

Harassment, Intimidation, and Bullying & the Anti- Bullying Bill of Rights Act

Upper Township School District
2018-2019

HIB Personnel

Anti-Bullying Coordinator:

Brian Mistretta

MS Anti-Bullying Specialist:

Tracey LeFever

ES Anti-Bullying Specialist:

Suzi Paschuck

PS Anti-Bullying Specialist:

Kathy Weatherby



HIB Safety Teams

MS

Brian Mistretta
Tracey LeFever
Jeff Leek
T.J. Warren
Holly Becker
Becky Bird
Lane Hendricks

ES

Brian Mistretta
Suzi Paschuck
Andrea Urbano
Stephanie Corcoran
Amy Schiavone
Kelly Tjoumakaris

PS

Brian Mistretta
Kathy Weatherby
Jamie Gillespie
Kate McMahon
Debbie Young
Erin Scott



New Jersey Law

- In 2002, the New Jersey Legislature adopted the laws that are currently in effect prohibiting harassment, intimidation, and bullying (HIB)
 - Defined HIB
 - Required policies prohibiting HIB
 - Compared HIB to other behaviors that “disrupt” a students’ ability to learn and schools’ ability to educate in a safe environment

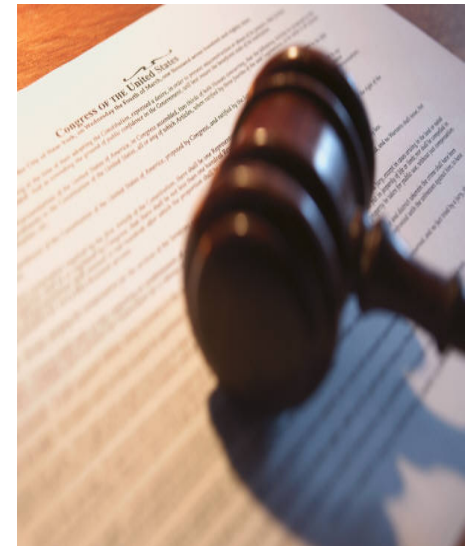
NJDOE Expectation: STOP HIB



“Anti-Bullying Bill of Rights Act”

- P.L. 2010, c. 122, codified at *N.J.S.A.* 18A:37-13 and various other sections of the law
- Passed by the Legislature in November 2010
- Signed into law by Governor Christie on January 5, 2011
- Amends:
 - P.L. 2002, c. 83
 - P.L. 2007, c. 129
 - P.L. 2007, c. 303

• **EFFECTIVE SEPTEMBER 1, 2011**



“Anti-Bullying Bill of Rights Act”

- Seeks to establish clearer standards on what constitutes HIB
- Seeks to strengthen and establish clearer standards on how to prevent, report, investigate, and respond to incidents of HIB



Anti-Bullying Bill of Rights (19)

- Right to Have HIB Reported
- Right to Have HIB Investigated
- Right to Consequences and Remedial Action
- Right to Board of Education Oversight
- Right to Civil and Criminal Redress



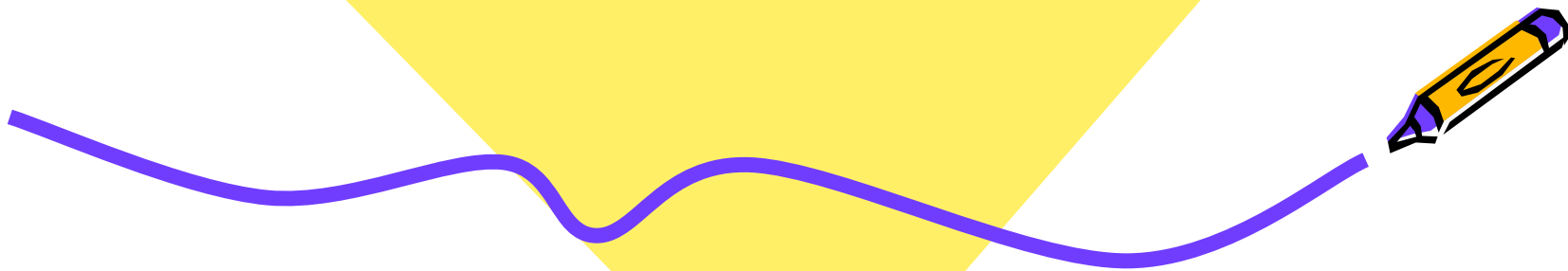
Anti-Bullying Bill of Rights (19)

- Right to Ensure Employees and Students Understand HIB
- Right to a Policy Implementing the Bill of Rights
- Right to Confidentiality
- Right to Continual HIB Law/Policy
- Oversight





What is HIB?



New Definition of HIB, N.J.S.A. 18A:37-14

Any gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by *any actual or perceived characteristic*, such as:

- Race
- Color
- Religion
- Ancestry
- National origin
- Gender



New Definition of HIB, N.J.S.A. 18A:37-14 (cont' d)

- Sexual Orientation
- Gender Identity & Expression
- Mental, Physical or Sensory Disability
- 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 section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and meet one of the following:



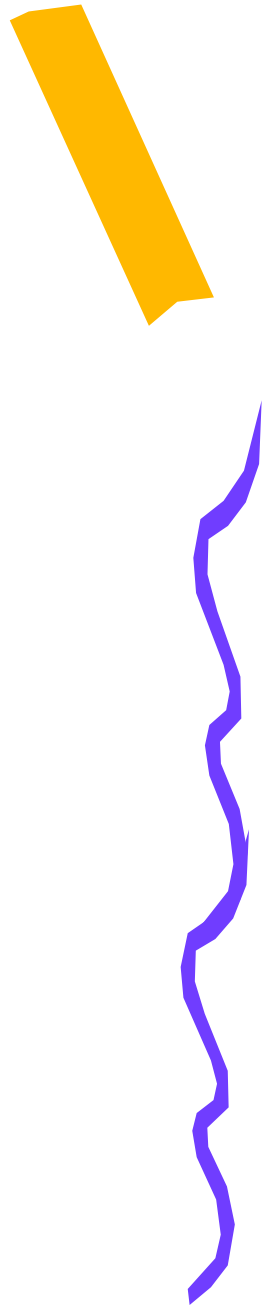
New Definition of HIB, N.J.S.A. 18A:37-14 (cont' d)

- a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;
- b. has the effect of insulting or demeaning any student or group of students; or
- c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.



Three Main Changes

- Type of Behavior
- Location of Behavior
- Effect of Behavior



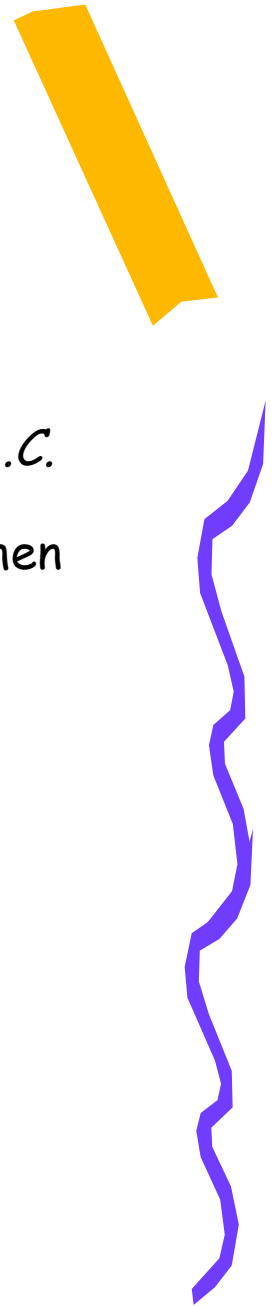
Type of Behavior

- **Single incident or series of incidents**
- *Gesture*
- *Written, verbal, physical act*
- *Electronic communication*
 - *A communication transmitted by means of an electronic device, including, but not limited to, a telephone, cellular phone, computer, or pager*
 - *N.J.S.A. 18A:37-14.*
 - *Facebook, e-mails, text messages*



Location of Behavior

- On school property
 - Land, structures, buildings, vehicles used for academic or extracurricular programs sponsored by the district. *N.J.A.C. 6A:16-1.3*
 - Playgrounds and recreational places not owned by school when district has exclusive use of that land. *N.J.A.C. 6A:26-1.2*
- At a school-sponsored function
- On a school bus or bus stop
- Off school grounds
 - If school employee is made aware. *N.J.S.A. 18A:37-15.3*



Location of Behavior (cont'd)

“Behavior must substantially disrupt or interfere with the orderly operation of the school or the rights of other students”



What is a “Substantial Disruption?”

- String of First Amendment Cases
 - Free speech and free expression guarantees
- The law affords certain protections to public school students’ First Amendment rights
- Must balance those rights with school district’s ability to prevent HIB



The First Amendment

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”



Substantial Disruption: NO

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S.
503 (1969)

- School board policy in Iowa prohibited students from wearing black armbands in protest of the Vietnam War
- Supreme Court held:
 - First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.



Tinker (cont'd)

- In order to prohibit students from expressing particular points of view, school officials must show “more than a desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”
- “Certainly where there is no finding and no showing that engaging in the forbidden conduct would ‘materially and substantially interfere with the requirement of appropriate discipline in the operation of the school,’ the prohibition cannot be sustained.”

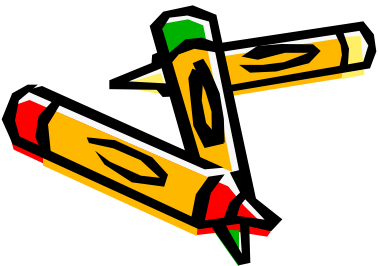


Substantial Disruption: YES

Bethel School District No. 403 v. Fraser, 478 U.S. 675
(1986)

Student used elaborate sexual metaphor in speech before approximately 600 students nominating a fellow student for a school election:

- "I know a man who is firm-he's firm in his pants, he's firm in his shirt, his character is firm-but most of all, his belief in you, the students of Bethel is firm."
- Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts-he drives hard, pushing and pushing until finally-he succeeds.

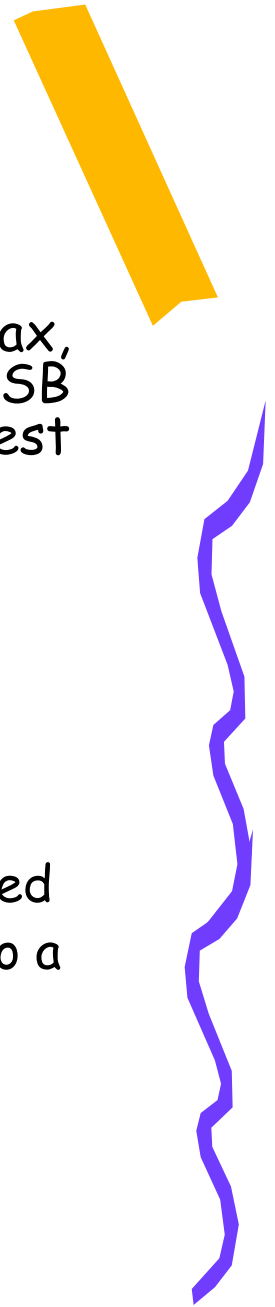


Fraser (cont'd)

- Jeff is a man who will go to the very end-even the climax, for each and every one of you. So vote for Jeff for ASB vice president-he'll never come between you and the best our high school can be."

Supreme Court held speech was disruptive:

- Some students hooted and yelled
- Some students gestured and graphically simulated the sexual activities alluded to in the speech
- Some students appeared to be bewildered and embarrassed
- On the day following the speech, one teacher had to forgo a portion of a scheduled lesson to discuss the speech



Fraser (cont'd)

- School may regulate the “manner of speech in the classroom or in school assembly”
- Unlike passive, nondisruptive expression of a political position (like in *Tinker*), educators have duty to enforce habits and manners by establishing policies to discipline for lewd and obscene speech without any political viewpoint
- “Plainly offensive” standard



Effect of Behavior

- Must meet one of the following:
 1. Reasonable person should know, under the circumstances, that behavior will have the effect of:
 - physically or emotionally harming a student or
 - damaging the student's property or
 - placing a student in reasonable fear of physical or emotional harm to his person or damage to his property
 2. Have the effect of insulting or demeaning any student or group of students
 3. Create a hostile educational environment by:
 - interfering with a student's education or
 - pervasively causing physical/emotional harm to student



What is a “Hostile Educational Environment”

- Not defined in the new law
- New statutory language not yet interpreted
- Department of Education, Office of Civil Rights, Dear Colleague Letter (Oct. 26, 2010)
 - HIB “creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school.”



What is a “Hostile Educational Environment”

- Courts have previously used similar language in harassment under Title IX, which prevents discrimination based on sex
- *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999)
 - Serious and systematic sexual harassment against student at the hands of another student creates abusive environment if school district officials act with deliberate indifference to the harassment
 - Harassment must be severe enough to prevent victims from enjoying educational opportunities



What is a “Hostile Educational Environment”

- Courts have previously used similar language in harassment under New Jersey Law Against Discrimination (LAD)
- *L.W. v. Toms River Bd. of Educ.*, 189 N.J. 381 (2007)
 - Student-on-student harassment based on sexual orientation violates the LAD if the school district's failure to reasonably address that harassment has the effect of denying to that student any of a school's accommodations, advantages, facilities or privileges.



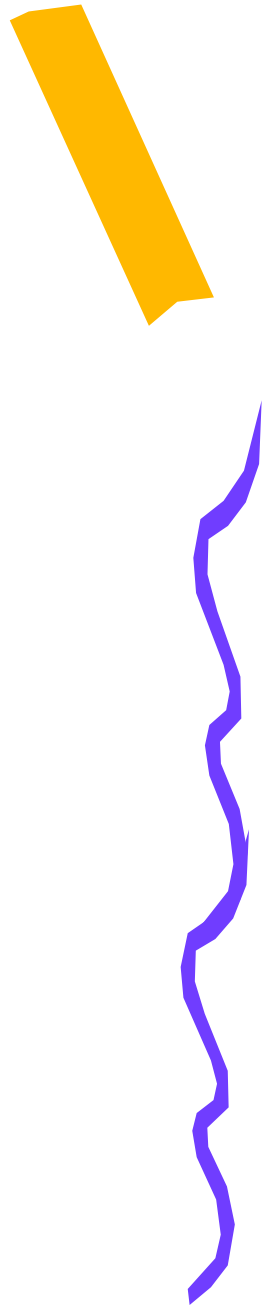
HIB is.....

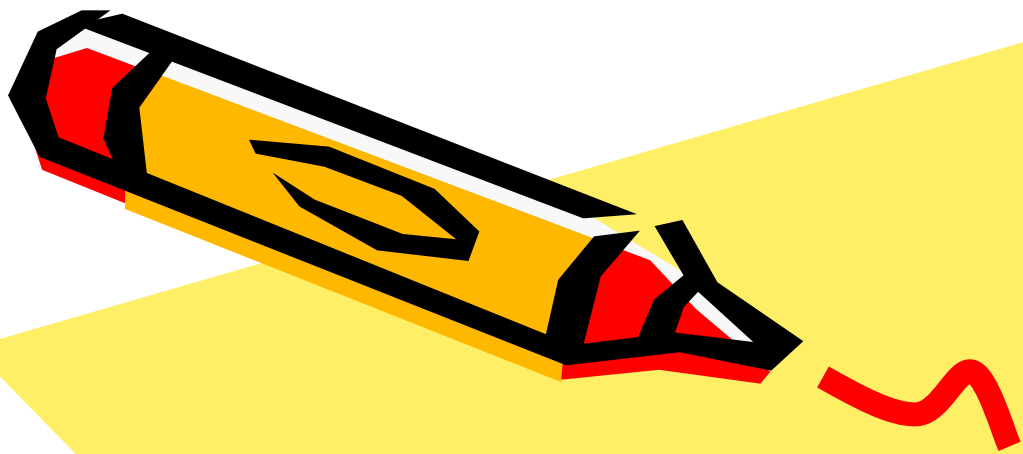
- Single incident or series of incidents
- Occurring on or off school property
- Creating substantial disruption or interference with the orderly operation of the school or the rights of other students
- Meeting one of the following:
 - Cause physical or emotional harm
 - Be insulting or demeaning
 - Create hostile educational environment



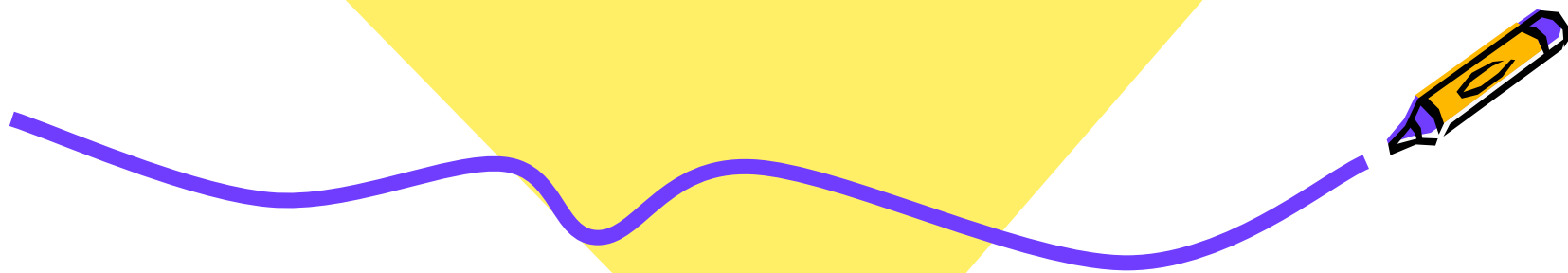
Actions that could be HIB?

- Name calling
- Teasing
- Gossiping
- Shunning
- Isolating
- Manipulating
- Humiliating
- Coercing
- Extorting
- Terrorizing
- Blackmailing
- Sexual harassment
- Touching
- Poking
- Shoving
- Kicking
- Choking
- Tickling





Right to Have
HIB Reported



Who Reports HIB?

- The following must report:
 - Member of Board
 - School Employee
 - Contracted Service Provider
 - Student
 - Volunteer
- If witnessed HIB
- If have reliable information that a student has been subject to HIB



Are Anonymous Reports Accepted?

YES

- Must permit anonymous reports
- Cannot take formal disciplinary action on basis of anonymous report alone



To Whom Do You Report?

- Any school administrator
- An SRO (School Resource Officer)
- Whomever is designated by school policy (Administration, ABC, ABS)



When Do You Report?

- Must verbally report HIB on the same day when HIB was witnessed or reliable information regarding an HIB incident is received
- Must provide written report within two school days of when HIB was witnessed or reliable information that a student had been subject to HIB was received



Do Parents Have Rights?

- Principal must inform parents of all students involved in alleged HIB incidents of the report
 - Principal may discuss, as appropriate, the availability of counseling and other intervention services
 - Verbally: when brought to our attention
 - Written: within 5 days after the investigation has been completed and reported to the BOE



Can You Get In Trouble For Reporting HIB?

Any school employee or board member who promptly reports HIB in compliance with the District's policy is immune from any action for damages resulting from any failure to remedy the reported incident.



What Happens IF I Don't Report?



- *Cox v. Board of Education of Township of Hamilton* (1999):
 - Teacher failed to report information received concerning sexual harassment of a student. Court noted teacher was an “outstanding teacher who made an error in judgment”
 - Held
 - It doesn't matter if you are an outstanding teacher who made an error in judgment



Teacher's contract not renewed



Protection from Retaliation for Reporting HIB

- No reprisal, retaliation or false accusation against a victim, witness or anyone who reports an act of HIB
 - No false accusations as a means of retaliation
 - No false accusations as a means of HIB
- Consequences and appropriate remedial action will be taken if you retaliate against HIB reporters
 - For students or employees, disciplinary action as appropriate
 - For visitors of volunteers, range from removal of building privileges to law enforcement reports



Reports Involving Special Education Students



- Incidents of HIB that occur exclusively among or between special education students or students with developmental disabilities MUST be reported

(Prior to passage of the Act, reporting was discretionary)



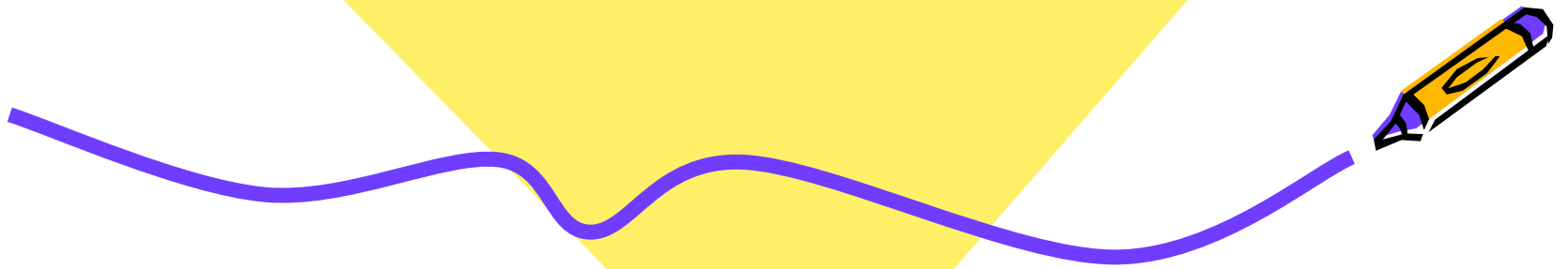
Disciplining Special Education Students

- Special regulations apply to the discipline of special education students
- Some things to keep in mind:
 - Must notify the student's case manager
 - Manifestation determination for decisions to suspend long-term
 - Within 10 school days of decision to suspend
 - If manifestation, can only discipline in limited circumstances

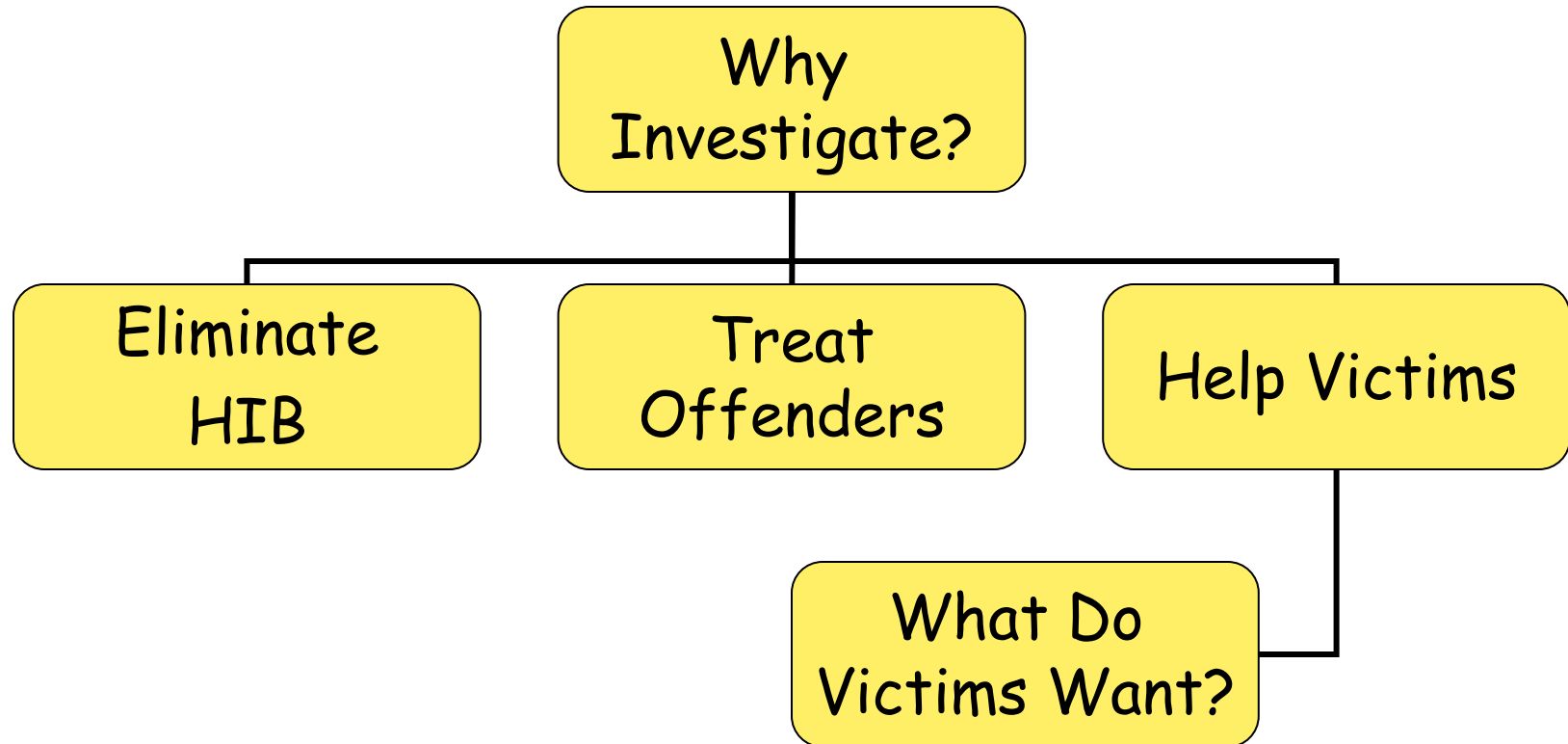




Right to Have HIB
Investigated



Why Does Investigation Occur?



When Does Investigation Get Initiated?

- Principal or Principal's designee responsible for initiation of investigation
 - School Administrator who receives report and fails to initiate or conduct investigation may be subject to disciplinary action
- Investigation must be initiated within one school day of the report
 - Law doesn't specify which report, verbal or written
 - Best practice: verbal report



Who Investigates?

Designated Building Anti-Bullying Specialist (ABS)

- New position created by the Bill of Rights
- Principal appoints from staff already employed in the school
 - If school employs a school psychologist or guidance counselor or other individual similarly trained, must be that person
 - No definition of “similarly trained”
 - If no individual meets that criteria currently, ABS may be someone else currently employed in the school



ABS Responsibilities

- Leads the investigation of HIB reports
 - Principal may appoint other individuals to assist (Assistant Principal if applicable)
- Designated school official responsible for preventing, identifying and addressing incidents of HIB



ABS Training

- Commissioner will make available online tutorial on HIB that includes best practices/applicable laws
 - Will be accompanied by a test to assess person's understanding of information
- Commissioner will consult with experts to establish in-service workshops and training programs
- District Board of Education must provide time for in-service training during usual school schedules



How Does Investigation Occur?

Interview Victim/Complainant

Interview Witnesses

Interview Bully/Harasser



Are Parents Present During The Interviews?



- No requirement to call parents before you speak with their child as
- Discretion is the key
- Consideration given to:
 - Age of student
 - Student's wishes
 - Urgency
 - History with parents
- Parental involvement/comm. may be helpful



What Does An Investigation Look Like?

- Do not threaten, force, or bully the students
 - Avoid student claims of coercion
- Keep in mind context and statements taken out of context
- Allow each student the opportunity to explain what he/she saw or did
- Make sure you take as many witness statements as necessary, not always just the victim and the accused (including Staff)



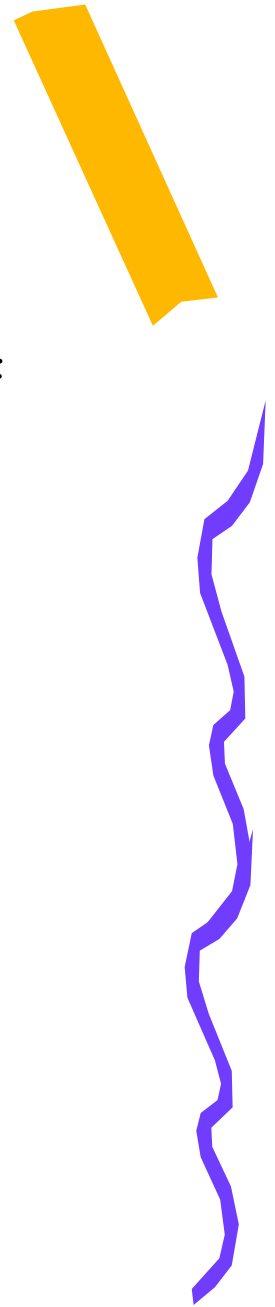
Conduct of Investigations

- Make sure quotes are accurate, and allegations and statements are correct
 - Student statements in student handwriting
 - Student signature on non-student handwriting
 - Have another adult present



Investigations Gone Bad...

- No documented conversations
- No written complaints
- Did not investigate a claim (Someone asked you not to)
- Did not follow Board Policy
- Did not know Board Policy
- Did not interview staff and/or students
- Incorrect spelling, grammar, names
- Loss of photographs
- Loss of videotape



Inadequate Investigations

- Commissioner must establish formal protocol pursuant to which ECS must investigate complaints alleging violations of *N.J.S.A. 18A:37-13 et seq.* by school district when complaint hasn't been adequately addressed at lower level
- ECS must report findings and if appropriate issue order for district to develop and implement corrective action



When Must The Investigation Be Completed?

- Investigation must be completed no later than 10 school days from the date of the written report of the incident
 - If information relative to the investigation is anticipated but not yet received by the end of the 10-day period, original report of results of investigation may be amended to reflect that information
- Investigation should be documented in an investigative report

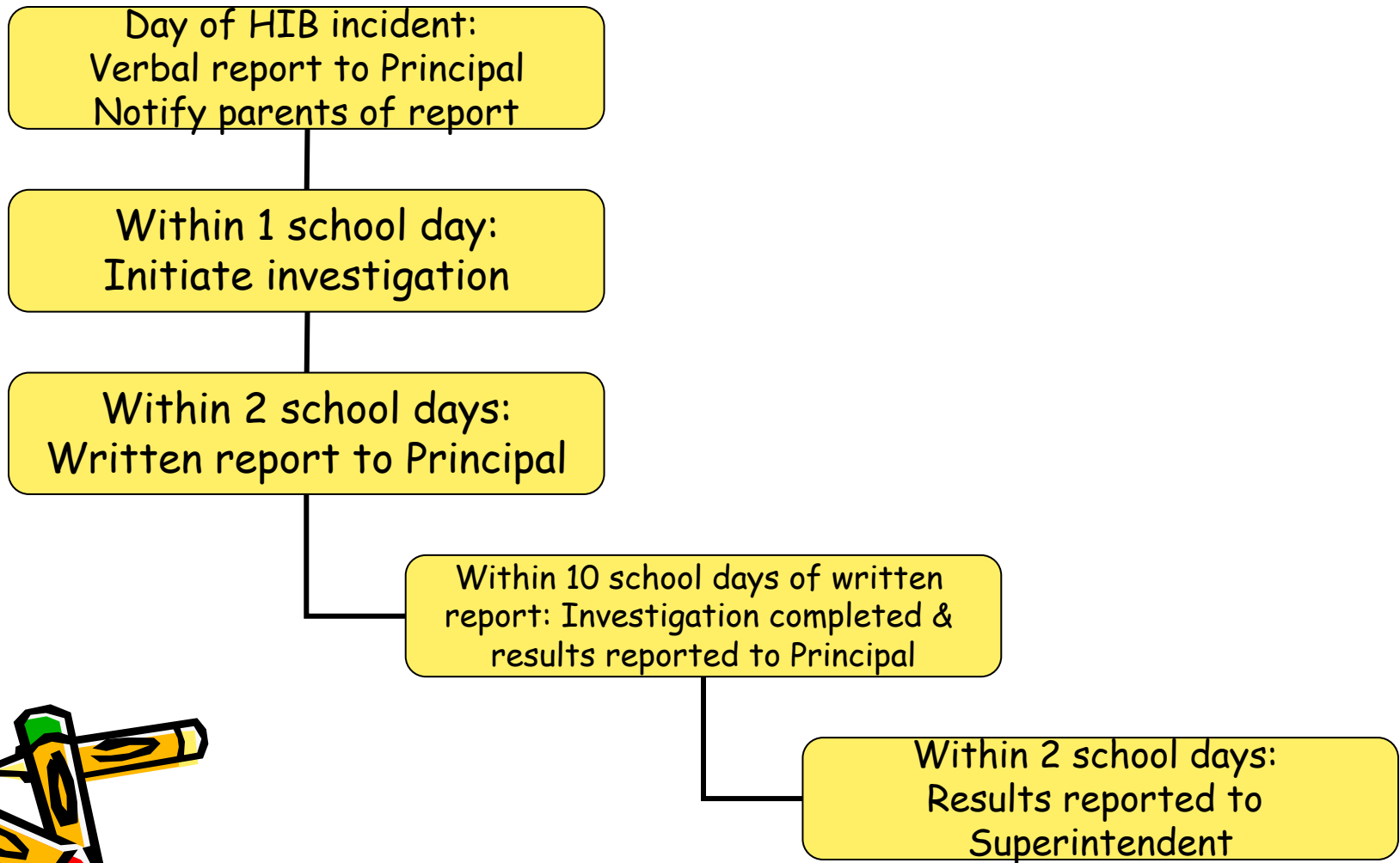


What Happens After Investigation is Completed?

- Investigation results are reported:
 - To the **Principal** within 10 school days after the date of the written report
 - To the **Superintendent** within 2 school days of completion of investigation
 - Law does not specify who reports to Superintendent
 - Best practice: **Principal**

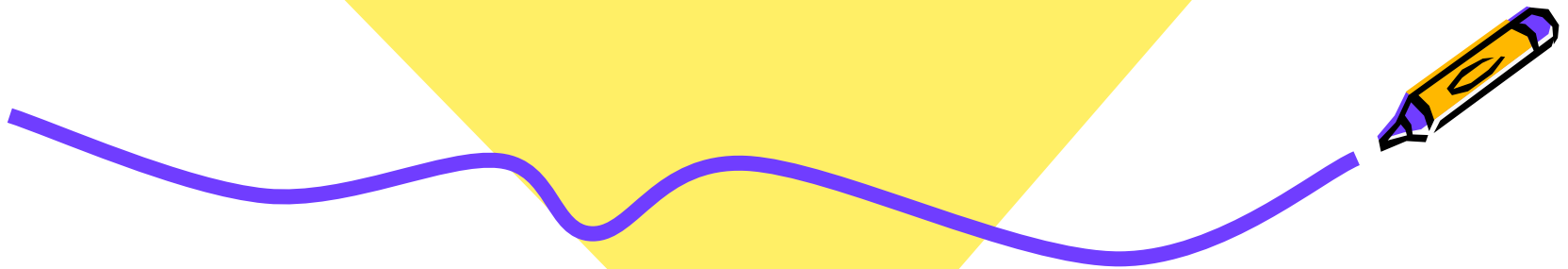


Investigation Timeline





Right to Consequences and Remedial Action



Who Determines Consequences/Remedial Action?

- Range of ways in which a school will respond once an HIB incident is identified must be defined by Principal in conjunction with the ABS
- No time frame given when Principal can respond
 - Principal may take interim measures to ensure health, safety, and welfare of students pending outcome of investigation



Who Determines Consequences/Remedial Action?

- After Superintendent receives investigative report, Superintendent may:
 - Provide intervention services
 - Establish training programs to reduce HIB and enhance school climate
 - Impose discipline
 - Order counseling
 - Take or recommend other appropriate action



When To Respond?

Response deadline	Required action
Day of HIB Incident	Verbal report to Principal Notify parents of report Principal can take action
Within one school day of verbal report	Initiate investigation
Within two school days of HIB incident	Written report to Principal Principal can take action
Within ten school days of written report	Investigation completed Report results to Principal Principal can take action
Within two school days of completion of investigation	Report results to Superintendent Superintendent can take action



What is the Appropriate Response?

- Remedial measures
 - Correction
 - Prevention
 - Protection
- Factors to determine remedial measures
 - Personal
 - Life skills deficiencies, strengths, social relationships, interests, classroom participation, academic performance
 - Environmental
 - School culture and climate, supports, family situation, community activity, staff managements



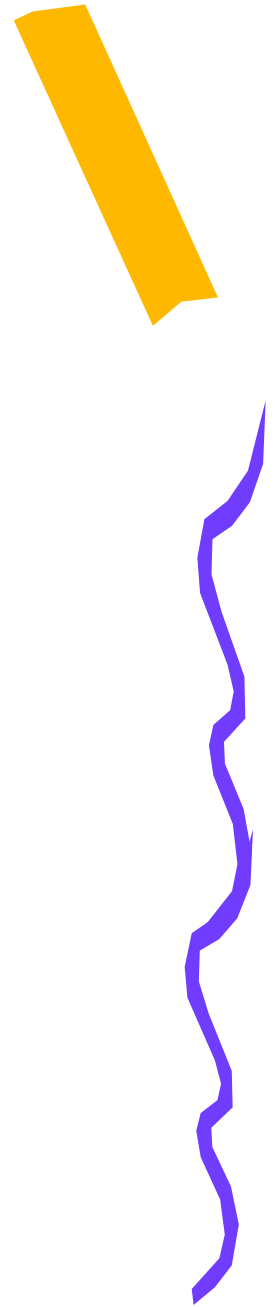
What is the Appropriate Response?

- Consequences
 - Contextual Approach
 - Maturity and age of parties involved
 - Degrees of harm
 - Surrounding circumstances
 - Nature and severity of behaviors
 - Prior acts/continuing behavior
 - Relationship of parties
 - Context in which incidents occurred

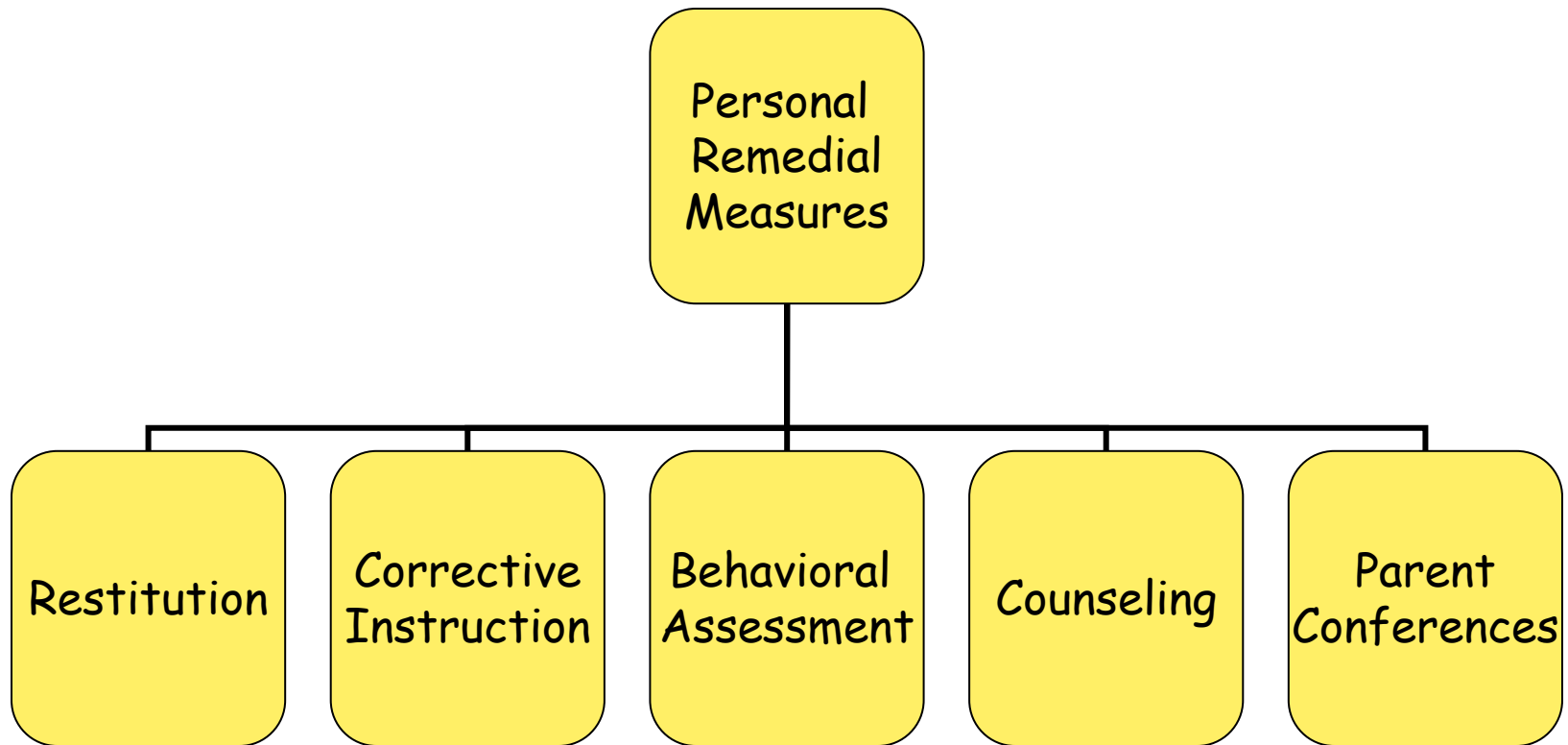


What is the Appropriate Response?

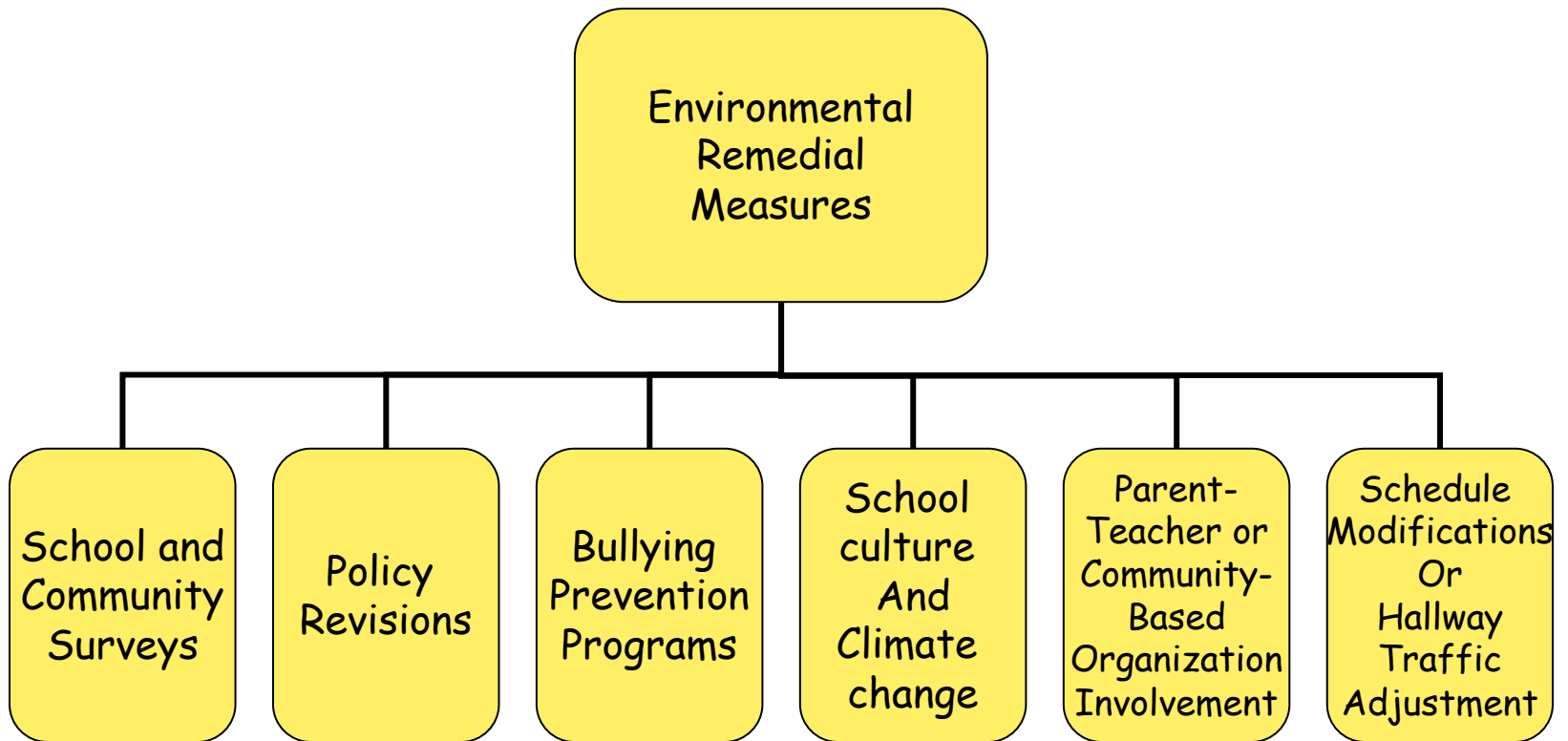
- Consistent with code of student conduct
- Must include combination of:
 - Counseling
 - Support services
 - Intervention services
 - Other programs defined by Commissioner



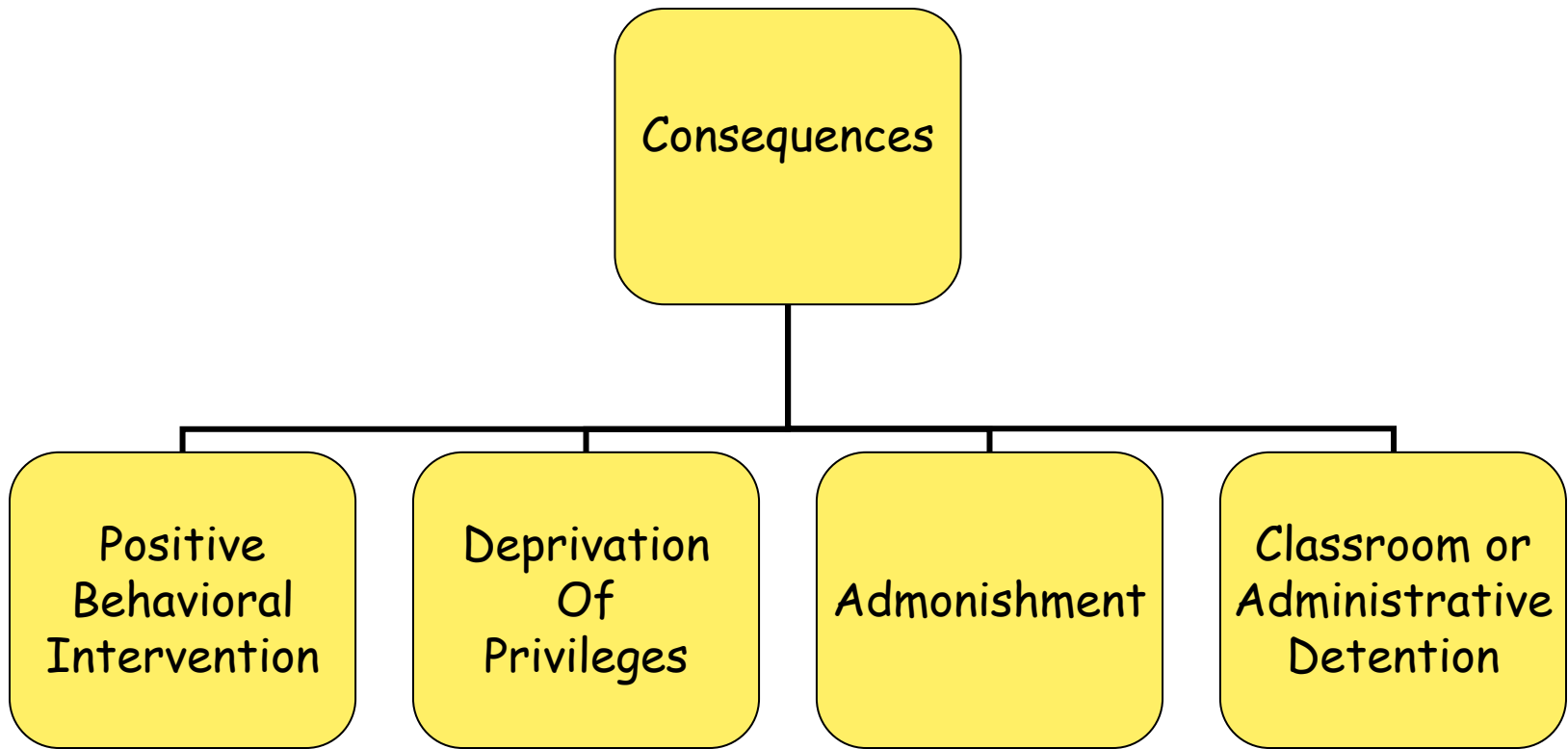
Remedial Measures



Remedial Measures



Consequences



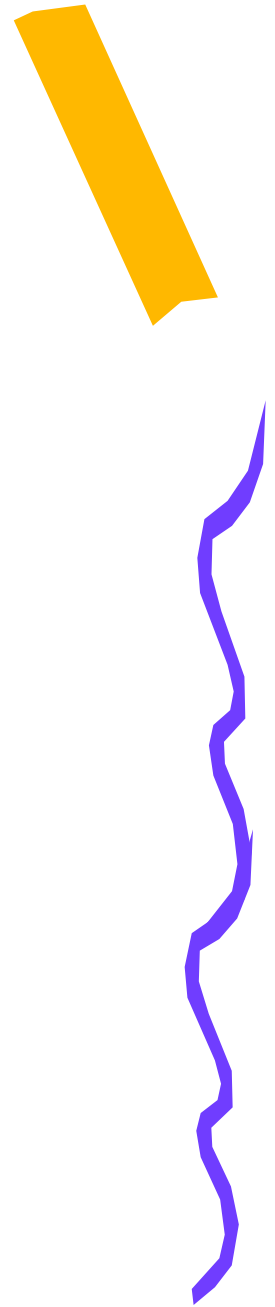
Discipline

- Anti-Bullying Bill of Rights added HIB to the student discipline statute, *N.J.S.A. 18A:37-2*
 - HIB is now one of the enumerated acts that constitutes good cause for suspension or expulsion of a “pupil guilty of such conduct”



Discipline

Can a student be guilty of HIB
before
an HIB investigation is complete?



Immediate Decisions to Discipline

- Due Process protections protect students from unfair or mistaken findings of misconduct and arbitrary exclusion from school
- *Goss v. Lopez*, 419 U.S. 565 (1975)
 - Ohio High School students suspended for less than 10 days without a hearing prior to suspension or immediately thereafter in violation of the Fourteenth Amendment
 - *Goss* set forth certain Due Process rights prior to a student's suspension



Due Process for S/T Suspensions

- Student has the right to
 - Oral or written notice of the charges
 - An opportunity to respond
 - If student denies charges, student must be given
 - an explanation of the evidence the authorities have
 - an opportunity to present his side of the story
 - Notice if further penalty is recommended
- Student does not have the right to:
 - Counsel
 - Confront adverse witnesses
 - Call their own witnesses

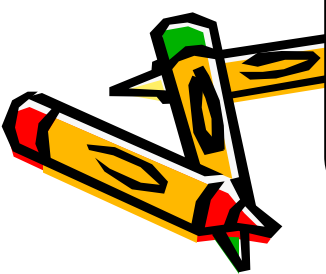
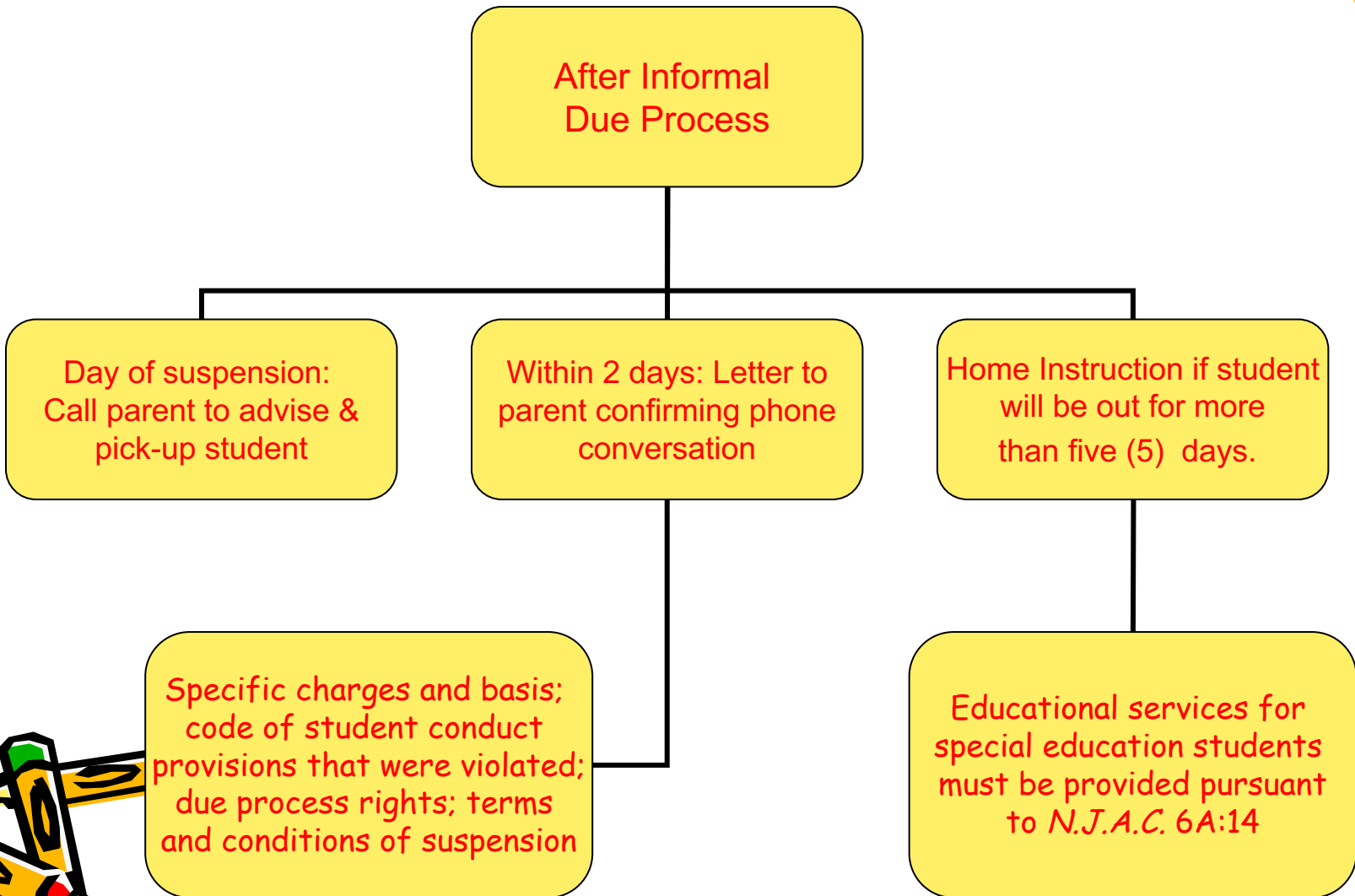


Short-Term Suspensions

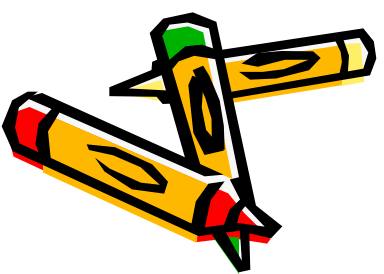
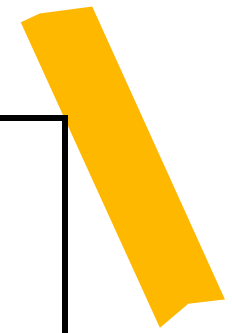
- Principal must report suspension to Superintendent immediately after suspension
 - For special education students, Principal must also forward written notification and description of reasons for suspension to the case manager
- Superintendent must report suspension to the Board at the next Board meeting following suspension



Short-Term Suspensions



Day of HIB incident	Verbal HIB report Decision to suspend up to 10 days Informal Due Process Call parent re: HIB report and suspension
Within one school day of verbal report	Initiate HIB investigation
Within two school days of HIB incident	Written HIB report Letter to parent re: suspension
Within five school days of HIB incident	Home instruction
10 school days after HIB incident	Student back in school
Within ten school days of written report	HIB investigation complete HIB results reported to Principal
Within two school days of completion of investigation	HIB results reported to Superintendent
First Board meeting after completion of investigation	Report suspension to Board

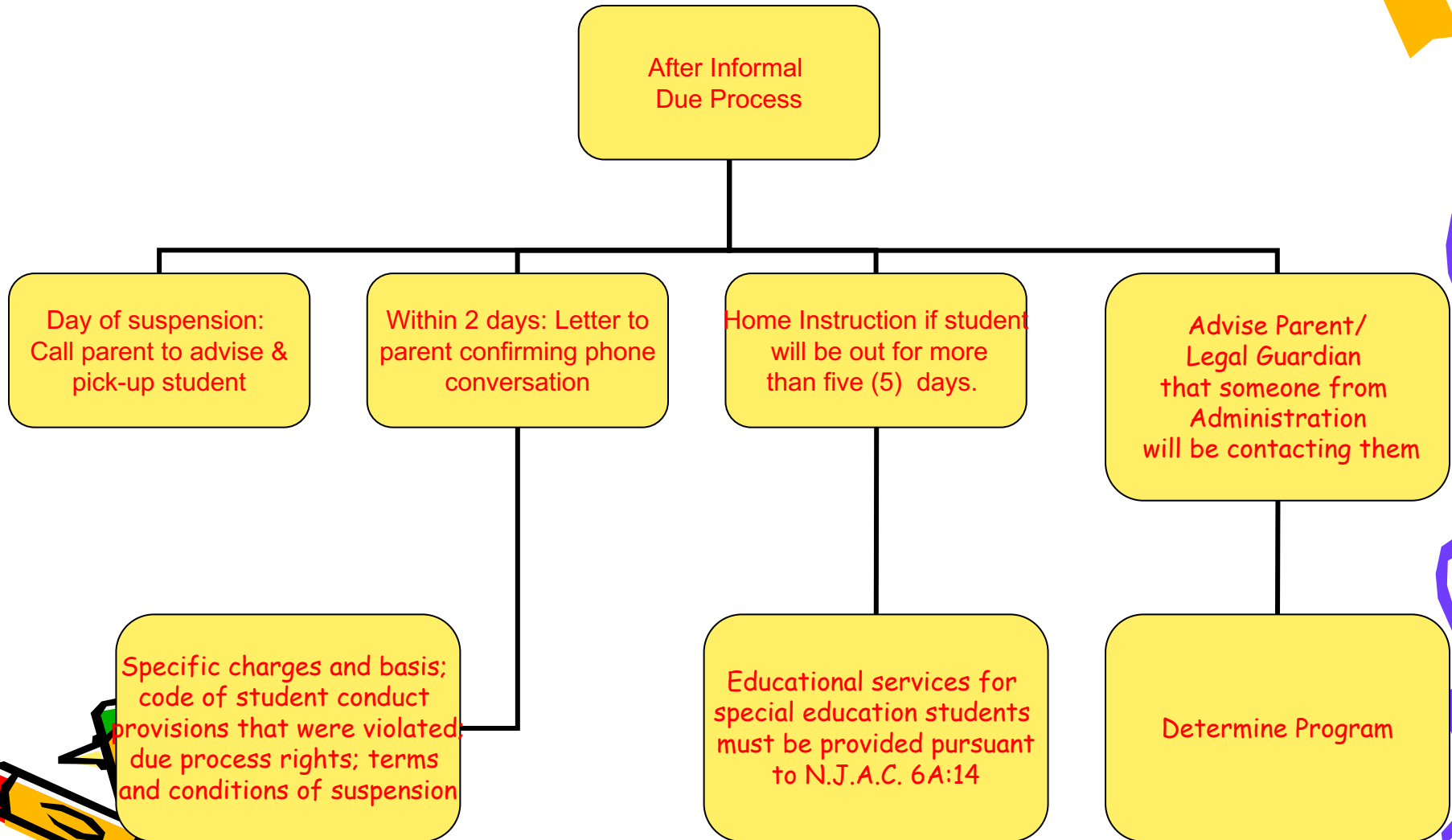


Due Process for L/T Suspensions

- Longer suspensions require more formal due process procedures:
 - Informal Due Process
 - Full Due Process hearing



Long-Term Suspensions



Program Choice

- The appropriate placement of the general education student while on suspension, at a minimum, is based on the following:
 - A behavioral assessment or evaluation including, but not limited to a referral to the child study team, as appropriate
 - The results of any relevant testing, assessments or evaluations of the student
 - The student's academic, health and behavioral needs
 - The recommendation of the chief school administrator and Principal
 - Considerations of parental input
 - Consultation with PERS
- Board determines appropriate program and support services



Program Choice

Review Student Disciplinary File,
Academic Records, Attendance,
Special Education,
Nature of Incident, etc...

Contact parent to schedule meeting
to discuss Administrative
Recommendation to Resolve
without a Due Process Hearing

Parent agrees with
recommendation:
parent signs a Disciplinary Waiver
and the student begins discipline

Parent disagrees with
recommendation:
Full Due Process Hearing within 30
Days of the incident

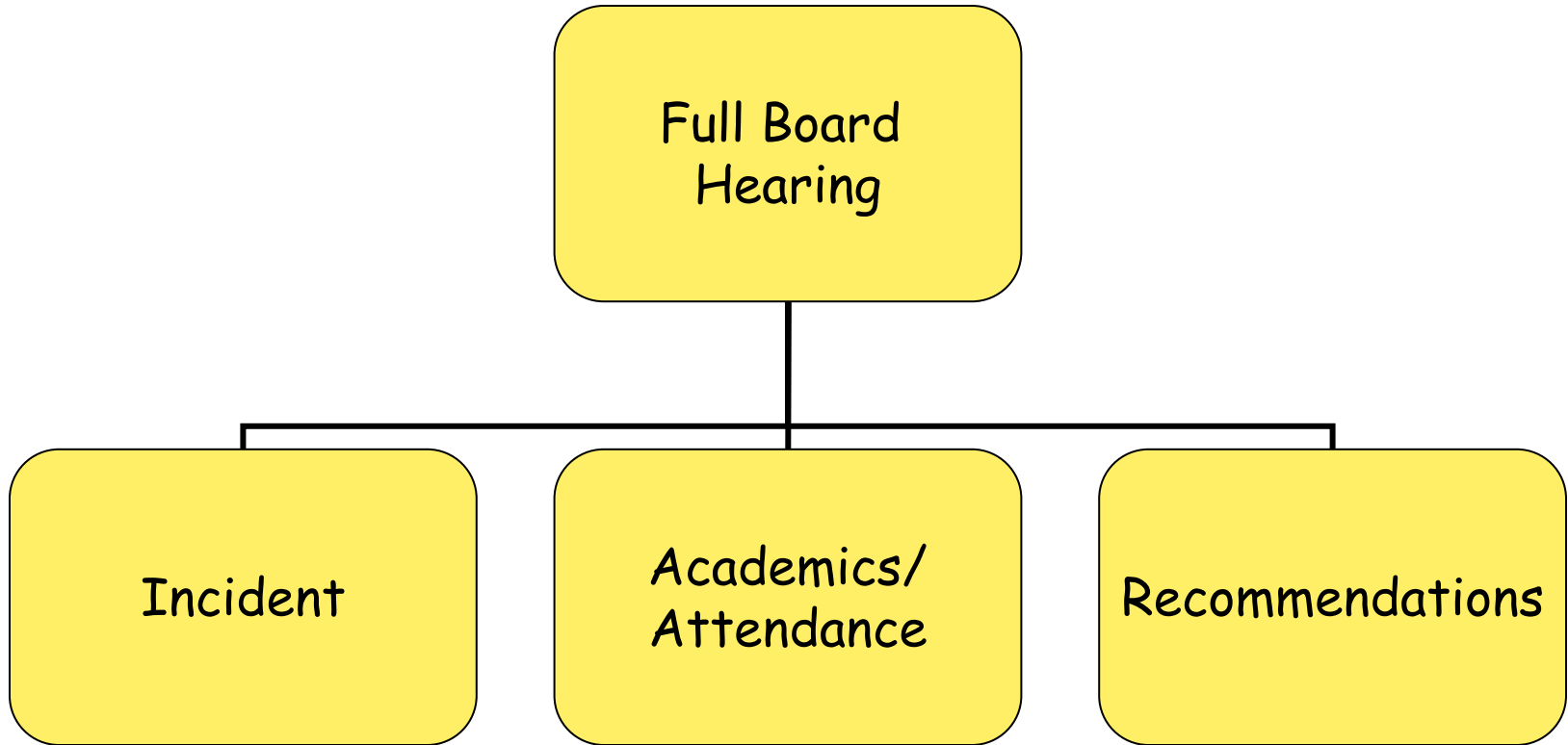


Due Process Hearing

- Parent must be provided with written notice of charges, anticipated testimony and witnesses, the date, time, location of hearing, and an opportunity to review their child's file and witness statements as well as notification that they may present witnesses and evidence in their own defense, and a right to be represented by counsel.
 - Letter must be provided 5 days before hearing
- Prior to the Hearing, District's attorney will meet with the District witnesses to prepare them for the Hearing
- Student has a right to an attorney and to present and cross-examine witnesses



Due Process Hearing

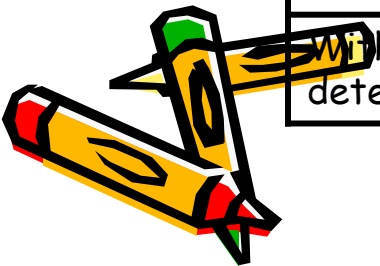


After Due Process Hearing

- General education student must be returned to program if it is found student did not commit the offense
- Within 5 school days after close of hearing, school must provide written statement to student's parents of board's decision including
 - charges considered
 - summary of evidence
 - factual findings
 - identification of educational services to be provided
 - terms and conditions
 - right to appeal to commissioner



Day of HIB incident	Verbal HIB report Decision for suspension Informal Due Process Call parent re: HIB report and suspension
Within one school day of verbal report	Initiate HIB investigation
Within two school days of HIB incident	Written HIB report Letter to parent re: suspension
Within five school days of HIB incident	Home instruction
Within ten school days of written report	HIB Investigation complete HIB results reported to Principal
Within two school days of completion of investigation	HIB results reported to Superintendent
As soon as possible after student is suspended	Meet with parents to discuss placement recommendation Parents may request full Due Process
Within thirty days of suspension	Due Process hearing
Within five days after Due Process hearing	Written results of hearing to parents
Within 90 days after Board's determination on Due Process hearing	Appeal to Commissioner



Failure to Provide Due Process

- Actionable for monetary damages
 - Even if suspensions are justified, students will be entitled to recover nominal damages, punitive damages, and attorneys fees

Carey v. Piphus, 435 U.S. 247 (1978)



Expulsion

- The term “suspension” and “expulsion” are often used interchangeably
- Suspension is temporary
- Expulsion is permanent denial of the student’s rights to attend school
- Expulsion stops the Board’s obligation to educate the student at an alternative setting
- Expulsion can only be imposed by the Board of Education after the Board has provided the following:
 - Procedural due process rights subsequent to long term suspension
 - An appropriate educational program or services
 - Prior notice of continued behavior resulting in Expulsion (two bites at the apple)



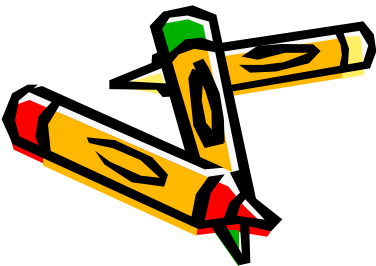
Police Involvement

- School Districts are required to cooperate with Police Investigations pursuant to the Memorandum of Agreement with Law Enforcement (MOA)
- Law Enforcement officers may only interview non-target students at school without parental consent
- If student arrested
 - Principal will contact parents as soon as possible
 - Arresting law enforcement agency must also attempt to contact the student's parent



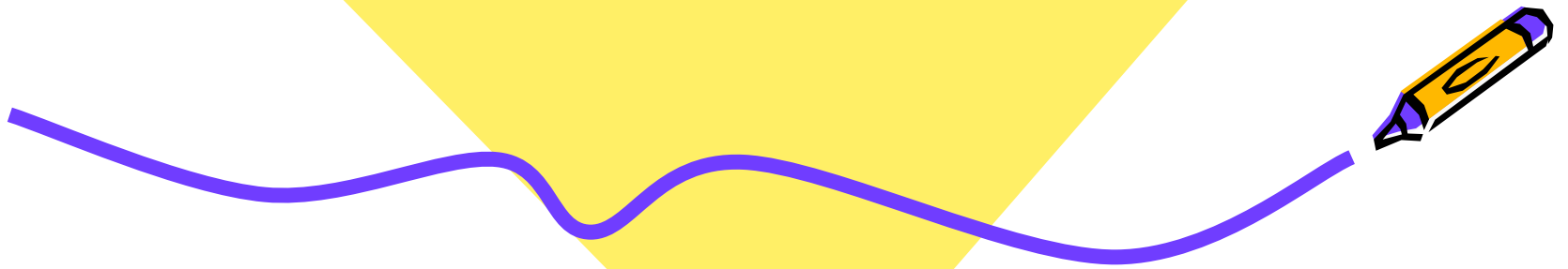
Police Involvement

- Discipline incidents that require notification to local law enforcement
 - Controlled Dangerous Substance (“CDS”)
 - Firearms or Firearm ammunition
 - Incidents of Planned or Threatened Violence (HIB)
 - Sexual Offenses (HIB)
 - Hate Crimes (HIB)
 - Bias Related Acts (HIB)
 - Missing Children
- School employee may not divulge information in violation of the legal and regulatory confidentiality requirements





Right to Board of Education Oversight



Board of Education Oversight

- Results of every HIB investigation must be reported to Board of Education no later than the date of the Board of Education meeting next following the completion of the investigation
 - Law does not specify who reports
 - Best practice: Superintendent
- Report to Board must include:
 - Services provided, if any
 - Training established
 - Discipline imposed
 - Other action taken or recommended by Superintendent



Board of Education Oversight

- Parents of students who are parties to investigations have the right to information about investigations in writing within 5 school days after results of investigation are reported to the Board
 - nature of the investigation (including names)
 - whether the district found evidence of HIB
 - whether discipline was imposed
 - whether services were provided
- Law doesn't specify who informs parents
- Follow federal and State laws and regulations
- After receiving information about investigation, parents may request a hearing before the board
 - Hearing must be held within 10 days of the request



What is an HIB hearing?

- Open Public Meetings Act (OPMA), *N.J.S.A. 10:4-8* requires 48 hours notice
- Held in executive session to protect students' confidentiality
- ABS may present information about
 - the incident
 - recommendations for discipline or services
 - any programs instituted to reduce such incidents
- Law does not specify whether formal hearing similar to a Due Process Hearing is required
- Law doesn't state remedy by the Board



Best Practices

- Informal hearing
- Opportunity for parents to present information
- School employees should present information
 - Prior to or after parents?
- Nothing appears to prevent Board from deliberating in private

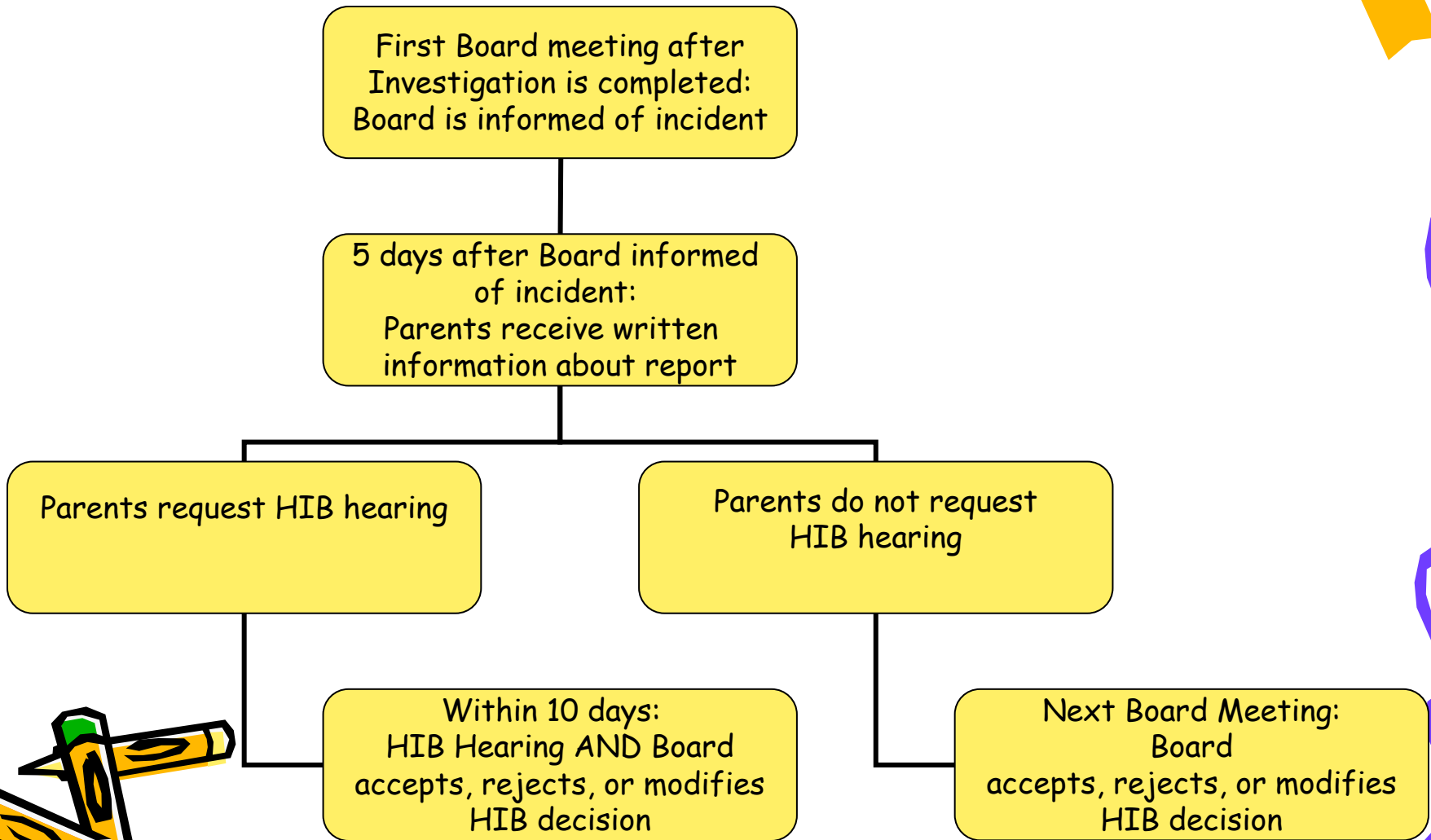


Board of Education Oversight

- Board will issue a written decision to affirm, reject, or modify Superintendent's decision
 - Decision must be issued at next Board meeting following board's receipt of the report
 - Board's decision may be appealed to the Commissioner of Education no later than 90 days after the issuance of the Board's decision



Summary of BOE Oversight



Bill of Rights v. Discipline Statute

- How do you reconcile the HIB law with the requirements for Due Process for long-term suspensions as they pertain to Board of Education involvement?
- Main sources of confusion
 - Superintendent reports results of HIB investigation and any action taken by Superintendent at first board meeting after investigation is complete. Board affirms, rejects, or modifies Superintendent's recommendation at next board meeting after investigation is complete.
 - Parents are informed of investigation report 5 days after HIB is reported to the Board. HIB hearing must be held within 10 days after parent requests it.
 - Parents are entitled to a Due Process Hearing within 30 days after student is disciplined.



Due Process and HIB Hearing

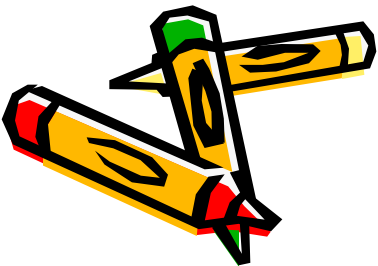
HIB Results reported to Superintendent

First Board meeting:
Report HIB investigation results to Board

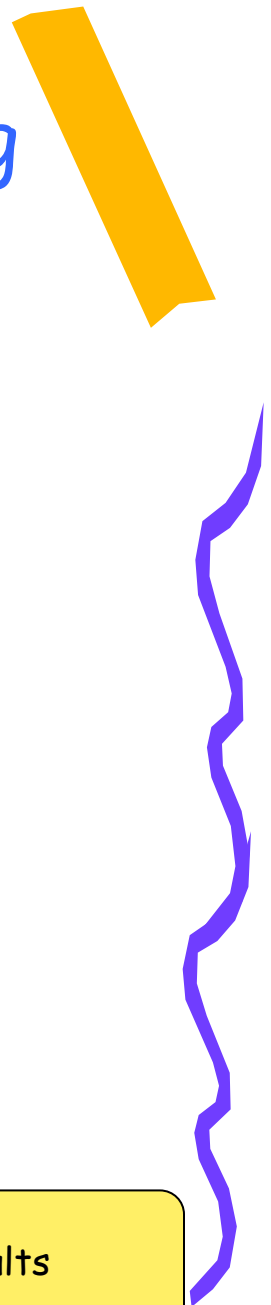
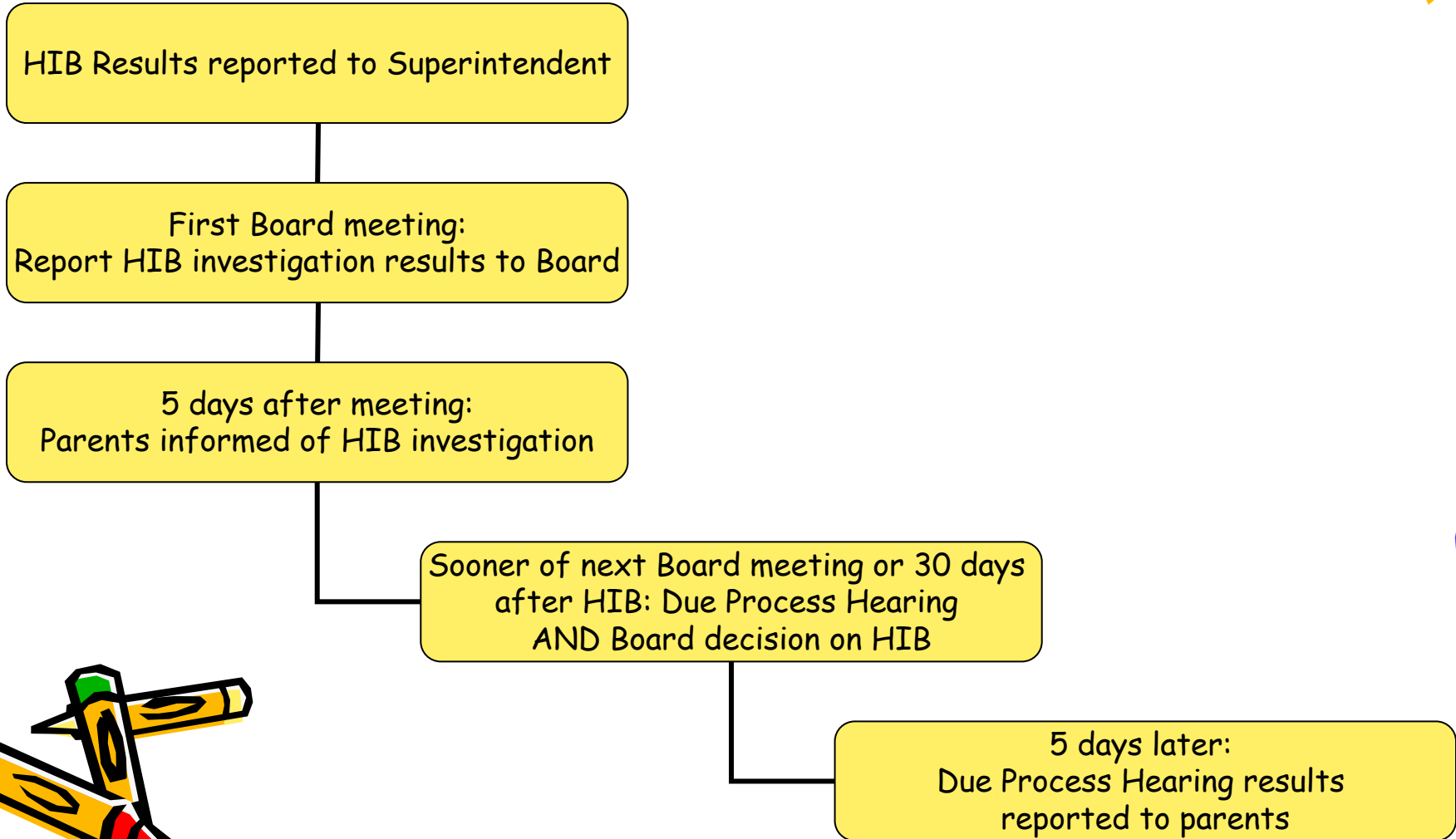
5 days after meeting:
Parents informed of HIB investigation

Determine what comes first:
Next Board meeting; 30 days after HIB; or
10 days after HIB hearing request

HIB hearing, Due Process Hearing, and
Board decides whether to affirm, reject,
or modify Superintendent's decision



Due Process Hearing, No HIB Hearing



HIB Hearing, No Due Process Hearing

HIB Results reported to Superintendent

First Board meeting:
Report HIB investigation results to Board

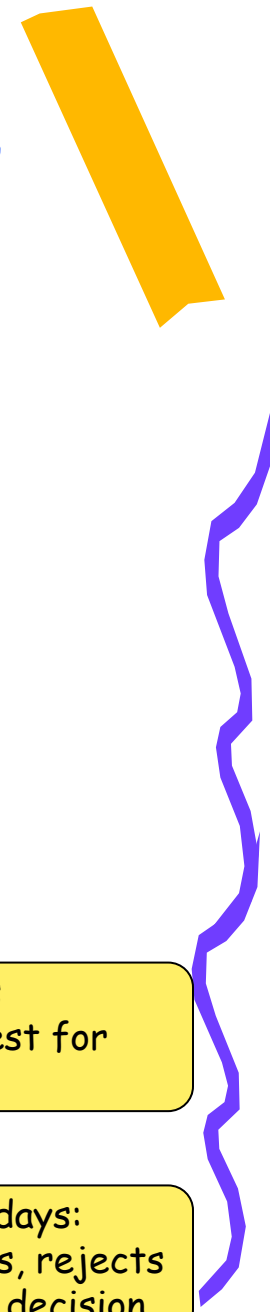
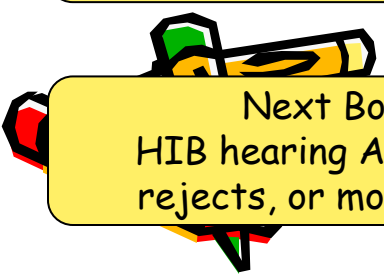
5 days after meeting:
Parents informed of HIB investigation

Next Board meeting is
within 10 days of request for
HIB hearing

Next Board meeting:
HIB hearing AND Board accepts,
rejects, or modifies HIB decision

Next Board meeting is
NOT within 10 days of request for
HIB hearing

Special meeting within 10 days:
HIB hearing AND Board accepts, rejects
or modifies Superintendent's decision



No Due Process Hearing or HIB Hearing

HIB Results reported to Superintendent

First Board meeting:
Report HIB investigation results to Board

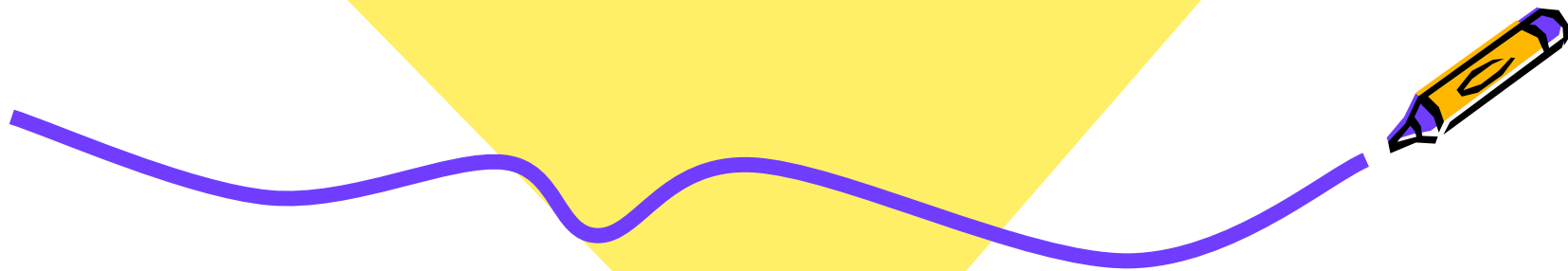
5 days after meeting:
Parents informed of HIB investigation

Next Board meeting:
Board affirms, rejects, or modifies
HIB decision



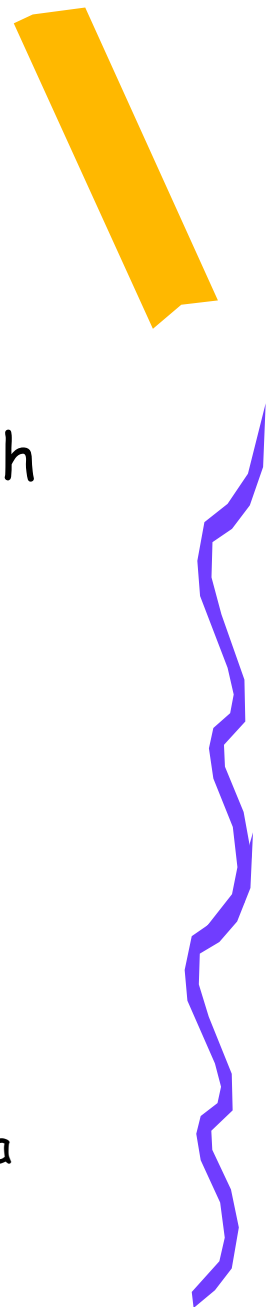


Right to
Civil and
Criminal Redress



Commissioner of Education

- Right to appeal Board's action affirming, modifying or rejecting Superintendent's determination within 90 days in accordance with the procedures set forth in the laws and regulations
 - Commissioner refers to Office of Administrative Law (OAL) for Hearing
 - At OAL Hearing, each party may:
 - be represented by counsel
 - has the right to testify
 - to produce witnesses in his own behalf
 - to cross-examine witnesses against him
 - to compel the attendance of witnesses by subpoena



Commissioner of Education

OAL Hearing (cont' d)

- At conclusion of trial in the OAL, Judge makes Initial Decision
- Either Party can file “Exceptions” to the Initial Decision
- Commissioner reviews Initial Decision and any filed Exceptions and makes a Final Determination
- Commissioner’s Decision appealable to Appellate Division



Tort Actions

Titus v. Lindburg, 49 NJ 66 (1967)

Facts:

- Nine-year-old student rode from home to school on his bicycle
- While heading for the bicycle rack and rounding a corner of the building at school, a thirteen-year-old student struck him with a paper clip which was shot from an elastic band
- The nine-year-old was seriously injured
- Parent sued
 - the thirteen-year-old for negligently shooting the paper clip
 - the principal for negligently failing to exercise supervision with the resulting injury
 - the Board of Education for having actively and affirmatively failed to provide the necessary safeguards

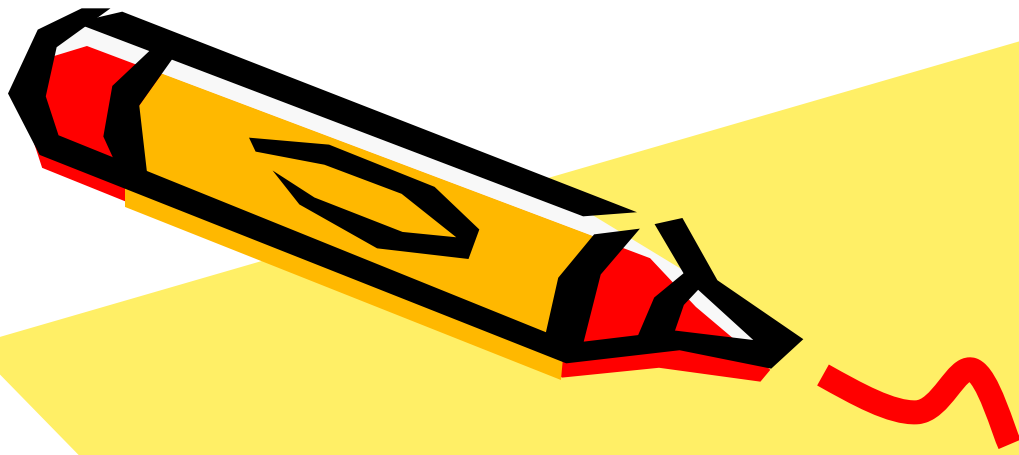


Titus (cont' d)

Supreme Court Held:

- Principal was negligent
 - Had not announced any rules regarding congregation of students before entering classrooms
 - Had had not assigned teachers or other personnel to assist him in supervising students
 - Undertook sole responsibility to do so except at point of milk delivery and by walking around or through building
- Board of education was negligent
 - School was designated as 'pickup site' for transfer of students
 - The fact that many older students congregated there created an evident need to for supervision
 - Board apparently made no supervisory plans
 - Board took no precautions





Right to Ensure
Employees and
Students Understand
HIB



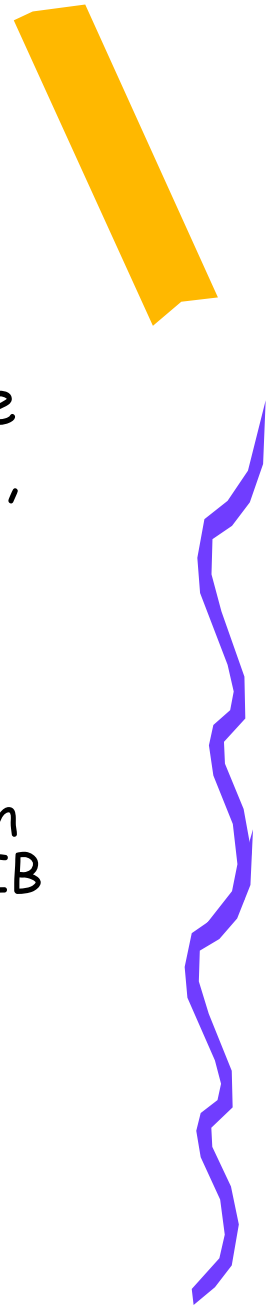
Student Education

- Week of Respect
 - First Monday in October
 - Must observe by providing age appropriate instruction on preventing HIB
- Core curriculum content standards
 - Throughout the school year must provide continuing age appropriate instruction on HIB prevention



Employee Training

- Starting with the 2011-2012 school year, any person seeking certification through alternate route must, within one year of being employed, complete a program on HIB prevention
- Starting with the 2012-2013 school year
 - Candidates for teacher certification who have completed a teacher preparation program at a regionally-accredited institution of higher education must have satisfactorily completed a program on HIB prevention
 - Candidates for administrative and supervisory certification must have satisfactorily completed a program on HIB prevention



Employee Training

- Amendment to *N.J.S.A. 18A:6-7.1*
 - It is grounds to disqualify an individual from employment or service in a school if that individual has a criminal history of bias intimidation as defined by *N.J.S.A. 2C:16-1*



Employee Training

- *N.J.S.A. 18A:6-112* requires State Board to provide instruction to teaching staff on
 - Relationship between risk of suicide and incidents of HIB
 - Reducing risk of suicide in students who are members of communities identified as having high risk of suicide
- Teachers must also complete at least two hours of instruction on HIB in each professional development period
- Amendment to *N.J.S.A. 18A:6-7.1*
 - It is grounds to disqualify an individual from employment or service in a school if that individual has a criminal history of bias intimidation as defined by *N.J.S.A. 2C:16-1*



Board Member Training

- Training on HIB, including school district's responsibilities
- Within 1 year after being newly elected or appointed or being reelected or reappointed
- Training need only be completed one time
- To be provided by NJSBA
- Amendment to *N.J.S.A. 18A:12-33*



Bullying Prevention Programs

- Mandatory programs designed to create school-wide conditions to prevent and address HIB
 - Implemented, documented, and assessed annually
- Training to school employees and volunteers who have significant contact with students on HIB policy
 - HIB policy included in employee training programs
- Develop process for discussing HIB policy with students.



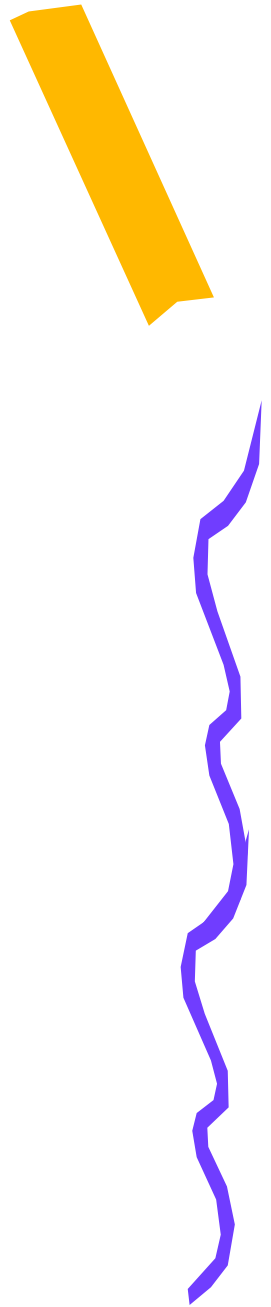


Right to Policy
Implementing Bill of
Rights



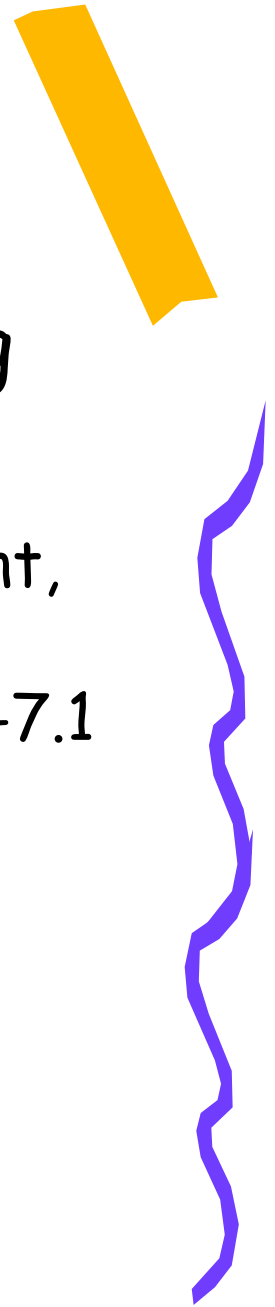
Policy Adoption

- Adoption process must include representation of:
 - Parents or guardians
 - School employees
 - Volunteers
 - Students
 - Administrators
 - Community representatives



Policy Adoption

- Policy must comport with existing policies
 - Programs to Support Student Development, *N.J.A.C. 6A:16*
 - Code of Student Conduct, *N.J.A.C. 6A:16-7.1*
 - MOA, *N.J.A.C. 6A:16-6*
 - NJQSAC performance review indicators, *N.J.A.C. 6A:30*



Policy Adoption

- New law creates the District Anti-Bullying Coordinator (**ABC**) to coordinate and strengthen district HIB policies to prevent, identify and address HIB
 - Appointed by Superintendent
 - Superintendent must make every effort to appoint an employee of the school district to this position



Anti-Bullying Coordinator

- Responsibilities:
 - Collaborates with ABSs, Board of Education and Superintendent to prevent, identify, and respond to HIB
 - Meets at least 2 times per year with all of the district's anti-bullying specialists
 - Collaborates with Superintendent to provide data to DOE regarding HIB
 - May be required to execute other duties delegated by Superintendent



Anti-Bullying Coordinator

- Continued...
 - Commissioner must consult with experts in school bullying (academics, child advocacy organizations, etc.) to establish in-service workshops and training programs
 - Available online
 - During usual school schedule
 - Commissioner will also make available online tutorial on HIB that includes best practices and applicable laws
 - Will be accompanied by a test to assess person's understanding of information



School Safety Team

- New law develops School Safety Team to develop, foster, and maintain positive school climate by focusing on ongoing, systemic process and practices in school
 - Meet at least 2 times a year
 - Receive complaints of HIB that have been reported
 - Receive copies of reports prepared after investigations
 - Identify and address HIB patterns
 - Review school climate and policies to prevent/address HIB
 - Educate community, students, staff members, and parents to prevent and address HIB
 - Collaborate with ABC to collect district-wide data and develop district policies to prevent HIB
 - Execute other duties as requested by Principal or ABC



School Safety Team

- Who is on it?
 - Principal or his/her designee (preferably senior administrator)
 - A teacher appointed by the principal
 - ABS (CHAIR)
 - Parent of a student in the school appointed by the principal
 - Can only participate in activities that do not compromise the confidentiality of students
 - Other members determined by the principal
- Training
 - Must participate in any training required by law, the principal, or anti-bullying coordinator
 - Must be provided professional development opportunities that address effective practices of successful school climate programs and approaches



Minimum Policy Components

- Source of law: *N.J.S.A. 18A:37-15*
 - School district may adopt a policy that includes more stringent components
- Must include statements regarding all legal requirements on reporting, investigation, responses, and parental rights
- Must also include:
 - Statement prohibiting HIB
 - Definition of HIB no less inclusive than definition set forth by *N.J.S.A. 18A:37-14*
 - Behavior expected from each student
 - Statement regarding policy posting and publication



DOE Assistance

- Model Policy and Guidance for Prohibiting Harassment, Intimidation, and Bullying on School Property, at School-Sponsored Functions and on a School Bus (Revised April 2011)
 - Available at <http://www.state.nj.us/education/parents/bullying.htm>
 - Summary guide and model, not a complete policy to be adopted
- Must develop policy locally



DOE Assistance

- DOE must develop guidance document to assist school districts with new standards
 - Document must be posted on school district's website at easily accessible location
 - Must include
 - Best practices for preventing HIB
 - Methods to identify and assist student bullying populations at high risk of HIB
 - Information regarding parental rights



Policy Posting and Publication

- Notice of district's policy must appear
 - In any publication of the school district that sets forth the comprehensive rules, procedures and standards of conduct for schools within the school district
 - In any student handbook
- Link to policy must be posted:
 - On homepage of district's website
 - Students and parents must be notified of link
- Policy must be distributed annually to parents of children enrolled in school in the district



Policy Posting and Publication

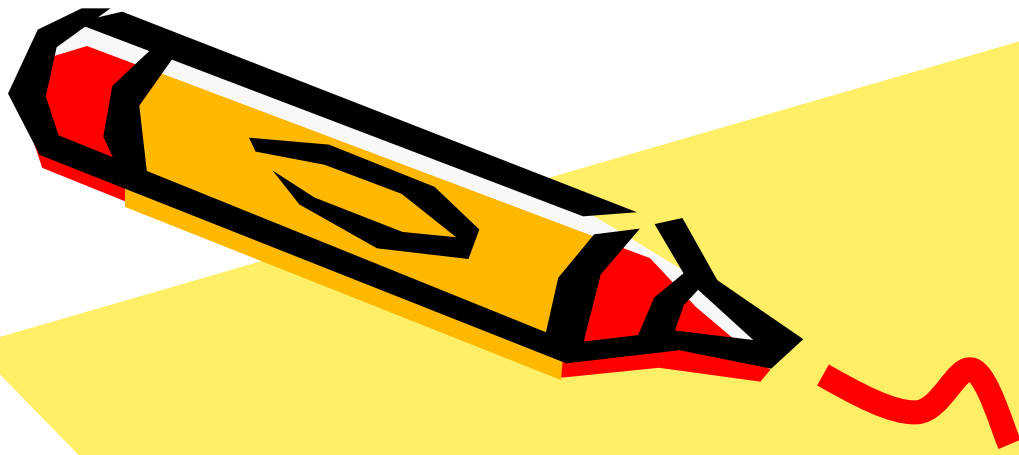
- Must provide notice that policy applies to participation in school-sponsored functions
- ABC's contact information must be prominently posted on homepage of district's website
- ABC's and ABS's contact information must be listed on homepage each individual school's website
 - If a school does not have an individual website, post ABS information on district website



Policy Posting and Publication

- Reevaluations, reassessments, and reviews to policy annually
 - Must have input from the ABSs
 - Must include any necessary revisions/additions
- Subsequent revisions to ECS within 30 school days of revision
- First revised policy following the effective date of the Act must be transmitted to ECS by September 1, 2011.





Practice Tips
&
Potential Pitfalls



Definitional Challenges

- Does the incident fall within the definition of HIB?
 - If it does not, the Anti-Bullying Bill of Rights does not apply
 - Follow general policies on documenting student complaints and discipline
- Principal's investigation initiation obligations
 - Victim's perception v. parent's perception v. administration's perception



Is it HIB or Free Speech??

- Take Report
- Begin Investigation
- Contact School Solicitor
- Discuss context of incident



“I ❤️ Boobies”

- Two middle school students attending school in the Easton Area School District were banned from wearing breast-cancer awareness bracelets with the slogan “I ❤️ boobies! (Keep a Breast)”
- The students filed a motion for temporary restraining order and preliminary injunction to enjoin the School District from enforcing its ban on the bracelets and from continuing punishment or sanction against the students.



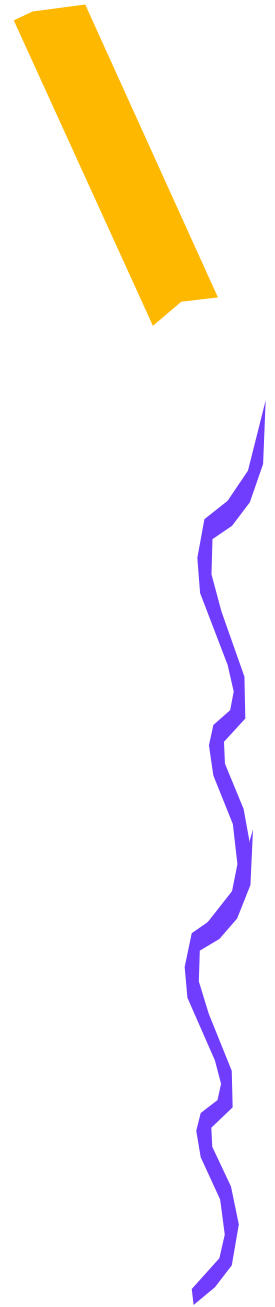
“I ❤️ Boobies”

- Court held in favor of students
 - The bracelets “cannot reasonably be considered lewd or vulgar under the standard of *Fraser*”
 - Administration used the word “boobies” when sending notice of the ban to faculty and on the school TV station ❤️
 - “The bracelets are intended to be and they can reasonably be viewed as speech designed to raise awareness of breast cancer and to reduce stigma associated with openly discussing breast health”
 - The school district failed to present evidence “of a well-founded expectation of material and substantial disruption from wearing these bracelets under *Tinker*”
 - A few male students made comments to female students about their “boobies”
 - Male student gestured with fireball candies



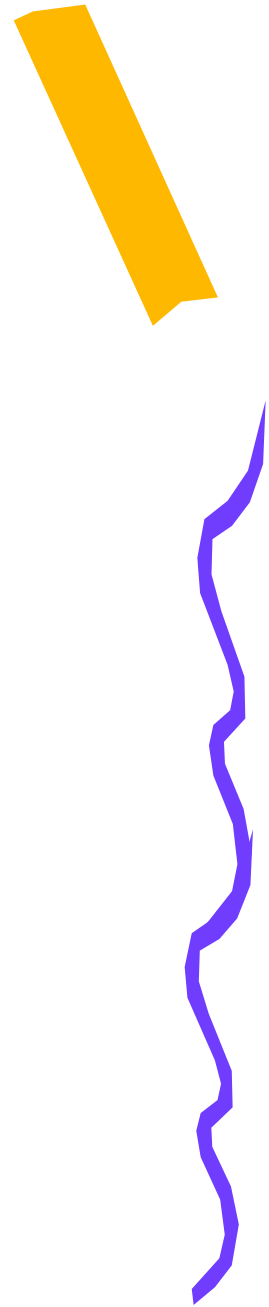
Race Discrimination

- Hostile Environment
 - Racial Slurs
 - Race related jokes
- Inequality in discipline for same conduct



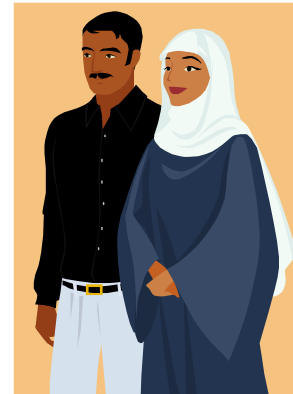
Religious Discrimination

- Hostile Environment
 - Taunting
- Disparate Treatment
 - Holidays not accommodated.
 - Religious based attire not permitted.



National Origin Discrimination

- Hostile Environment
 - Slurs, taunting.
- Inequality in discipline for same conduct



Civil Rights Protection

42 U.S.C. § 1983:

- “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.”



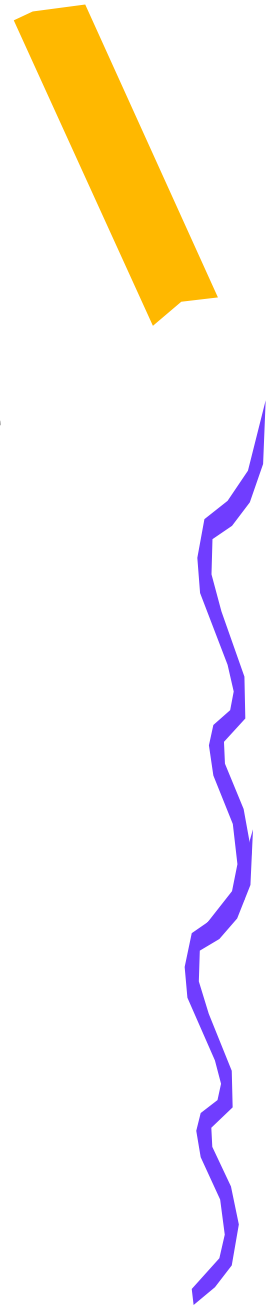
Civil Rights Protection


- New Jersey Civil Rights Act, *N.J.S.A.* 10:6-1 to -2
 - Basis for cause of action for violations of any substantive rights, privileges or immunities secured by the Federal or State Constitutions
 - Parallel to Section 1983



Rules To Live By

- No Time like the Present
- If you don't write it down...it didn't happen
- People "Lie and Cry"
- No Good Deed goes unpunished
- If you discarded it, you'll need it
- Always proof read your work
- Never is always wrong
- Always is never right
- You are being Recorded
- When in doubt ask for help





Harassment, Intimidation, and Bullying & the Anti- Bullying Bill of Rights Act

Upper Township School District
2018-2019