

**Tutorial on the**  
***New Jersey Anti-Bullying Bill of Rights Act (ABR)***  
**and the**  
***New Jersey Law Against Discrimination (LAD)***  
**for**  
**School Personnel, Parents and Students**

## About this tutorial...

- This tutorial is designed to help parents, students, school staff and school administrators understand the relationship between the ABR and the LAD and to provide information on filing a complaint regarding a violation of the LAD.
- This tutorial is organized in a question and answer format.

# Tutorial, cont.

- The following topics are covered in this tutorial:
  - Understanding biased-based harassment, intimidation and bullying (HIB).
  - Compliance with the LAD.
  - School administration requirements.
  - Filing a complaint under the LAD.
    - Contact phone numbers.
    - Timeframes.
    - Expectations.
    - Final decisions.
  - References.
  - Additional resources.
  - Test.

# Introduction

- The LAD is a state statute that prohibits most schools (see slide #8) from discriminating against students based on race, creed, color, national origin, ancestry, nationality, sex, sexual orientation, gender identity or expression, and disability.
  - As explained later in this tutorial, although the Division on Civil Rights (DCR) in the New Jersey Department of Law and Public Safety is the state agency charged with enforcement of the LAD, a student or parent may file a complaint directly with the Superior Court of New Jersey, without first filing with DCR.
- “Discrimination” includes HIB that targets a student because of any of the protected characteristics listed above. This is known as “bias-based HIB.”
- The LAD requires covered schools to take appropriate action to prevent and remediate HIB that targets a student because of his or her *actual* or *perceived* race, color, religion, national origin, ancestry, nationality, sex, sexual orientation, gender identity or expression, or disability.

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# Introduction, cont.

- When schools do not take appropriate preventive and remedial action, they could be held responsible for bias-based HIB committed by students, school employees, volunteers who have significant contact with students and persons contracted by the district to provide services to students.
  
- Discrimination is based on a “perceived” protected characteristic when the perpetrator believes that the victim is a member of a LAD-protected group or has a LAD-protected characteristic, even if that belief is wrong.
  - For example, harassing a heterosexual student using derogatory words or phrases commonly associated with homosexuality may constitute discrimination based on *perceived* sexual orientation.
  - Similarly, harassing a non-Muslim student using anti-Muslim comments may constitute discrimination based on *perceived* creed or religion.

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## Introduction, cont.

- To facilitate efforts to prevent and intervene with bias-based HIB, schools and school districts should be aware that research studies indicate that some students with LAD-protected characteristics are at higher risk for HIB than the general student population.

### **For example:**

- Studies conducted in the United States found that children with disabilities were two to three times more likely to be the victims of HIB than other children, and that the HIB experienced by these children was more chronic in nature and directly related to their disability (<http://www.abilitypath.org>).
- The results of a 2009 National School Climate Survey conducted by the Gay, Lesbian and Straight Education Network (GLSEN) indicated that 84.6% of LGBT students reported being verbally harassed; 18.8% of LGBT students reported being physically assaulted at school because of their sexual orientation; 9 out of 10 LGBT students experienced harassment at school in the past year; and nearly two-thirds of LGBT students felt unsafe because of their sexual orientation (GLSEN, 2009).
- In some communities, schools or school districts, students with other LAD-protected characteristics may be particularly vulnerable to bias-based HIB.

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## **Which New Jersey schools are required to comply with the LAD's protections against HIB of students?**

- The LAD applies to all schools, except for schools operated by a bona fide religious or sectarian organization. *Except for those religious schools*, all public schools, charter schools and private schools are required to comply with the LAD.

# How does the LAD differ from the ABR?

- The ABR addresses HIB that targets a student because of race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, a mental physical or sensory disability, *or because of any other distinguishing characteristic*.
- The LAD prohibits HIB that targets a student because of race, color, religion, national origin, ancestry, nationality, sex, sexual orientation, gender identity or expression, or disability. This type of conduct is commonly referred to as “bias-based” HIB. The LAD does *not* cover HIB that targets a student because of any other distinguishing characteristics.

# **Does the ABR change students' protections or school districts' obligations under the LAD?**

- No. The LAD has prohibited certain types of HIB since long before the Legislature enacted the ABR, and the ABR did not amend or change the LAD.
- The ABR clarifies some rights and responsibilities and establishes new school procedures. Following these procedures should make it easier to effectively prevent and remediate HIB.
- However, merely following the new procedures will not automatically insulate the school or school district from liability under the LAD, if the school administration fails to take appropriate actions that are reasonably calculated to end the specific types of bias-based HIB taking place.

# What does the LAD require a school administration to do regarding bias-based HIB?

- When school staff or administrators know, or *should* know, that bias-based HIB is happening, the administration must take actions reasonably calculated to stop it.
- The school or school district may be held liable under the LAD if a school administrator failed to take actions reasonably calculated to stop the HIB, **AND**
- The conduct was sufficiently severe or pervasive that a reasonable student of the same age, maturity level and protected characteristic would find that the bias-based HIB created an intimidating, hostile or offensive school environment.

# Does the LAD require specific actions by a school administrator in specific situations?

- No. Based on the specific circumstances, an intervention, response or remedy that is appropriate in one case may not be appropriate in another case.
- Since a school or school district can be held liable when it *knew* or *should have known* of the bias-based HIB, the school administration should take preventive measures to ensure that anyone who witnesses or experiences such conduct promptly reports it to an administrator, and should also take measures to ensure that all students, employees, volunteers who have significant contact with students, as well as those persons contracted by the district to provide services to students, know that bias-based HIB will not be tolerated.
- To determine whether the administration took reasonable measures designed to end the bias-based HIB, there must be an examination of the specific facts of each case. This will include factors such as the ages and maturity levels of the students involved (i.e., offenders and victims), the severity, frequency and nature of the HIB, the swiftness and nature of the administration's actions, and whether the administration took appropriate action to assess and address any cumulative or systemic aspects of the bias-based HIB.

# **Are people who complain about bias-based HIB in schools protected from reprisal or retaliation?**

- Yes. The LAD prohibits reprisal or retaliation against anyone who reports or complains about bias-based HIB. The LAD also prohibits reprisal or retaliation against anyone who assists someone else in reporting or complaining about bias-based HIB.
- This means that it would violate the LAD for a school administrator, teacher, coach, other staff member or board of education member to take away privileges or take any other adverse or negative action against anyone - - student or adult - - because he or she has complained about or reported bias-based HIB.

# What can a parent or student do if the student is being subjected to bias-based HIB?

- The parent or the student should report the alleged bias-based HIB to school administrators as soon as possible, and give them a reasonable opportunity to take action to stop the HIB. If more incidents of bias-based HIB occur after the first report, the parent or the student should report each new incident as soon as possible.
- If school administrators do not remedy the situation within a reasonable amount of time after the report, a student may file a formal complaint against the school or school district to seek relief under the LAD. (If the student is under age 18, the student's parent or guardian may file the LAD complaint on behalf of the student.)
- If school administrators have initiated an investigation under the ABR, in most cases it would be reasonable to delay filing a formal LAD complaint until after school administrators have completed their investigation, and have reported the results of that investigation to the parents and to the local board of education.

# How does a parent or a student file a complaint under the LAD?

- A parent/guardian or student have two options for filing a LAD complaint:
  - Filing an administrative complaint with the New Jersey Division on Civil Rights (DCR); or
  - Filing a complaint with the Superior Court of New Jersey.
  
- If a parent/guardian or student choose to file an administrative complaint, he or she should contact the nearest office of the DCR:
  - Newark Regional Office: (973) 648-2700
  - Trenton Regional Office: (609) 292-4605
  - Camden Regional Office: (856) 614-2550
  - Atlantic City Regional Office: (609) 441-3100
  
- More information is available on the DCR website:  
[www.NJCivilRights.gov](http://www.NJCivilRights.gov).

# **What are the timeframes for a parent or student to file a complaint with the Division on Civil Rights (DCR) or with the Superior Court of New Jersey?**

- If a parent or student choose to file a complaint with the DCR, it must be filed within 180 days of the most recent act of bias-based HIB.
- If a parent or student instead choose to file a complaint with the Superior Court, it must be filed within two years of the most recent act of bias-based HIB.
- As noted in a slide above, if school administrators have initiated an investigation under the ABR, in most cases a parent or student should delay filing a formal LAD complaint until after the school administrators have completed their investigation and reported the results of its investigation to the parent or student and to the local board of education.
  - That report normally would be issued long before the 180-day or two-year limitation periods for filing a LAD complaint. However, if the deadlines are close and the parent or student intends to file a LAD complaint, they should keep track of the dates and make sure the complaint is filed before the deadline.

## **If a parent or student has decided to file a LAD complaint regarding bias-based HIB, what factors should be considered in deciding whether to file the complaint with the DCR or with the Superior Court?**

- The filing, investigation, dispute resolution, hearing and other procedures used by the DCR are designed for parents or students to proceed without the need to hire an attorney. However, parents or students may feel more comfortable hiring an attorney to prepare, file and litigate a Superior Court complaint.
- While a wide range of remedies, including compensatory damages, are available to prevailing complainants in DCR proceedings, some additional remedies, such as punitive damages in appropriate cases, may be available in Superior Court actions.
- A jury trial is only available in Superior Court; any hearing on a DCR complaint will be presented to an Administrative Law Judge.
- In Superior Court complaints, a LAD claim may be combined with claims under other statutes or common law causes of action, while a DCR complaint can be based only on allegations that the school or school district violated the LAD.

## **What can a parent or student expect if he or she decides to file a complaint with the DCR?**

- First, an intake investigator will speak with the parent or the student to determine whether the situation states a claim under the LAD. If it does, the DCR will prepare a complaint for the parent or student to sign, and it will be sent to the chief school administrator (CSA) or local board of education (BOE).
- The CSA or BOE will file a written response to the complaint, and your complaint will be assigned to a DCR investigator, who will conduct an investigation.

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## **Expectations, cont.**

- During the investigation, the investigator will gather information in a variety of ways, which may include getting copies of written records and other documents, and interviewing the parent or student and other witnesses. If school administrators have conducted an investigation under the ABR, the investigator also will review available documents related to that investigation.
- During the investigation, the investigator will often attempt to negotiate a settlement between the parent or student and the school or school district, to amicably resolve the complaint without the need for a formal hearing.

# What happens if the parties do not reach a settlement of the complaint?

- If the investigation shows enough evidence to support the complaint, the Director of the DCR will issue a written report called a Finding of Probable Cause, and then a hearing on the complaint will be held in the Office of Administrative Law.
- If, instead, the evidence gathered in the investigation shows that the school or school district met its obligations under the LAD or that no actionable harassment under the LAD occurred, the Director of the DCR will issue a written report summarizing the evidence, and will sign a Finding of No Probable Cause, which dismisses the complaint.

# What happens at a hearing at the Office of Administrative Law?

- A parent or student may choose to hire a private attorney to represent him or her at the hearing, or if the DCR Director has issued a Finding of Probable Cause in the case, a state attorney will prosecute the complaint on behalf of the DCR.
- At the hearing, an Administrative Law Judge (ALJ) will hear testimony from the complainant and/or other witnesses and will review documents and other evidence presented in support of the complaint and in support of the defenses presented by the school or school district.
- Based on the evidence presented at the hearing, the ALJ will issue a written, recommended decision. After receiving a copy of the ALJ's recommended decision, both sides will have an opportunity to submit written objections (called "exceptions") to the Director of the DCR, who will make a final decision on the complaint.

# How is a final decision made on a parent's or a student's LAD complaint?

- The Director of the DCR will review the ALJ's recommended decision and any exceptions submitted by the parties, and will make a final decision regarding whether the evidence shows that the school or school district failed to meet its obligations under the LAD, and if so, the remedies that will be ordered.
- As remedies, the Director may order the school or school district to provide equitable relief (for example, improving anti-bullying policies and procedures or providing staff training) and to pay compensatory damages and your attorney's fees. The Director also may order the school or school district to pay monetary penalties to the State Treasury. Punitive damages are only available in Superior Court actions.

# Contact Information and Resources

- Contact and additional information is available on the Division on Civil Rights website:  
[www.NJCivilRights.gov](http://www.NJCivilRights.gov).

# References

- GLSEN, 2009. The 2009 National School Climate Survey: Executive Summary. NY:GLSEN. Retrieved from [http://GLSEN\\_ATTACHMENTS/File/000/001/1676-2.PDF](http://GLSEN_ATTACHMENTS/File/000/001/1676-2.PDF)  
[www.glsen.org](http://www.glsen.org).
- Olweus, Dan, Bullying at School: Basic Facts and Effects of a School-Based Intervention Program, *Journal of Child Psychology and Psychiatry and Allied Disciplines*, October, 1994, 35, 7, 1171-1190.
- Walk a Mile in Their Shoes, Bullying and The Child with Special Needs, <http://www.Ability Path.org>, 2010.

# Test

## for the Tutorial on the New Jersey *Anti-Bullying Bill of Rights Act (ABR)* and the New Jersey *Law Against Discrimination (LAD)*

- On the following slides are five true or false statements designed to test your knowledge of key points made in this tutorial.
- A slide with each true or false statement is followed by a slide that includes:
  - The true or false answer;
  - An explanation for the answer; and
  - The associated slide number(s) in the tutorial.

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**Test Your Knowledge**  
**Tutorial on Anti-Bullying Bill of Rights Act (ABR)**  
**and the New Jersey Law Against Discrimination (LAD)**

1. The New Jersey LAD prohibits discrimination based on specific protected characteristics and discrimination based on other distinguishing characteristics.

True or False?  
*(Answer on next slide.)*

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# Test Your Knowledge

## Tutorial on Anti-Bullying Bill of Rights Act (ABR) and the New Jersey Law Against Discrimination (LAD)

### 1. False.

While the LAD prohibits HIB that targets a student because of race, color, religion, national origin, ancestry, nationality, sex, sexual orientation, gender identity or expression, or disability, it does *not* cover HIB that targets a student because of any other distinguishing characteristics.

See slide #9.

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**Test Your Knowledge**  
**Tutorial on Anti-Bullying Bill of Rights Act (ABR)**  
**and the New Jersey Law Against Discrimination (LAD)**

2. The 2011 ABR did not change or amend the LAD.

True or False?  
*(Answer on next slide.)*

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**Test Your Knowledge**  
**Tutorial on Anti-Bullying Bill of Rights Act (ABR)**  
**and the New Jersey Law Against Discrimination (LAD)**

**2. True.**

See slide #10.

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**Test Your Knowledge**  
**Tutorial on Anti-Bullying Bill of Rights Act (ABR)**  
**and the New Jersey Law Against Discrimination (LAD)**

3. A school or school district may be held liable under the LAD if a school administrator failed to take reasonable actions to stop bias-based HIB of a student, and the conduct created a hostile environment for the student.

True or False?  
*(Answer on next slide.)*

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**Test Your Knowledge**  
**Tutorial on Anti-Bullying Bill of Rights Act (ABR)**  
**and the New Jersey Law Against Discrimination (LAD)**

**3. True.**

See slides #5 and #7.

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**Test Your Knowledge**  
**Tutorial on Anti-Bullying Bill of Rights Act (ABR)**  
**and the New Jersey Law Against Discrimination (LAD)**

4. Students who experience biased-based HIB in school should wait to monitor whether the HIB stops before reporting the matter to a school administrator.

True or False?  
*(Answer on next slide.)*

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**Test Your Knowledge**  
**Tutorial on Anti-Bullying Bill of Rights Act (ABR)**  
**and the New Jersey Law Against Discrimination (LAD)**

**4. False.**

Students are encouraged to report the bias-based HIB to school administrators as soon as possible, and give them a reasonable opportunity to take action to stop the HIB. If more incidents of bias-based HIB occur after your first report, students should report each new incident as soon as possible.

See slide #14.

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**Test Your Knowledge**  
**Tutorial on Anti-Bullying Bill of Rights Act (ABR)**  
**and the New Jersey Law Against Discrimination (LAD)**

5. A parent or a student can file a complaint with the New Jersey Division on Civil Rights or the New Jersey Superior Court after he or she reports bias-based HIB to school administrators, and finds the school's response or investigation inadequate.

True or False?  
*(Answer on next slide.)*

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**Test Your Knowledge**  
**Tutorial on Anti-Bullying Bill of Rights Act (ABR)**  
**and the New Jersey Law Against Discrimination (LAD)**

**5. True.**

See slide #14.

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