

# **The Anti-Bullying Bill of Rights Act: What Parents Need to Know**

Presented to the  
Parents and Guardians of the Paramus Public School District  
October 27, 2022

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# Agenda

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1. Definition of HIB
2. Administrators' Duties
3. HIB and Cyber Harassment Amendments
4. The Investigations and Appeals
5. Cases About Conduct Away from School Grounds

# The Anti-Bullying Bill of Rights: Purpose

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“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.”

# The Statutory Definition of HIB

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“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.”

# Breaking it Down: The conduct must meet all of the following criteria...

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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...

# Breaking it Down: The conduct must *also* meet one of the following criteria...

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Has at least one of the following characteristics:

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.

# Key Concept: The Act

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

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## 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.

# Key Concept: Reasonably Perceived

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- 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 victim or witnesses *felt* that the student was targeted based on the characteristic.
- If the answer is yes, then the question then becomes whether that belief is *reasonable*.



# Key Concept: Motivated By

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## Actual or Perceived Characteristic

- Race
- Color
- Religion
- Ancestry
- National origin
- Gender
- Sexual orientation
- Gender identity or expression

## 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

# Key Concept:

## Substantial Disruption or Interference

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

# Key Concept: The Effect

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

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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.

# Key Concept: Location

Where and when can an act of HIB occur? (Part One)

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## Generally

1. On school grounds;
2. On a school bus;
3. At any school-sponsored function.

# Key Concept: Location

## Where and when can an act of HIB occur? (Part Two)

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### More limited:

**Off school property**, when a school employee is made aware of such act, including (1) Any other physical location; or (2) 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).

# Key Concept: *All* Criteria Must be Met

Not every code of conduct violation is a HIB

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- Note that *all* of the criteria must be met to be a HIB. *See, e.g., N.U. o/b/o M.U. v. Mansfield Bd. of Educ.*, OAL Dkt. No. EDU-09701-20 (Aug. 10, 2022).
  - In December 2017, an eleven year old student got a haircut and dyed his hair blonde, and a fellow classmate told him that he looked like Donald Trump. A HIB investigation followed. Ultimately, the Commissioner determined it was not a HIB because it did not satisfy *all* of the elements: it was a verbal act, reasonably perceived as being motivated by an actual or perceived characteristic (the student's haircut/color), and insulted or demeaned the student. **But** there was no evidence that the comment “substantially disrupted or interfered with the rights of other students or the orderly operation of the school.”
  - The Board claimed that the alleged victim shaved his head and felt reluctant to return to school, but there was no documentary support for that claim, especially since it was not in the HIB report itself.

# Key Concept: Peer Conflicts

Not every code of conduct violation is a HIB

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- Not every instance of poor behavior by students will meet the definition.
  - Social or peer conflicts are often not HIB. Disputes about possessions, disputes about who's a better soccer player, arguments that turn into fist fights, etc.
  - *See, e.g., W.H. o/b/o Z.A. v. City of Beverly Bd. of Educ.*, OAL Dkt. No. EDU-08075-19 (Oct. 21, 2021)(name calling and verbal jabs because the alleged victim's absences led his homeroom to lose a competition based on attendance—and thus did not get a pizza party—was not motivated by a distinguishing characteristic, and, therefore, not a HIB) and *L.P. and H.P. o/b/o L.P. v. Bd. of Educ. of the West Morris Regional Sch. Dist.*, OAL Docket No. 4462-16 (July 25, 2016)(student's conduct was “motivated by the relationship between the two team members and the dynamics of the fencing team [e.g., who was a better fencer], not a distinguishing characteristic protected by the Act”).
- Just because it is not HIB doesn't mean the other student “gets away with it.”

# Administrators' Duties





# Preliminary Determinations (Part One)

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- Building principals are generally required to investigate every alleged act of HIB, unless the board of education has a policy allowing for a “preliminary determination.”
- The Paramus Board of Education maintains such a Policy ([Policy 5131.1](#)), which requires the building Principal or his or her designee, in consultation with the Anti-Bullying Specialist (“ABS”), to determine whether or not the allegations meet the threshold for HIB.

# Preliminary Determinations (Part Two)

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- The threshold question is: “Assuming the facts as alleged are true, does the incident meet the definition of HIB?”
  - If the facts reported, taken as true, would constitute HIB, then the Principal must commence an investigation.
  - If they would not, then the Principal does not need to commence an investigation. However, if information is subsequently obtained that changes this determination, the Principal must then commence an investigation.
  - If there is insufficient information to make a determination, then an investigation is appropriate.

# Preliminary Determinations (Part Three)

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- The Principal must report the results of the preliminary determination to the parents of the children involved.
- The parents may appeal the determination to the Board and the Board must hold a hearing within **ten** days of the request.
- If the Board determines that the facts, if true, would meet the definition of HIB, then the Principal must conduct an investigation.

# Reporting Timelines

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

# Investigation Timelines: Initial Investigation

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## First Level – Initial Investigation

- If the Principal (or designee) determines that the allegations meet the HIB threshold, then an investigation must be initiated within **one** school day of the report.
  - The investigation must be done in consultation with the ABS.
  - The principal may appoint other personnel to assist in the investigation.
- The investigation shall be completed no later than **ten** school days from the date of the written report.
  - If there is information relative to the investigation that is anticipated but not yet received by the end of the ten-day period, the investigation report may be amended to reflect that information when it comes in.

# Investigation Timelines: Superintendent Review

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## Second Level – Superintendent’s Review

- The results of the investigation must be reported to the Superintendent within **two** school days of the completion of the investigation.
- The Superintendent may decide, based on the results, 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.
- This is colloquially referred to as “the Superintendent’s decision,” even though no written decision is issued.

# Investigation Timelines: Board Review

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## 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: Notification

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## 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 must be provided with written information about the investigation, including:
  - The nature of the investigation;
  - Whether the District found evidence of HIB; and
  - Whether any discipline was imposed or services were provided to address the act of HIB.
- Upon request, parents may obtain copies of the investigation materials, provided that other students' names and any other confidential material is redacted.



# Post-Investigation Procedures: Decision

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## 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 to be provided or programs to be instituted to reduce acts of HIB.
- At the next Board meeting following its receipt of the investigation results or following a hearing, the Board shall issue a written decision to affirm, reject, or modify the Superintendent's decision.

# Post-Investigation Procedures: Appeal

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## 3. Appeal of Board Level Decision

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

# Sharing Information with Parents (Pre-Investigation)

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## Before the Investigation Begins

- The principal must contact the parents of all the students involved in the alleged incident, and, as appropriate, may discuss the availability of counseling and other intervention services.
- The law does not specify exactly what the parents *must* be informed of. Generally, parents will be informed as to whether the child is considered to be the alleged offender or victim; but factual details will only be shared to the extent it will not compromise the investigation.

# Sharing Information with Parents (Post-Investigation)

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## After the Investigation is Complete

- 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 any 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. Parents may also request the investigation materials, with disclosure being subject to FERPA.
- 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.

# Anti-Bullying Bill of Rights Act Amendments (Part One)

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The following amendments went into effect on July 9, 2022.

The first two concern **preliminary determinations** made by the Principal, which are authorized by Board [Policy 5131.1](#).

1. The Superintendent may **disagree** with the Principal's preliminary determination that the reported incident does not meet the HIB threshold and require the Principal to initiate an investigation. The Superintendent must notify the Principal of this determination **in writing** and the investigation must be completed within 10 school days from the date of the Superintendent's notification.
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 (Part Two)

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- 3. Law Enforcement Notification:** 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, consequences *may* include 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. In all instances of an affirmative HIB finding, **a copy of the investigation results must be placed in the student's record.**

# Anti-Bullying Bill of Rights Act Amendments (Part Three)

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5. Districts must provide a means for parents/guardians to confidentially report acts of HIB using the new [HIB 338 Form for Families](#) disseminated by the DOE on August 29, 2022.
6. Written reports to the Principal must also be on a the new [HIB 338 Form for LEAs](#). 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. After the investigation, if a parent requests a Board hearing, a **redacted copy** of the reporting form that removes all student identification information shall be confidentially shared with the Board.

# Anti-Bullying Bill of Rights Act Amendments (Part Four)

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8. The Principal must keep a **written record** of the date, time, and manner of all **notifications** to parents/guardians.
9. 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 (*most recent: 2012!*)
10. 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 in the same location that it posts its HIB Policy.



# Parental Liability for Cyber Harassment

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The following amendments went into effect *immediately*.

- P.L. 2021, c. 338 also provide for civil liability of 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.

# Conduct Away from School Grounds

## *(Mahanoy, Part One)*

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- A rising sophomore did not make the varsity cheerleading team or her preferred position on the softball team, and was frustrated because certain freshmen made varsity. While at a local convenience store, she made two posts on Snapchat. One was an image of her and her friend flipping the bird with the caption, “F\*\*k school f\*\*k softball f\*\*k cheer f\*\*k everything.” The second was just text that said, “Love how me and [another student] get told we need a year of jv before we make varsity but that[t] doesn’t matter to anyone else?”
- Several students saw the Snapchats, took photos, and circulated them. The coaches decided that the use of profanity in connection with an extracurricular activity violated team and school rules, and suspended her from the cheerleading squad for the upcoming year.

# Conduct Away from School Grounds

## (*Mahanoy*, Part Two)

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- The parents filed a lawsuit in the federal district court claiming that the discipline violated the students' First Amendment (free speech) rights.
- The district court found that the posts did not cause a substantial disruption in school--the discussion only took a few minutes of an Algebra class for a few days, and although some members of the cheerleading team were upset and there was an expressed concern for team morale, there was no serious decline. Therefore, in accordance with *Tinker v. Des Moines*, the discipline violated the First Amendment.
- The Third Circuit affirmed, but seemingly held that a board's ability to discipline students for speech that causes a substantial disruption under *Tinker v. De Moines* **does not extend to *off-campus* speech.**

# Conduct Away from School Grounds

## (*Mahanoy*, Part Three)

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- The United States Supreme Court declined to establish a bright-line rule that schools cannot regulate off-campus speech and declined to define “off-campus” speech, but set forth three features of off-campus speech that should distinguish a school’s efforts to regulate that speech compared to on-campus speech.
  1. A school, in relation to off-campus speech, will rarely stand *in loco parentis* so such speech is generally not subject to regulation.
  2. Since off-campus speech includes *all* speech uttered by a student 24/7, courts must be skeptical of efforts to regulate it.
  3. Public schools, as “nurseries of democracy,” have an interest in protecting a student’s unpopular expression, *especially when* that speech takes place off-campus. (“I disapprove of what you say, but I will defend your right to say it.”)
- This speech did not have any features that would place it outside the First Amendment’s ordinary protection (e.g., not fighting words, not obscene, did not identify the school or target anyone specific in the school community). Also, the district’s interests in punishing the speech were diminished by the fact that the speech was made outside of school on the student’s own time when the school was not standing *in loco parentis*, and there was no substantial disruption in the school. The punishment thus violated the student’s rights.

# Conduct Away from School Grounds (*Sayreville*, Part One)

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- On February 11, 2017, A.H., a thirteen-year-old, posted on Snapchat a picture of a friend with a mud mask on her face with the caption, “When he says he’s only into black girls.” Several students complained, the board concluded that the act constituted HIB.
- Thereafter, A.H.’s parents claimed that A.H. was being called a racist after an incident in her multicultural class in which she glanced up after students were asked to put their heads down and raise them if they had witnessed racism in their home. She also alleged that A.H. was teased in math class when she was asked if she “liked chocolate”—a reference to whether she dated black boys. The board concluded that these incidents did not constitute HIB.
- The ALJ upheld the board’s determinations and the Commissioner agreed. As to the second incident, other students did not perceive the comments as malicious. While they may have been inappropriate, they did not result in a substantial disruption to the school or the rights of A.H. With regard to the first incident...

# Conduct Away from School Grounds

## *(Sayreville, Part Two)*

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1. The Commissioner was not persuaded by the parents' argument that *Mahanoy* should have prevented the board from punishing A.H.'s speech. The post caused a **substantial disruption** in school, unlike in *Mahanoy* where the post resulted in a short discussion in Algebra class. **Here, three students reported to the principal that they were very upset and wanted action to be taken immediately and planned to confront A.H.** The post was spread throughout the school, there were murmurings in the hallways, and teachers heard students talking about the matter. **The principal changed her schedule for weeks after the incident to monitor the lunch period to prevent fights from erupting in the cafeteria.** Multiple students approached her in the cafeteria with concerns about racism in school and wanting to know what was going to happen to the offender.
2. The parents argued that as in *Mahanoy*, the post had no nexus to the school, but the post was made on a platform that enabled many students to see the picture, thus **bringing it into the school** where the substantial disruption occurred.
3. The parents argued that as in *Mahanoy*, the board was not standing *in loco parentis* at the time of the speech, but the school was not attempting to; staff had to maintain order in the school due to the substantial disruption caused by the post.
4. Finally, unlike the type of speech in *Mahanoy* (protected as expressing disagreement or criticism), here, the speech was a photograph and remark that a reasonable person would perceive as being motivated by **race**, was inherently racist and **demeaning** to black people, and that a reasonable person should know would cause **emotional harm**.

# The End

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Questions?