



***Anti-Bullying Bill of Rights Act
(N.J.S.A. 18A:37-13 et seq.)***

**Questions and Answers
November 2015**

Glossary of Terms	
ABR	<i>Anti-Bullying Bill of Rights Act</i>
HIB	Harassment, intimidation or bullying
ABC	Anti-Bullying Coordinator
ABS	Anti-Bullying Specialist
SS/SCT	School Safety/School Climate Team
BOE	Board of Education
CSA	Chief School Administrator

HIB Policy and Procedures

Q: Who is required to participate in the development of the BOE’s HIB policy?

A: The BOE must develop the HIB policy through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators and community representatives. (*N.J.S.A. 18A:37-15a*)

Q: What is the relationship between the BOE’s HIB policy and *N.J.A.C. 6A:16-7.1*, code of student conduct?

A: The BOE’s HIB policy must be included in or must be consistent with the BOE’s code of student conduct.

Q: What is the district’s responsibility for publicizing and making parents aware of the HIB policy?

A: The board of education’s HIB policy must include a statement on the way the policy is to be publicized, including notice that the policy applies to behavior during school-sponsored functions. The policy must include a requirement that a link to the HIB policy

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is to be prominently displayed 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. Additionally, notice of the HIB policy must appear in any publication of the school district that sets forth the comprehensive rules, procedures and standards of conduct for schools in the district, and in any student handbook. (*N.J.S.A. 18A:37-15b(10), (11) and e)*)

Q: What are the requirements for the ongoing review of the HIB policy?

A: Each school district must annually conduct a re-evaluation, reassessment and review of the HIB policy, making any necessary revisions and additions. The BOE must include input from the school ABSs in conducting the re-evaluation, reassessment and review. A copy of any revised policy must be submitted to the executive county superintendent of schools within 30 days of its adoption by the BOE. (*N.J.S.A. 18A:37-15c*)

Q: Are there requirements for providing students with information on the HIB policy?

A: Yes. Each school district must develop a process for discussing the BOE's HIB policy with students. (*N.J.S.A. 18A:37-17b(3)*)

Q: What actions can an individual take if he/she disagrees with the HIB policy adopted by the school district?

A: HIB policies are adopted and implemented by each BOE. Individuals that disagree with a school district's HIB policy should first attempt to resolve the dispute with the BOE directly. Information on how to request a hearing with the BOE should be directed to the school district's main office.

If an individual is unable to resolve the dispute with the BOE directly, the individual may file a petition of appeal with the Bureau of Controversies and Disputes according to the procedures detailed in *N.J.A.C. 6A:3-1.1 et seq.* A controversy or dispute under the State school laws arises when one party alleges that another has violated State statutes governing education (Title 18A) or the rules adopted by the State Board of Education.

Additional information on the process for filing a petition of appeal can be found at http://www.state.nj.us/education/genfo/faq/faq_candd.htm.

Q: Must all reports of HIB be investigated or only those that meet the criteria in the ABR?

A: Each school district is required to adopt a policy prohibiting HIB, and the policy must include a procedure for prompt investigation of reports of violations and complaints. Although the procedure is subject to certain minimum requirements as detailed in *N.J.S.A. 18A:37-15b(6)(a)-(f)*, including a requirement for the principal or his/her designee to initiate an investigation within one school day of the report of the incident, each school district shall ultimately have local control over the content of the HIB policy (*N.J.S.A. 18A:37-15b*). Whether a principal or his/her designee will initiate an investigation upon receipt of all reports of alleged HIB, or will initiate an investigation only in those cases where he/she determines that the allegations meet the threshold definition of HIB, will depend on the HIB policy adopted by the BOE. In the event that the principal or his/her designee does not initiate an investigation, but later acquires information suggesting that the allegations meet the threshold definition of HIB, it will then be referred to the ABS for investigation.

Q: Does the principal or his/her designee have the discretion to determine whether allegations meet the threshold definition of HIB before initiating an investigation?

A: Possibly. It is the responsibility of the BOE to determine the role of the principal or his/her designee in the HIB investigatory process. Whether a principal or his/her designee will initiate an investigation upon receipt of all reports of alleged HIB, or will initiate an investigation only in those cases where the incident meets the criteria in the ABR, will depend on the HIB policy adopted by the BOE. In some districts, the BOE may determine that the principal or his/her designee should be permitted to exercise his/her discretion in determining whether allegations meet the threshold definition of HIB. If allegations meet the threshold definition, an investigation must be conducted. If allegations do not meet the threshold definition, an investigation does not need to be conducted. However, if the principal or his/her designee later acquires information suggesting that the allegations meet the threshold definition of HIB, it should then be referred to the ABS for investigation. Finally, if the principal or his/her designee cannot determine, based on the available evidence and information, whether allegations meet the threshold definition of HIB, the initiation of an investigation is appropriate.

Q: Can a finding of HIB be substantiated if, without more, the incident was motivated by an actual or perceived characteristic?

A: No. Each of three criteria identified in definition of HIB (*N.J.S.A. 18A:37-14*) must be satisfied for the incident to be deemed HIB. In order for an incident to constitute HIB, evidence of the following must be present:

- A reasonable perception of the HIB being motivated either by any actual or perceived characteristic; and
- Substantial disruption or interference with the orderly operation of the school or the rights of other students; and
- One or more of the following criteria –
 - 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.

Q: Does the ABR require that a victim of HIB belong to one of the protected categories (race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability) listed in the definition of HIB?

A: No. A student may be a victim of HIB if a gesture, written, verbal, or physical act, or electronic communication is motivated by “any other distinguishing characteristic,” e.g., weight. Because the ABR includes “other distinguishing characteristic” within the definition of HIB, a student that does not belong to one of the protected categories listed above can also be a victim of HIB. BOEs must include “other distinguishing characteristic” in the definition of HIB in their HIB policy, and must also consider this when investigating allegations of HIB.

Q: Are schools required to investigate reports of hazing under the ABR?

A: The ABR's definition of HIB may, in certain circumstances, encompass behaviors associated with hazing (*N.J.S.A. 18A:37-14*). Therefore, and where appropriate, reports of hazing should be investigated and addressed in accordance with the district's HIB policy, in addition to any other potential violations of the code of student conduct.

School district officials should also consult Article 8.6 of the *Memorandum of Agreement Between Education and Law Enforcement Officials* (Memorandum) to ensure they are

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fulfilling their agreement to report any hazing incident to law enforcement that may constitute a criminal offense. The Memorandum and associated resources may be found at <http://www.state.nj.us/education/students/safety/behavior/law/moa/>.

Q: What are the requirements for addressing HIB that occurs off school grounds?

A: School districts are responsible for addressing HIB that occurs off school grounds when a school employee is made aware of the HIB, and the HIB substantially disrupts or interferes with the orderly operation of the school or the rights of other students. The responses to HIB that occurs off school grounds shall be consistent with the BOE's code of student conduct, and with other provisions of the BOE's HIB policy (*N.J.S.A. 18A:37-14 and 15.3*).

Q: Does the ABR apply to summer school or other board of education-sponsored educational activities that take place during the summer?

A: The ABR applies to all board of education-sponsored activities on school property, at school-sponsored functions and on school buses without regard to the time period. The only exception is for the bi-annual reporting requirement at *N.J.S.A. 18A:17-46*, which is limited to all acts of HIB that take place between the time periods of September 1 to January 1 and January 1 to June 30. Incidents that occur between July 1 and August 31 should not be reported in EVVRS. However, districts should maintain their own records of incidents and actions taken.

Training and Pre-Service

Q: What are the in-service training requirements for full- and part-time staff members, persons contracted by the school district to provide services to students (e.g., bus drivers, substitute teachers, home instruction teachers, educators employed by private companies and outsourced to school districts) and volunteers who have significant contact with students?

A: School districts are required to provide HIB in-service training for all full- and part-time staff, contracted service providers and volunteers. Each local district must determine the appropriate way to provide staff, contracted service providers and volunteers, with the required training on the board of education's HIB policy and procedures, the prevention of HIB based on the protected categories identified in the HIB definition and other distinguishing characteristics. The applicable provisions in the ABR can be found at *N.J.S.A. 18A:37-17*.

The NJDOE has resource materials on HIB that can be found at <http://www.state.nj.us/education/students/safety/behavior/hib/#si>. These materials may assist contracted vendors in understanding the ABR, but not the district's HIB policy and procedures. To fulfill its obligation to provide in-service training, the district would have to modify these materials to include specific information about the district's HIB policy and procedures, the protected categories of students and other distinguishing characteristics that could be the target of HIB.

Q: Are substitute teachers and teachers providing home or out-of school instruction, in addition to full- and part-time teachers and educational services professionals, required to have training in HIB prevention as a prerequisite for employment?

A: No. There is no training requirement that is a prerequisite to employment; however, there is a requirement for training as a condition of certification. The applicable requirement in the ABR can be found at *N.J.S.A. 18A:37-22*. The NJDOE's guidance on these requirements can be found at <http://www.state.nj.us/education/students/safety/behavior/hib/HIBGuidanceEdPrep.pdf>.

Q: Are school districts required to annually re-train all full- and part-time school staff members, including persons contracted to provide services to students (e.g., bus drivers, substitute teachers, home instruction teachers, educators employed by private companies and outsourced to school districts) and volunteers who have significant contact with students?

A: No. The ABR does not specify that in-service training on HIB must be provided annually to all school staff and contracted service providers. However, the school district must provide training to all new full- and part-time school staff, new contractors providing services to students, and new volunteers who have significant contact with students. The applicable provisions in the ABR can be found at *N.J.S.A. 18A:37-17*.

Q: Are there professional development requirements in addition to the in-service training provided by school districts?

A: Yes. In addition to the in-service training provided by a school district, staff must also receive two hours of instruction in suicide prevention that includes information on the relationship between the risk of suicide and HIB, and an additional two hours of instruction in the prevention of HIB in each professional development period (*N.J.S.A. 18A:6-112 and 18A:37-22*).

The NJDOE's guidance on these requirements can be found at

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<http://www.state.nj.us/education/students/safety/behavior/hib/HIBGuidancePD.pdf>.

Additional information related to professional development requirements may be found at <http://www.state.nj.us/education/profdev/topics/>.

Q: What is the process for becoming an approved or certified HIB trainer?

A: There is no process for approving or registering trainers and there are no certification requirements or other standards or qualifications for an individual to provide HIB training services to school districts. District BOEs are responsible for determining the strategy and resources to be used in providing the required in-service training for staff. Should someone be interested in providing HIB training to school districts, he or she can contact school officials directly regarding the services. A directory of contact information for all New Jersey school districts can be found at <http://education.state.nj.us/directory/>.

Incident and Investigation Reporting

Q: Which forms and correspondence are required or may be used in the district's HIB reporting and investigation procedures?

A: While the ABR establishes new procedures and responsibilities, it does not require the development or use of specific forms or the manner of correspondence. Any forms pertaining to the ABR are developed and used at the district's discretion, but must be consistent with the requirements of applicable laws and regulations. However, if a district chooses to use forms, the forms may not be used to replace the opportunity for people to verbally report HIB.

Q: Are the district BOE's HIB policies required to include an anonymous reporting procedure?

A: Yes. Each district BOE's procedure for reporting an act of HIB must include a provision that permits a person to anonymously report HIB. However, school officials are not permitted to take formal disciplinary action solely on the basis of an anonymous HIB report.

Q: What are the requirements for parent reports of HIB?

A: The ABR does not establish specific reporting requirements for parents. However, pursuant to *N.J.S.A. 18A:37-15*, each school district must establish its HIB reporting procedure. Questions regarding a district's procedures for parent reports of HIB should be directed to the district.

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Q: Is the CSA required to present the results of each investigation, regardless of the findings, to the BOE?

A: Yes. All investigation reports completed under the ABR must be reported to the CSA, who is required to report the results of each investigation to the BOE. The applicable provision in the ABR can be found at *N.J.S.A. 18A:37-15b(6)*.

Q: What are the criteria or parameters for the CSA's report on the results of each HIB investigation to the BOE?

A: *N.J.S.A. 18A:37-15b(6)(c)* establishes that the CSA must report the results of each investigation, along with information on any services provided, training established, discipline imposed or other action taken or recommended by the CSA. Since there are no other specific criteria or parameters for the CSA's report on the results of each investigation, the report should be based on the facts from each investigation. Additionally, since parents are entitled to specific information subsequent to the CSA's report to the BOE, pursuant to *N.J.S.A. 18A:37-15b(6)(d)*, the CSA may want to provide the same information, at a minimum, to the BOE.

Public Reporting

Q: Which data must be reported by the CSA at the bi-annual public hearing, and which data must be reported to the NJDOE twice each school year?

A: As set forth in *N.J.S.A. 18A:17-46*, the CSA's bi-annual reports to the BOE and to the NJDOE must include all of the information reported on the Electronic Violence and Vandalism Reporting System, which includes the number of reports of HIB, the status of all investigations, the nature of the HIB based on one of the protected categories identified in *N.J.S.A. 18A:37-14*, the names of the investigators, the type and nature of any discipline imposed on any student engaged in HIB, and any other measures imposed, training conducted, or programs implemented, to reduce HIB. The report also must include data for each school in the district, in addition to district-wide data. The report could include any other information the CSA chooses to provide.

Guidance and reporting forms specific to the data required by the NJDOE can be found at <http://homeroom.state.nj.us/EVVRS.htm>.

Q: Will schools be required to report all reported HIB incidents or only confirmed HIB incidents on the Electronic Violence and Vandalism Reporting System (EVVRS)?

A: School districts must report on the EVVRS all acts of HIB that have been affirmed by the district BOE as HIB. However, school districts must report all reported HIB incidents for which the required investigation has been completed and for which the acts of HIB that have been affirmed by the district BOE on the Harassment, Intimidation and Bullying Interventions, Trainings and Programs Data Collection System (HIB-ITP).

Q: Which information must the CSA report to the public and to the NJDOE?

A: The CSA must report all acts of violence, vandalism, and HIB which occurred during the previous reporting period to the board of education, at a public hearing, two times each school year, between September 1 and January 1 and between January 1 and June 30. The information also must be reported once during each period to the NJDOE. The report must include the following information: the number of reports of HIB; the status of all HIB investigations; the nature of the HIB based on one of the protected categories identified *N.J.S.A. 18A:37-14*; the names of the HIB investigators; the type and nature of any discipline imposed on any student engaged in HIB; and any other measures imposed, training conducted, or programs implemented, to reduce HIB. The report must include data broken down by the enumerated categories as listed in *N.J.S.A. 18A:37-14*, and data broken down by each school in the district.

Q: Are public college-operated programs for students with disabilities required to report HIB data to the NJDOE?

A: No. Public college-operated programs for students with disabilities are not required to report HIB data to the NJDOE.

Prevention Programs and Strategies

Q: What are the requirements for HIB prevention programs?

A: Each school district must annually establish, implement, document and assess HIB prevention programs or approaches and other initiatives involving parents, law enforcement and other community members, students, school staff and administrators, and school volunteers. The programs or approaches and other initiatives must be designed to create school-wide conditions to prevent and address HIB. (*N.J.S.A. 18A:37-17a*)

Q: If the purchase of a commercial program is being considered as part of a comprehensive HIB prevention initiative, are there resources available to obtain information on evidence-based programs?

A: A searchable data base to help identify evidence-based HIB prevention and intervention programs can be found at the SAMHSA National Registry of Evidence-based Programs (<http://www.nrepp.samhsa.gov/>).

Parents' Rights and Information

Q: Is the school district required to provide parents of offenders and victims with information on the results of an HIB investigation?

A: Yes. Regardless of the findings from an investigation, parents of alleged offenders and alleged victims are entitled to receive information about the investigation, in accordance with federal and state law and regulation. The ABR stipulates that parents of alleged offenders and alleged victims must receive the following information: the nature of the investigation, whether the district found evidence of HIB, or whether discipline was imposed or services provided to address the incident of HIB. This information must be provided in writing within five school days after the results of the investigation are reported to the board of education. (*N.J.S.A. 18A:37-15b(6)*).

The ABR does not establish requirements for the way in which districts choose to meet this requirement, and does not supersede existing requirements or procedures for informing or contacting parents. If a district has established a procedure for notifying parents that has been approved by the BOE or legal counsel and is consistent with applicable laws and regulations, there is nothing in the ABR that prohibits the use of this pre-existing parent notification procedure.

Q: Is the school district required to provide parents of offenders and victims with the investigation report?

A: The ABR does not require the provision of the investigation report to parents. Parents are only entitled to the information specified in the ABR provision included above. If a district chooses to provide parents with the report, the investigation report cannot divulge privileged/confidential information or information precluded by law. This information includes, but is not limited to, information about students other than their own child, and information that would (or could) identify students other than their own. Pursuant to the *Family Rights and Educational Privacy Act* (20 U.S.C. §1232g and 34 CFR Part 99), and absent consent or permission from the other parent and/or a student who is at least eighteen (18) years of age, parents are only entitled to information about their own children.

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Q: Does the ABR establish student records or privacy requirements?

A: The ABR is silent on the issue of student records, and does not establish new student records or privacy requirements. Student records maintained in connection with the ABR are not mandated records under the NJDOE's student records regulations, and the decision to retain these records would be made by each local school district. However, school districts are required to retain records on any discipline imposed on a student, since this information must be shared with a sending school district should the student transfer to another school district (20 *U.S.C.* §6301 and *N.J.S.A.* 2A:4A-60); this requirement applies to discipline imposed for any type of conduct and not only HIB. The district's procedures regarding student records, at a minimum, must be consistent with the Family Educational Rights and Privacy Act and its regulations (20 *U.S.C.* §1232g and 34 *CFR* Part 99), the Department of Education's student records regulations (*N.J.A.C.* 6A:32-7), the Open Public Meetings Act and each BOE's procedures.

Q: Do parents have the right to deny school staff the permission to interview their child as a part of an HIB investigation?

A: No. The ABR does not address the issue of parent presence during interviews. Therefore, the school district determines the procedures for conducting investigations, including interviews. Since the ABR does not establish new or amended requirements regarding parent involvement in student interviews, pre-existing requirements apply, meaning that schools have the right to interview students without parents being present.

Q: Is the school district required to inform parents of their right to a BOE hearing in executive session?

A: While *N.J.S.A.* 18A:37-15b(6)(d) provides parents with the right to a hearing, it does not explicitly mandate parent notification of this right. Since the hearing is an unequivocal right and it provides the district and parents with an additional opportunity to assure the safety of students, parents should be notified of their right to be heard by the BOE. Parent notification of this right is a logical component of the investigation information that must be provided to the parents of alleged offenders and victims and assures the provision of due process of law, as intended in *N.J.S.A.* 18A:37-15b(6)(d).

Q: Does the ABR provide parents with opportunities to be involved in HIB policy and program development?

A: Yes. There are three specific school district functions in which parents must be involved:

- *School Safety/School Climate Teams (SS/SCT)* – Each school must have a SS/SCT. Each SS/SCT must include, at a minimum, one parent of a student enrolled in the school, in addition to the school anti-bullying specialist, the principal and a teacher in the school. (*N.J.S.A. 18A:37-21*)
- *School District HIB Policy* – The HIB policy must be developed through a process that includes representation of parents, along with other community representatives, students, school employees and school administrators and volunteers. (*N.J.S.A. 18A:37-15a*)
- *HIB Programs* – Schools and school districts must annually establish, implement, document and assess HIB prevention programs, approaches or other initiatives involving parents, law enforcement and other community members, school staff and school administrators, students and volunteers. (*N.J.S.A. 18A:37-17*)

School Roles/Functions

Q: Who must perform the role of the school ABS? May the principal perform this role?

A: *N.J.S.A. 18A:37-20a* specifies that the ABS must be a guidance counselor, school psychologist or other person trained to be the ABS, who is currently employed at the school. If no one meets these criteria, the principal must appoint the ABS from currently employed personnel, and the employee must be trained to be the ABS.

Since the principal is the one who must appoint school staff to this role, the legislative language and intent is for this to be someone other than a school administrator (e.g., someone with a student support services or student advocacy point of view and function) to counter-balance the administrative, including disciplinary, point of view.

That being said, there is nothing in the ABR that explicitly prohibits a principal from serving as the ABS. If a district chooses to assign the principal or permits the principal to appoint the assistant principal to act as the ABS, as an “other person trained to be the ABS,” the district would make this determination, presumably in consultation with the school attorney.

Q: Can the principal assign another ABS to investigate an HIB allegation when the ABS is counseling a student who is the alleged victim or offender?

A: There is nothing in the ABR that precludes the principal from appointing more than one ABS from currently employed school staff. If the ABS is counseling a student who is the alleged victim or offender and, therefore, there may be a conflict of interest if he/she conducts the investigation or his/her investigation could negatively interfere with the therapeutic relationship, an alternate ABS may be assigned to conduct the investigation. When choosing an alternate ABS, school districts should be mindful that

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N.J.S.A. 18A:37-20a specifies that the ABS must be a guidance counselor, school psychologist or other person trained to be the ABS, who is currently employed at the school.

Q: Must the CSA appoint a school employee to perform the role of the district anti-bullying coordinator (ABC)?

A: The ABR specifically states that the CSA must make every effort to appoint an employee of the district as the ABC; however, appointing a school employee to serve as the ABC is not required. (*N.J.S.A. 18A:37-20b*)

Board of Education Action

Q: Is the BOE required to issue a decision, in writing, regarding the CSA's decision following his or her receipt of the results of each investigation or only when a parent requests a hearing?

A: The board of education must issue a decision, in writing, to affirm, reject or modify the CSA's report on the results of each investigation. The applicable provision (*N.J.S.A. 18A:37b(6)(e)*) applies to the board's receipt of the CSA's report(s) and his or her decision(s), rather than to the outcomes of a board hearing. However, should a hearing be held, it is assumed that information from the hearing also would be used by the board to guide its decision.

Q: Who is required and who is permitted to participate in a board of education hearing held in executive session for a parent?

A: *N.J.S.A. 18A:37-15b(6)(d)* establishes the following:
...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;

As indicated above, the ABR does not establish requirements for whom a board of education may choose to have appear or provide information at a hearing, and the ABR does not establish new requirements for board hearings conducted in executive session. Therefore, in addition to having the explicit option to hear from the school anti-bullying specialist, a board of education could choose to hear from anyone it determines could help the board make its decision pursuant to *N.J.S.A. 18A:37-15b(6)(e)*.

District BOEs should establish procedures for conducting hearings in executive session.

General

Q: In March 2012, a law (P.L.2012, c.1) concerning HIB in the public schools, was adopted. What is the effect of this law on the *Anti-Bullying Bill of Rights Act* adopted in January 2011?

A: The March 2012 law amends specific portions of the ABR. The amendments achieve the following purposes:

- Clarified that school officials should use existing resources to implement HIB prevention and intervention strategies and personnel and may at their own discretion use HIB prevention and intervention strategies and personnel which impose a cost on the district;
- Appropriated \$1 million to assist school districts with the implementation of the ABR in the 2011-2012 school year; and
- Established an Anti-Bullying Task Force (<http://www.state.nj.us/education/students/safety/behavior/hib/task/>), to provide guidance to school districts on available resources to assist in the implementation of the ABR; examine the implementation of the ABR; draft model regulations in support of the ABR and submit them to the Commissioner of Education; present any recommendations regarding the ABR deemed to be necessary and appropriate; and prepare reports on the effectiveness of the act in addressing HIB in schools.

Q: Is there a way to check whether school and school district activities are in compliance with the ABR?

A: Yes. The *HIB Compliance Checklist*, can help determine the degree of the district's and school's compliance with the ABR. The checklist may be found at <http://www.state.nj.us/education/students/safety/behavior/hib/checklist.pdf>.

Q: Does the ABR only apply to an act of HIB committed by or against a student? Or does it also apply to an act committed by or against an adult?

A: The ABR applies only to HIB committed against a student. Under the ABR, the offenders could be any persons, students or adults, but the victims are students. The applicable provision can be found at *N.J.S.A. 18A:37-15b*.

Q: How should schools proceed when a staff member is identified as an alleged offender in an HIB incident?

A: The ABR applies to HIB committed by an adult or youth against a student. Therefore, it is possible that a staff member may be identified as an alleged offender of

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HIB. All of the procedural requirements in the ABR apply regardless of whether the alleged offender is an adult or youth. The response to reports involving alleged adult offenders should be consistent with both the ABR, and any applicable procedures for addressing adult behavior established by the BOE.

Q: Can the school ABS conduct an investigation where a staff member of the same bargaining unit is the subject of the investigation?

A: The BOE's investigation procedures must comply with statute and regulation. However, when there is an appearance of impropriety or a conflict of interest (including the appearance of one), it may be more appropriate for the investigation to be conducted by an individual who is not a member of the same bargaining unit as the alleged offender.

As indicated above, there is nothing in the ABR that precludes the principal from appointing more than one ABS from currently employed school staff. An additional appointed ABS could be someone who is not in the same bargaining unit as teaching staff members. In the event that all of the ABSs are part of the same bargaining unit as the alleged offender, the ABR permits the principal to appoint additional personnel, i.e., those that are not in the same bargaining unit as the alleged offender, to assist the ABS with the investigation.

Q: Must student records be maintained for HIB cases? If so, which files must be maintained?

A: School districts are not required to maintain reports of HIB as part of the mandated school record, pursuant to *N.J.A.C. 6A:32-7*. A district may include such reports or other items related to HIB incidents, at the district's discretion, and as required by law. Such files would be retained consistent, at a minimum, with the student records regulations (*N.J.A.C. 6A:32-7*) and 20 *U.S.C. §1232g, Family Educational Rights and Privacy Act*, and 34 *CFR Part 99, Family Educational Rights and Privacy*.

However, pursuant to 20 *U.S.C. § 6301, N.J.S.A. 18A:36-19a* and *N.J.A.C. 6A:16-7.8(a)* and (b) school districts are required to provide receiving school districts with all information in a transferring student's record related to disciplinary actions taken against the student by the district. Therefore, school districts must maintain records of disciplinary actions imposed under the ABR.

While not mandated, it is recommended that sufficient documentation be retained for reporting incidents on the Electronic Violence and Vandalism Reporting System (EVVRS). This documentation is important to ensure accurate reporting and to verify the disposition of cases and incidents reported on the EVVRS.

Q: Are schools required to investigate only bias-based HIB?

A: Pursuant *N.J.S.A.* 18A:37-15b(5), reports of HIB must be investigated by the school ABS in consultation with the principal. The purpose of the investigation is to ascertain the facts for each report and determine the nature of the concern, which could include, for example:

- A finding of HIB according to the definition in the ABR;
- A finding of bullying that does not meet the criteria in the statutory definition for HIB, but meets the criteria in a different definition of bullying;
- A finding that no HIB under the definition in the ABR or other bullying occurred;
- A violation of the code of student conduct other than HIB or other bullying; or
- Some other finding based on the facts of the case.

It is important to note that “bias” is only one of the conditions in the HIB definition in the ABR; the definition in its entirety must be considered. An HIB incident would fall under this definition if (1) it is motivated by an actual or perceived characteristic and (2) interferes with the orderly operation of the school or the rights of the victim, and (3) meets one of the conditions identified in *N.J.S.A.* 18A:37-14a through c.

Q: How should districts proceed with HIB cases involving students with disabilities?

A: The procedures in the ABR must be followed for all students including, but not limited to, the incident report, the investigation, the report of the results of the investigation to the CSA and the BOE’s decision regarding the CSA’s decision.

The only difference in implementing the ABR for students with disabilities is in the application of consequences and remedial strategies for HIB when the student is the offender. If a student with a disability is determined to have engaged in HIB, any consequence must be determined in compliance with the requirements of the *Individuals with Disabilities Education Act* (IDEA) and applicable state and federal regulations.

If it is determined that the conduct resulting in HIB resulted from the student’s unique circumstances (disabling condition), the resulting consequence should be determined with that in mind, which could result in the provision of counseling or other assistance, rather than a punitive measure such as a suspension. In addition, if the consequence imposed results in a requirement, in accordance with the IDEA, to conduct a manifestation determination, and it is concluded that the HIB behavior was a manifestation of the student’s disability, any consequence changing the placement of the student would have to be rescinded and the student returned to his or her placement.

It is understood that some students with disabilities might not understand the effects of their behaviors, might have varying degrees of control over their behaviors, or might not have acquired or mastered certain behaviors. However, it is important to recognize that in

addition to addressing HIB offenders, the ABR protects student victims of HIB, regardless of who commits the HIB.

The ABR provides schools with the opportunity to teach all students about differing abilities (e.g., cognitive, social-emotional, behavioral or physical), which could minimize HIB reports for misperceived or misunderstood behaviors from students with disabilities. This instruction may be a component of the district's activities to improve school culture and climate.

Q: Are there any other considerations that a BOE must consider when an alleged victim or offender is a student with disabilities?

A: In addition to triggering the BOE's HIB policy, an incident of HIB may also implicate one or more of the federal and/or State anti-discrimination and/or special education laws. If a student with disabilities is involved, as either an alleged victim or offender, in an HIB incident, notification to the student's individualized education program (IEP) team may be required, the provision of a free and appropriate public education (FAPE) may be implicated, and different disciplinary procedures may need to be followed. As a result, the ABS and administration should consult with the student's case manager at the earliest possible opportunity.

Q: How will the NJDOE assign the "grade" required in the ABR?

A: The ABR requires the Commissioner of Education (Commissioner) to develop guidelines for a program to grade each public school and school district's efforts to implement the ABR (*N.J.S.A. 18A:17-46*). Under the Commissioner's Program, each school must annually complete a self-assessment of its efforts to implement the ABR. This process requires each district to present each school's self-assessment to the BOE at a public meeting prior to submission to the NJDOE. The official grade for each district and each district school issued by the NJDOE must be presented to the BOE and posted on the webpage of the district, and the webpage of each district school.

Additional information on the Commissioner's Program can be found at <http://www.state.nj.us/education/students/safety/behavior/hib/guidance/>.

Q: How can a school district apply for grants under the Bullying Prevention Fund?

A: The ABR was amended on March 26, 2012, in part, to provide for the funding of certain activities required under the ABR. Funds were disseminated to school districts for the 2011-2012 and 2013-2014 school years. Funds for this program are subject to state appropriations from the New Jersey State Legislature. School districts will be informed

of the process to apply for Bullying Prevention Fund grants if funds are appropriated for this program.

Q: How should school officials proceed when it is conducting an HIB investigation at the same time that law enforcement is conducting a criminal investigation of the same incident?

A: When a school district learns that law enforcement is conducting a separate, but simultaneous, criminal investigation of an HIB incident that it is also investigating, the school district's investigation should be suspended or stayed only *when deemed appropriate and requested by law enforcement*. It is only when law enforcement affirmatively requests that a school district suspend or stay its HIB investigation that such an investigation should be suspended or stayed. If law enforcement does not affirmatively request a suspension or stay of an HIB investigation, a school district must comply with all applicable timeframes for its investigation. If law enforcement has not affirmatively requested a stay or suspension of an HIB investigation, but a school district believes that the HIB incident may also constitute a criminal offense(s), it should contact law enforcement to inquire as to whether law enforcement may want to investigate the matter and, thereby, stay or suspend the school district's HIB investigation.

School district officials must consult Article 8.9 of the *Memorandum of Agreement Between Education and Law Enforcement Officials* to ensure they are fulfilling all obligations, including the requirement to safeguard the health and welfare of students. The Memorandum and associated resources may be found at <http://www.state.nj.us/education/students/safety/behavior/law/moa/>.

Q: Does the ABR apply to pre-school students?

A: The ABR applies to all students, including pre-school age children who are enrolled in a public school district. The ABR establishes requirements for district BOEs and school district staff regarding the HIB of students in their care. The ABR does not establish an age range that qualifies students to receive the services nor does it exempt any age group from receiving the required services.

In the instance of contracted pre-school programs, they must follow the policy of the school district and report incidents to the school principal of the school district, and the school anti-bullying specialist from the principal's school must investigate the report. The school district is responsible for training contracted service providers in the district's HIB policy and procedures.

Q: Are evening, adult-only programs required to implement the ABR?

A: If school-age students are enrolled in the program and the program is operated by the school district, the program must implement the ABR.

If the program is for adults only, the program is not required to implement the ABR. In terms of a General Education Development (GED) program, the ABR does not apply, even if the program is run by the school district, because the participants are not enrolled in the school district.

Q: How should school officials proceed when the same source repeatedly reports HIB of a student, but the investigations of the reports do not reveal evidence to substantiate the reports?

A: The ABR requires each BOE approved HIB policy to include consequences and appropriate remedial action for a person found to have falsely accused another as a means of retaliation or as a means of HIB. School officials should implement this provision when a determination has been made from the evidence that a person reporting HIB has falsely accused another. Until this determination has been made, however, reports of HIB must be investigated and all other procedures in the ABR must be followed.

If there are repeated incidents where reports from one or more sources are not substantiated as a result of investigations, some possible courses of action could be to confer with the school attorney to determine appropriate actions, reevaluate the investigation procedures used by school officials or recommend amendments to the BOE approved HIB policy that will address this type of occurrence.

Q: How should schools proceed when they receive a complaint for an incident of HIB that allegedly occurred in school during the regular school year, but the complaint is received after school has closed for the school year?

A: *N.J.S.A. 18A:37-15b(6)* requires that each BOE's policy include "a procedure for prompt investigation of reports of violations and complaints..." Since the ABR applies to all board of education-sponsored activities on school property, at school-sponsored functions and on school buses without regard to when the report is received, the school in which the alleged incident occurred must investigate, in accordance with the BOE's investigation procedures.

Q: How should schools proceed when the alleged student victim and offender are no longer in the same school?

In instances where the alleged offenders or victims are moving to another school in the same school district, the sending school would investigate the complaint, the receiving school would be advised of the matter and the officials from both schools would consider appropriate responses pursuant to *N.J.S.A. 18A:37-15b(4)* and (7).

When the alleged offender or victim or both transfer to a school outside of the school district, the school district in which the incident occurred would investigate the complaint to determine whether actions are warranted for students remaining in the school or to determine issues that could affect school programs, policies, procedures or activities as a result of the findings from the investigation.

When both the alleged offender and victim have graduated from high school, the school would not be required to investigate the complaint when the complaint is made after the close of the regular school year. However, if one of the students remains in school, the complaint would be investigated and actions would be taken for the remaining student(s), as appropriate to the facts and circumstances of the matter.

Additional Resources

- **Information on the Law and Policy**
 - *Anti-Bullying Bill of Rights Act*
 - http://www.njleg.state.nj.us/2010/Bills/PL10/122_.PDF
 - Guidance for Schools on Implementing the ABR
 - <http://www.nj.gov/education/students/safety/behavior/hib/guidance.pdf>
 - Model Policy and Guidance for Prohibiting HIB
 - <http://www.state.nj.us/education/parents/bully.pdf>
 - HIB Policy Compliance Checklist
 - <http://www.state.nj.us/education/students/safety/behavior/hib/checklist.pdf>
 - HIB Online Tutorials
 - <http://www.state.nj.us/education/students/safety/behavior/hib/tutorials/>
 - NJDOE PowerPoint: An Overview of Amendments to Laws on Harassment, Intimidation and Bullying
 - <http://www.state.nj.us/education/students/safety/behavior/hib/overview.pdf>
 - NJDOE PowerPoint: Applying the *Anti-Bullying Bill of Rights*
 - <http://www.state.nj.us/education/students/safety/behavior/hib/HIBTrainingPP.pdf>
- **Information for Parents**
 - Guidance for Parents on the ABR
 - <http://www.state.nj.us/education/students/safety/behavior/hib/ParentGuide.pdf>
 - Obtaining Assistance for HIB Concerns
 - <http://www.state.nj.us/education/students/safety/behavior/hib/hibassistance.shtml>

- **Anti-Bullying**
 - Resources on HIB
 - <http://www.state.nj.us/education/students/safety/behavior/hib/hibresources.shtml>
 - US Department of Health & Human Services
 - <http://www.stopbullying.gov>
 - Cyberbullying Research Center
 - <http://cyberbullying.org/>
 - SAMHSA National Registry of Evidence-based Programs
 - <http://www.nrepp.samhsa.gov/>

- **School Climate**
 - US Department of Education: Safe and Supportive Schools Technical Assistance Center
 - <http://safesupportiveschools.ed.gov/>
 - New Jersey School Climate Survey
 - <http://www.state.nj.us/education/students/safety/behavior/njscls/>
 - National School Climate Center
 - <http://www.schoolclimate.org>
 - New Jersey Positive Behavior Support in Schools
 - <http://www.njpbs.org/>

- **Social-Emotional Learning**
 - Collaborative for Academic, Social, and Emotional Learning
 - <http://www.casel.org>
 - Edutopia
 - <http://www.edutopia.org/social-emotional-learning>
 - Character.org
 - <http://www.character.org>
 - New Jersey Alliance for Social, Emotional and Character Development
 - <http://www.njasecd.org>
 - Center for Social and Character Development at Rutgers University
 - <http://www.rucharakter.org/index.php>
 - Center for Character & Citizenship, University of Missouri-St. Louis
 - www.characterandcitizenship.org
 - Center on Great Teachers & Leaders at AIR
 - <http://www.gtlcenter.org/sel-school>