



Passaic County Technical Institute Professional Development Program

April 21, 2023

Presented by:

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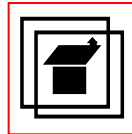
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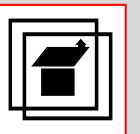


Affirmative Action Issues



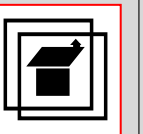
Updates to N.J.A.C. 6A:7 – Managing for Equality and Equity in Education

- N.J.A.C. 6A:7 has been revised by the State Board of Education and those revisions are due to be approved in Summer 2023.
- These revisions are substantial and include:
 - An expansion of protected groups.
 - Added roles for the Affirmative Action Officer and Affirmative Action Team.
 - Removal of the entire Administrative Code section addressing Equity in Employment and Contracting Practices with no replacement section.
- The following slides address information that is still in effect per N.J.A.C. 6A:7, but much of it is due to change over the next few months.
- Until these changes are made official, the district should still adhere to the rules as they are provided in the current Administrative Code provisions.



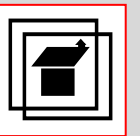
Affirmative Action – N.J.A.C. 6A:7-1.5

- The Board shall annually:
 - Designate a member of its staff as the Affirmative Action Officer.
 - Form an Affirmative Action Team, of whom the Affirmative Action Officer is a member, to coordinate and implement the requirements of N.J.A.C. 6A:7 – Managing for Equality and Equity in Education.
- The Board shall assure that:
 - All stakeholders know who the Affirmative Action Officer is; and
 - How to access the Affirmative Action Officer.
- N.J.A.C. 6A:7 – recently added gender identity and gender expression to protected class as per NJLAD.



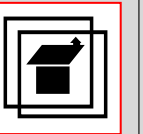
Affirmative Action Officer Responsibilities

- The Affirmative Action Officer shall:
 - Coordinate the required professional development training for certificated and non-certificated staff;
 - Notify all students and employees of district grievance procedures for handling discrimination complaints; and
 - Ensure the district grievance procedures, which include investigative responsibilities and reporting information, are followed.



Typical Issues Investigated by the Affirmative Action Officer

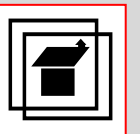
- Affirmative action complaints regarding:
 - Employment and contract practices
 - School and classroom practices
 - Staff member to staff member sexual harassment
 - Inappropriate staff conduct



Affirmative Action Plan

Contract and Employment Practices

- The Board of Education shall:
 - Strive to overcome the effects of any previous patterns of discrimination in district employment practices; and
 - Systematically monitor district procedures to ensure continuing compliance with anti-discrimination laws and regulations.
- The Board will ensure:
 - All persons regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, gender identity, gender expression, religion, disability, or socioeconomic status shall have equal and bias free access to all categories of employment in the public educational system.



Affirmative Action Plan

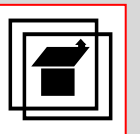
Contract and Employment Practices

- The Board of Education, based on the sole basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, gender identity, gender expression, religion, disability, or socioeconomic status:
 - Will not enter into any contract with a person, agency, or organization that discriminates either in employment practices or in the provision of benefits or services to students or employees.
 - Will not assign, transfer, promote or retain staff, or fail to assign, transfer, promote, or retain staff.
 - Will ensure equal pay for equal work among members of the district's staff.



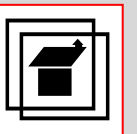
Equal Educational Opportunities

- The district's curricula in the following areas will eliminate discrimination, promote mutual acceptance and respect among students, and enable students to interact effectively with others, regardless of race, color, creed, religion, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, gender identity, gender expression, social or economic status, or disability:
 - School climate/learning environment;
 - Courses of study, including Physical Education;
 - Instructional materials and strategies;
 - Library materials;
 - Software and audio-visual materials;
 - Guidance and counseling;
 - Extra-curricular programs and activities; and
 - Testing and other assessments.



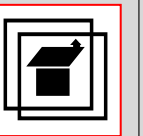
Equal Educational Opportunities

- The district's curricula will include:
 - Multi-cultural education content and practices;
 - Instruction on African-American history in the teaching of U.S. History; and
 - Instruction on the Holocaust and genocide.
- The Superintendent shall develop and promulgate a procedure by which a student or parent may appeal:
 - A Board policy;
 - District practice; or
 - The act or omission of any district employee that allegedly violates this policy.



Equal Educational Opportunities

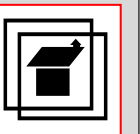
- All students shall be afforded equal educational opportunities in strict accordance with law.
- No student shall be denied access to or benefit from any educational program or activity or from a co-curricular or athletic activity on the basis of the student's race, color, creed, religion, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, gender identity, gender expression, social or economic status, or disability.
- Faculty, administrators, support staff members, curriculum materials, and instructional equipment supplies shall be allocated among and between the schools and classes of the district in a manner that ensures equivalency of educational opportunity throughout the district.



Affirmative Action Plan

School and Classroom Practices

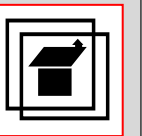
- The Board shall:
 - Provide equal and bias-free access for all students to all school facilities, courses, programs, activities and services, regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, gender identity, gender expression, religion, disability, or socioeconomic status;
 - Ensure the district's curriculum and instruction are aligned to the State's New Jersey Student Learning Standards; and
 - Address the elimination of discrimination by:
 - Narrowing the achievement gap;
 - Providing equity in educational programs; and
 - Providing opportunities for students to interact positively with others regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status.



Affirmative Action Plan

School and Classroom Practices

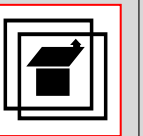
- The Board shall ensure the district's physical education program and its athletic programs:
 - Are equitable, co-educational, and
 - Do not discriminate on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, gender identity, gender expression, religion, disability, or socioeconomic status, as follows:
 - The district shall provide separate restroom, locker room, and shower facilities on the basis of gender, but such facilities provided for students of each gender shall be comparable.



Affirmative Action Plan

School and Classroom Practices

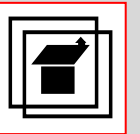
- Athletic programs as a whole:
 - Shall provide equal opportunities for students of both sexes to participate in sports at comparable levels of difficulty and competency; and
 - The activities of athletic programs shall receive equitable treatment, including, but not limited to:
 - Staff salaries,
 - Purchase and maintenance of equipment,
 - Quality and availability of facilities,
 - Scheduling of practice and game time,
 - Length of season, and
 - All other related areas or matters.



Affirmative Action Plan

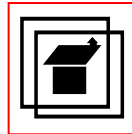
School and Classroom Practices

- The Affirmative Action Officer reports to the Board on progress made in the affirmative action program for school and classroom practices.
- The Board will annually review district progress toward the objectives of any state-approved affirmative action plan.
- The Affirmative Action Officer completes the Comprehensive Equity Plan Needs Assessment Checklist that lists specific requirements in:
 - Board Responsibilities;
 - Staff Development Training;
 - School and Classroom Practices; and
 - Contract Practices.



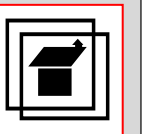


Staff Member to Staff Member Sexual Harassment



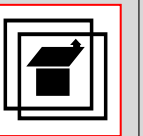
Staff Member to Staff Member Sexual Harassment

- Quid Pro Quo Sexual Harassment
 - When a school staff member explicitly or implicitly conditions another school staff member's conditions of employment on the staff member's submission to unwelcomed sexual advances, requests for sexual favors, or other favors, or other verbal, nonverbal, or physical conduct of a sexual nature.
 - Quid Pro Quo harassment is equally unlawful whether the staff member:
 - Resists and suffers the threatened harm; or
 - Submits and thus avoids the threatened harm.



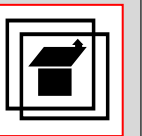
Staff Member to Staff Member Sexual Harassment

- Quid Pro Quo Sexual Harassment
 - Supervisor – subordinate relationships set up quid pro quo opportunities.
 - A staff member gets “special treatment” from supervisor in exchange for sexual favors, dates, etc.
 - Special treatment could be:
 - Special work schedule
 - Overtime
 - Promotion
 - Time-off without being charged time, etc.



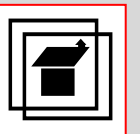
Staff Member to Staff Member Sexual Harassment

- Hostile Environment Sexual Harassment
 - Unwelcomed sexual advances,
 - Requests for sexual favors or other favors, or
 - Other verbal, nonverbal, or physical conduct of a sexual nature by a staff member that is:
 - Sufficiently severe, persistent, or pervasive to limit another staff member's ability to participate in a workplace environment or activity; or
 - To create a hostile or abusive workplace environment.



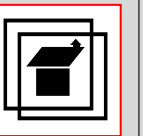
Staff Member to Staff Member Sexual Harassment

- Hostile Environment Sexual Harassment
 - Hostile environment issues include jokes, kidding, teasing, etc.
 - Fellow staff member tells sexual jokes after being told to stop.
 - Fellow staff member makes repeated inappropriate comments to another staff member about their body, looks, dress, etc.
 - Conduct that was welcomed in the past that is no longer welcomed.
 - Relationships outside of work that change or are severed (friendships, dating, etc.)
 - Staff member should tell colleague to stop such conduct.
 - If it does not stop...it should be reported to the AAO.



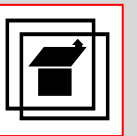
What is meant by unwelcomed?

- Unwelcomed is a key determinant in whether or not behavior constituted sexual harassment.
- Conduct of a sexual nature is unwelcomed when:
 - The person being harassed did not request or invite the conduct; and
 - Regards the conduct as offensive or undesirable.
- Courts will use the reasonable person standard to determine how a reasonable person, as the person alleging sexual harassment, would react.



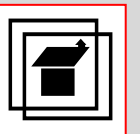
Can a person be accused of sexual harassment even if the person didn't intend to harass anyone?

- Intent is not part of the definition.
- It's how the other person, who is the receiver of the conduct, feels about the words or acts.



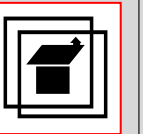
Things You Should Know About Sexual Harassment

- The person engaging in harassing behavior is often in a position of power, influence, or authority over the individual toward whom the conduct is directed.
- To be considered “harassment”, the behavior must be unwanted or unwelcomed.
- Questionable conduct is more likely to be harassment if it is repeated, especially after being told to stop such behavior.
- Harassers do not fit a demographic or social profile – all ages, races, occupations, etc.
- Harassers may be respected, talented, and well-liked.
- Certain behaviors would be harassment to some, but not to others.
 - One question the courts ask in determining if there is harassment is, “How would it look to a reasonable person?”
- Sexual harassment can occur between people of the same sex even though neither is sexually attracted to persons of the same sex.
- Many who engage in offensive conduct stop when asked to stop.



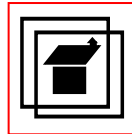
Reporting and Investigation

- Reporting Procedure
 - District must have a reporting procedure
- Investigation Procedure
 - Reports are usually investigated by Affirmative Action Officer.
 - Affirmative Action Officer interviews witnesses and makes a decision.
 - Investigation results may be appealed to Superintendent.
 - Office of Civil Rights may be contacted at any time.



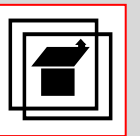


Healthy Workplace Environment



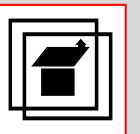
What is a healthy workplace environment?

- A healthy workplace environment is where:
 - Employees interact with each other with dignity and respect regardless of the employee's work assignment or position in the school district.
 - Repeated malicious conduct of an employee or group of employees directed toward another employee or group of employees in the workplace, that a “reasonable person” would find hostile or offensive, is unacceptable, and is not conducive to establishing or maintaining a healthy workplace environment.



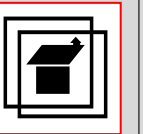
What does a healthy workplace environment look and feel like?

- Staff members should:
 - Work in a relaxed and productive atmosphere.
 - Share a commitment to excellence.
 - Have open and honest communications within their level and among all levels of employment categories.
 - Cooperate and support each other.
 - Have a reasonable sense of humor.
 - Exhibit compassion and empathy with an understanding for each other.
 - Work in a clean and comfortable work space.



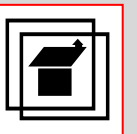
What are examples of unacceptable conduct among co-workers?

- Unacceptable conduct may include, but is not limited to:
 - Repeated infliction of verbal abuse such as the use of derogatory remarks.
 - Insults.
 - Verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating.
 - The sabotage or undermining of a person's work performance.
- Typically, a single act of such conduct shall not constitute unacceptable conduct unless it is especially severe and egregious.



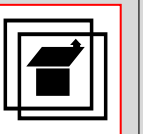
Conduct That is NOT Considered Unacceptable Conduct in a Healthy Workplace Environment

- Unacceptable conduct is NOT conduct toward an employee of a protected class or because of the employee's protected activity.
 - These employees and activities are afforded the legal protections under various Federal and State anti-discrimination laws.
- In addition, this unacceptable conduct shall not be confused with conduct of management employees exercising management rights including, but not limited to, assigning tasks, reprimanding, assigning discipline, or directing.



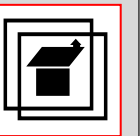
What can staff members do?

- Don't Participate
 - Do not get “sucked in” participating in negative “stuff”.
- Be Positive
 - Seek out staff members that are positive and are committed to making things better in the workplace.
- Speak Privately
 - When one sees or hears unreasonable negativity – talk to the person privately and solicit input on what the person thinks it would take to make things better.
- Encourage Others
 - Leaders should establish an “open door policy” where staff members are encouraged to meet with their administrator(s) to convey concerns and to discuss how everyone working together can make things better.



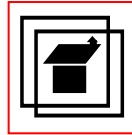
Reporting Procedure

- Employees who believe the conduct prohibited by Board policy has been directed toward them or to another employee of the school district shall submit a written report to the Affirmative Action Officer.
- Upon receipt of a report, the Affirmative Action Officer will conduct an investigation.
- An Affirmative Action investigation may result in administration imposing consequences, professional development requirements, or other remedial measures.



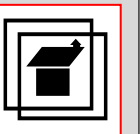


Inappropriate Staff Conduct/Maintaining Professional Boundaries



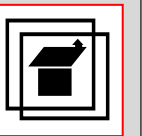
Headlines

- *Teacher of the Year Admits Having Sex with 15 Year-old Student*
 - High school teacher admitted in Superior Court that she had sex with a 15 year-old student who was in her honors English class.
 - Text messages made it clear that they were in something of a relationship.
 - Under the terms of the plea deal, the teacher, who won accolades in her near decade long teaching career, will never teach again, must register as a sex offender, and will spend at least 15 years under parole supervision.
- *High School Teacher Accused of Offering Money for Sex*
 - Started with a Facebook exchange between the teacher and the student over a period of time.
- *Teacher Accused of Inappropriate Sexual Conduct with Student*
 - Exchanged sexually explicit Facebook conversations and nude photos with one of his students.



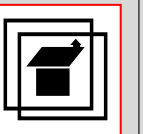
Professional Boundaries in a School Setting

- What are professional boundaries between a teacher/school staff member and a student in a school setting?
 - Appropriate standards of behavior and conduct between a school staff member and a student.
 - The verbal, physical, emotional, and social distances a school staff member must maintain with a student.
- The teacher/student relationship is inherently unequal.
 - Teacher/school staff member holds a unique position of authority and power over students.
 - Many students view teachers, counselors, and other school staff members as role models.



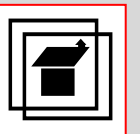
Professional Boundaries in a School Setting

- The “Fine Line”:
 - Connecting to students is a significant component of successfully working with students and making and maintaining this connection without crossing or violating professional boundaries may, at times, be challenging.
 - The teacher that comes in late, leaves early, does not participate in any extra-curricular school activities, and has minimal connection to students is typically at little or no risk.
 - The teacher that connects with students, stays after school to provide “extra help”, who students want to be their coach or advisor, who is popular, who volunteers for extra-curricular school activities, and who is well-respected is at much greater risk.



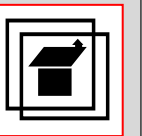
Professional Boundaries in a School Setting

- The district must investigate reports of professional boundary violations, even if the report comes from an anonymous source or is alleged to occur “out of school”.
- Reporting Requirements
 - If allegations or preliminary investigation involve illegal or immoral professional boundaries violations, the district must immediately notify:
 - Parents,
 - Department of Children and Families (DCF), and
 - Local law enforcement.
 - If final investigation concludes professional boundary violation(s) have occurred, the district must take immediate action to include notification to:
 - DCF,
 - Local law enforcement, and
 - Take appropriate employment action.
 - May include notification to Commissioner of Education, tenure charges, etc.



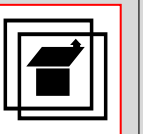
Professional Boundaries in a School Setting

- Who is most at risk for a boundary violation?
 - Staff Members Living Within the Community
 - Staff members living within the community may encounter students during their personal activities within the community.
 - Staff members' children may be friends with the staff members' students; therefore, the staff member may have a reason to see or interact with the students outside of school.
 - Staff Member of the Year
 - The staff member who is viewed by the student as the only person they trust or can talk to about confidential and personal issues.
 - Staff Members Serving in Multiple/Dual Positions
 - Staff members that are coaches and advisors are vulnerable as they are in less supervised environments.
 - Staff Members Going through a Difficult Physical or Emotional Event
 - Could be vulnerable and susceptible to a violation.
 - Immature Staff Members
 - More vulnerable to at-risk conduct.



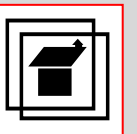
Patterns of Inappropriate Behavior

- Most cases involve male staff members with female students.
- Many cases begin with relationship and/or contact outside the school building.
- Most cases involve some type of sexual discussion in advance of additional inappropriate behavior.
- Commissioner/Arbitrator/Courts showing less tolerance for inappropriate behavior, particularly with issues of sex, drugs, weapons, etc.
- Many times other staff members know or suspect with another staff member is engaging in such inappropriate behavior (considered sexual abuse) and staff member is legally obligated to report such conduct to child welfare authorities.



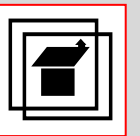
Who determines what is inappropriate conduct?

- The New Jersey Commissioner of Education and Arbitrators under TEACHNJ, determine conduct that warrants dismissal of tenured school staff members.
- New Jersey and Federal Courts determine civil liability under State and Federal laws.
- New Jersey Courts determine criminal conduct under State criminal laws.



Why provide staff members guidance in inappropriate conduct?

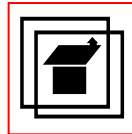
- Accusations, true or false, affect professional relationships, personal friendships, marriages, respect, etc.
- Staff need to know what is considered inappropriate conduct/boundaries in order to avoid even the perception of or from being falsely accused of inappropriate conduct.
- False accusations and/or inappropriate conduct exposes school staff members to personal civil liability, criminal charges, revocation of certificate(s).
- False accusations and/or inappropriate conduct threatens the continued existence of any organization.





Professional Boundaries for Staff Members

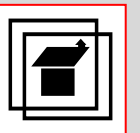
Cases



Teacher Dismissed for Repeated Inappropriate Comments to Female Students and Sharing of Inappropriate Material

- The Board certified tenure charges alleging over the past two years the Teacher had been involved in multiple inappropriate and highly egregious incidents involving female students.
- The Board alleged the Teacher:
 - used inappropriate and profane language with students on several occasions,
 - promoted the use of his personal website with his students which had some inappropriate content for students to view, and
 - made inappropriate comments to at least one student regarding the student's family situation.
- The Arbitrator indicated the Teacher received at least 15 warnings and memos from his supervisors and at least two writings regarding his insubordination as conduct unbecoming a teacher.
- The Arbitrator also indicated encouraging students to visit his personal website that contained inappropriate personal photos had no instructional value and his behavior of contacting local police regarding an incident in his classroom without first informing administration also brings the Teacher's ability into question.

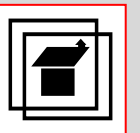
See In the matter of the tenure hearing of Jose DaCosta and State-Operated School District of the City of Newark, Essex County, DKT. NO. 352/11-12, Ernest Weiss, Arbitrator, 01 April 2013.



Arbitrator Suspends Teacher for Inappropriate Conduct – No Prior Disciplinary Action (1 of 2)

- The charges centered on a conversation the Teacher had with several female students where the Teacher discussed prostitution and asked if any of the female students would have sex for money.
- The students testified at the hearing and the Arbitrator concluded some conversation took place in the classroom where this group of female students made comments regarding prostitution and/or becoming a stripper as a way to earn money and the Teacher joined in the conversation.
- The Arbitrator concluded the Teacher did not seek to end the conversation as it was inappropriate for the classroom, but rather participated in the conversation.
- The Arbitrator indicated the students testified they did not feel uncomfortable after this conversation and this conversation was not a pattern of inappropriate comments of a sexual nature by the Teacher with his students.

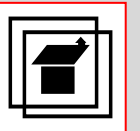
See In the matter of the tenure hearing of Thomas Strassle and the School District of Old Bridge, Middlesex County, DKT. NO. 131-5/16, Melissa H. Biren, Esquire, Impartial Arbitrator, 05 October 2016.



Arbitrator Suspends Teacher for Inappropriate Conduct – No Prior Disciplinary Action (2 of 2)

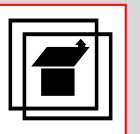
- The Arbitrator indicated the Teacher inserting himself into this conversation, even if intended as a joke, was improper and violated school policies on inappropriate staff conduct.
- However, the Arbitrator was not convinced these actions rendered the Teacher unfit to continue to teach.
- The Arbitrator indicated there was no evidence the Teacher had any prior disciplinary action.
- The Arbitrator concluded the Teacher be returned to his position and the forfeiture of 120 days pay already withheld was the appropriate penalty.

See In the matter of the tenure hearing of Thomas Strassle and the School District of Old Bridge, Middlesex County, DKT. NO. 131-5/16, Melissa H. Biren, Esquire, Impartial Arbitrator, 05 October 2016.



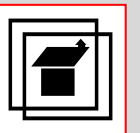
Arbitrator Dismissed the Teacher for Inappropriate Relationship with Student During Remote Learning (1 of 2)

- The Teacher taught eighth grade mathematics in the middle school for twelve years and had no prior disciplinary history nor did he receive a summative evaluation rating less than effective or its equivalent.
- Once the pandemic hit, the district transitioned to a fully remote learning model using a technology platform on the district's servers that was monitored and recorded by the district.
- The Teacher began sending inappropriate messages to one of his fifteen year old female students through the district's technology platform and the district was alerted to the inappropriate messages.
 - The Teacher was also sending books to the student and was contacting the student late at night and on weekends rarely with any talk of mathematics.
- The Board certified tenure charges against the Teacher alleging unbecoming conduct regarding the inappropriate conduct with the student.



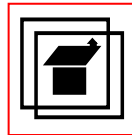
Arbitrator Dismissed the Teacher for Inappropriate Relationship with Student During Remote Learning (2 of 2)

- The Arbitrator held the Teacher violated district Policy 3281 and 3283 by clearly establishing “a personal relationship” with the student “beyond the teaching staff member’s professional responsibilities” and made “inappropriate comments”.
- The Arbitrator stated although the administrators discussed showing compassion for the mental health of students and appreciation of their struggles with virtual learning, it was ridiculous to suggest the administration’s concern granted permission to a middle-aged Teacher to engage in private communications with a fifteen year old, alone in her room on a Saturday night.
- The Arbitrator explained the Teacher refused to concede his conduct violated any district policies, became argumentative, and denied his conduct was inappropriate even announcing he would send the emails again.
- The Arbitrator affirmed the Teacher’s termination.





School Staff Members & Social Networking Sites



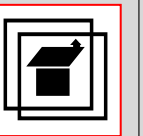
Do Staff Members Have 1st Amendment Rights?

- Violation of Staff Member's First Amendment Rights?
 - Sometimes limited First Amendment Rights.
 - School districts want to inform staff members of these limited First Amendment Rights to protect staff members.
 - Courts have held school staff members are held to a higher standard than most other employee groups.
- Do public school employees have the right, on their own time, to blog or comment about their private lives without fear of losing their jobs?
 - Depends on who has or gets access to staff member's comments and the nature of the content.
 - Staff members should assume whatever is posted to social media can become public.



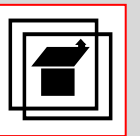
Teacher Social Media Postings – Current Trends

- Posting about side businesses while in classroom during contracted hours.
- Controversial COVID-19 and political memes
- Alcohol, drugs, sexual innuendos
- Negativity about district, school, students, etc.



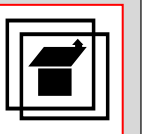
Teacher Social Media Postings – Real Life Examples

- “Well you know you’ve had a tough day when you are home at 2:20 drinking a glass of wine!”
- “That awkward moment when you are flipping through your phone and discover pictures you don’t remember taking! Man...that was some New Years!! Hahahahaha”
- Teacher posted a video of herself in a pole-dancing class.
- “Why are all of my students germ bags? And their parents so snobby and arrogant?”



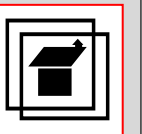
Do's and Don'ts of Social Media

- Do follow colleagues you know, respect, and like.
- Do show what makes you proud.
- Do encourage students to make the most of their social media accounts.
- Do talk to your students about the ramifications of their social media postings.
- Don't follow colleagues you don't know, don't respect, or flat out don't like.
- Don't share personal pictures or tag other teachers.
- Don't use your social media to tell personal stories about your students, administrators, school, etc.
- Don't post during contracted school hours.



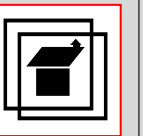
What are schools doing?

- Schools are monitoring staff member's and prospective teacher internet activity.
- If subject matter is considered “inappropriate” or “too personal”, schools feel information should not be posted for students to see.
- Schools are taking disciplinary action:
 - Short and long term suspensions,
 - Non-renewal,
 - Termination, and
 - Pursue loss of certification.



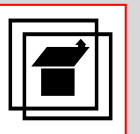
What are schools doing?

- School districts are adopting policies that place teachers “on notice” they are legally responsible for anything they post on social media including:
 - Material that could be considered defamatory, obscene, or libelous;
 - Governing how employees can interact with students on social networking sites;
 - Discouraging inappropriate and unprofessional relationships between staff and students; and
 - Providing staff guidance on what is appropriate conduct on social media.



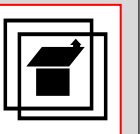
Staff Responsibility

- What is the obligation of a staff member who learns of or sees information on social media that could be harmful to students?
- The staff member MUST:
 - Follow the law, Administrative Code, and all Board Policies regarding notifications to the proper authorities regardless of how or when the staff member receives the information pertaining to student safety, risk behaviors, abuse, etc.



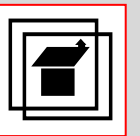
Teacher Terminated For Inappropriate Postings on Social Networking Site (1 of 3)

- Board filed 8 charges of unbecoming conduct against the Teacher arising from two statements she admitted were posted by her on her social media. The comments indicated “I am not a teacher – I’m a warden of future criminals!” and “They had a scared straight program in school – why couldn’t I bring 1st graders?”
- News of these social media postings quickly spread into the community and a protest took place outside of the school attended by parents and community activists. In addition, a day or two later, media descended upon the school with reporters and camera crews.
- The ALJ concluded the Teacher’s postings were not constitutionally protected. The ALJ concluded the Teacher was guilty of conduct unbecoming a teacher and the district had proven the Teacher’s conduct breached her duty as a professional teacher and endangered the well-being of her students.



Teacher Terminated For Inappropriate Postings on Social Networking Site (2 of 3)

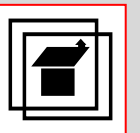
- Furthermore, the ALJ concluded the Teacher's conduct violated the district's inappropriate staff conduct policy that prohibits inappropriate comments about students.
- The ALJ concluded the Teacher's conduct was highly disruptive to the educational environment at the school and detrimental to the entire student body.
- The ALJ also indicated the Teacher's conduct undermined public confidence in the public schools.
- The ALJ indicated the Teacher did not appear as remorseful as she should have been and she left the impression with the ALJ that she was somewhat befuddled by the commotion she had created and that while she continued to maintain her conduct was not inappropriate, she was sorry others felt differently.



Teacher Terminated For Inappropriate Postings on Social Networking Site (3 of 3)

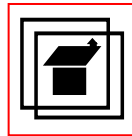
- Teacher commented that the social media comments were done on her own time and to her friends.
- The ALJ indicated with some sensitivity training, the Teacher could successfully return to the classroom, but not within this school district.
- The ALJ concluded the Teacher's relationship with this school community was irreparably damaged, not because the community thought so, but because the Teacher failed to understand why it was damaged.
- Based on these facts, the ALJ ordered the Teacher be dismissed from her tenured position of employment within the school district and the Commissioner concurred.

See In the matter of the Tenure Hearing of Jennifer O'Brien, State-Operated School District of the City of Paterson, Passaic County, DKT. NO. 108-5/11, Commissioner of Education, 12 December 2011.



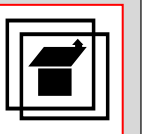


Electronic Communications Between Staff Members and Students



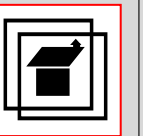
Legislation in New Jersey

- New Jersey Legislators have taken a pro-active approach with law N.J.S.A. 18A:36-40.
- S441 requires school districts to adopt a written policy concerning electronic communications between school employees and students.
- Policy must include provisions designed to prevent improper communications between school employees and students made via electronic communications.
- Policy 3283 and Policy 4283.



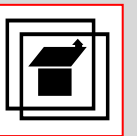
Legislation in New Jersey

- “Electronic communication” means a communication transmitted by means of an electronic device, including, but not limited to:
 - Telephone,
 - Cellular phone,
 - Computer,
 - Computer network,
 - Personal data assistant, or
 - Pager.



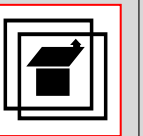
Legislation in New Jersey

- Electronic communications include, but are not limited to:
 - Emails,
 - Text messages,
 - Instant messages, and
 - Communications made by means of an internet website, including social media and social networking websites.



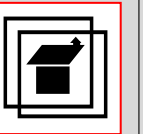
Inappropriate Content of an Electronic Communication Between a Staff Member and Student

- Is of a sexual nature, sexually oriented humor or language, sexual advances, or content with sexual overtone.
- Involves the use, encourages the use, or promotes or advocates the use of alcohol or tobacco, the illegal use of prescription drugs or controlled dangerous substances, illegal gambling, or other illegal activities.
- Refers to the teaching staff member's or student's romantic relationships.
- Uses profanities, obscene language, lewd comments, or pornography.
- Is harassing, intimidating, or bullying.
- Requests to establish a personal relationship with a student beyond the teaching staff member's professional responsibilities.
- Is related to confidential or personal information about another staff member or student.
- Is considered inappropriate by the Commissioner or Arbitrator in determining the staff member's fitness for duty.



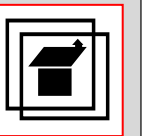
Acceptable Protocols – E-mail

- All emails between a staff member and a student must be sent or received through the school e-mail system.
- Content limited to the staff member's professional responsibilities regarding the student.
- Teaching staff member shall not provide their personal e-mail address to any student.
- Remind teaching staff members there is no expectation of privacy on the school district's e-mail system.



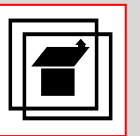
Acceptable Protocols – Cell Phones

- Staff member and student communication via a personal cell phone shall be prohibited.
- Exception:
 - A teaching staff member may, with prior approval of the Principal or designee, communicate with a student using their personal cell phone if the need is directly related to their professional responsibilities for a specific purpose such as a field trip, athletic event, activity, etc.
 - Any approval shall not extend beyond the specific purpose.



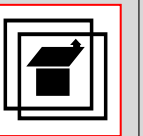
Acceptable Protocols – Text Messaging

- Texting between a teaching staff member and a student is prohibited.
- Exception:
 - With prior approval of the Principal or designee, a teaching staff member may text students provided the message is directly related to the staff member's professional responsibilities with a class or extra-curricular activity.
 - Any such message must be sent to every student in the class or every member of the extra-curricular activity.
 - Any such approval shall not extend beyond the approved class or activity.



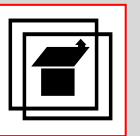
Acceptable Protocols – Social Media

- A teaching staff member is prohibited from communicating with any student through the teaching staff member's personal social media.
- A teaching staff member shall not accept “friend” requests from any student on their personal social media.
- Any communication sent by a student to a teaching staff member's personal social media shall not be responded to and shall be reported to the Principal or designee.
- Communications through social media is only permitted provided the website has been approved by the Principal or designee.
- All communications on approved websites must be made available to every student in the class, every member of the extra-curricular activity, their parents, and the Principal or designee.



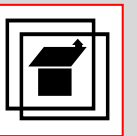
Reporting Responsibilities

- In the event a student sends an improper electronic communication to a teaching staff member, the staff member shall report the improper communication to the Principal or designee by the next school day.
- The Principal or designee will take appropriate action to have the student discontinue the improper electronic communications.
- Improper electronic communications may result in appropriate disciplinary action to a teaching staff member or student.

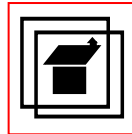


Support Staff Electronic Communications

- Support staff members shall have no electronic communications with students unless determined by the Superintendent or designee that the support staff member (i.e. aide, secretary, cafeteria staff, etc.) should have electronic communications based on their position, then the support staff member must follow the same policy as teaching staff members.



Student 1st Amendment Rights



Student 1st Amendment Rights

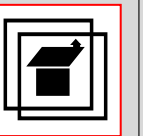
Tinker v. Des Moines (1969)

- Several students publicized their objection to Vietnam War by wanting to wear black armbands.
- Principal learns about armbands and two days before scheduled protest, the Principal prohibits wearing armbands.
- Students wore armbands and were suspended.
- Tinker established that school rules and regulations should be based on a determination of the school's legitimate interests.
- Court sought to determine if wearing an armband could in fact interrupt school activities or intrude on the life of other students.
- Record demonstrated no facts that armbands would show a forecast of substantial disruption or of constituting a material interference with school activities.
- U.S. Supreme Court holds armbands are manifestation of free speech under 1st Amendment.



Tinker Test

- The U.S. Supreme Court established the “Tinker Test”, the standard that public schools must meet before legally restricting free speech or expression of students.
- The free expression of public schools students can only be restricted if it threatens a material and substantial disruption of the educational process or invades the rights of others.



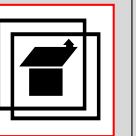
Tinker Rule

- Justified:

- *If a student's exercise of free speech or expression justifies a "reasonable forecast of substantial disruption," then it can be regulated.*

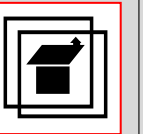
- Not Justified:

- *"If motivated by mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint"*



Bethel School District v. Fraser (1986)

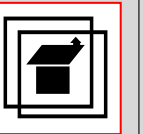
- Matthew Fraser was suspended for making a nominating speech with sexual innuendos for a friend running for student council. The speech was delivered in the high school during the school day at a mandatory assembly.
- Fraser suspended for three days and not permitted to be the graduation speaker.
- With the help of the ACLU, Fraser challenged the discipline as a violation of his 1st Amendment right to free expression.
- Fraser testified he knowingly used sexual innuendos in a speech nominating Jeff Kuhlman for school office.
- He did so because he thought it would be effective to establish a rapport with his fellow students, and perhaps to amuse them.
- Fraser won at Federal District Court and in Ninth Circuit Court of Appeals.



Bethel School District v. Fraser (1986)

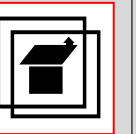
Supreme Court Opinion

- Supreme Court upholds disciplinary action taken against Matthew Fraser.
- Supreme Court did not look at the “Tinker Test”, but defined the difference between a political message and a sexually provocative speech having no political message at all.
- Supreme Court holds:
 - “It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse.”



Bethel Rule

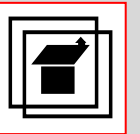
- Non-disruptive political speech is constitutionally protected.
- Lewd, vulgar speech conveying no political message cannot find protection under the United States Constitution.



Hazelwood School District v. Kuhlmeier, 1988

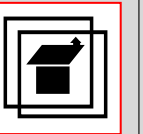
- Principal removed two articles from the school newspaper due to content he considered inappropriate.
- The school newspaper was produced by the journalism class.
- One story was about teen pregnancy and the other was about divorce.
- Three students from the class sued the school, claiming their 1st Amendment rights had been violated.

Does censorship of a student newspaper by a Principal violate the 1st Amendment?



Hazelwood School District v. Kuhlmeier, 1988

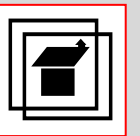
- Supreme Court Opinion
 - The school district did not violate the rights of students.
 - Public schools can regulate, with some limitations, the content of student newspapers and other publications that are paid for by the school and bear its name.
 - Student newspapers are considered limited public forums (as opposed to public forums), and are subject to lesser 1st Amendment protections.
 - Educators are not in violation of the 1st Amendment when censoring school-sponsored publications, as long as their actions are reasonably related to educational concerns.



Morse v. Frederick, 2007

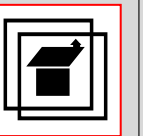
- A student was suspended for displaying a banner promoting drug use at a school event.
- In 2002, the Olympic Torch Relay passed through Juneau, Alaska on the way to the winter games in Salt Lake City, Utah.
- Since it passed right in front of the public high school, students attended with their teachers as a school-sponsored event.
- As the runners passed by, a student, with the help of others, held up a 14' banner that read: "BONG HiTS 4 JESUS".
- The Principal confiscated the banner and suspended the student. The student sued the school and the Principal for violating his rights.

Does suspension of a public school student for displaying a message promoting drug use, at a school-sponsored event, violate the 1st Amendment?

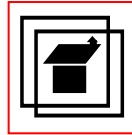


Morse v. Frederick, 2007

- Supreme Court Opinion
 - The school and the Principal did not violate the student's rights.
 - Schools can regulate speech that conflicts with school anti-drug policies, or similar school policies, even if the speech doesn't directly disrupt the educational process, such as at a school-sponsored event.
 - The school has a responsibility to provide a safe environment for students, and this includes discouraging use of illegal drugs.



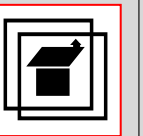
Student 4th Amendment Rights



Student Search and Seizure Rights

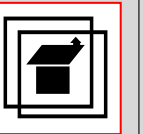
T.L.O.

- U.S. Supreme Court in New Jersey v. T.L.O. held the 4th Amendment does apply to schools and in order for searches to be constitutionally valid reasonableness must prevail.
- According to the Court in T.L.O., constitutional validity of a search is to be determined at two levels:
 - Was the motivation for the search reasonable in light of the information obtained by the school official?
 - Were the measures adopted for the search reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction?
- A search is not reasonable if it lacks specificity or if it excessively intrudes on the student's privacy.



Impact of T.L.O. Case

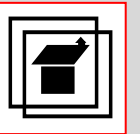
- T.L.O. is the U.S. Supreme Court landmark case on search and seizure in schools.
- Basically, school officials may search a student's property if they have a "reasonable suspicion" that a school rule has been broken, or a student has committed or is in the process of committing a crime.
- These type of searches are called "suspicion-based" searches.



Supreme Court Determines District's Strip Search Was Unreasonable

- Assistant Principal finds knives, contraband, and pills on two students who claim items were owned by female student.
- Assistant Principal has female student searched by female staff member who had the student remove some clothing – nothing found.
- Parent files claim indicating search was a strip search and a violation of the student's 4th Amendment Rights.
- Court indicated Assistant Principal had suspicion to justify searching student's backpack and outer clothing and having found nothing bad, did not have reason to strip search the student.
- Court concludes this search went too far and was unreasonable and violated student's 4th Amendment Rights.

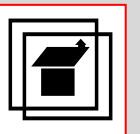
See Safford United School District #1, et al. v. April Redding, 129 S. Ct. 2633, 174 L. Ed. 2d 354, Supreme Court of the United States, 25 June 2009.



Random Drug Testing of Certain Students Does Not Violate Constitution

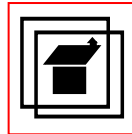
- The Supreme Court of New Jersey affirmed an Appellate Court decision that held the School Board's random drug testing program did not violate the New Jersey Constitution.
- The challenged policy expanded an existing drug testing program that required students engaged in athletics and extra-curricular activities to include students with permits to park motor vehicles on campus.

See Michael and Deborah Joye, et al. v. Hunterdon Central Regional High School Board of Education and Acting Superintendent of Schools, Judith Gray, 826 A.2d 624, 09 July 2003.



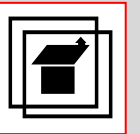


Staff Member's 1st and 4th Amendment Rights



Staff Member's 1st and 4th Amendment Rights

- Subject to public official standard of defamation (Constitutional Malice)
- Staff 1st Amendment rights may be affected in certain school district responsibilities (religious and political views, etc.)
- Expectation of Privacy
 - Out of school conduct may affect public school teaching position.
 - Guilt on certain crimes includes revoking certificate(s) – no opportunity for rehabilitation.
 - School computers, desks, filing cabinets are school property and staff should have no expectation of privacy in these areas.

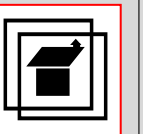


Staff Member's Out of School Conduct

“School Staff Member 24/7”

- The Commissioner of Education concurred with the findings and conclusions of the Administrative Law Judge that found:
 - The tenured Teacher's conduct adversely affected the morale and efficiency of the district,
 - Violated the standard of good behavior, and
 - Destroyed the public respect for teachers
- As a result of allowing drug dealers to use her residence for storing, selling and cooking cocaine, and receiving money and cocaine, which she sold.

See In the matter of the Tenure Hearing of Brenda Mapp, School District of the City of Trenton, Mercer County, DKT. NO. 352-11/02, Commissioner of Education, 05 August 2003.

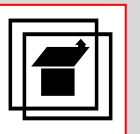


Staff Member's Out of School Conduct

“School Staff Member 24/7”

- The Teacher was convicted of a crime, assault by auto, for knowingly driving while under the influence of drugs and alcohol and causing serious bodily injury to others.
- The Teacher was terminated by the Board and the decision was upheld by the Commissioner.
- The Board of Examiners, upon considering revocation of the Teacher's certificates, indicated a Teacher's behavior outside the classroom may be relevant in determining that person's qualifications and continued fitness to retain her certificates.
- Board of Examiners voted to revoke Teacher's certificates.
- The Commissioner affirmed the Board of Examiners' decision.

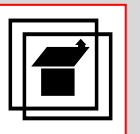
See In the matter of the Revocation of the Certificates of Erin Markakis by the State Board of Examiners, DKT. NO. 1-1/11A, Commissioner of Education, 19 September 2011.



Arbitrator Terminates Teacher After 2nd Incident of Shoplifting

- Board certified tenure charges against a Teacher for shoplifting, failure to report an arrest, violation of district policies, and a pattern of unbecoming conduct over a period of time.
- The Teacher was arrested on 2/7/15 for shoplifting with property valued over \$230. The Superintendent was informed of the arrest on 3/3/15.
- The Superintendent suspended the Teacher pending an investigation of the shoplifting incident and for the Teacher not reporting the incident within 14 days as required by district policy and law. The Superintendent lifted the suspension when the retailer's apprehending agent failed to appear in court to testify.
- On 3/5/16, the Teacher was arrested again for shoplifting an item worth \$60 and the Teacher pleaded guilty to shoplifting and was admitted into a Conditional Dismissal Program.
- The Arbitrator acknowledged although the district did not impose discipline after the Teacher's 1st admitted incident its failure to do so did not waive its ability to consider her admitted conduct in addressing the 2nd incident.
- The Arbitrator also stated evidence of the Teacher's mental health history cannot serve to mitigate against the district's decision to impose the penalty of removal. The Teacher was dismissed.

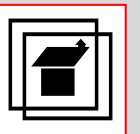
See In the matter of the Tenure Hearing of Michele Schwab, Woodbridge Township Board of Education, Middlesex County, DKT. NO. 125-5/16, James W. Mastriani, Arbitrator, 05 January 2017.



Commissioner Orders Secretary to Undergo Psychiatric Examination

- Secretary alleged district IT department was monitoring her computer work and telephone calls.
- Secretary told co-workers she went to police alleging district was sending internet messages to her home computer.
- Superintendent requested Secretary undergo psychiatric exam and report indicated the Secretary was suffering from a disorder treatable with medicine and therapy.
- Secretary refused use of medicine and district offers to pay for second opinion and Secretary refused.
- Commissioner – Board's actions are justified to insist on second examination and orders Secretary go for examination.

See State-Operated School District of Paterson, Passaic County v. C.R., DKT. NO. 277-8/06, Commissioner of Education, 29 September 2006.

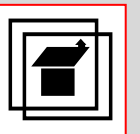


Staff Member Suspected of Substance Use

Immediate Medical Examination

- The Commissioner of Education adopted the Administrative Law Judge's decision finding State Statute and Code do not preempt the Board's authority to assure the safety of its students and faculty by adopting and applying regulations requiring an immediate medical examination of an employee who is reasonably suspected of being under the influence of drugs or alcohol at work.
- Strauss Esmay's Policy and Regulation was challenged and found to be within the Board's authority.
- Commissioner supports need for immediate examination, unlike process for examination for psychiatric examination.

See Bayonne Teachers' Association v. Board of Education of the City of Bayonne, Hudson County, DKT. NO. 389-11/02, Commissioner of Education, 08 January 2004.



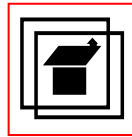
Political Activity – Staff Members

- Green Township v. Rowe
 - Board of Education barred staffed members from wearing political buttons bearing the inscription “NJEA SETTLE NOW” while teaching in the school.
 - 1st Amendment Test applied by court.
 - Court finds:
 - “carefully worded protocol tailored to prohibiting teachers from promoting positions on labor relations issues in the presence of students while on school property could pass constitutional muster.”
 - Court holds district may bar such buttons under these circumstances.



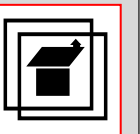


Staff Member and District Reporting Responsibilities



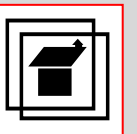
Staff Member Reporting an Arrest or Indictment

- All certificate holders shall report their arrest or indictment for any crime of offense to the Superintendent within **fourteen calendar days** in accordance with the provisions of N.J.A.C. 6A:9-17.1.
- The report shall include the date of the arrest or indictment and the charge(s) lodged against the certificate holder.
- Such certificate holders shall also report to the Superintendent the disposition of any charges within **seven calendar days** of the disposition.
- Failure to comply with these reporting requirements may be deemed “just cause” for revocation or suspension of certification pursuant to N.J.A.C. 6A:9-17.5.



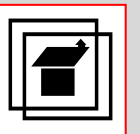
Superintendent's Reporting Requirements

- The Superintendent shall notify the Board of Examiners when:
 - Tenured teaching staff members, nontenured teaching staff members, including substitute teachers, who are accused of criminal offenses or unbecoming conduct resign or retire from their positions;
 - A certificate holder fails to maintain any license, certificate, or authorization pursuant to N.J.A.C. 6A:9-4.1(b) that is mandated in order for the holder to serve in a position;
 - The Superintendent becomes aware that a certificate holder has been convicted of a crime or criminal offense while in the district's employ; or
 - The Superintendent has received a report from the Department of Children and Families substantiating allegations of abuse or neglect or establishing "concerns" regarding a certificated teaching staff member.
- The Superintendent shall also notify the New Jersey State Board of Examiners, in accordance with the provisions of N.J.S.A. 18A:16-1.3, whenever a nontenured, certificated employee is dismissed prior to the end of the school year for just cause as a result of misconduct in office.



Reporting Potentially Missing or Abused Children

- Employees, volunteers, or interns working in the school district shall immediately notify designated child welfare authorities of incidents of alleged missing, abused, and/or neglected children.
- Reports of incidents of alleged missing, abused, or neglected children shall be reported to the New Jersey State Central Registry (SCR) at 1-877-NJABUSE.
- If the child is in immediate danger, a call shall be placed to 911 as well as to the SCR.
- The person having reason to believe that a child may be missing or may have been abused or neglected may, prior to notifying designated child welfare authorities, inform the Principal or designee if the action will not delay immediate notification.
- The school district, along with child welfare authorities, has responsibility to report to law enforcement.



Reporting Potentially Missing or Abused Children

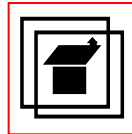
- The person notifying designated child welfare authorities shall inform the Principal or designee of the notification, if such had not occurred prior to the notification.
- Notice to the Principal or designee need not be given:
 - When the person believes that such notice would likely endanger the reporter or the student involved, or
 - When the person believes that such disclosure would likely result in retaliation against the child or in discrimination against the reporter with respect to their employment.





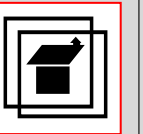
Dating Violence at School

N.J.S.A. 18A:37-33 et seq.



Dating Violence at School

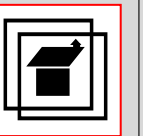
- Acts of dating violence at school may include, but are not limited to:
 - Those characterized by physical, emotional, verbal, or sexual abuse;
 - Digital or electronic acts or incidents of dating violence; and/or
 - Patterns of behavior which are threatening or controlling.
- All acts or incidents of dating violence at school must be reported and investigated.



Dating Violence at School

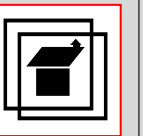
Reporting Requirement

- All staff members shall take reasonable measures to prevent acts or incidents of dating violence at school.
- A verbal report shall be made to the Principal or designee as soon as possible, but no later than the end of the student's day, when the staff member witnesses or learns of the incident.
- Written report to the Principal no later than one day after the act or incident occurred or staff member learns of the incident.



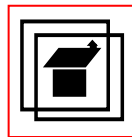
Dating Violence at School

- Consequences and remedial measures shall be implemented upon a confirmed act of dating violence at school.
- Board required to include age-appropriate dating violence education in grades seven through twelve to include:
 - A definition of dating violence;
 - Recognizing the warning signs of dating violence; and
 - The characteristics of healthy relationships.



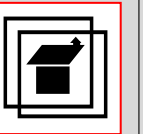


Harassment, Intimidation, or Bullying



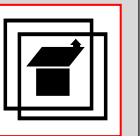
HIB Definition

- Harassment, intimidation, or bullying means any gesture, any written, verbal or physical act or electronic communication, whether it is a single incident or a series of incidents, that is:
 - Reasonably perceived as being motivated by either any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability; or by any other distinguishing characteristic; and that
 - Takes place on school property, at any school-sponsored function, on a school bus, or off school grounds, as provided for in N.J.S.A. 18A:37-15.3;
 - That substantially disrupts or interferes with the orderly operation of the school or the rights of other students; and that



HIB Definition

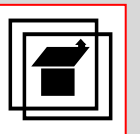
- A reasonable person should know under the circumstances that the act(s) will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his/her person or damage to his/her property, or
- Has the effect of insulting or demeaning any student or group of students, or
- Creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.



HIB Complaint and Investigation Process

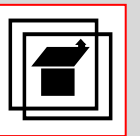
The 10 Steps

- | | |
|---------|---|
| Step 1 | Verbal Report <ul style="list-style-type: none">◦ Preliminary Determination Process |
| Step 2 | Parent Notification |
| Step 3 | Investigation Commences Within 1 School Day of Verbal Report |
| Step 4 | Written Report Submitted Within 2 Days of Verbal Report |
| Step 5 | Investigation Report Completed Within 10 School Days of Written Report – Submitted to Superintendent Within 2 School Days |
| Step 6 | Superintendent's Actions |
| Step 7 | Superintendent's Report to BOE – 1 st Meeting After Report Completed |
| Step 8 | Information to Parents – 5 Day Letter |
| Step 9 | Board Hearing, If Appealed, Held Within 10 Business Days |
| Step 10 | BOE Vote to Accept, Reject, Modify |



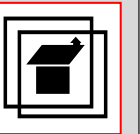
HIB Determination

- Motivation – the alleged HIB was motivated by a perceived or actual characteristic of a protected class or by any other distinguishing characteristic, and
- Location – the alleged HIB took place on school property, at any school-sponsored function, on a school bus; or off school grounds, as provided for in N.J.S.A. 18A:37-15.3, and
- Disruption/Rights – the act substantially disrupted or interfered with the orderly operation of the school or the rights of other students, and
- Harm – a reasonable person should know under the circumstances the act would have the effect of:
 - Physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to their person or damage to their property, or
 - Insulting or demeaning any student or group of students, or
 - Creating a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.



Reporting Alleged HIB Acts

- All Board members, school employees, volunteers, and contracted service providers who have contact with students who witness or receive reliable information regarding an alleged act of HIB committed by an adult or youth against a student, must report it verbally on the same day to the Principal or designee and shall submit a report in writing to the Principal within two school days of the verbal report.
- In accordance with the recently revised statute, N.J.S.A. 18A:37-15.b.(5), the written report must be on the “HIB 338 Form” developed by the NJDOE and available on their website.
 - Every time the Principal fills out this form, a copy must also be submitted to the Superintendent.
- Students, parents, and visitors are encouraged to report alleged HIB if they witness or receive reliable information regarding an alleged act of HIB.
- The recently revised statute, N.J.S.A. 18A:37-15.b.(5), now requires the district to provide a means for a parent to complete an online numbered form developed by the NJDOE to confidentially report an incident of HIB.



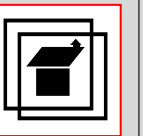
HIB Investigation

- Principal's Role Upon Receiving Report
 - Initiate investigation within one school day of the verbal report through the ABS.
 - Inform parents of the alleged aggressor(s) and alleged target that there is an incident and an investigation will be conducted.
 - When providing notification to the parents of all students involved in the alleged HIB incident, the Principal shall take into account the circumstances of the incident when conveying the nature of the incident, including the actual or perceived category motivating the alleged offense.
 - Although not explicitly required in statute or code, best practice would be to notify the parents the same day.



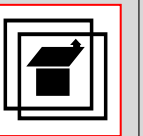
HIB Investigation

- Role of the ABS
 - Lead and conduct each investigation.
 - Complete investigation within 10 school days of the written report and submit the written findings to the Principal.
- Principal shall proceed in accordance with Code of Student Conduct as appropriate, based on the investigation.
- The original report may be amended if additional information relative to the investigation is received after the 10-day investigation period.
 - District should have procedure to consider additional information that is received after the 10 school day investigation period.



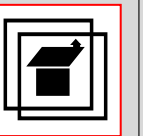
HIB Investigation

- The report completed and submitted to the Superintendent within two school days of the completion of the investigation.
- Superintendent may decide to provide intervention services, establish training programs, impose discipline, order counseling or take or recommend other action.
- The results of each investigation are reported to the Board in an initial report no later than the next regularly scheduled Board meeting after the investigation is completed, along with the following information:
 - Services provided;
 - Training established; and
 - Discipline imposed or other action taken or recommended by the Superintendent.



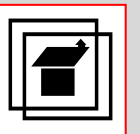
Post-Investigation Monitoring

- While the matter is pending review by the Superintendent, the Principal shall monitor the situation to ensure:
 - The safety of the student victim(s);
 - The remediation of the HIB behavior by the offender; and
 - The appropriate support for school staff and parents, if applicable.



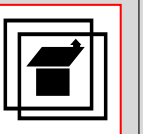
Parent Involvement

- Minus the statutory requirement of notifying parents upon receiving a report and commencing a HIB investigation, there is no requirement to involve the parent during the active investigation.
 - If a parent insists their child not be interviewed or if interviewed the child will not answer questions, the parent should be informed the ABS will have no other option but to believe what others report.
 - District may have informal practice to offer parent invitation to meeting – parent shall not comment unless requested by the ABS.
 - If a parent was a witness of a bystander, they should be interviewed (stress confidentiality with parent)
 - If the parent is the reporter of the incident, they should be treated as any other reporter – document the facts, gather any evidence the parent may have, and then their involvement ends.
- Periodic updates of the progress being made are appropriate, but not required during the ten-days of active investigation.



Role of ABS and AAO

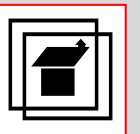
- There is some confusion between the role of the AAO and the role of the ABS when HIB incidents occur. The confusion may be attributed to the fact that certain incidents of HIB intersect with discrimination laws.
- The roles of both the AAO and ABS are similar in nature, with the exception that the AAO is concerned with discrimination based on protected class status (e.g. race, sex, religion, etc.) and the AAO must handle discrimination claims made against staff, in addition to those made against students.
 - When a report of HIB is made that involves an allegation of conduct based on a protected class, the AAO and the ABS should be notified. The AAO and the ABS can collaborate to conduct a single investigation.



Being a Vegetarian is “Any Other Distinguishing Characteristic”

G.C., on behalf of minor child, C.C. v. Board of Education of the Township of Montgomery, DKT. NO. 44-2/16. Commissioner of Education, 22 November 2016.

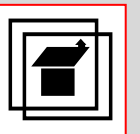
- An incident between two sixth graders occurred in the cafeteria, wherein one student demeaned another due to the victim identifying as a vegetarian.
 - “Vegetarians are idiots.” and “It’s not good to not eat meat and people who eat meat are smarter and have bigger brains.”
- These comments were reasonably perceived to be motivated by the student being a vegetarian.
- The district conducted an investigation and concluded the incident was properly classified as HIB stemming from comments the student made regarding his classmate’s vegetarian lifestyle.
- The ALJ found the issue is whether the state of being a vegetarian can constitute “any other distinguishing characteristic”.
- The ALJ concluded vegetarian was an “any other distinguishing characteristic” and the fact the victim was a vegetarian was an identifiable motivation.
- The ALJ concluded the comments made by the student constituted a violation of the HIB law.
- The Commissioner adopted the ALJ’s decision.



No Distinguishing Characteristic/Student Conflict

R.A., on behalf of minor child, B.A. v. Board of Education of the Township of Hamilton, 22 June 2016

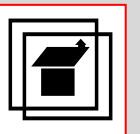
- The Parent alleged there had been intermittent incidents involving a group of friends that B.A. perceived to be harassment, beginning in 2013 when the girls were in 6th grade – after B.A. was invited to a birthday party when the other friends were not invited.
- The final incident took place in January 2015 when B.A.'s lunch bag was allegedly kicked out of a classroom by another student.
- The district's investigation was inconclusive as there was no distinguishing characteristic that motivated the conduct of the friends.
- The ALJ stated a dispute between students such as a relationship falling apart between former friends, a fight over a piece of property, or some form of personal vendetta of one against another is not conduct based on a “distinguishing characteristic” of the victim and thus, does not constitute a violation of the Act.
- The ALJ concluded the circumstances in this case showed personal conflict between B.A. and the other girls.
- The Commissioner adopted the ALJ's decision.



Special Needs Student Was Not Motivated by a Distinguishing Characteristic

C.K. and M.K., on behalf of minor child, M.K. v. Board of Education of the Township of Voorhees, Camden County, DKT. NO. 353-11/15, Commissioner of Education, 23 March 2017.

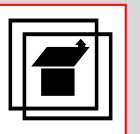
- A special needs student had a habit of indiscriminately seeking high fives from classmates and in the restroom, the student reached under the stall and grabbed another student's leg and said "high five!".
- District determined the incident did not rise to the level of HIB because it was not motivated by an actual or perceived distinguishing characteristic.
- Parent of the student who was grabbed filed the petition.
- ALJ found the special needs student's conduct of grabbing the student's leg did not meet the definition of HIB as the conduct could not reasonably be perceived as being motivated by a distinguishing characteristic of the petitioner's student and did not have the effect of insulting or demeaning the student.
- The ALJ concluded the Board had properly found the conduct did not meet the definition of HIB under the ABR and the Commissioner concurred.



HIB Allegedly Motivated by “Parental Advocacy”

T.T., on behalf of minor child, G.C. v. Board of Education of the Toms River Regional School District, Ocean County, DKT. Nos. 226-8/15 and 187-7/15, Commissioner of Education, 17 November 2017.

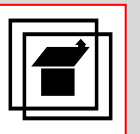
- Mother alleged G.C. was the victim of a HIB in 3 separate incidents at the hands of various teaching staff members and a substitute teacher.
- The district investigated all 3 incidents and found that while the staff members could have handled the situations better, it was not HIB because the conduct was not motivated by any distinguishing characteristic.
- The Mother appealed the Board’s decision alleging her advocacy on behalf of G.C. was the distinguishing characteristic.
- On appeal, the Board upheld the determination and the Mother then appealed to the Commissioner.
- The ALJ dismissed the Mother’s argument that the incidents were motivated by her advocacy for her daughter.
- The ALJ ultimately concluded the district’s determination was correct and cited “The Commissioner will not substitute his judgment for that of the Board, who exercises its discretion may not be disturbed unless shown to be patently arbitrary, without rational basis, or inducted by improper motives”.
- The Commissioner adopted the ALJ’s decision.



HIB Determination/Distinguishing Characteristic was Student's Gender (1 of 2)

R.P., on behalf of minor child, A.P. v. Board of Education of the Township of Hamilton, Atlantic County, DKT. NO. 103-5/17, Commissioner of Education, 29 March 2018.

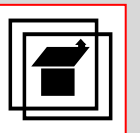
- S.W. (female middle school student) wrote a letter to her Vice Principal detailing harassing behavior by another student, A.P. (male middle school student).
- The behavior included sexually explicit gestures directed at S.W. over the course of a couple months.
- The district's ABS investigated the matter, and during the interviews, A.P. admitted to the alleged conduct.
- The administration concluded the incident constituted HIB because the conduct was motivated by S.W.'s gender and it caused her harm.
- The Board concurred and A.P.'s mother appealed to the Commissioner.



HIB Determination/Distinguishing Characteristic was Student's Gender (2 of 2)

R.P., on behalf of minor child, A.P. v. Board of Education of the Township of Hamilton, Atlantic County, DKT. NO. 103-5/17, Commissioner of Education, 29 March 2018.

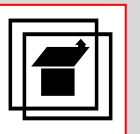
- A.P.'s mother claimed her son did not understand what his gestures meant and the district did not investigate properly because there were inconsistencies in what the Principal told her and what the ABS reported.
- The ALJ stated it was clear A.P. understood what the gestures meant from his interview with the ABS and regardless of what the Principal told his mother, the ABS' investigation was done properly and adhered to the law.
- The ALJ concluded the distinguishing characteristic that motivated A.P.'s actions was S.W.'s gender because of the nature of the gestures and it was clear A.P.'s conduct caused S.W. harm, from the letter that S.W. had written to the Vice Principal.
- The ALJ upheld the HIB determination and the Commissioner concurred.



Single Incident and Distinguishing Characteristics

W.C.L., on behalf of minor child, L.L. v. Board of Education of the Borough of Tenafly, Bergen County, DKT. NO. 33-2/12, Commissioner of Education, 10 January 2013

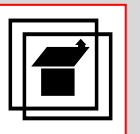
- The school nurse sent a memo to inform parents there was a case of head lice in the school.
- A fourth grade student told other students that L.L. dyed her hair because she had head lice.
- L.L. was embarrassed and offended.
- The district concluded HIB and the parent of the child identified as the bully appealed to the Commissioner.
- The ALJ stated the student's comment was:
 - A verbal act;
 - Motivated by distinguishing characteristic; and
 - Substantially interfered with rights of another student.
- The ALJ indicated the student should have realized that pointing out his classmate's problem would hurt her feelings.
- ALJ concluded the Board's actions were consistent with the letter and spirit of law, as the law is intended to encourage mutual respect and cruel words will not be tolerated in NJ's schools.
- Commissioner concurred.



Single Incident and Distinguishing Characteristics

J.M.C., on behalf of minor child, A.C., v. Board of Education of the Township of East Brunswick, Middlesex County, DKT. NO. 62-3/12, Commissioner of Education, 09 January 2013.

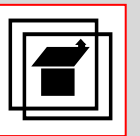
- A sixth grader told a fellow classmate he “danced like a girl” and called him “gay”.
- The district investigated and concluded the incident constituted HIB.
- The student was given a three-day detention, consistent with his age and first offense.
- The parent appealed the Board’s determination.
- The ALJ concluded, pursuant to the ABR, the child’s verbal acts were motivated by distinguishing characteristics, such as gender and sexual orientation.
- The ALJ concluded the Board’s actions were consistent with the letter and spirit of law and the Commissioner concurred.



Disciplining Student For Violation of School Rules Does Not Constitute HIB (1 of 2)

R.C.F. and A.L.F., on behalf of minor child, S.N.F. v. Board of Education of the Borough of South Plainfield, Middlesex County, Commissioner of Education, DKT. NO. 143-5/12, 18 September 2013.

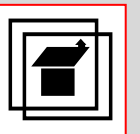
- Parents alleged daughter was subject to acts of HIB by a teacher.
- Teacher felt length of student's skirt was unacceptable and told student to call home to get a change of clothes.
- The student was unable to reach home, so she was allowed to return to class, wherein the teacher remarked "they let you walk around all day like that?"
- On another occasion, the student asked a classmate about a problem on an algebra test and the same teacher accused her of cheating and gave her a "zero" grade.
- Upon completing a HIB investigation, the administration and Board determined the teacher's actions did not meet the legal definition of HIB.



Disciplining Student For Violation of School Rules Does Not Constitute HIB (2 of 2)

R.C.F. and A.L.F., on behalf of minor child, S.N.F. v. Board of Education of the Borough of South Plainfield, Middlesex County, Commissioner of Education, DKT. NO. 143-5/12, 18 September 2013.

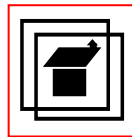
- The parents filed two complaints with the Commissioner alleging the teacher's conduct constituted HIB and they alleged the HIB investigation was conducted improperly as the investigator failed to interview witnesses who observed the teacher harass and demean the student.
- Parents further asserted the alleged cheating incident constituted HIB guaranteeing the student would fail the second marking period.
- The Board asserted this matter concerned two separate teacher-student interactions concerning violation of school rules.
- ALJ concluded the teacher's interaction with the student was merely disciplining the student for violation of school rules and the Commissioner concurred.





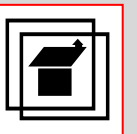
Anti-Hazing

Policy 5541



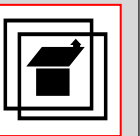
Anti-Hazing

- P.L.2021, c.208 designated as the “Timothy J. Piazza Law” was passed and approved on August 24, 2021 and went into effect on March 1, 2022.
- This new law requires public and nonpublic high schools and middle schools to adopt an anti-hazing policy.
- The new statutes N.J.S.A. 18A:37-32.2 and 18A:37-32.3:
 - Outline the appropriate penalties for a violation of the district’s anti-hazing policy;
 - Requires the district’s anti-hazing policy be applied to conduct on or off school grounds; and
 - Requires notification of the district’s anti-hazing policy to the school community.



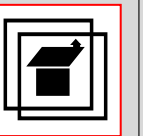
Anti-Hazing

- Board of Education members, school employees, and contracted service providers are required to report an alleged incident of hazing that may take place or has taken place on or off school grounds to the Principal or designee on the same day when the individual witnessed or received reliable information regarding such an incident.
 - Students, parents, volunteers, or visitors are encouraged to report an incident of hazing.
- Any report of an alleged incident of hazing shall be immediately investigated by the Principal or designee.



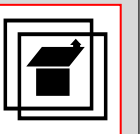
Anti-Hazing

- A Principal or designee who receives a report of an alleged incident of hazing and fails to initiate or conduct an investigation and fails to minimize or eliminate the hazing may be subject to disciplinary action.
- The Superintendent or designee shall report to local law enforcement any hazing incident that rises to the level of mandatory reporting under the “Uniform Memorandum of Agreement Between Education Officials and Law Enforcement Officials” or any other agreement between local law enforcement and the school district pursuant to N.J.A.C. 6A:16-5.1(b).



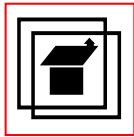
Anti-Hazing

- Hazing allegations may very often implicate Policy Guide 5512 – Harassment, Intimidation, or Bullying.
- Therefore, there may be a need for a separate investigation to address the requirements outlined in Policy Guide 5512 and the Anti-Bullying Bill of Rights Act.
- Without the New Jersey Department of Education (NJDOE) providing more detail regarding a procedure to investigate claims of hazing, Strauss Esmay recommends hazing claims be investigated using the same procedures used for Student Code of Conduct violations and Policy Guide 5600 – Student Code of Conduct.
- If the NJDOE releases additional guidance regarding this new law, Strauss Esmay will update Policy Guide 5541 accordingly.



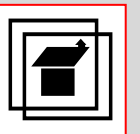


Marijuana/Cannabis Legislation



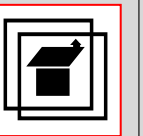
Recreational/Medical Cannabis For Students

- There is no change in the Medical Cannabis law which permits students to take medical cannabis during the day.
 - Policy and Regulation Guides 5330.01 – Administration of Medical Cannabis were recently revised to reflect terminology changes in the law.
 - These Guides outline the district's responsibilities for handling student requests to take medical cannabis during the school day.
 - Strauss Esmay recommends that no district employee be involved in the physical handling or administering of medical cannabis to a student.
- Recreational Cannabis
 - Still illegal to buy, possess, or use cannabis for any person/student under the age of 21.
 - Policy and Regulation Guides 5330 – Substance Abuse are still accurate and provide districts with administrative code to follow when it is suspected a student is under the influence of any substance.



Recreational/Medical Cannabis For School Staff Members

- State use of medical marijuana law expressly states an employer does not have to permit employees to come to work while using medical marijuana.
- Drug Free Workplace Federal law does not permit CDS in the workplace and school districts have to comply with this law and have a policy prohibiting drugs in the workplace.
- A school district is a unique workplace and there is a major concern regarding liability in light of a staff member's supervisory responsibilities of children.
- School staff members also complete safety sensitive tasks.
- Strauss Esmay believed there would be a need for a "field sobriety test" administered in conjunction with a drug test to be able to determine if a staff member was under the influence of marijuana while at work.





DISCUSSION

