

# The Essentials of HIB Investigations

*Presented by:  
New Jersey Department of Education and LEGAL ONE  
With assistance from the New Jersey State Police*

# Presenters

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## As a result of this session...

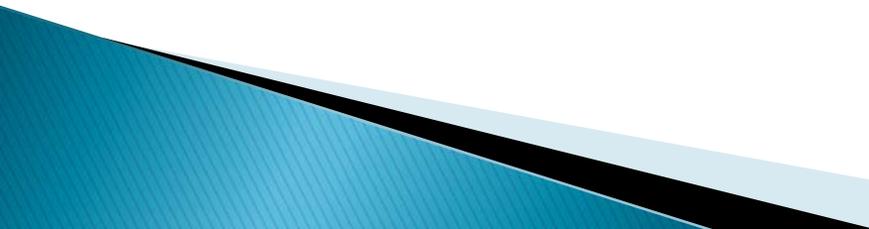
Participants will have increased awareness of requirements and best practices for HIB investigations, including:

- Developing and carrying out compliant investigations and effective investigation plans;
  - Questioning techniques for various situations and types of interviews;
  - Assessing verbal and nonverbal cues;
  - Listening actively and overcoming witness resistance;
  - Assessing evidence; and
  - Managing special circumstances and complex investigations.
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# Agenda

- ▶ Legal Context for HIB Investigations
  - ▶ Investigation Concepts, Skills and Techniques
  - ▶ Practice and Problem Solving
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# Investigation Requirements under the *Anti-Bullying Bill of Rights Act (ABR)*

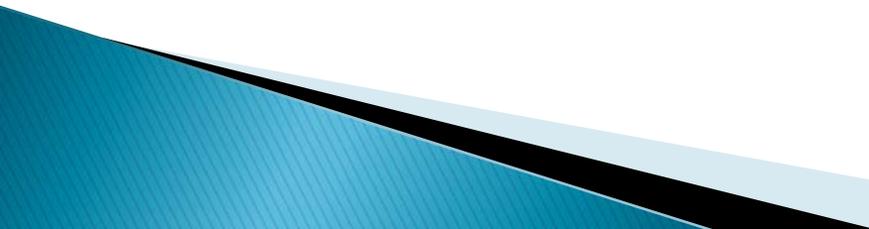
- ▶ HIB Definition
  - ▶ Roles of the Principal, School Anti-Bullying Specialist (ABS), chief school administrator (CSA) and board of education (BOE)
  - ▶ Investigation Procedures and Timelines
  - ▶ Parent Notice and Due Process Rights
  - ▶ Investigation Reports
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## HIB Definition – Key components (3-part test)

*For a determination of HIB on or off school grounds under the ABR, there must be:*

- Substantial disruption or interference with the orderly operation of school or student's rights;
- An actual or perceived distinguishing characteristic as the motivating factor; and
- One of the following:
  - Physical or emotional harm to a student or his or her property or fear of harm to student or property;
  - Effect of insulting or demeaning a student or group of students; or
  - Creation of “hostile educational environment,” interfering with student's education.

# Points on “Substantial Disruption” or “Interference”

- ▶ One of the required elements
  - ▶ Suggestion: Write your observations of an incident. Interpret the observations later.
  - ▶ Interpretations are dependent on facts and circumstances
  - ▶ Could be for only one student; does not have to be widespread disruption of entire class or entire school
  - ▶ Could be fear of bully or inability to focus on school due to emotional harm, which may result in substantial disruption and/or interference
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# “Distinguishing Characteristics” – Statewide Data for 2011–12

- ▶ Protected Categories
  - Sexual Orientation (10.7%)
  - Gender Identify & Expression (4.5%)
  - Gender (9.9%)
  - Disability (9.4%)
  - Race, Color, Ancestry, Religion, Origin, etc.
  - OTHER Distinguishing Characteristics (62.3%)
    - Consult with the school attorney for district determinations, as needed

# Case Law – “Distinguishing Characteristic”

**W.C.L. and A.L., o/b/o L.L. v. Board of Education of Borough of Tenafly, Comm’r dec. January 10, 2013**

- Nurse sent memo to parents, informing of reported case of head lice (L.L. – 4<sup>th</sup> grade student)
- A student told other students that L.L. had dyed her hair because she had head lice; one-time incident
- L.L. embarrassed and offended
- HIB determined by district
- Consequence – learning assignment on sensitivity; no other discipline
- Parents of student identified as bully sued; sought \$50k plus attorney’s fees
- District prevailed – Parents failed to show district actions were arbitrary, capricious or unreasonable

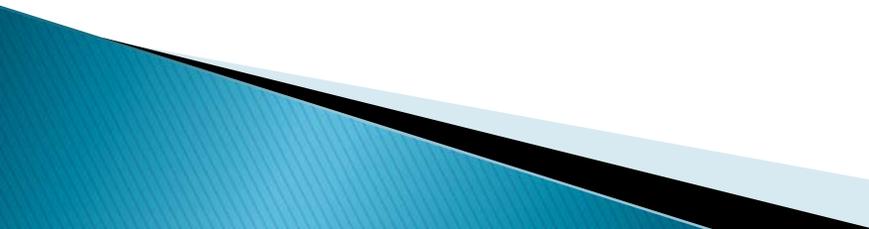
# Case Law – “Distinguishing Characteristic”

## K.L. v. Evesham School District (App. Div. 2011)

What a personal characteristic is not:

*“Harmful or demeaning conduct motivated only by another reason, for example, a dispute about relationships or personal belongings, or aggressive conduct without identifiable motivation, does not come within the statutory definition of bullying.”*

# Principal's Role in HIB Investigations

- ▶ Receive all verbal and written reports of HIB
  - ▶ Inform parents of alleged victim(s) and offender(s)
  - ▶ Initiate investigations with the ABS, within one school day of the verbal report and coordinate with the ABS
  - ▶ As appropriate, appoint additional staff (including him or herself), who are not ABS' to assist ABS in investigations
  - ▶ Ensure investigations are completed within 10 school days of the written report
  - ▶ Ensure the results of investigations are reported to the CSA within 2 school days of their completion
  - ▶ Ensure safety of students in all incidents and invoke code of student conduct for non-HIB behaviors
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# School Anti-Bullying Specialist's (ABS) Role in HIB Investigations

- ▶ Lead and conduct investigations in the school
  - The ABR does not preclude a principal from appointing more than one ABS for a school
- ▶ Prepare report of the results of the investigation; amend the original report if information is not received within the 10-day period
- ▶ While not explicitly required in statute, it is strongly recommended that the ABS be present for interviews of alleged bullies and victims, whenever possible
- ▶ Act as the primary school official responsible for preventing, identifying and addressing HIB incidents in the school

# Does the School Safety Team (SST) Have a Role in HIB Investigations?

- ▶ **NO**. It is **NOT** the role of the SST to investigate or be involved in the investigation of incidents
- ▶ The SST is required to:  
*“... develop, foster and maintain a positive school climate by focusing on the on-going, systemic process and practices in the school and to address school climate issues such as harassment, intimidation, or bullying.”*
- ▶ To identify and address patterns of HIB, the SST is required to review the HIB complaints submitted to the principal and the HIB investigation reports

# Case Law – Indemnification

- ▶ ABS and others are indemnified if named in civil suit (except for punitive damages)
- ▶ A.B. obo B.B. v. Montville BOE, Appellate Division decision (May 17, 2012); Issue was whether district was responsible for paying legal fees of teacher
- ▶ Case involved student who allegedly suffered humiliation and embarrassment after video filmed at high school was uploaded to internet
- ▶ Teacher entitled to indemnification for legal fees incurred by NJEA legal counsel – \$34K
- ▶ *N.J.S.A.* 18A:16-6

# HIB Investigation Procedures – “Step by Step”

## *Step 1 – HIB Incident Report*

- Any school employee (SE) or contracted service provider (CSP) who witnesses or receives reliable information regarding an act of HIB, must report it verbally and on the same day to the principal
- Therefore, if a student or parent reports an incident to a staff member, the staff member must report it to the principal
- The verbal report and time period requirements only apply to SEs and CSPs
- If HIB is alleged, the principal cannot pre-screen
- If an allegation describes facts, but does not specifically use HIB language, the principal should apply the HIB definition to determine course of action (e.g., HIB or other code of student conduct violation?)

# HIB Investigation Procedures – “Step by Step,” cont.

## *Step 2 – HIB Investigation*

- ▶ **Principal** – Initiates each investigation through the ABS
  - Coordinates with ABS, but does not lead
  - As appropriate, appoints additional staff to assist with investigation
  - Informs parents of alleged offenders and alleged victims that there is an alleged incident, and may discuss, as appropriate counseling and other intervention services
    - Although not explicitly required in statute, best practice to notify same day, if possible
- ▶ **ABS** – Leads and conducts each investigation. Completes within 10 school days of *written* incident report.

# HIB Investigation Procedures – “Step by Step,” cont.

## *Step 3 – HIB Investigation Report*

- Report completed and submitted to CSA within 2 days of investigation completion
- May amend the original report if information is not received within the 10-day period

## *Step 4 – CSA Decision*

- May decide to provide intervention services, establish training programs, impose discipline order counseling or take or recommend other action

# HIB Investigation Procedures – “Step by Step,” cont.

## ***Step 5 – CSA Report to BOE***

- Reports the results of each investigation along with information on services provided, training established, discipline imposed or other action taken or recommended by the CSA
- Reports made no later than the BOE meeting following the completion of each investigation

## ***Step 6 – Parent Notification***

- Parent is provided with the following *written* information within 5 days of the CSA’s report:
  - The nature of the investigation;
  - Whether the district found evidence of HIB; and
  - Whether discipline was imposed or services provided

# HIB Investigation Procedures – “Step by Step,” cont.

## *Step 6 – BOE Hearing*

- At any time, a parent may request a hearing before the BOE. If requested, the hearing must be held:
  - Within 10 days of the request; and
  - In executive session

## *Step 7 – BOE Decision*

- In every case, BOE votes to affirm, reject or modify the CSA’s decision
- Must occur at the BOE meeting following the CSA’s report
- Must happen whether or not there was a BOE hearing with the parent

# HIB Investigations – Special Circumstances

- ▶ Staff member accused of bullying a student
  - Should be a component of BOE HIB policy and procedures
  - Follow BOE policy and procedures
- ▶ Parent requests a BOE hearing AFTER the BOE votes to affirm, reject, modify the CSA's decision
  - A parent has a right to a BOE hearing at any time
  - The information should be considered in the district's response to the matter and the investigation report, as appropriate
- ▶ Parties want the ABS or principal to mediate a student bullying incident
  - Never mediate between alleged bully and alleged victim if incident may be HIB
- ▶ An electronic device is the vehicle for the HIB
  - Authorized to search if have reasonable suspicion

# HIB Investigations – Law Enforcement (LE) Involvement

- ▶ School officials must:
  - Consult the *Memorandum of Agreement Between Education and Law Enforcement Officials* (Article 8.6); and
  - Investigate all HIB incident reports and implement all HIB procedures
- ▶ At the request of LE officials, school officials may:
  - Postpone or suspend interviewing a victim or a witness; or
  - Delay obtaining or not obtain a statement from a victim or a witness
- ▶ The ABS may amend the investigation report whenever additional information is forthcoming

# Parents and HIB Investigations

- ▶ For reported HIB incidents, parents of alleged offenders and alleged victims have the following rights:
  - Initial notice of the reported incident
    - Same day suggested in most instances but no required timeline
  - The following information resulting from the investigation, within 5 days of the CSA's report to the BOE:
    - The nature of the investigation;
    - Whether the district found evidence of HIB; and
    - Whether discipline was imposed or services provided
  - A hearing before the BOE held within 10 days of the parent's request
- ▶ School districts have the right to interview students **WITHOUT** prior parent permission – Goss v. Lopez, 419 U.S. 565 (1975) Supreme Court case

# Statewide Data for 2011–12

- ▶ Investigations Conducted – 35,552
- ▶ Incidents Confirmed – 13,684 (38.49%)
- ▶ More than Half of Incidents – Grades 5–8
- ▶ Effect of Bullying
  - Substantial interference or disruption (23.5% of reported HIB cases)
- ▶ Board of Education Decisions
  - 6,901 statewide

# NJDOE Resources

- ▶ ***HIB*** – ABR guidance for schools and parents, questions and answers on the ABR, HIB online tutorials, HIB model policy and guidance, PowerPoint presentations and other HIB resources can be found at <http://www.state.nj.us/education/students/safety/behavior/hib/>
- ▶ ***School Climate and Culture*** – School climate measurements, webinars, reports and other resources can be found at <http://www.state.nj.us/education/students/safety/sandp/climate/>

# New Jersey Anti-Bullying Task Force

- ▶ Charged with:
  - Providing guidance to school districts on available resources;
  - Examining implementation of the ABR;
  - Drafting model regulations; and
  - Making appropriate recommendations
- ▶ First interim report released in January 2013
  - Identifies strengths and challenges experienced in implementation
  - Preliminary findings
- ▶ The Task Force will continue to meet for three years and issue, at a minimum, three additional reports

# Questions?

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