

New Jersey Center  
for Tourette  
Syndrome &  
Associated Disorders  
Presents

TOURETTE TALK:  
HARASSMENT  
INTIMIDATION &  
BULLYING: Parental  
Rights and School  
District Obligations

Presented by:  
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Sussan Greenwald & Wesler  
October 27, 2022

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### HISTORICAL OVERVIEW OF THE LAW

2002 - NJ ENACTED AN ANTI-BULLYING  
LAW  
Required schools to adopt a HIB policy

2008 - COMMISSION ON BULLYING IN  
SCHOOLS ESTABLISHED

2009 - COMMISSION  
RECOMMENDATIONS SUBMITTED TO  
THE GOVERNOR

2010 - NEW HIB LAW INTRODUCED AND  
APPROVED BY THE LEGISLATURE

2011 - ANTI-BULLYING BILL OF RIGHTS  
ACT SIGNED INTO LAW EFFECTIVE  
SEPTEMBER 2011

2022 - ANTI-BULLYING TASK FORCE AND  
BULLYING PREVENTION



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### PURPOSE OF THE LAW

In 2002, Anti-Bullying Law  
was enacted requiring  
districts to adopt a HIB policy

Evolved into Anti-Bullying  
Act of 2011 in order to  
strengthen standards and  
procedures for reporting,  
investigating and responding  
to incidents of harassment,  
intimidation and bullying

Address school climate by  
using a comprehensive  
approach to prevention of  
HIB



## NEW JERSEY ANTI-BULLYING TASK FORCE

Final Report January 2015  
Makes various recommendations to  
further clarify the law

Include proper guidance on  
definition of HIB to make it  
easier to identify  
Establish minimum criteria for  
conducting HIB investigations at  
principal's school  
Increase training and focus on  
best practices to improve  
school climate  
Address needs of most  
vulnerable populations when  
developing policies,  
procedures, programming and  
training  
Require school climate self-  
assessment

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## THE LEGAL DEFINITION OF HIB

Any gesture, any written, verbal or physical act or any  
electronic communication, whether it be a single  
incident or series of incidents, that:

Is reasonably perceived as being motivated by an  
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, **AND** that:

Substantially disrupts or interferes with the  
orderly operation of the school or the rights of  
other students, **AND** that

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## THE LEGAL DEFINITION OF HIB Cont...

EITHER:

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; 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  
a physical or emotional harm to the student.

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### What does the HIB Law Require School Districts to do?

Develop and implement an anti-bullying policy/procedures outlining legal definition which shall be reviewed annually

Policy must be publicized and on district website via a link

Create new school roles

Anti-bullying coordinator

Anti-bullying specialist

Establish a school safety team



### What School Districts Must Do cont...

Implement

anti-bullying prevention trainings and programs

Investigate

allegations of HIB

Report

all HIB incidents to NIBOC

Develop, foster and maintain a positive school climate



### REPORTING PROCEDURES

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

Principal must inform parents of ALL students involved in the alleged incident – information does not mean everything there is to know

All acts of HIB shall be reported in writing to the principal within 2 school days of when the school employee or contracted service provider witnessed or received reliable information that a student has been subject to HIB

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## REPORTING PROCEDURES Cont...

Investigation shall be initiated within 1 school day of the report and shall be conducted by a school anti-bullying specialist.

Investigation shall be completed within 10 school days from the date of the written report but report may be amended if necessary.

Results of the investigation must be reported to the superintendent within 2 school days.

Superintendent has discretion to issue consequences, establish training programs, or order counseling or recommend other action.



## REPORTING PROCEDURES Cont...

Results of investigation shall be reported to the board of education no later than the date of the next board of education meeting following the completion of the investigation along with recommendations of superintendent.

Parents shall be entitled to receive information about the investigation within 5 days AFTER the results are reported to the board.

Nature of investigation

Findings

Whether discipline was imposed or services provided to address the incident



## REPORTING PROCEDURES Cont...

Parents may appeal and request an informal hearing before the board.

A parent seeking an appeal must do so within 30 calendar days after receipt of written notice of outcome of investigation.

Hearing must be held within 30 days of the appeal.

Not adversarial but proceeds like a trial. Board may hear from anti-bullying specialist.

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## REPORTING PROCEDURES Cont...

At the next board of education meeting (same night usually) the board shall issue a decision in writing

Affirm

Modify

Reject

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## RIGHT TO APPEAL

Board's decision may be appealed to the Commissioner of Education within 90 days

Burden of Proof to demonstrate that Board's decision was arbitrary, capricious or unreasonable

Parents, students, guardians or an organization may file a complaint with the Division on Civil Rights within 180 days of the occurrence of any HIB incident based on a protected class

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## WHO CAN INITIATE THE INVESTIGATION?

As of July 1, 2018

Local board policy may allow a school principal in consultation with the ABS to make an initial determination as to whether reported incident is an act of HIB

- a. Must assume all allegations are true
- b. Parent may appeal decision not to initiate an investigation



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# APPROVED PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITIES

As of July 1, 2018

- APSSDs were required to adopt HIB policy
- The sending district of an alleged victim is required to take lead in investigation involving APSSD students when incident occurs:
  - On school bus
  - At school sponsored function and/or
  - Off school grounds
- APSSD staff are to cooperate with sending district in investigation



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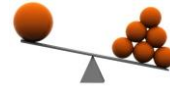
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## RECOGNITION OF POWER IMBALANCE RECOGNIZED

As of July 1, 2018, the revised regulations required every board policy to include a statement that bullying is unwanted aggressive behavior that may involve a real or perceived power imbalance. *Power imbalance is not a distinguishing characteristic but what underlies the imbalance is likely to be the distinguishing characteristic.*



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## STUDENTS WITH DISABILITIES

As of July 1, 2018, the revised regulations required districts to consider nature of disability when determining remedial actions  
NOTE: Just because a student has a disability does not mean he or she cannot be a bully or be found to be in violation of the HIB policy.



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## RECENT AMENDMENTS TO HIB LAW

On January 10, 2022, Governor Phil Murphy signed Chapter 338 into law. The new law has two effective dates. The provisions related to the criminal code, which increase fines for crimes of cyber-harassment, went into effect immediately. The remaining provisions, concerning school investigations of HIB, go into effect on July 9, 2022.



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## SO, WHAT CHANGED?

Effective as of January 10, 2022

1. Changes to Criminal Code, C.2C:33-4.1
  - The statute increased the fines to a parent or guardian imposed by a court for cyber-harassment.
  - Parents/guardians who demonstrate willful or wanton disregard in the exercise of supervision and control may be liable under civil action.



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### NEW REQUIREMENTS FOR ANTI-BULLYING POLICIES

Effective July 9, 2022

1. First and Second Acts of HIB
  - Investigation results will become part of the student's record.
  - The student may be subject to remedial actions.
2. Third and Each Subsequent Act
  - Investigation report will become part of the student's record.
  - An individual student intervention plan will be developed.
  - Student may be required to complete a class related to reducing HIB behavior.

## RECORDKEEPING AND REPORTING REQUIREMENTS

2. The law is unchanged in terms of all suspected acts of HIB being reported verbally to the school principal on the same day
  - The principal must inform the parents/guardians of all students involved
  - The principal must keep a written record of the date, time and manner of his/her notification



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## DOE NUMBERED REPORT

3. The written report must be on a numbered form developed by the NJDOE
  - The principal must promptly submit the form to the superintendent
  - The NJDOE report must be filled out in all cases
  - This report form must be kept on file at the school

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## PARENT REPORTING FORM

4. The New Law did not change the provision in NJSA 18A:37-15b(5) which requires districts to have a procedure for reporting a HIB including a provision that permits a person to report a HIB anonymously

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## INVESTIGATION CLOSE AND APPEALS

5. Chapter 338 maintains current law provision but adds the additional action of seeking additional information
  - At the end of an investigation, the superintendent must be notified of the results within two days
  - Parents continue to have the right to request a BOE hearing and to challenge the board's decision in court

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## REQUIREMENT TO POST PARENTS' GUIDANCE ON ABR DOCUMENT



6. All schools and districts must post the NJDOE document Guidance for Parents on the Anti-Bullying Bill of Rights on their websites

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## SCHOOL CLIMATE STATE COORDINATOR

7. School Climate State Coordinator ("State Coordinator")
  - Duties and Responsibilities
    - *Identifying and disseminating research and resources*
    - *Disseminating information*
    - *Reviewing, analyzing and reporting HIB data*
    - *Assisting the NJDOE in creating public information programs*
    - *Work collaboratively with law enforcement, the NJDOE, Division on Civil Rights and other state agencies*
    - *Provide an annual report to the Commissioner of Education, State Board of Education, and Legislature*

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## PRELIMINARY DETERMINATIONS

8. Chapter 338 maintains a principal's authority to make a preliminary determination that an allegation, if true, does not meet the legal definition of the HIB
9. Chapter 338, requires however, when a principal does so, he/she must report this determination to the superintendent
10. The superintendent may require the principal to investigate the incident (if they determine the incident is within the scope of a HIB)
  - The superintendent must put this notification in writing
  - This notification triggers the 10-day investigatory timelines

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## The Role of Law Enforcement

11. Law enforcement will play no role in the investigation of HIB cases, unless criminal activity is suspected.



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## NJ Bullying Case Law

*M.S. and N.S. o/b/o J.S. v. Hainesport Township Board of Education*– The parents of J.S. appealed the Board's decision finding that J.S. violated the ABBRA and committed an act of HIB when J.S. slammed another student's Chromebook, pulled on his earbuds, called him "weaking" and commented on the student's athletic ability, using the phrase, "you suck."

The Board upheld the administration's recommendation that J.S. receive a one-day, in school suspension and his schedule be adjusted to limit interaction with the other student.



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## NJ Bullying Case Law

- J.S.'s parents appealed the Board's determination.
- The ALJ and the Commissioner both agreed that the Board did not act in an arbitrary, capricious, or unreasonable manner when it determined that J.S.'s conduct met the criteria for HIB:
  - The conduct was motivated by the other student's distinguishing characteristic of being weak and bad at sports;
  - The conduct disrupted or interfered with the orderly operations of the school or the rights of other students; and
  - The conduct made the other student feel embarrassed
- While J.S.'s parent argued that the situation was conflict between the students rather than HIB, this argument was rejected.
- The evidence did not suggest a "back and forth" of taunting between J.S. and the other student.

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## NJ Bullying Case Law

MM-E o/b/o B.E. v. Fort Lee Board of Education The parents brought several charges against the school district staff, administration, and the board of education after a claim of harassment, bullying, and intimidation (HIB) was made against their child.

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## NJ Bullying Case Law

In 2019, after an incident in which the district's anti-bullying coordinator and assistant principal investigated a matter involving three students and a cell phone, it was found that the student at issue had participated in an act of HIB and was given three days of detention.

The matter moved through the district's internal appeal processes and was heard by the board of education.

The Board rescinded the HIB binding. The student enrolled in a different school of his choosing for the 2019-2020 school year.

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## NJ Bullying Case Law

Nearly two years later, the parent of this student brought seven civil charges against the BOE and individual staff and administration.

The essence of the charges alleged that the district's HIB process itself resulted in the student being bullied by staff. Among the charges was a claim of "bullying" against the defendants under NJ's HIB Law.

In a summary judgment, the judge dismissed the charge, saying that NJ does not recognize an independent tort claim for bullying, and even if it did, the plaintiffs had not pled a "cognizable claim. The NJ AB&RA does not create or alter any tort liability."

The Judge clearly discerned that claims of HIB are properly brought before the NJ Commissioner of Education.

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## NJ Bullying Case Law

DeFalco v. Hamilton Twp. Bd. Of Ed (6/25/19)— Teacher found to have committed an act of HIB towards a student with disabilities argued that the process used during the Board hearing violated her due process rights because she did not have the opportunity to examine and cross-examine her accuser.

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## NJ Bullying Case Law

DeFalco v. Hamilton Twp. Bd. Of Ed (6/25/19), cont.

Honorable Jeff S. Masin disagreed, and issued the following decision:

"While it would no doubt be more satisfactory to some if HIB determinations by school boards were made after a full trial-type, judicialized hearing process with full rights to cross-examine witnesses, I CONCLUDE that there is simply no constitutional, statutory or case law support for the proposition that in a proceeding such as a board HIB determination a right to cross-examination exists. The absence before the board of any direct testimony by the accuser or other witnesses relied upon by the investigator and the Superintendent does not present a ground for finding the process in violation of due process or fundamental fairness. The due process/fundamental fairness requirement in an HIB inquiry is met by a process in which the staff member is made aware of the charges and evidence upon which the charge is based before the board hearing and is then able to present to the board such documents, witnesses and testimony and argument as the staff member may offer. The board may then evaluate this evidence and determine if an incident of HIB occurred. Given the nature of the legislative command and the limited sanctions, which do not involve the loss of tenure, employment or future employment (the first two not without additional processes that would, at least in the tenure situation, involve a full arbitration process), a more "judicialized" process is not mandated."

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## NJ Bullying Case Law

Gibble v. Hunterdon Central Reg. Bd. Of Ed (7/13/16) – Teacher alleged to have made comments to a special education student to the effect that he hoped the student did not have access to weapons or keys to gun closet at home during summer wrestling camp. ALJ concluded that teacher was not afforded appropriate due process and that HIB references should be removed from the teacher's file. The Commissioner affirmed in part – finding that District was required to afford teacher meaningful board hearing similar to that given to students in disciplinary proceedings but instead of removing HIB references, remanded to the District to hold a hearing before the Board. The Board reversed and found no HIB. Certification was denied 6/1/18.

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## NJ Bullying Case Law

S.A. and C.A. o/b/o minor child G.A. v. Board of Education of the Township of Moorestown, Burlington County (10/15/2019)

- Matter involved allegations that a sixth grade student had been the victim of acts of HIB at the hands of her special education teacher
- Allegations included: pulling her papers from her in front of the class to check her work and test scores and seeking her out at the end of class to give her special study guides
- Such actions caused the student discomfort and upset
- Student was eligible for services based on her ADHD and had an IEP which required that she receive in class support, including checks her work

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## Cont.

- It was found that the student was not classified as having an emotional disability nor was there any evidence of a connection between her ADHD and her negative response to having her work checked.
- There was nothing to show that the teacher's actions were motivated by her disability other than the relationship between special education teacher and the student.
- The teacher's conduct could not reasonably be perceived as being motivated by the student's disability or any other distinguishing characteristic.
- Additionally, the alleged conduct did not substantially disrupt or interfere with the orderly operation of the school or the rights of the student.

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## Findings...

- The Commissioner and ALJ agreed that the board of education determination that the teacher had not engaged in behavior that constituted an act of HIB was not arbitrary, capricious or unreasonable.
- The alleged conduct failed to meet the statutory definition of HIB as the teacher's conduct was not motivated by the student's status as a special education student. No distinguishing characteristic was found.
- October 15, 2019 – Appellate Division affirms Commissioner. Petitioner did not overcome the presumptive validity of the Commissioner's final decision. Did not establish that the board's determination was arbitrary, unreasonable or capricious. Insufficient facts to support the conclusion that the teacher's actions were motivated by student's ADHD or other personal characteristics. Even if the court were to presume that teacher was insensitive or even unkind, no evidence that it was prompted by any actual or perceived characteristic.

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## NJ Bullying Case Law

J.L. o/b/o A.L. v. Bridgewater Raritan Bd. Of Ed. (12/9/16) – Commissioner agreed with ALJ determination that Board conducted a timely and thorough investigation but failed to notify the student and her parents of their right to a hearing and failed to issue a written decision. The Commissioner remanded the matter to the Board to provide petitioner with a hearing and issue a proper decision. Petitioner appealed. The Appellate Division agreed with the Commissioner as to the remand for a board hearing and further opined that petitioner parent was entitled to the full record of the HIB allegations including the underlying investigative report, any additional written reports or summaries, and the letter from the victim's parents to the superintendent.

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## NJ Bullying Case Law

C.K. and M.K. o/b/o M.K. v. Voorhees Bd. Of Ed. 3/23/17 – Principal discretion not part of board policy so matter was remanded back to district

J.B. o/b/o M.B. v. Haddonfield Borough Bd. Of Ed. 6/4/18 – procedural violations including no hearing, findings to principal, no information to parents or written decision from which to appeal warranted remand to district

R.S. o/b/o G.M. v. State Operated School District of Paterson– 1/13/17 – held that graduation of student does not make HIB matter moot – See also B.E. o/b/o minor child F.E. v. Piscataway Bd. Of Ed. - 1/4/19 – held matter regarding one-year suspension for cyberbullying not moot despite parents' withdrawal of student from school

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## NJ Bullying Case Law

G.C. o/b/o C.C. v. Montgomery Twp. Bd of Ed. – 4/23/16 – Held that comments by student in cafeteria to another about being a vegetarian constituted HIB

S.C. o/b/o K.C. v. Montgomery Twp. Bd. Of Ed. – 8/11/16 – Held that comments by student in cafeteria to another student about anorexia constituted HIB

EW and DW o/b/o AW v. Bridgewater Raritan Reg. Sch. Dist. Bd. Of Ed. – 10/23/17 – Held that comment “if you throw those scissors at me, you are going back to the concentration camp” motivated by religion and constituted a HIB

R.P. o/b/o A.P. v. Hamilton Twp. Bd. Of Ed. – 3/29/18 – Held that demeaning sexual comments and graphic sexual gestures made by a fourth-grade student were motivated by a victim's gender and constituted a HIB

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## NJ Bullying Case Law

N.M. o/b/o H.M. v. Chatham Bd. Of Ed. – 11/29/18 – No HIB in 3 of 4 incidents including calling a special education student “you’re f---ing stupid” which insulted and demeaned, caused anxiety and depression and resulted in home instruction

L.K. and T.K. o/b/o A.K. v. Mansfield Bd. Of Ed. – 4/22/19 – Student repeatedly questioned about his name, hair, clothing, gender identity and expression on school bus and school grounds found to interfere with rights of victim and others and also included procedural errors

M.S. and N.S. o/b/o J.S. v. Hainesport Bd. Of Ed. 6/18/19 – Ongoing conflict and comments including weak, weakling and athletic ability including, “you can’t catch, you suck” constituted HIB and motivated by distinguishing characteristic, weak.

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## Cases where NO HIB Found

R.A. o/b/o B.A. v. Hamilton Twp. Bd. Of Ed. – 6/22/16 – Incidents among middle school girls including no birthday party invite, glaring stares, stomping and kicking go lunch bag in hallway and name calling found not to be an HIB because no distinguishing characteristic present

D.D.K. o/b/o D.K. v. Readington Twp. Bd. Of Ed. – 11/16/16 – School bus incident where comparative math abilities were discussed and where comment made about yellow shirt on spirit day, “you’re already yellow, you’re Asian” found not to be a HIB because no disruption or interference with school operations or student rights found. Alleged victim admitted, “fortunately, this was not problematic for my learning experience, but it ticked me off at the time.”

W.D. and J.D. o/b/o G.D. v. Jefferson Twp. Bd. Of Ed.-11/26/19 – fifth grade students in group chat included offensive language, sexual references and “N” word not found to be HIB because all involved viewed as pranking and no disruption found.

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NJ  
Bullying  
Hot Topics

Sharing the full HIB Investigation Report: Due Process Rights v. Student Confidentiality

J.L. v. Bridgewater-Raritan BOE (12/9/16)-Petitioner parent was entitled to the full record of the HIB allegations including the underlying investigative report, any additional written reports or summaries, and the letter from the victim's parents to the superintendent.

L.R. v. Camden City Pub. Sch. Dist., 238 N.J. 547 (2019)- Documents considered "student records" within the meaning of N.J.A.C. 6A:32-2.1, are protected from disclosure under the New Jersey Pupil Records Act, N.J.S.A. 18A:36-19, and its implementing regulations, even if redacted to eliminate personally identifiable information in accordance with FERPA.

NJ Department of Education Guidance for Parents on the Anti-Bullying Bill of Rights Act:

*Limited Information and Student Privacy Laws: Due to student records and privacy laws and regulations, parents are only entitled to review their child's educational records; a parent is not entitled to view the records of other students. This means that parents are not permitted to receive the entire HIB investigation report if it in any way would identify a student other than their own. If parents believe they are entitled to more information than has been provided by the school district, the parents may request a hearing before the board of education. The process for the board hearing and other actions available to parents are outlined in the following section (based on 2012 S.C. §12:26, the Family Education Rights and Privacy Act, and N.J.A.C. 6A:32-7, Student Records).*

<https://www.nj.gov/education/student/safety/behavior/ablr/parents/index.pdf>

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