



**TESTIMONY BEFORE THE STATE BOARD OF EDUCATION ON HIB
REGULATIONS**

Submitted by Elizabeth Athos, Esq., on behalf of ELC and Coalition for Effective ABR

October 5, 2016

I am Elizabeth Athos, an attorney at Education Law Center, a court-approved legal services organization that has long advocated for New Jersey's vulnerable and disadvantaged students.

I speak today not only on behalf of ELC, but also as one of several speakers on behalf of a coalition of organizations and individuals who have come together to address the implementation of the Anti-Bullying Bill of Rights Act. Our Coalition for an Effective ABR is an ad hoc working group that represents members with a wide range of perspectives and interests pertaining to the topic of bullying in schools. However, we all share the belief that students must be safe in school and the law must do all it can to promote the creation of a safe and healthy school climate that will ultimately benefit all students and staff. You will find the names of our coalition members on page 10 of the collective comments that we have submitted today.

Our view is that the HIB regulations that you are considering for adoption do not go far enough in protecting students and in ensuring that the ABR is implemented effectively. In addition to our collective comments, we have submitted today our version of the regulatory language that is necessary to carry out the ABR, and we ask that you read these two documents carefully.

We think it is important to note that the Coalition's recommendations have been endorsed, to date, by the fifteen organizations listed on page 10 of our collective comments:

Advocates for Children of New Jersey
Alliance for Comprehensive & Effective Strategies for Bullying Prevention
American Civil Liberties Union – New Jersey
Center for Supportive Schools
Central New Jersey Chapter of the Gay Lesbian Straight Education Network
Disability Rights New Jersey
Education Law Center
Garden State Equality
HiTops Adolescent Health and Well-being
Innisfree Foundation

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New Jersey Coalition for Bullying Awareness and Prevention
Northern New Jersey Chapter of the Gay Lesbian Straight Education Network
Statewide Parent Advocacy Network
Warshaw Law Firm, LLC

In the limited time available, I will highlight our comments pertaining to remedial action, due process, complaint investigation, and the bullying prevention fund.

Remedial Action

Neither the current nor proposed regulations clearly require remedial action for the person who commits HIB despite the fact that both the ABR and New Jersey case law mandate remediation for both the target and the perpetrator of HIB.

Since we believe that implementation of the ABR must, above all, be about correcting problem behavior, preventing future occurrences of such behavior, and protecting and providing support to those who are targeted, we have several suggestions.

First, include a definition of remedial action in the regulation so that it is clear to all what is required. You will find our definition on p. 9 of our regulatory proposal.

Second, spell out in more detail the types of responses to HIB that should be considered by a school, and specifically refer school officials and parents to the Department's own guidance as an additional source of possible remedial measures. The regulations should also make clear what is not appropriate as a response to HIB, but which is still used by a number of schools, namely, conflict mediation between the perpetrator and target.

Third, let's codify the principle, recognized in court cases, that remedial measures must be designed to alter the behavior of the harassers, not the person harassed. As a general matter, we do not want to see the target of bullying isolated under the guise of protecting the student from bullying. The only exception is that the regulations must permit the transfer of the target to another classroom or school when that move is made at the request of the target's parents.

Finally, let's make sure that there is a viable remedy for a targeted child who is being tortured and tormented at school without relief. The regulations should make clear that a school district must pay for tuition at another school when it has received timely notice of harassing conduct that creates a hostile environment, but has failed to take reasonable steps to eliminate the conduct.

Due Process

Our comments detail a number of steps needed to ensure due process to families in HIB cases. Let me emphasize two points:

First, we ask for clear written notice to parents when a HIB determination is made, as well as copy of the full investigatory file within two days of a board hearing request. However, all information must be released in a manner consistent with law and guidance regarding the handling of confidential and sensitive information. You will hear more about the importance of protecting sensitive information from other speakers today.

Second, we disagree with the 45 days proposed time limit for requesting hearings in HIB cases. That time limit is not based in the statute and is simply too short for many families. If a time limit must be imposed, we recommend 90 days.

Complaint Investigation

The ABR requires the Commissioner to establish a formal protocol for investigating complaints of violations, but this enforcement mechanism is not currently readily accessible to those who need it. Especially for students whose parents are not able to litigate under the Controversies and Disputes rules, there must be a way to ensure that violations of the ABR are corrected in a timely manner. We recommend, first, that a complaint form be developed and made available on the Department's website, and, second, that a 60 day deadline be set for the completion of investigations. Both the complaint form and the 60 day deadline are already in place for special education complaints and, in light of our strong state policy against HIB in schools, we believe that HIB complaints must be treated comparably.

Bullying Prevention Fund

We cannot stress enough the importance of adequate funding for school districts to effectively implement the ABR. As a result, we strongly urge the State Board and the Commissioner to seek a regular annual appropriation from the Legislature of three million dollars per year to be allocated to support three regional training centers, in north, central, and south New Jersey. These centers should be used to provide consultation and technical assistance to schools in their respective regions on bullying-related issues, as well as to operate a hotline to answer bullying-related calls from school staff, parents, and community members.

Thank you for your consideration of the comments of the Coalition for an Effective ABR.