

**MONTCLAIR STATE UNIVERSITY NETWORK FOR  
EDUCATIONAL RENEWAL (MSUNER) PRESENTATION**

**THE HARASSMENT, INTIMIDATION OR BULLYING  
(HIB) LAW  
EFFECTIVE SEPTEMBER 1, 2011<sup>1</sup>**

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<sup>1</sup> This document is not designed to constitute legal advice. It is designed for educational purposes only. It is critical to work with your board attorney to ensure that you are constantly in compliance with the law. At the time of this document, the state department of education was in the process of updating its regulations; so this document relies on the statutory language. It is important to comply with any state regulations once those are revised and promulgated.

**A. WHAT CONSTITUTES HARASSMENT,  
INTIMIDATION OR BULLYING UNDER THE NEW  
LAW?<sup>2</sup>**

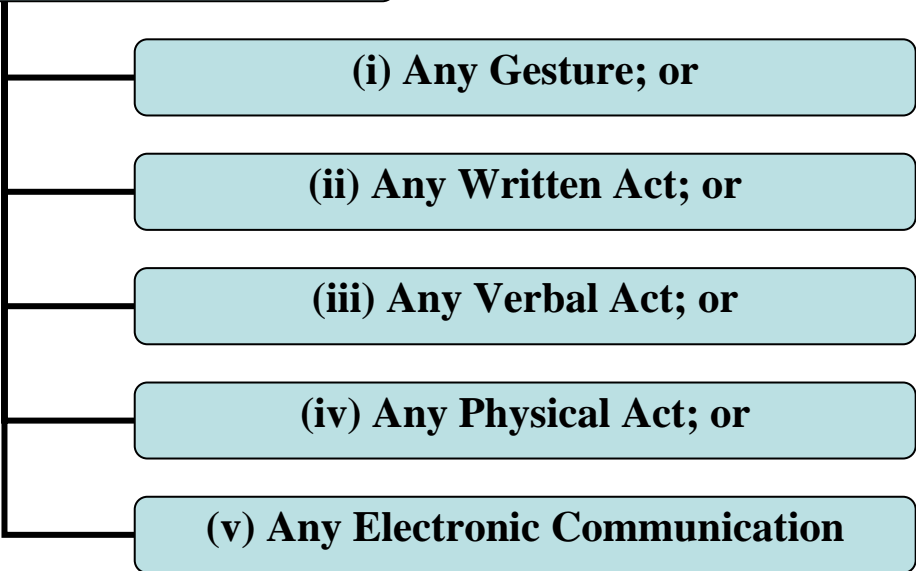
Harassment, Intimidation or Bullying (HIB) refers to:

**(I) WHAT ACTS QUALIFY AS HIB?**

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<sup>2</sup> Unless otherwise specified as school days, you could assume that the timelines referenced are calendar days.

**A Single Incident OR Series of Incidents of:**



**Electronic communication** refers to communication sent by an electronic device. Electronic devices for purposes of the law include but are not limited to: (i) telephone; (ii) computer; (iii) cell phones; and (iv) pager.

If the incident (or series of incidents) qualifies under any of the items listed in (i) through (v) of **the chart above**, you must then ask the questions in sections (A)(II) through (A)(V) below and make sure the conditions in those sections are satisfied:

**(II) WHAT IS THE MOTIVATION?**

Is the gesture, written act, verbal act, physical act or electronic communication **REASONABLY PERCEIVED** as motivated by:

- (a) any **ACTUAL** characteristic such as:
  - race; color; ancestry; national origin;

gender; sexual orientation; gender identity and expression;  
religion; or a mental, physical or sensory disability?;

**OR**

(b) any **PERCEIVED** characteristic such as:

race; color; ancestry; national origin;

gender; sexual orientation; gender identity and expression;

religion; or a mental, physical or sensory disability?;

**Note:** By using the word “perceived”, the law is signaling that, even if the person (or persons) being harassed, intimidated or bullied does not actually have the characteristic the bullies thought she had, the incident could still constitute HIB (if the other parts of the definition are satisfied). For example, if the bullies think the student is Hispanic (even though he is not) and on that basis harass, intimidate or bully him for being Hispanic, the perceived characteristic is his race. Consequently, the law does not require the bullied person actually have the characteristic that is reasonably perceived to have motivated the HIB.

**OR**

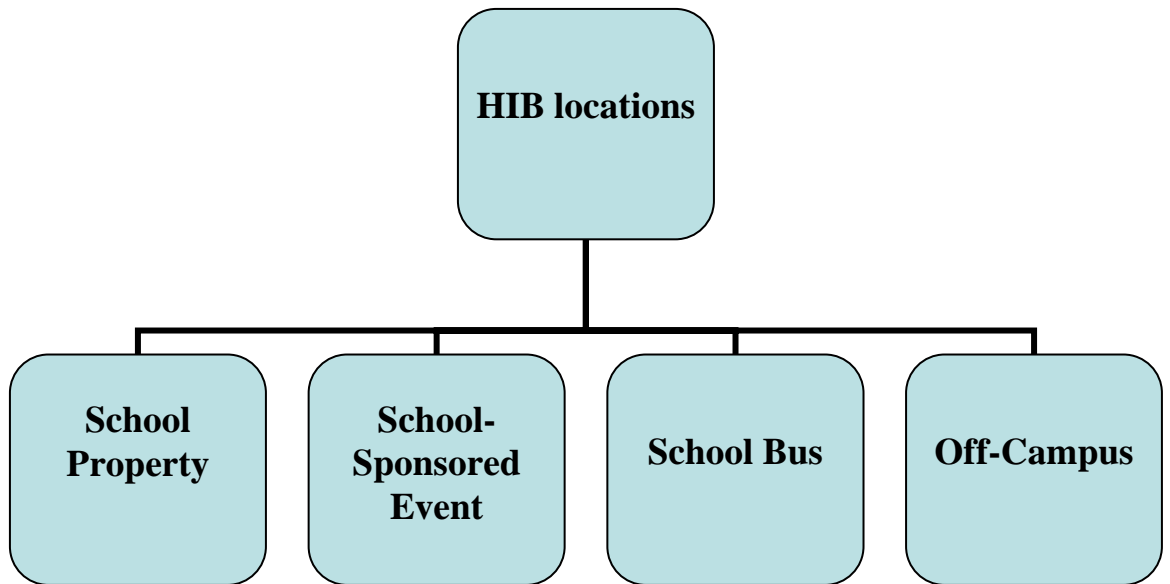
(c) any other distinguishing characteristic (this could likely include a

distinguishing characteristic such as a birthmark). Ask yourself, is this

characteristic a distinguishing characteristic?

**(III) SCHOOL JURISDICTION**

The law allows schools to regulate HIB in the following locations:



**OFF-CAMPUS HIB**: The statutory provision for off-campus HIB covers HIB that happens off school grounds “in cases in which a school employee is made aware of such actions.” N.J.S.A. 18A:37-15.3.

#### **(IV) SUBSTANTIAL DISRUPTION OR INTERFERENCE**

Even if the incident meets the above requirements and takes place at a location identified above, the school **must** still ensure that:

The incident **substantially disrupts or interferes** with (i) the **orderly operation of the school** or (ii) **the rights of other students**. (Note: This language is from *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). However, unlike the express language of the HIB law, the U.S. Supreme Court ruled that *reasonable forecast* of substantial disruption or interference with the orderly operation of the school or the rights of other students would suffice in regulating student speech). While the law does not include the “reasonable forecast” language, to protect the district from HIB liability, it might be wise to “reasonably forecast” the

substantial disruption rather than wait for an actual substantial disruption when it might be too late to take action.

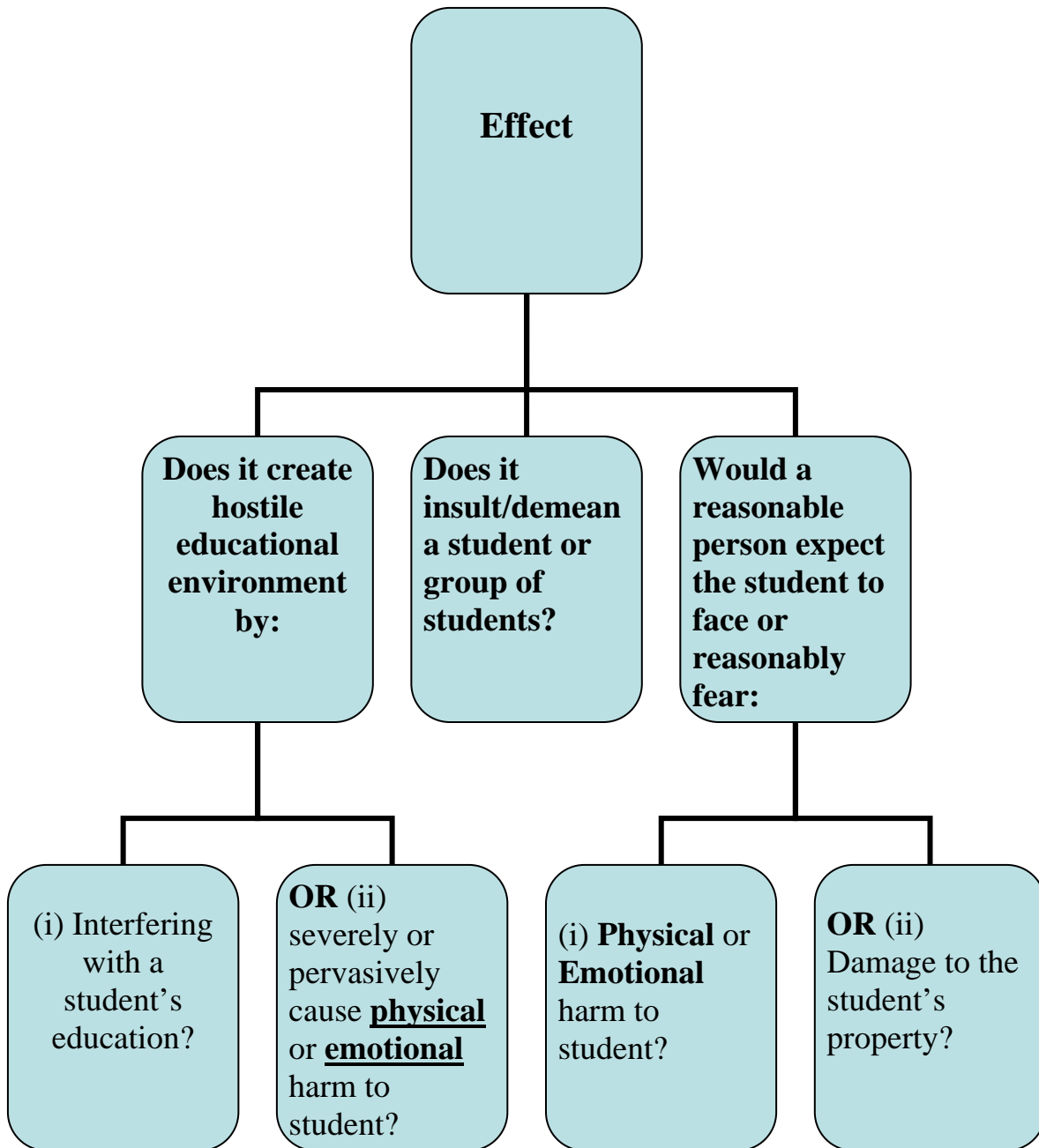
When applied to “off-campus” incidents, the “substantial disruption” language helps provide the nexus between the off-campus HIB and the school.

#### **(V) EFFECT OF THE INCIDENT**

Having met the above requirements, ask yourself the following questions about the **EFFECT** of the gesture, written act, verbal act, physical act or electronic communication (see chart below for the illustration):

- Does the gesture, written act, verbal act, physical act or electronic communication create a **hostile educational environment** for the student **by interfering with a student’s education?**; **OR**
- Does the gesture, written act, verbal act, physical act or electronic communication create a **hostile educational environment** for the student **by severely or pervasively causing physical or emotional harm to the student?**; **OR**
- Does the gesture, written act, verbal act, physical act or electronic communication have the *effect of* **insulting or demeaning any student or group of students?**; **OR**
- Should a **reasonable person, under the circumstances,** know that the gesture, written act, verbal act, physical act or electronic communication would **physically or emotionally** harm the student?; **OR**

- Should a reasonable person, under the circumstances, know that the gesture, written act, verbal act, physical act or electronic communication would damage the student's **property**?; **OR**
- Should a reasonable person, under the circumstances, know that the gesture, written act, verbal act, physical act or electronic communication would place a student in **reasonable fear** of *physical* or *emotional* harm to his person?; **OR**
- Should a reasonable person, under the circumstances, know that the gesture, written act, verbal act, physical act or electronic communication would place a student in **reasonable fear** of damage to his property?



Note that the new HIB definition includes **EMOTIONAL** harm.

N.J.S.A. 18A:37-14



## **B. THE DUTY TO REPORT HIB**

Outlined below are the duties to report of various school personnel under HIB law. Even with the duty to report, the law requires that schools, districts and school personnel not disclose any information protected by federal and state confidentiality laws from public disclosure. If you do, the law states clearly that you will be in violation of the applicable confidentiality laws (N.J.S.A. 18A:17-46). Here are the duties to report outlined by personnel:

**(I) ALL SCHOOL EMPLOYEES:** All school employees **must** report HIB if they either:

- Observe; **OR**
- Have Direct Knowledge from a participant or victim; **OR**
- Have reliable information that a student has faced HIB.

**VERBAL REPORT AND THE SAME-DAY RULE:** The employee must **verbally** notify the principal of the HIB the very **same day** the employee witnesses an HIB or gets information about an HIB. N.J.S.A. 18A:37-15.

**WRITTEN REPORT AND THE TWO-SCHOOL DAYS RULE:** A **written** report of the HIB must be filed with the principal within two school days of the employee witnessing HIB or receiving the information on HIB. The report must describe the incident. N.J.S.A. 18A:37-15 and N.J.S.A. 18A:17-46. Additionally, school employees must immediately report the HIB to the school official designated in the district's policy to receive reports of HIB.

**(II) THE PRINCIPAL:** The principal must immediately commence the district's HIB procedures once he is aware of an HIB incident. N.J.S.A. 18A:37-16(c). The principal must also immediately forward the information to the school safety team (the school safety team is discussed below). The principal **must** inform the superintendent of the HIB information he or she receives and any

action that has been taken to address the situation. N.J.S.A. 18A:17-46. A written copy of any HIB reports received by the principal must be sent to the superintendent. N.J.S.A. 18A:17-46. The results of any HIB investigation must be reported to the superintendent within **two school** days of the completion of the investigation. N.J.S.A. 18A:37-15(b)(6).

The principal must also inform parents or guardians of all the students involved in the HIB of the HIB. The law does not give a timeline for informing parents or guardians, but to comply with due process, it is wise to inform the parents the very same day you learn of it or immediately after you determine the information is reliable. The principal is given the option of also informing the parents or guardians of any counseling and other intervention services available for the students involved. N.J.S.A. 18A:37-15.

(Note that even though the anti-bullying specialist is listed in the statute as the primary person responsible for HIB at the school, the law indicates that it is the principal or other school administrator who will be subject to discipline for failure to properly address HIB at the school. N.J.S.A. 18A:37-16(d)).

Therefore, continuous, seamless and deliberate **communication** between the school anti-bullying specialist and the principal is extremely important. The principal needs to hold the specialist accountable to ensure he/she is doing her job.

- (III) THE SUPERINTENDENT:** There are two reporting periods for the superintendent during each school year. Once during each reporting period, at a **public** hearing, the superintendent **must** inform the board of HIB as well as

violence and vandalism that happened during the immediately preceding reporting period. The two reporting periods are:

- **Between September 1 and January 1**
- **Between January 1 and June 30**

The superintendent's report to the board **must** include **all** of the following:

- (a) the nature of the bullying based on any **ACTUAL** or **PERCEIVED** characteristic such as race; color; ancestry; national origin; gender; sexual orientation; gender identity and expression; religion; or a mental, physical or sensory disability; or any other distinguishing characteristic; and
- (b) the number of HIBs reported in the district during the preceding reporting period; **and**
- (c) the status of **all** investigations; **and**
- (d) the names of **all** investigators; **and**
- (e) the nature and type of discipline imposed on the student who committed the HIB; **and**
- (f) the measures imposed or programs implemented in the district and its schools to reduce HIB; **and**
- (g) training implemented to reduce HIB in the district and its schools.

N.J.S.A. 18A:17-46.

Despite the above reporting periods, the superintendent must report the results of **each** HIB investigation *as it is completed* to the board as follows:

- the results of **each** investigation must be reported to the school board **no later than** the date of the board meeting that immediately follows the

completion of the investigation. The report to the school board must include information on any (i) intervention services provided; (ii) discipline imposed; (iii) training programs created to reduce HIB and improve school climate; (iv) counseling ordered as a result of the investigation's findings; and (v) any other appropriate action taken or recommended by the superintendent for dealing with those involved in the HIB. N.J.S.A. 18A:37-15(b)(6).

**(IV) THE SUPERINTENDENT, SCHOOL BOARD AND THE DISTRICT ANTI-BULLYING COORDINATOR:** The very same information provided by the superintendent to the school board (see section (B) (III) immediately above) **must** be reported to the state department of education at least once during each of the same reporting periods identified above: i.e.

- **Once between September 1 and January 1**
- **Once between January 1 and June 30**

This report to the state department of education **must** break down the data on HIB by:

- (i) Each school in the district; **and**
- (ii) **ACTUAL** or **PERCEIVED** characteristic such as race, color, ancestry, national origin, gender, sexual orientation, gender identity and expression, religion or a mental, physical or sensory disability or any other distinguishing characteristic; **and**
- (iii) District-wide data.

The superintendent and board should work together with the district anti-bullying coordinator to gather and submit data and other information to the state department on HIB in the district. N.J.S.A. 18A:37-20(b).

**GRADING:** The state department of education will use the report submitted to it in grading each school's efforts to address HIB. The district will also be graded. The district's grade will be the average grade of all its schools.

**POST GRADES ON WEBSITE HOMEPAGE:** There is a **10**-day rule for posting grades on websites. Here it is:

Within **10** days of receiving the grades from the state department of education, you **must**:

- (a) **School website HOMEPAGE:** post the grade of the school **and** that of district on the school's website homepage.
- (b) **District website HOMEPAGE:** post the grade of each school in the district and that of the district on the district's website homepage.

**LINK TO RERORT ON WEBSITE:** The district **must** provide a link on its website to the report submitted to the state department of education. Note that the law does not state that this link needs to be on the homepage. However, the same **10**-day rule above applies.

**FALSIFICATION OF REPORT:** Probably due to concerns about falsification of reports that could occur because districts and schools are graded based on the reports, the law requires **penalties** (penalties to be specified in the promulgated state regulations) for any school employee who "**knowingly** falsifies the report."

N.J.S.A. 18A:17-46.

The district **must** also provide the following information to the state department of education as the department is required to include the information on its website:

Information on District Anti-Bullying Coordinator:

- (i) name of the district anti-bullying coordinator; and
- (ii) school phone number of the district anti-bullying coordinator;  
and
- (iii) email address of the district anti-bullying coordinator; and
- (iv) school address of the district anti-bullying coordinator.

Information on School Anti-Bullying Specialist:

- (i) name of the school anti-bullying specialist; and
- (ii) school phone number of the school anti-bullying specialist;  
and
- (iii) email address of the school anti-bullying specialist; and
- (iv) school address of the school anti-bullying specialist.

N.J.S.A. 18A: 37-15(b)(12).

**(V) SCHOOL BOARD MEMBERS:** Any school board member who either (i) witnesses HIB; or (ii) has reliable information that a student has faced HIB

**must immediately** report it to any of the following persons:

- any school administrator; or
- the school official designated to receive such reports in the district's HIB policy; or
- the safe schools resource officer.

N.J.S.A. 18A:37-16(b).

**(VI) STUDENTS:** Any student who either (i) witnesses HIB; or (ii) has reliable information that a student has faced HIB

**must immediately** report it to any of the following persons:

- any school administrator; or
- the school official designated to receive such reports in the district's HIB policy; or
- the safe schools resource officer.

N.J.S.A. 18A:37-16(b).

**(VII) CONTRACTED SERVICE PROVIDER:** Any provider contracted to provide services in the district who either (i) witnesses HIB; or (ii) has reliable information that a student has faced HIB

**must immediately** report it to any of the following persons:

- any school administrator; or
- the school official designated to receive such reports in the district's HIB policy; or
- the safe schools resource officer.

N.J.S.A. 18A:37-16(b). The law **also** requires the following:

**VERBAL REPORT AND THE SAME-DAY RULE:** The contracted service provider must **verbally** notify the principal of the HIB the very **same day** the service provider witnesses an HIB or gets information about an HIB. . N.J.S.A. 18A:37-15.

**WRITTEN REPORT AND THE TWO-SCHOOL DAYS RULE:** A **written** report of the HIB must be filed with the principal within two school days of the provider witnessing HIB or receiving the information on HIB. The report must describe the incident. N.J.S.A. 18A:37-15 and N.J.S.A. 18A:17-46.

**(VIII) VOLUNTEERS:** Any volunteer who either (i) witnesses HIB; or (ii) has reliable information that a student has faced HIB

**must immediately** report it to any of the following persons:

- any school administrator; or
- the school official designated to receive such reports in the district's HIB policy; or
- the safe schools resource officer.

N.J.S.A. 18A:37-16(b). Note that this applies to all volunteers, not just those with significant contacts with students. Inform every volunteer of this information and make them sign a statement acknowledging that they are aware of this information.

**EXTREMELY IMPORTANT:** ANY OFFICIAL DESIGNATED IN THE DISTRICT'S POLICY TO RECEIVE REPORTS OF HIB INCIDENTS OR ANY SCHOOL ADMINISTRATOR OR SAFE SCHOOLS RESOURCE OFFICER WHO RECEIVES ANY REPORT OF AN HIB INCIDENT **MUST IMMEDIATELY** PASS THE INFORMATION TO THE SCHOOL SAFETY TEAM **AND MUST** ALSO INITIATE THE DISTRICT'S HIB PROCEDURES FOR ADDRESSING THE INCIDENT.

## **C. UNION REPRESENTATIVES' ACCESS TO REPORTS**

The law provides that union rep. (or other majority representative of the school employees) **must** have access **every month** to the following information:

- (i) the number of all reported HIBs, violence and vandalism; and
- (ii) the disposition of all reported HIBs, violence and vandalism.

N.J.S.A. 18A:17-46.



## **D. SCHOOL ANTI-BULLYING SPECIALISTS AND DISTRICT ANTI-BULLYING COORDINATOR**

The law requires that certain personnel be appointed from **existing** staff to run the district-wide HIB program and others to run its schools' HIB programs. The requirement of existing staff is designed to help minimize the budgetary burdens that could result from the mandates of the HIB law. The title for the person who will run the *district's* HIB program should be the **District** Anti-Bullying **Coordinator**. The person who runs each school's HIB program should be the **School** Anti-Bullying **Specialist**. N.J.S.A. 18A:37-20. For recordkeeping, compliance and reporting requirements, you want to make sure you use these very titles specified in the law.

### **(I) SCHOOL ANTI-BULLYING SPECIALIST**

(a) Who is responsible for appointing the school anti-bullying specialist?

➤ The **principal** of the school.

(b) Who qualifies for appointment as anti-bullying specialist? Any of the following persons currently employed in the school:

➤ (i) school guidance counselor; **or**

➤ (ii) school psychologist; **or**

➤ (iii) an employee with training similar to the school

psychologist or school counselor.

(c) What if no guidance counselor, school psychologist or individual with similar training is currently employed in the school?

- Then and only then should the principal appoint someone else employed in the school as the anti-bullying specialist. The law does not currently list any other qualifications for the person to be appointed, other than the requirement that the person be someone already employed in that school.

(d) What are the responsibilities of the anti-bullying specialist?

- (i) chair the school safety team (discussed below); and
- (ii) lead all HIB investigations at the school; and
- (iii) serve as the **primary** person at the school responsible for **preventing, identifying and addressing** HIB at the school.
- (iv) together with all other anti-bullying specialists in the district, meet at least twice each school year with the district anti-bullying coordinator to discuss ways to better prevent, identify and address HIB in the district and to enhance the district's HIB policies and procedures. N.J.S.A. 18A:37-20(c).
- (v) work with the principal to ensure that the results of any HIB investigation are reported to the superintendent within two school days of the completion of the investigation. N.J.S.A. 18A:37-15(b)(6).
- (vi) the anti-bullying specialist shall work with the principal to determine the range of ways for the school to respond once an HIB incident is identified. These ways shall include an

appropriate combination of intervention services, counseling, support services, and other programs, as defined by the Commissioner of Education. N.J.S.A. 18A:37-15(b)(7).

- (vii) collaborate with the board in **annually** re-evaluating, reviewing, reassessing and revising the district's HIB policy. N.J.S.A. 18A: 37-15(c).

(Note that even though the anti-bullying specialist is listed in the statute as the primary person responsible for HIB at the school, the law indicates that it is the principal or other school administrator who will be subject to discipline for failure to properly address HIB at the school. N.J.S.A. 18A:37-16(d).

N.J.S.A. 18A:37-20(a).

## **(II) DISTRICT ANTI-BULLYING COORDINATOR**

(a) Who is responsible for appointing the district anti-bullying coordinator?

- The **superintendent**.

(b) Who qualifies for appointment as anti-bullying coordinator?

- Unlike with school anti-bullying specialists, the statute currently does not limit the anti-bullying coordinator to a school psychologist, school guidance counselor or other person similarly trained. However, it might be advisable to choose someone similarly qualified (the knowledgebase such a person brings might be invaluable).

- The law states that the superintendent must “make every effort” to select a current district employee as the anti-bullying coordinator. N.J.S.A. 18A:37-20(b).

(c) What are the responsibilities of the anti-bullying coordinator?

- (i) coordinate and enhance district policies so as to **prevent, identify and address** HIB in the district; and
- (ii) work together with the school board, the superintendent and all anti-bullying specialists in the district to ensure that HIB is prevented, identified and addressed in the district; and
- (iii) working together with the superintendent, gather and submit data to the state department on HIB in the district (see discussion above under “THE DUTY TO REPORT HIB” section on the forms of information that must be submitted to the department of education); and
- (iv) meet at least twice each school year with all the anti-bullying specialists in the district’s schools to discuss ways to better prevent, identify and address HIB in the district and to enhance the district’s HIB policies and procedures. N.J.S.A. 18A:37-20(c).
- (v) perform any other duties dealing with HIB assigned by the superintendent.

N.J.S.A. 18A:37-20(b).

## **E. TRAINING REQUIREMENTS UNDER THE HIB LAW**

**(I) BOARD MEMBERS:** Each board member only needs to complete HIB training once. He or she **must** complete this training within **ONE** year of his/her election, re-election or appointment to the board. The training must include information on the district's responsibilities under the HIB law as well as information on HIB in schools. N.J.S.A. 18A:12-33(d). Contact the New Jersey School Boards Association (NJSBA) for available HIB training as the law places the obligation for providing the training on the NJSBA.

N.J.S.A. 18A:12-33(e).

### **(II) SCHOOL BOARD:**

- Must work together with the state department of education to provide continuous training for staff on the reporting requirements mentioned above. N.J.S.A. 18A:17-46.
- Must provide time to **district** anti-bullying **coordinators** and **school** anti-bullying **specialists** *during the regular school schedule* to go through inservice training so they are ready to assume the responsibilities of their positions. N.J.S.A. 18A:37-26.

### **(III) SUPERINTENDENT, PRINCIPALS AND SUPERVISORS:** In

addition to the professional development training in school law, school ethics and school governance required for administrators, they must now ensure that this training they get includes information on HIB prevention. N.J.S.A. 18A:26-8.2. The principal (or his designee) who serves on the school safety

team must also undergo HIB training discussed below in section (V) under “School Safety Team.”

**(IV) SCHOOL ANTI-BULLYING SPECIALISTS AND DISTRICT**

**ANTI-BULLYING COORDINATORS:** They must complete inservice training so they are ready to assume the responsibilities of their positions.

N.J.S.A. 18A:37-26. The anti-bullying specialists and the anti-bullying coordinators must undergo continuous training for HIB, particularly because they are responsible for their school and districts respectively. The anti-bullying specialist, as chair of the school safety team, must also undergo training as pointed out in section (V) under “School Safety Team.”

**(V) SCHOOL SAFETY TEAM:** The school safety team is discussed further below. However, as far as training is concerned, the law requires all members of the school safety team to be trained on how to effectively (a) prevent; (b) identify; and (c) address HIB. The school safety team members must also complete any training the principal or district anti-bullying coordinator requests of them. (N.J.S.A. 18A:37-21(c)(6)).

Additionally, the members of the school safety team must get professional development opportunities on **effective practices of successful school climate programs or school climate approaches**. N.J.S.A. 18A:37-21(d).

**(VI) ALL SCHOOL EMPLOYEES:** The district must provide its HIB policy to all its employees. The district must train all school employees (full-time employees as well as part-time employees) on the district’s HIB policies. The training must at a minimum include instruction on:

- any **ACTUAL** or **PERCEIVED** characteristic such as race, color, ancestry, national origin, gender, sexual orientation, gender identity and expression, religion or a mental, physical or sensory disability or any other distinguishing characteristic that could incite discrimination or HIB.

The school district's HIB policy must be integrated into each school's *employee training program*. In other words, your training program for employees must now include education on the district's HIB policy.

N.J.S.A. 18A:37-17.

This is not in the law but when you provide each employee with your district HIB policy, it might be wise to have him/her sign a document acknowledging receipt; then give them a timeline to read it and after that time runs, have them sign a document stating that they have read and fully understand the HIB policy and will completely comply with it.

**(VII) VOLUNTEERS WITH SIGNIFICANT STUDENT CONTACT:**

The district must train all volunteers who have significant contact with students on the district's HIB policies. At a minimum, the training must include instruction on:

- any **ACTUAL** or **PERCEIVED** characteristic such as race, color, ancestry, national origin, gender, sexual orientation, gender identity and expression, religion or a mental, physical or sensory disability or any other distinguishing characteristic that could incite discrimination or HIB.

N.J.S.A. 18A:37-17.

**(VIII) STUDENTS:** The district must educate its students on identification and prevention of HIB. It must also create a process for educating and discussing with students its HIB policy. N.J.S.A. 18A: 37-17(b)(3). Additionally, as indicated below under the section titled “Week of Respect”, throughout the school year, the district must provide ongoing “age-appropriate” HIB instruction to its students. N.J.S.A. 18A:37-29.

**(IX) PERSONS CONTRACTED TO PROVIDE SERVICES FOR STUDENTS:** The district must provide its HIB policy to all persons contracted by the district to provide services for its students. N.J.S.A. 18A:37-17.

**(X) SAFE SCHOOLS RESOURCE OFFICERS AND SCHOOL LIAISONS TO LAW ENFORCEMENT:** The safe schools resource officers as well as the school liaisons to law enforcement in the district must contact the Police Training Commission in the Division of Criminal Justice in the Department of Law and Public Safety for information on the HIB training they must complete. N.J.S.A. 52:17B-71.8.

**(XI) ADDITIONAL TRAINING INFORMATION:** The law requires the state department of education to offer online HIB tutorials. It might be wise to advise your staff to regularly check the department’s website or contact the department to find out the latest HIB tutorials offered. You (the principal) should probably assign this specific responsibility to one person/entity – maybe the person or committee responsible for professional development at



the school; preferably give the responsibility to the school safety team as the law states that the school safety team is responsible for educating the community on HIB so as to prevent, identify and address HIB effectively (N.J.S.A. 18A:37-21). Require the school safety team to work together with the professional development committee on HIB professional development opportunities at your school. You should follow up with them to hold them accountable; give them specific timelines for reporting back to you each school year on HIB training opportunities found and implemented at the school. The professional development committee should always work actively with the school anti-bullying specialists in selecting and implementing HIB professional development. The district might also be able to get grants from the state department of education for HIB-prevention training as mentioned below.

## **F. BULLYING PREVENTION FUND**

The state law has now created a special HIB fund within the state department of education. This fund, known as the Bullying Prevention Fund, will be used to provide grants to school districts for the following:

- (i) HIB-prevention training; and
- (ii) Establishment of positive school climate.

If your district is interested in applying for the grant, you might want to follow up with the state department of education. N.J.S.A. 18A:37-28. It would be wise to ask your district grant writer to constantly follow up with the state department of

education on the grant opportunities and report back to you maybe at least twice each school year on grants applied for and received.

## **G.BULLYING PREVENTION PROGRAMS/INTIATIVES**

Every year, each school and each school district must create bullying prevention programs/initiatives. The programs/initiatives must be evaluated, documented and implemented **every** year. It does not appear that it has to be the same program used year-to-year; but bullying prevention programs/initiatives must be in place every year and be evaluated and documented every year. Here are more details about the program:

(a) What is the purpose of the bullying prevention programs/approaches?

- To establish school-wide conditions and positive school climate to prevent and address HIB

(b) Who should be involved in the programs/initiatives?

- Parents
- School staff
- Administrators
- Volunteers
- Parents
- Law Enforcement
- Community Members

(b) Is state funding available for the bullying prevention programs/initiatives?

- The statute leaves it up to the state department of education to decide whether to create a fund for grants to support bullying prevention programs. Additionally, it is up to the state department of education to decide whether to appropriate funds from the Bullying Prevention Fund for bullying prevention programs/initiatives. If any such grants are made available, school districts are encouraged to apply.

N.J.S.A. 18A:37-17.

## **H. SCHOOL SAFETY TEAM**

**Every** school **must** establish a school safety team. Here are some further details:

(a) Who is responsible for creating the school safety team?

- The law simply states that the **school district** is responsible. The law does not specify whether it should be the superintendent or principal; but it appears that, with the district as the responsible party, the school safety team could be created by the principal or the superintendent. The key thing is to ensure that **each** school in the district has a school safety team. However, the **principal** is responsible for appointing members of his or her school safety team.

(b) What is the required composition of the school safety team?

- the principal or his designee. If the principal is appointing a designee, unless it is impossible, he must make sure the

designee is a **senior** administrator employed at the school;

**and**

- at least one teacher employed at the school; **and**
- the school's anti-bullying specialist (this person serves as chair of the school safety team); **and**
- at least one parent of a student in the school; **and**
- other persons the principal chooses to name to the team.

(c) How often must the school safety team meet?

- At least **TWICE** each school year

(d) What are the responsibilities of the school safety team?

- (i) study the school's systemic practices and processes to determine how a positive school climate could be created, nurtured and sustained; and
- (ii) address issues with the school's climate such as HIB; and
- (iii) receive any HIB complaints that have been reported to the principal; and
- (iv) identify patterns of HIB at the school; and
- (v) address patterns of HIB at the school; and
- (vi) receive copies of all reports prepared after any HIB investigation; and
- (vii) review and strengthen the school's policies so as to prevent and address HIB at the school; and

- (viii) work with the district anti-bullying coordinator to collect district-wide data on HIB; and
- (ix) work with the district anti-bullying coordinator to create district policies that would prevent and address HIB; and
- (x) educate the community on HIB so as to prevent, identify and address HIB effectively. The community that must be educated includes but is not limited to teachers, students, parents and administrative staff; and
- (xi) participate in professional development opportunities on **effective practices of successful** school climate programs or school climate approaches (N.J.S.A. 18A:37-21(d)); and
- (xii) participate in training on how to prevent, identify and address HIB and any other training the district anti-bullying coordinator or principal requests of the members; and
- (xiii) perform any other responsibilities related to HIB requested by the principal or the district anti-bullying coordinator.

(e) What must a **parent member(s)** on the school safety team be excluded from? The law states that, in order to protect student confidentiality, the parent member of the team must **not** participate in any of the following responsibilities of the team:

- **receiving** any of the HIB complaints that have been reported to the principal (while the law expressly limits its language to complaints that have been reported to the principal, since the goal of this exclusion of the parent member(s) of the school safety team from certain responsibilities of the school safety team is to protect student confidentiality, it might be wise to assume that, in the future, a court would rule that the parent member is excluded from receiving *any* HIB complaints (other than probably those reported directly to the parent member by a student or the student's relatives and, of course, those complaints involving the parent member's own children); and
- **reviewing** any of the HIB complaints that have been reported to the principal (while the law expressly limits its language to complaints that have been reported to the principal, since the goal of this exclusion of the parent member(s) of the school safety team from certain responsibilities of the school safety team is to protect student confidentiality, it might be wise to assume that, in the future, a court would rule that the parent member is excluded from reviewing *any* HIB complaints (other than

those complaints involving the parent member's own children); and

- **identifying** patterns of HIB at the school; and
  - **addressing** patterns of HIB at the school; and
  - receiving copies of any report prepared after any HIB investigation; and
  - any other activities of the team that may compromise student confidentiality.
- Note: while the law only explicitly applies this requirement on student confidentiality to parent members, for any other person the principal adds to the school safety team, it is important for the team and the principal to ensure that student confidentiality is maintained as required by state and federal law.

N.J.S.A. 18A:37-21.

## **I. WHAT MUST BE IN YOUR DISTRICT HIB POLICY?**

The law requires each district to adopt an HIB policy that complies with the new law. This revised HIB policy **must** be sent by the district to the appropriate executive county superintendent of schools by **September 1, 2011** at the very latest. Subsequently, the district must *annually* re-evaluate, re-assess and review its HIB policy. Then the district must forward a copy of the revised policy to the appropriate executive county superintendent within 30 school days of each year's revision.

Notice of the district's HIB policy must be included in (i) student handbooks; and (ii) any district publication that sets forth the comprehensive procedures, rules and standards of conduct for the district's schools.

Here are some further answers:

(a) Who must be involved in adopting the policy? The following people must be represented in the adoption of the policy:

- parents or guardians; and
- school employees; and
- students; and
- administrators; and
- volunteers; and
- community representatives.

(b) What must be included in the policy?

While you could add other items beyond those identified below, they must not conflict with the items identified below. After reading this entire document, you might find other things that are important beyond the minimum requirements for the policy outlined below. The law indicates that a school district can adopt an HIB policy with more stringent items than those below (N.J.S.A. 18A:37-15(f)). However, your policy **must** at least include **ALL** of the following items:

- an explicit statement prohibiting HIB of a student;
- a prohibition of HIB on school properties;
- a prohibition of HIB at school-sponsored functions;
- a prohibition of HIB on school buses;



- a definition of HIB that is not less inclusive than the following statutory definition:

"Harassment, intimidation or bullying" means 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. (N.J.S.A. 18A:37-14).

- describe the type of behavior expected from each student;
- consequences for any person who commits HIB;
- remedial action for any person who commits HIB;
- a procedure for reporting HIB;
- provision for anonymous reporting of HIB. Note that this is in addition to the regular procedure that must be implemented for reporting HIB. However, the law strikes a tone of caution about relying solely on an anonymous tip for a formal disciplinary action;

- **same-day rule:** a requirement that, on the very same day they witness HIB or receive information about an HIB, all *employees* and *contracted service providers* must **verbally** report the HIB to the principal;
- **two-school day rule:** a requirement that, within two school days of witnessing HIB or receiving information about an HIB, all *employees* and *contracted service providers* must file a **written** report of the HIB with the principal;
- discretion for the principal to share information as appropriate with parents or guardians on the availability of counseling and other intervention services;
- an enumeration of the various ways a school would respond once an HIB incident is identified. These ways must include an appropriate combination of intervention services, counseling, support services and other programs, as defined by the Commissioner of Education. The principal shall work with the anti-bullying specialists to determine the range of ways to respond;
- a statement prohibiting reprisal or retaliation against any person who reports an HIB;
- a statement identifying the consequences for *any* person who engages in reprisal or retaliation against any person who reports an HIB;
- a statement identifying the appropriate remedial actions for *any* person who engages in reprisal or retaliation against any person who reports

an HIB;

- a statement that prohibits falsely accusing any person as a means of retaliation or falsely accusing any person as a means of HIB;
- a statement identifying the consequences for any person found to have falsely accused any person as an act of retaliation or as an act of HIB;
- a statement identifying the remedial actions for any person found to have falsely accused any person as an act of retaliation or as an act of HIB;
- a statement on how the district's HIB policy would be publicized;
- a clear notification that the HIB policy applies to school-sponsored functions. While not explicitly stated in the law, you might also want to include notice that the policy would apply to off-campus HIB if it substantially and materially disrupts the school or the rights of other students and the off-campus incident is brought to the attention of the school;
- a requirement that a link to the policy be prominently posted on the district's website;
- a requirement that the policy be **annually** distributed to parents and guardians who have children enrolled in a school in the district;
- a requirement that the following information about the district anti-bullying coordinator be listed on the **homepage** of the *district* website:
  - (i) name of the district anti-bullying coordinator; and

- (ii) school phone number of the district anti-bullying coordinator;
  - and
  - (iii) email address of the district anti-bullying coordinator; and
  - (iv) school address of the district anti-bullying coordinator.
- a requirement that the following information about the district anti-bullying coordinator be listed on the **homepage** of the website of **each** school in the district:
- (i) name of the district anti-bullying coordinator; and
  - (ii) school phone number of the district anti-bullying coordinator;
  - and
  - (iii) email address of the district anti-bullying coordinator; and
  - (iv) school address of the district anti-bullying coordinator.
- a requirement that the following information about the school anti-bullying specialist be listed on the **homepage** of the website of **each** school in the district:
- (i) name of the school anti-bullying specialist; and
  - (ii) school phone number of the school anti-bullying specialist;
  - and
  - (iii) email address of the school anti-bullying specialist; and
  - (iv) school address of the school anti-bullying specialist.

N.J.S.A. 18A:37-15. While the statute does not at all mention the posting of this information about the school anti-bullying specialist on the **district** website, since the law's goal in requiring posting of the information is to provide easy accessibility

information, it might be wise to also provide the information on the various anti-bullying specialists on the district website and the school they are assigned to. On the district website, it might be easier to list this information just below that of the district anti-bullying coordinator.

- a procedure for promptly investigating HIB complaints and for promptly investigating violations of the district’s HIB policy (see further information below under “Due Process and the Investigation Procedure”);

### **DUE PROCESS AND THE INVESTIGATION PROCEDURE:**

#### **What must be included in the district HIB policy regarding the procedure for investigating HIB complaints and the procedure for investigating violations of the district’s HIB policy?**

At the very least, **all** of the following must be included in such a procedure:

- **one-school day rule:** A requirement that the principal (or the principal’s designee) begin the investigation within one school day of the report of the HIB. While the law does not explicitly state whether the investigation should begin within one school day of the *verbal* report of the HIB or within one school day of the *written* report of the HIB, to be safe, it is wise to provide in your policy that the investigation begin within one school day of the **verbal** report of the HIB;
- a provision that the investigation be conducted by a **school anti-bullying specialist**;
- a provision that the principal may appoint additional personnel who are not school anti-bullying specialists to assist in the investigation;

- **10-school day rule:** A requirement that the investigation must be completed as soon as possible but not later than 10 school days from the date of the **written** report of the HIB (i.e. the written report to the principal under the two-school day rule required in the policy as mentioned above).
- a provision that the school anti-bullying specialist could amend the original report of the investigation results after the 10 school days if information relevant to the investigation was expected but not received by the end of the 10-day window for the investigation.
- a requirement that the results of the investigation be reported to the superintendent within **two school** days of the completion of the investigation.
- a statement that the superintendent upon receiving the investigation results could take any of the following actions: (i) provide intervention services; (ii) impose discipline; (iii) create training programs to reduce HIB and improve school climate; (iv) order counseling as a result of the investigation's findings; or (v) recommend or take other appropriate action.
- **Next board meeting following completion of investigation:** the policy must include a provision requiring that the results of each investigation must be reported to the school board **no later than** the date of the board meeting that immediately follows the completion of the investigation. The policy must also include a statement that the report to the school board

must include information on any (i) intervention services provided; (ii) discipline imposed; (iii) training programs created to reduce HIB and improve school climate; (iv) counseling ordered as a result of the investigation's findings; and (v) any other appropriate action taken or recommended by the superintendent for dealing with those involved in the HIB.

- **Next board meeting following receipt of investigation results:** the policy must state that at the next board meeting following its receipt of the investigation results, the board shall issue a **written** decision affirming, rejecting or modifying the superintendent's decision.
- **90-day rule:** a statement that the board's decision may be appealed to the Commissioner of Education, in accordance with the procedures set forth in law and regulation, no later than 90 days after the board issues its decision.
- **180-day rule:** a statement that a parent, guardian, student or organization could file a complaint with the Division on Civil Rights within 180 school days of the occurrence of an HIB incident based on membership in a protected group as enumerated in the "Law Against Discrimination," P.L. 1945, c. 169 (C. 10:5-1 et seq.).
- a statement informing parents or guardians of students who are parties to the investigation that they are entitled to receive information about the investigation in accordance with federal and state law and regulation. Some of the information these parents or guardians are entitled includes:

- (i) the nature of the investigation; and
- (ii) whether the district found evidence of HIB; and
- (iii) whether and what discipline was imposed; and
- (iv) whether services (e.g., intervention services, counseling, support services, etc.) were provided to address the HIB;

**5-school day rule:** This information must be provided in **writing** to the parents or guardians of students who are parties to the investigation within 5 school days after the results of the investigation are reported to the school board. A statement informing parents of this 5-day rule must be included in the policy.

**10-day rule:** A parent or guardian is entitled to request a hearing before the board after receiving the information. The law does not specify a time frame for the parent or guardian to request the hearing. However, the law provides that the hearing must be held within 10 days after the parent or guardian makes the request. The board must meet in executive session to consider the parent or guardian's hearing before the board so as to protect the student's confidentiality. During this hearing, the board is entitled to hear testimony from the school anti-bullying specialist about, at least, the following: (i) the HIB incident; and (ii) the recommendations for discipline or services; and (iii) any programs implemented to reduce such incidents.

The law does not specify whether the parent or guardian's request for a hearing must be in writing or could be verbal. It is critical to hold the hearing within 10 days after the request is made, even if made verbally. It is important to



also document the date when the request is made, particularly if it is made verbally. However, it is conceivable that a court might allow the district to rely on its already well-publicized existing policy on protocols for parents seeking a hearing *in terms of* whether parents in the district must provide verbal or written request for hearings. If there is no explicit policy or the district has an established practice of allowing verbal requests for a hearing, a court might find that a verbal request suffices. To avoid liability as much as possible, it might be prudent to hold the hearing within 10 days after the verbal request is received. If relying on verbal requests, the importance of documentation of the request and a foolproof system for verifying the date of the verbal request and recording the substance of the request can not be overemphasized. In the case of verbal requests, the responsibility for receiving the verbal requests should be assigned to one person and all parents in the district must be provided the name, district phone number, district physical address and district email address of that person; the availability of that person, the means of contacting that person and the protocol must be very well publicized and you should document your due diligence in publicizing this information. In fact, think of sending this information home to all parents along with the district HIB policy and with it require all parents to sign and return to the school within a specified timeline a carefully-worded document. Among other things, the document should clearly state that they have been provided a copy of the HIB policy and the information on the contact person(s) in the district for appeals as well contact information on the anti-bullying specialist and that they

understand that it is their responsibility to read and familiarize themselves with all aspects of the policy and procedures. This should be done annually.

- a statement that the board shall meet in executive session to consider the parent or guardian's hearing before the board so as to protect the student's confidentiality.

N.J.S.A. 18A:37-15.

**MODEL POLICY:** The law required the department of education to revise its model HIB policy to comply with the new law. Along with the information above, this model policy would greatly help districts in adopting and revising their own HIB policies in order to comply with the new law. Here are the links for the model policy:

<http://www.state.nj.us/njded/parents/bully.htm>

<http://www.state.nj.us/education/parents/bulymemo.pdf>

<http://www.state.nj.us/education/parents/bully.pdf>

## **J. SUSPENSION OR EXPULSION OF STUDENTS**

HIB has now been added to the state law that specifies grounds for suspension or expulsion of students. Of course, same due process and other requirements as with other grounds for suspension must be complied with. N.J.S.A. 18A:37-2(k).

## **K. WEEK OF RESPECT**

**WEEK OF THE FIRST MONDAY IN OCTOBER:** State law now requires each school to **annually** observe the week that begins with the first Monday in October as the "Week of Respect." During that entire week, each school must provide "age-appropriate" instruction designed to prevent HIB. The law specifically states that, in addition to and separate from this Week of Respect, throughout the school year, each school must

provide age-appropriate HIB instruction that complies with the core curriculum content standards. N.J.S.A. 18A:37-29.

## **L. DEPARTMENT OF EDUCATION GUIDANCE DOCUMENT**

The law requires the state department of education to create an HIB guidance document for school districts, parents and students. It is critical that you look out for this document once it is made available by the department. The law requires the department to provide the document on its website. **Every** school district **must** also include the document on the district's website. While the law does not expressly require that the guidance document be on the district's *homepage*, it does require that the document be posted "at an easily accessible location" on the district's website. N.J.S.A. 18A:37-24.

## **M. PROHIBITION OF RETALIATION, REPRISALS AND FALSE ACCUSATIONS**

Retaliations, reprisals and false accusations prohibited under the law are described below:

(a) Who is **prohibited** from retaliation, reprisals and false accusations?

- School board members
- School employees
- Volunteers
- Students

(b) Who is **protected** from retaliation, reprisals and false accusations?

- Victims of HIB
- Witnesses to the HIB (apply to all witnesses, not just eye-witnesses)

- Anyone with reliable information about an HIB.

N.J.S.A. 18A:37-16.

## **N. IMMUNITY FROM LAWSUIT FOR DAMAGES**

The law provides immunity from lawsuit for damages arising from any failure to remedy a reported HIB incident. The statutory conditions for this immunity are described here:

(a) Who is **protected**?

- School board member
- School employee

(b) What is statutorily required for the board member or school employee to be immune? The board member or school employee seeking immunity must show that:

- (i) he or she promptly reported the HIB; and
- (ii) the HIB was reported to the school official designated by the district's policy or to any school administrator or safe schools resource officer; and
- (iii) the report was made in compliance with procedures identified in the district policy; and

N.J.S.A. 18A:37-16(c).

## **O.BEWARE: ADMINISTRATORS COULD FACE DISCIPLINE**

The law warns that school administrators could face discipline under certain circumstances. Those circumstances are described here:

(a) Who could be disciplined?

- School administrators

(b) What is required for the school administrator to be disciplined? The administrator must qualify under (A) (i) and A(ii) *below* **OR** (B) (i) and (B) (ii) *below*:

- (A) (i) received a report of an HIB incident from a district employee; and
- (A) (ii) failed to initiate or conduct an investigation into the HIB.

**OR**

- (B) (i) should have known of an HIB incident; and
- (B) (ii) failed to take sufficient action to minimize or eliminate the HIB incident.

N.J.S.A. 18A:37-16(d).

**PROFESSIONAL DEVELOPMENT:** It is extremely important to provide professional development to all your staff to educate them on all aspects of the HIB law. It might also be wise to have all employees sign a statement acknowledging that the district has fully informed them of the law's requirements and that they take ownership of their responsibilities under the law. This might also be wise to do with all the various

personnel identified above as responsible for various parts of the law (including contracted service providers and volunteers). When you provide each person with your district HIB policy, have them sign a document acknowledging receipt; then give them a timeline to read it and after that time runs, have them sign a document stating that they have read and completely understand the HIB policy and will comply with it fully. You should probably also require each school's professional development committee as well as the school safety team to constantly look for and run professional development opportunities for your entire staff.

The law provides that the district must provide time to **district** anti-bullying **coordinators** and **school** anti-bullying **specialists** *during the regular school schedule* to go through inservice training so they are ready to assume the responsibilities of their positions. N.J.S.A. 18A:37-26.