



*Law, **E**thics and **G**overnance for **A**ll **L**eaders, including an
Overview of **N**ew and **E**merging Issues*

Enforcing Expectations Around Sportsmanship for Spectators, Parents, Athletes, and Staff

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Presentation Materials

Today's document(s) can be accessed at

<https://tinyurl.com/LO-NJSIAA-251029>



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Upcoming Sessions

November 11, 9:30 - 12 virtual

Athletics and Human Resources: Elevating Professionalism in Athletics

December 17, 9:30 - 12 virtual

Connecting the Dots: Moving the Athletic Program from an Island to a Team Approach

January 14, 9:30 - 12 virtual

Athletics and School Finance

Our Plan

- Group Discussion
- Defining Sportsmanship
- Identifying Foreseeable Issues, Key Legal Considerations, Protocols for Moving Forward
- Addressing Spectators
- Addressing Parents
- Addressing Student Athletes
- Addressing Staff and Volunteers

DEFINING AND ENFORCING SPORTSMANSHIP

Defining Sportsmanship

- **NJSIAA Sportsmanship Statement**
- Officials will read the following statement before every NJSIAA event at all levels (No Paraphrasing):
- The NJSIAA requires officials to enforce all rules regarding unsportsmanlike conduct by coaches and players. There will be no tolerance for any negative behavior, such as taunting, trash talking and verbal, written, or physical conduct related to race, gender, ethnicity, disability, sexual orientation, or religion. Such behavior will result in being ejected from this event. All participants must respect the game and respect their opponents.

What About Other Comments

- What if taunting, trash talking and verbal, written, or physical conduct occurs that is not related to a protected characteristic?
 - E.g., Weight, appearance, intelligence, etc.

Small Group Discussion

- Small Group Discussion
 - Group 1 – Spectators
 - Group 2 – Parents
 - Group 3 – Student Athletes
 - Group 4 – Staff/Volunteers
- In your group, discuss:
 - What does good and bad sportsmanship look like for your particular audience?
 - How do we promote it?
 - How do we enforce expectations? What is the role of the AD, coach, school administration, school security, athletes, others?
 - What legal issues may arise related to Sportsmanship?

RELEVANT LAWS

Relevant Laws

- New Jersey Law Against Discrimination
- CROWN Act
- NJ's Anti-Bullying Bill of Rights
- IDEA and Section 504
- Code of Student Conduct
- MOA Between Education and Law Enforcement
- Threat Assessment/Emergency Response
- First Amendment
- NJSIAA Rules

Key Aspects of HIB

- Distinguishing Characteristic
- Substantial Disruption
- Harm
 - Physical or emotion, self or property, fear
 - Demeaning to student or group
 - Hostile educational environment
- Distinguish from conflict
 - Mutual engagement, NOT primarily one-sided

Protected Classes / Characteristics

- Employers--including parochial schools and public-school districts--may not discriminate against staff or students based on:
 - Race
 - Creed
 - Color
 - National origin
 - Ancestry
 - Age
 - Genetic information
 - Pregnancy
 - Sex
 - Religion
 - Disability
 - Military service
 - Atypical cellular blood trait
 - Nationality
- NJ LAD
 - Marital/domestic partnership/civil union status
 - Affectional or sexual orientation
 - Gender identification or expression
 - Hair

If Issue Involves a Protected Class

- Inform Affirmative Action Officer/Title IX Coordinator - Potential discrimination claim under state or federal discrimination law
- Potential bias-related act – report to local law enforcement and county prosecutor
- Potential HIB incident
- Potential Code of Conduct violation

Mandatory Reports to Law Enforcement

- Controlled dangerous substances
- Firearm or deadly weapon
- Credible threat to cause death, serious or significant bodily injury
- Sexual offenses on school grounds, at school events, during school hours
- Bias-Related acts
- Suspected child abuse or neglect (also DCPP)

Strong Signals from NJ AG

- See the [August 28, 2023 guidance](#) released jointly by the Attorney General and Acting Commissioner of Education. School districts need to take reasonable measures to guard against, and identify, situations where implicit biases may be interfering with proper response to student discipline.
- See article, [Understanding Reporting Obligations for Bias-Related Acts Under the Revised MOA with Law Enforcement](#)
- Memorandum of Agreement between Education and Law Enforcement
 - *School and law enforcement officials should be aware that, in some cases, a school's failure to appropriately intervene in and investigate bias-related acts **may also constitute a violation of the LAD**. When a law enforcement agency is confronted with a suspected or confirmed violation of New Jersey's Law Against Discrimination, the victim shall be informed of the Division on Civil Rights' jurisdiction and referred to the Division, if appropriate, and the Division on Civil Rights shall be contacted.*

Disorderly Persons Offense

- **2C:12-1. Assault**
- **a. Simple assault.** A person is guilty of assault if he:
 - (1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or
 - (2) Negligently causes bodily injury to another with a deadly weapon; or
 - (3) Attempts by physical menace to put another in fear of imminent serious bodily injury.
- Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.

Petty Disorderly Persons Offense

- **2C:33-2. Disorderly conduct**
- **a. Improper behavior.** A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he
 - (1) Engages in fighting or threatening, or in violent or tumultuous behavior; or
 - (2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.
- **b. Offensive language.** A person is guilty of a petty disorderly persons offense if, in a public place, and with **purpose to offend the sensibilities of a hearer or in reckless disregard of the probability of so doing**, he addresses unreasonably loud and offensively coarse or abusive language, given the circumstances of the person present and the setting of the utterance, to any person present.
- "Public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

Bias Intimidation

- **2C:16-1 Bias intimidation.**
- 2C:16-1. Bias Intimidation.
- a. Bias Intimidation. A person is guilty of the crime of bias intimidation if he commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of an offense specified in chapters 11 through 18 of Title 2C of the New Jersey Statutes; N.J.S.2C:28-4; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4; or N.J.S.2C:39-5,
 - (1) with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity; or
 - (2) knowing that the conduct constituting the offense would cause an individual or group of individuals to be intimidated because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity; or
 - (3) under circumstances that caused any victim of the underlying offense to be intimidated and the victim, considering the manner in which the offense was committed, reasonably believed either that (a) the offense was committed with a purpose to intimidate the victim or any person or entity in whose welfare the victim is interested because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity, or (b) the victim or the victim's property was selected to be the target of the offense because of the victim's race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.

Forfeiture Statute

- **N.J.S.A. 2C:51-2. Forfeiture of public office.**
- - a. A person holding any public office, position, or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof, who is convicted of an offense shall forfeit such office or position if:
 - (1) He is convicted under the laws of this State of an offense involving dishonesty or of a crime of the third degree or above or under the laws of another state or of the United States of an offense or a crime which, if committed in this State, would be such an offense or crime;
 - (2) He is convicted of an offense involving or touching such office, position or employment; or
 - (3) The Constitution so provides.

Forfeiture Statute in Practice

- *Tenured teacher who pushed a 6th grade student against a wall in response to the student scaring another student found guilty of simple assault, a disorderly persons offense.*
- *Ordered to forfeit position.*
- *Since assault upon a student “touches on” a teacher’s public office, forfeiture of his position is mandatory upon conviction of such an offense, and a board of education may seek such forfeiture even where the court entering the conviction does not impose that penalty at the time of sentencing. See **STATE v. ERCOLANO**, Superior Court of New Jersey, Appellate Division, 335 N.J.Super. 236 (App. Div. 2000), certif. denied 167 N.J. 635 (2001)*

ADDRESSING SPECTATORS

Before Event

- Who should read the sportsmanship statement prior to athletic events?
- What other steps, beyond reading the NJSIAA statement, should be considered prior to an event?
- When and how does a prior history of conflict between communities/ schools/ teams/ students impact actions taken prior to an event?
- What are the different considerations for home v. away events?

Controlled Entry and Exit

- Parking Lot Supervision
- Fencing/Controlled Access
- Role of school security, school administration, school staff, coaches
- Planning for emergency situations
 - Threat assessment, fights, weather, etc.
- Should law enforcement be present?
 - Size of event, prior history, current issues/conflicts

During Event

- What steps should be taken when a coach or club advisor becomes aware of spectator comments or actions that are discriminatory in nature?
- What about comments or actions targeting a specific student?
- What if spectators approach or enter onto the court or field of play?
- How does the response protocol differ for events with a large number of school staff present v. events with one or two staff members?
- When might spectator behavior cross the line into HIB?

Response to Comments

- If comments violate Sportsmanship policy and offender can be readily identified, duty to act to immediately stop behavior and then consider consequences (warning, ejection from event, potentially barring from future events)
- If there are multiple (or dozens of) offenders what then?
 - Announcement to crowd, warning, large scale ejections
- If offender cannot be readily identified
 - Announcement, heightened scrutiny, investigation

After Event

- What steps should be taken at the conclusion of an athletic event/competition if there was an incident involving improper spectator behavior during the event?
- What documentation should occur?
- When do you consider contacting law enforcement?

Beyond the Immediate Response

- If potential HIB, staff member must report verbally to the school principal the same day and then do written report (338) within 2 school days
- If involves protected class, need to inform Affirmative Action Officer/Title IX Coordinator
- If intentional discrimination, must report to local law enforcement and county prosecutor
- If incident involves students from multiple school districts, ensure collaboration in investigation
- If banned from future events, need protocols to enforce ban

Case Law – Spectator Behavior

Dickerson v. Wallkill Valley Regional Bd. of Ed.,
U.S. Dist. Ct. N.J., 6/1/2020

- **Allegations** that BOE, principal and superintendent violated NJLAD, U.S. Civil Rights Act and N.J. Civil Rights Act. Defendants motion to dismiss denied.
- HS basketball game at which it was alleged that spectators made monkey sounds, shouted the “n” word and “monkey” at student during the game. Student allegedly suffered psychological distress, PTSD, anxiety and depression.
- **Assuming allegations are true, Principal/superintendent’s failure to respond to fans and decision to eject student’s father may have been so unreasonable so that one could infer that principal/superintendent acted with deliberate indifference.** BOE/adm allegedly not HIB compliant.

ADDRESSING PARENTS

The Things Parents Say ...

- My kid needs to start in order to get into ...
- You cost my child a scholarship to ...
- My son/daughter is better than...
- All the parents think...
- My child is devastated that...
- I played a little ball...
- I coached these kids...
- My child's travel coach says...
- My child's trainer thinks...
- The coach does not like my child...
- All the kids hate the coach...

What if ...

- Parent comes to the AD and says a coach is:
 - Discriminating against their child?
 - Bullying their child?
 - Is failing to provide reasonable accommodations for their child?
 - Making bad decisions on who makes the team, playing time and/or strategy?
- Parent goes to the Superintendent, principal or BOE President and complains?

Parent Behavior Crossing the Line

- Communicating with child, coach, and/or other students during event
- Attempting to meet with coach without an appointment
- Verbally abusive
- Threatening language
- Harmful or threatening physical contact
- Waiting near coach's car, office, home

Discussions with Parents

Appropriate

- Child's unique needs – health issues, disability, traumatic events
- In-game or post-game concerns about HIB, hazing, other student conduct issues
- 24-hour waiting period for most discussions (other than imminent health and safety)
- Other???

Inappropriate

- Playing Time
- Other players abilities
- Starting v. Bench
- In-game or post-game debate over in-game strategies, decisions
- Immediately after the game
- Other???

13 POINTS TO BEING A KEY PARENT

(developed by Frank Noppenberger)

- 1. Tell your child every time you watch them play.** “I loved watching you play today!” Please think about how that would make you feel! I know that would make anyone feel great!
- 2. Do Not soften the blow for your child after a loss.** If they lose teach them to not make excuses, to learn from the loss and move on.
- 3. Teach them to be a part of something greater than themselves.** Teach them this by applauding their effort and their coachability.
- 4. Do not coach your Child.** Coaching your child may confuse your child. Allow them to experience how to deal with others.

13 POINTS TO BEING A KEY PARENT

(continued)

5. **Do not approach your child's coach about playing time:** Encourage your child to speak with their coach.
6. **Do not compare your child to others, but encourage them to be the best that they can be!** If a parent is constantly trying to have their child be better than someone else, the child will always be second best....
7. **Cheer for all!... AND never speak negatively about your child or another child or a coach:** We would not want anyone to speak negatively about our child, so do not speak of someone else's child negatively.

13 POINTS TO BEING A KEY PARENT

(continued)

8. **Let it be your child's experience:** When we experience something we will have good times and bad times, great moments and average plays, we will deal with victory and defeat.
9. **Teach them to play for the love of the game (NOT A TROPHY):** We are teaching them to play for the reward rather than understanding that the reward is playing the game itself!
10. **Focus on the process:** Sports like life are a process... And we need to attack the process everyday to grow and get better.

13 POINTS TO BEING A KEY PARENT

(continued)

- 11. Enjoy the Journey of your child:** Any journey we take is bound to have great moments, some bad moments, and some moments that we laugh at...
- 12. Be a parent, not a fan:** Your child will make mistakes, your child is not always perfect...
- 13. Do not make Excuses:** “The Teacher or coach does not like me” is a familiar excuse... in the end, coaches/teachers like children that work hard, are coachable, have a great attitude, show perseverance, are a good team, know how to deal with success and failure... teach your child to show the coach these attributes.

ADDRESSING STUDENT ATHLETES

Start of Season/Rehearsal/Club

- What should a coach/club advisor do to set the tone at the first meeting with the team?
- What elements are consistent across all sports?
- What elements are unique to particular sports?
- How might student athletes “test” the coach early on? How should the coach respond?

Information Sharing with Coach/AD

- Even when coach is not otherwise a full-time district employee
- When student is victim of HIB and/or aggressor
- When student has a disability
- When student experienced traumatic event
- When student intervention plan is put in place
- When student confidentiality plan is put in place
- When trends emerge regarding school climate

Students with Disabilities

- As a “school official” coach is entitled to receive information if it will help ensure that the student fully benefits from participation in athletics
 - “Legitimate Educational Interest”
- Work closely with case manager AND parents
- Consult with colleagues with greater expertise
- Don’t assume student is unable to participate
- If victim of HIB, convene IEP team, including parent

Duty to Supervise Students

- On the Field/Court
 - Dangers of “Trash Talk”
- Less Structure Settings
 - On School Grounds
 - In the Locker Room
 - On the Bus
 - On the Sidelines
 - Waiting for Pick Up
 - Away from School Grounds

Duty to Supervise School Grounds

- **See** Duty of Care at School - *Dickens v. Township of Irvington Irvington BOE and Derek Strong* Docket No. ESX-L-006221-15 (N.J. Super. Ct. Sept. 18, 2017)
- **Facts:** 13 year-old girl fell and severely injured her left arm after jumping over a cable on her way to an athletic field for gym class.
- The cable had been erected to prevent vehicles from entering the athletic field
- Girl claimed that she had never been warned by teacher not to jump over cable, which she and her classmates had done previously on numerous occasions without incident

Dickens v. Irvington BOE cont'd

- **Outcome:** Jury found plaintiff 25 percent liable for her injuries and the district 75 percent liable. \$8 million award reduced accordingly to \$6 million. No liability was found against the teacher
- *Question*
 - *What reasonable measures could be taken to reduce potential for injury and legal liability?*

Lessons from Prior Incidents

- Locker Room Supervision
 - Reasonable supervision
 - Physical presence of staff
 - Cannot rely on students to report
- Hazing Rituals
 - Can be criminal even if student “consents”
 - Often crosses line into HIB
 - Can be violent – e.g. badge of honor/baseball

Issue between 2 school districts

- Football game between two NJ high schools in 2014
- Alleged incident of unsportsmanlike conduct between students from 2 schools
- Locker rooms for home and visiting teams separated by a wall with connecting door
- Hole in the door
- Hole filled 2x with banana by player(s)
- More than half of players on opposing team were black
- NJSIAA Controversies Committee reviewed incident, found insufficient proof of intentional racial bias, but required a Corrective Action Plan w/sensitivity training

“Trash Talk” Escalated to HIB

H.P. o/b/o R.S. v. BOE of the Borough of Tenaflly, Commissioner
3/26/2024

- Parent appealed BOE decision that her freshman son committed an act of HIB against a fellow classmate. HIB complaint resulted from **antisemitic comments and threats of physical harm made by R.S. during an exchange on Instagram with a Jewish student in January 2023**; exchange followed text exchanges between R.S. and his classmate which included back-and-forth insults regarding the other’s perceived soccer skills. R.S. alleged that the Instagram messages were in response to sarcastic comments made about his soccer abilities.
- ABS undertook investigation after the **victim met with her guidance counselor to report R.S.’s antisemitic comments and threats made through a private message on Instagram**; Crisis Team determined that R.S. needed a mental health clearance, which occurred.

“Trash Talk” Escalated to HIB

H.P. o/b/o R.S. v. BOE of the Borough of Tenaflly, Commissioner
3/26/2024

- Instagram message was nasty, antisemitic and threatened the victim. ABS found that both the victim and R.S. made unfavorable comments to each other about who was better at soccer; however, R.S. made comments threatening to hurt the victim as well as antisemitic comments about her religion. ABS HIB report concluded that R.S.’s actions met all of the statutory requirements and constituted an act of HIB. R.S. received counseling and a very short suspension.
- ALJ concluded that R.S.’s statements were specifically targeted at the victim’s **religion, a distinguishing characteristic**. Messages threatened physical harm on the victim with comparisons to Adolph Hitler and the Holocaust. Not just “trash talk”. **R.S. escalated “trash talk” exchanges into hate speech.**
- **ALJ** concluded that BOE determination that R.S.’s conduct constituted HIB was not arbitrary, capricious or against the weight of the evidence. **Commissioner** concurred. BOE reminded to comply with 10 day hearing requirement.

Hazing as a Crime - MOA with Law Enforcement

Section 8.5. Hazing.

- Hazing is a separate offense under N.J.S.A. 2C:40-3. Hazing is a disorderly persons offense when the conduct, other than competitive athletic events, may place another person in danger of bodily injury.
- When serious bodily injury results, the offense is aggravated hazing, which is a crime of the fourth degree.
- The consent of the person hazed is not a defense. N.J.S.A. 2C:40-4. Any other criminal conduct under the New Jersey Code of Criminal Justice also may be charged. N.J.S.A. 2C:40-5.

Hazing Definition under MOA

Section 4.5. Hazing.

- Hazing is a process, based on tradition that is used by groups to maintain a hierarchy (i.e., a pecking order) within the group.
- Regardless of consent, the rituals require individuals to engage in activities that are physically and psychologically stressful.
 - These activities can be humiliating, demeaning, intimidating and exhausting, all of which results in physical or emotional discomfort.
- Hazing is about group dynamics and proving one's worthiness to become a member of a specific group.
 - The newcomer, or victim, is hazed.
 - Once accepted by the group, the victim becomes a bystander and watches others get hazed.
- Eventually the bystander typically achieves senior status and power, and becomes a perpetrator.

Addressing Hazing

- Identify situations where potential exists for hazing to occur
- Ensure proper supervision of students involved in athletics, extra curriculars
- Develop alternative means to honor tradition, recognize upper classmen/team leaders
- Promote school climate that is respectful to all
- Recognize some forms of hazing may be criminal in nature, require law enforcement notice

Required Hazing Policy

- **P.L. 2021 c. 208 (8/24/2021)** Requires BOE of school district with high school or middle school to provide a program for the enforcement of the policy against hazing and adopt appropriate penalties for violation of the policy
- Penalties for violations of the policy may include:
 - Withholding of diplomas or transcripts pending compliance with the rules;
 - Rescission of permission for the organization or group, whose student members are being penalized under the anti-hazing policy, to operate on campus or school property or to otherwise operate under the sanction or recognition of the school district or nonpublic school; and
 - Imposition of probation, suspension, dismissal, or expulsion.
- A penalty imposed under this section shall be in addition to a penalty imposed for violation of any other school district or nonpublic school rule to which the violator may be subject.
- Policy adopted shall apply to each act conducted on or off campus if the acts are deemed to constitute hazing.

Addressing Conduct Away from School

- R.R. v. Shore Regional – student threatens another with a knife outside school, school able to take action
- Anti-Bullying Bill of Rights – Is behavior outside school likely to cause substantial disruption in school
- N.J.A.C. 6A:16-7.6 – Code for conduct away from school grounds - Is it necessary to act to protect health and safety, maintain order in school
- G.D. M. v. Ramapo Indian Hills – school district's student athlete contract went too far, unenforceable where there is not sufficient nexus to district
 - See [LEGAL ONE Video](#) summarizing case and legal implications

Implications of Ramapo-Indian Hills

- Cannot suspend or remove a student from sports or other extra-curricular activities solely because the student was involved in use of alcohol or drugs off school grounds, or engages in criminal activity or juvenile delinquency
- **Need to show nexus between conduct off school grounds and school environment**
- Must meet standards in N.J.A.C. 6A:16-7.6
- Failure to revise policies could lead to significant liability for districts
- Requires changes in typical 24/7 policies in place in most districts for their high school athletes and in some districts for students involved in other extra-curricular activities
- **IT DOES NOT** change any requirements related to reporting on HIB, dating violence, or when a student is suspected of being under the influence

Student Discipline – First Amendment Rights

B.L., a minor, by and through her father Lawrence Levy and her mother Betty Lou Levy v. Mahanoy Area School District, Third Circuit C of A, June 30, 2020, U.S. Supreme Court, Decided 6/23/2021

- A frustrated cheerleader after having only made the JV team posted a picture to “snapchat” with a caption “F**k school f**k softball f**k cheer f**k everything.”
- The post circulated at least among her 250 “friends” on her feed.
- Student removed her from the team, claiming a violation of a school policy relative to extracurricular activities.
- Student challenged the discipline, school district upheld the discipline.
- Student brought action against school district, alleging that suspension based on her social media post, made on a Saturday, violated her First Amendment rights.
- **SUPREME COURT – Violation of First Amendment Rights**
- **NO HIB, NO THREATS, NOT ON SCHOOL GROUNDS, PRIVATE DEVICE**

ADDRESSING BEHAVIOR OF STAFF AND VOLUNTEERS

Don't Forget

- Coaches who are not otherwise district employees
 - Need to know your policies, protocols, reporting requirements
- Volunteers
 - Need definition of those volunteers who have regular pupil contact and need criminal background checks

Social Isolation is not HIB

- S.G. o/b/o B.H. v. BOE of the Township of Montvale, Commissioner 1/26/2024 –
Difficulty making friends/social connections is not HIB
 - Student sitting alone while traveling, having difficulty making friends with teammates
 - NOT HIB, but what should a coach do if you notice that one teammate is isolated, sitting alone?

Constructive Feedback v. HIB

- What is the difference between constructive feedback and HIB?
- How can coaching or activity plans (comparable to lesson plans) help in demonstrating that appropriate constructive feedback was being provided? How can rubrics for assessing student performance be helpful?
- What steps should be taken if there is a pending allegation against a coach or club advisor and the student is still participating on the team or club?

Case Law – Feedback to Student

Janan Wehbeh v. Bd. Of Ed. of the Township of Verona, Commissioner 2/4/2020

- Tenured chemistry teacher found to have committed an unintentional act of HIB through conversation with student about enrollment in AP Chemistry program.
- Teacher's recommendation was that student not enroll in the course, but left decision up to the student; key factors - course difficulty and student's prior performance in honors chemistry course taught by teacher
- Student diagnosed with anxiety and panic disorder; had 504 plan.

Case Law – Feedback to Student

Janan Wehbeh v. Bd. Of Ed. of the Township of Verona, Commissioner 2/4/2020

- Teacher had no awareness of potential negative impact on student. Student's disability distinguishing characteristic.
- ALJ overturned board decision; held that a person cannot "unintentionally" commit an act of HIB. Commissioner disagreed.
- HIB as an action "that is reasonably perceived as being motivated either by any actual or perceived characteristic . . .", **the statute requires an analysis of how the actor's motivation is perceived and whether that perception is reasonable. It does not require intent or an analysis of the actual motivation of the actor. A reasonable person should know...**

Protecting Your Kids, Your District and Yourself

- Be consistent – process/criteria/rubric for choosing leaders, starters, making the team
- Break the cycle when necessary
 - E.g. Don't perpetuate outdated coaching style that you experienced as athlete
 - E.g., Don't feed into hostile relationship with parent
- Think of yourself as combination educator/counselor/school leader
 - E.g., develop Coaching Plans similar to Lesson Plans
 - E.g., exhibit Empathy and Take Action – notice changes from baseline behavior, check-in, refer to counselors, others as needed
 - E.g., Communicate Clear Vision and Adjust as Necessary
 - Make clear upfront that HIB and Hazing are not OK

Have Rubric/ Be Consistent With the Rules

- Have clear rubric for measuring student athlete performance
- If the rule is:
 - The student with the fastest time runs/swims – enforce consistently
 - There is nothing discretionary about this rule
 - Keep a record of the times of the athletes
 - If the student misses / is late for a practice / game (or a certain number of practices / games), then they do not start / play in the next game
 - Apply this rule consistently e.g., The “Star Athlete” and the worst player
- Be consistent with any exceptions
 - Have this figured out before the season starts – Discuss with AD
 - Religious Issues
 - Death in the family, illness, family crisis of some kind, etc.
 - Tutoring Sessions, Detention
 - Will you accept excuses including but not limited to...
 - A family’s pre-planned vacation / event
 - A college tour
 - A field trip / event in another activity (such as a Marching Band Competition or a National Honor Society Banquet)
 - Any other excuses / reasons you have been given for missing practices / games in your experience

HIB Case Law – Improper Behavior by Coach, but no distinguishing characteristic

R.Z. and L.D. o/b/o L.Z. v. BOE of the Northern Valley Regional HS District, Commissioner 4/28/2025

- Parents challenged BOE determination that allegations that head coach of the varsity boys' basketball team committed an act of HIB were unfounded. Coach was **accused of a pattern and practice of abusive and retaliatory behavior against student and other members in the basketball program**. Student was allegedly specifically targeted based on his status as a special education student (ADHD). Alleged behavior began in 2021-2022 school year and continued through 2022-2023 basketball season.
- ABS determined that while a number of the allegations were found to be credible and that the evidence “did reasonably substantiate that there was evidence of a substantial disruption, hostile/harmful environment or an interference to the rights of the alleged victim,” no HIB occurred as “the investigation did not reasonably substantiate a distinguishing characteristic served as the motivating factor in this case.”

Employee Due Process Rights

- **Sadloch v. Cedar Grove SD** – June 23, 2015 Commissioner affirmed ALJ. HIB Allegations against coaches dismissed –
 - Failed to provide coaches with written summary of allegations, findings and denied right to appear before the BOE prior to Board vote
- **Karp v. Barnegat SD** – On May 26, 2016, Arbitrator dismissed allegations against teacher involving alleged sexual harassment of students.
 - Teacher's Due Process Rights violated:
 - There were no certifications from direct witnesses or victims, no ability to cross examine.
 - SD's allegations were vague and did not provide necessary information re: dates and alleged victims.

Addressing Staff Behavior – Coaches and AD

DeFranco v. So. Orange-Maplewood BOE, et als., App. Div. 5/12/2023

- **App. Div. vacated Law Division 3/16/21 order.** *Matter arising out of a lawsuit brought by DeFranco, former student and baseball team member; alleged coaches, athletic director and others violated the ABRA.*
- App. Div. invalidated Law Division protective order related to racially and religiously insensitive text messages sent by coach and athletic director on personal cell phone which required messages to remain confidential and returned to parties involved in settlement of litigation or destroyed
 - App. Div held parent of another athlete entitled to see evidence for a separate pending proceeding regarding his son
 - District entitled to use evidence for potential disciplinary proceedings against staff

Case Law – Suspension of Certificates

In the Matter of the Suspension of the Certificates of James Smith 12/2/2020

- State Board of Examiners suspended tenured Athletic Director's Supervisor Certificate and Principal's Certificate of Eligibility for four months. Appellant's teacher of social studies certificate was not suspended.
- State Board of Examiners found that the appellant failed to complete his required coach and teacher evaluations over a five year period, even after he was placed on a corrective action plan and had an increment withheld; progressive discipline was properly imposed. **Appellant also failed to report a parent's harassment, intimidation and bullying (HIB) complaint as required by the District's HIB policy.** Board concluded that this conduct amounted to inefficiency and unbecoming conduct.

Case Law – Suspension of Certificates

In the Matter of the Suspension of the Certificates of James Smith 12/2/2020

- Commissioner may not substitute her judgment for that of the State Board of Examiners so long as the appellant received due process and the Board's decision is supported by sufficient credible evidence in the record. Board's decision should not be disturbed unless it is demonstrated to be arbitrary, capricious or unreasonable.
- No tenure dismissal proceedings as employee resigned before prepared tenure charges could be filed. Board of Education went directly to State Board of Examiners.

HIB and TPAF Pension Rights

Cooke v. Bd. of Trustees TPAF *Aff'd App. Div. 4/14/2020*

- Elementary teacher appealed 2/14/19 decision of Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF), imposing a ten percent forfeiture of teacher's pension benefits pursuant to [N.J.S.A. 43:1-3](#) and [N.J.A.C. 17:1-6.1](#). App. Div. affirmed.
- Appellant elementary teacher was employed by the Egg Harbor Twp. BOE. November 2007, appellant called another teacher “Aunt Jemima” in the presence of other teachers. June 2008, Appellant called same teacher a “n....r” in the presence of students and other teachers. Both statements were made during school hours and on school property. School Board contended that Cooke's racial epithets were made in anger and not in jest.

HIB and TPAF Pension Rights

Cooke v. Bd. of Trustees TPAF *Aff'd App. Div. 4/14/2020*

- Tenure charges brought. Acting Commissioner of Education adopted the ALJ's factual findings but modified the penalty to 120 days of salary withholding, plus an additional thirty-day suspension without pay, and mandatory training on racial sensitivity at teacher's own expense. 11/22/10
- Both parties appealed, teacher also filed NJLAD retaliation complaint in Law Division. Parties settled.
- Teacher applied for accidental disability retirement, was granted ordinary disability retirement. Effective 1/1/13
- 10/7/14 TPAF performed an honorable service review and imposed a ten percent reduction in her ordinary disability retirement benefits effective 1/1/13 (allocating five percent to each of the two incidents).

Addressing Behavior of Referees/Officials

- AG announces settlement and new guidance document - <https://www.nj.gov/oag/newsreleases19/pr20190918a.html>
- Referee suspended for 2 years
- NJSIAA rules must be limited to hair length, and cannot be applied in way that discriminates based on hair style
- New AG [guidance](#) clarifies that discrimination on the basis of race includes discrimination based on a trait “inextricably intertwined with or closely associated with race,” including hairstyle.
- Led to passage of the CROWN Act.

What If ...

- Similar incident started to occur at an event, where the referee or other game official is asking student to do something that is embarrassing, demeaning, or discriminatory?
- What role does the coach play in addressing the behavior of other adults who may be harming student athletes?

KEY TAKEAWAYS

Key Takeaways

- Failure to address bad behavior by spectators can lead to liability for district and coaches.
- “Trash talk” can quickly escalate to HIB/discrimination.
- Issues often occur at less structured times (in locker room, on the bus, waiting for a ride home).
- Many incidents where coaches are accused of HIB, but there is no evidence of wrongdoing - making difficult decisions on playing time, making team, etc.
- Athletics staff are in a position of power in relation to student athletes and are held to a higher standard when it comes to their behavior.
- Athletics staff may create student records, public records or material that is discoverable in civil litigation through electronic communications, even when using personal devices
- When school staff members engage in HIB consequences may be extremely serious, including suspension or revocation of certificates, and even reduction in pension.

Sportsmanship as a Priority

- Stress from the top down and bottom up
- Celebrate positive examples
- Consistently apply expectations for:
 - Spectators
 - Parents
 - Athletes
 - Staff/Volunteers

Avoid Going through the Motions

- Take security drills seriously, ensure that district planning and drilling includes athletic events
- When doing training, check for understanding and ability to apply
- Trust but verify – As AD, important to audit to ensure the policies, protocols and practices are fully aligned, consistent with legal requirements

Things NOT to Say/Write

- Examples of the types of things **not** to say or include in a journal:
 - This kid is hopeless / clueless / a lost cause / stupid / a pain / a crybaby
 - S/he is as bad as his brother/sister was
 - The parents are crazy / driving me crazy / have the delusion that their kid is going to go pro / get a scholarship
 - My grandmother runs faster than this kid
 - I can't stand this kid / the family
 - Having to cater to the needs of this Special Ed kid is inconvenient / a pain / a waste of time / too much work

Write It Down Responsibly!

- Remember may be creating student records and/or public records and/or discoverable materials even when using personal device
- If you acted responsibly, but it's not in writing, it didn't happen (or so someone may argue)
- Have evidence of training provided and who participated
- Have documentation of meetings with students, parents, staff, officials, etc. to address issues of concern
- Document all referrals made to others to address student needs

QUESTIONS???

Conclusion

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School Athletics, Sportsmanship and Legal
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ORIGINAL AIR DATE:
MAY 19, 2025

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DATE
THURSDAY, JANUARY 22, 2026



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9:00AM TO 1:00PM



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