HARASSMENT, INTIMIDATION AND BULLYING

QSAC Monitored:

DPR: Governance – 1
SOA: Governance – 1
SOA: Operations – 3

Mandated:


N.J.S.A. 18A:37-14, as amended by P.L. 2010, c.122 section 11, defines "harassment, intimidation or bullying" to include "any gesture, 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, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing 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 and that:

A. 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 his property;

B. Has the effect of insulting or demeaning any student or group of students; or

C. 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."

An "electronic communication is defined as “a communication transmitted by means of an electronic device, including, but not limited to a telephone, cellular phone, computer, or pager.”

N.J.S.A. 18A:37-15 requires each school district to adopt a policy through a process that includes representation of parents/guardians, school employees, volunteers, students, administrators, and community representatives that:

A. Prohibits harassment, intimidation or bullying on school property, at a school-sponsored function or on a school bus;

B. Contains a definition of harassment, intimidation and bullying no less inclusive as set forth in N.J.S.A. 18A:37-14;

C. Describes the type of behavior expected from each student;
D. Lists the consequences and appropriate remedial action for a person who commits an act of harassment, intimidation or bullying;

E. Enumerates the time frames and statutory procedures for reporting and promptly investigating reports of violations and complaints of harassment, intimidation and bullying, as well as post-investigative reporting to the chief school administrator and the board and district response and disposition of reported incidents;

F. Ensures that parents/guardians and students who are parties to an investigation receive written information within 5 days of the date the results of the investigation are reported to the board, regarding the nature of the investigation, evidence and actions taken, and are afforded an opportunity for a hearing before the board. N.J.A.C. 6A:16-7.7 (a), 2., xi. requires that parents or guardians requesting a hearing before the district board of education shall file the request no later than 60 calendar days after the written information about a harassment, intimidation, or bullying investigation is received by the parents or guardians. When the parents and guardians request a hearing the board shall hold the hearing within 10 business days of receipt of the request;

G. Details and includes the legal time frames for the appeal processes to the board; to the commissioner; and to the Division on Civil Rights;

H. Details that the district response to harassment, intimidation and bullying shall be defined by the principal in conjunction with the anti-bullying specialist and include an appropriate combination of actions;

I. Prohibits reprisal or retaliation for reporting harassment intimidation and bullying;

J. States the consequences and appropriate remedial action for a person who has been found to have falsely accused another person as a means of retaliation or as a means of harassment, intimidation and bullying;

K. Includes a statement of how the policy will be publicized, including notification of the policy’s application to school sponsored functions;

L. Is distributed annually to parents and guardians who have children enrolled in a school in the school district; and is linked in a prominent location of the school and district website homepage, along with the identifying information regarding the district anti-bullying coordinator and the school anti-bullying specialist;

M. Is annually re-evaluated, reassessed and reviewed with revisions transmitted to the executive county superintendent within 30 days of the revision (beginning September 1, 2011).

A district may adopt more stringent provisions than those required. A district is required to provide notice of its policy in any of its publications that contain school rules, and in any student handbook.

N.J.S.A. 18A:37-15.3 (P.L. 2010, c.122, Section 16) requires that district policy include provisions for appropriate responses to harassment, intimidation and bullying as defined in N.J.S.A. 18A:37-14, that occurs off school grounds, where a school employee is made aware of such actions. The responses must be consistent with the code of student conduct and the board policy on harassment, intimidation and bullying.

N.J.S.A. 18A:37-16 (see P.L. 2010, c.122, Section 13) prohibits retaliation and false accusations by a board member, school employee, student or volunteer against a victim, or person with reliable information about an act of harassment, intimidation or bullying. It also requires reporting of incidents by a board member, school employee, contracted service provider, student or volunteer with reliable information that a student has been subject to harassment, intimidation, or bullying. Reporting shall be to the designated school official, or any school administrator or safe schools resource officer.

A board member or school employee who promptly and properly reports an incident of harassment,
intimidation or bullying, is protected from legal action for damages arising from any failure to remedy the
incident. A school administrator who receives a report and fails to conduct an investigation, or who should
have known of an incident but fails to take sufficient action to minimize or eliminate the harassment,
intimidation, or bullying, may be subject to disciplinary action.

N.J.S.A. 18A:37-17 (see P.L. 2010, c. 122, Section 14) requires the principal of each school to appoint from
existing trained and qualified staff a school anti-bullying specialist and details the responsibilities of the anti-
bullying specialist. Additionally, the law requires the chief school administrator to appoint a district anti-
bullying coordinator and lists the responsibilities pertaining to the district’s bullying policy and programs, and
requires the anti-bullying coordinator to meet at least two times a year with the school anti-bullying
specialists.

N.J.S.A. 18A:37-18 provides that the school statutes involving harassment, bullying, and intimidation do not
prevent a victim from seeking redress under any other available law.

costs to implement the bullying law, to apply to the Commissioner of Education for reimbursement and
requires the Department of Education, in consultation with the Division on Civil Rights in the Department of
Law and Public Safety to develop a guidance document and to maintain it on their respective websites.

N.J.S.A. 18A:37-21 (P.L. 2010, c. 122, Section 18) requires each school to form a school safety team which
at a minimum includes the principal or his or her designee (who shall be a senior school administrator), a
teacher, the anti-bullying specialist, a parent/guardian of a student in the school and other members as
determined by the principal. The school safety team is required to meet at least twice a year, and its
responsibilities are enumerated and include the review and analysis of bullying reports; investigations; school
bullying program and policy assessment and revision; training and staff development programs; community
education; and district data accumulation and reporting. Parents may not participate in certain activities,
including those that would compromise student confidentiality.

programs to train selected public school employees to act as district anti-bullying coordinators and school
anti-bullying specialists. (P.L. 2010, c. 122, Section 23)

N.J.S.A. 18A:37-28 (P.L. 2010, c. 122, Section 25) establishes a “Bullying Prevention Fund” to be used for
grants to school districts to provide training on harassment, intimidation, and bullying prevention and on the
effective creation of positive school climates.

N.J.A.C. 6A:16-7.1(a-d) requires district boards of education to develop and implement a code of student
conduct, and sets forth the purposes of the code, the minimum standards to be included in the code, and
requires due process procedures and policy for students and their families in accordance with N.J.A.C.
6A:16-7.2 through 7.6.

N.J.A.C. 6A:16-7.5 governs district authority for student conduct away from school grounds.

N.J.A.C. 6A:16-7.7 governs the development, adoption and implementation of a policy prohibiting
applicable, must be considered to the extent relevant.

N.J.A.C. 6A:16-7.7 (a), 2., iii requires the policy to state that bullying is unwanted, aggressive behavior that
may involve a real or perceived power imbalance.

Other Reasons:

Districts are reminded that they must develop a code of student conduct in accordance with N.J.A.C. 6A:16-
7.1. The range of school responses to harassment, intimidation and bullying shall be aligned with and not
replace the district’s code of student conduct.
N.J.S.A. 18A:6-112 requires that teaching staff receive professional development on suicide prevention and instruction on the relationship between the risk of suicide and incidents of harassment, intimidation and bullying. In addition, staff shall receive information on reducing the risk of students who are identified as at high risk of suicide.

N.J.S.A. 18A:12-33 requires newly elected or appointed board of education members and charter school trustees to complete training on harassment intimidation and bullying within one year of being newly elected or appointed or being re-elected or re-appointed to the board. A board member shall be required to complete the program only once.

N.J.S.A. 18A:17-46 requires the chief school administrator to report two times each school year, between September 1 and January 1 and between January 1 and June 30, at a public hearing, all acts of violence, vandalism and harassment, intimidation or bullying which occurred the previous reporting period. The elements of the report are enumerated such as the number, status and nature of the incidents. It also requires the board to report once each reporting period the information to the Department of Education. The DOE shall use the information to “grade” each school and the district. The grades must be posted on the homepage of the school’s and district’s websites.

N.J.S.A. 18A:26-8.2 requires “school leaders,” meaning a school district staff member who holds a position that requires the possession of a chief school administrator, principal or supervisor endorsement, complete training that includes information on the prevention of harassment, intimidation, and bullying.

N.J.S.A. 18A:37-19 (P.L. 2010, c. 122, Section 26) requires all schools to observe a “Week of Respect” on the first Monday in October each year and provide age appropriate instruction focusing on preventing harassment, intimidation and bullying during that week, as well as throughout the school year.

N.J.S.A. 18A:37-17 requires that the district provide training to staff, students and volunteers who have significant contact with students, on the district harassment, intimidation and bullying policy; preventing bullying; and district reporting procedures.

N.J.S.A. 18A:37-22 (P.L. 2010, c. 122, Section 19) requires all candidates for teaching certification who have completed a teacher preparation program at a regionally accredited institution of higher education to have satisfactorily completed a program on harassment, intimidation and bullying training. Also, the State Board must require public school teachers to complete at least two hours of instruction on harassment, intimidation, or bullying prevention in each professional development period as part of the professional development requirement.

N.J.S.A. 18A:37-22 (P.L. 2010, c. 122, Section 20) requires all candidates for administrative and supervisory certification to have satisfactorily completed a program on harassment, intimidation and bullying training.

N.J.A.C. 6A:16-7.7 (a), 2., ix, (1) gives the board the discretionary option to include in the policy a process prior to initiating an investigation by which the principal, or his or her designee, in consultation with the anti-bullying specialist, makes a preliminary determination as to whether a reported incident or complaint, assuming all facts presented are true, is a report within the scope of N.J.S.A. 18A:37-14. The statute has no provision for a preliminary determination by the principal or his or her designee, in consultation with the anti-bullying specialist.

N.J.A.C. 6A:16-7.7 (a), 2., ix, (2-4) investigate a complaint or report of harassment, intimidation, or bullying, occurring on district board of education school buses, at district board of education school-sponsored functions, and off school grounds involving a student who attends an approved private school for students with disabilities (PSSD). The investigation conducted by the district board of education’s anti-bullying specialist shall be in consultation with the approved PSSD.

N.J.A.C. 6A:16-7.7 (a), 2., xi requires that the PSSD report to the district board of education the results of the harassment, intimidation, or bullying investigation within five school days after the investigation. In addition,
information about the investigation must be provided in writing to the parents or guardians of students who are party to a harassment, intimidation, or bullying investigation within five school days after the investigation.

N.J.A.C. 6A:16-7.7 (a), 2., xi requires any request by the parents or guardians for a hearing before the district board of education concerning the written information about a harassment, intimidation, or bullying investigation, shall be filed with the district board of education secretary no later than 15 than 60 calendar days after the written information is received by the parents or guardians. The hearing shall be held within 10 business days of receipt of the request.

**Recommendation:**

A policy that:

A. Prohibits harassment, intimidation or bullying at a minimum for all circumstances allowed under the law N.J.S.A. 18A:37-13 et seq.;


C. Describes the type of behavior expected from each student;

D. Describes the appointment and responsibilities of the district anti-bullying coordinator, anti-bullying specialist, and the school safety team;

E. Lists the consequences and appropriate remedial action for any person who commits an act of harassment, intimidation or bullying;

F. Prohibits retaliation, reprisal for reporting harassment, intimidation and bullying and lists the consequences and appropriate remedial actions;

G. Prohibits false reporting of harassment, intimidation and bullying and enumerates consequences and appropriate remedial actions;

H. Describes the range of ways a district will respond to harassment; intimidation and bullying;

I. Lists a range of school responses to harassment, intimidation and bullying that are aligned with and do not replace the district’s code of student conduct;

J. Describes the school and/or district reporting and investigating procedures for violations and complaints;

K. Ensures that parents/guardians and students involved in an investigation receive the necessary information;

L. Details the appeal processes to the board; to the commissioner; and to the Division on Civil Rights;

M. Details the requirement to investigate reported incidents involving students placed in private schools for students with disabilities that occur on district school buses, at district board of education school-sponsored functions, and off school grounds;

N. Describe the appeal process for a student attending a PSSD to appeal to the district board of education concerning the written information about a harassment, intimidation, or bullying investigation conducted at the PSSD;

O. Covers the Week of Respect;

P. Includes all training requirements for board members, staff, volunteers and students;
Q. Includes reporting requirements to the board and to the Department of Education;
R. Describes program assessment and review requirements;
S. Describes policy development, adoption, review and revision requirements;
T. Describes district requirements for policy publication, dissemination and implementation.

In developing policy, districts should review the Department of Education’s Model Policy and Guidance for Prohibiting Harassment, Intimidation and Bullying.

**Legal References:**

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**Court Cases:**

- **Gebser v. Lago Vista Independent School District** 524 U.S. 274 (1989) United States Supreme Court addresses the standard by which a district will be held liable for sexual harassment of a student by a school employee under Title IX -- requires actual notice and deliberate indifference.

- **Davis v. Monroe County Board of Education** 526 U.S. 629 (1999) United States Supreme Court establishes the standard under which a school district may be liable under Title IX for sexual harassment of one student by another student. The district will be liable for damages only where the school officials are proven to have been deliberately indifferent to harassment of which it is actually aware. The harassment must be "severe, pervasive and objectively offensive."

- **Saxe v. State College Area School District** 240 F.3d 200 (3rd Cir 2001) A Pennsylvania school district's anti-harassment policy was overly broad and therefore violated the Constitutional guarantee of freedom of speech.
L. W. v. Toms River Regional Schools Board of Education 189 N.J. 381 (2007) The New Jersey Supreme Court held that the standard under which a school district may be liable under the New Jersey Law Against Discrimination for student-on-student bullying or harassment is not the Title IX deliberate indifference standard, but is rather the same standard used under the NJLAD for hostile work environment cases. A district will be judged by whether the district's response met the "reasonable person" test: what would a reasonable person (teacher, supervisor, vice principal, principal, etc.) do in a similar situation. School districts will be shielded from liability under NJLAD when their preventive and remedial actions are reasonable in light of the totality of the circumstances.

Possible Cross References:
- 1220 Ad hoc advisory committees
- 1410 Local units
- 3517 Security
- 3541.33 Transportation safety
- 4131/4131.1 Staff development; inservice education/visitation conferences
- 4148/4248 Employee protection
- 4231/4231.1 Staff development; inservice education/visitation conferences
- 5000 Concepts and roles for students
- 5010 Goals and objectives for students
- 5020 Role of parents/guardians
- 5113 Attendance, absences and excuses
- 5114 Suspension and expulsion
- 5124 Reporting to parents/guardians
- 5131 Conduct and discipline
- 5131.5 Vandalism/violence
- 5131.6 Drugs, alcohol, tobacco (substance abuse)
- 5131.7 Weapons and dangerous instruments
- 5132 Dress and grooming
- 5142 Student safety
- 5145 Rights
- 5145.2 Freedom of speech/expression
- 5145.4 Equal educational opportunity
- 5145.6 Pupil grievance procedure
- 5145.1 Questioning and apprehension
- 5145.1 Search and seizure
- 6145 Extracurricular activities
- 6164.4 Child study team
- 6171.4 Special education
- 6172 Alternative educational programs