

***NJ Anti-bullying
Bill of Rights Act -
Simplified***

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HIBster

The First Software Solution Battling Against Bullying

**HIB, AFFIRMATIVE ACTION & CODE OF CONDUCT
MANAGEMENT SOFTWARE**





**I&RS, SECTION 504, ELL, HEALTH, HIB INTERVENTION
SOFTWARE MANAGEMENT**



ONLINE PROFESSIONAL DEVELOPMENT

HIBster PD Annual Subscription Rates

HIBster Professional Development provides a number of professional development topics that satisfy certain requirements set forth by the state. The system is designed by an educator for educators. Each professional development topic is broken into smaller video and/or slideshow sessions that can be completed over multiple sittings. This provides flexibility and ease of use. Each topic includes an end-of-training assessment. The system automatically provides the user with a certificate if the end-of-training assessment is completed successfully with a minimum score of 70%.

Pricing is based on the number of Full-Time Equivalent (FTE) Staff reported to the NJ DOE. HIBster PD does not charge extra for administrative assistants, food service staff, bus drivers, custodians, volunteers, paraprofessionals, coaches, etc.

2016-17 Annual Subscription Rates

Order for 2016-17 and Lock-in Lifetime Rate Below

Up to 599 Staff - \$9.00 each or \$5,000 max
600-799 Staff - \$7.00 each or \$5,000 max
800-999 Staff - \$6.00 each or \$5,000 max
1000+ Staff - \$4.50 each or \$5,000 max

***Plus, FREE accounts for all support staff
Plus, FREE District Account for Substitute and Paraprofessional Module***

Maximum Annual Subscription of \$5,000 per year for all modules.



LIVE TRAININGS AND PROGRAMS

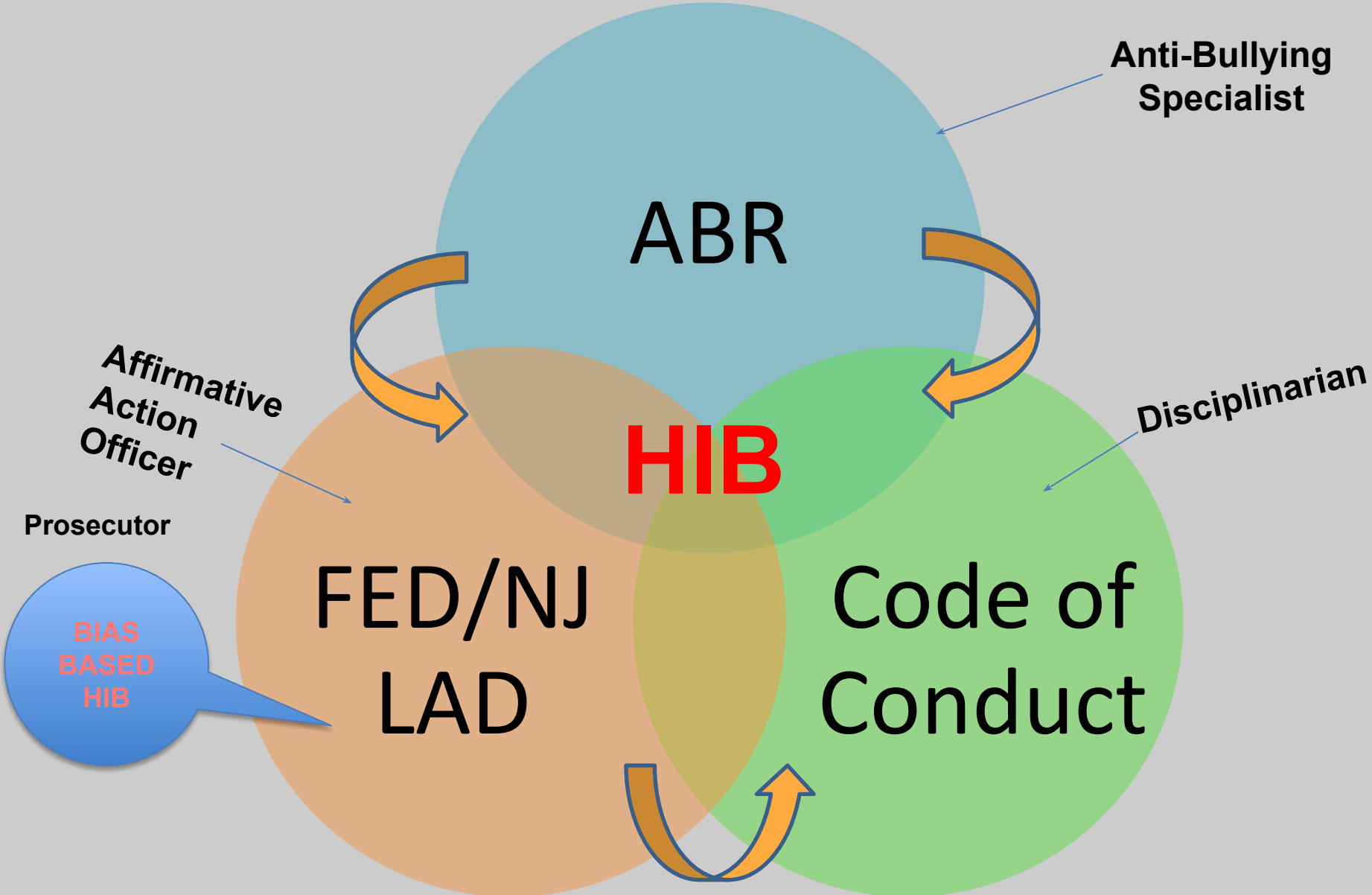
Legal Disclaimer

The information contained in this presentation is intended as a summary of law only for training purposes only, and is not meant as legal advice.

Please consult your attorney to obtain legal advice.

HIB DEFINED

Parallel Laws and Regulations



What is the definition of HIB under the ABR?

HIB MEANS:

any gesture,

any written, verbal or physical act,

or any electronic communication,

whether it be a single incident OR a

series of incidents,

HIB Definition, continued

That is *reasonably perceived as being 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 ANY OTHER DISTINGUISHING CHARACTERISTIC

Encompasses ANY and ALL including, but not limited to:

- rich/poor; tall/short
- thin/heavy; hair color/style
- birthmark/freckles
- the way a person talks;
- the way a person walks;
- good grades/failing grades; etc.

There is no way to develop an exhaustive list...

Case Law – Distinguishing Characteristic

What a PERSONAL CHARACTERISTIC is NOT:

“Harmful or demeaning conduct **MOTIVATED ONLY BY ANOTHER REASON**, for example, a **DISPUTE (CONFLICT)** about a relationship or personal belongings, or **aggressive conduct without IDENTIFIABLE MOTIVATION** does not come within the statutory definition of bullying.” K.L. v. Evesham School District (App. Div. 2011)

HIB Definition, continued

That takes place on **school property**,
at **any school-sponsored function**,
or off school grounds* as provided for in N.J.S.A. 18A:37-15.3;

AND SUBSTANTIALLY DISRUPTS or *interferes with the orderly operation of the school or the rights of other students,*

AND THAT...

HIB Definition, continued

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;* OR

HIB Definition, continued

A ***“reasonable person”*** is any adult member of the school community

“under the circumstances, will have the effect of...”
means even if the target claims to not be bothered by, upset by, offended by the behavior, the reasonable person must treat and respond to the behavior as it is presented, not as it is reported to be perceived by the target. The reasonable person must intervene.

HIB Definition, continued

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.

ABR Protects Students Only

The ABR provides for student-to-student and adult-to-student incidents, not student-to-adult or adult-to-adult.

Please note that students ages 18-20 (21 with IEP) are defined as students under the ABR while under the jurisdiction of school district.

*If you are wondering, **YES**, a staff member can be subjected to a HIB Investigation if a student claims to be the victim of HIB.*

REQUIRED ACTION

CONSEQUENCES FOR SCHOOL ADMINISTRATORS WHO DO NOT TAKE ACTION

d. A school administrator who receives a report of harassment, intimidation, or bullying from a district employee, and **fails to initiate or conduct an investigation, or who should have known** of an incident of harassment, intimidation, or bullying and fails to take sufficient action to minimize or eliminate the harassment, intimidation, or bullying, may be subject to disciplinary action.

- ADMINISTRATOR (Super, Asst. Super, BA, Director, Principal, Assistant Principal)
- WHO RECEIVES REPORT of HIB INCIDENT
or
- WHO SHOULD HAVE KNOWN of HIB INCIDENT (LW V TR Case)
- And FAILS to TAKE ACTION MAY be SUBJECT to DISCIPLINARY ACTION from BOE and/or DOE

IMMUNITY FROM CAUSE OF ACTION FOR DAMAGES

c. A member of a board of education or a school employee who promptly reports an incident of harassment, intimidation or bullying, to the appropriate school official designated by the school district's policy, or to any school administrator or safe schools resource officer, and who makes this report in compliance with the procedures in the district's policy, is **immune from a cause of action for damages** arising from any failure to remedy the reported incident.

- Everyone under BOE authority who REPORTS HIB INCIDENT is IMMUNE from CAUSE of ACTION for DAMAGES
- LAWSUIT \$
- DISCIPLINARY ACTION
- IF HAVE WITNESSED, HAVE KNOWLEDGE of, or RELIABLE INFORMATION and DO NOT REPORT
- OPEN for CAUSE OF ACTION for DAMAGES

HIB INCIDENT REPORTING, INVESTIGATIVE & BOE/PARENTAL NOTIFICATION REQUIREMENTS

All acts of harassment, intimidation, or bullying shall be reported verbally to the school principal on the same day when the school employee or contracted service provider witnessed or received reliable information regarding any such incident.

The principal shall inform the parents or guardians of all students involved in the alleged incident, and may discuss, as appropriate, the availability of counseling and other intervention services. All acts of harassment, intimidation, or bullying **shall be reported in writing to the school principal within two school days** of when the school employee or contracted service provider witnessed or received reliable information that a student had been subject to harassment, intimidation, or bullying;

- **ALL ACTS of HIB MUST be REPORTED**
- **VERBAL REPORT MUST be made to PRINCIPAL SAME DAY ACT WITNESSED or INFORMATION RECEIVED**
- **PRINCIPAL MUST INFORM PARENTS**
- **PRINCIPAL MUST RECEIVE written referral within two school days**

ADVISE to ADD to POLICY, in the ABSENCE of the PRINCIPAL, the XXXXX shall serve as the ABR ROLE of the PRINCIPAL for the purpose of the lawful management of the ABR.

HIB INCIDENT REPORTING, INVESTIGATIVE & BOE/PARENTAL NOTIFICATION REQUIREMENTS

(6) a **procedure for prompt investigation** of reports of violations and complaints, which procedure shall **at a minimum** provide that:

(a) the investigation **shall** be initiated by the **principal or the principal's designee within one school day** of the report of the incident and **shall be conducted by a school anti-bullying specialist**. The **principal may appoint additional personnel** who are not school anti-bullying specialists **to assist** in the investigation. The investigation shall be completed as soon as possible, but **not later than 10 school days** from the **date of the written report** of the incident of harassment, intimidation, or bullying. In the event that there is information relative to the investigation that is anticipated but not yet received by the end of the 10-day period, the school anti-bullying specialist **may amend** the original report of the results of the investigation to reflect the information;

- Investigation **MUST** be initiated **within 1 SCHOOL DAY** of the **INITIAL VERBAL REPORT**
- **ABS MUST** conduct investigation
- **PRINCIPAL MAY** appoint others to **HELP**
- Investigation **MUST** be completed **ASAP, NO LATER** than **10 SCHOOL DAYS** from **DATE** of **WRITTEN REPORT**, which is required within **2 SCHOOL DAYS** of **INITIAL VERBAL REPORT**

HIB INCIDENT REPORTING, INVESTIGATIVE & BOE/PARENTAL NOTIFICATION REQUIREMENTS

(b) the **results of the investigation shall be reported to the superintendent** of schools **within two school days** of the completion of the investigation, and in accordance with regulations promulgated by the State Board of Education pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), **the superintendent may decide to** provide intervention services, establish training programs to reduce harassment, intimidation, or bullying and enhance school climate, **impose discipline**, order counseling as a result of the findings of the investigation, or take or recommend other appropriate action;

- SUPER MUST receive investigation results within 2 SCHOOL DAYS of COMPLETION
- SUPER MAY...
- DOES NOT SAY PRINCIPAL MAY...
- BUT...

HIB INCIDENT REPORTING, INVESTIGATIVE & BOE/PARENTAL NOTIFICATION REQUIREMENTS

(c) the results of each investigation **shall be reported to the board of education** no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent;

BOE MUST have opportunity to **REVIEW** each HIB case **NO LATER THAN NEXT SCHEDULED MEETING** following the **COMPLETION** of the **INVESTIGATION** and all actions taken by **SUPER**

HIB INCIDENT REPORTING, INVESTIGATIVE & BOE/PARENTAL NOTIFICATION REQUIREMENTS

(d) parents or guardians of the students who are parties to the investigation **shall be entitled to receive information about the investigation**, in accordance with federal and State law and regulation, including the nature of the investigation, whether the district found evidence of harassment, intimidation, or bullying, or whether discipline was imposed or services provided to address the incident of harassment, intimidation, or bullying.

This information shall be provided in writing within 5 school days after the results of the investigation are **reported to the board**. A parent or guardian may request a hearing before the board after receiving the information, and the hearing shall be held **within 10 days** of the request.

The board shall meet in executive session for the hearing to protect the confidentiality of the students. At the hearing the board may hear from the school anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents;

PARENTS MUST RECEIVE within 5 SCHOOL DAYS of BOE that follows COMPLETION of INVESTIGATION:

- **Information about investigation within compliance with FERPA – no NAMES or IDENTIFIABLE INFORMATION of OTHER STUDENTS**
- **EVIDENCE of HIB – Yes or No**
- **DISCIPLINE IMPOSED – YES or No**
- **SERVICES PROVIDED – Yes or No**

HIB INCIDENT REPORTING, INVESTIGATIVE & BOE/PARENTAL NOTIFICATION REQUIREMENTS

A parent or guardian may request a hearing before the board after receiving the information, and the hearing shall be held **within 10 days** of the request.

The board shall meet in executive session for the hearing to protect the confidentiality of the students. At the hearing the board may hear from the school anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents;

- PARENT may request BOE hearing after receiving information
- BOE must provide executive session meeting within **10 DAYS** of request
- BOE may call in **ABS** to provide information regarding investigation

HIB INCIDENT REPORTING, INVESTIGATIVE & BOE/PARENTAL NOTIFICATION REQUIREMENTS

(e) at the next board of education meeting following its receipt of the report, the board shall issue a decision, in writing, to affirm, reject, or modify the superintendent's decision.

The board's decision may be appealed to the Commissioner of Education, in accordance with the procedures set forth in law and regulation, no later than **90 days** after the issuance of the board's decision; **and**

- **NOT UNTIL the NEXT BOE Meeting AFTER the BOE Meeting that HIB REPORT was RECEIVED that BOE MUST ISSUE a DECISION**
- **This DECISION is ultimately the district's FINAL DECISION on the CASE**
- **PARENT may appeal BOE decision to Commissioner of DOE no later than 90 days of BOE FINAL DECISION (2nd meeting)**

C.18A:37-15 Adoption of policy concerning harassment, intimidation or bullying by each school district.

(f) a parent, student, guardian, or organization may file a complaint with the **Division on Civil Rights** **within 180 days of the occurrence of any incident of harassment, intimidation, or bullying** based on membership in a protected group as enumerated in the “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.);

- May ALSO FILE **CIVIL RIGHTS COMPLAINT** within **180 DAYS** of the **OCCURRENCE** of HIB if a **PROTECTED CATEGORY**
- **AFFIRMATIVE ACTION OFFICER** MUST be made aware of ALL HIB investigations of **PROTECTED CATEGORY** for AA investigation and reporting

FREQUENTLY ASKED QUESTIONS

Must all reports of HIB be investigated or only those that meet the criteria in the ABR?

Each school district is required to adopt a policy prohibiting HIB, and the policy must include a **procedure for prompt investigation of reports of violations and complaints**. Although the procedure is subject to certain minimum requirements as detailed in *N.J.S.A. 18A:37-15b(6)(a)-(f)*, including a requirement for the principal or his/her designee to initiate an investigation within one school day of the report of the incident, each school district shall ultimately have local control over the content of the HIB policy (*N.J.S.A. 18A:37-15b*).

Whether a principal or his/her designee will initiate an investigation upon receipt of all reports of alleged HIB, or will initiate an investigation only in those cases where he/she determines that the allegations meet the threshold definition of HIB, will depend on the **HIB policy adopted by the BOE**. In the event that the principal or his/her designee does not initiate an investigation, but later acquires information suggesting that the allegations meet the threshold definition of HIB, it will then be referred to the ABS for investigation.

Does the ABR require that a victim of HIB belong to one of the protected categories (race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability) listed in the definition of HIB?

No. A student may be a victim of HIB if a gesture, written, verbal, or physical act, or electronic communication is motivated by “any other distinguishing characteristic,” e.g., weight. Because the ABR includes “other distinguishing characteristic” within the definition of HIB, a student that does not belong to one of the protected categories listed above can also be a victim of HIB. BOEs must include “other distinguishing characteristic” in the definition of HIB in their HIB policy, and must also consider this when investigating allegations of HIB.

Is the school district required to provide parents of offenders and victims with the investigation report?

The ABR does not require the provision of the investigation report to parents. Parents are only entitled to the information specified in the ABR provision included above. If a district chooses to provide parents with the report, the investigation report cannot divulge privileged/confidential information or information precluded by law. This information includes, but is not limited to, information about students other than their own child, and information that would (or could) identify students other than their own.

Pursuant to the *Family Rights and Educational Privacy Act* (20 U.S.C. §1232g and 34 CFR Part 99), and absent consent or permission from the other parent and/or a student who is at least eighteen (18) years of age, parents are only entitled to information about their own children.

Lawful Management of HIB Records and Investigation Documents

HIB Records

While not mandated, it is recommended that sufficient documentation be retained for reporting incidents on the Electronic Violence and Vandalism Reporting System (EVVRS). This documentation is important to ensure accurate reporting and to verify the disposition of cases and incidents reported on the EVVRS.

6A:32-7.3 Mandated student records

Mandated student records shall include the following:

- The student's name, address, telephone number, date of birth, name of parent(s), gender, standardized assessment results, grades, attendance, classes attended, grade level completed, year completed, and years of attendance;
- Record of daily attendance;
- Descriptions of student progress according to the student evaluation system used in the school district;
- History and status of physical health compiled in accordance with State regulations, including results of any physical examinations given by qualified school district employees and immunizations;
- Records pursuant to rules and regulations regarding the education of students with disabilities; and
- All other records required by N.J.A.C. 6A. **(not HIB)**

100 YEAR RECORD

The New Jersey public school district of last enrollment graduation, or permanent departure of the student from the school district shall keep for 100 years a mandated record of a student's:

- name,
- date of birth,
- name of parents,
- gender,
- health history and immunization,
- standardized assessment results,
- grades,
- attendance,
- classes attended,
- grade level completed,
- year completed,
- and years of attendance.

Not HIB

FERPA

"Education record" is defined by the statute as:

- "those records, files, documents, and other materials which contain information directly related to a student;
- and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution."
- Such records cannot be released to any "individual, agency, or organization" without the written consent of the student's parents.

FERPA

A disciplinary referral form is an "education record" within the meaning of FERPA.

Therefore, a HIB record that involved **discipline** is also a form of an "education record"

Discipline is the LINK

- ("student disciplinary records are education records because they directly relate to a student and are kept by that student's university").
- The referral form is a record that pertains to both the child who was disciplined and plaintiff's son as the "student" who was the victim of the choking, punching, and kicking by the named student.
- Under FERPA, the Board was not permitted to disclose information about the other student to plaintiff, but it was required to provide access to the parts of the record that pertain to plaintiff's own son.
- The Board fulfilled that obligation by redacting the name of the other student and providing the redacted disciplinary referral form to plaintiff.

Conclusion

1. The ABR does not expressly require disclosure of a written investigative report, notes, or any other designated school records.

Conclusion

2. Rather, the statute provides that the school district must inform parents in writing of "the nature of the investigation, whether the district found evidence of harassment, intimidation, or bullying, or whether discipline was imposed or services provided to address the incident of harassment, intimidation, or bullying."

Conclusion

3. Under FERPA, the Board is not permitted to disclose information about the other student to plaintiff, but it is required to provide access to the parts of the record that pertain to plaintiff's own child.

The Board fulfilled that obligation by redacting the name of the other student and providing the redacted disciplinary referral form to plaintiff.

HIB and Code of Conduct

Best Practice to treat HIB records the same as you do for Code of Conduct (Discipline Records)

FERPA Protection for HIB Records

So, under FERPA, HIB records are protected education records.

Cannot be released without parental consent.

Information about “other” students in record must be redacted if released.

How does this relate to Colleges?

Same as transcript, any component of educational record cannot be released to college without parental consent.

Do not automatically send HIB/Discipline records to colleges without parental consent