Religion
  - Disability
  - Military service
  - Atypical cellular blood trait
  - Nationality
- NJ LAD
  - Marital/domestic partnership/civil union status
  - Affectional or sexual orientation
  - Gender identification or expression

# HIB Investigation Procedures



# Investigation Steps



- HIB complaint filed (Staff must report incident on day it occurs, follow up in writing)
- Principal initiates investigation and responds to Code of Conduct issues (Key Q - Is this an allegation of HIB?)
- ABS leads investigation (10 school days to complete)
- ABS writes HIB Report (within 2 school days of completing investigation)
- Superintendent signs off on HIB response
- Board informed of incident
- Parent/Guardian notified of outcome, right to hearing
- Hearing occurs if requested
- BOE votes to affirm, reject or modify
- Parent retains rights to appeal, pursue other legal avenues



# HIB v. Conflict v. Something Else

- How do we know the difference between HIB and student conflict?
- What other issues may be mistaken for “HIB”?
- What if the word “bullying” is used but you know it does not meet the definition

# Conflict v. HIB

## Conflict

- No imbalance in power
- Mutual
- No substantial disruption
  - E.g., Students forget issue, best friends minutes later
- NOT driven by a characteristic
  - Relationship dispute
  - Property dispute
  - Random act

## HIB

- Imbalance in power
  - E.g., new student in school
- One-sided
- Substantial disruption
- Motivated by an actual or perceived characteristic

# Case Law – “Distinguishing Characteristic”

## K.L. v. Evesham School District

(App. Div. 2011)

What a personal characteristic is not:

*“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.**”*

# Common Examples, not HIB

- Two boys, like the same girl (or vice versa)
- One student loaned another something, upset it wasn't returned
- Mutual fight (even if one student wins and one loses)
- Two friends, joking with each other, use offensive language, but no actual harm

# What is Your Role?

Student, Parent, Principal,  
VP, ABS, ABC – What are  
the key roles for each?

How do you support each  
other?

What possible conflicts may  
arise? What then?



© Can Stock Photo

# Communicating with Parents



rel030 images.google.com.au



# Communicating with Parents

- When an alleged incident is first reported
- To gather relevant information
- While an investigation is ongoing
- When the ABS completes the investigation
- When the BOE is first advised
  - Written notice within 5 days
- When the parent requests a hearing
- After a final vote by the BOE
- Dealing with the aftermath, preventing future incidents

# Recent Developments on “Distinguishing Characteristic”





*C.C. o/b/o S.C. v. BOE Twp of Jefferson*, EDU 10872-14 Initial Decision (April 6, 2015) aff'd Commissioner (May 12, 2015)

**FACTS:**

- S.C. (student) made comments in front of other students that made G.C. (student) feel bad, sad, scared and insulted
  - Comments included: short, loser, dumb, no good in basketball, will not make it to the NBA, will drop out of high school, will not get into college and will become a drug dealer
- SD determined the “distinguishing characteristics” to be: height, intelligence and sports proficiency
- SD determined that a hostile education environment that interfered with G.C.’s education had been created by S.C.
- Punishment: one-half day of in-school suspension and a denial of 3 days recess
- S.C.’s guardian filed a complaint with the Morris County Executive County Superintendent’s Office, NJDOE.

*C.C. v. BOE Twp of Jefferson*, EDU 10872-14 Initial Decision (April 6, 2015) aff'd Commissioner (May 12, 2015)

## HOLDING:

- The Executive County Superintendent issued a Complaint Investigation Report, determining:
  - The Board approved HIB Policy contained all of the required components
  - The Board implemented the HIB policies and procedures
  - Under the HIB policy and Code of Student Conduct, suspension was within the range of responses allowed
  - The Board's decisions was not arbitrary, capricious or unreasonable

# *G.C. o/b/o v. BOE of Twp of Montgomery,* Commissioner 2016: April 22

## FACTS:

- 6<sup>th</sup> Grader made comments in the cafeteria about his classmate's vegetarian lifestyle
- Comments included:
  - It's not good to not eat meat
  - He should eat meat because he'd be smarter and have bigger brains
  - Vegetarians are idiots
- Student determined to have violated HIB Policy
  - Distinguishing Characteristic: Vegetarianism
  - Comments were verbal communications that substantially interfered with the student-victim's rights
  - Comments insulted and demeaned the student-victim
- Punishment: 5 lunch-time detentions

*G.C. o/b/o v. BOE of Twp of Montgomery,*  
Commissioner 2016: April 22

HOLDING:

- HIB finding upheld
  - BOE did not act in an arbitrary, capricious or unreasonable manner when it concluded that the student's comments constituted HIB under the NJ Anti-Bullying Bill of Rights Act.

*L.P. and H.P. o/b/o . BOE of West Morris Reg. HS District,*  
EDU 04462-16, Initial Decision (June 10, 2016)

**HOLDING:**

- Affirmed BOE’s determination that a series of alleged acts between Senior and Freshman female fencers did not constitute HIB
- BOE’s determination was not arbitrary, capricious or against the weight of the evidence.
- Freshman fencer could not prove that the alleged incidents occurred or constitute acts of HIB
  - Although the circumstances showed a “conflict”, it did not rise to the level of HIB
  - Alleged incidents were not corroborated
- ***A Distinguishing Characteristic is NOT a dispute between students such as:***
  - ***A relationship falling apart between former friends***
  - ***A fight over a piece of property***
  - ***Some form of personal vendetta of one against another***

# Addressing LGBT Student Issues

- Increased likelihood of being victimized by HIB
- Increased likelihood of suicidal ideation
- Difficult issues with balancing student privacy, parental rights
- Specific challenges related to transgender students
- Specific challenges related to attitudes of students, staff members, parents

# Cyberbullying

- 43% of teens have been victims of cyberbullying
- 81% said others cyberbully because they think it is funny
- Nearly 80% of teens say they do not have internet rules or found ways around rules
- Only 11% of teens discuss cyberbullying with parents

– Source: National Crime Prevention Council

# V.B., et al v. Flemington-Raritan Regional BOE, et al. (August 3, 2015)

<http://www.njtvonline.org/news/video/school-brings-students-into-bullying-lawsuit/>

**FACTS**: Students were bullied at their schools. Parents sued the School Districts. The School Districts brought in the “Bullies” and their parents as Additional Defendants.

**HOLDING**: Student bullies and/or the parents can be brought in by SD if particular criteria are met.

- In this case, the SD ultimately withdrew their claims against the parents
- Some of the students were kept in the case, others were dismissed.

**IMPLICATIONS???**



# Immunity For Reporters



- Staff members who report suspected child abuse, HIB, drug & alcohol use & teen dating violence are immune from legal liability

# Proposed HIB Code Revisions

- Initiating Investigation
- Timeline for Appeals
- Communicating Sensitive Information
- Students with Disabilities
- School Safety/Climate Team
- Possibly take effect in October, 2017

# Conclusion

- Thank you for choosing professional development with LEGAL ONE!
- Follow us on Twitter @LEGALONENJ
- If you have any questions about this presentation or suggestions for future seminars, please send an email to: [dnash@njpsa.org](mailto:dnash@njpsa.org)