



## **2023 Anti-Bullying Task Force**

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The New Jersey School Boards Association (NJSBA), a federation of all the state's local boards of education, appreciates the opportunity to testify before Anti-Bullying Task Force regarding experiences implementing the Anti-Bullying Bill of Rights Act (ABR) in New Jersey schools.

The NJSBA believes that boards of education have a responsibility to ensure that schools are safe havens for learning by taking actions to diminish the potential for violence and bullying in their schools. The NJSBA further believes that the State Board of Education, the New Jersey State Department of Education, the State Legislature, and other agencies should assign a high priority to the issue of school violence, harassment, intimidation and bullying (HIB) through providing means for local school districts to:

- Promote a district-wide attitude of sensitivity in dealing with others;
- Investigate school violence, harassment, intimidation and bullying and promulgate methods of preventing and combating them, including policies and other strategies for prevention during a pending criminal or school investigation of a student;
- Train staff to respond quickly and appropriately to incidents of violence, harassment, intimidation and bullying;
- Provide means for increasing supervision in activities outside the classroom; and
- Include topics in the curriculum that address the causes and prevention of violence, harassment, intimidation and bullying; and encourage students, teachers, and others who may be victims of violence, harassment, intimidation and bullying to report such actions to school officials.

The NJSBA also believes that students have the right to be educated in an environment free of discrimination and intimidation that promotes mutual respect and acceptance among the students regardless of age, gender, race, ethnicity, religious belief, physical ability, gender identity or expression, affectional or sexual orientation and perceived difference. Students should be expected to treat each other with respect and should not be subjected to or subject other students to demeaning remarks, whether discriminatory and/or intimidating statements and/or actions.

### **Board Member Responsibilities under the Anti-Bullying Bill of Rights Act**

Boards of education are required by state law to do the following:

- Adopt a required anti-bullying policy and annually conduct a re-evaluation, reassessment, and review of its policy, making any necessary revisions and additions. The board shall include input from the school anti-bullying specialists in conducting its re-evaluation, reassessment, and review;

- Receive Harassment, Intimidation and Bullying reports from the superintendent with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent;
- Conduct hearings for parents of students who are involved in HIB incidents when requested; and
- Issue a decision, in writing, to affirm, reject, or modify the superintendent's determination of HIB. N.J.S.A. 18A:37-15.

The law places duties not only on boards of education, but also on the individual board members who must:

- Report incidents of HIB to school administration that they witness or for which they have reliable information. When they report in compliance with the procedures in the district's policy, the board member is immune from a cause of action for damages arising from any failure to remedy the reported incident;
- Be trained, within 90 days of becoming a board member, on harassment, intimidation, and bullying in schools. This *mandatory* training on HIB in schools is provided by the NJSBA, in consultation with recognized experts in school bullying from a cross section of academia, child advocacy organizations, nonprofit organizations, professional associations, and government agencies. HIB is also a topic covered in the advanced board member training that all re-elected or reappointed board members receive within the first year of re-election or reappointment. Therefore, board members are consistently updated on any changes to the state's HIB statutes and regulations that may affect their, and anyone else's, roles and responsibilities. N.J.S.A. 18A:12-33, 18A:37-16, N.J.A.C. 6A:28-4.1.

With this legal backdrop as a foundation, the NJSBA recommends that this task force take the following actions to strengthen the Anti-Bullying Bill of Rights Act:

### **1. Provide Funding for the Bullying Prevention Fund**

*N.J.S.A. 18A:37-28* provides for a separate account administered by the Commissioner of Education to carry out the provisions of the ABR. The fund shall be used to offer grants to school districts to provide training on harassment, intimidation, and bullying prevention and on the effective creation of positive school climates, and to help fund related personnel expenses. Moreover, a 2002 law (*N.J.S.A. 18A:37-19*) that first required school districts to adopt HIB policies and encouraged them to establish bullying prevention programs provides that a school district that incurs additional costs due to the implementation of that law shall apply to the Commissioner of Education for reimbursement.

However, there has not always been funding for the reimbursement, essentially rendering the requirements of the ABR an unfunded mandate. The net result of the enactment of the Anti-Bullying Bill of Rights Act was a sizable unfunded mandate for local districts. New sensitivity to HIB issues raised reporting of such incidents to unprecedented levels. According to the earlier New Jersey Anti-Bullying Task Force's first interim report, over 13,000 incidents were reported in the first academic year following the passage of the Act. The resulting workload raised the positions of anti-bullying specialist and anti-bullying coordinator to full time jobs. Meanwhile, the Bullying Prevention Fund went unfunded.

In 2012, the Allamuchy School Board filed a complaint with the Council on Local Mandates. Allamuchy had incurred a one-time cost of \$6,000 plus \$1,000 annually for the implementation of an anti-bullying program by a third-party vendor. Additionally, the district anticipated additional personnel costs as the anti-bullying coordinator, anti-bullying specialists and safety team duties required additional compensation of \$2,000-4,000 for these staff members, based on their respective collective bargaining agreements. Based on these expenditures, the Council on Local Mandates [determined that that ABR was an unconstitutional unfunded mandate.](#) As a result of the [Allamuchy](#) decision, the Bullying Prevention Fund received \$1 million through a supplemental appropriation in spring 2012, and then another \$1 million through the FY2014 state budget. Unfortunately, the Bullying Prevention Fund has not received any financial support from the state since then.

According to information provided by the previous New Jersey Anti-Bullying Task Force, even this \$1 million woefully underfunded the statewide need. In its 2016 annual report, that task force noted requests to the NJDOE for bullying prevention monies totaled approximately \$9 million in the 2013-2014 school year. As the task force stressed in its final 2016 report, it is imperative that annual state funding be provided to support school culture improvement plans, professional learning, student services and parent training programs. The NJSBA wholeheartedly agrees with that sentiment. The NJSBA urges the current task force to ensure that the Bullying Prevention Fund is capitalized to meet the needs of local school districts and the students that they serve.

## **2. Improve BOE's Access to HIB Investigation Information**

Current law, *N.J.S.A. 18A:37-15(b)(6)(c)*, concerns the sharing of HIB investigation information with a BOE. Specifically, the law provides that “the results of each investigation shall be reported to the board of education no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent.” The imprecision of the language “the results of each investigation” creates challenges for BOEs in exercising their responsibilities to provide oversight of HIB policy, as the amount of investigation information shared with the BOE by the Chief School Administrator varies widely district by district, or administration to administration within a district. Anecdotally, in some districts, the CSA provides little more than the names of the students involved and whether the CSA determined that a HIB incident occurred; in others, CSAs provide a detailed accounting of the steps and nature of the investigation. Because BOEs are statutorily obligated to affirm, reject, or modify the CSA's HIB decisions (*N.J.S.A. 18A:37-15(b)(6)(e)*), it is crucial for the law to ensure that all BOEs have access to all pertinent investigation information needed evaluate the CSA's HIB decisions.

[N.U. v. Mansfield Township Board of Education \(Commissioner Dkt. 191-22, Aug.10, 2022\)](#) illustrates this point. In this case, parents appealed the board's finding of HIB to the Commissioner. The Commissioner initially remanded the matter to an administrative law judge because the record did not include a copy of the HIB incident report, which was not initially shared with the board. On remand, the Commissioner overturned the decision of the board as arbitrary and capricious because the decision failed to address any evidence of “substantial disruption”, the second prong of the analysis needed to prove HIB. Had all information been

shared with the board before it affirmed the chief school administrator’s decision, there might have been a different result. To ensure clarity and consistency, NJSBA recommends that the NJDOE issue guidance detailing the specific types of information regarding HIB investigation results that should be shared between the CSA and the board of education.

### **3. Provide guidance concerning when a board may affirm, reject, or modify a superintendent’s decision**

N.U. also demonstrates the need for further clarification of the role of the board as it relates to the superintendent’s report. Current law, *N.J.S.A.* 18A:37-15(b)(6)(e), provides “the board shall issue a decision, in writing, to affirm, reject, or modify the superintendent's decision.” By this language, the N.J. Legislature clearly wants boards of education to be more than a “rubber stamp” for the superintendent’s decision. But is the role of the board just to ensure that the superintendent’s report is procedurally sufficient? Or is it also the role of the board to ensure that the decision is substantively sufficient? Greater clarity in this area will give boards the guidance they need to further their role to protect students under the ABR.

### **4. Imbalance of power**

Current NJDOE regulations recognize that “bullying is unwanted, aggressive behavior that may involve a real or perceived power imbalance.” N.J.A.C. 6A:16-7.7(a)(2)(iii) While the relationship between a power imbalance and HIB is recognized in regulation, it is not in statute, or in the regulatory definition of HIB at N.J.A.C. 6A:16-1.3. That omission could make it difficult for boards to enforce the ABR in a manner recognizing that conduct motivated by power imbalances may constitute HIB. This task force should recommend further language in regulation or statute to clarify what is a “real or perceived power imbalance,” giving greater guidance to school administrators and the boards they serve.

### **5. Gauge the effectiveness of the most recent amendments to the ABR**

The Legislature last amended the anti-bullying laws through legislation passed by the Legislature late 2021 and signed into law by Governor Murphy in February 2022 (See P.L.2021, c.338). That law was the culmination of nearly three years of discussion and deliberations with the bill’s sponsors, anti-bullying advocates and various stakeholders throughout the educational community. Among other things, P.L.2021, c.338 makes various changes to the state’s anti-bullying law and improves HIB reporting and investigation by:

- Placing a renewed emphasis on a supportive school climate and culture as a means to combat HIB.
- Creating the funded position of School Climate State Coordinator in the New Jersey Department of Education to serve as a “one-stop shop” for HIB information and resources for parents, students, and school staff. The office also coordinates and collaborates with law enforcement and other agencies on anti-harassment, intimidation and bullying efforts.
- Preserving the board’s role in HIB oversight and parental appeals.
- Requiring funding for the “bullying prevention fund” to finance implementation of the law’s new requirements. The fund shall be used to offer grants to school districts to provide training on HIB prevention and on the effective creation of positive school climates, and to help fund related personnel expenses.

While some of the law's provisions went into effect immediately, others did not become operable until the start of the 2022-2023 school year. Before recommending any significant revisions to the ABR, we urge this task force to first endeavor to determine whether these relatively recent amendments have had the intended effect of decreasing bullying in the schools while increasing communication and information among parents and districts.

In that same regard, it may be appropriate for this task force to continue its work beyond its statutory deadline. According to the 2019 enabling statute, the task force must submit a final report with findings and recommendations within 180 of first organizing. The NJDOE's Sept. 27 new release indicates that the task force intends to issue its report as soon as the end of the calendar year. Due to the significant amendments made to the ABR since the task force was originally authorized, as well the complexity and importance of this issue, the task force should consider recommending an extension of the timeframe to fully carry out its charge.

The NJSBA thanks the Task Force for this opportunity to share its views about New Jersey's anti-bullying laws and stands ready to assist the Task Force as it completes its work.