

# Harassment, Intimidation & Bullying: Pointers and Pitfalls

David B. Rubin, Esq.

David B. Rubin, P.C.

Metuchen, NJ

[www.rubinlaw.net](http://www.rubinlaw.net)



Rock  
Hard Place









# New Code Provisions

- [www.rubinlaw.net](http://www.rubinlaw.net)
- “Speaking Engagements”
- Chapter 16 of DOE Administrative Code, page 102

# The Anti-Bullying Bill of Rights Act

- Effective 2011-12 school year
- Awareness/Prevention/Investigation
- Data/Consequences/Supportive Resources

# N.J.S.A. 18A:37-14

- “Harassment, intimidation or bullying” means 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 any actual or perceived characteristic. .....

- 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 . . .

# What is HIB?

- Not all instances of unkind or insensitive behavior are covered
- Conflict vs. HIB
- First Amendment rights of students?

# What is HIB?

- Creates a “hostile environment”
- Puts student in fear for physical or emotional safety
- Often involves “ganging up” but not always



# What is HIB?

- Student's *intentions (joking, etc.)* are not controlling
- The *effect on the victim* is what matters!
- Includes bullying by staff or others

# School Safety Team

- School Anti-Bullying Specialist
- Principal
- Teacher
- Parent (doesn't get complaints)
- Others designated by Principal

# Anti-Bullying Specialist

- Appointed by Principal
- Currently-employed School Guidance Counselor, School Psychologist or Similarly Trained Individual
- Chairs School Safety Team
- Point Person

# Other Requirements

- District Anti-Bullying Coordinator
- Week of Respect
- Report Cards
- Public Report Twice Annually



# Duty to Report

- Personal Obligation
- Consequences for Not Reporting
- Legal Immunity

# Investigations

- Initial Report (Same Day)
- Written Report (Within 2 Days)
- School Anti-Bullying Specialist completes investigation within 10 days from written report
- Report to Superintendent (Within 2 Days)

# Rights of Parents / Guardians

Parents or guardians of the students who are parties to the investigation shall be entitled to receive information about the investigation, . . . in writing within 5 school days after the results of the investigation are reported to the board.

- Parents may request a hearing before the board of education
- May appeal to the Commissioner of Education
- May file a complaint with the New Jersey Division on Civil Rights



# Rights of Employees

“[A] staff member should be afforded the same procedural rights as students.”

*S.G. v. BOE of Hunterdon Central Reg. Sch. District* (App. Div. March 1, 2018)

# Students with Disabilities

- HIB standards fully applicable, *but*
- Disability may be a factor in victim or actor's intentions or perceptions

# Litigation Advantages to Strong HIB Enforcement

A strong and compliant HIB framework can be useful evidence in defending special education claims for out-of-district placements based on fear of bullying

*F.F. v. Matawan Aberdeen Reg. BOE* (OAL  
July 26, 2012)

# Changes to Code

- “Bullying is unwanted aggressive behavior that may involve a real or perceived power imbalance.”
- Consider nature of the student’s disability, developmental age and history of problem behaviors “to the extent relevant.”

- Must take into account “the circumstances of the incident when providing notification to parents and guardians ... and, when conveying the nature of the incident, including the actual or perceived protected category motivating the alleged offense. . . .”

- “To protect the victim, the procedure also shall take into account the circumstances of the incident when communicating with parents and when following the provisions of N.J.S.A. 18A:37-15.”

- Principal discretion
- No investigation of adults by members of same bargaining unit
- “School Safety/School Climate Team”



# New HIB Provisions for PSSDs

## N.J.A.C. 6A:16-7.8 (p. 102)

- What problem is this supposed to be solving?
- Additional cost/staffing/workload
- HIB statute itself only applies to districts

- All PSSDs must “develop, adopt, and implement” a policy defining and prohibiting HIB on school grounds.
- Appropriate “remedial action” and “consequences” for students committing HIB

- Policy also applies to “participation in approved PSSD-sponsored functions and on school buses operated by the approved PSSD”
- Link to HIB policy must be “posted prominently on the home page of the approved PSSD’s website”

- Policy must be developed “in consultation with, at a minimum, parents and other community members, school employees, school administrators and, as appropriate, school volunteers and students.”

- Principal must initiate an investigation within 1 school day of the initial report.
- Investigation to be conducted by the school anti-bullying specialist.
- Must be completed within 10 school days.

- Principal shall report the results of the HIB investigation to “appropriate” sending district personnel, within five school days.
- Principal shall provide to parents information about the nature of the investigation, findings and whether discipline was imposed within 5 school days.

- Must notify the sending district(s) when HIB reported “on a sending district board of education school bus, at a sending school district board of education school-sponsored function and off school grounds.”
- Victim’s district initiates investigation.



# Principal Discretion

- May allow Principal discretion to find that report on its face isn't HIB
- Parent may appeal to sending district BOE, and thereafter to the Commissioner of Education

- Principal may “in consultation and conjunction with the sending district board of education pursuant to N.J.A.C. 6A:14-7.6(f), impose discipline, order counseling as a result of the investigation findings, or take or recommend other appropriate action.”

# Possible Remedial Actions

- Behavioral assessment/referral to sending district IEP Team
- Supportive interventions and referral services
- Discipline of staff who commit HIB

- Appeal hearing may be requested within 60 calendar days, and “shall be scheduled in collaboration with the PSSD” and held within 10 business days of the request.
- “The approved PSSD and the sending district board of education shall coordinate the policies and procedures for conducting such hearings.”

- **Mandatory reporting to Principal by employees, contracted service providers students and volunteers**
- **Principal shall appoint a School Anti-Bullying Specialist “from currently employed school staff.”**

- Must form a School Safety/School Climate Team
- Teacher, School Anti-Bullying Specialist, Parent and other members appointed by Principal
- Must meet twice each school year

- Principal who fails to initiate investigation, or fails to take sufficient action to minimize or eliminate HIB, may be subject to disciplinary action.



- A parent, student, guardian or organization may file a complaint with the New Jersey Division on Civil Rights within 180 days of the occurrence if HIB “based on membership in a protected group as enumerated under the Law Against Discrimination.”

- HIB policy must be distributed annually to all school staff, students and parents
- Link to HIB policy must be posted prominently on the home page of PSSD's website, with contact information for School Anti-Bullying Specialist

- Must annually examine the training needs of school employees and volunteers “who have significant contact with students.”
- Must develop a process for “annually discussing with students” the HIB policy

# C.K. v. BOE of Twp. of Voorhees

Special education student reached under partition separating two bathroom stalls in the girls' restroom, grabbed another student's leg, and said "high five"

No HIB because not motivated by distinguishing characteristic

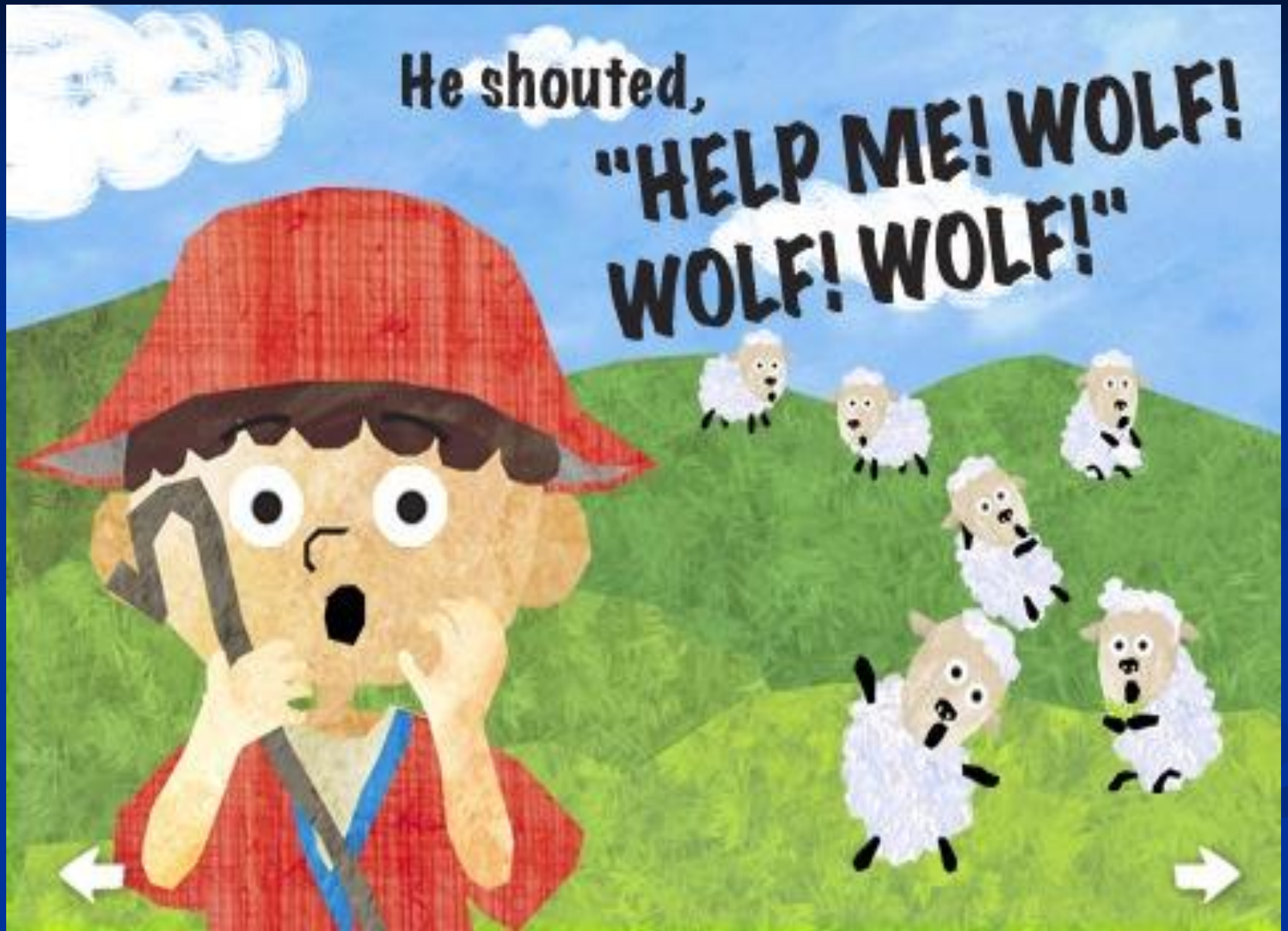
# Concerns

- A solution in search of a problem
- Statutory immunity concern resolved!
- Awkward allocation of HIB responsibility

# Recommendations

- Attend County Anti-Bullying Coordinator Meetings
- Train staff now!
- Consult your insurance advisor

He shouted,  
**"HELP ME! WOLF!  
WOLF! WOLF!"**







**IF YOU SEE SOMETHING,  
SAY SOMETHING.**

**BE SUSPICIOUS OF ANYTHING UNATTENDED.**

Tell a cop, an MTA employee or call 1-888-NYC-SAFE.



# Thanks for Coming!

**David B. Rubin, Esq.**

David B. Rubin, P.C.  
Metuchen, NJ

[www.rubinlaw.net](http://www.rubinlaw.net)