



NJPSAFE

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Latest Developments on
New Jersey' Anti-Bullying Bill of Rights

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RECENT LEGISLATION RELEVANT TO HIB



Recent Legislation - 2019

- **P.L. 2019, c. 222 (8/9/19)** – Requires health curriculum for public school students in grades kindergarten through grade 12 to include instruction on mental health. The instruction in mental health shall be adapted to the age and understanding of the students and shall be incorporated as part of the district's implementation of the New Jersey Student Learning Standards in Comprehensive Health and Physical Education. 2020-2021 school year.

Recent Legislation – 2019

- **P.L. 2019, c.185** –Requires school districts to incorporate age-appropriate sexual abuse and assault awareness and prevention education in grades preschool through 12 as part of New Jersey Student Learning Standards in Comprehensive Health and Physical Education.

Recent Legislation – 2019

- **P.L. 2019, c.16** - Requires school districts to incorporate instruction in grades 6 through 12 on law and meaning of consent for physical contact and sexual activity as part of Student Learning Standards in Comprehensive Health and Physical Education.
- Effective 2019-2020 School Year

Recent Legislation -2018

- **P.L.2018, c.80 (8/10/18)** - Requires school districts to include instruction on consequences of distributing and soliciting sexually explicit images through electronic means (sexting) as part of New Jersey Student Learning Standards in Comprehensive Health and Physical Education. 2019-2020 school year

Recent Legislation – 2018

- P.L. 2018, c.34 - Requires firearms seizure when certain health care professional determines patient poses threat of harm to self or others. Duty to warn extends to *“[a]ny person who is licensed in the State of New Jersey to practice psychology, psychiatry, medicine, nursing, clinical social work, or marriage and family therapy.”*

Recent Legislation – 2018

P.L. 2018, c. 73 – 8/10/18:

- Requires SD to provide daily recess period for students in grade kindergarten through 5
- Permits denial of recess for violation of Code of Student Conduct but student must be provided with restorative justice activities

NJDOE Guidance – Recess Law

- July 5, 2019 – NJDOE Memo
 - Additional Guidance: Implementation of Daily Recess for Kindergarten through Grade 5 Students
 - <https://homeroom5.doe.state.nj.us/broadcasts/2019/JUL/05/20304/Additional%20Guidance%20-%20Implementation%20of%20Daily%20Recess%20for%20Kindergarten%20through%20Grade%20Five%20Students.pdf>
- July 5, 2019 – NJDOE FAQ Guidance
 - <https://homeroom5.doe.state.nj.us/broadcasts/2019/JUL/05/20303/NJDOE%20Frequently%20Asked%20Questions%20Recess%20Law.pdf>

LGBTQ ISSUES



Recent Legislation – 2019

P.L. 2019, C.6 (1/31/19) - Instructional Materials

1. A board of education shall include instruction on the political, economic, and social contributions of persons with disabilities and lesbian, gay, bisexual, and transgender people, in an appropriate place in the curriculum of middle school and high school students as part of the district's implementation of the New Jersey Student Learning Standards.
2. A board of education shall have policies and procedures in place pertaining to the selection of instructional materials to implement the requirements of section 1 of this act. When adopting instructional materials for use in the schools of the district, a board of education shall adopt inclusive instructional materials that portray the cultural and economic diversity of society including the political, economic, and social contributions of persons with disabilities and lesbian, gay, bisexual, and transgender people, where appropriate.
3. This act shall take effect immediately and shall first apply to the **2020-2021 school year.**

— https://www.njleg.state.nj.us/2018/Bills/AL19/6_.PDF

Reaction to Legislation – February 2019

- Hackensack School Board Trustee allegedly sent emails to the acting Superintendent indicating that she was “disgusted and appalled” by the January 31, 2019 law requiring public schools to teach LGBTQ History.
 - "I find it repugnant that someone's sexual preferences have anything to do with their contributions or achievements in society,"
 - "Everywhere I turn, this alternate lifestyle narrative is being shoved (down) our children's throats. Where does it end???"
- Emails were obtained through OPRA
- <https://www.northjersey.com/story/news/bergen/hackensack/2019/06/14/hackensack-nj-school-board-member-under-fire-emails-targeting-lgbt/1456953001/>

DOE Transgender Student Guidance

- NDOE Guidance:
 - <https://nj.gov/education/students/safety/sandp/transgender/Transgender%20Guidance%20Resources%202018.pdf>
- Definitions
- Student Gender Identity – Parent consent, court order name change not required; parent notification
- Name and pronoun use, student ID, student dress
- Safe and Supportive Environment – staff training, equal access, HIB, social and emotional learning
- Confidentiality and Privacy
- Student Records – gender identity v. birth name
- Student Activities
- Restrooms and locker rooms

HIB Motivated by Gender Identity

L.K. and T.K. o/b/o A.K. v. Bd. Of Ed. of Twp. of Mansfield – Comm. 4/22/19

- Commissioner determined that BOE finding of HIB was not arbitrary, capricious or unreasonable. Student repeatedly questioned 7 year old student re: name, hair, clothing student wore. Victim identified as a male in the previous year and was now identifying as a female. Student was repeatedly counseled that the behavior was not appropriate and was unacceptable but continued behavior. Student received counseling and one recess detention.
- Conduct was motivated by victim's gender identity and expression, took place on school bus and school grounds, interfered with victim's rights and rights of other students. Victim did not want to ride on the same bus with the student. Behavior was demeaning, caused emotional harm and created a hostile educational environment.

HIB Code Amendments – Effective July 1, 2018

Topics

- Initiation of HIB Investigation
- Role of Approved Private Schools with Disabilities
 - Is this being followed? / Who is investigating?
- Taking Into Account the Circumstances of Incident when Contacting Parents
- Timeline for Parental Appeals
- School Safety / Climate Team
- Recognition of Power Imbalance
 - “Power Imbalance” is NOT a Distinguishing Characteristic by itself
 - If you can identify a Power Imbalance, then you should be able to identify the characteristic(s)
- Conflict of Interest
- Student with Disabilities

Case Law on HIB Initial Threshold Assessment

K.P. o/b/o I.M. v. Bd. of Ed. of Twp. of Saddle Brook, Commissioner 9/5/19

- Commissioner determined that BOE was not arbitrary, capricious or unreasonable in making a preliminary determination that alleged conduct did not meet the statutory definition of HIB. Board did not conduct an HIB investigation.
- **Board policy set forth a process by which to make a preliminary determination prior to launching into a full HIB investigation, as per administrative code. (See HIB code amendments - 7/1/18)** Board followed its process.

Initial Threshold Assessment Upheld

K.P. o/b/o I.M. v. Bd. of Ed. of Twp. of Saddle Brook, Commissioner 9/5/19

- **Parent did not allege that I.M. had a distinguishing characteristic, that the comments were motivated by a distinguishing characteristic or that the alleged statement substantially disrupted or interfered with the orderly operations of the school.**

New Jersey Anti-Bullying Task Force - 2019

P.L. 2019 c. 179, 7/19/19

Establishes new task force to examine and make recommendations regarding implementation of "Anti-Bullying Bill of Rights Act.

- 11 members, Chairperson of ABTF
- Effectiveness of ABRA, unintended consequences of law, regulations; impact on athletic coaches
- Recommendations for law and regulations
- One public hearing; victim testimony, report 180 days after organization

Uniform State Memorandum of Agreement Between Education and Law Enforcement

Student Safety Data System (SSDS) Combines and Replaces EVVRS and HIB

- <https://homerom4.doe.state.nj.us/ssds/>
- [SSDS Guidance 2019-20](#)
- [Incident Report Form](#)
- Incident reports include violence, vandalism, weapons offenses, substance offenses, HIB
- Location - on school grounds, in school building, at school entrance, outside of school building, off school grounds (HIB only), both on and off school grounds

2019 Revised Memorandum of Agreement

3.16. Requirement to Report Bias-Related Incidents

- *N.J.A.C. 6A:16-6.3(e)* – School employees must report a “bias-related act” committed or about to be committed, regardless of the location of the act to principal/administrator. School district must report acts to local law enforcement and county prosecutor’s office.
- “Bias-Related Act” Definition
 - An act that is directed at a person, group of persons, private property, or public property that is motivated in whole or in part by race, color, national origin, ethnicity, gender, gender identity or expression, disability, religion, or sexual orientation.
 - Need not involve conduct that constitutes a criminal offense.
 - All Hate-Crimes are Bias-Related Acts, but not all Bias-Related Acts are Hate-Crimes
 - Such Acts may constitute HIB

Student Safety Data System (SSDS) Combines and Replaces EVVRS and HIB **Violence and Vandalism in the Schools Report** **2017-2018**

- Number of confirmed HIB incidents
 - **2017-2018 – 7,522**
- Number of Cases Involved Protected Class under State or Federal Discrimination Law
 - **2017-18 – 3,460** (46% of all confirmed HIB incidents)
- Number of Bias Incidents Reports to Law Enforcement
 - **2017-18 – 32** (*less than 1% of cases that should have been reported*)

New Jersey Anti-Bullying Case - 2019

Matters remanded to board where board made procedural errors. Case dismissal and removal of HIB references no longer acceptable remedy.

- **(9) J.L. o/b/o A.L. v. Bridgewater-Raritan Bd. of Ed. 12/9/16** – seven year old student on bus made fun of classmate with speech disability; verbal reprimand, changed bus seating; no written decision, no info to parents, 10 days; remand for hearing
 - App. Div. 10/16/18 - info to parents for hearing, ***“the full record of the HIB allegations ... including the underlying investigative report, [and] any additional written reports or summaries, and the letter from [the victim’s] parents to the superintendent.”***
 - Certification denied Sup. Ct. 3/8/19

New Jersey Anti-Bullying Case Law - 2019

M.S. and N.S. o/b/o J.S. v. Bd. Of Ed. of Twp. of Hainesport - Commissioner 6/18/19

- Commissioner agreed with ALJ that BOE finding of HIB was not arbitrary, capricious or unreasonable.
- While conduct was part of a long-standing and ongoing conflict, student told victim that he was weak, a weakling, commented on his athletic ability, and told victim that “you can’t catch, you suck.”
- Comments were motivated by the distinguishing characteristic of being weak, were demeaning and caused embarrassment to the victim. Adjudicated bully was given a one day in-school suspension; schedule was adjusted to limit contact with victim.

New Jersey Anti-Bullying Case Law - 2019

M.S. and N.S. o/b/o J.S. v. Bd. Of Ed. of Twp. of Hainesport - Commissioner 6/18/19

- **“Commissioner emphasizes that overturning a BOE’s finding of HIB presents a high hurdle, requiring clear evidence that the board acted indiscriminately or in bad faith in reaching its determination.”**
- ALJ – “ While some finder of fact might conclude otherwise, where there is more than one reasonable way to understand a set of facts, it cannot be said that the choice of one reasonable interpretation over the other...amounts to an unreasonable choice.”

New Jersey Anti-Bullying Case Law - 2019

Ruth Young-Edri v. Bd. Of Ed. of City of Elizabeth, Commissioner 7/8/19

- Commissioner agrees with ALJ that BOE failed to comply with the due process protections of the ABRA when it determined that a teacher had committed an act of HIB against a student in her class. Matter remanded to BOE for full due process.
- Teacher not provided with written summary of the investigation within 5 days, investigation results not shared with CSA, no CSA decision, no BOE decision.

New Jersey Anti-Bullying Case Law - 2019

Ruth Young-Edri v. Bd. Of Ed. of City of Elizabeth, Commissioner 7/8/19

- Staff members accused of committing an act of HIB are entitled to same due process guaranteed to students.
- ALJ - Staff member entitled to information as set forth in *J.L. v. Bridgewater BOE*, No. A-22022-16 (App. Div. 10/16/18)
- ALJ – ABRA does not require a full adversarial hearing; executive session, may hear from the ABS. Full adversarial hearing – appeal to Commissioner

New Jersey Anti-Bullying Case Law - 2019

Tamaika DeFalco v. Bd. Of Ed. of Twp. of Hamilton, Commissioner 7/26/19

- BOE determination that teacher committed an act of HIB when she, in the presence of other students, directed a classified student to visit the child study team, caseworker, guidance office or In-School Alternative Program if student was unable or unwilling to work in class was not arbitrary, capricious or unreasonable.
- Statements pointed out the classified student's mental or sensory disability, placed the student in reasonable fear of emotional harm, insulted and demeaned him and created a hostile educational environment.
- Discipline - Letter in teacher's file, remedial training on HIB, building positive relationships in the classroom.

New Jersey Anti-Bullying Case Law - 2019

Tamaika DeFalco v. Bd. Of Ed. of Twp. of Hamilton, Commissioner 7/26/19

- Staff members accused of committing an act of HIB have the same due process and hearing rights provided to parents and guardians of students.
- ABRA does not require a trial-type adversarial proceeding; provisions for discovery, cross-examination could have been included by the Legislature but were not. May hear from the ABS.
- Arbitrary and capricious standard applies to staff as well as students. Argued preponderance of evidence.

H.S. Wrestler – December 2018

- [Buena Regional H.S. Wrestler required to cut his hair or forfeit match](#)
- Video viewed millions of times
- Sparked national debate
- NJ Division on Civil Rights investigation completed on September 18, 2019

H.S. Wrestler – AG Settlement/Guidance

- AG announces settlement and new guidance document - <https://www.nj.gov/oag/newsreleases19/pr20190918a.html>
- Referee suspended for 2 years
- NJSIAA rules must be limited to hair length, and cannot be applied in way that discriminates based on hair style
- New AG [guidance](#) clarifies that discrimination on the basis of race includes discrimination based on a trait “inextricably intertwined with or closely associated with race,” including hairstyle.

HIB Case Law – Access to Records/ Video

Letter to Wachter, December 7, 2017

- Pennsylvania SD was advised by the U.S. Department of Education Office of the Chief Privacy Officer that a parent had a right to inspect video footage showing her son's role in an on-campus hazing incident, even though the parents of other students did not consent to disclosure of their child's images in the video.
- See also N.J.A.C. 6A:32-7.1(f) - *The parent or adult student shall have access to his or her own records and have access to be or be specifically informed about only that portion of another student's record that contains information about his or her child or himself or herself.*

HIB and Special Education – Case Law

L.B. o/b/o J.B. v. Roselle Board of Education 2018 WL 2016647 OAL Dkt. No. EDS
05079-16 (April 13, 2018)

- School district failed to provide FAPE in the LRE for a multiply handicapped now 19 year old student.
 - Student had a major depressive disorder and a generalized anxiety disorder and was deemed other health impaired.
 - Student was also deemed emotionally disturbed as he developed fears associated with school over a period of time to the extent that he was unable to attend school.
- ALJ ordered that student be placed at the New Roads School in Somerset, including transportation, and was awarded one school year plus six months of compensatory education.
- Allegations were made of bullying in the 2014-2015 school year.
 - There was no direct evidence of bullying; no witnesses testified to seeing such conduct.
 - School district determined that each incident of alleged bullying was unfounded.
 - However, four psychiatrists and one psychologist credited the student's accounts in regard to bullying as the conditions which impacted him in the 2015-2016 school year.

Elementary Scenario

A parent complains that her daughter, Princess, is being ostracized and it is a form of bullying. She notes that everyone else in the fourth grade class has been invited to one student's birthday party and her daughter has not. She doesn't know why her daughter was excluded, but she knows it must be bullying, because there is no other reason for her daughter to be excluded.

- a. What if Princess tells her teacher everyone hates her because she is prettier and smarter than they are?
- b. What if students have posted photos from the party online?
- c. What if the photo that is posted online has a caption from a student that says "Everyone who counts is here!"

Middle School Scenario

Jin is a seventh grade Korean student whose father has just filed a claim of HIB. He alleges that his son was bullied two weeks ago when he came to school on a Monday morning. It was school spirit day and all students were encouraged to wear yellow, which is the school color. Jin did not remember to wear yellow that day. Another student, Daniel, allegedly said to him, “Hey Jin, what’s up. I thought if anyone would be wearing yellow it’s you. You’re always yellow!” Jin’s father explains that his son is very resilient and never mentioned the incident, and that he only found out about it when the parents of another student mentioned it.

The father says that although his son is doing fine academically and emotionally he should not have to accept such terrible treatment and the other student needs to have consequences.

Questions?

Conclusion

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