

PART 1: OVERVIEW OF THE ANTI BULLYING BILL OF RIGHTS ACT (ABR) – DISTRICT AND SCHOOL OBLIGATIONS AND PARENTS RIGHTS

Which Schools and Which Types of Student Conduct are Covered Under the ABR?

Only certain types of schools and behavior are covered in the ABR. The ABR only applies to public school districts and schools, including charter schools, in New Jersey. Nonpublic schools are not required, but are encouraged to follow the ABR. If your child attends a nonpublic school, you should call the school for information on its harassment, intimidation and bullying policies.

The ABR also only applies to conduct that is defined as “harassment, intimidation and bullying” (HIB) in the ABR. (See *N.J.S.A. 18A:37-14*)

How is Bullying Defined in the ABR?

The ABR defines harassment, intimidation and bullying (HIB) as 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 an 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; **and that**
- Takes place on school property, at any school-sponsored function, on a school bus, or off school grounds, that substantially disrupts or interferes with the orderly operation of the school or the rights of other students; **and that**
- 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. (*N.J.S.A. 18A:37-14*)

The ABR does not explain the meaning of a “distinguishing characteristic.” However, the dictionary (Webster’s Ninth Collegiate Dictionary) defines the word “distinguish” as “... to perceive a difference in ... to mark as separate or different ... to separate into kinds, classes or categories ... to set above or apart from others ... to single out...” The same dictionary defines the word “characteristic” as “...something that identifies a person or thing or class...”

How Do Schools Decide Whether Conduct is Considered HIB?

The school must first conduct an investigation when bullying is reported. A school must consider many different factors to decide whether a behavior is HIB as defined in the ABR.

In making this decision, schools must take into account the facts of each case. In fact, the ABR requires schools to take certain steps. The steps required in the ABR for responding to and investigating HIB is explained in the section of this guide titled The 10 Steps of the HIB Complaint and Investigation Process located on pages 17-19.

If a student's behavior is not found to be HIB, based on the facts, schools might be required to take other actions required in the school district's code of student conduct. To access your board of education's code of student conduct, please contact the main office of the school or school district. The school district's code of student conduct must be consistent with the regulations at N.J.A.C. 6A:16-7 (<http://www.state.nj.us/education/code/current/title6a/chap16.pdf>).

Understanding Different Types of Bullying Behavior

Bullying can occur in many different ways. Bullying can be direct ("face to face") or indirect ("behind someone's back). The type of bullying can affect the way parents describe or approach their child or a school about a bullying incident. Generally, there are four types of bullying behaviors:¹

- **Verbal** – Includes name calling, taunting, constant teasing or making threats;
- **Physical** – Includes hitting, punching, shoving, spitting, or taking or damaging personal belongings;
- **Psychological** – Includes spreading rumors, purposefully keeping people from activities and breaking up friendships or other relationships; and
- **Electronic** – Includes using the internet, mobile phone or other electronic equipment to intentionally harm others.

Cyberbullying: The New Form of Bullying

Cyberbullying is a new form of bullying that is being used with the advancement of technology. It takes place using electronic devices or equipment such as cell phones, computers and tablets; and communication tools, such as social media sites, text messages, chat rooms and websites, to intentionally harm someone. Under the ABR, cyberbullying falls under the category of an "*electronic communication*," which is defined as "*a communication transmitted by means of an electronic device, including, but not limited to, a telephone, cellular phone, computer, or pager*" (See N.J.S.A. 18A:37-14).

Cyberbullying can be especially damaging to the victim. Young people who are cyberbullied often also are bullied in person. Cyberbullying can happen anytime of the day or night and can reach victims even when they are alone.

The cyberbully can be difficult to find. The cyberbully has the ability to send hurtful messages and images quickly to a wide audience, and can do this without anyone knowing he or she did it. The messages and images are hard to stop or delete once they have been posted or sent.¹ Some examples of cyberbullying include:

- Using online social networking sites, such as Facebook, MySpace and Twitter, to make hurtful postings about someone. This can include calling a person a name, writing a rumor or posting personal information;
- Using instant messenger services to repeatedly harass someone or contact someone who is not interested in communicating with the person;
- Sending hurtful or unwanted text messages to someone's cell phone;
- Showing recorded or live video of someone's private life on the internet.
- Intentionally excluding someone from an online group.

Places Where Bullying Frequently Occurs

Schools must find out where the bullying took place before deciding if it is HIB. Bullying is most likely to occur outside of the classroom, in places where there is the least amount of adult supervision. Some examples of areas, during school, where bullying may occur include:

- School playgrounds;
- Hallways;
- Lunch rooms;
- Locker rooms; and
- Buses.

Unlike other forms of bullying, cyberbullying is more likely to occur inside the classroom or in adult supervised areas because of the ability to easily move electronic devices from one location to another and because of the growing presence of these devices in the classroom. The small size of electronic devices, such as cell phones, makes these items easier for students to conceal and use to bully.

Conflicts vs. Bullying

During a conflict, name-calling, threats and other conduct that might look like bullying can occur. However, a conflict and bullying are very different.

Unlike bullying, during a conflict people are equally involved in some type of disagreement. Conflict is considered mutual, meaning everyone is more or less evenly involved.

Bullying, on the other hand, involves one or several people (the bullies) intentionally committing a mean or violent act against another person(s) or group of people (the victims). When bullying occurs, there is no mutual participation in a disagreement; it is one-sided. Bullying victims have a hard time defending themselves. The victims want the bullying to stop, but the bully continues the behavior.

Conflicts and bullying can interrupt the school day, damage property and cause injuries to the people involved. However, when the behavior involves a conflict, the school will take action based on its code of student conduct instead of the ABR.

Bullying occurs when:

- One or more students are victims of unwanted or uninvited aggression, as the behavior applies to the definition of harassment, intimidation and bullying in the ABR;
- The aggressor's behavior would lead a person to reasonably believe that the aggressor is motivated by a desire to physically or emotionally hurt someone;
- The aggression is one-sided; and
- The behavior is not an attempt to positively or negatively address or resolve a problem.

Bullying that Leads to a Conflict

An incident that is found to be bullying could lead to a conflict in the future. If a conflict is the result of bullying, a school is required to follow the ABR when dealing with the bullying aspect of the incident. To decide whether a behavior is bullying, the school officials must think about

all of the facts during an investigation. Examples of bullying and conflict by grade level are provided below:

<i>GRADE LEVEL</i>	<i>CONFLICT</i> <i>(Mutual disagreements, arguments or fights)</i>	<i>BULLYING</i> <i>(Intent to emotionally or physically hurt a student; it is one-sided.)</i>
<i>Elementary School</i>	<p>“You copied my picture...you stole my idea!” “No, I didn’t...you copied from my picture!”</p>	<p>A fellow student grabs the picture you colored and tears it up, calling you names related to your religion and cultural heritage.</p>
<i>Middle/Junior High School</i>	<p>“After you borrowed my basketball, I asked that you return it and you didn’t!” “I did return it...I left it on your porch.”</p>	<p>While practicing basketball skills in the gym, several students sit nearby and call out insulting comments about the color of your skin and your basketball skills.</p>
<i>High School</i>	<p>“You went after my boyfriend at the party and tried to hook-up with him.” “I was told you broke up and he was available...and he didn’t seem too unhappy with me!”</p>	<p>A student posts explicit photos and insulting words about your sexual orientation on Facebook, attacking you for “stealing” her boyfriend.</p>

Hazing and Bullying

It can be easy to think that hazing and bullying are the same things. Hazing can involve bullying or can be considered bullying in some situations. The key difference is that hazing is behavior that is based on a tradition and is used by members of a group to maintain a hierarchy or “pecking order” within the group. The lower group member or persons who want to join the group either agree or go along with the hazing activities, which may be physically, psychologically or socially harmful. Unlike bullying, the victims or newcomers let themselves to be treated in a way that gets them accepted as a member of the group. Once accepted by the group, the victims become bystanders and watch others get hazed. Eventually, the bystanders achieve senior status and power and haze others. ⁱⁱ

Two things that make hazing and bullying different are:

- The victims agree or go along with being hazed as a way to prove that they should be accepted as a member of the group; and
- The victims eventually haze others after they have been accepted into the group and have achieved senior status or power.

Hazing and the Law

Hazing is considered a disorderly persons offense in New Jersey, when a person in connection with an initiation of another, knowingly or recklessly engages in conduct, other than competitive athletic events, which places another in danger of bodily injury (*N.J.S.A. 2C:40-3*). When serious bodily injury results, the offense is aggravated hazing, which is a crime of the fourth degree. The consent of the person hazed is not a defense (*N.J.S.A. 2C:40-4*). Any other criminal conduct under the New Jersey Code of Criminal Justice also may be charged (*N.J.S.A. 2C:40-5*).

Examples of Hazing

Some examples of hazing under New Jersey's hazing law are provided below:

- A new member of a high school football team is told by the team's captain that all new players must not drink water after each of the first week of practices to prove their commitment to the team. The team member does not drink water after the practices and is taken to the hospital after the third practice due to symptoms of dehydration.
- A high school sophomore who is a new member of the cheerleading squad is told by a junior cheerleader that it is customary for new cheerleaders to demonstrate a difficult cheerleading move without floor padding. As a result, the sophomore cheerleader attempts the move and falls on her tailbone on the gymnasium's wood floor, which resulted in her being taken to the hospital for evaluation.
- A student who is interested in joining the car club at school is told by the club's president that before a person can join he must race through a red light traveling at a speed that is at least 35 miles an hour above the speed limit. The student races through a red light traveling at a speed of 70 miles per hour in a posted 25 miles per hour zone. As a result, the student gets into an accident, causing him bodily harm.

Examples of Hazing that Include another Offense

The legal definition of hazing above makes it clear that other offenses and criminal charges can result from hazing; these offenses could include assaults, criminal threats and extortion. For example, if as a part of hazing a student intentionally shoves another student into a locker, breaking the student's wrist, the hazing would also involve an assault. From a school perspective, hazing could also involve HIB if the behaviors meet the criteria in the HIB definition (see section of this guide titled *How is Bullying Defined in the ABR?* on page 9). For example, HIB would also occur when, as a part of hazing, a student makes negative comments about another student's religion when the student enters a classroom, causing substantial disruption to the orderly operation of the school and emotionally harming the student.