

BULLYING

A LEGAL PERSPECTIVE

Presented By:
Mariann Crincoli, Esq.

TRUSTED ATTORNEYS SERVING SPECIAL NEEDS CHILDREN THROUGHOUT NEW JERSEY



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HISTORICAL OVERVIEW OF THE LAW



- 2002 - NJ ENACTED AN ANTI BULLYING LAW
 - Required schools to adopt an HIB policy
- 2008 – COMMISSION ON BULLYING IN SCHOOLS ESTABLISHED
- 2009 – COMMISSION RECOMMENDATIONS SUBMITTED TO THE GOVERNOR
- 2010 – NEW HIB LAW INTRODUCED AND APPROVED BY THE LEGISLATURE
- 2011 - ANTI BULLYING BILL OF RIGHTS ACT SIGNED INTO LAW EFFECTIVE SEPTEMBER 2011
- 2012 – ANTIBULLYING TASK FORCE AND BULLYING PREVENTION

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PURPOSE OF THE LAW

- In 2002, Anti-Bullying Law was enacted requiring districts to adopt a HIB policy
- Evolved into Anti-Bullying Act of 2011 in order to strengthen standards and procedures for reporting, investigating and responding to incidents of harassment, intimidation and bullying
- Address school climate by using a comprehensive approach to prevention of HIB
- Adds Requirements



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NEW JERSEY ANTI-BULLYING TASK FORCE



- Final Report January 2016
- Makes various recommendations to further clarify the law
 - Include power imbalance in definition of HIB to make it easier to identify
 - Establish minimum criteria to initiate HIB investigation at principal level
 - Increase training and focus on best practices to improve school climate
 - Address needs of most vulnerable populations when developing policies, procedures, programming and training
 - Require school climate self-assessment

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THE LEGAL DEFINITION OF HIB

Any **gesture**, any **written, verbal or physical act** or any **electronic** communication, whether it be a single incident or series of incidents, that:

Is reasonably perceived as being motivated by an **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 AND that:*

Takes place on school property, at any school-sponsored function, on a school bus, or off school grounds, **AND that**

Substantially disrupts or interferes with the orderly operation of the school or the rights of other students, **AND that**



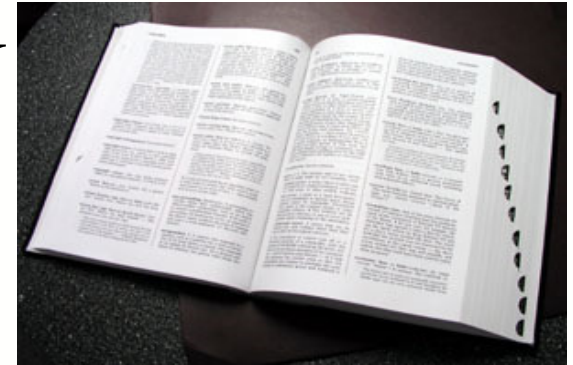
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THE LEGAL DEFINITION OF HIB Cont...



EITHER:

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; **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 a physical or emotional harm to the student.

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What does the HIB Law Require School Districts to do?

- Develop and implement an anti-bullying policy/procedures utilizing legal definition which shall be reviewed annually
 - Policy must be publicized and on district website via a link
- Create new school roles
 - Anti-bullying coordinator
 - Anti-bullying specialist
 - Establish a school safety team



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What School Districts Must Do cont...



- **Implement**
 - *anti-bullying prevention trainings and programs*
- **Investigate**
 - *allegations of HIB*
- **Report**
 - *all HIB incidents to NJDOE*
- Develop, foster and maintain a positive school climate

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REPORTING PROCEDURES

- All acts of HIB must be reported **verbally** to the principal on the same day when the school employee or service provider witnessed or received reliable information regarding an alleged HIB incident
- Principal must inform parents of ALL students involved in the alleged incident – information does not mean everything there is to know
- All acts of HIB shall be reported in **writing** to the principal within 2 school days of when the school employee or contracted service provider witnessed or received reliable information that a student has been subject to HIB



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REPORTING PROCEDURES Cont...

- Investigation shall be **initiated** within 1 school day of the report
- Investigation shall be **completed** within 10 school days from the date of the written report but report may be amended if necessary
- Results of the investigation must be reported to the superintendent within 2 school days
 - Superintendent has discretion to issue consequences, establish training programs, order counseling or recommend other action



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REPORTING PROCEDURES Cont...

- Results of investigation shall be reported to the **board of education** no later than the date of the next board of education meeting following the completion of the investigation along with recommendations of superintendent
- Parents shall be entitled to receive information about the investigation within 5 days AFTER the results are reported to the board
 - Nature of investigation
 - Findings
 - Whether discipline was imposed



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REPORTING PROCEDURES Cont...

- Parents may appeal and request an informal hearing before the board
- Hearing must be held within 10 days of the request
- Hearing must be held in executive session to protect confidentiality of students
 - Not adversarial but parents may bring counsel
 - Board may hear from anti-bullying specialist



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REPORTING PROCEDURES Cont...

- At the next board of education meeting (same night usually) the board shall issue a decision in writing
 - Affirm
 - Modify
 - Reject



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RIGHT TO APPEAL



- Board's decision may be appealed to the **Commissioner of Education** within 90 days
 - Burden of Proof to demonstrate that Board's decision was arbitrary, capricious or unreasonable
- Parents, students, guardians or an organization may file a complaint with the **Division on Civil Rights** within 180 days of the occurrence of any HIB incident based on a protected class



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Additional Protections for the Special Needs Student

- Special needs students are bullied or harassed more than their nondisabled peers
- Physical characteristics, processing and social skills, intolerant environments may increase the risk that students with disabilities will be bullied
- Some students with disabilities may not, due to the characteristics of their disabilities, understand that they are being bullied



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Additional Protections cont.

- Several laws in addition to the State's anti-bullying law may be triggered
 - IDEA – Individual with Disabilities in Education Act (OSERS)
 - Section 504 of the Rehabilitation Act (OCR)
 - Title II of the Americans with Disabilities Act (OCR)



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Additional Protections cont.

IDEA

BULLYING OF A STUDENT WITH A DISABILITY THAT RESULTS
IN A STUDENT NOT RECEIVING MEANINGFUL EDUCATIONAL
BENEFIT = A DENIAL OF FAPE THAT **MUST BE REMEDIED**



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Additional Protections cont.

School should convene an IEP team meeting to determine whether, as a result of the effects of bullying, the students needs have changed such that the IEP is no longer designed to provide meaningful educational benefit

Are different or additional special education or related services necessary?

A change in placement may be necessary

It's a team decision and Parents are an integral part of the team

School has an ongoing obligation to ensure FAPE even if special needs student is the bully



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Additional Protections cont.

Section 504 and Title II

Both prohibit discrimination on the basis of a disability

Both Civil Rights statutes

VIOLATION

If harassment based upon disability is sufficiently serious that it creates a **hostile environment** and **school officials knew or should have known about the bullying** and the school did not respond appropriately



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Additional Protections cont.

Hostile Environment

the conduct was sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school

If a student 504 FAPE services are affected by the bullying, school has an obligation to remedy

Under Section 504, **school has an ongoing obligation to ensure FAPE**



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WAS FAPE DENIED?

When bullying is based upon a disability, FAPE is not always denied but there is a **STRONG LIKELIHOOD THAT FAPE WAS DENIED**

Best practice is to convene an IEP or 504 meeting



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INDICATORS THAT FAPE WAS DENIED

- Adverse changes in academic performance
- Onset of emotional outbursts
- Increase in frequency or intensity of behavioral interruptions
- Rise in absences or tardies
- Withdrawal from peers/social situations
- School refusal/avoidance
- Depression
- Poor relationships with peers/teachers



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HOW PARENTS CAN HELP

- Read your District's HIB Policy and Understand it
- Speak to your child about the District's HIB Policy
- Be aware of any changes in your child's academic performance, behaviors and other effects of bullying
- Immediately Report a HIB if you learn of one
- Attend parent workshops/trainings offered by your School District – GET EDUCATED!
- Ask for an IEP or 504 Meeting if your child has been involved in HIB as either a target or a bully
- Ask for the written records of the investigation of a HIB if your child has been involved in a HIB
- Know your APPEAL RIGHTS



**we can
help**

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AMENDMENTS TO HIB LAW

Scheduled to go into effect July 1, 2018

1. Initiation of HIB Investigation
 - a. New Regulation – PERMITS local board policy to allow school principal in consultation with ABS to make an initial determination as to whether reported incident is an act of HIB
 - b. Must assume all allegations are true
 - c. Parent may appeal decision not to initiate an investigation
 - d. Previously – no discretion



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2. Approved Private Schools for Students with Disabilities

New Regulation – Requires APSSDs to adopt HIB policy

New Regulation – Requires sending district of alleged victim to take lead in investigation involving APSSD students when incident occurs:

- On school bus

- At school sponsored function and/or

- Off school grounds

New Regulation -- Requires APSSD staff to cooperate with sending district in investigation

Previously public school discipline rules applied



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3. Notification to Parents

New Regulation – Requires school districts to take into account circumstances of incident when communicating with parents in order to protect privacy rights of student (in response to concerns about sexual orientation issues)

Previously – not addressed

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4. Timeline for Parent Appeal

New Regulation – Requires parent seeking an appeal to do so within 60 calendar days after receipt of written notice of outcome of investigation

Previously – no time limitation



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5. School Safety Team

New Regulation – changes name to Safety/Climate Team

Clarifies that parents shall not receive confidential student information and neither shall team members not authorized



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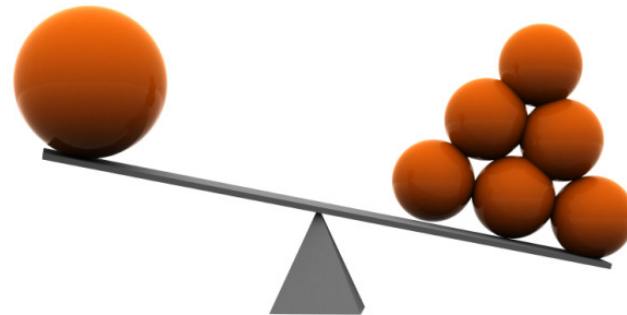
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6. Power Imbalance Recognized

New Regulation – Requires every board policy to include a statement that bullying is unwanted aggressive behavior that may involve a real or perceived power imbalance

Power imbalance is not a distinguishing characteristic but what underlies the imbalance is likely to be the distinguishing characteristic

Previously – not addressed



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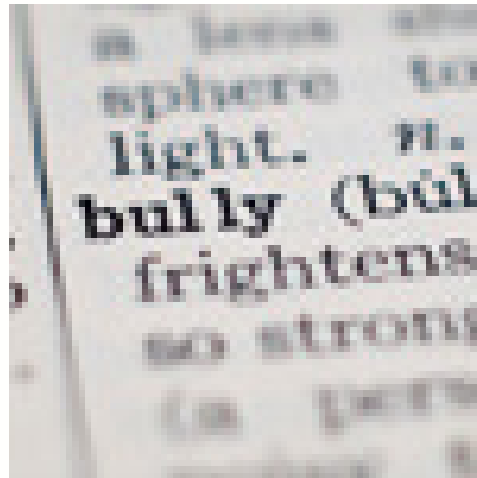
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7. Students with Disabilities

New Regulation requires district to consider nature of disability when determining remedial actions

Previously – no delineation made for students with disabilities

NOTE: Just because a student has a disability does not mean he or she cannot be a bully or be found to be a bully



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