The ABCs of HIB: New Rules, Evolving Challenges and Next Steps

October 9, 2018

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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.
Documents

All materials can be accessed at

https://tinyurl.com/LO-HIB-100918

This folder can be accessed for 30 days from the training date.
Topics To Be Covered

• HIB Definition
• Investigation Requirements
• New Statute on Recess
• Revised HIB Code
• Case Law
• Scenarios
HIB Definition
DEFINITION OF HARASSMENT, INTIMIDATION OR BULLYING

“Harassment, intimidation or bullying” means:

– Any gesture
– Any written, verbal or physical act, or 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
– That takes place on school property, at any school-sponsored function, on a school bus, or off school grounds
DEFINITION OF HARASSMENT, INTIMIDATION OR BULLYING

The HIB must *substantially disrupt or interfere* with the orderly operation of the school or the rights of other students and:

- A reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging a student’s property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
- 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.
Protected Characteristics

• Employers--including parochial schools and public school districts--may not discriminate against staff or students based on:
  • Race
  • Creed
  • Color
  • National origin
  • Ancestry
  • Age
  • Genetic information
  • Pregnancy
  • Sex
  • Religion
  • Disability
  • Military service
  • Atypical cellular blood trait
  • Nationality

• NJ LAD
  • Marital/domestic partnership/civil union status
  • Affectional or sexual orientation
  • Gender identification or expression
HIB Investigation Procedures
Investigation Steps

- HIB complaint filed (Staff must report incident on day it occurs, follow up in writing)
- Principal initiates investigation and responds to Code of Conduct issues (Key Q - Is this an allegation of HIB?)
- ABS leads investigation (10 school days to complete)
- ABS writes HIB Report (within 2 school days of completing investigation)
- Superintendent signs off on HIB response
- Board informed of incident
- Parent/Guardian notified of outcome, right to hearing (within 5 days of school board being informed)
- Hearing occurs if requested
- BOE votes to affirm, reject or modify
- Parent retains rights to appeal, pursue other legal avenues
LEGAL ONE HIB CHART

NJ HIB Caselaw Summary Chart in your Drop Box. For future updated versions of this chart, visit the LEGALONE Website...

P.L. 2018, c. 73

• Implementation required for 2019-20 school year.
• 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.”
Understanding the New Regulations
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:

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.
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
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
    • Demeaning to student or group the student is part of
    • Creation of a hostile educational environment
Case Law on Initiation of Investigation  

• Board of education’s determination that special education student’s action, reaching under a partition separating two bathroom stalls in the girl’s restroom, grabbing another student’s leg and asking for a “high five” did not constitute an act of HIB, was not arbitrary, capricious or unreasonable. No evidence in the record that student’s actions, while not appropriate, were motivated by any actual or perceived characteristic. However, board failed to conduct a timely hearing within ten days of petitioner’s request and initially failed to investigate the matter in March 2015. The initial failure to investigate was a result of the board’s misapplication of the “principal’s discretion.” Guidance issued by the Department provides that the principal or his/her designee may exercise his/her discretion in determining whether the allegations meet the threshold definition of HIB before initiating an investigation. However, 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 allegation meet the criteria in the Act, depends on the HIB policy adopted by the local board of education.
Case Law on Initiation of Investigation (cont’d)

• The board’s HIB policy did not provide for such discretion. No remand was necessary as the outcome would remain the same; the student’s conduct was not reasonably perceived as being motivated either by an actual or perceived characteristic.

• Corrective action ordered by the Camden County Office of Education was an appropriate remedy and ensures that the board conducts HIB investigations in accordance with the Board’s policy and the Act; initiates and completes investigations in accordance with the provisions of the Act, and safeguards the due process rights of all parties involved.
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 understanding 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/expressions.
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.
School Safety and HIB

• What potential issues related to HIB may arise when students are planning for or engaging in student protests related to school safety and gun violence?

• What issues arise if a student is being singled out by others for being a “gun lover”?

• How should you address future requests for students to walkout from school? What if competing groups wish to walk out and each competing views?
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

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School district failed to provide FAPE in the LRE for a multiply handicapped now 19 year old student. Student had a major depressive disorder and a generalized anxiety disorder and was deemed other health impaired. Student was also deemed emotionally disturbed as he developed fears associated with school over a period of time to the extent that he was unable to attend school.

ALJ ordered that student be placed at the New Roads School in Somerset, including transportation, and was awarded one school year plus six months of compensatory education.

Allegations were made of bullying in the 2014-2015 school year. There was no direct evidence of bullying; no witnesses testified to seeing such conduct. School district determined that each incident of alleged bullying was unfounded. However, four psychiatrists and one psychologist credited the student’s accounts in regard to bullying as the conditions which impacted him in the 2015-2016 school year.
HIB and Special Education – Case Law


Matter involved 13 year old student who was eligible for special education and related services. Parent alleged that student was the continued target of HIB for the 2016-2017 school year and was unable to make meaningful educational progress. Student suffered from autism, generalized anxiety disorder and ADHD. While ALJ concluded that IEP and 504 plan were appropriate at the start of the year, school district should have done more. While student perceived that he was being bullied, parents did not reference bullying in any communications with school staff. No actual HIB complaints were filed. Teachers did not witness bullying or believed student was being bullied. There was never an HIB investigation into any incident involving the student. However, the staff noted the student’s difficulties with other students and should have investigated the “push down” incident and student’s claims of being teased as HIB.

ALJ determined that the Main Road School was an appropriate placement; educational progress was made and the school was the LRE, giving the student the greatest opportunity to interact with his peers. However, the failure to provide measurable goals and objectives in the area of social skills and social speech to address his disabilities was a failure to provide FAPE. Student to receive a new IEP and compensatory education including weekly social skills and counseling.
HIB and Special Education – Case Law

• A teacher did not engage in HIB by taking papers from a student to check her work during class and asking to see the student after class to give her special study guides. The student had alleged HIB, claiming she was singled out because of her disability. Student had ADHD and IEP required teacher to check her work during class. No evidence student was singled out due to IEP. S.A. and C.A. v. Moorestown BOE (April 23, 2018)
HIB, Section 504, Title IX

• C.M. v. Pemberton Twp. HS (June 29, 2017) D. N.J.

• Facts – High School student with ADHD alleged that she was the victim of a series of physical assaults and sexual and gender harassment by other students. Alleged her civil rights were violated by district failure to properly investigate. Sued for violations under Title IX and Section 504. District sought to get case dismissed.

• Holding – Motion to dismiss denied.
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 7th 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 8th 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\textsuperscript{th} 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 2nd 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 2nd 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?
RECENT HIB DECISIONS
Lessons from Recent Case Law

• Choosing to not invite a classmate to a party is not, in and of itself, HIB. R.A. v. Hamilton Twp BOE (June 22, 2016)

• Procedural errors resulted in HIB decision being overturned, case remanded. Failure of Board to issue a written decision affirming, rejecting or modifying Supt. J.L. v. Bridgewater-Raritan BOE (December 9, 2016)
Lessons from Recent Case Law

• Teaching staff members have 90 days to appeal HIB finding to Commissioner. Teacher was outside 90 days when she filed since she was notified of HIB decision being affirmed by Board on January 24. Education Association filed a grievance on January 25 which was denied on March 21, 2017. Teacher filed petition of appeal with Commissioner on June 13, 2017, well past deadline. Could not rely on grievance decision notice as relevant date. Valerie Kenny v. Moonachie BOE (Sept. 27, 2017).
Lessons from Recent Case Law

• Superintendent has the authority to reject a decision of the Anti-Bullying Specialist. In this case, superintendent rejected finding of no HIB. Presented finding of HIB to the Board, and Board affirmed. Case involved two 7th grade students in social studies class. Students were cutting and pasting. A.W. said to J.S., who was a Jewish student, “if you throw those scissors at me you are going back to the concentration camp.” J.S. then stabbed A.W.’s water bottle. ABS had found it was a code of conduct violation and not HIB. Supt disagreed. E.W. and D.W. v. Bridgewater-Raritan BOE (October 23, 2017).
Lessons from Recent Case Law

• A finding of HIB cannot be made against the Booster Club. It must be against individuals. Case involved allegations that the booster club disinvited a student athlete to the end of year banquet because he had accused the baseball coaches of HIB. Commissioner noted that the BOE should have determined if individual members were acting as school district volunteers under N.J.S.A. 18A:37-16a, and if so, whether they committed acts of HIB. Columbia HS Baseball Boosters v. South Orange-Maplewood BOE (November 13, 2017)
Lessons from Recent Case Law

• Even a fourth grade student can be guilty of sexual harassment, which is a form of HIB. Case involved a fourth grade male student who targeted a 10 year old female student, and made inappropriate hand gestures and comments which were reasonably perceived as being motivated by gender.  R.P. v. Hamilton Twp (Atlantic County) BOE (March 29, 2018).
Lessons from Recent Case Law

• Legal question remains open as to whether a parent could file a claim of HIB on behalf of his adult child. Case was remanded for further exploration. Case involved allegations that student athlete was retaliated against and cut from team due to filing of prior allegations against coaches. R.N. v. South Orange-Maplewood BOE (June 22, 2018).
Lessons from Recent Case Law

• If there is alleged cyberbullying, engage in due diligence to determine source – S.J. v. Plumsted SD (Nov. 22, 2016)
• If the target is resilient, the behavior may not be HIB (D.K. v. Readington SD, Nov. 11, 2016) – Asian student targeted, but no substantial disruption)
• The Road to HIB may be paved with good intentions! (K.C. v. Montgomery Twp. SD, Aug. 11, 2016) – Expressing concerns about friend and possible eating disorder
• Distinguishing characteristics are defined very broadly (e.g., vegetarianism, sports proficiency, head lice)
• Staff members have due process rights, too – See case involving coach, and tenure cases alleging HIB
More Information on D.K. v. Readington

– D.K. alleges that he was called a “know it all” on the bus by several students and that one student said that he hoped D.K. would hit his head and get “brain damage”

– D.K. maintained grades of A or A+ in all classes in middle school

– D.K. never missed class, and never went to a counselor or doctor for assistance as a result of alleged incidents

– D.K. was known to regularly brag about his math grades and discuss how easy math is, and indicate he did not know why other students struggled with math since anyone who is smart would find it easy

– Is this HIB? What additional information is needed?
HIB and Employee Rights

• Sadloch v. Cedar Grove SD – June 23, 2015 Commissioner affirmed ALJ. HIB Allegations against coaches dismissed – Failed to provide coaches with written summary of allegations, findings and denied right to appear before the BOE prior to Board vote

• Karp v. Barnegat SD – Tenure charges filed against teacher. On May 26, 2016, Arbitrator dismissed allegations against teacher involving alleged sexual harassment of students. There were no certifications from direct witnesses or victims, no ability to cross examine.

• Smith v. Wayne Township BOE 8/26/16 – BOE filed Charges of Conduct Unbecoming and Other Just Cause against tenured Physical Education / Health teacher alleging that he engaged in a physical altercation with a high school student during the 2014-15 school year, and a series of incidents during the 2015-16 school year involving charges of HIB of several students. Tenure charges upheld.
Joseph Ehrhard and Robert Ehrhard v. Hunterdon Central Regional School District
EDU 00188-14, Commissioner (December 21, 2017)

FACTS:
• The conduct at issue by baseball coaches Raymond and Augusta involved such incidents as:
  – Instructing R.E. to retrieve balls that had been thrown into a pond,
  – Guilting R.E. to miss a family vacation to attend baseball practice,
  – Threatening to demote R.E. to junior varsity, and
  – Forcing R.E. to carry his catchers’ gear with no intention of letting him play,
  – Unfair playing time,
  – Teasing or name-calling, insulting and demeaning comments,
  – Publicly humiliating a player,
  – Favoritism,
  – Profanity and
  – Being too hard on players.

**HOLDING:** The Commissioner agreed with the ALJ that the Board did not act in an arbitrary, capricious or unreasonable manner in rendering its HIB determination, as the alleged conduct failed to meet the statutory definition of HIB.

**RATIONALE:**

- There were no facts to support that the alleged bullying was motivated by a “distinguishing characteristic” of R.E.
  - Petitioners alleged conduct may have been motivated by R.E.’s status as:
    - 1) a student;
    - 2) a “white, healthy male student athlete”; or
    - 3) a perceived “meek or weak” member of the baseball team.

- Status as a “student” does not qualify as a distinguishing characteristic, as the HIB statute only applies to misconduct against students—the “distinguishing characteristic” must be more specific than simply being a student with the imbalance of power that exists by nature of the position of an adult teacher or coach and a minor child.

- Additionally, there is no support for the argument that R.E. was targeted because he was a “white, healthy male student athlete.”

- Finally, while being “meek or weak” could qualify as a “distinguishing characteristic,” petitioners have not set forth any facts to support this theory.

- In fact, according to J.E., Coach Raymond exhibited “bullying” conduct to everyone from assistant coaches to members of the grounds crew.

- These actions are more akin to what the Appellate Division has called “aggressive conduct without identifiable motivation,” conduct that, while inappropriate and undesirable, is not covered by the HIB statute.

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A teacher did not engage in HIB by taking papers from a student to check her work during class and asking to see the student after class to give her special study guides. The student had alleged HIB, claiming she was singled out because of her disability. Student had ADHD and IEP required teacher to check her work during class. No evidence student was singled out due to IEP. S.A. and C.A. v. Moorestown BOE (April 23, 2018)
Physical Restraint/Seclusion Legislation

• P.L. 2017, c.291
• Limits use of physical restraint – 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
Top 10 Implementation Challenges

1. Broad definition of “restraint”
2. Students without a history of behavioral issues
3. Students whose disability and resulting behavior often require some form of restraint
4. Short timeline for providing a detailed report to parents
5. Need for a second staff member to monitor the first staff member
6. Finding the time and resources to train a large number of staff members on restraint
Top 10 (cont’d)

7. Clearly identifying students who may need “timeout” and building that strategy into the IEP
8. Working with approved private schools for students with disabilities to properly report and respond
9. Systemically addressing any patterns that emerge
   – Multiple incidents with one student OR one staff member
   – Recurring issues for students with similar behavioral issues
   – Professional development on classroom management
10. Utilizing progressive supervision in response to any deviation from statute
Scenario

• Two third grade girls, Crystal and Latonya, are playing tag on the school playground during recess. Crystal catches up to Latonya near the swing set and tags her. Latonya falls down. She gets up and says “hey, too rough!” She then pushes Crystal and appears to be winding up to hit Crystal. Ms. James, the teacher monitoring recess, comes over, and puts her hand on Latonya’s should and pulls her away from Crystal, saying “that’s enough!” Latonya has an IEP but has no history of any behavioral issues and her behavior today is not a manifestation of her disability. In addition, Ms. James has not received any training on physical restraint. Finally, Ms. James did not have any notice that Latonya has an IEP.

• How is this addressed under the physical restraint law? What if the parents tell you they don’t want to make a big deal of it? What if the parent complains that Ms. James was discriminating against Latonya and should have known she is not allowed to put her hands on any student with an IEP without prior parent permission?
NJDOE Transgender Student Guidance - 9/28/18


• Resources

• Definitions
  – “A safe and supportive environment within a school begins with understanding and respect.
  – Students, teachers, and administrators should be provided with common terminology associated with gender identity.
  – Although these terms are commonly used by advocacy and human rights groups, students may prefer other terms to describe their gender identity, appearance, or behavior.”
Gender Identity means a person's internal, deeply held sense of gender. All people have a gender identity, not just transgender people. For transgender people, the individual’s internal gender identity is not the same as the gender assigned at birth.

Gender Expression means external manifestations of gender, expressed through a person's name, pronouns, clothing, haircut, behavior, voice, and/or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine or feminine changes over time and varies by culture.

Assigned Sex at Birth (ASAB) refers to the biological sex designation recorded on a person's birth certificate upon the initial issuance of that certificate, should such a record be provided at birth.

Gender Assigned at Birth refers to the gender a child is assigned at birth or assumed to be, based on their biological sex assigned at birth.

Sexual Orientation describes a person's enduring physical, romantic, and/or emotional attraction to another person. Gender identity and sexual orientation are not the same. A transgender person may be straight, lesbian, gay, bisexual, or asexual. For example, a person who transitions from male to female and is attracted solely to men may identify as a straight woman.

Transgender is a term for an individual whose gender identity and/or gender expression differs from those typically associated with the sex and gender assigned at birth.

Transition is the process by which a transgender person recognizes that their authentic gender identity is not the same as the gender assigned at birth, and develops a more affirming gender expression that feels authentic. Some individuals socially transition, for example, through dress, use of names and/or pronouns. Some individuals may undergo a physical transition, which might include hormone treatments and surgery. School district personnel should avoid the phrase “sex change,” as it is an inaccurate description of the transition process; the process is more accurately described as “gender-confirming.”

LGBTQ is an acronym for “lesbian, gay, bisexual, transgender, and queer/questioning.”

Gender nonconforming describes a person whose gender expression does not conform to the gender expectations of their family or community. Gender nonconformity is not necessarily an indication that a youth is transgender; many non-transgender youth do not conform to stereotypical expectations.

Gender Expansive/Gender Diverse/Gender Fluid/Gender Non-Binary/Agender/Gender Queer are terms that convey a wider, more flexible range of gender identity and/or expression than typically associated with the binary gender system. For example, students who identify as gender queer or gender fluid might not identify as boys or girls; for these students, the non-binary gender identity functions as the student’s gender identity.

Cisgender refers to individuals whose gender identity, expression, or behavior conforms with those typically associated with their sex assigned at birth.
Student-Centered Approach

• “A SD shall accept a student’s asserted gender identity; **parental consent is not required.**” (emphasis added)

• No threshold diagnosis or treatment requirements to have his or her gender identity recognized by the SD, school or school personnel.

• No legal or court-ordered name change required.

• No affirmative duty for any SD personnel to notify a student’s parent or guardian of the student’s gender identity or expression.
When the Parent/Guardian Disagrees

- Parent/Guardian may object to the minor student’s name change request.

- “SD should consult their Board Attorney regarding the minor student’s civil rights and protections under the NJLAD.

- Staff should continue to refer to the student in accordance with the student’s chosen name and pronoun at school and may consider providing resource information regarding family counseling and support services outside of the SD.
Communication

• SD personnel should have an open, but confidential discussion with the student to ascertain the student’s preference on matters such as chosen name, chosen pronoun to use, and parental communications.
  – SDs shall ensure that a transgender student is addressed at school by the name and pronoun chosen by the student, regardless of whether a legal name change or change in official school records has occurred.
  – SDs shall issue school documentation for a transgender student, such as student ID cards, in the name chosen by the student.
  – A transgender student shall be allowed to dress in accordance with the student’s gender identity.
Disclosure

- FERPA Compliance

“SD should discuss with the student, and any other individuals at the student’s request, the risks associated with the student’s transgender status being inadvertently disclosed.”

- Other students’ discussions at home
- Activities or events
- HIB
Safe & Supportive Environment

• “Each SD shall develop policies and procedures to ensure that its schools provide a safe and supportive learning environment...”

• See NJSBA’s Sample Policy (Drop Box Attachment)

• Staff Sensitivity Training

• “SD shall honor and recognize a student’s asserted gender identity, and shall not require any documentation or evidence in any form, including diagnosis, treatment, or legal name change.”
School Records

• “If a student has expressed a preference to be called by a name other than their birth name, permanent records containing the student’s birth name should be kept in a separate, confidential file.
  – This file should only be shared with appropriate school staff after consultation with the student.
  – A separate file containing records bearing the student’s chosen name may also be kept.”

• “To ensure consistency among teachers, school administrators, substitute teachers and other staff, every effort should be made to immediately update student education records (e.g. attendance records, transcripts, IEP’s, etc.) with the student’s chosen name and gender pronouns, consistent with the student’s gender identity and expression, and not circulate records with the student’s birth name, unless directed by the student.”
School Records

• “Districts shall report to the NJDOE through NJ SMART a student’s name or gender based upon that student’s chosen name and corresponding gender identity.
  — Changing the name or gender identity from what was reported in previous years will not affect the reliability of the data reported.”

• “If a district changes a student’s name or gender identity, it must also maintain locally a separate record reflecting the student’s legal name and sex assigned at birth until receipt of documentation of a legal change of name or gender.”
Use of Facilities

• “All students are entitled to have access to restrooms, locker rooms and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities.”

• “In all cases, the school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may access the restroom, locker room, and changing facility that corresponds to the student’s gender identity.”

• “Transgender students who are uncomfortable using a sex-segregated restroom should be provided with a safe and adequate alternative, such as a single “unisex” restroom or the nurse’s restroom.”

• “Non-transgender students should also be afforded the option to use a private facility, such as a unisex facility or the nurse’s restroom, should they feel uncomfortable.”
NJSIAA Transgender Athlete Policy

• Permits athlete to participate in athletics in accordance with State law and BOE policy

• Allows a student to participate based on gender identity AFTER initially participating based on gender assignment at birth.

• Allows student to go back to participating based on gender assignment at birth, after participating based on gender identity, in accordance with NJSIAA Bylaws.

• In the event of a positive test result under the NJSIAA’s “General Prohibition Against Performance Enhancing Drugs,” a transgender student’s use of a banned substance shall be considered by the NJSIAA medical review officer as a medical reason for the positive result.

QUESTIONS

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Conclusion

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