



**NJPSAFE A**

LEGAL ONE

The ABC's of HIB: New Rules,  
Evolving Challenges and  
Next Steps

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***David Nash, Esq.***, LEGAL ONE Director

# Disclaimer

*This presentation is intended as a summary of law only, and is not meant as legal advice. Please consult your attorney to obtain legal advice.*



# Topics To Be Covered

- New Statute on Restorative Justice
- New Transgender Student Guidance
- New Physical Restraint Law
- Revised HIB Code
- Scenarios

# P.L. 2018, c. 73

- Requires SD to provide daily recess period for students in grade Kindergarten through 5
  - “... a public SD shall provide a daily recess period of at least 20 minutes for students in grades K-5.”
    - “These recess periods shall be held outdoors, if feasible.”
    - “A SD shall not be required to provide a recess period on a school day in which the day is substantially shortened due to a delayed opening or early dismissal.”
- Permits denial of recess for violation of Code of Student Conduct but student must be provided restorative justice activities
  - “A student shall not be denied recess for any reason, except as a consequence of a violation of the SDs Code of Student Conduct, including a HIB investigation...”
  - “If a student is denied recess (except for medical or §504 reasons)... the student shall be provided restorative justice activities during the recess period.”
    - “... activities designed to improve the socioemotional and behavioral responses of students through the use of more appropriate, and less punitive, interventions thereby establishing a more supportive and inclusive school culture.”
  - “A student may not be denied recess more than 2x per week.”

# Addressing LGBTQ Student Issues

- Increased likelihood of being victimized by HIB
- Increased likelihood of suicidal ideation
- Difficult issues with balancing student privacy, parental rights
- Specific challenges related to transgender students
- Specific challenges related to attitudes of staff members, parents

# Transgender Students/Staff

- Four legislative enactments
  - **P.L. 2017, c. 137**; DOE Guidelines **9/27/18**
  - **P.L. 2018, c. 58**; Amended birth certificate – female, male, undesignated non-binary gender
  - **P.L. 2018, c. 59**; Death certificates, gender identification
  - **P.L. 2018, c. 60**; Transgender Equality Task Force
- NJSIAA Transgender Student Policy – Participation, Drug Testing

# DOE Transgender Student Guidance

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

# Physical Restraint/Seclusion Legislation

- P.L. 2017, c.291
- Limits use of physical restraint for students with IEPs – only in an emergency in which the student is exhibiting behavior that places the student or others in imminent physical danger
- Only restrain in prone position with prior written authorization of primary care doctor
- Staff members using restraint annually trained
- Immediate parental notice with written notice within 48 hours
- Failure to properly restrain students with disabilities or otherwise follow law could lead to HIB claims or other litigation



# Understanding the New Regulations



Download from [Dreamstime.com](https://www.dreamstime.com/stock-illustration-vector-image)

# HIB Code Amendments

## Topics

- Initiation of HIB Investigation
- Role of Approved Private Schools with Disabilities
- Taking Into Account the Circumstances of Incident when Contacting Parents
- Timeline for Parental Appeals
- School Safety / Climate Team
- Recognition of Power Imbalance
- Conflict of Interest
- Student with Disabilities
- SEE LEGAL ONE Comparison Chart***

## Status

- Met on November 1, 2017
- Scheduled to be effective July 1, 2018
- Link to the full text of the code changes:
  - <http://www.state.nj.us/education/sboe/meetings/2017/November/public/Item%20D%20Programs%20to%20Support%20Student%20Development.pdf>

# Initiation of HIB Investigation

## prior regulation

- Principal shall initiate an investigation upon receipt of an allegation of HIB or when principal has reason to believe HIB has occurred.

## New Regulation

- Permits local board policy allowing the principal in consultation with ABS to make an initial determination as to whether reported incident is an act of HIB.
- In making determination, principal must assume the allegations are true.
- The parent may appeal the decision not to initiate an investigation to the BOE.

## Major NJPSA Policy Goal!

- Recognizes that the use of the word “bully” is not always in good faith or based on an understanding of the law.
- Allows for more efficient use of limited resources.
- However, it REQUIRES local district policy in order to become operational.

# Threshold Assessment Checklist

- ASSUMING ALL ALLEGATIONS ARE TRUE, Principal must determine if the allegations include:
  - Substantial Disruption or Interference
  - Actual or Perceived Distinguishing Characteristic
  - One of the following:
    - Actual harm to self or property or fear of reasonable harm to self or property
    - Demearing to student or group the student is part of
    - Creation of a hostile educational environment

# Initiation of HIB Investigation

## Best Practice

- Have superintendent and/or Anti-Bullying Coordinator sign off on decision not to initiate HIB investigation
- Provide parents of alleged aggressor and victim with written notice of decision not to initiate HIB investigation
- Get initial allegations in writing prior to making a decision as to whether or not to initiate an HIB investigation

# Role of Approved Private Schools for Students with Disabilities (APSSDs)

## Prior Regulation

- Indicates that APSSDs are governed by student discipline rules that apply to all public schools and holds PSSDs to same requirements as all boards of education.

## New Regulation

- Provides specific HIB rules for APSSDs and requires adoption of HIB policy.
- Requires sending district BOE of the alleged victim to take the lead in investigating incidents involving APSSD students when incident occurs:
  - On BOE school bus,
  - At school-sponsored function and/or
  - Off school grounds.
- Requires APSSD staff to cooperate with sending district in investigation.

# Role of Approved Private Schools for Students with Disabilities (APSSDs)

## Best Practice

- Confirm that APSSDs have an ABS in place and that they understand their obligations
- Require appropriate personnel from APSSDs to be present and participate when questioning students
- When questions exist as to whether or not the alleged HIB started in school at the APSSD OR started on the bus or off school grounds conduct a joint investigation, rather than separate parallel investigations
- Review contract between sending district and APSSD and ensure that HIB reporting and investigation obligations are addressed

# Taking Into Account the Circumstances of Incident when Contacting Parents

## Prior Regulation

- No specific provision

## New Regulation

- Requires the school district to take into account the circumstances of the incident when communicating with parents in order to protect the student.
- Does not define how a school district is to do this.
- The language was developed in response to concerns related to revealing student sexual orientation or gender identity/expression.



# Taking Into Account the Circumstances of Incident when Contacting Parents

## Best Practice

- When applicable, inform parent or guardian that the alleged HIB involves perceived sexual orientation or gender identity/expression, but do not share actual sexual orientation or gender identity/expression as part of HIB notice
- Be aware of other sensitive issues that may arise (interracial relationships, disputes related to religion, etc.)
- Ask the student about any issues in the home that the district should be aware when notifying parents and consider student requests regarding parental notice

# Timeline for Parent Appeals

## Prior Regulation

- Requires hearing to be held within 10 school days of the request.
- No deadline for when parent may request a hearing.

## New Regulation

- Establishes deadline for parent seeking to request a hearing before the BOE of no later than 60 calendar days after parent or guardian receives written notice of outcome of investigation.

# School Safety /Climate Team

## Prior Regulation

- Refers to “School Safety Team”
- Outlines role of SST to address school climate, identify patterns of HIB, etc.

## New Regulation

- Revises name to School “Safety/Climate Team”
- Clarifies that parent shall not receive confidential student information and that other team members not authorized to do so shall not receive confidential information.

# Recognition of Power Imbalance

## Prior Regulation

- No reference to imbalance in power.

## New Regulation

- Requires every board policy to include a statement that bullying is unwanted aggressive behavior that may involve a real or perceived power imbalance.

# Conflict of Interest

## Prior Regulation

- Does not address potential conflicts of interest

## New Regulation

- Prohibits a member of the same bargaining unit from investigating claim against fellow member.

## Best Practice

- Do not investigate your boss!

# Students with Disabilities

## Prior Regulation

- Requires BOE policy to include certain factors when determining remedial action, but does not reference students with disabilities.

## New Regulation

- Requires BOE policy, when considering remedial actions, to consider nature of disability.
- Requires APSSDs to consult with sending districts IEP teams as appropriate when considering remedial actions and consider role of I & RS.

## Best Practice

- Consult with case manager prior to interviewing a student with a disability as alleged aggressor, victim or witness

# Students with Disabilities

## Prior NJDOE/USDOE Guidance

- NJDOE view that if behavior otherwise would be HIB, still is HIB even if a manifestation of disability
- USDOE guidance indicates that districts need to convene IEP or 504 Team if student with an IEP or 504 plan is the victim of bullying
- Under ESSA school districts need to consider if racial disparities exist in student disability regarding students with disabilities

## Best Practice

- Convene IEP team even if student with disability is the aggressor, don't wait until 10 days of suspension

# Students with Disabilities

- HIB may result in a denial of FAPE
- Broadly consider which “school officials” are entitled to receive information if it will help ensure that the student fully benefits in the educational program and extra curricular activities
- Work closely with case manager AND parents
- Consult with colleagues with greater expertise
- If victim of HIB, convene IEP team, including parent
- If behavior is a manifestation of disability, behavior that otherwise would be HIB still is labeled as HIB



# SCENARIOS



# Scenarios Applying the New HIB Regulations

- DO WE START A HIB INVESTIGATION?
- Johnny has falsely accused Billy of bullying on 4 separate occasions between January and June. Both were in the 7<sup>th</sup> grade at the time. Each claim was investigated. All 4 were determined to be unfounded, with witnesses contradicting Johnny's version of events each time. On August 1, your board of education adopted a new board policy, allowed the principal in consultation with the anti-bullying specialist to determine if an HIB investigation is required. On the first day of school, Johnny, who is now an 8<sup>th</sup> grader, once again accuses Billy of bullying. You ask Johnny if he has any witnesses and he says no. Do you initiate an HIB investigation? What additional information do you need to answer this question?

# Scenarios Applying the New HIB Regulations

- Who Takes the Lead?
- Brenda is an 11<sup>th</sup> grade student who is bussed to an approved private school for students with disabilities. On Monday morning, she complains to her case manager at the private school that she was humiliated by the horrible things several classmates said to her when she came into school that morning. Brenda alleges that several classmates called her “slut” or other similar terms. She doesn’t know why, but says that a friend told her that someone started a rumor online over the weekend about Brenda “sleeping around.” She hasn’t seen the online post and says she promised her friend she would not use her name.
- How should this investigation be conducted? Who takes the lead? What additional information do you need?

# Scenarios Applying the New HIB Regulations

- What do you say?
- Chase is a 2<sup>nd</sup> grade student. He is close friends with Jazz, a transgender girl in his class. Chase was Jazz's friend in kindergarten and first grade as well. At that time, Jazz was known as Jeremy. Jazz had been assigned male at birth, but had started identifying to the class as female in 2<sup>nd</sup> grade.
- Chase remained close friends with Jazz. That afternoon, Chase was found by a teacher crying in the hallway. He told the teacher that other boys were making fun of him, saying "Chase is a girl". He explains to the teacher that he and Jazz were talking and Jazz had to use the restroom, so they both just went to the girls restroom together. Several boys saw Chase leaving the restroom and starting chanting "Chase is a girl." Chase admits to the teacher that he wishes his parents were as cool as Jazz's parents. He tells the teacher that he is really a girl too, and would wear "girl clothes" like Jazz if he was allowed to. He says his dad would kill him, so he knows he can't.
- What information should be shared with Chase's parents? What steps should be taken to address the revised code requirements?

# QUESTIONS

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# Conclusion

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