

Harassment, Intimidation, and Bullying

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Overview of HIB: Applicable Statutory and Regulatory Provisions

- ▶ **N.J.S.A. 18A:37-13 et seq.**: The Anti-Bullying Bill of Rights Act
- ▶ **P.L. 2021, c.338** amended both the Act and sections of New Jersey's Code of Criminal Justice, Title 2C (the "Amendments").
- ▶ Regulations implementing the Act can be found at **N.J.A.C. 6A:16-7.7 and 7.8**
- ▶ **District Policy 5512** - Harassment, Intimidation, and Bullying

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Important Requirements under the Regulations

- ▶ N.J.A.C. 6A:16-7.7(a)(2)(ix)(1) and (ix)(1)(a) - Permits Principals, in consultation with the ABS, to exercise discretion (aka Principal's discretion) to make an initial determination as to whether reported incident falls within the scope of the Act.
 - ▶ In making the determination, the Principal must assume the allegations are true.
 - ▶ The parent/guardian may appeal the decision not to initiate an investigation to the Board, and then to the Commissioner of Education.
- ▶ N.J.A.C. 6A:16-7.7(a)(2)(ix)(2) and (ix)(2)(a) - Board policy must include HIB investigation procedures for students attending APSSDs.
 - ▶ Requires the sending District to take the lead on investigating the alleged incident of HIB.
 - ▶ APSSD must cooperate with the District (N.J.A.C. 6A:16-7.8).
- ▶ N.J.A.C. 6A:16-7.7(a)(2)(ix)(3) - To protect the victim, the investigation procedure also shall take into account the circumstances of the incident when communicating with parents.
 - ▶ For instance, outing students' sexual orientation and/or gender identity/expression.
- ▶ N.J.A.C. 6A:16-7.7(a)(2)(ix)(4) - Prohibits investigations of complaints by a member of the same bargaining unit as the individual who is the subject of the investigation.

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Important Requirements under the Regulations

- ▶ N.J.A.C. 6A:16-7.7(a)(2)(iii) - Board policy must include a statement that bullying is unwanted, aggressive behavior that may involve a real or perceived power imbalance of power.
- ▶ N.J.A.C. 6A:16-7.7(a)(2)(xi)(1) and (xi)(2) - Sets forth a sixty (60) "calendar days" deadline for a parent or guardian to request a hearing before the Board and provides ten (10) "business days" to hold the hearing.
- ▶ N.J.A.C. 6A:16-7.7(h) - Clarifies requirements for the School Safety Climate Team.
- ▶ N.J.A.C. 6A:14-7.8 - Requires APSSDs to consult with the District's IEP teams, as appropriate, when considering remedial actions.

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Definition of HIB

- ▶ Harassment, intimidation, or bullying means “any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or series of incidents, that is reasonably perceived as being *motivated either by any actual or perceived characteristic*, such as:
 - Race
 - Color
 - Religion
 - Ancestry
 - National origin
 - Gender
 - Sexual orientation
 - Gender identity and expression,
 - A mental, physical, or sensory disability, or
 - Any other distinguishing characteristic

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Definition of HIB (cont.)

- ▶ Takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in N.J.S.A. 18A:37-15.3, 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 her 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.

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“Distinguishing Characteristic”

- ▶ Typically, something that is objectively distinguishing and readily apparent.
 - ▶ Easy examples: personal appearance or intelligence. Most, but not all, are appearance-based.
 - ▶ Possible examples: social standing, socio-economic status, grade level, political affiliation, dietary restrictions/choices.

Most Likely Yes	Possibly Yes	Probably Not
Hair Color	Grade Level	Comparative strength between students
Piercings	Political affiliation	Comparative age between students
Braces	Social standing	Comparative popularity between students
Glasses	Popularity	
Intelligence	Socio-economic status	
Weight		
Physical features		

- ▶ Not simply based on a relationship between the parties. Just because Student A is physically stronger than Student B, it does not make “weakness” a distinguishing characteristic of Student B. Actual or perceived “weakness” must be the motivating factor.
- ▶ Always consider the circumstances.

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Investigation Procedures and Timelines

REPORTING

Immediately: Upon receipt of a complaint or reliable information of an alleged act of HIB, or upon having witnessed an act of HIB, the incident must be reported immediately (same day) to the building Principal, who will notify the parents/guardians of all students involved in the alleged incident. If a staff member is accused of HIB, the staff member must also be notified. If the allegations were sent to a Board employee or service provider via email or correspondence, then same should be forwarded to the Principal.

Within Two (2) School Days following the verbal report: Following the verbal reporting (or forwarding of any emails or correspondence containing the allegations), the employee or service provider who witnessed or received the reliable information regarding the alleged act of HIB, must memorialize the details of the incident(s), in writing, and submit same to the Principal within two (2) school days on the HIB 338 Form. The Principal must then promptly submit the form to the Superintendent.

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Investigation Procedures and Timelines

REPORTING (Cont.)

- ▶ Principal must report to the Superintendent if the principal makes a preliminary determination that the conduct reported falls outside the scope of the definition of HIB.
- ▶ Superintendent may still require the Principal to conduct an investigation if the Superintendent determines an investigation is necessary because the incident is within the scope of the definition of HIB
 - ▶ Superintendent must notify the principal of this determination in writing.
- ▶ If school district policy permits the Principal to make preliminary determinations, the Superintendent must also annually provide the Board with information on the number of times a preliminary determination was made that an incident is outside the scope of the definition of HIB.

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Investigation Procedures and Timelines

INVESTIGATION

Within One (1)
School Day
following the
verbal report:

The investigation shall be initiated by the Principal or the Principal's designee within one (1) school day of receiving a verbal report of the incident.

The written report that is received from the employee or service provider will be considered part of the investigation, when received.

The investigation shall be conducted by an Anti-Bullying Specialist ("ABS"). The Principal may appoint other personnel to assist in the investigation.

During the course of the investigation, all relevant parties must be interviewed.

Persons accused of HIB must be made aware of the specific allegations during their interview. The investigation report should document the fact that the specific allegations were shared and discussed with the accused.

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Investigation Procedures and Timelines

INVESTIGATION (cont.)

Within Ten (10)
School Days
following the
written report:

The investigation shall be completed as soon as possible, but no later than ten (10) school days from the date of the written report of the incident HIB or from the date of written notification from the Superintendent to the Principal in the event the Superintendent determines the HIB should be investigated notwithstanding the Principal's preliminary determination.

In the event there is information relative to the investigation that is anticipated but not yet received by the end of the ten (10) school days period, the ABS may amend their report of the results of the investigation to reflect the information.

Important Tips for Investigating:

- Know the definition of HIB and all of the factors that must be met.
- Ask the questions to ensure that information identifies whether all parts of the definition have been met.
- Analyze all of the information gathered in light of the HIB factors.

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Investigation Procedures and Timelines

SUPERINTENDENT'S REVIEW

Within Two (2)
School Days
following
completion of
investigation:

The results of the investigation (the ABS's Report) shall be reported to the Superintendent within two (2) school days of the completion of the investigation.

The Superintendent may decide to provide intervention services, impose discipline, order counseling, or take or recommend other appropriate action.

At the Next Board
Meeting following
Superintendent's
receipt of the
ABS's report:

The results of each investigation shall be reported by the Superintendent to the Board no later than the next scheduled Board meeting after the investigation has been completed and shared with the Superintendent.

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Investigation Procedures and Timelines

SUPERINTENDENT'S REVIEW (cont.)

Within Five (5)
School Days
following report
to the Board:

Within five (5) school days after the results of the investigation have been reported to the Board, the parents/guardians of the students and/or the staff members who are parties to the investigation must be provided with the following information in writing:

(1) the nature of the investigation; (2) whether the District found evidence of HIB; and (3) whether discipline was imposed or services provided to address the incident of HIB.

This "Five-Day Letter" is the "Superintendent's Decision" relating to the HIB incident. Therefore, the correspondence should set forth the information above and state whether the Superintendent concurs with the findings and results of the investigation.

The correspondence shall also notify the parents/guardians and/or staff members of the right to request a hearing before the Board, and may include a statement on the recipients' right to representation.

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Investigation Procedures and Timelines

BOARD'S REVIEW

At the Next
Board Meeting
following report
to the Board:

At the next Board meeting following receipt of the report of the investigation from the Superintendent, the Board must vote to affirm, reject, or modify the Superintendent's Decision.

The Board must issue a written decision to the parents/guardians and/or staff members. The Board's Decision must include information on the parents'/guardians' and/or staff members' right to appeal the Board's determination to the Commissioner of Education.

Best practice is to issue the Board's Decision within a day or two of the Board Meeting where the vote to affirm, reject, or modify the Superintendent's decision took place.

A copy of the Board's Decision must be mailed to the parties.

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Investigation Procedures and Timelines

BOARD'S REVIEW (cont.)

If a Board hearing is requested by the parents/guardians and/or staff member

Within Ten (10)
Business Days of
receipt of request

for a Board hearing: Following receipt of the Five-Day Letter, *i.e.*, the Superintendent's Decision, a parent/guardian and/or staff member may request a Board hearing. The hearing must be held within ten (10) business days of the receipt of the parent/guardian or staff member's request, and shall take place in executive session.

The hearing timeframe can be extended by consent or mutual agreement.

Following the hearing, the Board must issue a written decision to the parties. It is recommended that the Board decision resulting from a hearing contain details and specific findings, in addition to whether the Board is affirming, rejecting or modifying the Superintendent's decision.

The Board's decision should include information on the parents'/guardians' and/or staff member's right to appeal the decision to the Commissioner of Education.

Best practice is to issue the Board's Decision within a day or two of the hearing.

A copy of the Board's decision must be mailed to the parties.

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Investigation Procedures and Timelines

BOARD'S REVIEW (cont.)

If a Board hearing is requested after the Board has made a determination

The New Jersey Department of Education, pursuant to N.J.A.C. 6A:16-7.7(a)(2)(xi), established a sixty (60) calendar day deadline for parents/guardians and/or staff members to request a hearing before the Board.

What does this mean?

If the request for a hearing is received after the Board's vote and issuance of the written decision, the Board must conduct a hearing and issue another decision.

The *new* Board decision supersedes the *prior* Board decision, and the timeline to appeal to the Commissioner of Education runs from the issuance of the *new* Board decision.

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Investigation Procedures and Timelines

APPEAL TO THE COMMISSIONER OF EDUCATION

Within Ninety (90) Days following issuance of the Board Decision, a parent/guardian and/or staff member may appeal the Board's determination to the Commissioner, in accordance with the procedures set forth in N.J.A.C. 6A:3 et seq.

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Record Keeping and Discipline

- ▶ A progressive disciplinary system is to be used for repeat violators:
 - ▶ First act of HIB - result of the investigation placed in the student's record and may be subject to remedial actions, such as counseling or behavioral interventions services, discipline, or both as determined by the principal.
 - ▶ Second act of HIB - result of the investigation placed in the student's record and may be subject to remedial actions, such as counseling or behavioral interventions services, discipline, or both as determined by the principal.
 - ▶ Third (and any subsequent) act of HIB - result of the investigation placed in the student's record, the principal shall develop an individual student intervention plan, which shall be approved by the superintendent of schools, and may include remedial actions, progressive discipline, or both, and may require the student, accompanied by a parent or guardian, to complete, in a satisfactory manner, a class or training program to reduce the tendency toward harassment, intimidation or bullying behavior.

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Scenario 1:

- ▶ Student X is a newly-enrolled middle school student whose ears are somewhat large for her head.
- ▶ Over the period of a few months, her fellow classmates routinely make fun of her because of the size of her ears, calling her “Dumbo,” asking if she can fly with those ears, and other juvenile acts making fun of her appearance.
- ▶ Individual students are admonished and/or given detention or other sanctions, but Student X hears it from a different student each time.
- ▶ Student X finally decides to stand up to her tormentors, but instead they continue to make fun of her, and call her a “wimp” for complaining about it. They completely ostracize her and leave her out of any activities, and she tells her guidance counselor that she hates coming to school and wishes she could go to school somewhere else.
- ▶ Is this HIB?

Yes.

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Scenario 1 (cont.):

- ▶ Does it meet the definition of HIB?
 - ▶ There were verbal and physical acts; and
 - ▶ It took place on school grounds; and
 - ▶ The actions were motivated by an actual characteristic (in this case, Student X’s big ears).
 - ▶ There was a substantial disruption or interference with Student X’s rights; and
 - ▶ Student X felt insulted and demeaned by the actions of her classmates, and suffered emotional harm.
- ▶ Yes, this is HIB.

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Scenario 2:

- ▶ Student A has no lunch money for the week, having spent his entire lunch allowance on a Kanye concert.
- ▶ Student A suspects that Student B probably has lunch money. He approaches Student B and says, "Give me your lunch money, or I'll beat you up."
- ▶ Student B, who is smaller than Student A, and doesn't want to fight about it, gives Student A his lunch money.
- ▶ This happens for the rest of the week, until Teacher finds out about it, and reports it to the Principal.
- ▶ The ABS investigates and asks Student A why he took Student B's lunch money. Student A replies, "I needed the money, and I figured he had some and wouldn't fight back."
- ▶ Is this HIB?

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Scenario 2 (cont.):

- ▶ Does it meet the definition of HIB?
 - ▶ There was a verbal and physical act; and
 - ▶ It took place on school grounds; and
 - ▶ There was a substantial disruption or interference with Student B's rights; and
 - ▶ Student B was put in fear of physical harm.
- ▶ BUT
 - ▶ Under the fact pattern, Student A's actions were not motivated by an actual or perceived characteristic.
- ▶ No, this is not HIB (more information is necessary to find HIB).
- ▶ In order to determine whether it was motivated by Student B being "smaller," or some actual or perceived characteristic, what kind of questions can you ask?
- ▶ NOTE: Even if the incident is ultimately determined not to be HIB, Student A may still be disciplined for violation of the Student Code of Conduct.

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Scenario 3:

- ▶ Student Z is biologically male. Through Kindergarten and 1st grade, Student Z dressed in clothing associated with the male gender, and their birth name is typically associated with the male gender.
- ▶ When Student Z returned to school in 2nd grade, she dressed in clothing associated with the female gender, requested to be called by a name typically associated with females, and preferred to be referred to by female pronouns.
- ▶ Student Y is Student Z's classmate and they ride the bus together every day.
- ▶ On the school bus during the first week of school, Student Y made fun of Student Z's clothes and kept asking Student Z why she was dressed in that manner. Student Y also commented that Student Z was a "boy" and told her that she should not dress like a "girl".
- ▶ A bus aide reported the incident to the school counselor, who then referred it to the Principal.
- ▶ The Principal and the ABS determined that the incident did not constitute HIB, but found Student Y's behavior inappropriate.

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Scenario 3 (cont.):

- ▶ The school counselor met with Student Y and her parent to discuss the incident.
- ▶ In addition to counseling, Student Y was directed to call Student Z by her preferred name, to refer to Student Z by her preferred gender, and Student Y was further directed not to continue to ask Student Z about her clothing, name, and appearance. Student Y's parent also explained gender identity/expression to Student Y and told her not to bother Student Z.
- ▶ A couple of days later, Student Y continued her behavior; specifically, in the lunchroom she started taunting and teasing Student Z. Student Y also repeatedly referred to Student Z by the incorrect gender and name in class. Other students laughed and snickered and students often had to be redirected to their tasks.
- ▶ Student Z stopped eating in the lunchroom and stopped taking the bus to avoid interactions with Student Y.
- ▶ Is this HIB?

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Scenario 3 (cont.):

- ▶ Does it meet the definition of HIB?
 - ▶ There were multiple verbal acts; and
 - ▶ It took place on the school bus and on school grounds; and
 - ▶ It was motivated by Student Z's gender identity and expression; and
 - ▶ There was a substantial disruption of the orderly operation of school and the rights of other students; and
 - ▶ Student Y should have known, under the circumstances (especially after the meeting with the school counselor and her parent), that her words would be emotionally harmful to Student Z; this also created a hostile educational environment for Student Z.
- ▶ Yes, this is HIB.

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Cases:

R.P. o/b/o minor child A.P. v. Board of Education of the Township of Hamilton, Atlantic County, EDU 09436- 17, Initial Decision (February 13, 2018), concurred Commissioner (March 29, 2018)

Issues: Sexual Harassment & Gender as Distinguishing Characteristic

- ▶ Matter involved fourth grade male student, who, on multiple occasions during the school year, made comments and gestures in front of a ten-year-old female student, that included:
 - ▶ Saying "F-you",
 - ▶ Made hand gestures which denoted "oral sex";
 - ▶ Would hold the front of his pants and refer to his genital area as "bananas" and
 - ▶ Would wave his middle finger.

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Cases

(R.P. Cont.)

- ▶ ALJ found that:
 - ▶ The student's actions were reasonably perceived to be motivated by victim's gender.
 - ▶ Victim felt uncomfortable and was upset by the actions, conduct had an emotional impact on the victim, was demeaning in nature and caused a disturbance in her educational rights.
 - ▶ Student's conduct met the criteria for HIB and school's determination and response was appropriate, i.e. a two day internal suspension;
 - ▶ Board did not act in an arbitrary, capricious or unreasonable manner.
- ▶ Commissioner Affirmed

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Cases:

J.B. o/b/o minor child M.B. v. Board of Education of the Borough of Haddonfield, Camden County, EDU 11464-14 Initial Decision (April 20, 2018), adopted as modified Commissioner (June 4, 2018)

Issues:

- ▶ Cyberbullying.
- ▶ School District Failure to Follow HIB Required Process.
- ▶ BOE Did Not Issue a Decision.

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Cases:

(J.B. cont.)

- ▶ On April 16, 2013, M.B. was a 7th grade student when C.B. posted on M.B.'s social media page a message stating, "You're ugly. You're fat. Only losers like you. I wish I could kill you. You're annoying. No popular people like you."
- ▶ The next day, C.B. posted on the same website, "Bitch skanky hoe bag."
- ▶ The anti-bullying specialist concluded that the incidents did not meet the statutory definition of HIB and the principal proposed such remedial measures as a "new lunch table" and "meetings with counselor"
- ▶ Petitioner did not receive the results of this investigation in writing but did become aware of the results in May 2013.
- ▶ While the anti-bullying specialist investigated the HIB complaint and reported her findings to the principal, who then instituted some remedial measures, there was no showing that the results were reported to the superintendent within two days.
- ▶ Petitioners did not receive information regarding the HIB investigation in writing.

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Cases:

(J.B. cont.)

- ▶ The results were never reported to the board.
- ▶ The board did not conduct a hearing.
- ▶ The board never issued a written decision.
- ▶ In September 2013 petitioners filed with the Camden County Office of Education (CCOE) (the local field office and representative for the New Jersey Department of Education) a complaint that the Haddonfield Middle School (HMS) office did not adequately address the alleged HIB incidents. The CCOE determined that
 - ▶ The district did not comply with the procedures of N.J.S.A. 18A:37-15.
 - ▶ The district correctly determined that the incident did not meet the statutory definition of HIB.
 - ▶ The district took appropriate remedial measures.
- ▶ The board's argument that the petition was not timely filed (90 day rule) was rejected. Since there was no decision from the board, the time for appeal did not begin to run. Fact that petitioner chose to file a complaint with the Camden County Executive Superintendent did not change that fact. Substantive determinations by the ALJ were stricken from the record.

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Cases:

(J.B. cont.)

- ▶ Both the Commissioner and ALJ agreed that matter should be returned to the board to remedy noncompliance with the procedures set forth in N.J.S.A. 18A:37-15.
- ▶ The board was to afford petitioners an opportunity for a hearing and issue a written decision as to whether M.B. was a victim of HIB.

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Cases:

L.P. and H.P. o/b/o minor child L.P. v. Board of Education of the West Morris Regional High School District, EDU 14255-16 and EDU 14256-16, Initial Decision (February 12, 2018) concurred and adopted Commissioner (March 29, 2018).

Issues:

- ▶ Retaliation

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Cases:

(L.P. cont.)

- ▶ Student had filed a complaint against the Fencing Team captain the year prior to this allegation.
- ▶ Student alleged her "assignment" to the "B" Strip (instead of the "A" Strip) on the Fencing Team was due to her prior complaint against her teammate.
- ▶ ALJ determined:
 - ▶ Fencing coach did not change her criteria for "strip assignments" for the 2015-2016 school year and did not keep L.P. off of the "A" Strip because L.P. had filed a HIB complaint against the team captain the year before.
 - ▶ Coach did not retaliate against L.P. during the 2015-2016 school year, and there was not violation under the Act.
- ▶ Commissioner Affirmed.

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Recent Incidents in the News

- ▶ 14-year-old student died by suicide following an incident of alleged bullying that was recorded and posted online.
 - ▶ Not the first incident to have allegedly occurred at the school - a lawsuit filed in October of 2022 alleged similar conduct
 - ▶ Response from State Legislators includes potential updates to the current HIB laws.
 - ▶ We will keep you updated on any and all changes that may result to the HIB laws.
- ▶ City of Perth Amboy was ordered to pay \$450,000 to a man who was sexually abused by a city firefighter numerous times starting at the age of 8
 - ▶ This was a jury verdict returned in favor of Plaintiff, even after counsel for the city had argued that it had no knowledge of the abuse and properly trained its staff

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Recent Amendments in Connection with HIB

- ▶ Amendments to New Jersey's Code of Criminal Justice:
 - ▶ Increased fines that may be imposed on parents for failing to comply with Court ordered training classes from \$25 to \$100 for a first offense and from \$100 to \$500 for each subsequent offense.
 - ▶ Provides for civil liability against a parent or guardian who "demonstrates willful or wanton disregard in the exercise of the supervision and control of the conduct of a minor adjudicated delinquent of cyber-harassment."