

EDUCATION

STATE BOARD OF EDUCATION

Programs to Support Student Development

Adopted Amendments: N.J.A.C. 6A:16-1.2, 1.3, and 7.7

Adopted New Rule: N.J.A.C. 6A:16-7.8

Proposed: September 6, 2016, at 48 N.J.R. 1743(a).

Notice of Proposed Substantial Changes upon Adoption to Proposed Amendments: June 5, 2017, at 49 N.J.R. 1285(a).

Adopted: November 1, 2017, by the State Board of Education, Kimberley Harrington, Commissioner, Department of Education and Secretary, State Board of Education.

Filed: November 1, 2017, as R.2017 d.215, **with substantial changes** to proposal after additional notice and public comment, pursuant to N.J.S.A. 52:14B-10 and with **non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 18A:38-1.

Effective Date: January 2, 2018.

Operative Date: July 1, 2018.

Expiration Date: February 18, 2021.

Summary of Public Comments and Agency Responses:

Comments on the original notice of proposal were received from the following commenters, some of whom also commented on the changes in the notice of proposed substantial changes:

1. Elizabeth Athos Esq., Education Law Center
2. Christian Fuscarino, Executive Director, Garden State Equality

3. Gordon Sauer, Vice President of Community Services, Gay Activist Alliance in Morris County
4. Carol Watchler, Co-Chair, Gay Lesbian and Straight Education Network, Central Jersey Chapter
5. Barbra Siperstein, Director, Gender Rights Advocacy Association of New Jersey
6. Elizabeth Schedl, Deputy Director, Hudson Pride
7. Dr. Stuart Green, Director, New Jersey Coalition for Bullying Awareness and Prevention
8. Dr. Michael Greene, Research Advisor, New Jersey Coalition for Bullying Awareness and Prevention
9. John Burns, Counsel, New Jersey School Boards Association
10. Michael A. Vrancik, Director of Governmental Relations, New Jersey School Boards Association
11. Joe Endres, Rainbow Café Morris
12. Marie Endres, Rainbow Café Morris
13. A. Skurna, Rainbow Café Morris
14. Amanda Thompson, Rainbow Café Morris
15. Dr. Paula C. Rodriguez Rust, Founder, Spectrum Diversity
16. Maria Docherty, Director of Technical Assistance, Statewide Parent Advocacy Network
17. Mark McSpirit, President, The Pride Center of New Jersey
18. Christine Hamlett, Retired educator, Newark Public Schools
19. Alexandra Lawrence, Clinical social worker

20. Tea Sefer
21. Andrea Mystrena, Mount Laurel, NJ
22. Leichena Young, Somerset, NJ
23. Michael Smith, Toms River, NJ
24. Linda Murphy, Ocean City, NJ
25. Marsha Shapiro, Monmouth Junction, NJ
26. Nora Lambert, Flemington, NJ
27. Maddy Smith, Mount Laurel, NJ
28. LanChi Pham, North Charleston, SC
29. Kathleen McGoldrick, Flanders, NJ
30. Ronnie Weyl, Hillsborough, NJ
31. Margo Saltzman, Oakhurst, NJ
32. Kathleen Loughran, Teacher, Lakewood, NJ
33. Carly Herman, Howell, NJ
34. Michael McCall, Annandale, NJ
35. Abby Maisonave, Howell, NJ
36. William McDevitt, Williamstown, NJ
37. Cathy Rabbai, Bridgeton, NJ
38. Gloria Krolak, Flemington, NJ
39. Sarah Foulk, Franklinville, NJ
40. Jessica Ippolito, Teacher and Gay-Straight Alliance Advisor, Vineland, NJ
41. Giana Masso, Williamstown, NJ
42. Geoff Gingerich, Teacher, South Orange, NJ

43. Kailynn Warfield, Franklinville, NJ
44. Sophia Fortner, Glassboro, NJ
45. Natalie Inal, Franklinville, NJ
46. Amy Herbst Vassallo, West Deptford, NJ
47. Thomas Hyland, Ocean, NJ
48. Jacob Corbley, Brick, NJ
49. Melissa Cutler, Brick, NJ
50. Faith Verderose, Newfield, NJ
51. Kari Hudnell, Jersey City, NJ
52. Jolene Smyers, Toms River, NJ
53. Stacey Underwood, Franklinville, NJ
54. Alyssa Worbetz, Deptford, NJ
55. Laurie McGuire, Woodstown, NJ
56. Summer Coppinger, Glassboro, NJ
57. Emily Keefe, Lincroft, NJ
58. Jerald Hissim, Bloomsbury, NJ
59. Cheryl Cuddihy, Middletown, NJ
60. John Marron, Highland Park, NJ
61. Kristine Raye, Old Bridge, NJ
62. Sara Landau, West Windsor, NJ
63. Nicole Brownstein, Morganville, NJ
64. Seth Rainess, Atlantic Highlands, NJ
65. Yvonne Krasner-Cohen, Randolph, NJ

66. Patricia Jaworski, Clark, NJ
67. Denise Desiderio, Woolwich, NJ
68. Daryl Presgraves, Jersey City, NJ
69. Amanda Aikens, Highland Park, NJ
70. Fred Eisinger, Lambertville, NJ
71. Emily Armant, Hillsborough, NJ
72. Rachelle Omenson, Runnemede, NJ
73. Janine Perry, Monmouth Beach, NJ
74. Liza Restifo, Neptune City, NJ
75. Maria Ortiz-Myers, Bernardsville, NJ
76. Paul Hammond, Mount Laurel, NJ
77. Denise Lytle, Fords, NJ
78. Carol Zur, Howell, NJ
79. Tom Tamburello, Teacher and Gay-Straight Alliance Advisor, Marlton, NJ
80. Sally Sharp, Milltown, NJ
81. Tara Corcoran, Lumberton, NJ
82. Sharon Briles, Hammonton, NJ
83. Tammy Dorff, Highland Park, NJ
84. Karen Lenard, Highland Park, NJ
85. Marsha Shapiro, Monmouth Junction, NJ
86. Laura Docherty, Brick, NJ
87. Patrick Rumaker, Pitman, NJ
88. Lou Rattacasa, Hackensack, NJ

89. Christine Gentile, Turnersville, NJ
90. Stephanie Tarr, Tuckerton, NJ
91. John Carlson, Egg Harbor Township, NJ
92. Nancy Pino, Linwood, NJ
93. Kristin Broggi, Highland Park, NJ
94. Mark Pino, Linwood, NJ
95. Dan Goldman, Bedminster, NJ
96. Margot D'Amico, Millville, NJ
97. Christine Kosar, Sicklerville, NJ
98. Miriam Reichenbach, West Deptford, NJ
99. Joyce Naylor, Clementon, NJ
100. Susan Clark, Franklinville, NJ
101. Candice Zachowski, Turnersville, NJ
102. David Smith, Princeton, NJ
103. Dori Eitelberg, Howell, NJ
104. Gerard M. Thiers, Executive Director, ASAH
105. Jennifer Keyes-Maloney, Assistant Director for Government Relations, New Jersey
Principals and Supervisors Association
106. Jean Public
107. Jennifer Shaner
108. Aaron Potenza, Director of Programs, Garden State Equality
109. Debra Wentz, Chief Executive Officer, NJ Association of Mental Health
110. David Nash, Esq., Director, Legal One

- 111. Jane Rothfuss, Roosevelt, NJ
- 112. Cynthia & Cathy (by email)
- 113. Dr. Russell Healy, Lawrenceville, NJ
- 114. Elizabeth Williams-Riley, President and CEO, American Conference on Diversity
- 115. Cynthia B. Scheer, MSW, LCSW, Bridgeton, NJ
- 116. Coalition for an Effective ABR

1. Comments Received During Initial Comment Period Giving Rise to Substantial Changes in Proposal upon Adoption

1. COMMENT: The commenters expressed concern that the procedures for investigating and reporting alleged harassment, intimidation, or bullying (HIB) incidents and parental notification required pursuant to the Anti-Bullying Bill of Rights Act (ABR) (P.L. 2010, c. 122) could result in the “outing” of lesbian, gay, bisexual, and transgender (LGBT) students who were victims of alleged HIB motivated by people who are anti-LGBT and would place the students at further risk. The commenters recommended the proposed regulations remind schools of their obligation to implement the ABR in ways that protect students rather than endanger them, and of schools’ ethical and legal responsibility to maintain the confidentiality and privacy of sensitive information about a student during the HIB investigation process. (1 through 7, 11 through 103, 113, 114, 115, and 116)

RESPONSE: The Department agrees it is essential for schools to take into account the circumstances surrounding an HIB incident when conducting an investigation and notifying parents. The Department plans to develop and disseminate supportive resources for school

districts that will assist school staff in responding considerately to HIB incidents and appropriately supporting all students. This information will be included in future trainings.

Based on the commenters' concern regarding the importance of maintaining the confidentiality and privacy of sensitive information during the HIB investigation process, the Department proposed a new regulation at recodified N.J.A.C. 6A:16-7.7(a)2viii(2) to require the school district official to take into account the circumstances of the HIB incident when providing notification and related information to parents and guardians of all students involved in the reported HIB incident. Defining a threshold for "sensitive" is subjective; therefore, the Department has determined to not include "sensitive" in the proposed regulations, as recommended by the commenters. Furthermore, the nature of any affirmed HIB incident is based on a protective factor, which may or may not be based on sexual orientation or gender identity and expression. The Department proposed to require school district officials to take into account the circumstances surrounding the actual or perceived protected category for all HIB incidents. The Department proposed to recodify N.J.A.C. 6A:16-7.7(a)2ix(3) as new N.J.A.C. 6A:16-7.7(a)2ix(4) to reflect a proposed new regulation for reporting and investigating, as discussed regarding N.J.A.C. 6A:16-7.7(a)2viii(2) above. The Department also proposed an amendment at recodified N.J.A.C. 6A:16-7.7(a)2x(1), corresponding to N.J.A.C. 6A:16-7.7(a)2viii(2).

The Department also proposed three new regulations in N.J.A.C. 6A:16-7.8 to clarify similar rules for approved private schools for students with disabilities (APSSDs) for consistency. The new rules will require the full-time non-teaching principal to take into account the circumstances of the HIB incident when providing notification and related information to parents and guardians of all students involved in the reported HIB incident. The Department proposed to

recodify proposed N.J.A.C. 6A:16-7.8(a)3viii(2) as (a)3viii(3) to reflect proposed new N.J.A.C. 6A:16-7.8(a)3viii(2).

The Department proposes to recodify proposed N.J.A.C. 6A:16-7.8(a)3ix(6) and (7) as (a)3ix(7) and (8), respectively, to reflect proposed new N.J.A.C. 6A:16-7.8(a)3ix(6).

The Department also proposes an amendment at N.J.A.C. 6A:16-7.8(a)3x(1).

2. COMMENT: The commenters expressed concern about proposed N.J.A.C. 6A:16-7.7(a)2ix(1), which would permit a school district to include in its HIB policy a process by which the principal, or his or her designee, in conjunction with the anti-bullying specialist (ABS), makes a preliminary determination as to whether a reported incident or complaint is a report of an act of HIB before the principal refers the incident to the ABS for investigation. The commenters expressed concern that the lack of procedural requirements effectively allows the preliminary determination procedure to function as a way for schools to decide without accountability that an incident is not HIB. The commenters recommended that procedural requirements be added to the preliminary determination procedure to ensure, at a minimum, the determination process is open to scrutiny and subject to appeal. (1 through 8, 11 through 103, 113, 114, 115, and 116)

RESPONSE: The Department conducted additional discussion on N.J.A.C. 6A:16-7.7(a)2ix(1) presented at proposal level to include the principal's preliminary determination as part of the investigation based on the commenters' concern. The Department concluded that since HIB investigations must be conducted by the school ABS specialist under the ABR, the principal may not be part of the investigation; however, he or she may make a preliminary determination, in consultation with the ABS, as to whether the reported incident or complaint, assuming all facts

presented are true, is a report of HIB. When the report is within the scope of the ABR, the principal must initiate the investigation with the school ABS.

The Department proposed amendments to amend the proposed new rule at recodified N.J.A.C. 6A:16-7.7(a)2ix(1).

The Department proposed new N.J.A.C. 6A:16-7.7(a)2ix(1)(A) to effectuate procedural requirements for appealing the principal's preliminary determination since the determination is not part of the investigation.

The Department also proposed an amendment at N.J.A.C. 6A:16-7.7(d) to include school administrators who determine a reported incident or complaint, assuming all facts presented are true, is a report within the scope of N.J.S.A. 18A:37-14, pursuant to N.J.A.C. 6A:16-7.7(a)2ix(1), that fail to initiate an investigation may also be subject to disciplinary action.

The Department also proposed an amendment at recodified N.J.A.C. 6A:16-7.8(a)3ix(7) and (8) and new (a)3ix(8)(A) to clarify the rules for APSSDs and for consistency. The proposed new rule at N.J.A.C. 6A:16-7.8(a)3ix(8)(A) effectuates procedural requirements for appealing the full-time non-teaching principal's preliminary determination and for consistency with N.J.A.C. 6A:16-7.7(a)2ix(1)(A).

3. COMMENT: The commenters suggested an amendment at N.J.A.C. 6A:16-7.8(a)1i and (a)3x(2) to replace "the sending district board of education" with "appropriate sending district board of education personnel" when referring to the requirement that an APSSD consult with the sending district board of education when initiating an investigation and when determining the appropriate response to address the individual circumstances once an incident of HIB is identified.
(9 and 10)

RESPONSE: In taking the commenters' suggestions under consideration, the Department realized that N.J.A.C. 6A:16-7.8(a)1i was inconsistent with N.J.A.C. 6A:16-7.7(a)2ix(2). Therefore, the Department proposed an amendment for consistency that clarifies that the APSSD staff must notify the appropriate sending district board(s) of education personnel when it receives a complaint or report of an act of HIB occurring on a sending district board of education school bus, at a sending district board of education school-sponsored function, and off school grounds to conduct an investigation rather than consult with the sending district board of education.

The Department agrees with the commenters regarding N.J.A.C. 6A:16-7.8(a)3x(2) and proposes an amendment to clarify that APSSD staff need not consult with the sending district board of education but, rather, with the appropriate district board of education personnel.

4. COMMENT: The commenters expressed concern that N.J.A.C. 6A:16-7.7(a)2xi(1) establishes a timeline of 45 calendar days after parents or guardians received the required written information about the investigation from the district board of education, pursuant to N.J.S.A. 18A:37-15.b(6)(d), for parents or guardians to request a hearing before the district board of education. The commenters indicated that 45 calendar days is an insufficient length of time for parents to request a hearing when their first priority will be ensuring their child's emotional needs are met. The commenters recommended that parents have 90 calendar days to file a request for hearing before the district board of education. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department disagrees that the length of time to file an appeal should be changed from 45 calendar days to 90 calendar days as it would delay closure of the incident for all students involved.

The Department is sympathetic to the commenters' concern that the 45-calendar day timeframe may not be sufficient. Therefore, the Department proposes to amend N.J.A.C. 6A:16-7.7(a)2xi(1) and 7.8(a)3xi(1) to increase the number of calendar days in which to file an appeal from 45 days to 60 days. The proposed amendments will provide additional time for parents without unduly delaying resolution and necessary supports and remedies for students.

2. Comments Received During Initial Comment Period Not Giving Rise to Changes in the Rule Proposal

5. COMMENT: The commenter disagreed with the creation of regulations regarding incidents of bullying and stated the regulations will cause more harm than good. The commenter recommended that each bullying incident be evaluated and addressed on an individual basis and not pursuant to regulations, which would set "in stone" the process of reviewing incidents of bullying. (106)

RESPONSE: The Department disagrees and maintains that regulations related to HIB are necessary. Regulations ensure that HIB cases are handled consistently across the State and all New Jersey public school students have the opportunity to achieve academic and behavioral success in safe and supportive learning environments. However, the Department agrees with the commenter's recommendation that each incident be evaluated and addressed on an individual basis. As proposed, the rules at N.J.A.C. 6A:16-7.7(a) and 7.8(a) will require each district board of education and APSSD to develop a policy to include a procedure for prompt investigation of complaint reports, as well as appropriate remedial action and consequences for a student who commits an act of HIB.

6. COMMENT: The commenters thanked the Department for clarifying that special services school districts, renaissance schools, and recovery high schools are covered in the scope of N.J.A.C. 6A:16-1.2. (9 and 10)

RESPONSE: The Department appreciates the commenters' support.

7. COMMENT: The commenter recommended the Department add rules to inform school district staff that there is a distinction between the standard definition of "bullying" and the ABR's definition of "bullying." The commenter recommended the Department provide guidance to school districts on the distinction between the two definitions to reduce confusion that leads to unintentional failure to comply with the ABR and misapplication of evidence-based practices. The commenter further noted that the Department's guidance to parents provides clarity on this issue. (15)

RESPONSE: The Department understands the commenter's point that there may be differences between how bullying is generally defined and how the ABR defines HIB. However, the Department disagrees with the recommendation to add rules informing school district staff that there is a distinction between the two definitions. School districts are required to follow N.J.A.C. 6A:16-7.7, which was promulgated as a result of the ABR and utilizes the ABR's definition of HIB. The Department will review guidance materials to determine if information on the distinction needs to be revised and/or added.

8. COMMENT: The commenter expressed concern that students and parents lost the ability to meaningfully describe incidents in which a student was being victimized by another student(s)

since the ABR's adoption and the inclusion of "bullying" in the ABR's definition of HIB. The commenter further noted that the ABR has increased the compliance burden on schools. The commenter recommended the Department develop rules to permit school staff, students, and parents to use "bullying" to refer to bullying that does not require the invocation of the ABR's requirements and is handled in a different manner. The commenter noted this change would reduce the number of unfounded reports of HIB; reduce the burden on administrators and anti-bullying specialists; end the harmful practice of telling students who are being bullied that they are not because it does not meet the ABR's criteria for HIB; and empower targeted students. (15)

RESPONSE: The Department disagrees. Pursuant to N.J.S.A. 18A:37-15.b(6), the school district's HIB policy must have a procedure in place for prompt investigation of reports of violations and complaints of HIB. A school district that is aware of an allegation of bullying must institute its HIB procedures. To address the number of unfounded reports of HIB and to reduce the burden on administrators and anti-bullying specialists, the Department proposed N.J.A.C. 6A:16-7.7(a)2ix(1) to permit a school district to include in its HIB policy a process by which a principal, in conjunction with the anti-bullying specialist, makes a preliminary determination as to whether a reported incident is a report of an act within the scope of N.J.S.A. 18A:37-14 (that is, the ABR's definition of HIB). If an incident is found not to meet the ABR's definition of HIB, school administrators will still be required to respond to the student and address the issue following the code of student conduct.

9. COMMENT: The commenters recommended the Department add a definition for "distinguishing characteristic" at N.J.A.C. 6A:16-1.3 to promote consistency in identifying HIB incidents across schools and to improve comparability of reporting information related to HIB

incidents to the Department in the Electronic Violence and Vandalism Reporting System. The commenters suggested the following for the definition of “distinguishing characteristic”: “may include actual or perceived characteristics that may or may not be permanent or visible in nature and which may include, but are not limited to, characteristics of a physical, psychological, emotional, intellectual, social, or familial nature.” (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department disagrees and contends that it is unnecessary to include a definition for “distinguishing characteristic” at N.J.A.C. 6A:16-1.3. The Anti-Bullying Bill of Rights Act (ABR) includes “distinguishing characteristic” in the list of actual or perceived characteristics that motivate HIB in the definition of “harassment, intimidation or bullying” at N.J.S.A. 18A:37-14. When investigating allegations of HIB, a school district is responsible for determining if an incident meets the ABR’s definition of HIB, including the actual or perceived characteristic. School districts should consult with their district board of education solicitor to make this determination.

10. COMMENT: The commenters recommended the Department add, at N.J.A.C. 6A:16-1.3, a definition for “remedial action” that is designed to alter the behavior of the harassers, not the person harassed. The commenters’ proposed definition is as follows: “Remedial action” means effective measures for the victim and for the student or staff member who has committed an act of HIB, which corrects the problem behavior of the student or staff member who committed an act of HIB, prevents another occurrence of the problem, and protects and provides support for the victim of the act. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department disagrees with the recommendation to include a definition for “remedial action” at N.J.A.C. 6A:16-1.3 since the Department’s Model Policy and Guidance for

Prohibiting Harassment, Intimidation and Bullying on School Property, at School-Sponsored Functions and on School Buses provides best practices for the design of remedial measures to correct the problem behavior; prevent another occurrence of the problem; protect and provide support for the victim of the act; and take corrective action for documented systemic problems related to harassment, intimidation, or bullying.

11. COMMENT: The commenters recommended the Department add the following definition for “school climate” at N.J.A.C. 6A:16-1.3: “‘School climate’ means the collective perception of how well a school provides suitable conditions for learning, for positive social, emotional, and character development for all staff to grow professionally, and for parents, families, and community resources to become engaged in the school. School climate includes not only the general climate of the school, but also awareness of the differences in school climate as experienced by students with different identities related to race, ethnicity, religion, disability, sexual orientation, gender identity, and gender expression.” (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department disagrees with the need to include the commenters’ definition for “school climate” at N.J.A.C. 6A:16-1.3. School climate is a research-based term that is used commonly throughout the education field and does not need to be defined in proposed rulemaking. In presentations, the Department focuses on how to build a positive school climate, characteristics of a positive school climate, its benefits, and the role of the school safety/school climate team in reviewing and strengthening school climate.

12. COMMENT: The commenters recommended adding a definition for “written notice,” at N.J.A.C. 6A:16-1.3, to set forth the information that must be provided to parents and to ensure that

the information provided is consistent across school districts. The commenters further recommended that the definition specify that a student's distinguishing characteristic need not be included in the required written notice when necessary to protect a student's sensitive information. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department disagrees with the recommendation to include a definition for "written notice" because it is unnecessary and duplicative. The ABR at N.J.S.A. 18A:37-15.b(6)(d) outlines the information that must be provided to parents or guardians of students who are parties to the investigation. Proposed new N.J.A.C. 6A:16-7.7 takes into account the necessity of maintaining confidentiality and privacy of sensitive information during the HIB process under the ABR. Each school district is responsible for determining if it is necessary to provide parents additional information in writing.

13. COMMENT: The commenters recommended the Department include the following as a definition for 'power imbalance' at N.J.A.C. 6A:16-1.3: "'Power imbalance' is a concept used in some research on bullying to distinguish bullying from other forms of hurtful behavior. The concept reflects the following aspects of bullying: (1) the tendency for those engaged in bullying behavior to direct that behavior towards targets who are vulnerable, (2) the target's feelings of powerlessness that enhance the harmful impact of bullying, and (3) the inability of the target to effectively end the bullying, and, therefore, the importance of adult intervention into bullying situations. In keeping with evidence-based definitions of bullying, the imbalance of power in a bullying situation may be real or perceived by either the perpetrator or the target; it may be an imbalance in physical, social, intellectual, or psychological power; it may be an imbalance that stems from factors either inside or outside the school, for example, societal stigma; it may develop

as a consequence of victimization; and it may not be visible to observers. The concept of “power imbalance” should be used to enhance understanding of bullying; it is not a required criterion for identifying incidents of bullying or ‘Harassment, Intimidation, or Bullying.’” (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department disagrees with the recommendation to include the suggested definition for “power imbalance” at N.J.A.C. 6A:16-1.3. Power imbalance is often defined in research on bullying and does not need to be included in the proposed rulemaking. Recognizing “a real or perceived power imbalance” may assist school officials in identifying HIB within the context and relative positions of the alleged aggressor and target, rather than focusing solely on the real or perceived characteristics.

For an incident to be deemed HIB, the incident must fulfill the criteria of the HIB definition at N.J.A.C. 6A:16-1.3, including the following: a single incident or a series of incidents is reasonably perceived as being motivated either 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, 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:37-14 and 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 or her person or damage to his or her property; has the effect of insulting or demeaning any student or group of students; or creates a hostile educational environment for a student by interfering with the student’s education or by severely or

pervasively causing physical or emotional harm to the student. The mere existence of a real or perceived power imbalance without fulfillment of the other criteria is insufficient to find an incident of HIB.

14. COMMENT: The commenters recommended the Department replace “unwanted” with “hurtful” in the statement at proposed N.J.A.C. 6A:16-7.7(a)2iii that “bullying is unwanted, aggressive behavior that may involve a real or perceived power imbalance.” The commenters stated that “hurtful” is aligned with evidence-based definitions of bullying and the hurtfulness of the behavior should be the focus of the definition rather than if the behavior is unwanted. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department disagrees with the recommendation to replace “unwanted” with “hurtful” at proposed N.J.A.C. 6A:16-7.7(a)2iii. In addition to being recommended by the Anti-Bullying Task Force, the U.S. Department of Education’s definition of “bullying” includes “unwanted” in reference to bullying behavior.

15. COMMENT: The commenters recommended the Department amend proposed N.J.A.C. 6A:16-7.7(a)2iii to replace “may” with “might or might not” in the statement that “bullying is unwanted, aggressive behavior that may involve a real or perceived power imbalance.” The commenters stated that using “might or might not” may make it clear to school officials that power imbalance is not required in the statutory definition of HIB, accurately reflects the recommendation from the Anti-Bullying Task Force, and recognizes that distinguishing characteristics that may be identified through an observed power imbalance are only one way to satisfy the distinguishing characteristic criteria in the ABR. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department agrees that the ABR's definition of HIB does not include power imbalance and that it is not a required component when determining if an incident is HIB. In addition, the Department agrees with the Anti-Bullying Task Force's recommendation that including "power imbalance" in the statement on bullying will help school officials to link the concept of power imbalance to the ABR's inclusion of "other distinguishing characteristic" in the statutory definition of HIB. The Department disagrees that "may" needs to be replaced with "might or might not" since "may" expresses the possibility that power imbalance should be considered but is not required to meet the ABR's definition of HIB. While the Department disagrees with the recommendations to include this information in the proposed regulations, the Department plans to include information on power imbalance in guidance documents.

16. COMMENT: The commenter recommended the Department inform the education community that proposed N.J.A.C. 6A:16-7.7(a)2iii, which will require school districts to include a statement in their policy that bullying may involve "a real or perceived power imbalance," is not an additional criterion that must be used when a school district investigation determines if an incident meets the definition of HIB. (15)

RESPONSE: The Department agrees that proposed N.J.A.C. 6A:16-7.7(a)2iii does not add a new component to the ABR's definition of HIB, pursuant to N.J.S.A. 18A:37-15. Furthermore, school districts are not required to ensure there is "a real or perceived power imbalance" when determining if an incident meets the criteria of HIB. The intent of the proposed rule is to assist school officials in identifying HIB within the context and the relative positions of the alleged aggressor and target, rather than focusing solely on the real or perceived characteristics. The

Department plans to provide information on power imbalance in a guidance documents for school districts.

17. COMMENT: The commenter expressed concern that proposed N.J.A.C. 6A:16-7.7(a)2iii, which will require school districts to include a statement in their policy that bullying may involve “a real or perceived power imbalance,” will change the definition of HIB and place an undue bias on size. The commenter further explained that including this language will encourage discrimination based on “uncontrollable traits,” such as weight and/or height as an erroneous source of power, which will cause severe, unjustifiable harm to students who are tall or obese by blaming them in HIB incidents. (107)

RESPONSE: The Department appreciates the commenter’s concern that students who are tall or obese may be assigned blame in HIB incidents solely based on their size; however, the Department disagrees that adding a statement regarding “a real or perceived power imbalance” at proposed N.J.A.C. 6A:16-7.7(a)2iii will cause that result.

18. COMMENT: The commenters recommended an amendment at recodified N.J.A.C. 6A:16-7.7(a)2v to require remedial actions for a student who commits an act of HIB. The commenters stated that the ABR and case law support mandated remedial actions and suggested the following language be added to the rule: “The response to HIB must include an appropriate combination of the following: referral to the child study team, counseling for the student who committed the act, counseling for the student who was targeted by the act, behavioral contract and other positive behavioral support measures for the student who committed the act, support services, intervention and referral services including those at N.J.A.C. 6A:16-8, and other programs, as

defined by the Commissioner.” The commenters also recommended school officials be made aware that conflict mediation or conflict resolution strategies are not considered evidence-based remedial responses to bullying situations. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department agrees that remedial actions may be necessary to address behaviors related to HIB and prevent future incidents. However, the Department disagrees with the commenters’ interpretation of the ABR. The ABR does not require remedial actions to be imposed in every HIB incident. Pursuant to N.J.S.A. 18A:37-15.b(4) and (8), respectively, each school district’s policy must include “consequences and appropriate remedial action for a person who commits and act of” HIB and “appropriate remedial action for a person who engages in reprisal or retaliation.” Each school district must use the district board of education policy to determine remedial actions for each student who is found to have committed HIB, as appropriate and necessary. Additionally, types of remedial action contained in guidance would be suggestions, and not mandated, as school district personnel should provide recommendations based on the specific incident rather than specific regulatory requirements. While the Department will not add the recommended requirement to the proposed regulations, the Department will include information on remedial actions in future guidance.

19. COMMENT: The commenter emphasized the importance of not utilizing conflict mediation between the perpetrator and the target and also not isolating the target of bullying under the guise of protecting the student from bullying unless the move is made at the request of the target’s parents. (1)

RESPONSE: The Department agrees with the commenter that peer mediation is not an appropriate response between the perpetrator and target in an HIB incident and does not suggest this as a

remedial measure in the proposed rules or “Guidance for Schools on Implementing the ABR.” The Department also agrees that removing the target of bullying does not necessarily prevent future bullying and that it is more appropriate for schools to use remedial measures intended to alter or correct the problem behavior of the harasser.

20. COMMENT: The commenter recommended the Department remove “power imbalance” in proposed N.J.A.C. 6A:16-7.7(a)2iii because introducing “power imbalance” complicates an educator’s identification and assessment of whether an incident is bullying. The commenter also noted several research studies that demonstrated the idea of “power differential” is not present in the way children and youth define bullying. (8)

RESPONSE: The Department disagrees with the commenter’s recommendation to remove “power imbalance” in proposed N.J.A.C. 6A:16-7.7(a)2iii and further disagrees that including the statement that bullying is unwanted, aggressive behavior that may involve a real or perceived power imbalance will complicate identification and assessment of incidents. The concept of power imbalance is prevalent in the literature on bullying and also included in the U.S. Department of Education’s definition of bullying, which states “bullying is unwanted, aggressive behavior among school aged children that involves a real or perceived power imbalance.”

21. COMMENT: The commenter thanked the Department for clarifying, at proposed N.J.A.C. 6A:16-7.7(a)2ix(1), in the original proposal that the principal’s preliminary determination is part of the overall investigation and not a separate activity from the investigation. (9 and 10)

RESPONSE: In response to other comments received, the Department proposed a change to proposed N.J.A.C. 6A:16-7.7(a)2ix(1) in the notice of proposed substantial changes upon adoption

to clarify that the principal's determination is not part of the overall investigation but rather a process prior to the initiation of an HIB investigation. The Department concluded that since the ABR requires HIB investigations to be conducted by a school's anti-bullying specialist (ABS), the principal cannot be part of the investigation; however, he or she may make a preliminary determination, in consultation with the ABS, as to whether the reported incident or complaint, assuming all facts presented are true, is a report of HIB. When the report is within the ABR's scope, the principal must initiate an investigation with the school ABS.

22. COMMENT: The commenter reiterated support for proposed N.J.A.C. 6A:16-7.7(a)2ix(1), which would allow the principal, in conjunction with the ABS, to make a preliminary determination regarding whether a reported incident meets the criteria for HIB before the principal refers the incident to the ABS for investigation.

Additionally, the commenter stated that the proposed rule does not go far enough and should require all principals to complete the initial threshold assessment in response to every allegation of HIB as endorsed by the Anti-Bullying Task Force. The commenter further stated that this requirement would help increase uniformity of the HIB investigation process across the State, ensure allegations that clearly do not rise to the level of HIB are addressed in a timely manner under the code of student conduct, allow the ABS to focus on the allegations that, if true, would rise to the level of HIB, and ensure limited school district resources are utilized in the most efficient manner by freeing up staff to provide other critical services. (105)

RESPONSE: The Department appreciates the support for proposed N.J.A.C. 6A:16-7.7(a)2ix(1). However, the Department disagrees with the recommendation to require principals to utilize this provision in response to every HIB allegation. 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 minimum requirements detailed in N.J.S.A. 18A:37-15.b(6)(a) through (f), including a requirement for the principal or his or her designee to initiate an investigation within one school day of the report of an incident, each district board of education ultimately has control over the content of the school district's HIB policy, pursuant to N.J.S.A. 18A:37-15.b. The HIB policy adopted by a district board of education will dictate whether a principal or his or her designee will initiate an investigation upon receipt of all reports of alleged HIB or only in cases where the preliminary determination as to whether the reported incident, assuming all facts presented are true, is a report within the scope of N.J.S.A. 18A:37-14.

To support principals in school districts where the district board of education decided to include a provision allowing the principal to make a preliminary determination, the Department plans to develop a tool for principals to use in consultation with ABSs to assess whether a reported incident is an act of HIB.

23. COMMENT: The commenters expressed concern with proposed N.J.A.C. 6A:16-7.7(a)(2)ix(1), which will permit a district board of education to include a provision in the school district's HIB policy to permit the principal to make a preliminary determination. The commenter stated the provision will contribute to underreporting of HIB and permit school districts to dismiss allegations of HIB as "typical behavior." The commenters recommended that the Department include procedural requirements in the HIB determination process and require documentation and explanation for any determinations that do not result in the initiation of an HIB investigation. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department recognizes the commenters' concern that the provision in a district board of education HIB policy to permit a principal to make a preliminary determination may contribute to underreporting of HIB and permit school districts to dismiss allegations of HIB as "typical behavior." To prevent underreporting of HIB allegations and noncompliance with the requirements of the ABR and the related rules, the Department approved the proposal of substantial changes to the original proposed notice of proposal at the April 5, 2017, State Board of Education meeting. The proposed new rule at N.J.A.C. 6A:16-7.7(a)2ix(1)(A) will effectuate procedural requirements for appealing a principal's preliminary determination since the determination is not part of the investigation.

The Department also proposed a substantial change at N.J.A.C. 6A:16-7.7(d) to include school administrators who determine a reported incident, assuming all facts presented are true, is a report within the scope of N.J.S.A. 18A:37-14, pursuant to N.J.A.C. 6A:16-7.7(a)2ix(1), and fail to initiate an investigation may also be subject to disciplinary action.

The Department also proposed a substantial change at recodified N.J.A.C. 6A:16-7.8(a)3ix(7) and new (a)3ix(8)(A) to clarify the rules for APSSDs and for consistency.

24. COMMENT: The commenter expressed concern with proposed N.J.A.C. 6A:16-7.7(a)2ix(1), which will permit a principal, in consultation with the ABS, to make a preliminary determination as to whether an incident or complaint is an act of HIB. The commenter recommended that the Department include information as to what constitutes documentation and evidence that a reported incident need not be investigated as an HIB incident to prevent decisions from being made on an arbitrary and capricious basis. The commenter further recommended requiring the following: the target of the bullying and/or his or her parents be interviewed about

the incident, documentation of the interviews, and the reasoning for not proceeding with an HIB investigation be articulated in writing. (8)

RESPONSE: The Department recognizes the commenter's concern and, to prevent underreporting of HIB incidents, the Department proposed substantial changes as described in the Response to Comment 2. The Department disagrees with the recommendation to require specific interviews and documentation for each reported incident. Since the ABR does not stipulate how a school district must conduct an HIB investigation, it is a local decision as to the protocols for conducting investigations, including interviews and documentation.

25. COMMENT: The commenter expressed support for the provision in proposed N.J.A.C. 6A:16-7.7(a)2ix(1) that stated the preliminary determination is part of the investigation required under N.J.S.A. 18A:37-14. The commenter further recommended that the rules require training opportunities for school leaders and the ABS regarding the procedural requirements of the preliminary determination. (18)

RESPONSE: The Department proposed amendments to proposed N.J.A.C. 6A:16-7.7(a)2ix(1) in the notice of proposed substantial changes upon adoption to permit a district board of education policy to include a process prior to initiating an investigation by which the principal, or his or her designees, makes a preliminary determination as to whether a reported incident or complaint, assuming all facts presented are true, is a report within the scope of N.J.S.A. 18A:37-14. (See the Response to Comment 2 for more details.) The Department plans to include information about the new rule in guidance for school districts.

26. COMMENT: The commenter recommended that proposed N.J.A.C. 6A:16-7.7(a)2ix(2), which will require a district board of education's procedures to include a process for the district board of education to investigate a complaint or report of HIB occurring on district board of education school buses, at district board of education school-sponsored functions, and off school grounds involving a student who attends an APSSD, be amended to permit sending district boards of education to assist with, but not take the lead on, the investigations. (105)

RESPONSE: The Department disagrees. A sending district board(s) of education is responsible for investigating incidents that occur on district board of education school buses, at district board of education school-sponsored functions, and off school grounds involving a student who attends an APSSD. The Department contends it may be helpful to have the input of APSSD administrators who may be more familiar with students and proposed N.J.A.C. 6A:16-7.7(a)2ix(2)(A) to require consultation with the APSSD.

27. COMMENT: The commenters expressed concern that the proposed regulations will make HIB investigations unwieldy for APSSDs since sending district board(s) of education, which are not familiar with students who attend APSSDs, will be responsible for incidents occurring off-site. (104 and 105)

RESPONSE: To prevent HIB investigations conducted by a sending district board(s) of education from becoming cumbersome for APSSDs, the Department proposed N.J.A.C. 6A:16-7.7(a)2ix(2)(A) to require an HIB investigation to be conducted by the sending district board of education's ABS in consultation with the APSSD. The proposed rule will ensure an APSSD is informed of the HIB investigation and will have the opportunity to provide information regarding students with whom they may be more familiar.

28. COMMENT: The commenters recommended the Department promulgate new regulations stating that school districts may be liable for school tuition if timely notice of HIB behavior is reported to the school district and it fails to take reasonable steps against HIB. The commenters stated that school districts should not be allowed to limit the payment of tuition to circumstances where a parent removed his or her child from school for safety reasons and is seeking reimbursement for their child's placement at another public school or at a private school. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department disagrees with the commenters' recommendation to include a notice regarding school district liability for school tuition in the proposed regulations. N.J.S.A. 18A:37-16.d and N.J.A.C. 6A:16-7.7(d) already stipulate that a school administrator who receives a report of HIB and fails to initiate or conduct an investigation, or who should have known of an incident of HIB and fails to take sufficient action to minimize or eliminate the HIB may be subject to disciplinary action. The Department does not have the authority to promulgate regulations that hold school districts liable for tuition as a result of a student's transfer due to HIB.

29. COMMENT: The commenters expressed concern regarding the regulatory framework establishing timeframes for a district board of education's review of an investigation of an incident and decision on the investigation's outcome in relation to the time period for parents to file an appeal and when parents are afforded access to the investigation materials. The commenters recommended the Department establish a clear timeframe with which a district board of education conducts investigations and adopts the outcome, as well as providing parents with more time to file appeals and with improved access to investigation materials. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department proposed N.J.A.C. 6A:16-7.7(a)2xi(1) and 7.8(a)3xi(1) to establish timeframes for the appeal process for families of students who are involved in an HIB incident by providing parents or guardians 60 calendar days to request a hearing before the district board of education concerning the written information about an HIB investigation. The Department disagrees with the recommendation to create new rules regarding access to the investigation materials since rules already exist. N.J.A.C. 6A:32-7.5 and 7.6 govern access to student records.

30. COMMENT: The commenter recommended the Department enhance the role of the school safety/school climate team by requiring school districts to provide the team with the findings of all HIB investigations, even when an investigation concludes that an incident was not found to be HIB. The commenter also recommended the Department require a school safety/school climate team to connect to the school district's special education parent advisory group and any other required parent advisory groups, such as the bilingual advisory group. (16)

RESPONSE: The commenter may be pleased to learn that the ABR requires the school safety/school climate team receive any complaints of HIB that have been reported to the principal and receive copies of any report prepared after an investigation of an incident of HIB (see N.J.S.A. 18A:37-21.c(1) and (2)) as part of their role to strengthen school climate and prevent HIB. Additionally, the Department agrees that the engagement of parent advisory groups may be helpful to the school safety/school climate team and contribute to a more positive school climate. Proposed N.J.A.C. 6A:16-7.7(h)1i and ii do not preclude school safety/school climate teams from collaborating with parent groups.

31. COMMENT: The commenters supported the expansion of the regulations regarding HIB incidents to include APSSDs at proposed N.J.A.C. 6A:16-7.8. (2, 4, and 116)

RESPONSE: The Department appreciates the support.

32. COMMENT: The commenters expressed concern with proposed N.J.A.C. 6A:16-7.8(a)3xi, which will permit parents or guardians of students who are parties to an HIB investigation to request a hearing before the sending district board of education concerning information received about an investigation. The commenters stated that the proposed regulation does not require APSSD employees to attend the hearing at the sending district board of education, which could limit a parent's ability to challenge a report's findings. The commenters also expressed concerned that APSSDs are not required to adhere to the findings of the sending district board of education's hearing and can remove students from the APSSD as the result of disciplinary action and the sending district board of education will have no authority to return the student to the APSSD. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department contends that current rules and the proposed regulations address the commenters' concerns. First, proposed N.J.A.C. 6A:16-7.8(a)3xi(2) will require the APSSD and the sending district board of education to coordinate the policies and procedures for conducting hearings. While proposed N.J.A.C. 6A:16-7.8 does not require specific individuals to attend the hearings, it is the responsibility of each district board of education to determine the most appropriate manner for conducting the hearings. Secondly, consequences for a student who commits an act of HIB, including the removal of a student from a placement, must be consistent with the provisions of N.J.A.C. 6A:14-7.6(f) and 6A:16-7.8. Additionally, parents of students

involved in an HIB investigation may appeal a district board of education's decision to the Commissioner through the controversies and disputes process, pursuant to N.J.A.C. 6A:3.

33. COMMENT: The commenters recommended the Department propose new rules to improve the effectiveness of the school safety/school climate team. The commenters recommended that the regulations encourage the team to meet more frequently than the statutory requirement. The commenters further recommended new regulations be added to ensure that the school safety/school climate team has full access to information relevant to school safety, culture, and climate, including reports of all HIB incidents. The commenters also recommended that new regulations be added to provide specific guidance regarding the selection, preparation, and function of the parent member on the school safety/school climate team. The commenters stressed that school districts should avoid excluding parents from the activities of the school safety/school climate team because files related to HIB investigations can be redacted to remove students' identifying information to allow for parental participation. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department agrees that school safety/school climate teams play an important role in building positive learning environments. However, the commenters' recommendations are more appropriate in guidance resources for schools than in regulations. Furthermore, it is unnecessary for the Department to propose new regulations since the ABR already includes requirements related to school safety/school climate team meetings (N.J.S.A. 18A:37-21.a), the responsibilities of the team (N.J.S.A. 18A:37-21.c), and the role of the parent member (N.J.S.A. 18A:37-21.e).

34. COMMENT: The commenter disagreed with the provision in proposed N.J.A.C. 6A:16-7.8 that would require sending district board of education personnel to address HIB incidents as presenting “real and significant legal and practical challenges” for the sending school district. The commenter recommended that proposed N.J.A.C. 6A:16-7.8 be amended to require APSSD administrators to review HIB matters and immediately report them to the sending district board of education. The commenter recommended the Department revise the proposed rules to allow a sending district board of education to assist the APSSD with investigations of alleged HIB incidents that occur on sending district board of education school busses or at sending district board of education school-sponsored functions and that involve sending district board of education students who attend an APSSD. (105)

RESPONSE: The Department agrees that APSSD administrators are responsible for investigating allegations of HIB that occur at APSSDs (see proposed N.J.A.C. 6A:16-7.8(3)ix) and with reporting the result of each investigation to the appropriate sending district board(s) of education personnel (see proposed N.J.A.C. 6A:16-7.8(3)ix(4)). However, the Department disagrees that APSSD administrators are responsible for incidents that occur on a sending district board of education bus, at a sending district board of education school-sponsored function, and off school grounds. The sending district board(s) of education is responsible for investigating incidents that occur in on a sending district board of education bus, at a sending district board of education school-sponsored function, and off school grounds. Since it may be helpful to have the input of APSSD administrators who may be more familiar with students, proposed N.J.A.C. 6A:16-7.7(a)2ix(2)(A) requires the sending district board of ABS to conduct the HIB investigation in consultation with the APSSD.

35. COMMENT: The commenters expressed concern that employees at APSSDs will be vulnerable to legal exposure because proposed N.J.A.C. 6A:16-7.8 will require them to report HIB but does not include a provision for immunity like public school counterparts. (104 and 105)

RESPONSE: The Department does not have the authority to include an immunity provision for an employee of an APSSD who promptly reports an incident of HIB to the full-time non-teaching principal in compliance with the APSSD's HIB policy since APSSDs are not included under the provisions of N.J.S.A. 18A:37-16.c.

36. COMMENT: The commenter recommended the Department revise the proposed rules to allow APSSDs to retain control over their HIB policies. (104)

RESPONSE: The Department agrees that an APSSD must be responsible for its own HIB policy. The Department contends that proposed N.J.A.C. 6A:16-7.8(a) supports this recommendation as it states “[e]ach approved private school for students with disabilities (PSSD) shall develop, adopt, and implement a policy prohibiting harassment, intimidation, or bullying on school grounds.”

37. COMMENT: The commenters stated they understand the Department's rationale for including New Jersey students in out-of-State PSSDs at N.J.A.C. 6A:16-7.8(a) but expressed concern about the practicality of enforcing the regulation if an offender has no connection to New Jersey. (9 and 10)

RESPONSE: The Department understands the commenters' concerns. However, a sending district board of education is responsible for ensuring its students in out-of-State PSSDs are provided with safe learning environments and also receive the same education, supports, and services available in the district of residence. The sending district board of education will also be responsible for

contracting with the out-of-State PSSD to ensure HIB investigations are conducted in compliance with proposed N.J.A.C. 6A:16-7.8 and to take appropriate action if it is determined that an out-of-State PSSD is not compliant.

38. COMMENT: The commenter disagreed that proposed N.J.A.C. 6A:16-7.8(a)3 will make a sending district board of education responsible for HIB incidents occurring off school grounds involving its students who attend an APSSD. The commenter recommended that an APSSD be made responsible for investigating the incidents since an APSSD has more familiarity with its students. The commenter more strongly disagreed with the same requirement being applied to students sent to an out-of-State APSSD, which the commenter stated would be problematic. (10)

RESPONSE: The Department disagrees that APSSD administrators will be responsible for incidents that occur on a sending district board of education bus, at a sending district board of education school-sponsored function, and off school grounds. A sending district board(s) of education is responsible for investigating incidents that occur in or on a sending district board of education bus, at a sending district board of education school-sponsored function, and off school grounds. Since it may be helpful to have the input of APSSD administrators who may be more familiar with students, proposed N.J.A.C. 6A:16-7.7(a)2ix(2)(A) requires the sending district board of education's ABS to conduct an HIB investigation in consultation with the APSSD.

39. COMMENT: The commenter stated the current system APSSDs follow for HIB incidents -- whereby the APSSD principal initiates the investigation, the school ABS conducts the investigation, the sending district(s) board of education is notified of confirmed incidents, and a response to address the behavior is developed -- is appropriate and does not need to be changed.

The commenter further stated APSSDs have low incidents of HIB because of extensive behavior modification systems in place and students who are placed in programs with history of bullying or being bullied get more intensive specialized services. (104)

RESPONSE: The provisions at proposed N.J.A.C. 6A:16-7.8(a)3ix are similar to the steps described by the commenter for allegations of HIB that occurs at an APSSD. The full-time non-teaching principal initiates the investigation, the school ABS must conduct the investigation, and the result of each investigation must be reported to sending district board(s) of education personnel. The full-time non-teaching principal may provide intervention services; establish training programs to reduce HIB and to enhance school climate; and, in consultation and conjunction with the sending district board of education, impose discipline upon students, order counseling for students, or take other actions as appropriate.

40. COMMENT: The commenters noted that there is no statutory mandate for HIB programs at APSSDs or a mandate for the sending district board of education to be involved in the creation of HIB policies, training programs, or disciplinary proceedings of APSSDs. The commenters expressed concern that proposed N.J.A.C. 6A:16-7.8 presents legal and practical issues, without legislative authorization, that may increase expenses and liability for district boards of education. (9 and 10)

RESPONSE: The Department understands the commenters' concerns, but maintains that sending district boards of education are responsible for ensuring district board of education students who attend APSSDs are provided with safe learning environments and receive the same education, supports, and services they would in the school district.

41. COMMENT: The commenters expressed support for the amendment at proposed N.J.A.C. 6A:16-7.8(a)3vi(1) put forth at proposal level that inserted “to the extent relevant” after “the nature of the student’s disability” when determining consequences for a student attending an APSSD who commits an act of harassment, intimidation, or bullying. (9 and 10)

RESPONSE: The Department appreciates the support.

42. COMMENT: The commenters expressed concern that proposed N.J.A.C. 6A:16-7.8(a)3xi will require parents of students in APSSDs who are party to an HIB investigation to request a hearing before the sending district board of education. The commenters stated that there is no legislative requirement for a sending district to hold such a hearing for an incident of HIB that occurs at an APSSD. The commenters also stated the proposed requirement may amount to an unfunded mandate on district boards of education that imposes needless and unwanted liability. The commenters asked for clarification on the role of the district board of education and APSSD in the hearing. (9 and 10)

RESPONSE: The Department disagrees. The sending district board of education is responsible for the educational program of each student in an APSSD, pursuant to N.J.A.C. 6A:14-7.5(a) and, therefore, must afford the parents of its students their right to a hearing before the sending district board of education. Sending district board of education students in approved PSSDs are entitled to the same appeal options as other district board of education students. The Department proposed N.J.A.C. 6A:16-7.8(a)3xi(2) to specify the role of the district board of education and the APSSD at the hearing, including a requirement that hearing procedures must be in accordance with the sending district board of education policies and procedures.

43. COMMENT: The commenter recommended the Department clarify what is a “disciplinary action,” pursuant to recodified N.J.A.C. 6A:16-7.9, to be included in the transfer of records to another public school district. The commenter asked if the principal’s determination that an incident is not HIB would be part of the student information that must be transferred. (10)

RESPONSE: Pursuant to N.J.A.C. 6A:16-7.9(a), all information in the student’s record related to disciplinary actions taken against the student by the school district must be provided to the receiving school district. A determination that an incident is not HIB is not a disciplinary action taken against a student.

44. COMMENT: The commenters stated that the ABR requires the Commissioner to establish a formal protocol for investigating complaints of alleged violations and that the regulations should alert the public of the existence of the protocol. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department disagrees that it is necessary to alert the public of the existence of the formal protocol through regulations, since N.J.S.A. 18A:37-25 establishes the required protocol. Additionally, the Department provides information on the formal protocol in two Department resources, Guidance for Parents on the Anti-Bullying Bill of Rights Act and Guidance for Schools on Implementing the Anti-Bullying Bill of Rights Act.

45. COMMENT: The commenters recommended that the Commissioner make changes to the process utilized by the executive county superintendent’s office to investigate complaints of non-compliance with the ABR, pursuant to N.J.S.A. 18A:37-25, to ensure that violations of the ABR and the corresponding regulations can be brought to the Department’s attention. The commenters suggested the Commissioner develop a form to collect all necessary information, similar to the

form developed regarding special education complaints, and post on the Department's website. The commenters also recommended a 60-day deadline for completion of investigations and issuance of reports. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department appreciates the commenters' recommendations and will review the formal protocol currently utilized by the executive county superintendent's office to investigate complaints of allegations of non-compliance with the ABR to determine if any changes to the process are warranted. The protocol is not included in N.J.A.C. 6A:16 since it is required by the ABR. The Department takes all HIB investigations seriously and provides the completed investigation report in response to a complaint once all available information is received and processed. The Department declines to include a 60-day deadline for completion of investigations and issuance of reports by the executive county superintendent's office because oftentimes, a nuanced approach and multi-level investigation is necessary to determine compliance with the ABR. A one-size-fits-all deadline is not appropriate for this type of investigation.

46. COMMENT: The commenters recommended a new rule to require all school staff to receive training regarding sensitive issues that affect students in schools, such as sexual orientation, gender identity, and gender expression. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department does not have the authority to mandate training for all school staff without a statutory requirement and the recommended mandate is not included in the ABR or elsewhere in Title 18A of New Jersey Statutes. The Department plans to develop and disseminate supportive resources for school districts that will assist school staff in responding considerately to HIB incidents and appropriately supporting all students. This information will be included in future trainings.

47. COMMENT: The commenters recommended that the State Board and the Commissioner seek an annual appropriation of \$3 million from the Legislature for the Bullying Prevention Fund. The commenters suggested that the funds should be utilized to support three regional training centers that would provide consultation and technical assistance to schools on bullying-related issues. The commenters also suggested the funds should be used to establish and maintain a hotline to answer bullying related calls from school staff, parents, and community members. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The comment is outside the scope of the rulemaking at N.J.A.C. 6A:16-7.7 and 7.8.

48. COMMENT: The commenter suggested the Department create an on-going State advisory process of community advocates to ensure HIB is adequately addressed and the intent of the ABR is fulfilled. (7)

RESPONSE: The Department disagrees with the commenter's suggestion to create a formal State advisory group on the ABR's implementation. The Department participates in multiple coalitions regarding issues around school climate and will continue to engage stakeholders in discussions regarding the ABR's implementation.

49. COMMENT: The commenter recommended that the Department require each school district to assess the school climate in each school on an annual basis to meet the ABR's requirement that the school safety team "review and strengthen school climate and policies of the school," pursuant to N.J.S.A. 18A:37-21.c(4). The commenter argued this requirement cannot be effectively conducted in the absence of data from students and school personnel on the nature of each school's school climate. The commenter further suggested that schools utilize a school

climate survey, such as those made available by the Department or the United States Department of Education. (8)

RESPONSE: The Department agrees that school climate surveys are valuable instruments that provide schools and school districts with data from the school community that can be used to improve a school's climate and promote safe and supportive environments conducive to learning. However, the Department disagrees with the commenter's recommendation to include in the proposed rulemaking a requirement for each school district to annually assess its climate and to use of a school climate survey. While conducting a school climate survey is one research-based strategy for school climate improvement, school districts have the flexibility to determine the method for conducting this review, pursuant to N.J.S.A. 18A:37-21.c(4), which may include a school climate survey.

50. COMMENT: The commenters recommended that new rules be added to the proposed rulemaking to inform school districts that parents are entitled to student records and that the Open Public Records Act (OPRA) provides another avenue for access to student records. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: The Department disagrees that new rules in N.J.A.C. 6A:16 regarding student records are necessary. N.J.A.C. 6A:32-7.5 and 7.6 govern access to student records. The Department also notes that OPRA does not authorize access to all records that may be requested by parents, particularly individual student records.

51. COMMENT: The commenters stated that parents are entitled to an HIB investigation report involving their child and recommended the parents of the target and perpetrator be given

the same report that is provided to the district board of education, with all personally identifiable information of other students redacted and in a matter consistent with school district policy and State and Federal law regarding the handling of confidential and sensitive information. (1, 2, 4, 7, 15, 16, and 116)

RESPONSE: School districts are responsible for maintaining records and determining rights to access the records, pursuant to N.J.A.C. 6A:32-7. Furthermore, the ABR does not require the investigation report be given to parents. A school district that chooses to provide parents with an investigation report cannot divulge privileged/confidential information or information precluded by law, including, but not limited to, information about a student(s) other than the recipients' child or information that could identify the other student(s). 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 18 years of age, parents are entitled to information about only their own child(ren).

52. COMMENT: The commenters recommended that the Department amend the proposed rulemaking to require school districts to appoint the same individual to fulfill the role of the anti-bullying coordinator (ABC) and affirmative action officer (AAO). The commenters stated that the requirement would ensure the New Jersey Law Against Discrimination and the ABR are appropriately followed; reduce duplication and confusion; eliminate conflict in assessing which law applies to each incident; and ensure incidents of HIB and discriminatory behavior by adults in a school are appropriately assessed without any conflict of interest. (1, 2, 4, 7, 8, 15, 16, and 116)

RESPONSE: The Department appreciates the recommendation and recognizes that there may be some confusion between the role of the AAO and the role of the ABC or ABS when HIB incidents

occur, as discussed by the Anti-Bullying Task Force. While neither the ABR, nor N.J.A.C. 6A:7, Managing for Equality and Equity in Education, precludes the AAO from being the ABS or the ABC, as long as the AAO is trained to be an ABS according to the ABR's requirements, the Department asserts that this decision should be made by each school district. The Department will consider suggesting this practice in guidance.

53. COMMENT: The commenter recommended the Department develop rules to require school districts to establish a "safe person" to whom a student who may be the victim of bullying could go to for support. This person would be required to inform the school safety team about the nature of any incident that occurred without identifying information but would not be required to report the incident as potential HIB unless reporting is consistent with the student's wishes. The commenter further noted that students who may be victims of bullying should be able to decide if they want an investigation to commence. (15)

RESPONSE: The Department disagrees with the recommendation to develop rules that would permit school district staff who are aware of a potential HIB incident to not report it to the appropriate school staff to prevent the ABS from conducting an investigation. Even if the student who was bullied prefers that an investigation not be conducted, N.J.S.A. 18A:37-16.b requires a school employee who has reliable information that a student has been subject to HIB to report the incident to the appropriate school official designated by the school district's policy or to any school administrator or safe schools resource officer who shall immediately initiate the school district's procedures concerning bullying. Furthermore, pursuant to N.J.S.A. 18A:37-16.d, a school administrator who receives a report of HIB from a district employee and fails to conduct an

investigation may be subject to disciplinary action. The Department cannot promulgate regulations contrary to statutory requirements.

The Department agrees with the commenter that students should be able to turn to a trusted adult or “safe person” for support. However, the Department disagrees with the commenter’s recommendation to mandate the establishment of this position. The ABR requires each school to appoint an ABS. Pursuant to N.J.S.A. 18A:37-20, the ABS role must be performed by a school guidance counselor, school psychologist, or other person similarly trained. An individual with this training should have the skills and disposition to be a “safe person” for students.

3. Comments Received upon Publication of Notice of Proposed Substantial Changes upon Adoption to Proposed Amendments and New Rules at N.J.A.C. 6A:16-7.7 and 7.8

54. COMMENT: The commenters urged the Department to consider an effective date for the proposed amendments and new rules that is later than the adoption date. The commenters stated a delayed implementation is necessary because school districts have already adopted their HIB policies and procedures for the 2017-2018 school year. (9 and 10)

RESPONSE: The Department agrees with the recommendation to delay the proposed rulemaking’s effective date. The rulemaking contains completely new rules for APSSDs and significantly revised rules for school districts, both of which require revisions to HIB policies and procedures and training of staff. The Department plans to have a delayed operative date for the adopted amendments and new rules of July 1, 2018.

55. COMMENT: The commenter expressed appreciation for the Department's attempts to address concerns raised by previous comments from the Coalition for an Effective ABR; however, the commenter stated the Department's responses did not go far enough in most cases. Further, the commenter stated the Department failed to respond to comments and recommended rule language previously submitted and asserted the Department may be out of compliance with N.J.S.A. 52:14B-4(a)(4), which concerns agency responses to public comments. Moreover, the commenter asked the Department to review and consider the comments previously submitted on October 5, 2016, referencing the Coalition for an Effective ABR. (1)

RESPONSE: The Department thanks the commenter for the comments supporting the Department's rulemaking review process and also recognizes the commenter's dissatisfaction with the proposed regulations. The Department disagrees with the commenter's assertion that the Department is out of compliance with N.J.S.A. 52:14B-4(a)(4). The Department thoroughly reviewed all comments submitted regarding N.J.A.C. 6A:16-7.7 and 7.8, including the comments submitted on October 5, 2016, by the Coalition for an Effective ABR and is responding to each comment via this notice of adoption.

The commenter may have thought that comments submitted on October 5, 2016, were not responded to because the summarized comments and Department responses were not included in the Notice of Proposed Substantial Change upon Adoption approved by the State Board at its meeting on April 5, 2017, and published in the New Jersey Register on June 5, 2017 (see 49 N.J.R. 1285(a)). As outlined in the notice, the Department proposed a number of substantial changes to the proposed amendments in response to comments received. A summary of only the comments that prompted the changes and the Department's responses were provided in the Notice of Proposed Substantial Change upon Adoption. Any comments submitted during the 60-day public

comment period that were not responded to in the Notice of Proposed Substantial Change upon Adoption are included in this notice of adoption. This notice of adoption also includes comments submitted about the Notice of Proposed Substantial Change upon Adoption. This notice of adoption also includes the previously published comments on the original proposal that led to proposed substantial changes, which ensures all comments received on the original proposal and the Notice of Proposed Substantial Change upon Adoption are captured for the record.

56. COMMENT: The commenter expressed eagerness for the Department’s development and dissemination of relevant “supportive resources” regarding the issue of “sensitive information” that was stated in a Department response included in the Notice of Proposed Substantial Change upon Adoption. (1)

RESPONSE: The Department thanks the commenter for the support and plans to develop and disseminate supportive resources for school districts that will assist school staff in responding considerately to HIB incidents and appropriately supporting all students.

57. COMMENT: The commenter recommended the Department revise the proposed rulemaking to prevent LGBT students from being “outed” to their parents when an incident of HIB has taken place in school. The commenter further noted that students should have the opportunity to talk to their families about their orientation/identity when they are ready, rather than as a result of actions taken by school officials. (112)

RESPONSE: The Department understands the commenter’s concerns and proposed several rules to address these concerns in the notice of proposed substantial change upon adoption. Please see the Response to Comment 1 for full explanation of the rules and rationale.

58. COMMENT: The commenters recommended the Department add language at proposed N.J.A.C. 6A:16-7.7(a)2viii(2), which will require a school district official to take into account the circumstances of an incident when providing notification to parents, to provide greater guidance to school personnel. Specifically, the commenters suggested the Department define “school district official” and “circumstances of the incident.” (9 and 10)

RESPONSE: “School official” is defined in N.J.A.C. 6A:28-1.2 as “a board member, a member of the board of trustees of a charter school, an employee or officer of the New Jersey School Boards Association, but not including any member of the secretarial, clerical or maintenance staff of the Association, or an administrator of a district board of education or charter school.” Since all school officials must abide by the school ethics rules in N.J.A.C. 6A:28, the Department contends it is unnecessary to define the term at N.J.A.C. 6A:16-1.3. The Department also disagrees that it is necessary to define “circumstances of the incident” as the circumstances of each HIB incident are unique.

59. COMMENT: The commenters expressed support for proposed N.J.A.C. 6A:16-7.7(a)2viii(2), which will require a school district official to take into account the circumstances of a reported HIB incident when providing notification to parents and guardians of all students involved and when conveying the nature of the incident, including the actual or perceived protected category motivating the alleged offense.

The commenters also recommended the Department revise proposed N.J.A.C. 6A:16-7.7(a)2viii(2) to protect the privacy and safety of a targeted student by replacing the proposed rule with the following: “To protect the privacy and safety of the victim, and subject to the requirements

of N.J.A.C. 6A:16, school officials and staff members shall take into account the circumstances of the incident in deciding whether, when, and how to convey the nature of the incident, including the actual or perceived category motivating the alleged offense, in oral and written communications related to the reported incident of alleged HIB. Such communications include notification to parents and guardians of all students involved in the incident, interviews with witnesses, and HIB investigation reports.”

The commenters further recommended that any notification by school district officials should take into account the characteristic that is the basis for the HIB incident because a student’s safety and privacy could be jeopardized if the characteristic is of a sensitive nature, such as gender identity or sexual orientation. The commenters noted that young people who are targets of HIB hesitate to report incidents because of fear of being “outed” to others, especially parents/guardians. The commenters further stated the danger to a student’s safety and privacy can be minimized when school districts have strategies to handle matters with great care. (1, 4, 15, 38, 77, 108, and 111)

RESPONSE: The Department appreciates the commenters’ support and acknowledges the concern for the safety and privacy of students who are targets of HIB, especially when the characteristic is of a nature such as gender identity or sexual orientation. The Department further agrees with the commenters that students are better protected when school districts are equipped with strategies to handle such matters with care and sensitivity. To help school districts in this implementation, the Department plans to develop and disseminate supportive resources that will assist school staff in responding considerately to HIB incidents and appropriately supporting all students. (See also the Response to Comment 1.)

However, the Department disagrees with the language proposed by the commenters to replace N.J.A.C. 6A:16-7.7(a)2viii(2). The language proposed by the commenters would permit

school officials and staff members to decide “whether, when, and how to convey the nature of the incident” in oral and written communications “to parents and guardians of all students involved in the incident.” The proposed language violates the ABR’s mandates, pursuant to N.J.S.A. 18A:37-15.b(6), and would result in schools and school districts being out of compliance with the ABR and subject to the findings of noncompliance, which may include corrective action. The Department understands the commenters’ intent to protect the safety and privacy of students from being “outed” to their parents and the detrimental effect it can have on students. The Department contends the proposed rules address the commenters’ concern and will protect students from this outcome while fulfilling the ABR’s requirements.

60. COMMENT: The commenter stated the importance of amending proposed N.J.A.C. 6A:16-7.7(a)2viii(2) to protect the privacy and safety of a student who is the target of HIB, based on a characteristic that calls for taking circumstances into account when making any notification about the incident. The commenter further noted that the current proposed rule is ambiguous and has an implication that may not serve the intended purpose. The commenter further stated that the proposed rule may lead to conclusions that would further endanger, rather than protect, students from being “outed.” The commenter also noted that the proposed rule implies that the administrator is expected to tell the parent about the actual or perceived protected characteristic, which the commenter noted is not required by statute.

The commenter suggested the Department replace proposed at N.J.A.C. 6A:16-7.7(a)2viii(2) with the following: “To protect the victim, the school district official shall take into account the circumstances of the incident when providing notification to parents and guardians of all students involved in the reported harassment, intimidation, or bullying incident, and school

officials and staff members shall consider the safety of the students whenever the nature of the incident, including the actual or perceived category motivating the alleged offense, is conveyed in any verbal communication or written document related to the reporting, investigation or documentation of the incident.” (15)

RESPONSE: The Department agrees with the importance of protecting the privacy and safety of all students who are targets of HIB, especially when the HIB is based on a characteristic that calls for taking the circumstances into account when making notifications about the incident. However, the Department disagrees with the commenter’s interpretation of the ABR. Pursuant to N.J.S.A. 18A:37-15.b(6)(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.” The Department maintains that the proposed rule and forthcoming guidance will protect the privacy and safety of all students while fulfilling the statutory requirements.

61. COMMENT: The commenter recommended the Department delete “taking into account the circumstances of the incident” at N.J.A.C. 6A:16-7.7(a)2viii(2), (a)2ix(3), and (a)2x(1) and 7.8(a)3viii(2), (a)3ix(6), and (a)3x(1). The commenter acknowledged great care is necessary to determine how to best communicate sensitive information with parents during an HIB investigation, such as a student’s sexual orientation. However, the commenter stated the issue is best addressed through Department guidance and examples, rather than through rules. The commenter explained that parents are entitled to know the perceived characteristic that led to their child being a target for HIB. The commenter recommended the Department include either in rule or guidance the following language: “nothing in the code shall be construed to require a school

principal to share information regarding the sexual orientation or gender identity of a student as part of investigating or reporting on an allegation of HIB.” (110)

RESPONSE: The Department disagrees with the commenter’s recommendation to delete “to take into account the circumstances of the incident” in each of the cited proposed rules. The Department contends it is important for school district officials to be aware of the possible negative outcomes for students when sharing specific information as a result of an HIB investigation and, therefore, the proposed rules are necessary to protect students’ safety and privacy. The Department agrees that guidance from the Department, including language that clearly states that principals do not need to share information regarding a student’s sexual orientation or gender identity, would be helpful to school districts, administrators, and educators. The Department will take the commenter’s recommended language under consideration when developing guidance materials.

62. COMMENT: The commenter expressed support for proposed N.J.A.C. 6A:16-7.7(a)2ix(1), which will allow a principal, in conjunction with the ABS, to make an initial determination as to whether a complaint constitutes an allegation of HIB. The commenter further stated that the amended rule, which calls for the principal to assess the complaint assuming the alleged facts are true, is the appropriate standard for making the initial determination. The commenter stated there have been countless examples during the past six years of students and parents, and sometimes staff members, mistakenly using “bullying” to describe incidents that are typical student conflict or otherwise clearly do not meet the HIB definition. The commenter stressed the importance of a consistent approach to the investigation of HIB incidents and recommended the Department require the proposed provision in all school districts rather than making it contingent upon the adoption of a district board of education policy. The commenter

recommended the Department include the initial threshold determination language in the Model Policy on Harassment, Intimidation and Bullying. (110)

RESPONSE: The Department appreciates the commenter's support and recognizes the usefulness of proposed N.J.A.C. 6A:16-7.7(a)2ix(1), which will allow a principal to make a preliminary determination that an incident is not within the scope of N.J.S.A. 18A:37-14. However, the Department disagrees that this provision should be required for all school districts. Under the proposed rule, district boards of education will determine whether to include this provision in their HIB policies. The Department will take the commenter's suggestion for including language on the preliminary determination threshold under consideration when revising the Model Policy on Harassment, Intimidation and Bullying.

63. COMMENT: The commenter expressed support for the addition of a provision at N.J.A.C. 6A:16-7.7(a)2ix(1)(A) that would establish a general parental appeal of a threshold determination that an incident does not constitute HIB. However, the commenter stated that the provision ideally would allow a parent to appeal the preliminary decision to the superintendent or superintendent's designee rather than to the district board of education, as currently stated. The commenter stated that appealing to the superintendent would allow for a much more timely review and would help establish a more comprehensive record of the incident if an appeal to the district board of education is necessary. (110)

RESPONSE: The proposed rules do not preclude a parent from discussing the matter with the superintendent or superintendent's designee prior to making a decision whether to appeal to the district board of education.

64. COMMENT: The commenter expressed support for the Department's addition of a rule that includes a general right to appeal a preliminary determination. However, the commenter stated that proposed N.J.A.C. 6A:16-7.7(a)2ix(1)(A) must go further and recommended the Department provide additional procedural safeguards. The commenter suggested the safeguards include written notice of the preliminary determination, a requirement that the written notice include the specific criterion of the ABR that is not met, even if the facts alleged are assumed to be true, and a time frame for completion of the written notice. (1)

RESPONSE: The Department disagrees with the recommendation. Proposed N.J.A.C. 6A:16-7.7(a)2ix(1) will allow schools to more effectively address incident reports and to support all students by allowing a school district forgo the ABR's procedural requirements when a report is not within the ABR's scope. The recommendation to require additional procedures for the preliminary determination would conflict with the provision's intent.

Additionally, proposed N.J.A.C. 6A:16-7.7(a)2ix(1)(A) will effectuate procedural requirements for appealing a principal's preliminary determination. Since the determination is not part of an investigation, the proposed rule will provide safeguards to ensure that students and parents have a process to disagree with a principal's determination. (See the Response to Comment 56.) The Department added an additional safeguard at N.J.A.C. 6A:16-7.7(d) to include possible disciplinary action for school administrators who determine a reported incident or complaint, assuming all facts presented are true, is a report within the scope of N.J.S.A. 18A:37-14, but who fail to initiate an investigation.

65. COMMENT: The commenters expressed concern with N.J.A.C. 6A:16-7.7(a)2ix(1), which will permit a principal to engage in a preliminary determination process prior to initiating

an HIB investigation. The commenters reiterated support for previously proposed amendments by commenters that stated the principal “shall initiate the investigation by reviewing the information presented and, utilizing the Threshold Assessment Checklist, determine whether the facts, if true may constitute HIB. When the facts presented, if true, do not satisfy the definition in law, the principal shall handle the matter consistent with the district’s code of student conduct. The principal’s determination shall be forwarded to the superintendent. All other reports shall be referred to the anti-bullying specialist for investigation.” (9 and 10)

RESPONSE: The Department conducted additional discussion on N.J.A.C. 6A:16-7.7(a)2ix(1) presented at proposal level to include the principal’s preliminary determination as part of the investigation based on the commenters’ concern. The Department concluded that since HIB investigations must be conducted by the school ABS specialist under the ABR, the principal may not be part of the investigation; however, he or she may make a preliminary determination, in consultation with the ABS, as to whether the reported incident or complaint, assuming all facts presented are true, is a report of HIB. When the report is within the scope of the ABR, the principal must initiate the investigation with the school ABS.

The Department published a notice of substantial changes to amend the proposed new rule at recodified N.J.A.C. 6A:16-7.7(a)2ix(1).

The Department also proposed new N.J.A.C. 6A:16-7.7(a)2ix(1)(A) to effectuate procedural requirements for appealing the principal’s preliminary determination since the determination is not part of the investigation.

The Department also proposed an amendment at N.J.A.C. 6A:16-7.7(d) to include school administrators who determine a reported incident or complaint, assuming all facts presented are

true, is a report within the scope of N.J.S.A. 18A:37-14, pursuant to N.J.A.C. 6A:16-7.7(a)2ix(1), that fail to initiate an investigation may also be subject to disciplinary action.

The Department also proposed an amendment at recodified N.J.A.C. 6A:16-7.8(a)3ix(7) and (8) and new N.J.A.C. 6A:16-7.8(a)3ix(8)(A) to clarify the rules for APSSDs and for consistency.

66. COMMENT: The commenters stated that proposed N.J.A.C. 6A:16-7.7(a)2ix(1)(A), which will permit an appeal of a principal's preliminary determination, is outside the scope of the ABR. The commenters also stated that students may not receive the procedural protections mandated by the ABR, if district boards of education adopt the provision as part of their HIB policy. (9 and 10)

RESPONSE: A principal's preliminary determination is not part of the HIB investigation (see the Response to Comment 2). Therefore, a district board of education's inclusion of the provision in its HIB policy would not impede the procedural protections mandated by the ABR.

67. COMMENT: The commenters asked for clarification as to what would happen if a district board of education overturns a principal's preliminary determination that a reported incident is outside the scope of N.J.S.A. 18A:37-14. The commenters further inquired how a school district will be able to comply with the ABR timelines if a preliminary determination is overturned. (9 and 10)

RESPONSE: If a district board of education overturns a principal's preliminary determination that a reported incident is outside the scope of N.J.S.A. 18A:37-14, the school district must immediately initiate an investigation based on the initial report to the principal. The principal will

be required to inform the parents or guardians of all students involved in the alleged HIB incident and the investigation must be initiated on the next school day after the district board of education's decision, complying with all subsequent timelines outlined at N.J.S.A. 18A:37-15.b(6).

68. COMMENT: The commenters recommended the Department add at N.J.A.C. 6A:16-7.7(a)2ix(1)(A) a time limit for parents to appeal a principal's determination that the conduct is outside the scope of N.J.S.A. 18A:37-14. (9 and 10)

RESPONSE: The Department maintains that a timeline for the parent's appeal is not necessary at N.J.A.C. 6A:16-7.7(a)2ix(1)(A) since it is already established by district board of education policies and procedures governing pupil grievances. The Department will take this recommendation under consideration for future rulemaking once school districts have had the opportunity to implement the proposed rules and the Department receives feedback from school district officials on barriers or consequences resulting from the proposed rulemaking's implementation.

69. COMMENT: The commenter expressed concern with proposed N.J.A.C. 6A:16-7.7(a)2ix(2) and (a)2ix(2)(A), which will require a district board of education to investigate a complaint or report of HIB occurring on a sending district board of education school bus, at district board of education school-sponsored functions, and off school grounds involving a student who attends an APSSD. The commenter argued that splitting the responsibility between the district board of education and the APSSD for HIB investigations will result in a fractured approach to addressing HIB and possible delays due to scheduling and logistical issues. The commenter further stated that splitting the responsibility may not elicit reliable information from APSSD students

since they most likely do not have a relationship with the ABS from the sending district board of education. The commenter recommended the Department amend the rule to make an APSSD the lead on investigations of HIB involving APSSD students, with the exception of incidents occurring at functions that are sponsored by the sending district board of education. The commenter also suggested that the Department amend the rule to require an APSSD to actively participate in all aspects of HIB investigations, including questioning of students, as requested by the sending district board of education. (110)

RESPONSE: The Department understands the commenter's concern. However, a sending district board of education is responsible for ensuring its students in APSSDs are provided with safe learning environments and also receive the same education, supports, and services the students would receive in their school district of residence. Therefore, a district board of education would initiate the investigation according to its HIB policy when an alleged HIB incident occurs while transporting students to or from the APSSD on the sending district board of education bus. Similarly, a district board of education remains responsible, pursuant to the ABR, to conduct an investigation when an HIB incident occurs off school grounds or at a district board of education sponsored function. Pursuant to proposed N.J.A.C. 6A:16-7.7(a)2ix(2)(A), a district board of education's ABS will be required to conduct the investigation in consultation with the APSSD. The proposed rule will ensure an APSSD is informed of the HIB investigation and an APSSD staff member, who may have greatest familiarity with the student(s), is involved in the investigation.

70. COMMENT: The commenter recommended the Department revise the amendment at N.J.A.C. 6A:16-7.7(d), which states that a school administrator may be subject to disciplinary action for failing to initiate an HIB investigation, to also include the following language: "if any

school employee fails to report an HIB complaint that employee may be subject to disciplinary action.” The commenter further explained that addressing HIB is the responsibility of the entire school community and a more appropriate message is sent if all staff members are on notice of the need to respond to potential HIB incidents, rather than just the principal. (110)

RESPONSE: The Department agrees that the entire school community is responsible for addressing HIB and all school staff should be on alert to respond to potential HIB incidents. However, the Department disagrees with the recommendation to amend N.J.A.C. 6A:16-7.7(d) to include all school employees because the rule, as proposed with amendments, is specifically related to the principal’s responsibility to initiate an HIB investigation when he or she receives a report of HIB or determines a reported incident is a report within the scope of N.J.S.A. 18A:37-14. It would be inappropriate to include all school employees in this rule because the principal or designees is the only school employee responsible for initiating an HIB investigation.

71. COMMENT: The commenter recommended that the Department amend proposed N.J.A.C. 6A:16-7.8(a)3ii, which will require an APSSD’s HIB policy to contain a definition of HIB as set forth in the ABR, except for incidents occurring on a sending district board of education bus, at a sending district board of education school-sponsored function, and off school grounds, to mirror the ABR’s definition of HIB. The commenter stressed the importance of utilizing a consistent definition for all public school students and argued that a different definition at proposed N.J.A.C. 6A:16-7.8(a)3ii is inconsistent with the spirit of the ABR. (110)

RESPONSE: The Department disagrees with the recommendation. The ABR does not apply to APSSDs; therefore, the definition for HIB may be changed to best fit the needs of APSSDs. Proposed N.J.A.C. 6A:16-7.8(a)3ii mirrors the definition of HIB at N.J.A.C. 6A:16-1.3 for

students in public schools, with the exception of incidents occurring on a sending district board of education bus, at a sending district board of education school-sponsored function, and off school grounds. Allegations of HIB on a sending district board of education bus, at a sending district board of education school-sponsored function, and off school grounds involving a student who attends an APSSD will still be addressed as allegations of HIB consistent with the definition of N.J.A.C. 6A:16-1.3, except they will be investigated by the sending district board of education in consultation with the APSSD, rather than solely by the APSSD.

72. COMMENT: The commenters asked for clarification as to who is responsible for investigating a report of HIB on an APSSD bus. (9 and 10)

RESPONSE: An APSSD would be responsible for investigating the report of a HIB incident on an APSSD bus. Pursuant to N.J.A.C. 6A:16-7.8(a)3ix, the full-time non-teaching principal would initiate the investigation within one school day of the initial report of the incident and the APSSD's ABS would conduct the investigation. No later than five days following the investigation's completion, the full-time non-teaching principal will be required to report the results of each investigation; information on any service(s) provided; training established; and discipline imposed or other action taken or recommended by the full-time non-teaching principal to the appropriate sending district board of education personnel of the students who are parties to the HIB.

73. COMMENT: The commenters noted that proposed N.J.A.C. 6A:16-7.8(a)3ix(8)(A), which will permit an APSSD's full-time non-teaching principal to make a preliminary determination, contains no timeline for the preliminary determination's appeal. (9 and 10)

RESPONSE: The commenters are correct. Proposed N.J.A.C. 6A:16-7.8(a)3ix(8)(A) does not contain a timeline for the appeal of a full-time non-teaching principal's preliminary determination of an incident at an APSSD. Similarly, proposed N.J.A.C. 6A:16-7.7(a)2ix(1)(A) does not establish a timeline for the appeal of a principal's preliminary determination of an incident in a public school. The Department maintains that a timeline for the parent's appeal is not necessary at N.J.A.C. 6A:16-7.8(a)3ix(8)(A), since it is already established by sending district board of education policies and procedures governing pupil grievances. The Department will review the implementation of proposed N.J.A.C. 6A:16-7.8(a)3ix(8)(A) and consider changes in a future rulemaking, if necessary.

74. COMMENT: The commenter recommended the Department amend proposed N.J.A.C. 6A:16-7.8 to limit the ability of a parent of an APSSD student to appeal the findings of an HIB investigation to the sending district board of education to cases where the resulting consequences involve a change in placement or revision to the student's individualized education program. (110)

RESPONSE: The Department disagrees. The sending district board of education is responsible for the educational program of each student in an APSSD, pursuant to N.J.A.C. 6A:14-7.5(a) and, therefore, must provide parents of its students with the right to a hearing before the sending district board of education. Sending district board of education students in APSSDs are entitled to the same appeal options as other district board of education students. Proposed N.J.A.C. 6A:16-7.8(a)3xi will allow the parents or guardians of students who are parties to an HIB investigation to request a hearing before the sending district board of education concerning the information received about an investigation.

75. COMMENT: The commenter expressed support for the Department's proposed rulemaking to ensure a safe school environment for all students. The commenter also recommended a system in which the Department would work with partner agencies, such as the Department of Children and Families' Division of Child Protection and Permanency and the Department of Health's Division of Mental Health and Addiction Services, to develop a system in which certain types of issues and conflicts can be prevented. The commenter said the partnership would emphasize ensuring a victim of an alleged HIB incident is provided with assistance soon after the alleged incident to address any potential impact to that student's mental health. The commenter also expressed support for requiring students who are HIB victims be referred to appropriate behavioral health services. Further, the commenter expressed support for requiring remedial actions for students who perpetuate alleged acts of HIB. (109)

RESPONSE: The Department appreciates the recommendation for rules requiring remedial actions for both the victims and offenders involved in an HIB incident, which could include a referral to an appropriate behavioral health service. The Department directs the commenter to recodified N.J.A.C. 6A:16-7.7(a)2x(1) and 7.8(a)3x(1), which are aligned with the commenter's recommendations related to victims, and recodified N.J.A.C. 6A:16-7.7(a)2v and 7.8(a)3v, which are aligned with the commenter's recommendations related to offenders. The Department agrees that working with other State agencies to help prevent escalation of HIB is appropriate and currently engages with other agencies in matters related to improving school climate that will decrease inappropriate behavior, among other things. N.J.A.C. 6A:16-7.1(c)7 requires school districts and APSSDs to include in their code of student conduct a current list of community-based health and social service provider agencies available to support a student and the student's family, as appropriate, and a list of legal resources available to serve the community.

76. COMMENT: The commenters expressed concern about proposed N.J.A.C. 6A:16-7.7(a)2iii, which will require a district board of education’s HIB policy to contain the statement that “bullying is unwanted, aggressive behavior that may involve a real or perceived power imbalance.” The commenters suggested the Department replace “unwanted” with “hurtful” and referenced *New Jersey v. Pomianek* (429 N.J. Super. 339, 343, 358-59 (App. Div. 2013)) that struck down portions of New Jersey’s bias intimidation statute as unconstitutional. Further, the commenters recommended the Department delete “aggressive” and “power imbalance.” Alternatively, the commenters recommended replacing “may involve a real or perceived power imbalance” with “may or may not involve a real or perceived power imbalance.” (1 and 15)

RESPONSE: N.J.A.C. 6A:16-7.7(a)2iii was proposed as part of the original rulemaking and not amended under the Notice of Proposed Substantial Changes upon Adoption. Please see the Responses to Comments 14 through 16 for the Department’s response to similar recommendations.

Federal Standards Statement

The adopted amendments and new rule do not exceed Federal standards as there are no Federal laws or regulations regarding the provisions of student conduct.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks

thus; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 7. STUDENT CONDUCT

6A:16-7.7 Harassment, intimidation, and bullying

(a) Each district board of education shall develop, adopt, and implement a policy prohibiting harassment, intimidation, or bullying on school grounds, pursuant to N.J.S.A. 18A:37-15.

1. (No change.)

2. Each district board of education shall have control over the content of the policy, except that the policy shall contain, at a minimum, the following components:

i.-vii. (No change from proposal.)

viii. A procedure that allows for reporting, verbally and in writing, an act of harassment, intimidation, or bullying committed by an adult or youth against a student. The procedure also shall include a provision that permits a person to report anonymously consistent with N.J.S.A. 18A:37-15.b(5).

(1) The district board of education shall not take formal disciplinary action based solely on the anonymous report*[*]**.*

*** (2) The school district official shall take into account the circumstances of the incident when providing notification to parents and guardians of all students involved in the reported harassment, intimidation, or bullying incident and when conveying the nature of the incident, including the actual or perceived protected category motivating the alleged offense;***

ix. A procedure for prompt investigation of violation and complaint reports consistent with N.J.S.A. 18A:37-15.b(6)(a) through (f) and 16.d.

(1) The procedure set forth in the district board of education policy may include*[, as part of the investigation,]* a process ***prior to initiating an investigation*** by which the principal, or his or her designee, in consultation with the anti-bullying specialist, makes a preliminary determination as to whether a reported incident or complaint*, **assuming all facts presented are true,*** is a report ***[of an act of harassment, intimidation, or bullying, pursuant to]*** ***within the scope of*** N.J.S.A. 18A:37-14.

(A) If a preliminary determination finds the incident or complaint is a report outside the scope of N.J.S.A. 18A:37-14, the determination may be appealed to the district board of education, pursuant to district board of education policies and procedures governing pupil grievances, and thereafter to the Commissioner in accordance with N.J.A.C. 6A:3.

(2) The procedure also shall include a process by which the district board of education will investigate a complaint or report of harassment, intimidation, or bullying, pursuant to ***[(a)2ix(1)]*** ***(a)2ix*** above, occurring on district board of education school buses, at ***district board of education*** school-sponsored functions, and off school grounds involving a student who attends an approved PSSD.

(A) (No change from proposal.)

(3) To protect the victim, the procedure also shall take into account the circumstances of the incident when communicating with parents and when following the provisions of N.J.S.A. 18A:37-15.

[(3)]* *(4) (No change in text from proposal.)

x. A requirement for the principal, in conjunction with the school anti-bullying specialist, to define the range of ways in which a school will respond once an incident of harassment, intimidation, or bullying is identified, consistent with the range of responses adopted by the board of education, pursuant to N.J.S.A. 18A:37-15.b(7);

(1) The ***[responses,]* *school district official shall take into account the circumstances of the incident when responding and,*** at a minimum, ***[shall]*** include support for victims of harassment, intimidation, or bullying and corrective actions for documented systemic problems related to harassment, intimidation, or bullying;

xi. A requirement that within five school days after the results of the harassment, intimidation, or bullying investigation are reported to the district board of education, information about the investigation shall be provided in writing to the parents or guardians of students who are party to a harassment, intimidation, or bullying investigation.

(1) Any request by the parents or guardians for a hearing before the district board of education concerning the written information

about a harassment, intimidation, or bullying investigation, pursuant to N.J.S.A. 18A:37-15.b(6)(d), shall be filed with the district board of education secretary no later than *[45]* ***60*** calendar days after the written information is received by the parents or guardians.

(2) (No change from proposal.)

xii. – xix. (No change from proposal.)

(b)-(c) (No change.)

(d) A school administrator who receives a report of harassment, intimidation, or bullying, ***or who determines a reported incident or complaint, assuming all facts presented are true, is a report within the scope of N.J.S.A. 18A:37-14, pursuant to (a)2ix(1),*** 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.

(e)-(i) (No change from proposal.)

6A:16-7.8 Harassment, intimidation, and bullying in approved private schools for students with disabilities (PSSDs)

(a) Each approved private school for students with disabilities (PSSD) shall develop, adopt, and implement a policy prohibiting harassment, intimidation, or bullying on school grounds.

1. Each approved PSSD shall develop the policy to include approved PSSD school grounds, pursuant to N.J.A.C. 6A:16-1.3;

- i. The policy shall include a provision for **[initiating an investigation, pursuant to (a)3ix(7) below, in consultation with the]** ***notifying the appropriate*** sending district board***(s)*** of education ***personnel of the students involved*** when the approved PSSD receives a complaint or report of an act of harassment, intimidation, or bullying occurring on a sending district board of education school bus***,* *or]*** at ***a sending district board of education*** school-sponsored function***[s]*** ***and off school grounds***;
2. (No change from proposal.)
3. Each approved PSSD shall have control over the content of the policy, except that it shall contain, at a minimum, the following components:
 - i. (No change from proposal.)
 - ii. A definition of harassment, intimidation, or bullying as set forth in the definition at N.J.A.C. 6A:16-1.3, except for incidents occurring ***on a sending district board of education bus, at a sending district board of education school-sponsored function, and*** off school grounds;
 - iii.-vii. (No change from proposal.)
 - viii. A procedure that allows for reporting, verbally and in writing, an act of harassment, intimidation, or bullying committed by an adult or youth against a student. The procedure shall also include a provision that permits a person to report anonymously.
 - (1) The approved PSSD shall not take formal disciplinary action based solely on the anonymous report; **[and]**

(2) The full-time non-teaching principal shall take into account the circumstances of the incident when providing notification to parents and guardians of all students involved in the reported harassment, intimidation, or bullying incident and when conveying the nature of the incident, including the actual or perceived category motivating the alleged offense; and

[(2)]* *(3) (No change in text from proposal.)

ix. A procedure for prompt investigation of violation and complaint reports.

(1)-(3) (No change from proposal.)

(4) The full-time non-teaching principal shall report to the ***appropriate*** sending district board*(s)* of education ***personnel*** of the students who are parties to the harassment, intimidation, or bullying investigation the results of each investigation ***[involving an incident found to be harassment, intimidation, or bullying]*** no later than five school days following the investigation's completion, along with information on any service(s) provided; training established; and, pursuant to N.J.A.C. 6A:14-7.6(f), discipline imposed or other action taken or recommended by the full-time non-teaching principal.

(5) (No change from proposal.)

(6) To protect the victim, the procedure also shall take into account the circumstances of the incident when communicating with parents.

[(6)] ***(7)*** A full-time non-teaching principal who receives a report of harassment, intimidation, or bullying*, **or who determines a reported incident or complaint, assuming all facts presented are true, is a report of an act of harassment, intimidation, or bullying, pursuant to (a)3ix(8),*** and fails to initiate or conduct an investigation, or who has reason to believe an incident of harassment, intimidation, or bullying occurred and fails to take sufficient action to minimize or eliminate the harassment, intimidation, or bullying, may be subject to disciplinary action.

[(7)] ***(8)*** The procedure set forth in the approved PSSD policy may include*[, as part of the investigation,]* a process ***prior to initiating an investigation*** by which the full-time non-teaching principal, or his or her designee, in consultation with the anti-bullying specialist, makes a preliminary determination as to whether a reported incident or complaint*, **assuming all facts presented are true,*** is a report of an act of harassment, intimidation, or bullying, pursuant to (a)3ii above*[*]**.*

***(A) If a preliminary determination finds the incident or complaint is a report outside the scope of the harassment, intimidation, or bullying definition set forth at (a)3ii above, the determination may be appealed to the sending district board of education pursuant to district board of education policies and**

**procedures governing pupil grievances, and thereafter
to the Commissioner in accordance with N.J.A.C. 6A:3.**

(9) The procedure shall also include a process by which the approved PSSD reports to the appropriate district board of education personnel any complaint or report of harassment, intimidation, or bullying, pursuant to N.J.A.C. 6A:16-7.7(a)2ix, occurring on district board of education school buses, at district board of education school-sponsored functions, and off school grounds involving a student who attends an approved PSSD.

(A) When a complaint or report of harassment, intimidation, or bullying involves students from more than one school district, the sending district board(s) of education of the victim(s) involved shall initiate the investigation.*

x. A requirement for the full-time non-teaching principal and school anti-bullying specialist to define the range of ways in which a school will respond once an incident of harassment, intimidation, or bullying is identified, including an appropriate combination of counseling, support services, intervention services, and other programs.

(1) The *school district official shall ensure all* responses *take into account the circumstances of the incident when responding and*, at a minimum, shall include support for a victim

of harassment, intimidation, or bullying and corrective actions, pursuant to N.J.A.C. 6A:14-7.6, for documented systemic problems related to harassment, intimidation, or bullying;

- (2) Once an incident of harassment, intimidation, or bullying is identified, the full-time non-teaching principal shall determine the appropriate response to address the individual circumstances in consultation and conjunction with *[the]* ***appropriate*** sending district board of education ***personnel***, pursuant to N.J.A.C. 6A:14-7.6(f), as *[appropriate]* ***necessary***;

xi. A requirement that allows the parents or guardians of students who are *[party]* ***parties*** to a harassment, intimidation, or bullying investigation to request a hearing before the sending district board of education concerning the information received about a investigation, pursuant to (a)3ix(5) above.

- (1) Any request for a hearing before the sending district board of education shall be filed within *[45]* ***60*** calendar days after the written information about the harassment, intimidation, or bullying investigation, pursuant to (a)3ix(4) and (5) above, is received by the sending district board of education and the parents or guardians.

- (2) (No change from proposal.)

xii.-xviii. (No change from proposal.)

(b) An approved PSSD employee, contracted service provider, student, or volunteer who has witnessed an incident of harassment, intimidation, or bullying, or has reliable information that a student has been subject to harassment, intimidation, or bullying, shall report the incident to the full-time non-teaching principal, pursuant to (a)3viii above, or to any school administrator or safe schools resource officer, who shall immediately initiate the approved PSSD's procedures concerning harassment, intimidation, and bullying.

(c) The approved PSSD shall:

1.-4. (No change from proposal.)

5. Submit to the executive county superintendent a copy of its harassment, intimidation, and bullying policy in the *[(first school year following the effective date of this new rule)]* ***2018-2019*** school year or within 30 days of revision.

(d)-(g) (No change from proposal.)