



There Isn't A Moment To Lose

An Urgent Call for Legal Reform and Effective Practices to Combat
Bullying in New Jersey Schools



Report of the New Jersey Commission
on Bullying in Schools



Issued on December 15, 2009

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Acknowledgements

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We further thank the New Jersey Principals and Supervisors Association that served as host for many of our meetings and the many volunteer experts who provided research as members of the Law Committee and Best Practices Committee.

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Moreover, we thank Governor Jon S. Corzine, Senate President Richard J. Codey, and Assembly Speaker Joseph Roberts for their leadership in establishing the Commission on Bullying in Schools, and making the safety of our children a top priority.

Most importantly, however, we thank the students. While many students testified before the Commission many others could not, but their collective voices were heard. For those who have witnessed, experienced, or participated in bullying, harassment and intimidation, we thank you for sharing your stories.

The Commission's collective efforts in studying the issues of bullying and creating this report have been in honor of all the students of New Jersey. We hope in some way that our work can help all students experience a safer school climate where their uniqueness can be safely expressed, where their ideas can be creatively explored, and where their futures can be positively impacted. To all the heroic students in New Jersey, we thank you.

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There isn't a Moment to Lose

School harassment, intimidation and bullying (HIB) is a common and serious national problem as well as one that is prevalent in other nations. In the United States, more than 160,000 school children avoid school each day, because they fear being bullied. HIB has been causally linked with, in many cases, severely harmful consequences for victims. These negative outcomes for victims affect a wide range of functioning in that long-term effects have been documented across the social, academic, and psychological lives of bullied children. What is known from the research literature is that HIB can result in low self-esteem, anxiety, depression and psychotic symptoms, poor academic performance in victims, as well as an increase in the illegal use of weapons and gang recruitment in schools. Most alarming of these harmful outcomes, is the increased risk of suicide among victims, which has been well documented in the research literature and has also been portrayed in the media. In short, HIB can prove deadly.

[M]y life changed forever on April 6, 2009.

That was the night I was cooking dinner when my son, Carl Joseph Walker-Hoover, went to his room where I imagined he'd be doing his homework or playing his videogames. Instead, I found him hanging by an extension cord tied around his neck.

He was 11 years old.

...

What we do know is that Carl was being bullied relentlessly at school. He had just started secondary school in September, and we had high hopes, but I knew something was wrong, almost from the start.

...

And the most important thing I've learned is that bullying is not an inevitable part of growing up. It can be prevented. And *there isn't a moment to lose*.¹

The New Jersey Commission on Bullying in Schools was established by the Governor and Legislature to study the issue of school HIB and make recommendations on how to reduce HIB throughout our schools.

After dozens of meetings and hearings, public testimony, research and analysis, the Commission herein reports its findings and recommendations, and recognizes a sense of urgency for addressing the problems of school HIB. As evidenced by the emotionally intense testimony provided by many New Jersey citizens at the Commission's public hearings, HIB continues to cause personal suffering and has already resulted in the suicide of some young people nationwide. We cannot wait for another HIB incident in New Jersey to cause any more harm. We must act now; *there isn't a moment to lose*.

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1 *Brief Overview of Findings and Recommendations*

School harassment, intimidation and bullying (HIB) is a significant impediment to effective education and the well-being of youth worldwide. Experts have analyzed the impact of HIB on individual victims, bullies, schools, and on the broader community. It is documented that incidents of HIB have resulted in suicide. While victims' increased risk of suicide is disturbing enough, elevated levels of violence towards others has also been documented for victims of HIB.

A 2001 U.S. Secret Service and U. S. Department of Education study found that 71% of youth involved in school shootings “felt bullied” or “persecuted”² and another study found that “bully-victims”—or those who fulfill dual identities of both bully and victim—were more likely than others to state that it was “not wrong” to take a gun to school.³ The infamous case of the shooters in the Columbine School District in Littleton, Colorado and other shooting incidents in

schools, illustrate this point all too clearly, since the perpetrators also had been victims of HIB.

While suicide and violence towards others are the most extreme and harmful manifestations of distress associated with

chronic HIB, there are many other consequences of which parents, educators, and the community at large need to be aware. In addition to suicide, the most common psychological effects on the victim include low self esteem and elevated levels of anxiety and depression.⁴

Additionally, children who are bullied are more likely to exhibit psychotic symptoms—

or a break with reality such as hallucinations and delusions—and this has been found to occur as early as twelve years of age.⁵ In a similar vein, victims of HIB have elevated levels of psychosomatic problems, or health problems that have their origins in psychological distress. They have been



In addition to compromising psychological and physical health, as well as peer-to-peer social interactions, school harassment, intimidation and bullying HIB is detrimental to the academic achievement of victims.

found to exhibit elevated levels of physical symptoms such as headache, stomachache, and dizziness.⁶ Interestingly, this effect was found for both those bullying and for children who are bullied.⁷ It is important to note that these harmful psychological outcomes have been found to occur at the same time as the bullying, or concurrently, in addition to more long-term manifestations. The personal and economic toll (e.g., healthcare expenses, time lost from school, and during adulthood days missed from work) associated with these disorders, in particular, depression, are substantial and clearly require not only intervention but warrant substantial efforts at prevention.

The damaging effects of HIB extend far beyond the psychological world of bullied children. One of the most important developmental tasks children face and must learn to successfully negotiate is interacting with their peers. Victims of HIB are often ostracized by their peer group, as many bystanders or non-bullied children avoid them for fear of being bullied themselves. This fact establishes a barrier to making friends and creates and exacerbates feelings of loneliness and isolation.⁸ It is difficult to disentangle the psychological and social problems that bullied children face, since difficulties in the social realm worsen feelings of low self-esteem and heighten levels of anxiety and depression.

In addition to compromising psychological and physical health, as well as peer-to-peer social interactions, HIB is detrimental to the academic achievement of victims. Empirical evidence has shown that victims of HIB have poorer academic achievement, increased levels of absenteeism, and feelings of alienation at school than youth not involved in bullying.⁹ Poor academic achievement is associated with a host of problems, including increased risk of substance use, delinquency,

depression in adulthood, and limited future employment opportunities. These effects are sustained after the HIB ends and continue into adulthood.¹⁰

While victims suffer the most as a result of HIB, it is important to note that negative consequences of HIB are not limited to victims. Those who bully also have been found to be at risk for psychological, social and academic problems. Studies have found that children who bully are at risk for elevated rates of depression and suicide,¹¹ and have compromised school functioning and academic achievement.¹² Moreover, these children tend to carry the behavior over into adulthood and have elevated levels of problem behaviors as adults, such as: a) HIB in the workplace and within family interactions;¹³ b) a tendency to raise children who bully;¹⁴ and c) an elevated risk for law breaking behaviors.¹⁵

The evidence suggests that HIB:

- negatively impacts social and academic performance of all children;¹⁶
- diminishes engagement in school, a major factor in school drop-out rates;¹⁷
- is a causative factor in a range of problems, including anxiety, depression and the development of psychotic symptoms;¹⁸
- is a major factor in youth suicide, especially for lesbian, gay and transgendered youth;¹⁹
- is a major stressor and challenge for youth in any demographic minority;²⁰
- is a critical problem among youth with a wide range of disabilities, as they are twice as likely to be bullied, less likely to identify when they are victims of HIB, and thus are more vulnerable to

the negative outcomes associated with HIB;²¹

- is a conduit for gang recruitment and activity in schools;²²
- is a major cause of weapon-carrying in school;²³
- has a long-lasting impact, extending into adult life, contributing to adult anxiety and depression and to antisocial behavior;²⁴ and
- is a major corrosive of school climate (how the school 'feels' to those who attend and work there) and a key indicator of the school's culture ('how we do things here').²⁵

The empirical evidence is unmistakable that HIB is damaging to all involved parties and that these destructive effects are not short lived. However, above and beyond the research evidence and horrifying anecdotal evidence, the topic has received a great deal of attention because at its core, it is a human rights issue. Increased awareness of HIB has grown out of a focus or increased sensitivity to protect the rights of people who are at substantial risk of discrimination.²⁶ Importantly, this sentiment is supported by the United Nations Convention on the Rights of the Child²⁷ which considers freedom from abuse to be a fundamental right that should be safeguarded for all children.

The Commission heard from many parents about the severe and negative impact of bullying on their children. For example, one parent from Southern New Jersey testified about how his child changed as a result of the HIB he endured:

My child went from being a model student to being fearful and unhappy about attending school and after-school activities. His

teacher wanted him removed from his current classroom and he was, unfortunately, placed in a [resource classroom] with peers with serious behavioral problems.

One thing I wanted to mention is that he's been shutting down emotionally and is so beside himself. He goes to school hiding in the bathroom at school, refusing to go to breakfast in the morning. He has quit all after-school program activities, tutoring and choir. He feels uncomfortable at school now. He told me that school is a waste of eight hours, and he wants to be home with his family. He comes home and cries to me about the teasing and the pressure. And he has told me on more than one occasion that the classroom aide in his literacy class is ignoring him while he is being teased, and looks past it when he's teased by other children, and this happens when the teacher steps out of the room.

He was a model student and won an award before all the bullying began.²⁸

This story is representative of much of the testimony provided by nearly 100 citizens.

Early in the Commission's deliberations, it identified the importance of supporting the development and maintenance of positive school climates; increasing awareness of issues; and promoting positive interactions among students and faculty. Any change in school climate is a direct result of this increased awareness as well as continuing education and professional development. It should be noted that the New Jersey Department of Education (NJDOE) as well as

many educators and administrators have already embraced proactive strategies for addressing HIB issues and promoting positive school climates. Testimony provided by several superintendents from across the State revealed that many schools are taking an active role in addressing this serious issue.



Some school districts are providing the in-service training programs delivered by staff from outside agencies., who provide integrated programs for staff and students, which go beyond the “single assembly program” approach.

For example, some districts have dedicated over half of their professional development time to educate their staff on the impact of HIB and the legal responsibilities for staff and administrators. The professional development opportunities include regular monthly faculty meetings, district-level professional development days and attendance at outside conferences. Many have integrated their HIB policies into their school culture, making them more user-friendly and making them accessible to the parents and students by posting them on district websites and requiring signed copies to be returned to the school district, along with the Acceptable Use Policy for technology. Some schools have very clearly defined procedures to address HIB. The procedures define the consequences for involvement in HIB activities and are consistent with the codes of student conduct

established by the district boards of education.

Some school districts are providing in-service training programs delivered by staff from outside agencies, who provide integrated programs for staff and students, which go beyond the “single assembly program” approach. These programs address bystander awareness, the “structure and players” involved in HIB, as well as the methodologies and strategies necessary to change climate and create a bully-free environment. It should be noted that educators who strive to support the whole child embrace any opportunity to provide for a safe learning environment, and welcome opportunities to learn new strategies and acquire new tools for improving student safety. The best practice approaches implemented by a number of New Jersey school officials provide for a sustained HIB prevention and intervention effort over a long period of time as the best opportunity to provide for systemic change.

While the extensive scope of anti-bullying activities in New Jersey signify a significant commitment of educational resources and an acknowledgment of the importance of HIB prevention and intervention, the Commission has determined that more should be done to contend with this ongoing and complex problem. Given the severity of these outcomes that are substantiated by published research findings, as well as the anecdotal evidence and professional testimony obtained from the Commission’s public hearings, the Commission was compelled to create a strong and comprehensive set of recommendations. These findings are made as a result of data analysis, review of testimony, consideration of public input, and assistance of experts on education, law, and school HIB.

The Commission hereby reports the following general findings, which are

followed by a list of recommendations to address the problems:

Summary of Findings

1. New Jersey—unlike most other states—has strong laws and educational regulations pertaining to school HIB.
2. The NJDOE has been actively engaged in addressing the issue of HIB in New Jersey's public schools. The department's initiatives have included the following types of activities in support of the prevention and intervention of school-based HIB (additional information on these activities is provided in Appendix A):
 - a) Funds made available to all school districts to implement evidence-based programs and practices for the prevention and intervention of violence, including HIB;
 - b) Adoption of HIB regulations in support of the anti-bullying law;
 - c) Written guidance to support the development and implementation of HIB policies and procedures by the local boards of education;
 - d) Review of HIB policies and procedures adopted by the local boards of education;
 - e) Data collection on HIB incidents in all public schools;
 - f) Monitoring of school district compliance with HIB requirements;
 - g) Development of HIB complaint investigation protocol;
 - h) Training in HIB policy requirements and effective school prevention and intervention practices;
 - i) Training in Internet safety;
 - j) Written guidance on school districts' annual observance of School Violence Awareness Week and the chief school administrators' annual public hearings on violence, both of which should address HIB;
 - k) Projects to reduce HIB, foster social-emotional and character development and provide technical assistance and training to individual school districts on HIB prevention and intervention issues and concerns;
 - l) Statewide HIB conferences in collaboration with the New Jersey Department of Law and Public Safety, and trainings through professional education associations on HIB requirements;
 - m) Cooperative agreements between local education and law enforcement officials regarding bias crimes, bias-related acts and hazing; and
 - n) Implementation of the federally mandated Unsafe School Choice Option policy.
3. Despite the strength of the current laws and regulations and the NJDOE's and local school districts' initiatives to support the effective prevention and intervention of HIB, it appears that either the provisions of the law or their implementation and the current intensity or degree of HIB prevention activities are not sufficient for the prevention of HIB, and there is a need for revisions to New Jersey law and the allocation of resources to more effectively combat HIB.
4. Since there is a lack of understanding by many in New Jersey about what "bullying" is, a new definition is

necessary in the law that more precisely defines “harassment, intimidation or bullying” as based on a power imbalance or “power differential” between students, rather than based on specific characteristics of the victims.

5. Nonetheless, while HIB can negatively affect all student populations, specific subgroups in schools are more vulnerable to being victims of HIB, and, therefore, greater attention must be paid to identifying the most vulnerable populations in each school and ensuring their specific needs are addressed. Depending on the school composition or school climate, the most vulnerable may include students who are gay, lesbian, bisexual or transgender (GLBT), racial minorities, religious or ethnic minorities, immigrants, those of different socioeconomic backgrounds than the majority in the school, students who are not athletic, students of different weights, shapes and sizes, and students with actual or perceived disabilities.
6. Each school’s culture and climate is different, yet a school’s culture and climate have the most significant impact on informing the potential for HIB. Therefore, strengthening school culture and climate is the single best way to reduce HIB in schools.
7. There appears to be confusion on what constitutes HIB and effective school prevention and intervention, which strongly implies that current training is not consistent or updated enough and that some personnel that are contracted to work in schools do not receive sufficient training on HIB.
8. School administrators and staff sometimes lack the tools, resources and support to more effectively address HIB

when it occurs, and do not share best practices in identifying and addressing school culture and climate issues.

9. Students and families of those who are victims of HIB sometimes lack an understanding of remedies available to them for having their allegations independently investigated or heard by a hearing officer.
10. There is currently no appropriation or funding mechanism to specifically provide needed fiscal resources to schools, NJDOE or others to investigate HIB cases, provide training, or develop initiatives to improve school culture and climate and reduce HIB.

Summary of Recommendations

As a result of our findings, and as explained in detail in the body of this report, the Commission makes the following recommendations:

1. Amend the statutory definition of Harassment, Intimidation and Bullying (HIB) in the Anti-Bullying Law (ABL)²⁹ to incorporate the critical concept of “power differential” between the bully and the victim;
2. Ensure all school districts implement effective anti-HIB programs or approaches;
3. Expand the anti-retaliation provisions of the ABL by making them also applicable to school board members;
4. Ensure that school districts provide legal representation to employees who appropriately report HIB;
5. Enact a new section of the ABL to address certain effects of HIB that occur off school grounds;

6. Publish and disseminate the range of administrative actions for investigating allegations of ABL violations and for providing remedies, including an expedited procedure for the review of ABL violations and clarification of available remedies and resources;
7. Amend the school antidiscrimination law to codify protected characteristics already enacted by the Legislature in the New Jersey Law Against Discrimination (LAD) or by NJDOE regulations, to clarify discrimination prohibitions on the basis of ancestry, age, nationality, disability, religion, sexual orientation, gender identity or expression, marital status, civil union status, domestic partnership status and socioeconomic status;
8. Amend the school antidiscrimination law to ensure non-discrimination by all schools — public or private — which receive public funding, unless otherwise exempted from the LAD (i.e., religious institutions);
9. Amend the various laws regarding training for (a) school board members; (b) educators; (c) suicide prevention trainers; (d) safe schools resource officers; and (e) law enforcement trained by the Police Training Commission, to include training on HIB, the ABL, discrimination and equal opportunity.
10. Amend the school employment disqualification statute to prohibit hiring any individual who has been convicted of bias intimidation for a school position involving regular contact with children;
11. Amend reporting law to require broader reporting of HIB;
12. Reform the current active parent consent requirement in the school survey law;
13. Include the study of HIB, civil rights, human relations and diversity in school curriculum provisions of existing laws;
14. Include violations of HIB or the bias intimidation statute in the student discipline law to provide school officials with authority to invoke the law for acts of HIB;
15. Develop and issue guidance on addressing HIB with particularly vulnerable student populations;
16. Recommend each school form a school climate team or to use an existing team to participate in professional training opportunities related to school climate programs/approaches and assist in developing a comprehensive school-wide approach to address school climate-related issues;
17. Develop and issue guidance on investigating HIB incidents and violations of the ABL;
18. Establish three regional **Technical Assistance Centers** (TACs) that will provide training, resources, and technical assistance to school climate teams focused on HIB policies and procedures; best practices for creating a positive school climate for adults and students; implementation and evaluation protocols and instruments; and strategies for engaging parents and community members;
19. Develop expert advisory groups to consult with the TACs and develop and implement school climate assessment methods;
20. Develop and deploy a comprehensive on-line HIB tutorial;
21. Institutions providing professional training to educator candidates should include HIB as a component of

pre-professional training for teachers and administrators;

22. Enact the creation of a Bullying Prevention Fund, which is authorized to receive funding from private foundations, Legislative appropriation, and other sources, to finance the TACs and the NJDOE for the provision of training and technical assistance to school staff and to provide training and program grants to schools in regard to the ABL and HIB.

Background on the New Jersey Commission on Bullying in Schools

On January 13, 2008, Governor Jon S. Corzine signed into law Public Law 2007, Chapter 303, Section 9, establishing the Commission on Bullying in Schools (“Commission”). The Commission consisted of fourteen members and included ex-officio and public members. The two ex-officio members were the Commissioner of the Department of Education and the Director of the Division on Civil Rights (or their designees).

The twelve public members were appointed by the Governor, Senate President, and the Speaker of the General Assembly as follows: the Senate President and Speaker each appointed two public members with a background in, or special knowledge of, the legal, policy, educational, social or psychological aspects of HIB in schools; and the Governor appointed four members with a background in, or special knowledge of, the legal, policy, educational, social or psychological aspects of HIB in schools, as well as one representative each from the following organizations: the New Jersey Education Association, the New Jersey School Boards Association, the Anti-

Defamation League, and the New Jersey Principals and Supervisors Association.

The members of the Commission, who served without compensation, were as follows:

Ex-Officio:

- Barbara Gantwerk – Designee of the Commissioner of the Department of Education
- Esther H. Nevarez³⁰ – Designee of the Director of the Division on Civil Rights

Public Members:

- Nadia S. Ansary, Ph.D. – Appointed by the Governor
- Stuart Green, D.M.H., L.C.S.W., M.A. – Appointed by the Governor
- Reman Mustafa³¹ – Appointed by the Governor
- Leisa-Anne Smith, M.Ed, Esq. – Appointed by the Governor
- Camy E. Kobylinski – Appointed by the Governor as the representative from the New Jersey Education Association, in accordance with the law
- Etzion Neuer – Appointed by the Governor as the representative from the Anti-Defamation League, in accordance with the law
- Steven McGettigan, Esq. – Appointed by the Governor as the representative from the New Jersey School Boards Association, in accordance with the law
- Patricia Wright – Appointed by the Governor as the representative from the

New Jersey Principals and Supervisors Association, in accordance with the law

- Brownita Manning Sharif – Appointed by the Senate President
- Sharon Rose Powell, Ed.D. – Appointed by the Senate President
- Hon. Esther Fletcher – Appointed by the Assembly Speaker
- Margo Saltzman – Appointed by the Assembly Speaker

For purposes of convenience and operational consistency, the Commission was formally placed in, but not of, the Office of the Child Advocate.³² Since the Commission received no independent appropriation from the Legislature, and consistent with Section 9 (h) of its enabling legislation, the Office of the Child Advocate and the Department of the Public Advocate provided the staffing, administrative and operational support necessary to conduct its work, including in-kind support, such as website services, photocopying and conference-calling expenses, transcription services, and other miscellaneous operational expenses. The Commission is very appreciative of the numerous venues where it has held its meetings and hearings which have been made available at no expense. The Commission extends its gratitude to the staff at the New Jersey Principals and Supervisors Association for ongoing use of their facilities, and for the assistance of technical and administrative personnel throughout the meeting process.

The Commission was charged with studying and making recommendations regarding:

- (1) the implementation and effectiveness of school HIB laws and regulations;
- (2) the adequacy of legal remedies available to students who are victims of HIB and their parents and guardians;
- (3) the adequacy of legal protections available to teachers who are in compliance with school HIB policies;
- (4) training of teachers, school administrators, and law enforcement personnel in responding to, investigating and reporting incidents of HIB;
- (5) funding issues related to the implementation of the State school HIB laws and regulations; and
- (6) the implementation of a possible collaboration between the Department of Education and the Division on Civil Rights in the Department of Law and Public Safety on a Statewide initiative against school HIB.³³

The Commission was required to issue a report of its “findings and recommendations, along with any legislation it desires to recommend for adoption by the Legislature, to the Governor and the Legislature in accordance with section 2 of P.L. 1991, c.164 (C.52:14-19.1).”³⁴

At its organizational meeting on October 20, 2008, the Commission members unanimously elected Stuart Green as its Chairman, consistent with Section 9(f) of the enabling law. Since the organizational meeting, the Commission held a series of public hearings in the north, central and southern parts of the State, held monthly public meetings, received in-person testimony and obtained testimony by mail and electronic submission from more than 110 individuals and organizations.

The public hearings were held on February 18, 2009 at Lawrence High School in

Lawrence, on February 25 at Gloucester County College in Sewell, and on March 4 at Lincoln High School in Jersey City. Transcripts from these hearings are available at the website of the Office of the Child Advocate, www.state.nj.us/childadvocate.

The Commission held meetings on October 10, November 18, and December 8, 2008, and January 12, February 9, March 9, April 13, April 20, May 11, June 8, July 13, July 24, August 10, September 30, October 15, 19, 20, 23 and 27, and November 2, 4, 9 and 12, 2009.

After reviewing nearly 15 hours of testimony from public hearings, more than 100 hours of Commission meetings, submissions by myriad organizations, and a review of research conducted by advisory subcommittees of the Commission,³⁵ the Commission submits this report as its conclusions of findings and recommendations. The report will not recite all the testimony provided at the public hearings, at meetings, or submitted in writing to the Commission. Rather, this report will highlight relevant testimony that corresponds to the Commission's legislative charge, and which, in its judgment, is material in reducing school HIB in New Jersey.

2

Overview of Current Laws Pertaining to Bullying Issues

In order to effectively analyze how to enhance the laws relating to HIB, it is critical to have a brief understanding of the current laws that are relevant to HIB of school children in New Jersey.

The major source of protections and remedies against HIB of school students lies in our statutory laws.³⁶ With the 2002 enactment of the New Jersey School Anti-Bullying Law,³⁷ the Legislature explicitly recognized the extent of the school HIB problem and the manner in which HIB precludes effective education--interfering with both the individual student's ability to learn and the school's ability to carry out its educational mission for all of its students. The ABL has advanced the fight against school HIB by, among other things, requiring public school districts to adopt anti-HIB

policies that meet minimum standards set by the New Jersey State Board of Education.³⁸ In the years since the enactment of the ABL laws and regulations, however, it has become apparent that the mechanisms provided by ABL, or their implementation, are insufficient to prevent and eliminate HIB in our schools.

Other statutes, such as the New Jersey Law Against Discrimination (LAD),³⁹ the Bias Intimidation statute,⁴⁰ and the School Anti-Discrimination law,⁴¹ while not enacted specifically to address school HIB, fill some of the gaps not addressed by the ABL and provide some additional mechanisms for victims and parents facing HIB.

While the LAD and other statutes strengthen the arsenal available to prevent and eliminate school HIB, the information gathered by the Commission demonstrates that the statutory, regulatory and administrative remedies

currently available to address HIB in our schools, or the degree to which they are implemented, remain unclear to many people. Thus, as noted in detail below, the Commission finds that amendments to the existing statutes are needed to provide educators, students

and parents with effective tools to combat HIB in our schools. The Commission also explored several other laws that pertain to protecting victims of HIB in some cases, and did not recommend any revisions to those laws, based on their review in accordance with the very limited jurisdiction of this Commission. The Commission begins with those.



The New Jersey Law Against Discrimination (LAD) Also Provides Limited Protections for Some Victims of HIB⁴²

The LAD does not explicitly address HIB, but prohibits discrimination in public accommodations based on race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, sex, gender identity or expression, affectional or sexual orientation, disability or nationality.⁴³ “Public accommodation” includes most schools (kindergartens, primary, secondary and high schools, trade and business schools, academies, colleges and universities, and any schools under the supervision of the New Jersey State Board of Education or the New Jersey Commissioner of Education), but exempts educational facilities “operated or maintained by a bona fide religious or sectarian institution.”⁴⁴

In L.W. v. Toms River Regional Schools BOE,⁴⁵ the New Jersey Supreme Court unanimously held that a school district can be held liable for bias-based peer harassment under the LAD where the school district knew or should have known of the harassment,



failed to take action reasonably calculated to end the harassment, and the school district’s failure has the effect of denying to the victim any of a school’s “accommodations, advantages, facilities or privileges.”⁴⁶ The Court further explained that “[a]n aggrieved student must allege discriminatory conduct that would not have occurred ‘but for’ the student’s protected characteristic, that a reasonable student of the same age, maturity level, and protected characteristic would consider sufficiently severe or pervasive . . . to create an

intimidating, hostile, or offensive school environment, and that the school district failed to reasonably address such conduct.”⁴⁷ In assessing the reasonableness of a school district’s actions, fact-finders must use a case-by case, fact-sensitive evaluation, based on the totality of the circumstances and including the cumulative effect of the harassment.

The Commission finds that the LAD, alone, is limited as a tool to address HIB.

Although the LAD prohibits only bias-based harassment, and for that reason cannot be invoked to address other types of HIB, that limitation is consistent with the legislative purpose underlying this statute. For that reason, the Commission concludes that any broader protections for HIB victims are more appropriately provided by other statutes, and does not recommend any amendments to the LAD, so long as the amendments are made to the ABL consistent with this report.

The New Jersey Bias Intimidation (BI) Statute Provides Limited Protections for Victims of Criminal Conduct That Sometimes Includes HIB⁴⁸

Where HIB conduct constitutes a crime or disorderly persons offense under specified sections of New Jersey’s criminal code (including harassment, assault, stalking, terroristic threats and certain offenses against property), and the perpetrator targets the victim because of protected characteristics, the bias intimidation statute may sometimes be available to address HIB. Bias intimidation (BI) is a separate offense under the criminal code, which can be charged only when the defendant is charged with another specified offense. The BI statute significantly increases the penalties/potential sentence for a defendant, because the BI charge will be one degree higher than the most serious charge facing the defendant.

For example, if the underlying charge is a disorderly persons charge, the bias intimidation charge is a fourth degree offense; if the underlying charge is a fourth degree offense, the BI charge is a third degree offense. If the underlying charge is already a first degree offense, the defendant is presumed to get a 20-year sentence.⁴⁹

A person commits the crime of bias intimidation by committing, attempting to commit, conspiring with another to commit, or threatening the immediate commission of at least one criminal offense enumerated in the BI statute (1) with the purpose to intimidate an individual or group because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity; (2) knowing that the conduct of the underlying offense would intimidate an individual or group because of their protected characteristics; or (3) where the victim reasonably believed they or their property were targeted because of their protected characteristics.⁵⁰



In L.W., in which the school district was charged with violating the LAD (a civil statute), the Supreme Court noted that while the BI statute was not implicated in that case, the legislature created the BI statute in part as a way to address the problem of bias-based harassment.⁵¹ Like the LAD, the BI statute is limited to bias-based HIB, and will not be available to address HIB in which the victim is not targeted because of protected characteristics. Moreover, it requires filing charges against the perpetrator under the criminal code, so that the school, parents or victim must first contact the police, and it will then be in the prosecutor's discretion to

decide whether to prosecute the underlying offense as well as the BI offense.

The BI statute provides only limited redress for students subjected to peer-inflicted HIB, as it can be charged only where conduct is motivated by the victim's membership in a protected class, rises to the level of a disorderly persons or criminal offense, and the prosecutor determines that it is appropriate to charge the perpetrator with a violation of the BI statute. Those limitations, however, are consistent with the legislative purposes underlying this statute. For that reason, the Commission concludes that any broader protections for HIB victims are more appropriately provided by other statutes, and does not recommend any amendments to the BI Statute.

3

*The New Jersey Anti-Bullying Law⁵²
as the Principal Legal Mechanism
for Addressing HIB in Schools⁵³*

The ABL requires all New Jersey school districts to adopt policies prohibiting HIB of students on school property, at school-sponsored functions or on school buses. In addition to conduct motivated by “any actual or perceived characteristic,” such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression or disability, the anti-bullying law defines HIB to include conduct motivated by “any other distinguishing characteristic.”

The ABL requires school districts to include in their policies, among other things: a statement of how the policy is to be publicized, procedures for reporting HIB; procedures for prompt investigation of HIB; and a statement of the range of ways in which a school will respond to a HIB incident. While the ABL requires schools to incorporate information regarding the school district HIB policy into a school's employee training program, the ABL does not require any specific training or HIB prevention programs except where funds are appropriated to do so, and only “encourages”

schools to implement HIB prevention programs and other anti-bullying initiatives. The NJDOE regulations promulgated under the ABL provide some additional formal structure for schools, requiring school districts to annually review and assess the characteristics of HIB behavior in their schools and their training needs regarding HIB issues, and to implement training programs as needed, as well as to annually review the extent and characteristics of HIB in the school buildings of the school district and implement locally determined programmatic or other responses determined by the district board of education, which must be planned in consultation with the community.

The current ABL does not create any independent remedy for HIB victims, and explicitly provides that it does not create or alter any tort liability or prevent victims from seeking redress under other civil or criminal laws. The NJDOE regulations similarly specify that the regulations should not be interpreted to prevent a victim from seeking redress under any other laws.

After discussion of the relevant issues, the Commission concludes that the Anti-Bullying Law (ABL) is deficient in the following respects:

- The ABL does not cover parentally placed students in non-public schools;
- The definition of "harassment, intimidation or bullying" does not adequately express the nature of the conduct the legislation is designed to address. The current definition implies that HIB must be motivated by some identifiable characteristic of the target student, and makes no mention of the power imbalance between the aggressor and target, which is the essential difference between HIB and other types of conduct;
- The ABL does not address incidents of HIB that occur off school grounds but either continue on school grounds or negatively impact school or its students;⁵⁴
- The ABL does not require, but only encourages, HIB prevention programs and staff training on HIB prevention, and requires that full-time staff but not staff, volunteers and individuals contracted to provide student services within a school to receive a copy of the school policy against HIB;
- While the ABL requires school staff to report HIB and protects HIB victims and witnesses from retaliation by school staff, these essential components of an effective anti-HIB policy are not extended to school board members;

- The ABL provides no formal mechanism for the NJDOE to obtain guidance and input from community members, academics, and other professionals working to address HIB;
- There is not a clear and specific set of administrative remedies available when there is an allegation that the school district has not complied with the ABL.

Recommendation #1:

Amend the statutory definition of HIB in the ABL to incorporate the critical concept of "power differential" between the bully and the victim.

After extensive discussion of the issues and consideration of public testimony and information from professionals, and others with experience and expertise in relevant fields, the Commission recommends the following amendments to the ABL:⁵⁵

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

"Harassment, intimidation or bullying" means any gesture, any written, verbal or physical act, or any electronic communication 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 handicap, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function or on a



school bus and that], due to a power differential between the aggressor(s) and the target(s), a reasonable person under the circumstances should know will have the effect of:

- a. [a reasonable person should know, under the circumstances, will have the effect of] harming a student or damaging the student's property, or placing a student in reasonable fear of harm to his person or damage to his property; or
- b. insulting, threatening or demeaning any student or group of students in such a way as to cause either a hostile school environment or a substantial disruption in, or substantial interference with, the orderly operation of the school, or
- c. perpetuating bullying by inciting, soliciting or coercing an individual or group to demean, dehumanize, embarrass or cause emotional, psychological or physical harm to another person.

Recommendation #2:

Ensure all school districts implement effective anti-HIB programs or approaches.

The Commission received significant testimony about the need to more aggressively and systematically implement programs and approaches to deal with HIB in schools. Mr. Barry Fulmer, Esq., testified about the need to require training on HIB:

“[m]andating training and discussion of bullying in the schools would significantly increase the probability of a reduction of bullying in the public schools.”⁵⁶

Ms. Afsheen Shamsi, who testified on behalf of the New Jersey Chapter of the Council on American-Islamic Relations, recommended:

[C]ultural[ly] [sic] sufficient training for students, teachers and administrators, educating students and parents about bullying laws and wh[at] [sic] they can do about them; role playing in assemblies to clearly identify what are bullying acts, what constitutes bullying acts and who can students go to if they are bullied against.”⁵⁷

The New Jersey Association of School Psychologists testified, through Terry Molony, about the need for training as a “key” element to addressing the issue of HIB in schools:



I think that training needs to be on several levels. One level is to create climates of caring, compassionate cultures in school and this would involve administrators, teachers, students, everyone understanding about diversity...Another area of training...[is]to train mental health practitioners for their direct work in helping students to resolve conflicts; mental health practitioners in the school being the

school psychologist, the guidance counselor and the social workers.⁵⁸

The Commission agrees. Although school climate and school cultural change is a complex process that occurs over an extended period of time, training is an important element of school change, and the development of quality programs and approaches that focus on creating a positive school climate help minimize the chances of HIB in a school. The Commission also believes, however, that “one size doesn’t fit all.” As Phil Brown, Director of the Social and Character Development Center at Rutgers University, testified “there is no one solution or one program that is adequate to address the problem [of HIB]. It is a problem in the school climate in establishing a positive school culture.”⁵⁹ Therefore, it is important to implement measures that integrate the expectations regarding HIB into the fabric of school operations.

To that end, the Commission recommends the following statutory amendments:

N.J.S.A. 18A:37-15.

a. Each school district shall adopt a policy prohibiting harassment, intimidation or bullying on school [property] grounds, at a school-sponsored function, or on a school bus, that is consistent with the school district’s code of student conduct. The school district shall [attempt to] adopt the policy through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators, and community representatives.

b. A school district shall have local control over the content of the policy, except that the policy shall

contain, at a minimum, the following components:

...

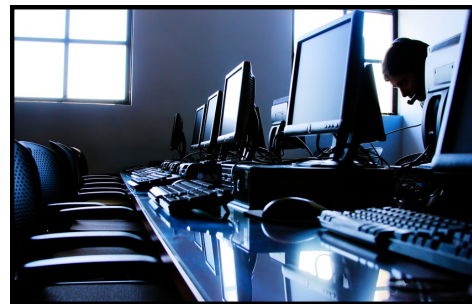
(11) a requirement that the policy be clearly posted on the school district's website and distributed annually to parents and guardians who have children enrolled in a school in the school district ; and

(12) a requirement that the district develop, implement, document, and assess a program or approach intended to create school-wide conditions that will prevent and address harassment, intimidation and bullying.

...

f. A district may apply to the Department of Education for a grant to be used for programs or approaches as listed in section (b) (12), to the extent funding is made available by the Legislature, or as available through the Bullying Prevention Fund.

g. Notwithstanding the provisions



of N.J.S.A. 18A:35-4.7, no student may be exempt from discipline as a result of violating N.J.S.A. 18A:37-14, et seq.

N.J.S.A. 18A:37-17.

a. Schools and school districts [are encouraged to] shall establish bullying prevention programs or approaches, and other initiatives involving school staff, students, administrators, volunteers, parents, law enforcement and community members.

b. [To the extent funds are appropriated for these purposes, a] A school district shall: (1) provide training on the school district's harassment, intimidation or bullying policies to school employees and volunteers who have significant contact with students; (2) ensure the training includes instruction on preventing bullying on the basis of power differentials and race, color, nationality, national origin, ethnicity, religion, creed, sex, gender identity or expression, sexual orientation, disability, and other groups that have been victims or targets of discrimination, harassment, intimidation and bullying; and (3) develop a process for discussing the district's harassment, intimidation or bullying policy with students.

c. Information regarding the school district policy against harassment, intimidation or bullying shall be incorporated into a school's employee training program, and must be provided to full-time and part-time staff, volunteers who have significant contact with students, and those contracted by the district to provide services to students.

In an attempt to thoroughly represent and enlighten all students and families, districts are strongly encouraged to provide that all HIB policies are made available for

translation and/or written in languages that represent the ethnic diversity of student populations within the district and community. This will help ensure that all families and students are informed and empowered with information regarding HIB, which will ultimately enhance school climate and facilitate consistency in parental understanding of the issues related to HIB.

Recommendation #3:

Expand the anti-retaliation provisions of the ABL by making them also applicable to school board members.

To strengthen the ABL, the Commission proposes the following revisions to ensure that school board members are included in the law's anti-retaliation provision, and to explicitly require board members to report incidents of HIB to district personnel:

N.J.S.A. 18A:37-16

a. A member of a board of education, school employee, student or volunteer shall not engage in reprisal, retaliation or false accusation against a victim, witness or one with reliable information about an act of harassment, intimidation or bullying.

b. A member of a board of education, school employee, student or volunteer who has witnessed, or has reliable information that a student has been subject to, harassment, intimidation or bullying shall report the incident to the appropriate school official designated by the school district's

policy, or to any school administrator or public safety officer, who shall immediately engage the district's procedures concerning school bullying.

Recommendation #4:

Ensure that districts provide a legal representation to employees who appropriately report HIB.

The ABL and the NJDOE regulations implementing that statute include a provision immunizing school employees from a cause of action for damages arising from any failure to remedy a HIB incident, if the employee promptly reports the HIB incident to the school official designated in the district BOE's HIB policy, and complies with the procedures in the district's HIB policy in the manner in which he or she makes the report.⁶⁰ These are important provisions of the laws and regulations that govern schools, insofar as employees must be encouraged to report incidents of HIB. Providing them with immunity for making such reports is an important step in that effort.

Additionally, New Jersey law⁶¹ provides that where school employees or officers are acting within the scope of their employment, the district board of education would be obligated to indemnify the employee for the costs resulting from any civil, administrative or other legal proceeding based on their acts or omissions, including for reasonable counsel fees, except for "exemplary or punitive damages."⁶²

However, although school employees may be able to invoke these provisions to secure indemnification for any losses

incurred in defending a legal proceeding, current law does not require the school districts to actually retain an attorney to represent the employee who makes a good faith report of HIB of a student. Moreover, the indemnification provision of the ABL might imply that a school employee is immunized from liability for damages, but would still be responsible for the costs of defending a court or administrative action based on the employee's acts or omissions. This is an unclear legal issue at this time, and it is of significant importance to require Legislative attention. As a result, the Commission finds that school personnel should be provided legal counsel—at the employer's expense—for any losses incurred in defending a legal proceeding due to that employee making a good faith report of HIB under the ABL. The proposed amendment is as follows:

N.J.S.A. 18A:37-16

c. A school employee who promptly reports an incident of harassment, intimidation or bullying, to the appropriate school official designated by the school district's policy, and who makes this report in compliance with the procedures in the district's policy, is immune from a cause of action for damages arising from any failure to remedy the reported incident. In the event such employee is named as a party to a lawsuit or complaint under N.J.S.A. 18A:37-15 to 16, the employee shall be provided

Recommendation #5:

Enact a new section of the ABL to address certain HIB that occurs off school grounds.

with legal representation at the cost of the school district.

Incidents of HIB sometimes occur off school grounds and the incidents continue on school property or negatively impact a school or its students. Schools need the tools to properly address HIB in these circumstances.

In explaining a common occurrence throughout the State, Patricia Crimaldi of New Jersey Child Assault Prevention testified how HIB commonly occurs off school grounds:

[W]e know that the bullying gets worse and worse, because now not only do kids get bullied on the playground, in school and outside, they also get bullied electronically. They all have cell phones. We have text messages, IM. They're on the computer. So if they're at school being bullied, they're going to come home, put their computer on and do homework. And they're going to get bullied on the computer also.⁶³

Without more effective tools to address these types of incidents, administrators and parents will have limited ability to directly address inappropriate conduct. Therefore, the Commission recommends⁶⁴ the following new section to the ABL:

New section: N.J.S.A. 18A:37-xx: Adoption of policy on harassment, intimidation and bullying away from school grounds

5.a. Each school district shall adopt a policy on harassment, intimidation and bullying that includes provisions for appropriate responses of school staff to harassment, intimidation or bullying that occurs off school grounds, including, where appropriate,

application of the district's code of student conduct and the district's harassment, intimidation and bullying policy pursuant to N.J.S.A. 18A: 37-15, when school staff are made aware of such actions, and where such actions either substantially or materially impact a student's physical or emotional safety, security and well-being or where such actions

Recommendation #6:

Publish and disseminate the range of administrative actions for investigating allegations of ABL violations and for providing remedies, including an expedited procedure for review of ABL violations and clarification of available remedies and resources.

substantially or materially impact the safety, security and well-being of other students, staff or school grounds.

This Commission repeatedly heard testimony that the current anti-bullying law lacks a strong and explicit enforcement mechanism, or that current requirements and mechanisms are not adequately understood or invoked, and does not provide victims with a clearly explained process of what to do when a school does not sufficiently address allegations of HIB.

On February 18, 2009, at the Commission's first public hearing, Dr. Joan Rivitz, Chair of the New Jersey Commission on Civil Rights and an educator who works on HIB prevention, testified that the law needed "some meaningful enforcement mechanisms...."⁶⁵

Stacey Ashmon testified about the confusion faced by parents when HIB occurs and they do

not know where to go for help on enforcing the Anti-Bullying Law or district policies against HIB. First, she complained about her difficulty in finding an actual copy of the school's policy, and then the continuing confusion of what to do next:

When I did find [a copy of the District's policy] it just said that... the superintendent shall develop appropriate procedures for addressing, you know, the harassment, but there are no procedures. **If somebody violates a rule, then okay, what is the next step? What happens?**

Then as a parent I am being told well, we can't tell you what happened to other students, so then **how do I know that the rules are being enforced and that people are being disciplined** on your behalf, and that has been my struggle with the school district.⁶⁶

This testimony is consistent with a plain reading of the current ABL, which is not necessarily clear to a reader who is not a trained attorney as to "what is the next step." Victims need to affirmatively know where to seek redress when HIB interferes with a child's education and the school district fails to properly address the problem. The ABL establishes clear mandates for the development of school district policies that prohibit HIB on school property, at school-sponsored functions and on school buses and for the adoption and implementation of school district procedures for responding to reported incidents of HIB that occur on school property, at school-sponsored functions and on school buses. As indicated in the public testimony presented to the Commission and based on the research literature, however, there are instances when concerns are raised



with the local implementation of the ABL or with the remediation of ABL violations. Therefore, the Commission finds that there is a need for a delineation of the range of procedures for the systematic investigation of possible ABL violations and for the correction of findings of non-compliance with the ABL.

To this end, the Commission believes that the following range of actions should be delineated and publicized as New Jersey's set of procedures for investigating and resolving violations of the ABL by any public school. The procedures described below include existing and new strategies for reviewing ABL violations.

1) Local School District ABL Complaint Investigations

Priority should be given to the resolution of HIB complaints within the schools and school districts where the incidents occur. The NJDOE and DCR should develop and publish guidance for use by parents, students and local school staff to resolve complaints regarding students' HIB behaviors or concerns with school implementation of the ABL (see below for additional details on the recommended guidance document).

2) County Office of Education ABL Complaint Investigations

For incidents when complaints have not been adequately resolved at the local level, the NJDOE should establish a formal protocol for investigating HIB complaints that document allegations of violations of the ABL by any public school district. The investigations should result in reports of findings and, when indicated by the facts, the issuance of orders for school district officials to develop and implement corrective actions that are specific to the facts of the individual cases.

3) State Administrative Remediation

a) *Legal Petitions to Commissioner of Education*

Pursuant to *N.J.A.C. 6A:2-1.2(a)1*, “The Commissioner [of Education] is empowered to decide legal controversies and disputes arising under school laws or State Board regulations and his/her decisions have the force of law;” [bracketed text added]. Therefore, the guidance to be developed and published by NJDOE and DCR, as recommended above, should explain in clear and simple language the procedures, pursuant to *N.J.A.C. 6A:3, Controversies and Disputes*, to be followed for petitioning the Commissioner of Education to exercise his or her authority to hear and make determinations on controversies and disputes specific to the implementation of the ABL.

Under this procedure, complainants also may submit a petition for “emergent relief” pursuant to *N.J.A.C. 6A:3-1.6, Interim relief or stay*. The following standards must be met for granting such relief: The petitioner will suffer irreparable harm if the requested relief is not granted; the legal right underlying petitioner’s claim is settled; the petitioner has a likelihood of prevailing on the merits of the underlying claim; and when the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the

requested relief is not granted. The recommended guidance should clearly explain this administrative option for resolving ABL violations.

b) *New Expedited Procedure for the Administrative Review of HIB Cases*

While complainants may currently petition the Commissioner of Education to hear and decide controversies and disputes as emergent relief cases regarding violations of the ABL and other issues arising under school law, as described above, the pervasiveness of the HIB problem and the serious effect HIB can have on students’ educations indicate the need for an expedited process that provides quick reviews and resolutions of HIB complaints by the

Commissioner of Education. Therefore, the Commission recommends the ABL and the hearings law be amended to establish specific times and any necessary procedures for the Commissioner of Education’s expedited review, including the Office of Administrative Law’s expedited processing, of all

complaints regarding violations of the ABL and the subsequent adoption of regulations specifying the applicable number of days and the scope of remedies for the Commissioner of Education’s expedited review, including the Office of Administrative Law’s expedited processing, of all complaints regarding violations of the ABL.



The Anti-Bullying Law (ABL) establishes clear mandates for the development of school district policies that prohibit HIB on school property, at school-sponsored functions and on school buses and for the adoption and implementation of school district procedures for responding to reported incidents of HIB that occur on school property, at school-sponsored functions and on school buses.

Scope of Remedies

While the Commissioner of Education has broad Constitutional and statutory powers, it would be helpful to delineate the scope of remedies that may be available to the Commissioner for remediating violations of the ABL. Therefore, the Commission recommends that the ABL be amended to establish the full range of injunctive and equitable relief for ABL violations including, but not limited to, payment for alternative school placements and reimbursement for education-related expenses already paid or expended, based on the factual findings of the cases. The Commission also recommends that the ABL be amended to establish prescribed timelines for the Commissioner's expedited review.

Resources

Additionally, a determination should be made on the capacity of the Office of Administrative Law to manage the caseload from the expedited administrative hearings, and provide sufficient resources, as appropriate.

c) Division on Civil Rights

As described previously in this report, where a student is subjected to bias-based harassment, that is, the student is harassed based on membership in a protected class as set forth in the LAD, DCR has jurisdiction to take complaints against school districts, and to investigate and prosecute cases of bias-based harassment, based on evidence that the school district has failed to take appropriate action to

eliminate a hostile school environment. The Commission recommends that guidance and training materials that will be made available regarding a range of legal and administrative remedies and options available to students should include information about DCR's jurisdiction and services. Additionally, consideration should be given to providing additional resources to DCR to establish a School Bullying Investigations Unit so that it can investigate such claims on an expedited basis with strict investigative timelines and deadlines.

4) Appeals

Appeals of the Commissioner of Education's final decisions currently can be made to the New Jersey Superior Court, Appellate Division, consistent with the Administrative Procedure Act, which permits appeals of Final Agency Determinations. Therefore, guidance materials and training should include information on appeals of final agency determinations to the Appellate Division.

As indicated above, to support implementation of these recommendations regarding HIB prevention and remediation, the NJDOE, in consultation with the DCR, should develop and issue guidance on school district obligations, available resources, and best practices for the prevention, intervention and remediation of HIB behavior in schools, designed to be used by all school staff, students and parents. The guidance should clearly explain the range of actions for investigating allegations of ABL violations and for remediating findings of non-compliance with the ABL, and include detailed information on options available to parents and the parameters, steps and supportive resources for these procedures.

The guidance should be widely disseminated to school personnel, students, parents and the public. The NJDOE should revise its publication titled *Model Policy and Guidance for Prohibiting Harassment, Intimidation and Bullying on School Property, at School-Sponsored Functions and on School Buses* (<http://www.state.nj.us/education/parents/bully.htm>), as appropriate, to be consistent with the information in the guidance recommended above. Additionally, the NJDOE should provide training, materials and technical support on the use of the complaint investigation protocol to the NJDOE staff assigned responsibility for conducting the investigations.

The Commission believes that the range of procedures described above would ensure that HIB cases are heard and acted upon in a timely manner, which is typically not the case, and that the guidance document would increase understanding and use of the procedures to effectively address ABL violations. By implementing these procedures, school staff, parents and students will receive current and comprehensive information, and educational resources will be directed to remediate HIB problems in a student-focused manner, which is the ultimate objective of HIB interventions.

The School Anti-Discrimination Law Necessarily Sets the Tone for Expectations of Equal Opportunity In Our Schools⁶⁷

The anti-discrimination law in New Jersey's education statutes prohibits discrimination against students based on a limited number of protected characteristics: race, color, creed, sex and national origin. The NJDOE regulations⁶⁸ expand the anti-discrimination provisions to require that school districts provide equal and bias-free access to all school facilities, courses, programs, activities and services regardless of race, creed, color, national origin, ancestry, ge, marital status,

affectional or sexual orientation, gender, religion, disability and socioeconomic status. Thus, the NJDOE regulation protects students from discrimination based on most, but not all, of the characteristics protected by the LAD.⁶⁹

To the extent that HIB based on the specified characteristics interferes with students' access to school programs, facilities and activities, a school district's failure to act appropriately may violate the school anti-discrimination law and regulations.

The Commission finds that this statute and these regulations, as currently codified, do not adequately protect against discrimination based on all of the relevant characteristics that have been identified to date by the Legislature and the Courts. Insofar as additional protected groups have been identified in recent years for protection from unlawful discrimination in education, they should be codified in the ABL to minimize confusion and increase compliance by school administrators and staff, and by students and parents. That is, though the school antidiscrimination law has been amended by other Legislative action (such as amendments to the Law Against Discrimination), or interpreted by the Courts as requiring additional protections, or interpreted by promulgation of additional regulation by the NJDOE, confusion will continue unless this specific provision of the education laws is amended.

The findings and recommendations in this report regarding remedies apply to public schools students (which includes special education students placed out of district according to their Individualized Education Programs). Students who are parentally placed in nonpublic schools are not addressed in this report. The Commission acknowledges that the issues regarding on public school remedies have not been addressed and

recommends that further consideration be given to appropriate prevention, intervention or remediation strategies, including administrative and legal actions that might be available to parents and students regarding HIB that occurs in nonpublic schools.

Recommendation #7:

Amend the school antidiscrimination law to codify protected characteristics already enacted by the Legislature in the LAD or by NJDOE regulations, to clarify discrimination prohibitions on the basis of ancestry, age, nationality, disability, religion, sexual orientation, gender identity or expression, marital status, civil union status, domestic partnership status and socioeconomic status.

Recommendation #8:

Amend the school antidiscrimination law to ensure non-discrimination by all schools — public or private — which receive public funding, unless

As result, the Commission makes two recommendations related to the school antidiscrimination law, as follows:

The specific statutory language the Commission recommends is as follows:

N.J.S.A. 18A:36-20

No pupil in a public school in this State, or in any non-public school that receives any form of public funding, shall be discriminated against in admission to, or in obtaining any advantages, privileges

or courses of study of the school by reason of race, color, creed, sex, ancestry, age, disability, religion, sexual orientation, gender identity or expression, marital status, civil union status, domestic partnership status, socioeconomic status or national origin. This provision shall not apply to any educational facility operated or maintained by a bona fide religious institution, to the extent that such religious education facility is exempt from the provisions of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49.

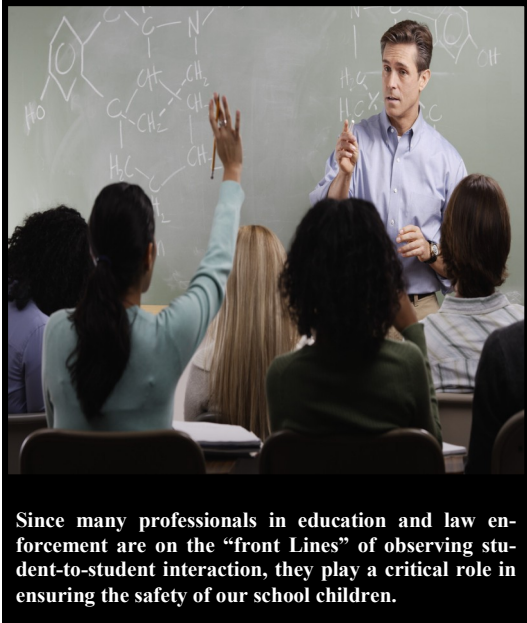
Recommendation #9:

Amend the various training laws for (a) school board members; (b) educators; (c) suicide prevention trainers; and (3) law enforcement trained by the Police Training Commission, to include training on HIB, ABL, discrimination and equal opportunity.

A critical component of the Commission's charge is to study the adequacy of training for teachers, school administrators, and law enforcement personnel in responding to, investigating and reporting HIB. After reviewing the testimony presented, consulting with experts and reviewing research, the Commission finds that current statutes on training for certain professionals in education and law enforcement do not require training in school HIB. Since many of these professionals are on the "front lines" of observing student-to-student interaction, they play a critical role in ensuring the safety of our school children.

As a result, the Commission recommends a number of statutory reforms to ensure training is provided to education and law enforcement personnel. The following include the specific recommended reforms:

Training for School Board Members Should be Enhanced



Since many professionals in education and law enforcement are on the “front Lines” of observing student-to-student interaction, they play a critical role in ensuring the safety of our school children.

To ensure that newly elected or appointed school board members understand the school district’s obligations regarding HIB, discrimination and equal opportunity, the Commission recommends amending the relevant statute to ensure that initial training includes these topics. This is important because board of education members often are called to hear disputes about HIB investigations, discipline, and development of policy. Recognizing that the New Jersey

School Boards Association conducts ongoing training for existing school board members in consultation with the NJDOE, the Commission recommends that the New Jersey School Boards Association, as well as the New Jersey Principals and Supervisors Association and the New Jersey Association of School Administrators, in consultation

with the NJDOE, assess the best way to provide ongoing training to school board members on HIB, and that they should seek input from professionals and others with experience relating to these issues, including, where appropriate, members of an ad hoc Advisory Committee on HIB, as is recommended elsewhere in this report.

N.J.S.A. 18A:12-33.

Each newly elected or appointed board member shall complete during the first year of the member's first term a training program to be prepared and offered by the New Jersey School Boards Association, in consultation with the New Jersey Association of School Administrators, the New Jersey Principals and Supervisors Association, and the Department of Education, regarding the skills and knowledge necessary to serve as a local school board member. The training program shall include information regarding the school district monitoring system established pursuant to P.L.2005, c.235, the New Jersey Quality Single Accountability Continuum, laws pertaining to equal opportunity and school bullying, harassment, intimidation and discrimination against students, and the five key components of school district effectiveness on which school districts are evaluated under the monitoring system: instruction and program; personnel; fiscal management; operations; and governance. The board member shall complete a training program on school district governance in

each of the subsequent two years of the board member's first term.

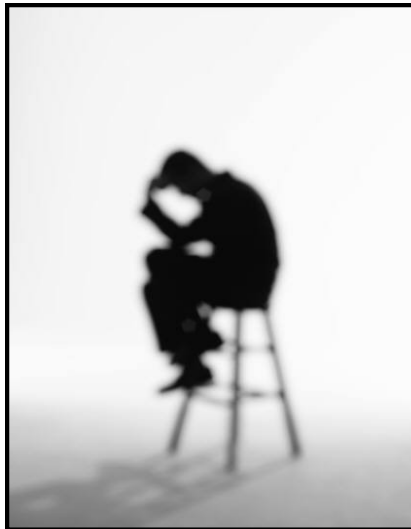
Training for Teachers Must Be Enhanced

The Commission has received considerable information regarding the role HIB plays in suicides, and the need for preventative action to protect students who are members of high-risk groups. The Commission heard about a young student named Amanda:

This is a young woman who only wanted to go to school, who wanted to be a teacher, who wanted to help others, but because the school could not protect her, in school or out, because the school's answer was again, "well, we have done all we can, why don't you try home school?" So the parents did.

And what happened? Well, she is not coming to school anymore, so we will go to her house. They went to the house one night and lit a bag of garbage on fire on the porch and they wrote things on the family's door.

This young woman was so terrorized because she was constantly being told she was ugly, she was fat, she blamed what her parents were going through on herself. So she decided that the only way to resolve her parents' situation was to take her [own] life. So that's what she did, and her parents found a note that said "I'm sorry for all the trouble I have caused."⁷⁰



We must avoid allowing another child to suffer as Amanda did. The Commission notes that State statutes require suicide prevention training for teaching staff, but do not require that such training include instruction regarding high-risk groups or the relation between HIB and suicide.

We also must focus on the increasing use of technology as a medium for HIB. The information gathered by the Commission underscores the growing prevalence of cyberbullying and other uses of computers, cell phones and other electronic media in the HIB of students. The Commission notes that State statutes recognize the importance of ensuring that teachers receive up-to-date technology training, but the statutes do not address the

role such technology plays in HIB, or the educator's duty to address electronic HIB.

After considering the relevant information and testimony, the Commission recommends the following statutory amendments:

N.J.S.A. 18A:6-104.

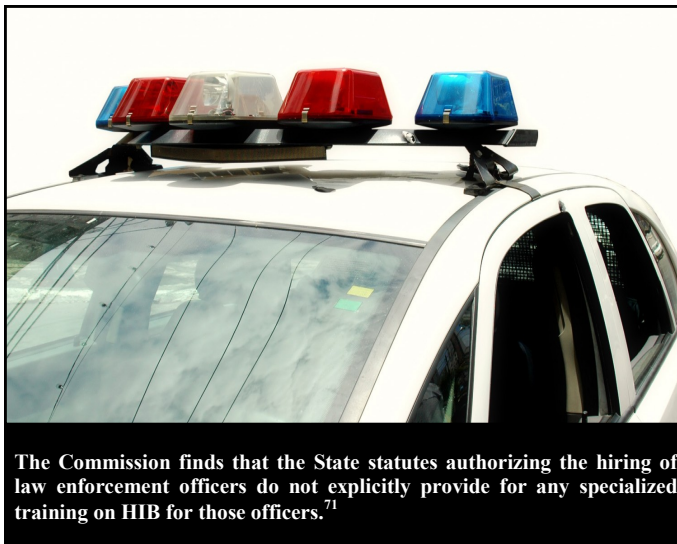
b. It is imperative that teachers understand the potential of technology within the classroom to support curriculum goals and to protect students from potential bullying, cyberbullying, harassment and bias from the use of modern technology or other avenues of electronic media, and that they become proficient and sophisticated users of those technologies critical to educating New Jersey's students;

Training on Suicide Prevention Must Be Strengthened

The Commission also finds that suicide prevention training should be strengthened and enhanced, because of the continued reports that some students who are repeated victims of HIB consider suicide, or attempt suicide. Unfortunately, for too many, they succeed. That is why the Commission recommends additional training, as part of the current suicide prevention curriculum required by State law, to specifically enhance focus on those who are at high risk

of HIB—which may include racial minorities, gay, lesbian, bisexual or transgender youth, and others. While experts recognize that there may be various reasons youth consider suicide, we cannot ignore

the many reports nationwide of students taking their own lives after being relentlessly bullied by other students. In many of these cases it has been reported that the victim was perceived as being gay, lesbian, bisexual or transgender. Based on this evidence that some students face potential greater risk of harm by HIB because of these and other identifiable perceptions and characteristics, the Commission finds that increased attention must be paid to identifying potential victims of bullying and providing appropriate assets to reduce the potential for HIB. One such way is to enhance training on suicide prevention.



The Commission finds that the State statutes authorizing the hiring of law enforcement officers do not explicitly provide for any specialized training on HIB for those officers.⁷¹

The Commission recommends the following revision:

N.J.S.A. 18A:6-111.

d. It is therefore appropriate for the Legislature to require: the State Board of Education to require instruction in suicide prevention as part of any continuing education which public school teaching staff members must complete to maintain their certification; and inclusion of suicide prevention

awareness in the Core Curriculum Content Standards in Comprehensive Health and Physical Education. The New Jersey Department of Education shall consult with the Youth Suicide Prevention Advisory Council to identify groups at high risk of

suicide as a result of harassment, intimidation and bullying, and develop appropriate standards.

Training for School Safety Personnel and Law Enforcement Officers In Order to Effectively Investigate and Combat HIB

The Commission concludes that it is important to ensure that all law enforcement and security officers working in schools or at school-sponsored events, and school resource officers who serve as liaisons to law enforcement, understand the State laws and regulations relating to HIB, as well as school district anti-HIB policies and reporting procedures.

The Commission finds that the State statutes authorizing the hiring of law enforcement officers do not explicitly provide for any specialized training on HIB for those officers.⁷¹ Similarly, the statute authorizing school security officers to attend trainings conducted by the State Police⁷² does not provide for any specific training on issues of HIB of students. The Commission recommends that the Superintendent of the New Jersey State Police, the Attorney General, or the Attorney General's designee incorporate HIB laws, regulations and policies into law enforcement training curricula, in consultation with the NJDOE. The Commission recommends that such training include a required segment on protecting students from HIB, including cyber-bullying.

Since a specific training course is currently required for safe schools resource officers, the Commission recommends amending this statute to ensure that the training includes HIB issues, as follows:

N.J.S.A. 18A:17-43.1.

d. Such training referenced in this section must include a training course on laws and school policy requirements pertaining to the protection of students from harassment, intimidation and bullying (including cyber-bullying). The Police Training Commission shall ensure that such training course is developed and administered.

Recommendation #10:

Amend the school employment disqualification statute to prohibit hiring any individual who has been convicted of bias intimidation for a school position involving regular contact with children.

New Jersey statutes currently disqualify individuals from school employment in positions that have regular contact with children, when they have been convicted of any first or second degree crime, or other specified offenses. "Bias Intimidation" is not included in the specified offenses. The Commission recommends amendment of this school employment disqualification statute to prohibit hiring any individual who has been convicted of bias intimidation—in addition to all the other crimes therein enumerated—for a school position involving regular contact with children.

To that end, the Commission recommends the following language:

N.J.S.A. 18A:6-7.1.

...

An individual, except as provided in subsection g. of this section, shall be permanently disqualified from employment or service under this act if the individual's criminal history record check reveals a record of conviction for any crime of the first or second degree; or

...

(2) A crime as set forth in chapter 39 of Title 2C of the New Jersey Statutes, a third degree crime as set

forth in chapter 20 of Title 2C of the New Jersey Statutes, or a crime as listed below:

- Recklessly endangering another person N.J.S.2C:12-2
- Terroristic threats N.J.S.2C:12-3
- Criminal restraint N.J.S.2C:13-2
- Luring, enticing child into motor vehicle, structure or isolated area P.L.1993, c.291 (C.2C:13-6)
- Causing or risking widespread injury or damage N.J.S.2C:17-2
- Criminal mischief N.J.S.2C:17-3
- Burglary N.J.S.2C:18-2
- Usury N.J.S.2C:21-19
- Threats and other improper influence N.J.S.2C:27-3
- Perjury and false swearing N.J.S.2C:28-3
- Resisting arrest N.J.S.2C:29-2
- Escape N.J.S.2C:29-5; [or]
- Bias intimidation N.J.S. 2C:16-1; or

Recommendation #11:

Amend the reporting law to require broader reporting of HIB.

To ensure that the NJDOE and local school districts receive accurate information about the extent of the HIB in schools to adequately assess progress in creating a safe

school environment, the Commission finds there is a need to enhance the current reporting requirements. The Commission received testimony from parents claiming that a lack of information about reports of HIB can result in significant parental criticism of the school leadership. A lack of strong reporting requirements results in a lack of critical data, reduces transparency, and diminishes the ability to conduct assessments and revisions to programs and the delivery of assets and resources. While the NJDOE requires that public schools report HIB incidents on its reporting forms, the Commission recommends codifying this policy.

The Commission recommends the following amendments to State statutes that address reporting requirements, so that data is provided not just to school administrators and board of education, but to the NJDOE, the State Board of Education, the Legislature, and parents.

N.J.S.A. 18A:17-46.

Any school employee or contracted student services agent of the local school district observing or having direct knowledge from a participant or victim of an act of violence, which shall include harassment, intimidation or bullying as defined in 18:A-37-14, shall, in accordance with standards established by the commissioner, file a report describing the incident to the school principal in a manner prescribed by the commissioner, and copy of same shall be forwarded to the district superintendent.

The principal shall notify the district superintendent of schools

of the action taken regarding the incident. Annually, at a public hearing, the superintendent of schools shall report to the board of education all acts of violence [and], vandalism, harassment, intimidation and bullying which occurred during the previous school year. Verification of the annual report on violence, [and] vandalism, harassment, intimidation and bullying shall be part of the State's monitoring of the school district, and the State Board of Education shall adopt regulations that impose a penalty on a school employee who knowingly falsifies the report. A board of education shall provide ongoing staff training, in cooperation with the Department of Education, in fulfilling the reporting requirements pursuant to this section. The majority representative of the school employees shall have access monthly to the number and disposition of all reported acts of school violence, [and] vandalism, harassment, intimidation and bullying.

N.J.S.A. 18A:17-48.

The Commissioner of Education shall each year submit a report to the Education Committees of the Senate and General Assembly detailing the extent of violence, [and], vandalism, harassment, intimidation and bullying in the

public schools and making recommendations to alleviate the problem.

Recommendation #12:

Reform the current active parent consent requirement in the student survey law.



Schools should evaluate school climate (the social, emotional and civic aspects of schooling) and school improvement efforts, since any HIB prevention and intervention approaches are inextricably connected to school climate and culture, and HIB cannot be effectively addressed independent of school climate and culture. Measurement drives school practice. Information obtained from such assessment is critical for planning interventions, monitoring them to make needed changes and determining efficacy. Current HIB prevention assessment tends to focus on reporting incidents. Relying solely on reported incidents is problematic mainly because the accuracy of reporting (over-reporting or under-reporting) is unclear. Assessment of school climate to determine the full range of problematic attitudes and behaviors and the strengths in a school will provide additional valuable information that is needed to address HIB.

However, the Commission notes that as a barrier to adequate assessment, current state law prevents collecting even anonymous

surveys of self-reported student anti-social behavior, including HIB, without specific individual parental consent. Research has clearly shown that the use of active parental consent biases the results of school-based studies by under-sampling higher risk subgroups in the general population. The Commission strongly urges efforts to modify this legal barrier to adequate assessment.

As discussed above, data is critical in the understanding of the school environment, identifying strengths and weaknesses, assessing reform measures, and signaling solutions to important priorities, such as HIB. Without access to data, a program cannot be adequately planned or assessed.

Additionally, the Commission understands that much of the information needed to properly assess school climate can sometimes include information that is confidential or sensitive. As a result, the Commission finds it is critically important to maintain student confidentiality when conducting school climate surveys. However, current law in New Jersey imposes many unnecessary and costly burdens on schools, and as a result, many schools that want to properly assess school climate face severe and unnecessary challenges in administering vital climate surveys to students. The current active parent consent law unnecessarily complicates the collection of certain student survey information needed to aid in combating HIB. As a result, it is recommended that the current active parent consent law pertaining to school surveys, N.J.S.A. 18A:36-34, be repealed and replaced with the following:



N.J.S.A. 18A:36-34

District boards of education are authorized to conduct school-based student surveys without written parent consent subsequent to providing a detailed notice to parents. The parental notice must provide the following information, at a minimum, three weeks in advance of the administration of each survey:

A description of the types of information contained in each survey;

An explanation of the purpose of each survey;

The identification of when and where each survey will be available for parental review, at a minimum,

for a period of two weeks prior to survey administration;

The identification of the specific entities or persons who will have access to the survey results;

An assurance that only aggregated data from the survey will be released without corresponding identifying information about the students participating in the survey;

The identification of the name(s) and contact information for a person(s) to whom questions may be directed;

An explanation that failure of parents to respond to the survey notice indicates approval of their child's

participation in the survey, should the student choose to participate;

A description of the specific method by which parents can deny permission for a survey to be administered to their child; and

An assurance that a school counselor or other supportive school resource will be identified following the survey for a student to talk to, in confidence, if the student chooses to do so.

Recommendation #13:

Include the study of HIB, civil rights, human relations and diversity in school curriculum provisions of existing laws.

As the State Board of Education continues to revise curriculum, it should take steps to ensure that issues of equality, civil rights and human relations are fully explored in all facets of curriculum development, since the Commission believes that having a greater understanding of people who are different from each of us can help prevent HIB in schools. When schools educate students about respect, understanding, integrity and positive ways of addressing difference and dealing with conflict, they can help to foster a more positive school climate. A widespread safe and nurturing school climate helps to reduce incidents of HIB and the creation of hostile educational environments. That is why the Commission finds that students should be exposed to classroom instruction that fosters a sense of respect for all students and families. The Commission acknowledges that in New Jersey's schools

there are many success stories of educators creating safe learning environments; many schools have included instruction on HIB prevention in various grade levels; some administrators have required that all students learn about respect; but while there are many positive practices being used throughout our classrooms, there is currently no State requirement that curriculum include the study of HIB, or about the important role of human relations, diversity, and civil rights history in our classrooms. As a result, the Commission recommends the following adjustments to existing curriculum:

N.J.S.A. 18A:7F-4.

c. with the growing importance of technology to our society, it is vital that students receive an education that emphasizes technological literacy, which shall include how to address harassment, intimidation and bullying through electronic communications;

N.J.S.A. 18A:35-2. Contents of course of study

Such course of study shall include instruction in (1) The principles and ideals of the American form of representative government as expressed in the Declaration of Independence and the Constitution of the United States and particularly in the Bill of Rights; and

(2) The history of the origin and growth of the social, economic and cultural development of the United States, of American family life and of the high standard of living and other privileges enjoyed by the citizens of the United States; and

(3) Such other events in the history of the United States as will tend to instill, into every girl and boy, a determination to preserve these principles and ideals as those of citizens of the United States and an appreciation of their solemn duty and obligation to exercise the privilege of the ballot, upon their reaching voting age, to the end that said principles and ideals may be so preserved; and

(4) The history of the State of New Jersey, including history of civil rights, human relations, human rights, equality and diversity of the people of New Jersey.

Recommendation #14:

Include violations of HIB or the bias intimidation statute in the student discipline law.

An important goal of the education system is to educate students to be responsible members of the community. It is essential to deliver education in safe and disciplined learning environments, designed to promote positive youth development and, when necessary, impose consequences for inappropriate, unhealthy, or dangerous behavior, such as for HIB. That being stated, the Commission understands that discipline “can only go so far”,⁷³ but it is one of the tools that school administrators must use, as determined by the district board of education’s code of student conduct. The Commission finds that, while the ABL requires the imposition of consequences for HIB violations, the current student discipline law does not specifically recognize the

critical nature of HIB, insofar as the current statute does not explicitly authorize suspension or expulsion of a student who engages in HIB.

The Commission recommends the following language:

N.J.S.A. 18A:37-2. Causes for suspension or expulsion of pupils Any pupil who is guilty of continued and willful disobedience, or of open defiance of the authority of any teacher or person having authority over him, or of the habitual use of profanity or of obscene language, or who shall cut, deface or otherwise injure any school property, shall be liable to punishment and to suspension or expulsion from school. Conduct which shall constitute good cause for suspension or expulsion of a pupil guilty of such conduct shall include, but not be limited to, any of the following:

- a. Continued and willful disobedience;
- b. Open defiance of the authority of any teacher or person, having authority over him;
- c. Conduct of such character as to constitute a continuing danger to the physical well-being of other pupils;
- d. Physical assault upon another pupil;
- e. Taking, or attempting to take, personal property or money from another pupil, or from his presence, by means of force or fear;

f. Willfully causing, or attempting to cause, substantial damage to school property;

g. Participation in an unauthorized occupancy by any group of pupils or others of any part of any school or other building owned by any school district, and failure to leave such school or other facility promptly after having been directed to do so by the principal or other person then in charge of such building or facility;

h. Incitement which is intended to and does result in unauthorized occupation by any group of pupils or others of any part of a school or other facility owned by any school district;

i. Incitement which is intended to and does result in truancy by other pupils; [and]

j. Knowing possession or knowing consumption without legal authority of alcoholic beverages or controlled dangerous substances on school premises, or being under the influence of intoxicating liquor or controlled dangerous substances while on school premises; **and**

k. Harassment, intimidation or bullying.



Recommendation #15:

Develop and issue guidance on addressing HIB with particularly vulnerable student to populations.

It is clear that resource allocation is a significant challenge when most schools operate exclusively through funding from taxpayers. Knowing that there is unlikely to be a sufficient level of funding for HIB prevention efforts and school climate reforms, it is critical to direct the limited resources to the most vulnerable students.

The Commission hereby finds that the NJDOE should specifically address the populations most vulnerable to HIB.



The Commission urges the NJDOE to review all district and school policies and practices to assure that schools specifically address student populations at high risk for HIB, especially students with special health and learning needs, those of racial or religious minorities, and those who are perceived to be lesbian, gay, bisexual or transgender (LGBT). The NJDOE should provide guidance to schools about how to address HIB issues specific to students with special educational needs, since such populations have higher rates of involvement in HIB. Approaches to such students involving consequences (the bullying child) and support and remedies (the bullied child) must take into account the student's Individualized Education Plan, as required by federal and state law.

The Commission heard considerable testimony about the need to direct assets and attention specifically to the most vulnerable of students in each school, which may vary from school to school. Some of the most vulnerable include religious minorities, sexual and gender minorities, racial and ethnic minorities, and others with non-majority characteristics. Students with disabilities, those who are religiously observant, and those who are gay, lesbian, bisexual or transgender are particularly at risk of HIB and are most vulnerable. For example, the Commission heard testimony as follows:



As to Muslim students, and those who are overweight or wear glasses:

[T]eachers should be trained to identify most “at risk” students such as Muslim students, particularly girls who observe [by wearing the hijab or covering] or overweight students or skinny students or anybody who wears glasses. You know those students should be frequently touched upon to let them know that there is someone they can go to.⁷⁴

As to children with disabilities:

...[C]hildren with disabilities are among the largest group of students who are harassed by their classmates. Verbal abuse, ostracizing, physical abuse and even sexual abuse occur against children with disabilities more than against any other identifiable class of students except perhaps for those students who are perceived to be gay.

One special vulnerability that children with disabilities have is that teachers and administrators may discount their reports. Although research demonstrates that bullying is often perpetuated by a high achieving and popular student, the myth is that most bullying is most commonly perpetuated by dysfunctional and even disliked students. Therefore, it is not uncommon for school administrators or teachers to discount a report of abuse by students with disabilities at the hands of popular “good” students because it goes against the popular myth.

Children with disabilities are particularly vulnerable for other reasons as well. On the one hand they are often seen by others as being on the lowest rung of the social ladder as having social awkwardness and as having cognitive or physical weaknesses. In fact, they are often already socially isolated. For all these reasons they stand out as natural targets, unlikely to receive assistance from any other students.⁷⁵

As to students who are gay, lesbian, bisexual or transgender:

[According to national student climate surveys] frequent reasons that students are harassed are because of “the way they look” or “their body size” as the highest reason for being targeted. Secondly, that they are, or people think they are, gay, lesbian, [transgender] or bisexual.⁷⁶

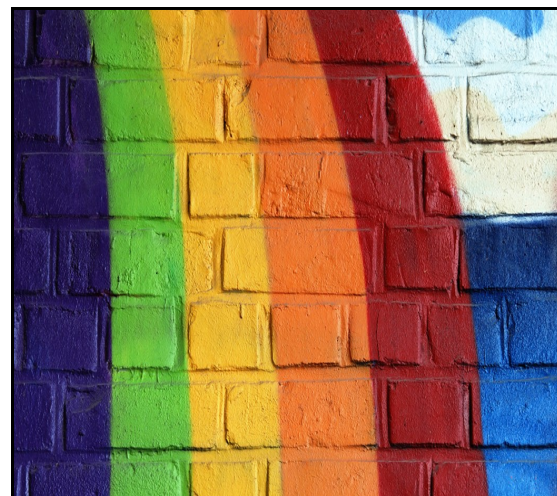
In fact, as to LGBT students, significant research has been made available about students in New Jersey. Findings from the 2007 National School Climate Survey conducted by GLSEN indicate some disturbing statistics for New Jersey. It reports a particularly acute challenge facing LGBT students in schools and reports that significant percentages of students in New Jersey's schools experience harassment because of their sexual orientation and their gender identity or expression. Most striking were the following:

- 99% of LGBT students in New Jersey regularly (sometimes, often or frequently) heard the word "gay" used in a negative way in school, such as "that's so gay" or "you're so gay";
- 93% of students regularly heard homophobic remarks such as "dyke" or "faggot" from other students;
- 90% regularly heard other students in school make negative remarks about someone's gender expression such as someone not acting "feminine" or "masculine" enough.
- 24% of LGBT students heard transphobic remarks from school staff and 19% regularly heard homophobic remarks from school staff.⁷⁷

Few findings are better documented than the importance of the way in which students - and, indeed anyone - are welcomed as they enter a school building. A feeling of being welcomed, followed in an ongoing way by genuine appreciation of one's presence, creates a climate in which the likelihood of aggressive behavior in any form is reduced.⁷⁸ The Commission believes that schools should encourage inclusion. This

can include actively facilitating the development of groups and support organizations for minority constituencies and under-supported groups in their buildings, systematically scanning the school environment for under-supported groups/students and taking active steps to strengthen the support structure for them.

Systematic support of all students should include proactive and ongoing school activities which support groups at known high risk of being targeted for HIB. Universal, inclusive curricular material should include an emphasis on civil rights problems and history. Educational programs should inform students about the range of diversity in the school community and the student population. Such efforts should specifically address LGBT-related HIB in



In a school in which there is a significant difference between the culture and ethnicity of students and that of teaching staff, it is especially important that school activities recognize and support the identifies and communities of students.

developmentally appropriate and sensitive ways, including supporting school activities such as a Gay-Straight Alliance or similar clubs. In a school in which there is a significant difference between the culture and ethnicity of students and that of teaching staff, it is especially important that school

activities recognize and support the identities and communities of students.

The Commission believes that HIB and victimization cannot be effectively addressed only at the level of individual students. Learning how to respond to, investigate and report incidents is only one part of a much bigger picture – school culture and climate.

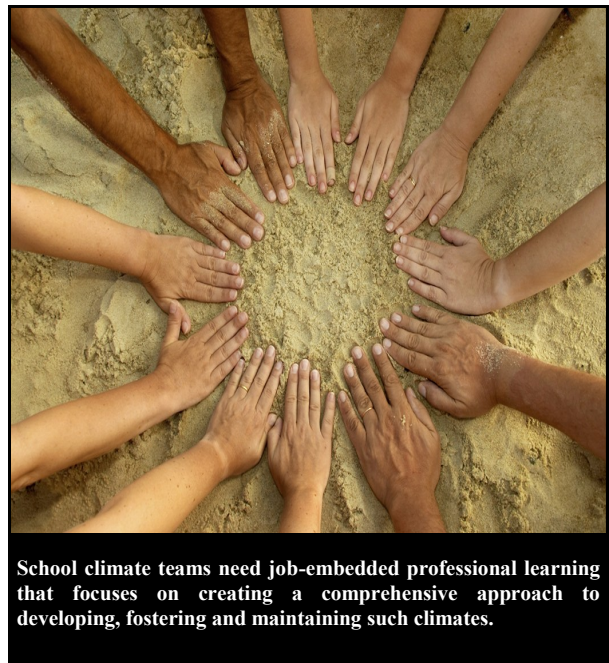
Recommendation #16:

Recommend each school form a school climate team or use an existing team to participate in professional learning opportunities related to school climate programs/approaches and assist in developing a comprehensive school-wide program/approach to address school climate-related issues, including HIB.

School climate is impacted by the school culture, “the way we do things around here.” How we report, investigate and respond to incidents of HIB is determined by the values, beliefs, attitudes and norms that create the school climate.

The Commission believes that programmatic efforts to prevent HIB or address incidents are unlikely to be effective in the absence of a positive school culture with clear norms about student-student, adult-student, and adult-adult behavior in the building. Those norms and expectations should include respect, civility, understanding and tolerance of differences, and non-violent, non-intimidating conflict resolution and problem solving. This view is consistent with positions taken by major organizations on global human rights and human dignity, and local focusing on subgroups within schools that all students need to understand, e.g., LGBT students,

students with special education or health needs, students of various ethnicities. Teachers, staff and students all must be actively engaged in practices that reinforce the core ethical values adopted by the district board of education pursuant to state regulation⁷⁹ and other school board or district-approved values that underpin the district’s educational programs. Any selected program or approach must be congruent with those values, and must include evidence-based social-emotional skill development with appropriate pedagogy for internalization and generalization, infusion of values in the curriculum, service-learning, and provide for locally created activities and faculty driven approaches. Over time — typically three to five years - living these values throughout the schoolday becomes identified as the culture of school.



School climate teams need job-embedded professional learning that focuses on creating a comprehensive approach to developing, fostering and maintaining such climates.

Any approach to professional learning related to HIB must focus on a systemic approach to building a positive school climate. School climate teams need job-embedded professional learning that focuses on creating a comprehensive approach to developing, fostering and maintaining such

climates. Such an approach requires knowledge of school climate assessment and the development of strategies that directly impact relationships; student to student, student to adult and adult to adult. Such strategies should not focus on specific programs, but instead should focus on the on-going, systemic processes and practices implemented in schools to address climate concerns.

Since every school culture and climate is different, it should be emphasized that, “one size does not fit all.” The Commission does not believe that the adoption of any one researched-based anti-bullying program will address this issue. Schools must create their own “programs” or “approaches” by adopting the practices and processes that are found in effective research-based programs. The focus should be on how school climate teams can facilitate systemic school-wide implementation of such practices in their own context, thus creating, monitoring and continually assessing their own “program” through use of school data.

The Commission urges schools to identify existing personnel in each school to serve as a “school climate team,” poised to look at school-wide climate in order to ensure strong efforts are in place that can support the development of a positive school climate, thus minimizing the risk of HIB. Using a team structure supports the development of a Professional Learning Community model of professional development that encourages school teams to work collaboratively to address issues that impact student learning.

These school climate teams, formed in each school building using existing staff, resources, or mechanisms, should be provided professional development opportunities that address the following

effective practices of successful school climate programs/approaches:

- Involves the entire school community and is linked to school/district goals and the values and beliefs that support the school mission
- Includes a clear definition of HIB and a method for distinguishing normal conflict and HIB.
- Addresses the effect of negative adult relationships on school climate
- Emphasizes the key role of adult modeling in the development of social-emotional character development (SECD) skills
- Includes specific developmentally appropriate instruction on SECD skills, especially those related to assertive problem-solving such as, conflict resolution and positive bystander intervention
- Develops school-wide caring, engaging, and respectful classroom practices
- Is connected to student conduct practices and procedures
- Is integrated into the curriculum
- Includes systemic data collection and analysis
- Provides for long-term and adequate intensity
- Provides methods for actively supporting at-risk or targeted students
- Addresses the needs of special education students
- Provides opportunities for student participation

- Includes a parent education component
- Addresses issues regarding HIB through electronic communications
- Involves participation by all stakeholders including community organizations

Recommendation #17:

Develop and issue guidance on investigating HIB and violations of the ABL.

To maintain the integrity of the Anti-Bullying Law and each school's policies against HIB, it is necessary that each school implement an investigative process that it will employ when school staff become aware of a possible violation of the policy, either by a victim, parent, school personnel, student, law enforcement officer, or other individual, or through the direct or indirect awareness of school administrators, coaches, teachers or others. School districts must investigate such allegations promptly, fairly, and confidentially.

As the Commission has heard through the reports of parents, attorneys, and advocates, there is currently no written set of statewide guidelines to assist schools in learning how to properly investigate incidents of HIB.

Schools need guidance on how to effectively conduct investigations. The NJDOE and the Division on Civil Rights in the Attorney General's Office, with the assistance of other experts and agencies, should collaboratively develop written guidance for the investigation of HIB incidents, based on federal and state standards. This must be followed with HIB investigative training for school personnel.

Investigated and documented incidents should result in Electronic Violence and Vandalism Reporting Survey (EVVRS) reports to the NJDOE.

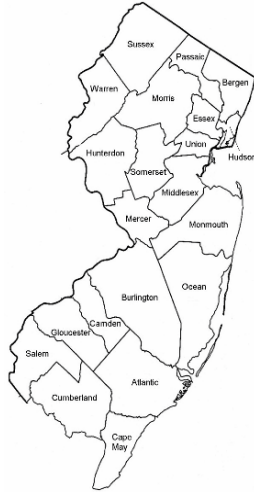
The guidelines on investigating HIB should include but are not limited to: procedures for making and receiving reports of HIB incidents, confidentiality issues, responsibilities of administrators and staff, communication with parents or guardians, investigatory process and forms to be used, training on investigatory process, implementing HIB investigatory process, appeals process/parental recourse when dissatisfied with school response. The written guidance should be targeted to parents, students and school personnel with sections specific to each intended audience. Such guidance should also include information about available remedies for victims of HIB.

Recommendation #18:

Establish three regional Technical Assistance Centers (TACs) that will provide training, resources and technical assistance to school staff, including school climate teams, focused on HIB policies and procedures; best practices for creating a positive school climate for adults and students; implementation and evaluation protocols and instruments; and strategies for engaging parents and community members.

This written guidance should be periodically updated by agency staff, distributed through the county superintendents, and implemented at the local level. The development and distribution of this guidance and necessary training should be a priority.

According to statute and regulations addressing the development and implementation of policies prohibiting HIB, training needs and programs are to be locally determined and implemented. Each school district is “[r]equired to review the training needs of district staff for the effective implementation of the HIB policy, procedures, programs and initiatives of the district board of education and implement locally determined staff training programs consistent with the annual review of training needs and the findings of the annual review and update of the code of conduct...as determined appropriate by the district board of education”⁸⁰



assistance. The Commission finds that teachers, school administrators, and law enforcement personnel will benefit from the establishment of TACs to serve as asset centers for improving school climate.

The Commission recommends the establishment of three TACs—in north, central and southern New Jersey—that will provide training, resources, and technical assistance to school staff, including school climate teams, focused on HIB policies and procedures; best practices for creating positive school climates for adults and students; program development, implementation and program evaluation protocols and instruments.

As Dr. Phil Brown of Rutgers University has explained in his testimony, professionals need a venue to acquire information, develop best practices, and allow for sharing so that a positive school climate can be developed:

Teachers, staff and students all have to be actively engaged in the programs and practices that reinforce the adopted values [that are part of a positive school climate]. Over a period of time, every ... three to five years ..., the climate and culture [change], the school, those programs are always driven by staff and leadership from the school that effectively engages the students and really looks at ways in which relationships can be the focus and foundation for the school culture.⁸¹

State-wide assistance for local policy development and implementation is provided free of charge through the NJDOE and the Rutgers Drug-Free Schools and Communities Project. The project provides workshops related to policy development and information for policy implementation. Other professional development workshops related to policy and program implementation are delivered state-wide by a myriad of providers. This points to a bigger issue: How can training be provided so that New Jersey schools embrace a systemic approach to HIB prevention?

Educators currently lack a centralized resource to provide technical assistance on school climate reform and on addressing HIB. If school staff are expected to properly identify incidents of bullying, report harassment and intimidation, and develop appropriate strategies to improve school culture and climate, they must be provided with the necessary tools and expert

The TACs would provide that venue for school staff, for parents, and for professionals/advisors. The TACs may develop an expanded capacity to address HIB in any existing TACs or function separately, and may be housed at a regional college or university, or in a county office of education. The TACs would develop and

recommend materials to schools throughout the State.

The TACs would develop and support, in collaboration with key non-profit and governmental organizations, a statewide parents' network. The effect of this activity, as described, is meant to promote a consistent, effective core and base for each district's (and school's) individual approach to the problem. The TACs would provide a central repository of scientific information, handouts for schools, trainings and courses. In doing so, the TACs would interact with existing New Jersey non-profit providers, such as the New Jersey State Bar Foundation, Statewide Parent Advocacy Network of New Jersey, and New Jersey Child Assault Prevention.



To be successful in creating school climate reform, the TACs should include parental involvement and training. A key component of an effective school climate program is the education of parents and community members. It is recommended that each TAC create a Parents Supporting Parents Network (PSPN), in collaboration with the NJPTA and other parent training groups such as SPAN, NJ Parent Caucus, NJ Tourettes Syndrome Association and others to empower parents from diverse backgrounds to increase parent knowledge about HIB and to encourage them to address HIB with their children. The TACs, through their PSPN, should provide regular training in each county aimed at the parents in order to create a network of parent leaders from diverse backgrounds who, in turn, will run training workshops for other parents in their county. Parent leaders can be identified through the school climate teams,

thus forging a strong connection between school and community. It is critical that the PSPNs include among their members parents of especially vulnerable populations, including students with disabilities and those of sexual, gender, racial, religious, or ethnic minorities.

Recommendation #19:

Develop ad hoc expert advisory groups to consult with the NJDOE and Technical Assistance Centers.

The Commission recommends that the NJDOE, through the TACs, develop and utilize expert advisory groups to provide volunteer expertise on HIB and school climate reforms. These advisory groups can be used to study and recommend strategies for key and urgent or emerging issues. First among these issues is addressing the need for a systematic, scientifically-based process for assessing school climate. Examples of other issues needing such attention include approaches to HIB during transport (e.g., on school buses) and further elaboration of the different forms of HIB, including the rapidly changing nature of electronic forms of HIB.

The Commission recommends collaborative structures be utilized to develop a comprehensive training model and a set of guidance documents to ensure that all schools are provided with a clear set of standards for the development and implementation of not only the policy, but also a comprehensive school-wide prevention program. Such collaborative structures could include an expert advisory group and the DOE. Such a group of experienced practitioners and researchers in the area of HIB will serve as a resource to assist in the development of school climate standards and a curriculum

framework to ensure all schools receive training in effective practices, processes and procedures, as well as being able to advise the NJDOE on the development of regulations and policies.

New Jersey is fortunate to have existing organizations with the expertise to assist these advisory groups. Members of the advisory groups may include representatives of state education associations, such as the New Jersey Education Association, the New Jersey Principals and Supervisors Association, New Jersey Association of School Administrators, New Jersey Association for Supervision and Curriculum Development, New Jersey Parent Teacher Association, New Jersey School Counselor Association, New Jersey State School Nurses Association, New Jersey State Interscholastic Athletic Association, and other organizations, such as the New Jersey State Bar Foundation. These organizations would be key in delivering professional development to school teams so all teams receive a common message, thus fostering a consistent language and a set of common practices and processes that will drive future professional learning.

Recommendation #20:

Develop and deploy a comprehensive on-line HIB tutorial.

In summary, the first advisory group task would be to advise NJDOE on methods for evaluating school climate. It is noted that NJDOE is already funding a project at Rutgers University (titled the “Developing Safe and Civil Schools: A Coordinated Approach for Social-Emotional and Character Development” project) which

addresses such school climate assessment (and intervention) Issues. These advisory groups can provide invaluable assistance to the TACs, NJDOE, county superintendents, and local schools staff to address HIB.

Recommendation #21:

Institutions providing professional training should include HIB as a component of pre-professional training for teachers and administrators.

The Commission finds that educators would benefit from having access to an on-line tutorial on issues of school climate and on rules, regulations and laws pertaining to school HIB.

The NJDOE, in consultation with the Division on Civil Rights and experts from the TACs, including parent representation, should advise on the production of an on-line tutorial on HIB regulations, pertinent research findings, and best practices with an accompanying multiple-choice test. The on-line tutorial should be made available to the public.

Recommendation #22:

Enact the creation of a Bullying Prevention Fund, which is authorized to receive funding from private foundations. Legislative appropriation, and other sources, to finance the TACs, and to provide training and grants to schools on ABL and HIB.

It is important that new teachers and administrators receive effective training on

HIB and the effective creation of positive school climate.

The Commission urges the NJDOE to collaborate with colleges, universities and alternate route programs that provide pre-professional/preparation educator training (i.e., teachers, administrators, school psychologists, social workers, counselors, student assistance professionals, special education personnel, including aides) to develop required coursework components in the areas of safe and civil school environments and HIB.

The Commission also urges the education professional associations in New Jersey to incorporate HIB and school climate into the training programs for their members and to periodically provide members with current information on these subjects.

At the present time, the most widely used source of public funding for addressing HIB falls under Title IV-A, the Safe and Drug Free Schools and Communities Act (SDFSCA) of the No Child Left Behind Act (NCLB). The SDFSCA is currently the NJDOE's sole source of funding dedicated to supporting local educational agencies (i.e., school districts, charter schools, private-non-profit schools) relevant to HIB. School district applications for these formula funds are submitted as part of their applications for all titles under NCLB. However, the funding for Title IV-A is currently not included in the proposed SFY11 Federal budget. Therefore, projects which have received funding through Title IV-A are not slated for extension or renewal. This would include DSACS, which has been highlighted in this report, and a number of other programs (e.g., Code of Student Conduct Pilot Program, Social Norms Project, Intervention and Referral Services Technical Assistance Project).

Almost all schools currently apply for and receive Title IV-A funds. Nevertheless, the funds have been increasingly restricted over time and are likely to be excluded from the SFY11 Federal budget. Federal allocation of funds has already been reduced by 43% since 2002-03. Some examples of ongoing Title IV-A projects that are at least loosely related to HIB education and prevention include two programs in which NJDOE collaborates with state universities and the Federal Partnerships in Character Education Program (PCEP), noted above.

Another public program, the New Jersey Character Education Partnership Funds, was a very significant source of funding for HIB prevention programs and staff training. However, these State funds were cut from the budget in 2006 and have not been restored.

In addition to State and Federal programs, smaller, more limited and variable sources of funding are available in the private sector. Such funds are typically directed to specific schools or community organizations, limiting a statewide application.

While there are a number of programs in place which provide support for efforts specifically addressing school HIB and related issues, existing funding will not support the measures recommended by the Commission. The major Commission recommendation which requires additional and ongoing funding is the creation of the three regional Technical Assistance Centers, and management of the related advisory group processes and parent network. Additionally, money is needed for the NJDOE to provide services and to provide grants to school districts and others to develop school climate improvement programs and systems.

The Commission also understands the historic fiscal climate faced by governments all over the country, which have resulted in a contraction of public funding for “new” programs. As a result, the Commission recommends the creation of a fund titled the “Bullying Prevention Fund,” which would be legally permitted to receive not only legislative appropriations, but also receive corporate funding and grants from foundations and other sources.

The Commission projects the annual operating expense for implementing these recommendations is approximately \$1,500,000. These costs are largely to operate the TACs and for the NJDOE to administer the TACs and implement these recommendations in this report.

The TACs, where appropriate and where space is available, could be located at regional colleges or universities, or established at county offices of education. Some logistic and staffing support for TAC functions may be available through the county resources. It is likely that county and local support, including from the community, will vary between the Centers and therefore that different levels of funding will be needed. Funding, therefore, should be allocated to the NJDOE, which would be responsible for using and distributing funds, as needed, to the three TACs. It is estimated that approximately \$300,000/year per Center should provide for Center expenses, including staffing and materials. The Commission envisions a staff structure of one full-time coordinator/practitioner per Center, full-time secretarial support and a part-time professional Director.

By creating a legal mechanism for the NJDOE to receive both public and private funds to address school climate and HIB, the Commission believes this can be implemented as quickly as possible. Should

no funding mechanism be provided, the TACs will be unable to operate, and systemic staff and parental training, assessment of school climate, and community climate reform will be significantly restricted.

4 *Conclusion*

By the end of this day, 160,000 students nationwide will skip school because they are afraid of being bullied. The lives of children are at stake—children of all backgrounds, races, religions, genders, orientations, abilities, ethnicities, and physical characteristics. Because of the long-term and profound negative effects of HIB, it is imperative that we act now. Acting now can help New Jersey continue to protect our children, enhance their opportunities, and make sure they receive a quality education, absent fear from HIB. Our call for these reforms is urgent. ***There isn't a moment to lose.***

Appendix A

**NEW JERSEY DEPARTMENT OF EDUCATION
HIB PREVENTION AND INTERVENTION ACTIVITIES**

Provided below are brief descriptions of the activities undertaken by the New Jersey Department of Education (NJDOE) to support the prevention and intervention of harassment, intimidation and bullying (HIB) in schools.

***SUPPORT FOR THE EFFECTIVE IMPLEMENTATION
OF SCHOOL HIB LAWS AND REGULATIONS***

- ***Model Policy and Guidance*** – In December 2002, the NJDOE published a model policy and guidance for local school district HIB policies and procedures, in collaboration with a variety of representatives from State agencies, professional associations and institutions of higher education, including the Violence Institute of New Jersey. The model and guidance has been updated on three occasions to provide clarifications. The third iteration of the model and guidance addresses amendments (e.g., electronic communications, website posting of the policy) to the authorizing statute and was posted in November 2008 at the following Web site: <http://www.state.nj.us/education/parents/bully.htm>.
- ***N.J.A.C. 6A:16-7.1(c)7 and 7.9 and the New Jersey Quality Single Accountability Continuum (N.J.A.C. 6A:30)*** – The New Jersey State Board of Education adopted regulations in support of the HIB statute in 2006, and the NJDOE provides regulatory and monitoring oversight of HIB and related educational requirements through NJQSAC.
- ***Memorandum of Agreement between Education and Law Enforcement Officials*** – The 2007 revision includes in 4.20.1 through 4.20.1.3, 8.3 through 8.5.2, 13.3 and 13.6 the agreements between education and law enforcement officials for addressing harassment and threats via electronic media, gang threats and recruitment, bias crimes and bias related acts, hazing, staff training and HIB policies. The MOA can be found at the following Web site: <http://www.state.nj.us/education/schools/security/regs/agree.doc>.
- ***Electronic Violence and Vandalism Reporting System (EVVRS)*** – Districts are required to report to the NJDOE all incidents of HIB. These incidents are considered in the determination of persistently dangerous schools and early warning schools under the Unsafe School Choice Option policy. Additionally, the NJDOE reports on these data to the Legislature each year. Information on the EVVRS can be found at the following Web site: <http://homerom.state.nj.us/index.htm>.
- ***Local Public Hearings and Violence Awareness Week*** – The NJDOE annually issues guidance to assist school districts in fulfilling their obligations to conduct annual public hearings on all acts of violence and vandalism which occurred in the previous school year [*N.J.S.A. 18A:17-46* and *N.J.A.C. 6A:16-5.3(f)*] and to observe School Violence

Awareness Week (*N.J.S.A.* 18A:36-5.1 and *N.J.A.C.* 6A:16-5.2). The guidance is located at <http://www.state.nj.us/education/students/safety/violence.htm>.

- ***HIB Policy Review*** – The NJDOE’s Title IV-A and USCO Training and Technical Assistance Project (Title IV Project) completed a review of all school districts’ and charter schools’ HIB policies in 2009 and provided training and technical assistance to school districts in 2009, through each of the 21 county offices of education, on aligning district policies and procedure with the statutory and regulatory requirements and on best practice intervention strategies. The project will complete a follow-up review of all districts’ policies after completion of the trainings, and will report the findings to the NJDOE in July 2010 for NJDOE consideration of additional action steps, as appropriate.

- ***Unsafe School Choice Option Policy*** – This federally mandated policy requires schools to transfer students (when another school is available in the district) who have been victims of a violent criminal offense, which could include some instances of HIB.

TRAINING FOR EDUCATORS IN RESPONDING TO, INVESTIGATING AND REPORTING INCIDENTS OF HIB

- ***HIB Policy Review & Training*** – County offices of education have been provided the results of the HIB policy review in order to provide follow up with school districts. County office staff are coordinating with the Title IV Project to provide training to school districts on policy requirements and best practices.

- ***HIB Complaint Investigations*** – The NJDOE has provided initial training to county office staff in complaint investigations. Additional training will be provided to county office staff on HIB complaint investigation procedures and responsibilities, once the NJDOE’s complaint investigation protocol has been finalized in 2010.

- ***Addressing Harassment, Intimidation and Bullying from Policy to Practice – Reviewing Your District’s Harassment, Intimidation and Bullying Policies and Practices*** – The NJDOE has provided this training program through the Title IV-A Project, to 513 teachers, administrators and student support services staff in the 2007-2009 school years. In 2009-2010, the training has been expanded to address strategies for responding to and reducing incidents of HIB.

- ***Reviewing Your District’s Harassment, Intimidation and Bullying Policies and Practices*** – The NJDOE has provided this training through the Title IV-A Project, to 244 teachers, administrators and student support services staff in the 2007-2009 school years. The training is being provided again in the 2009-2010 school year.

- ***Internet Safety*** – In collaboration with the Office of the Attorney General and the New Jersey State Police Cyber Crimes Unit, the NJDOE provided seven regional training programs in the 2007-2008 school year, for 1,000 educators, on “cyber-bullying,” the potential dangers of social networking sites and gambling sites, and sexual predators.

- ***Social Norms Project*** – Since October 2006, the NJDOE has been implementing this project through Rowan University to apply established social psychological principles

concerning the influence of group norms on individual behavior to reduce student HIB behavior in the participating middle schools. The project has been implemented in 53 schools since 2006, and the project will have been implemented in a total of 66 schools by December 2010. At the conclusion of the project in 2010, a tool kit will be disseminated to all school districts/charter schools, providing them with the findings from the program and all materials necessary to implement a social norms project, and training and technical assistance services will be provided to aid schools in implementing social norms programs.

- ***Collaborative Trainings***

- In 2005, the NJDOE collaborated with the New Jersey Department of Law and Public Safety on the statewide *Cyber-bullying Conference*.

- In 2003-2004, trainings were provided at the following events to help school staff fulfill the HIB requirements: New Jersey Principals and Supervisors Association-sponsored training; Thirty-third Annual School Law Forum sponsored by the New Jersey School Boards Association; Bullying Conference sponsored by the New Jersey State Bar Foundation; and NJDOE's No Child Left Behind regional information sessions.

- In 2002-2003, the NJDOE and the New Jersey Department of Law and Public Safety co-sponsored the conference titled *Stop the Pain: New Jersey Cares about Bullying Conference*.

- ***Partnerships in Character Education***— Under this federal grant, in 2007, the NJDOE began the implementation of a program that sought to improve academic engagement, social participation and the perceived sense of autonomy by children with disabilities by assisting a selected cohort of schools in the development of a positive culture facilitated by increased awareness, acceptance and perspective-taking by peers, teachers, and other school personnel through the use of the *Community of Caring* (CoC) program. The CoC program is a universal intervention intended to serve and enhance the learning of all students. It is the only character education program with a strongly articulated focus on inclusion of students with special needs. The program is aimed at changing the school culture through the incorporation of the core ethical values of caring, respect, responsibility, trust and family into the fabric of the school. Previous studies have shown that schools implementing the CoC program have demonstrated a more open and positive environment with greater acceptance and understanding of all students and improved effectiveness of collaborative relationships between teachers and students (Higgins-D'Alessandro, 2004). Preliminary studies also have indicated that participants feel positive about how the program helps them define and reach their goals of including students with disabilities into the mainstream of school life (Higgins-D'Alessandro, 2003).

**FUNDING FOR THE IMPLEMENTATION
OF SCHOOL HIB LAWS, REGULATIONS AND EFFECTIVE PRACTICES**

- **No State Funds** – There currently are no State funds dedicated to the implementation of State bullying laws, regulations or practices in New Jersey schools.

Federal Funds – The NJDOE has been using a portion of its allocation of federal funds under the *Safe and Drug-Free Schools and Communities Act (Title IV-A of the No Child Left Behind Act)* to support its HIB activities. School districts also are encouraged to use their annual allocation of these funds to address priority HIB problems. However, these funds have been reduced by 40% for the 2008-2009 and 2009-2010 school years, and statutory requirements and NJDOE priorities limit the availability of these funds. ***Most significantly, these funds have been eliminated from the federal budget for 2010-2011, which means that NJDOE and school districts will have no dedicated funds to support HIB prevention and intervention activities beyond the 2009-2010 school year.***

**EFFORTS FOR THE STATEWIDE COORDINATION OF HIB PREVENTION AND
INTERVENTION**

- The NJDOE convened a partnership meeting in an effort to “map” the current efforts statewide to address the issue of bullying on June 1, 2007. Approximately 25 stakeholders were invited, including representatives from the Governor’s office, NJDOE (county office), New Jersey Association of School Administrators, New Jersey Education Association, New Jersey Parents and Teachers Association, New Jersey Principals and Supervisors Association, NJ School Boards Association, New Jersey School Counselors Association, New Jersey School-Age Care Coalition, New Jersey State Police, the Attorney General’s office, New Jersey State Bar Foundation, New Jersey Coalition for Bullying Awareness and Prevention and staff from Rutgers and the University of Medicine and Dentistry of New Jersey that have been working with the NJDOE on related projects or who have related work in this area. The purpose of the meeting was to get a complete picture of what is happening statewide regarding programs and initiatives; to identify gaps in providing a comprehensive statewide response to HIB in New Jersey schools; to brainstorm strategies for addressing gaps; and to identify next steps that would coordinate the effort of all agencies. A follow-up meeting was held with a subgroup of the partnership group to further explore needs and strategies for addressing HIB.

- It was determined that it was essential to coordinate with the Attorney General’s office at the State level before moving forward with any new initiatives. Based on consultations with the Attorney General’s office, it was decided that current HIB activities should continue as planned, but that new State-level activities should be put on hold, pending the proceedings of the Commission on Bullying in Schools.

APPENDIX B



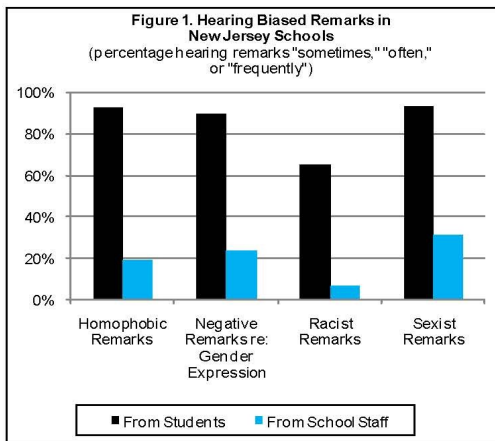
Research Brief

INSIDE NEW JERSEY SCHOOLS: THE EXPERIENCES OF LGBT STUDENTS

Findings from the 2007 National School Climate Survey demonstrate that New Jersey secondary schools were not safe for many lesbian, gay, bisexual, and transgender (LGBT) students. Significant percentages of New Jersey students experienced harassment at school, often because of their sexual orientation and how they expressed their gender. In addition, many LGBT students in this state reported that they did not have access to important school resources, such as Gay-Straight Alliances and comprehensive school anti-harassment policies.

LGBT students in New Jersey schools regularly heard various types of biased language in school. Homophobic and sexist remarks were the most commonly heard.

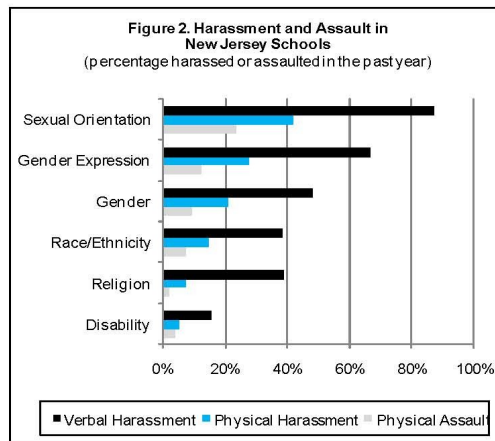
- 99% of LGBT students in New Jersey regularly (sometimes, often, or frequently) heard the word "gay" used in a negative way in school, such as in the expressions "that's so gay" or "you're so gay."
- 93% of students regularly heard homophobic remarks, such as "dyke" or "faggot," from other students in school (see Figure 1).
- 90% regularly heard other students in their school make negative remarks about someone's gender expression, such as comments about someone not acting "feminine" or "masculine" enough (see Figure 1).



- LGBT students also heard biased remarks from teachers and other school staff: 24% reported regularly hearing school staff make negative remarks about someone's gender expression, and 19% regularly heard homophobic remarks from school staff (see Figure 1).

Many LGBT students in New Jersey schools experienced verbal harassment (e.g., called names or threatened), physical harassment (e.g., shoved or pushed), or physical assault (e.g., punched, kicked, or injured with a weapon), most often related to their sexual orientation or gender expression. Most students did *not* report incidents of harassment and assault to adult authorities.

- 87% of LGBT students were verbally harassed in the past year because of their sexual orientation. About



two-thirds (67%) were verbally harassed because of how they expressed their gender (see Figure 2).

- 42% of LGBT students were physically harassed in school in the past year because of their sexual orientation, and 28% because of how they expressed their gender (see Figure 2).
- 24% of LGBT students were physically assaulted in school in the past year because of their sexual orientation, and 12% because of their gender expression (see Figure 2).
- 64% of students who were harassed or assaulted in school *never* reported it to school staff, and 56% *never* told a family member about the incident. Among students who did report incidents to school authorities, only 31% said that reporting resulted in effective intervention by school staff.

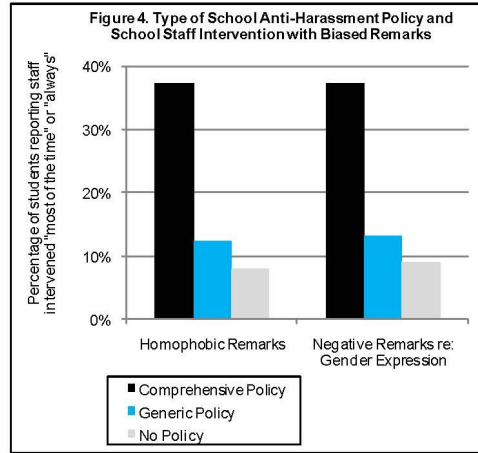
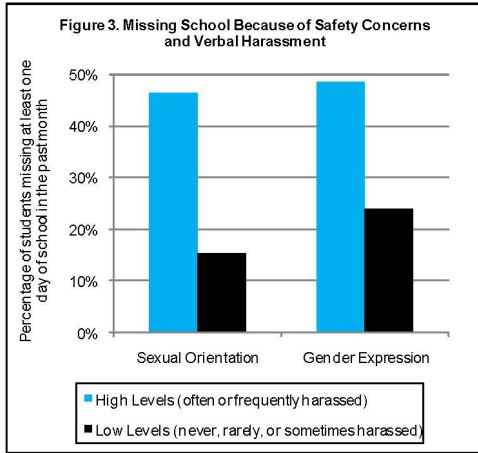
Being harassed in school were related to restricted access to education and lower academic achievement for New Jersey LGBT students.

- 24% of LGBT students had skipped class at least once in the past month because they felt unsafe, and 30% had missed at least one entire day of school for safety reasons.

- Students who were more frequently verbally harassed because of their sexual orientation were three times more likely to miss days of school because they felt unsafe than students who were less frequently harassed – 47% vs. 15% (see Figure 3).
- Students who were more frequently verbally harassed because of their gender expression were twice as likely to miss school because they felt unsafe – 49% vs. 24% of students who were less frequently harassed (see Figure 3).
- The grade point average (GPA) of LGBT students who were more frequently verbally harassed because of their sexual orientation was significantly lower than the GPA of students who were less frequently harassed (2.7 vs. 3.1).

Many New Jersey LGBT students did not have access to LGBT-related school resources that may improve school climate and lessen the negative effects of harassment and assault.

- Students in schools with a Gay-Straight Alliance (GSA) were less likely to miss school because they felt unsafe than students without a GSA in school (16% missed at least one day of school in the past month vs. 38% of those without a GSA). Yet, only 38%



of LGBT students in New Jersey reported that their school had a GSA or other student club that provided support for LGBT students.

- Having adults in school who provide support to LGBT students can offset the negative implications of hostile school climate for these students. About 9 out of 10 (88%) LGBT students in New Jersey could identify at least one teacher or other school staff person who they felt was supportive of LGBT students in their school.
- Students who had many supportive staff (6 or more) were less likely to report missing days of school because of feeling unsafe than those who did not have many staff who were supportive of LGBT students (20% vs. 38%). They also reported a higher GPA than those with few supportive staff (3.1 vs. 2.7). Unfortunately, less than half (45%) of students said that they had many supportive adults in their school.
- 49% of New Jersey LGBT students reported that their school had some type of policy for reporting incidents of in-school harassment and assault. Yet, only about 11% reported that the policy was comprehensive and specifically mentioned sexual orientation and/or gender identity/expression.
- Students attending New Jersey schools that had a comprehensive anti-harassment policy were much more likely to report that school staff frequently intervened when hearing homophobic remarks (38%) than those in schools with a generic policy (13%) or no policy at all (8%) (see Figure 4). They were also more likely to report staff intervention with negative remarks about gender expression – 38% vs. 13% of students in schools with a generic policy and 9% of those with no policy (see Figure 4).

SUMMARY AND RECOMMENDATIONS

New Jersey schools were not a safe place for many LGBT secondary school students. Biased language, especially homophobic and sexist language, was very common in New Jersey schools. Students heard biased remarks not only from their peers but school personnel as well. LGBT students also faced harassment in school, both verbal and physical in nature, with sexual orientation and gender expression being the characteristics most commonly targeted. These experiences led many students to miss classes and entire days of school because they felt unsafe, and LGBT students experiencing high levels of harassment were particularly at risk of absenteeism due to safety

concerns. Students who were frequently harassed reported lower grade point averages than other students, suggesting that a negative school climate may hinder students' ability to succeed academically. Unfortunately, incidents of harassment and assault often went unreported to school authorities and students' families.

It is clear that there is a need for action to create safe school environments for New Jersey students. New Jersey schools should establish clear policies that address the use of homophobic and other biased language in school, and train teachers and other school staff to ensure that they appropriately respond to incidents of bias and harassment. Findings from GLSEN's National School Climate Survey show that having comprehensive safe school policies may be key to creating safe and inclusive schools – LGBT students in schools with comprehensive anti-harassment policies reported lower incidences of negative events, such as harassment, and were more likely to report incidents to school authorities than those in schools without such policies. In addition, results here show that the presence of comprehensive anti-harassment policies was related to greater intervention by New Jersey school staff when anti-LGBT language was used in school. Yet, few LGBT students in New Jersey reported that they were protected by a comprehensive policy, despite there being a state-wide law protecting all students from victimization based on sexual orientation and gender identity. School districts must be held accountable for implementing protective policies that explicitly include sexual orientation and gender identity/expression, and for ensuring that all New Jersey schools enforce such policies.

Results here show that having GSAs and supportive educators can affect students' school experiences, specifically absenteeism and academic achievement. However, only about a third of New Jersey LGBT students reported that their school had a GSA, and less than half could identify many supportive educators. New Jersey schools should support student clubs that address LGBT students' issues. In addition, it is important that all schools and school districts provide professional development for school personnel on the experiences of LGBT students.

About the Research

In 2007, GLSEN conducted the fifth National School Climate Survey (NSCS), a biennial survey of LGBT secondary school students. The NSCS examines the experiences of LGBT youth in U.S. middle and high schools, documenting anti-LGBT bias and behaviors that make schools unsafe for many of these youth. The national sample consisted of 6,209 LGBT students, who were from all 50 states and the District of Columbia. A total of 157 respondents were attending schools in New Jersey at the time of the survey. Almost two-thirds of this sample was White (62%), 17% was Latino/a, 10% was African American, and less than 10% was Native American, or Asian/Pacific Islander. More than half identified as female (58%), 30% as male, and less than 10% as transgender. Almost all (90%) attended public schools, and 87% were in urban or suburban communities. The results reported in this Research Brief have a margin of error of +/- 8%. For the national NSCS report or for any other GLSEN research, go to www.glsen.org/research.

About GLSEN

GLSEN, or the Gay, Lesbian and Straight Education Network, is a national education organization working to ensure that each member of every school community is valued and respected regardless of sexual orientation or gender identity/expression.

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(Endnotes)

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28 Testimony of 2/25/09, pp. 18-19.

29 N.J.S.A. 18A:37-13 to -19.

30 The original appointee was Director Frank Vespa-Papaleo of the New Jersey Division on Civil Rights; upon his resignation as Director, Esther Nevarez was appointed as the Division's designee.

31 Commissioner Reman Mustafa was appointed on March 16, 2009 to fill the vacancy created by the resignation of former Commissioner Bassima Mustafa.

32 New Jersey's State Public Advocate, Ronald K. Chen, also serves as Acting Child Advocate.

33 Public Law 2007, Chapter 303, Section 9(c).

34 Public Law 2007, Chapter 303, Section 9(j).

35 The Commission Chair appointed a Law Committee and a Best Practices Advisory Group composed of experts to research and provide detailed reports identifying proposals to improve school climate and enhance laws dealing with school bullying. The Commission extends its appreciation to the volunteers who worked on these two committees for their invaluable work: the Law Committee consisted of attorneys Elizabeth Athos, Estelle Bronstein, David Giles, John Kovac, Michaelene Loughlin, Jeanne LoCicero, Steve McGettigan, LuAnne Peterpaul, Kyle Rosenkrans, Leisa-Anne Smith, Jerry Tanenbaum and Frank Vespa-Papaleo, Esqs.; the members of the Best Practices Advisory Committee were Maurice Elias, Nadia Ansary, Paul Boxer, Phil Brown, Linda Cedeno, Jonathan Cohen, Vivian A. Gleeson, Stuart Green, Michael B. Greene, Millicent H. Kellner, Michael J. Lee, Brad Lerman, John Lestino, Randie O'Neil, and Carlos Rojas.

36 Where existing statutory remedies have proven insufficient, the courts and parents/victims have also invoked common law tort theories and constitutional rights as sources of relief from school bullying.

Because the Commission is charged with evaluating the adequacy of school bullying laws and regulations, this report will focus on the effectiveness and limitations of the applicable statutes.

37 N.J.S.A. 18A:37-13 to -19.

38 N.J.A.C. 6A:16-7.9.

39 N.J.S.A. 10:5-1 to -49.

40 N.J.S.A. 2C:16-1.

41 N.J.S.A. 18A:36-20.

42 N.J.S.A. 10:5-1 to -49.

43 N.J.S.A. 10:5-12(f).

44 N.J.S.A. 10:5-5(1).

45 189 N.J. 535 (2007).

46 189 N.J. at 547.

47 Ibid.

48 N.J.S.A. 2C:16-1.

49 N.J.S.A. 2C:16-1(c).

50 N.J.S.A. 2C:16-1(a).

51 189 N.J. at 402.

52 N.J.S.A. 18A:37-13 to -19.

53 N.J.A.C. 6A:16-7.9.

54 Commissioner McGettigan does not agree that the Anti-Bullying Law is deficient in this regard.

55 Note that in any statutory language revisions reference in this report, any language that is underlined references new content, while any language that is bracketed [] references language that is removed.

56 Transcript of 2/18/09, p. 80.

57 Transcript of 2/18/09, p. 19.

58 Transcript of 2/18/09, p. 38.

59 Transcript of 2/18/09, p. 61.

60 N.J.S.A. 18A:37-16(c); N.J.A.C. 6A:17-7.9(c)(1).

61 N.J.S.A. 18A:16-6 and 18A:16-6.1.

62 See, e.g., Caltavuturo v. Passaic, 124 N.J.

63 Testimony of 2/25/09, pp. 10-11.

64 This recommendation is opposed by Commissioner McGettigan.

65 Transcript of 2/18/09, pp. 9-11.

65 Transcript of 2/18/09, p. 72.

66 N.J.S.A. 18A:36-20.

67 N.J.A.C. 6A:7-1.7.

68. N.J.A.C. 6A:7-1.1; N.J.A.C. 6A:7-1.7.

69 Transcript of 2/18/09, pp. 91-92.

70 See, e.g., N.J.S.A. 18A:17-43.1.

71 N.J.S.A. 18A:6-4.1.

72 Transcript of 2/18/09, p. 86.

73 Transcript of 2/28/09, p. 19.

74 Transcript of 2/28/09, pp. 47-9

75 Transcript of 2/28/09, p. 34.

76 GLSEN (2009), Inside New Jersey Schools: The Experiences of LGBT Students (GLSEN Research Brief). New York: Gay, Lesbian and Straight Education

77 Network; see Appendix B.

78 This approach is empirically supported and captured by the approach of the Responsive Classroom (www.responsiveclassroom.org).

79 N.J.A.C. 6A:16-7.1(a)2.

80 N.J.A.C. 6A:16-79(d)1.

81 Transcript of 2/18/09, p. 62.