

**LINK COMMUNITY CHARTER SCHOOL  
BOARD OF TRUSTEES BOARD RETREAT MEETING  
December 02, 2023, 9:00 AM  
In-Person  
Link Community Charter School  
230 Halsey Street, Newark, New Jersey 07102**

**Approved Minutes**

**LINK COMMUNITY CHARTER SCHOOL MISSION**

Link Community Charter School will provide an outstanding elementary and middle school education for learners of all academic abilities by developing the mind, body and spirit through a strong curriculum, experiential learning, immersion in the arts, and an enduring commitment to Core Values; this will allow them to be successful in competitive high schools and become responsible and resourceful citizens who give back to others.

**CALL TO ORDER**

The board retreat meeting of the Link Community Charter School Board of Trustees was called to order by Mr. Richard Marshall, Board Chair at 9:33am.

**FLAG SALUTE**

**OPEN PUBLIC MEETINGS NOTICE: READING OF THE “SUNSHINE LAW” STATEMENT**

Adequate notice of this meeting of the LCCS Board of Trustees, setting forth time, date and location, was provided by placing a notice with the *New Jersey Star Ledger* and *nj.com*, *Irvington Herald*, *East Orange Record*, *Orange Transcript*, and *Essex Daily News* on October 17, 2023; by email to the city clerks of, East Orange, Irvington, and Orange, and the county superintendent of education on October 17, 2023 and by mail on October 17, 2023 to the city clerk of Newark; by posting notice on the school website; and by communicating same to the Board of Trustees.

**ROLL CALL**

<b>Member</b>	<b>Present</b>	<b>Absent</b>
Barnett, Ms.	√	
Daughtry, Ms.		√
Ebanks, Ms.	√	
Fox, Ms.	√ Left 10:06am	
Key, Mr.	√	
Marshall, Mr.	√	
Naar, Mr.	√ Joined 10:06am	

**IN ATTENDANCE: NON-VOTING STAFF/BOARD ATTORNEY**

Maria Pilar Paradiso, Head of School  
Debbie Paczkowski, Board Recording Secretary  
Bima Baje, School Business Administrator  
Leslie Baynes, Chief Operating Officer  
Christine Martinez, Esq., Board Attorney

## **APPROVAL OF AGENDA**

**Resolution #120223-01:** Be it Resolved that the Board of Trustees accepts and approves the agenda for the board retreat meeting on December 02, 2023.

Moved by Ms. Ebanks

Second by Ms. Barnett

Discussion: None

Vote: Voice; passed unanimously

## **PUBLIC COMMENT**

During the course of the board meeting the Board of Trustees offers members of the public an opportunity to address issues regarding the operation of LCCS. The Board reminds those individuals to take this opportunity to identify themselves by name and address and to limit their comments to items listed on the agenda and/or items directly related to the operation of the LCCS. Issues raised by members of the public may or may not be responded to by the Board. All comments will be considered, and a response will be forthcoming if and when appropriate. The Board asks that members of the public be courteous and mindful of the rights of other individuals when speaking. Specifically, comments regarding students and employees of the Board are discouraged and will not be responded to by the Board. Students and employees have specific legal rights afforded by the laws of New Jersey. The Board bears no responsibility, nor will it be liable for any comments made by members of the public. Members of the public should consider their comments in light of the legal rights of those affected or identified in their comments and be aware that they are legally responsible and liable for their comments. Comments by each member of the public choosing to speak are limited to 3 minutes.

## **CLOSING OF PUBLIC COMMENT**

Seeing there are no members of the public wishing to speak, Mr. Marshall closed the public comment portion of the meeting.

## **ACKNOWLEDGMENT OF CORRESPONDENCE**

None.

## **BOARD RETREAT**

School Board Code Ethics, Christine Martinez, Board Attorney

Tour of the building

HIB, Christine Martinez, Board Attorney

## **OLD BUSINESS**

None.

## **NEW BUSINESS**

None.

## **ANNOUNCEMENTS**

The next regular board meeting will be on Monday, December 18, 2023, 6:30 pm.

Please respond tonight to the calendar invitation to the board meeting in December.

**MOTION TO ADJOURN**

Moved by Ms. Ebanks

Seconded by Ms. Barnett

Vote: Voice; passed unanimously

The meeting was adjourned at 12:14 pm.

These minutes represent a record of actions taken by the Board of Trustees during the meeting and a summary of the discussions that took place. The minutes are not intended to be, nor are they, a verbatim record of the discussion on a particular item.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Debra Paczkowski', with a long horizontal flourish extending to the right.

Debra Paczkowski, Board Recording Secretary

Date: December 18, 2023

Approved by the Link Community Charter School Board of Trustees: December 18, 2023

# LINK COMMUNITY CHARTER SCHOOL

## BOARD RETREAT

December 2, 2023

Machado Law Group

1 Cleveland Place

Springfield, NJ 07081

Christine M. Martinez, Esq.

# Code of Ethics for School Board Members

## N.J.S.A. 18A:12-24.1

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.
- b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.
- c. I will confine my board action to **policy making, planning, and appraisal**, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.
- d. I will carry out my responsibility, **not to administer the schools**, but, together with my fellow board members, to see that they are well run.
- e. I will recognize that **authority rests with the board of education** and will make **no personal promises nor take any private action that may compromise the board**.

# Code of Ethics for School Board Members

## N.J.S.A. 18A:12-24.1

f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

i. I will support and protect school personnel in proper performance of their duties.

j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

## LCCS Policy 1210 – Board-Head of School Relations:

- “It is the primary duty of the Board to establish policies and the primary duty of the Head of School to implement and administer the policies.”
- The Head of School is to be “given latitude to implement and administer policies.”
- The Board will dictate “what” they want to accomplish, but school administration will be responsible for implementing “how” that goal will be achieved.
- Attempting to micromanage administration may result in a finding that a Board member is attempting to “administer the schools”.

# Administering the Schools

- Pursuant to N.J.S.A. 18A:12-24.1(d), board members: “must avoid giving a direct order to school personnel or becoming directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district.” A32-14

## Takeaway:

- Board members may not assign work to District administration or District staff, as same would constitute an attempt to “administer the schools”.



# Administering the Schools

## ■ Board Member:

- Asked school guidance secretary to provide him with copies of 2004 and 2005 SAT reports.
- Entered boy's locker-room, inspected lockers, and instructed staff members on safety measures he felt were necessary for the school to take.

## ■ Commission:

- Board member censured for behavior.
- N.J.S.A. 18A:12-24.1: Board members may not administer the schools.
- Decisions regarding policy are to be made jointly with the full board.

In the Matter of William Lahn, Delsea BOE, Docket No. C25-05:

# Administering the Schools

- Board Member would violate Act by conducting doctoral work using district data.
- Board member's project would involve surveying Board and Superintendent, interviewing three Board members, anonymously surveying teachers in the district, and conducting focus group meetings with the teachers for her doctoral research.
- SEC indicated this would blur the line where a doctoral candidate ends, and Board member begins.

In Advisory Opinion A04-13, School Ethics Commission, 01 May 2013.

# Complaints

- SEC found Board member violated the Act by:
  - Acting on complaint before going to Superintendent.
  - Board member went into school and took pictures of open windows and debris in the bathroom and showed the pictures to a reporter.
- Takeaway:
  - If a parent raises a concern with you, tell them to raise it with the school administration.

In The Matter of Raymond A. Delbury, Sussex-Wantage Regional Board of Education, Sussex County, DKT. NO.337-11/07, Commissioner of Education, 06 December 2007.

# Confidentiality

- “I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools.”
- What is confidential?
  - Everything discussed in executive session.
  - Matters involving individual students, including disciplinary measures.
  - Almost all personnel matters involving employees, including performance evaluations.
    - Both students and employees have individual rights to privacy that must be respected.
  - Matters involving anticipated and pending litigation and any purchase of land or property.

# Confidentiality

- Board member taped a portion of the executive session on her cell phone.
- Board member shared the tape-recorded portion of the executive session with two attorneys after the meeting.
- Board member was found to have violated the Act by breaching the confidentiality of the Board's deliberations during the executive session.
- SEC also indicated that allowing members to tape a closed session introduces a greater and unacceptable threat that confidential deliberations may become public.
- The penalty was a reprimand.

In James Messner, et al. v. Deptford Township Board of Education, et al., Commissioner of Education, DKT. NO. 1-1/14A, 09 June 2014.

# Confidentiality

- Board member posted on an Internet chat room and bulletin board, where anyone could access, confidential information provided to all Board members from the administration about an employee's medical condition.
- SEC found this conduct undermined the employee's ability to effectively execute his or her duties.
- Board member received a six-month suspension.

Arthur Jacobs v. Raymond Delbury, Board of Education of the Sussex-Wantage Regional School District, Sussex County, DKT. NO. 348-11/08, Commissioner of Education, 09 January 2009.

# Confidentiality

- Board discussed a legal bill during executive session.
- Following the meeting, a board member released information regarding the closed session discussion to a reporter for *The Observer*.
- Although the information was later released to the public, it was not public at the time the board member shared it with the reporter.
- By revealing matters discussed in executive session before they are made public, the board member violated the Act.
- Reprimand.

# Prohibited Conduct

- Board member posted information on a website stating a local politician owed the district money for his children's lunches.
- Board member had access to this information as a Board member.
- SEC found the Board member violated the Act by using his official position to secure unwarranted privileges, advantages, or employment for himself.
- Board member received a reprimand.

In The Matter of Jose "Alex" Ybarra, Passaic City Board of Education, Passaic County, DKT. NO. 299-10/09, Commissioner of Education, 14 December 2009.



# Nepotism

## ■ LCCS Bylaw 0142.1C Nepotism

- Board may not appoint a Board member's relative to any position of employment during the Board member's tenure.
  - Spouse/civil union, domestic partner, or Board member or Board member's spouse's parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepbrother, stepsister, half-brother or half-sister whether related by blood, marriage or adoption.
  - Recent opinions expanded this definition to include "other" such as first cousin, co-habituating partner, ex-spouse etc.
- Persons employed prior to the date the relative becomes a Board member are not prohibited from continuing employment in the school.
- Excludes per diem substitutes and student employees.

# Hiring/Personnel

- May not hire a relative of a board member or chief school administrator. (May be exceptions)
- If the relative already works in the district:
  - A board member may not take part in employment matters concerning the CSA or supervisors in the chain of command between the relative and the CSA.
  - A board member may not take part in the search, selection, or vote to hire a new CSA, and post-hire evaluations and contract discussions.

# Hiring/Personnel

- No Board member shall use their position to secure unwarranted privileges, advantages or employment for themselves, members of their family, or others.
  - Board members should not refer anyone to the Head of School/LCCS staff for employment.
  - Same may be viewed as an attempt to use your position to secure an unwarranted privilege.

# Hiring/Personnel

- Board member approached the Director of Buildings and Grounds who felt pressured into interviewing the Board member's friend.
- Board member previously emailed principals promoting an applicant for a teaching position and received a reprimand.
- Board member attempted to use her position to secure employment for a friend.
- Board member censured for failing to recuse herself from voting on personnel matters where she was arguable biased, and for improperly communicating with administration regarding recruitment and hiring of employees.

In the Matter of Rhonda Williams-Bembry, Board of Education of the City of Hackensack, Bergen County, Commissioner of Education, DKT. NO. 325-10/15.

# Private Action

- Board President rebuts newspaper article with Letter to Editor from Board without Board approval.
- SEC found it was a *private action that could compromise the Board*.
- Board member censured.
- SEC found that the letter:
  - Addressed Board business
  - Intended to speak for the Board
  - Reasonable likelihood public would perceive it as official Board statement

In Jennifer Dericks, Maureen Sharpe, Daryl Savage, Shirley Boushell, Ronald Bassani v. Michael Schavoni, Board of Education of The Township of Sparta, Sussex County, SEC DKT. NO. C41-07, Comm. DKT. NO. 2-3/09A, Commissioner of Education, 18 August 2009.

# Volunteering

- School board members are not “banned” from volunteering in the school, but there are important considerations to make.
  - Acceptable:
    - One-time, infrequent, non-executive
  - Not Acceptable:
    - Supervision, management and direction of personnel or funds
    - Regular contact with student, staff, or parents
    - Active day-to-day presence

# Volunteering

Consult with Head of School, if :

- You will be giving directions or orders to staff or students
- You will be taking orders from staff
- You will be in the school often
- You will be handling the school district's money at all
- You will be the lead or regular volunteer for a school district club, or a coach for a school activity or sport
- It will seem to visitors that you work in the school
- The organization for which you are performing the school-based volunteer work (e.g., Girl Scouts, PTO, Rec Commission) does not have its own bylaws and bank accounts

# Providing Services

- Board member was in the process of creating a nonprofit entity that provides families in immediate need with meals, gift cards, or supplies, or directly pays household bills.
- Asked the SEC if there were limitations related to assisting families in the district and collaborating with the district's parent-teacher organization.
- The SEC determined that because the nonprofit was not under the control of, and not overseen or managed by, the board, the board member was not prohibited in being involved in the nonprofit *per se*.
- However, the board member would violate the SEA if the board member or the nonprofit “directly solicited financial contributions, donations, or supplies from District families; provided services to District families; and/or collaborated with the District PTO” while the member was on the board.

Advisory Opinion A03-21



# Open Public Meetings Act

- May have “meetings” only on notice to public
- All discussions must be in public unless specifically authorized or required to be in private

# Open Public Meetings Act

- Executive Discussions:
  - Confidential matters
    - Student issues
    - Attorney client privilege
  - Personnel
  - Negotiations
  - Security Issues

# Open Public Meetings Act: Meeting

- A “meeting” includes: any gathering whether corporeal or by means of communication equipment, which is attended by, or open to, all of the members of the public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body.”
  - -N.J.S.A. 10:4-8(b)

# Open Public Meetings Act: E-Mails

- Under this definition, a chain of e-mails or group text messages between members of a governing body could be construed as a meeting.
- A one-way flow of information via email is unlikely to constitute a “meeting”.

# Open Public Meetings Act: E-Mails

- Two County Prosecutors Offices (Burlington and Gloucester) have advised:
  - Email communications should, as far as practicable, not include an effective majority of the governing body where discussion of information related to the business of the municipality is involved.
  - Where email communications do include an effective majority of the governing body, such communications should not include any request for a response.

# Open Public Meetings Act: E-Mails

- Two County Prosecutors Offices (Burlington and Gloucester) have advised:
  - “Rolling” emails conversation should be avoided:
    - “Rolling” email occurs when one (1) member of the governing body or a third-party contacts other members via email individually to successively discuss or gain opinions on an item of Township business.

# E-Mail Communications

- Board member initiated e-mail conversation with fellow board members and administrators to discern whether the Board would be able to meet in executive session to discuss issues related to a pending grievance.
- Engaged in “lengthy” email discussion regarding possible methods of handling the matter.
- “The Commission does find troubling, however, the numerous amount of e-mail correspondence between Respondent, Complainant, and other board members in this matter. The Commission reminds the parties that Board business must be conducted in a public forum in compliance with the Open Public Meetings Act (OPMA), set forth at N.J.S.A. 10:4-6 et seq.”
- Commission “lacks the jurisdiction to review OPMA issues.” However, “we admonish the Board members to be mindful of their legal obligations.”

Hanlon v. Gross, Jackson BOE, Dkt. No. C14-03

# Open Public Records Act

- All “government records” presumed to be public unless specifically exempted.
  - N.J.S.A. 47:1A-1 et seq.
- Format and location are irrelevant – even e-mails on personal e-mail accounts are accessible if they deal with government/board business.



# Open Public Records Act

- E-mails between Board members may be considered “public records” unless they involve:
  - Advisory consultative, or deliberative
  - Attorney-client privilege
  - Personnel/Grievances
  - Students

# Social Media Communications

- Board Bylaw 0169.02, Board Member Use of Social Networks.
- When communicating on issues concerning LCCS, you must make clear that you are speaking as a resident and not as a board member:
  - For example, you can issue a statement on a Facebook account registered as “Name” but not one registered as “Name, Local Board of Education Member” or the like. Any social media account that inherently indicates your position as a Board member cannot be used. *Advisory Opinion A36-14 (October 29, 2014).*

# Social Media Communications

- When publicly commenting on issues concerning LCCS on a personal social media account, Board members must:
  - Identify themselves as a Board member; *Advisory Opinion A03-07 (April 2, 2007)*.
  - Indicate that the statement is not authorized by, nor written on behalf of, the Board.
    - Language must be clear, visible, and indicate your comments are as a private citizen and not as a member of the Local Board of Education nor are they endorsed by the entire Board; *Advisory Opinion A36-14 (October 29, 2014)*.

# Social Media

- Board member referred to Superintendent as a “terrorist” on his Facebook page.
- Action was found to be a deliberate action in violation of the Act that states a Board member is to support and protect school personnel in proper performance of duties.
- Such a public slur by a Board member is likely to undermine the Superintendent’s effectiveness.
- Reprimanded.
  - Remember: Private e-mails may become public.

Bey v. Brown, Camden BOE, DKT. NO. 365-12/11, Commissioner of Education, 20 March 2012. :

# Expressing Personal Opinion

- To avoid violation of School Ethics Act, Board member must:
  - remember authority rests with Board.
  - ensure letter/email/post does not indicate it is being written on behalf of Board.
  - indicate letter/email/post is written as a private citizen and not as a Board member.
  - write or speak accurately.
  - maintain confidential all matters that if disclosed would needlessly injure the school.

# Social Media

- Board members are not prevented from using social networks.
- Board members are held to a higher standard than the general public regarding standards of conduct and ethics.
- Board members must avoid conduct on a social network that violates School Ethics Act.
- Communications, publications, photographs, and any other information posted or reposted by Board member on a social network could violate School Ethics Act.

# Social Media

- “Social Networks” include, but not limited to,:
  - Internet blogs
  - Electronic bulletin boards
  - Emails
  - Social networking websites
  - Text messages
  - Any other online platform where people may post or communicate interests, opinions, or other information.
- “Use of a social network” includes, but not limited to,:
  - Posting to a social network
  - Reposting another person’s post to a social network
  - Messaging
  - Any other publication of material on a social network

# Social Media

- Exercise care in setting *appropriate boundaries* between your personal and public online behavior.
  - What is private in digital world may becoming public without consent or knowledge.
  - Carefully review privacy settings on social networks.
  - Exercise good judgment when posting content and information.



# Social Media

Board members are advised as follows when using social networks:

- Uphold the school's value of respect for any individual(s) and avoid making defamatory statements about Board of Trustees, school, employees, students, or their families
- Not disclose confidential information.
- Not post anything that would violate any of the school's policies for Board members.
- Not use or refer to their Board of Trustees title or position when soliciting for a business organization that he or she or any immediate family member has an interest.
- Refrain from having communications through social networks with other Board members regarding Board business.
- Not respond to any postings or question regarding Board or school business; refer questions/inquiries to Head of School.

# **Harassment, Intimidation and Bullying (“HIB”)**

# Anti-Bullying Bill of Rights Act

The New Jersey legislature enacted what is known as the “Anti-Bullying Bill of Rights Act” in January of 2011.

Effective July 1, 2018, new regulations governing the Anti-Bullying Bill of Rights went into effect.

On January 10, 2022, Governor Murphy signed into law Mallory’s Law amending the Anti-Bullying Bill of Rights Act (“ABRA”).

# 2022 ABRA REVISIONS

The amended cyber-harassment crime provision went into effect immediately, all other provisions went into effect in July 2022.

Provisions revised:

- Parental rights and responsibilities
- District protocols and reporting obligations
- Potential responses to acts of HIB
- Creates new State-level position of School Climate State Coordinator within NJ DOE to serve as a resource to parents, students, and educators.

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

“Harassment, intimidation or bullying” means

- Any gesture, written, verbal or physical act, or any electronic communication
- Single or series of incidents
- Reasonably perceived as motivated by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic
- AND: takes place on school property, school-sponsored function, on a school bus, or off school grounds that *substantially disrupts or interferes with* the orderly operation of school or student rights; AND
  - Reasonable person should know effectively harms or causes reasonable fear of harm to Target’s person or property; OR
  - Effectively insults or demeans any student or students; OR
  - Creates hostile educational environment by interfering with the student’s education or by severely or pervasively causing physical or emotional harm to student

# “Other Distinguishing Characteristic”

- New kid
- Socio-economic status
- Quiet
- Vegetarianism
- Poor athletic ability
- Academic stereotype - artsy, boy; scientific, girl
- Height/Weight
- Hair Color/Style
- Accent/Lisp/Stutter

# What is HIB?

Student's intentions (joking, etc.) are not controlling

The effect on the victim is what matters!

Includes bullying by staff or others.

# Bullying can be...

## Direct

- Hitting
- Name-calling
- Teasing
- Texting
- Online abuse

## Indirect

- Social Exclusion
- Spreading Rumors
- Texting others
- Altering a website



# Four General Types of Bullying

*Verbal* – Includes taunting, name calling, malicious teasing or making threats.

*Psychological* – Includes spreading rumors, purposefully excluding people from activities, breaking up friendships.

*Physical* – Includes hitting, punching, shoving, spitting or taking personal belongings.

*Cyberbullying* - Includes using the Internet, cell phone or other digital technology to harm others.

# Conduct OFF School Grounds

Examples of actionable conduct that could occur off school grounds:

- A student at home sends a text message to a classmate, threatening him and victim is afraid to attend school.
- Sexual-orientation based comments posted on Facebook and directed at one student, resulting in that student becoming withdrawn, skipping school or failing classes.

# Bullying vs. Conflict

Not all instances of unkind or insensitive behavior is HIB.

Conflict is a mutually competitive or opposing action or engagement, including a disagreement, an argument or a fight which is a normal part of human development.

- During a conflict, name-calling, threats, and other conduct that might look like bullying can occur.

Bullying is primarily one-sided, where one or more students are victims of one or more person's aggression.

# Procedure for Reporting

## School Day 1 –

All acts of HIB must be reported verbally to the principal on the same day when the school employee or contracted service provider witnessed or received reliable information regarding an incident.

Principal must inform parents/guardians of all students involved.

- Pursuant to the 2022 ABRA revisions, the School must keep a written record of date, time and manner whenever the School notifies parents/guardians about alleged HIB incident.

# Communications With Parents

The regulations effective July 1, 2018 require the School to take into account the circumstances of the incident when communicating with parents in order to protect students.

The regulations do not define how the School is to do this.

The language was developed in response to concerns related to revealing student sexual orientation or gender identity/expression.

# Procedure for Reporting

## School Day 1 – Preliminary Determination

Pursuant to regulations effective July 1, 2018, the Board has granted the principal discretion to determine whether or not an incident constitutes a reported HIB, thus initiating the investigation process.

- Principal must assume the allegations are true when determining whether or not to investigate.
- Parents are permitted to appeal the principal's decision not to initiate an investigation to the Board.



# Initiation of HIB Investigation

Since the School's HIB Policy permits Preliminary Determination, then under the 2022 ABRA revisions:

- The principal must report to the Head of School if a preliminary determination is made under the School's policy that the reported incident or complaint is a report outside the scope of the definition of HIB.
- If the Head of School determines that an investigation is necessary, the Head of School may require the principal to conduct an investigation.
- The Head of School must notify the principal of this determination in writing.

# Timeline for Investigation / Reports of HIB

## School Day 2 –

Principal must initiate investigation by Anti-Bullying Specialist within one school day of report.

May appoint others to assist.



# Timeline for Investigation / Reports of HIB

Written report to Principal to be made within 2 days by employee or contracted service provider who witnessed or received reliable information of a potential student HIB incident.

## Pursuant to 2022 ABRA revisions:

The written report shall be filed on the numbered form developed by NJDOE – i.e. the HIB 338 Form.

The form must be submitted promptly by Principal to Head of School *even if* preliminary determination made not to do HIB investigation.

# HIB 338 Form

There are two versions of the HIB 338 Form:

- Family/Caregivers
- Local Educational Agency Personnel

An HIB 338 Form is **required** for any reported allegation of HIB.

If a parent/caregiver makes a report to the school, and they do not complete the HIB 338 Form, the staff member who received the information **must** complete the HIB 338 Form.

# Timeline for Investigation / Reports of HIB

Investigation must be completed ASAP but no later than 10 school days from the time of the written report, or from the date the Principal receives written notification from Head of School directing Principal to initiate investigation into an incident preliminarily determined outside HIB.

- If information is missing at the end of 10 days, a report must still be prepared and amended after that information becomes available.

# Investigation Findings

If it is determined that the incident did not meet the criteria for HIB as defined by N.J.S.A. 18A:37-14,

**BUT**

- the child's actions constituted a violation of Student Code of Conduct,

**Then**

- disciplinary actions or remedial measures take place as determined by the Principal or Head of School.
- Just because it isn't determined to be HIB does not mean the school is unable to respond or take action.

# Timeline for Investigation / Reports of HIB

Head of School receives reported results two school days from investigation's completion.

**Next Board Meeting** – Head of School to report to the Board.

**Within 5 school days of Board Meeting** - School must provide “information about the investigation” to Parents / guardians of “students who are parties to the investigation” about investigation and findings, including:

- *Nature of investigation*
- *Whether evidence of HIB was found (i.e., HIB or not HIB)*
- *Whether discipline was imposed (i.e., yes or no)*
- *Services provided to address the HIB (i.e. yes or no)*



# Timeline for Investigation / Reports of HIB

## Report to Parents-

When providing parents with “information about the investigation” the School must not reveal personally identifying information regarding other students involved in the incident, including witnesses:

- Only provide parents with information regarding **their** student.
- May tell parent whether discipline was imposed on offender, but not nature of discipline.
- Do not reveal identifying characteristics of other students in letter to parents.
- Do not reveal a student’s special education status to parents if discussing matter telephonically.

# Board Member Duties...

## Board Hearing

- After receipt of report, honor parent or guardian requests for a hearing within 10 days of request.
- Effective July 1, 2018, parents are required to request a hearing within 60 days after receipt of the outcome of the investigation.
- Hearing is conducted in Executive Session to protect confidentiality of students.

# Board Member Duties...

## Board Hearing

- Board may hear from school Anti-Bullying Specialist and others, as appropriate, about the incident, recommendations for discipline or services, or programs instituted.
- Board issues a written decision affirming, rejecting, or modifying Head of School's decision at the next meeting following its receipt of the Head of School's report on the results of the investigations or following the hearing.



# Parents Rights to Appeal

- The Board's decision may be appealed to the Commissioner of Education within 90 days of the Board's decision.
- Parents may also file a complaint with the New Jersey Division of Civil Rights within 180 days of alleged incident based on membership in a protected group.
- Parents may also file a complaint in civil court.
- Executive County Superintendent shall investigate a complaint of a violation by a school district when the complaint is not adequately addressed on the local level.

# Reprisal or Retaliation Prohibited

- Engaging in reprisal, retaliation or false accusation against a victim, witness, one with reliable information, or any other person who has reliable information about an act of HIB or who reports an act of HIB is prohibited.
- All suspected acts of reprisal or retaliation will be taken seriously and appropriate responses (consequences and/or remedial actions) will be made.

# Pending Legislation

## Bill S3715/A5340 - Introduced March 13, 2023.

- If passed, the bill would remove the requirement that the conduct be motivated by actual or perceived characteristics from the definition of HIB.
- The updated definition of HIB would be as follows:
  - "Harassment, intimidation or bullying" means any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:
    - a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
    - has the effect of insulting or demeaning any student or group of students; or
    - creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.
- There has been no action taken on this Bill since its introduction in March 2023.

# HIB CASES

**W.M. o/b/o J.M. v. Twp. Of Bedminster Bd. of Ed.**, EDU 07337-19  
(December 15, 2022), Commissioner concurred (March 7, 2023)

- Board found that J.M. had committed an act of HIB against classmate when he made comments regarding their weight and attire.
- Petitioner challenged the HIB finding.
- J.M. admitted to asking victim how many pounds he weighed. Witnesses reported J.M. calling victim fat behind his back and referring to his shoes as being as big as “sailboats”. Victim alleged that J.M. used his body to push and intimidate him.
- As a result of the conduct, victim stopped taking his medication for a period of time in hopes that he would lose weight. He did not want to come to school or wear his clothes because he was worried that J.M. would make fun of him.
- The ALJ concluded that Petitioners failed to meet their burden of proof that the Board acted in an arbitrary, capricious, or unreasonable manner in concluding that J.M.’s actions constituted HIB.
- Commissioner concurred.
  - The Commissioner took note that it is irrelevant to the determination in this matter whether the victim participated in trash-talking or whether J.M. was joking; the HIB definition does not consider the accused’s intent.
  - It is also irrelevant that the victim did not have a physical injury or miss school; the victim’s fear of coming to school as well as his refusal to take his medicine constitutes a substantial disruption of his rights.

# HIB CASES

P.F. o/b/o D.F. v. Bd. of Ed. of the High Point Regional High School District, EDU 10889-22 (April 4, 2023), Commissioner concurred (May 16, 2023)

- D.F. alleged that she was the victim of a HIB when another student allegedly grabbed her by the arm and would not let go.
  - Petitioner also alleged that the student had stolen D.F.'s Chromebook twice before turning it in, claiming that she had found it.
- After an investigation by the ABS, the Board determined that this incident was ordinary student conduct—not HIB—as a result of a history of sporadic conflict between the two students.
- Petitioner challenged the no HIB finding.
- The ALJ determined that no such distinguishing characteristic or difference had been identified.
- Commissioner concurred.



# HIB CASES

T.Y. o/b/o S.Y. v. Bd. of Ed. of the Gateway Regional High School District, EDU 03784-22 (May 3, 2023), Commissioner concurred (June 15, 2023)

- First incident: Victim was walking in the school hallway near S.Y., who was agitated by the crowds. Victim asked her why she was so mad. According to victim, S.Y. responded, “Shut up. That’s why you’re Black.”
- Second incident: S.Y. referred to another girl’s black and blue finger as the color of victim (a black student). Victim and other students left the lunch table.
- Victim would call S.Y. “cracker”, but S.Y. volunteers that it did not bother her.
- The ALJ upheld the Board’s finding of HIB.
  - S.Y.’s racial comment at the lunch table and injecting race into her encounter with the victim in the crowded hallway were “reasonably perceived” by the victim as being motivated by race, a “distinguishing characteristic.”
  - S.Y.’s racial comments substantially interfered with the rights of another student. The victim left the lunchroom upset and her physical reaction to S.Y.’s comments disrupted her next class to the extent that she had to be removed from class by her teacher.
  - The racial statements could reasonably be perceived as offensive, insulting, and demeaning.
- Commissioner concurred.

# HIB CASES

J.M. o/b/o B.M. v. The Chathams School District Bd. of Ed.,  
EDU 04092-19 (April 13, 2023), Commissioner Reversed (July 6, 2023)

- Petitioner challenged the Board's determination that B.M., committed an act of HIB against a classmate who has a nut allergy.
- During the school lunch period, B.M. offered victim a cashew, which caused victim to recoil.
- B.M. subsequently touched victim's lunch bag and water bottle with the same hand that had offered the cashew, even after victim warned him to stop due to his nut allergy.
- The ALJ concluded that the record did not support a finding that B.M. committed an act of HIB and that the Board's HIB determination was unjustified and excessive.
- The Commissioner rejected the ALJ's conclusion, upheld the Board's determination, and found that the ALJ erroneously focused upon whether, from his own perspective, B.M.'s actions were severe enough to warrant a finding of HIB instead of whether the Board's determination was arbitrary, capricious, or unreasonable under the Act.

# QUESTIONS