

NJPSA EDUCATION LAW PRIMER

HARASSMENT, INTIMIDATION, AND BULLYING (HIB)



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By Robert M. Schwartz, Esq. and Carol R. Smeltzer, Esq.

Introduction

On January 5, 2011, New Jersey adopted the “Anti-Bullying Bill of Rights Act.” *N.J.S.A. 18A:37-13 et seq.* The purpose of the Anti-Bullying Bill of Rights Act was to strengthen the standards and procedures for preventing, reporting, investigating and responding to incidents of harassment, intimidation and bullying of students on school property (and in certain circumstances off school property) and on school buses, and at school-sponsored functions.

N.J.S.A. 18A:37-13 provides the Legislature’s findings with regards to harassment, intimidation and bullying of students:

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.

This primer will address the statutory requirements contained in the Anti-Bullying Bill of Rights Act as well as relevant case law on harassment, intimidation and bullying of students.

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Definition of Harassment, Intimidation or Bullying

(*N.J.S.A. 18A:37-14*):

- Any gesture, written, verbal or physical act or any electronic communication (either a single incident or a series of incidents);
- That is reasonably perceived as being motivated by either 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 a 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; 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.

Mandatory Board Policy:

- Every school district must adopt a policy prohibiting harassment, intimidation or bullying on school property, at a school-sponsored function or on a school bus. (Note: While not specifically required by the law, it may be wise to include in the policy a prohibition on off-school grounds harassment, intimidation or bullying that interferes with the orderly operation of the school).

- Board policy must be adopted through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators and community representatives.
- Board policy must contain, at a minimum, the following components:
 1. A statement prohibiting harassment, intimidation or bullying of a student;
 2. A definition of harassment, intimidation or bullying no less inclusive than that set forth in *N.J.S.A. 18A:37-14* (see above);
 3. A description of the type of behavior expected from each student;
 4. Consequences and appropriate remedial action for a person who commits an act of harassment, intimidation or bullying;
 5. A procedure for reporting an act of harassment, intimidation or bullying including a provision that permits a person to report an act of harassment, intimidation or bullying anonymously; however, formal disciplinary action is not permitted solely on the basis of an anonymous report;
 6. A procedure for prompt investigation of reports of violations and complaints;
 7. The range of ways in which a school will respond once an incident of harassment, intimidation or bullying is identified, which is to be defined by the principal in conjunction with the school anti-bullying specialist, but must include an appropriate combination of services that are available within the district such as counseling, support services, intervention services, and other programs, as defined by the commissioner;
 8. A statement that prohibits reprisal or retaliation against any person who reports an act of harassment, intimidation or bullying and the consequence and appropriate remedial action for a person who engages in reprisal or retaliation;
 9. Consequences and appropriate remedial action for a person found to have falsely accused another as a means of retaliation or as a means of harassment, intimidation or bullying;

10. A statement of how the policy is to be publicized, including notice that the policy applies to participation in school-sponsored functions;
11. 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
12. 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.

To assist school districts in developing policies for the prevention of harassment, intimidation or bullying, the Commissioner of Education shall develop a model policy applicable to grades kindergarten through 12. This model policy shall be issued no later than December 1, 2002.

Notice of the school district's policy shall appear in any publication of the school district that sets forth the comprehensive rules, procedures and standards of conduct for schools within the school district, and in any student handbook.

Model Policy and Guidance for Prohibiting Harassment, Intimidation and Bullying on School Property, at School-Sponsored Functions and on School Buses (Revised April 2011):

The New Jersey Department of Education has developed model policy language for districts to consider regarding prohibiting harassment, intimidation and bullying on school property, at school-sponsored functions and on school buses. In addition to model policy language, the New Jersey Department of Education has issued

guidance and requirements for local policy and program development; factors to be considered for determining consequences and remedial measures; examples of consequences and remedial measures; as well as resources on harassment, intimidation and bullying.

NJDOE's model policy language, guidance and requirements are available on the Internet at: www.state.nj.us/education/parents/bully.htm.

Reporting Procedure:

The Board policy prohibiting harassment, intimidation and bullying of students must include the procedure for reporting alleged harassment, intimidation or bullying. Allegations may be reported anonymously, although disciplinary action cannot be taken solely on the basis of an anonymous report.

- All acts of harassment, intimidation or bullying must 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 must inform the parents or guardians of all students involved in the alleged incident, and may discuss, as appropriate, the availability of counseling or other intervention services.
- All acts of harassment, intimidation or bullying must be reported to the school principal in writing 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 harassment, intimidation or bullying.

Investigation Procedure:

The Board policy prohibiting harassment, intimidation and bullying of students must include the procedure for investigating allegations of harassment, intimidation or bullying. The investigation procedure must include, at a minimum, the following:

- The investigation must be initiated by the principal or the principal's designee within one (1) school day of the report of the incident.

- The investigation must be conducted by a school anti-bullying specialist.
- The principal may appoint additional personnel who are not school anti-bullying specialists to assist in the investigation.
- The investigation must be completed as soon as possible, but not later than ten school days from the date of the written report of the incident of harassment, intimidation or bullying.
- Note: If there is information relating to the investigation that is anticipated but not yet received by the end of the ten day period, the school anti-bullying specialist may amend the original report of the results of the investigation to reflect the information once received.
- The results of the investigation must be reported to the superintendent of schools within two school days of the completion of the investigation.
- The Superintendent may then decide to provide intervention services, establish training programs to reduce harassment, intimidation or bullying and enhance school climate, impose discipline, order counseling as a result of the findings of the investigation, or take or recommend other appropriate action.
- The results of each investigation must be reported to the board of education no later than the date of the next board meeting following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent.
- The parents or guardians of the students who are parties to the investigation (including the parents or guardians of the alleged victim and alleged bully) are entitled to receive 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 harassment, intimidation or bullying, or whether discipline was imposed or services provided to address the incident of harassment, intimidation or bullying. This information must be provided to the parents or guardians in writing within five school days after the results of the investigation are reported to the board of education.
- A parent or guardian may request a hearing before the board of education after receiving the information, and the hearing must be held within ten days of the request. The board must 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.
- At the next board meeting following its receipt of the report, the board must issue a decision, in writing, to affirm, reject, or modify the superintendent's decision.
- The board's decision may be appealed to the Commissioner of Education no later than ninety days after the issuance of the decision.
- A parent, student, guardian or organization may file a complaint with the Division on Civil Rights within 180 days of the occurrence of any incident of harassment, intimidation or bullying based on membership in a "protected class" as defined in the Law Against Discrimination.

Appointment of School Anti-Bullying Specialists:

The principal in each school in a school district must appoint a school anti-bullying specialist. When a school guidance counselor, school psychologist, or other individual similarly trained is currently employed in the school, the principal must appoint that individual to be the school anti-bullying specialist. *N.J.S.A. 18A:37-20*. If no individual meeting this criteria is currently employed in the school, the principal must appoint a school anti-bullying specialist from currently employed school personnel. Note: Occasionally, a school guidance counselor, school psychologist or other similarly trained staff member will raise a concern that his or her appointment to the position of school anti-bullying specialist is a "conflict of interest." Principals may cite to *N.J.S.A. 18A:37-20* to support their appointment.

Duties of School Anti-Bullying Specialists:

Each school's anti-bullying specialist must:

1. Chair the school safety team;
2. Lead the investigation of incidents of harassment, intimidation and bullying in the school; and
3. Act as the primary school official responsible for preventing, identifying, and addressing incidents of harassment, intimidation and bullying in the school. *N.J.S.A. 18A:37-20.*

Note: The school district's anti-bullying coordinator must meet at least twice each school year with the school anti-bullying specialists in the district to discuss and strengthen procedures and policies to prevent, identify, and address harassment, intimidation, and bullying in the district.

School Safety Teams

A school district must form a school safety team in each school in the district 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 harassment, intimidation and bullying.

Members of a school safety team:

- Principal or principal's designee who, if possible, is a senior administrator in the school; and
- Appointees of the principal including, but not necessarily limited to, a teacher in the school, a school anti-bullying specialist, and a parent of a student in the school.
- The school anti-bullying specialist must serve as the chair of the school safety team.

School safety teams must:

1. Receive all complaints of harassment, intimidation, or bullying of students that have been reported to the principal;
2. Receive copies of all reports prepared after an investigation of an incident of harassment, intimidation or bullying;
3. Identify and address patterns of harassment, intimidation or bullying of students in the school;

4. Review and strengthen school climate and the policies of the school in order to prevent and address harassment, intimidation or bullying of students;
5. Educate the community, including students, teachers, administrative staff, and parents, to prevent and address harassment, intimidation or bullying of students;
6. Participate in the training required under *N.J.S.A. 18A:37-13 et seq.* and other training which the principal or the district anti-bullying coordinator may request;
7. 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 harassment, intimidation or bullying of students;
8. Execute such other duties related to harassment, intimidation and bullying as requested by the principal or district anti-bullying coordinator; and
9. Meet at least two times per school year.

Note: A parent who is a member of a school safety team is not permitted to participate in the activities of the team set forth in nos. 1, 2, and 3 above or any other activities of the team which may compromise the confidentiality of a student.

Duties of Principal

- The principal in each school in a school district must appoint a school anti-bullying specialist.
- An investigation of alleged harassment, intimidation or bullying must be initiated by the principal or the principal's designee within one school day of the report of the incident.
- The investigation must be conducted by a school anti-bullying specialist.
- The principal may appoint additional personnel who are not school anti-bullying specialists to assist in the investigation.
- The principal must inform the parents or guardians of all students involved in the alleged incident, and may discuss, as appropriate, the availability of counseling or other intervention services.

Harassment, Intimidation or Bullying Off School Grounds:

Under the Anti-Bullying Bill of Rights Act, schools are required to address incidents of harassment, intimidation or bullying occurring off school grounds when there is a nexus between the incident and the school (i.e., the harassment, intimidation or bullying substantially disrupts or interferes with the orderly operation of the school or the rights of other students.)

Disciplinary Action Against Administrators for Failure to Investigate or Take Sufficient Action

Pursuant to *N.J.S.A. 18A:37-16(d)*, “a school administrator who receives a report of harassment, intimidation, or bullying from a district employee, and fails to initiate or conduct an investigation, or who should have known of an incident of harassment, intimidation, or bullying and fails to take sufficient action to minimize or eliminate the harassment, intimidation, or bullying, may be subject to disciplinary action.”

Harassment, Intimidation or Bullying of Teachers, Support Staff, Administrators, Volunteers, Vendors or Other Non-Students

New Jersey’s Anti-Bullying Bill of Rights Act applies only to the harassment, intimidation or bullying of students. There are separate laws and board policies that prohibit mistreatment of staff and other non-students.

School Website

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 must be listed.

Week of Respect

Under New Jersey’s Anti-Bullying Bill of Rights Act, the week beginning with the first Monday in October of each year is designated as a “Week of Respect.” School districts are required to observe the week by providing age-appropriate instruction focusing on preventing harassment, intimidation or bullying. *N.J.S.A. 18A:37-29*.

Annual HIB Policy Review

Each school district must annually conduct a re-evaluation, reassessment, and review of its HIB policy, making any necessary revisions and additions. Each board of education must include input from the school anti-bullying specialist(s) in conducting its re-evaluation, reassessment, and review. *N.J.S.A. 18A:37-15(c)*. The district must transmit a copy of the revised policy to the appropriate executive county superintendent of schools within 30 school days of the revision.

Relevant Case Law on Harassment, Intimidation and Bullying of Students

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

The plaintiff, a parent of a fifth grader, brought suit against the school board and school officials alleging that as a result of the “deliberate indifference” of the school district her daughter was deprived of the education benefits to which she was entitled under Title IX of the Education Amendments of 1972. The parent claimed that the school board and school officials failed to remedy a classmate’s sexual harassment of her daughter. The alleged harassment consisted of repeated attempts by the student’s classmate, G.F., to touch the student’s breasts and genital area. G.F. was also alleged to have made vulgar statements such as “I want to get in bed with you” and “I want to feel your boobs.” The student reported the incidents to her mother and to her classroom teacher who said that he had reported it to the principal. Notwithstanding these reports, no disciplinary action was taken to stop G.F.’s conduct, which allegedly continued for a number of months

despite being witnessed by other staff members. Nor, according to the complaint, was any effort made to separate G.F. from the complaining student. On the contrary, despite the frequent complaints, only after three (3) months of reported harassment was the complaining student permitted to change her classroom seat so that she was no longer seated next to G.F. Moreover, the plaintiff alleged that at the time of the events in question, the school board had not instructed its personnel on how to respond to peer sexual harassment and had not established a policy on the issue.

Writing for a 5-4 majority, U.S. Supreme Court Justice Sandra Day O'Connor said lawsuits may be filed against school officials who knowingly and deliberately ignore student-on-student harassment. Referring to Title IX, Justice O'Connor wrote that "[t]he statute makes clear that, whatever else it prohibits, students must not be denied access to educational benefits and opportunities on the basis of gender."

As to when student-on-student gender oriented conduct constitutes harassment, the Court said that this depends on a "constellation of surrounding circumstances, expectations, and relationships, including, but not limited to, the harasser's and victim's ages and the number of persons involved." Moreover, Justice O'Connor cautioned that "courts must bear in mind that schoolchildren may regularly interact in ways that would be unacceptable among adults."

Hamel v. State of New Jersey, 321 N.J. Super. 67 (App. Div. 1999)

A seventh grade student alleged that her fellow students habitually teased and physically assaulted her because she was a "good" student and had received several academic awards. The alleged harassment consisted of pushing, shoving and kicking "on a daily basis," throwing "trash" at her and on one occasion throwing a "condom" at her.

Plaintiff asserted that they had discussed the harassment with the principal and superintendent. Nevertheless, the harassment continued. Plaintiff alleged that as a result of the stress caused by the harassment she collapsed in one of her classes and she experienced partial paralysis in her right leg. Plaintiff was hospitalized for one week following this incident. She was also treated by a psychiatrist complaining of "severe stomach aches, anxiety, and recurring nightmares." Plaintiff was diagnosed as suffering from post-traumatic stress disorder.

The plaintiff brought suit against the board, staff members, including the principal and vice principal, parents and other students based on negligence, tortious conduct and negligent supervision. The plaintiff alleged that the student had been harmed because of the failure of the district and its officials to take reasonable measures to stop the alleged harassment. The court held that whether the district had been "deliberately indifferent" to the alleged harassment was a "triable" issue to be presented to a jury.

Saxe v. State College Area School District, 240 F.3d 200 (3d Cir. 2001)

The U.S. Court of Appeals for the Third Circuit held that the language of the school's anti-harassment policy was at some points vague and overbroad and as a result could be interpreted to encompass protected speech.

The school policy at issue covered harassment based on race, national origin, or religion, and sexual harassment. The sexual harassment component of the policy consisted of the following:

Sexual harassment means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when: (a) submission to that conduct is made either explicitly or implicitly a term or condition of the student's education; (b) submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting the student; (c) the conduct has the purpose or effect of substantially interfering with a student's educational performance or creating an intimidating, hostile or offensive educational environment. This applies whether the harassment is between people of the same or different gender. Sexual harassment can include unwelcome verbal, written or physical conduct, directed at or related to a person's gender, such as sexual gossip or personal comments of a sexual nature, sexually suggestive or foul language, sexual jokes, whistling, spreading rumors or lies of a sexual nature about someone, demanding sexual favors, forcing sexual activity by threat of punishment or offer of educational reward, obscene graffiti, display or sending of pornographic pictures or objects, offensive touching, pinching, grabbing, kissing or hugging or restraining someone's movement in a sexual way.

As to the sexual harassment component of the policy, the Court said:

Because the Policy's 'hostile environment' prong does not, on its face, require any threshold showing of severity or pervasiveness, it could conceivably be applied to cover any speech about some enumerated personal characteristics the content of which offends someone. This could include much 'core' political and religious speech: the Policy's definition section lists as examples of covered harassment 'negative' or 'derogatory' speech about such contentious issues as 'racial customs,' 'religious tradition,' 'language,' 'sexual orientation,' and 'values.' Such speech when it does not pose a realistic threat of substantial disruption, is within a student's First Amendment rights.

Frugis v. Bracigliano, 177 N.J. 250 (2003)

This case, ultimately decided by the New Jersey Supreme Court, involved a lawsuit filed on behalf of elementary school students against their former principal and board of education in connection with sexual abuse of students by the principal.

The Court held that the board of education did not fulfill its most basic obligation to protect elementary school children in its care, when it: (1) failed to implement effective rudimentary reporting procedures that would have informed it of the former principal's misconduct, including covering his office door window in violation of regulations designed to ensure student safety, photographing male students in sexually provocative poses, and routinely appearing at high-school wrestlers' nude weigh-ins and (2) grossly disregarded critical information, either in its hands or readily accessible, that called for scrutiny of the principal's activities.

L.W. v. Toms River Board of Education, 189 N.J. 381 (2007)

This case decided by the New Jersey Supreme Court involved a male student of the Toms River Public Schools who was harassed and bullied by other students over multiple years (starting when he was in fourth grade) due to his perceived sexual orientation. In seventh grade, the bullying occurred daily and escalated to physical aggression and molestation. Within days of entering high school, the abuse culminated with a pair of physical attacks. Ultimately, L.W.'s discomfort prompted him to withdraw from his local high school and enroll elsewhere at the expense of the Toms River Public Schools.

In this case, the school district was found liable under New Jersey's Law Against Discrimination because it knew of the student-to-student sexual harassment and failed to take sufficient action to stop the harassment. Although the school district had taken action over the years to stop the harassment of L.W., the district did not take sufficient action to eradicate the harassment.