

Harassment, Intimidation and Bullying

Presented to the Midland Park School District

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The Anti-Bullying Bill of Rights Act ("The Act")

Timelines



Reporting Timelines

N.J.S.A. 18A:37-15b.(5)

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

Investigating Timelines

N.J.S.A. 18A:37-15b.(6)

* **First Level: Initial Investigation**

- * The investigation shall be initiated by the Principal or the Principal's designee **within one school day** of the report of the incident and shall be conducted by a **School Anti-Bullying Specialist**. The Principal may appoint other personnel to assist in the investigation. N.J.S.A. 18A:37-15b.(6)(a).
- * The investigation shall be completed ASAP, but not later than **10 school days** *from the date of the written report* of the incident of HIB. In the event that there is information relative to the investigation that is anticipated but not yet received by the end of the 10-day period, the School Anti-Bullying Specialist **may amend the original report** of the results of the investigation to reflect the information. N.J.S.A. 18A:37-15b.(6)(a).

Investigating Timelines

N.J.S.A. 18A:37-15b.(6)

* **Second Level: Superintendent**

- * The results of the investigation shall be reported to the Superintendent of Schools **within two school days** of the completion of the investigation, and in accordance with regulations to be promulgated by the State Board of Education. N.J.S.A. 18A:37-15b.(6)(b).
- * The Superintendent **may decide**, as a result of the findings, to do the following:
 - * Provide intervention services,
 - * Establish training programs to reduce HIB and/or enhance the school climate,
 - * Impose discipline,
 - * Order counseling, or
 - * Take or recommend other appropriate action.
- * N.J.S.A. 18A:37-15b.(6)(a). This is colloquially referred to as the “Superintendent’s decision,” even though no written decision is issued.
- * The Department of Education still has not issued the regulations.

Investigating Timelines

N.J.S.A. 18A:37-15b.(6)

* **Third Level: Board of Education**

- * The results of each investigation shall be **reported to the board of education** no later than the **next scheduled board meeting** after the investigation has been completed, along with information on any services provided, training established, discipline imposed, or other action taken or recommended by the superintendent. N.J.S.A. 18A:37-15b.(6)(c).
- * The Board must, **within five school days** after the results of the investigation are reported to the Board, provide **parents or guardians of the students who are parties to the investigation** with *information about the investigation*, in accordance with federal and State law and regulation, including:
 - * The nature of the investigation;
 - * Whether the district found evidence of HIB; and
 - * Whether discipline was imposed or services provided to address the incident of HIB.
- * N.J.S.A. 18A:37-15b.(6)(a). This is typically done via form letter. Parents are entitled to ask for copies of the investigation materials, which they can have, provided all other students' names are redacted (their child's name should be left intact).

Investigating Timelines

N.J.S.A. 18A:37-15b.(6)

* **Third Level: Board of Education (cont.)**

- * At the **next board of education meeting** following its receipt of the report, the **Board shall issue a decision**, in writing, to affirm, reject, or modify the Superintendent's decision. N.J.S.A. 18A:37-15(b)(6)(e). The Board **must issue a decision** regardless of whether the parents have requested a hearing. See also NJDOE's *Anti-Bullying Bill of Rights Act Questions and Answers* (November 2015), p. 13, located at <http://www.state.nj.us/education/genfo/faq/AntiBullyingQA.pdf>.
- * There is no specific date by which the written decision must be issued; however, given that the parents' right to appeal runs based on the date the decision is issued, we recommend issuing a decision within five days absent unusual circumstances.

Parental Rights of Appeal

N.J.S.A. 18A:37-15b.(6)

* **Following First Notification**

- * A parent or guardian may **request a hearing before the Board** after receiving the information, and the hearing shall be held **within 10 days of the request**. N.J.S.A. 18A:37-15b.(6)(d). The Board shall meet in executive session for the hearing to protect the confidentiality of the students. At the hearing the board may hear from the School Anti-Bullying Specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents.
- * **Note:** There is no specific timeline by which a parent must request a hearing. The Anti-Bullying Task Force recommends that the New Jersey Department of Education impose a deadline of 45 days after notification in the new regulations (when they are adopted).

Parental Rights of Appeal

N.J.S.A. 18A:37-15b.(6)

* *After the Board's Decision*

- * The Board's decision may be appealed to the Commissioner of Education, in accordance with the procedures set forth in law and regulation, **no later than 90 days after the issuance of the Board's decision.**
- * **Note:** Parents can also file complaints with the Division on Civil Rights within 180 days of the occurrence of any act of HIB if they fall under a protected class under the LAD.

Legal Requirements

HIB: Breaking it Down

- * An allegation can *only* be determined HIB when the statutory requirements of N.J.S.A. 18A:37-14 are met. The following are *required*:
- * **HIB can occur from a single incident or a series of incidents.**
- * **Mode of HIB** (*at least one* of the following must be present to find HIB):
 - * Verbal Communication,
 - * Written Communication,
 - * Electronic Communication,
 - * Physical Act, or
 - * Gesture.

HIB: Breaking it Down

- * **Reasonably Perceived** as Being **Motivated by** an Actual or Perceived Characteristic (*at least one* must be selected to find HIB):
 - * Race,
 - * Color,
 - * Religion,
 - * Ancestry,
 - * National Origin,
 - * Gender,
 - * Sexual Orientation,
 - * Gender Identity and Expression,
 - * Mental, Physical, or Sensory Disability **–and/or–**
 - * Other distinguishing characteristic.
- * “[T]he comment must be objectively perceived to a reasonable person as motivated by the characteristic.” *Melynk v. Teaneck Board of Education et al.*, 2016 WL 6892077 (D.N.J. Nov. 22, 2016)(unpublished).

HIB: Breaking it Down

- * **Impact** (*at least one* must be present to find HIB):
 - * Substantially disrupts or interferes with the orderly operation of the school –**and/or**–
 - * Substantially disrupts or interferes with the rights of other students.

HIB: Breaking it Down

* **Additional Impact** (*at least one* must be present to find HIB):

- * If the actions are such that a reasonable person should know, under the circumstances, will either: (1) have the effect of physically or emotionally harming a student; (2) damaging the student's property; OR (3) placing the student in reasonable fear of physical or emotional harm; OR
- * Has the effect of insulting or demeaning any student or group of students; OR
- * Creates a hostile educational environment for the student by interfering with a student's education OR by severely or pervasively causing physical or emotional harm to the student.

Substantially Disrupts or Interferes

This factor has been analyzed using the framework of the free speech rights afforded to students in *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, which held that students do not lose their free speech rights in school, except where it “materially disrupts classwork or involves substantial disorder or invasion of the rights of others ...”.

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 512-215 (1969).

Substantially Disrupts or Interferes

T.R. and T.R. o/b/o E.R. v. BOE of Bridgewater-Raritan Reg. Sch. Dist.,
OAL Dkt. No. EDU 10208-13 Initial Decision (Sept. 25, 2014) aff'd by Commissioner (Nov. 12, 2014)

An 8th grade male student attempted to engage in sexual activity with a 7th grade female student on school grounds. The male student continued to request sexual activities such as attempting to sit on her lap on the bus, inviting her to get off at his bus stop so she could go home with him and gratify him sexually with her hands, inviting her to strip for him over video chat, and text messaging her about hooking up.

The district initially did not investigate, but upon the parents' appeal to the superintendent, the district conducted an investigation. The result was a determination that the acts did not violate the HIB statute, which was upheld by the board. The parents appealed.

The ALJ found, and Commissioner affirmed, that repeated requests for sexual favors in the presence of other students both substantially disrupted the orderly operation of the school and substantially interfered with the rights of other students.

Substantially Disrupts or Interferes

T.R. and T.R. o/b/o E.R. v. BOE of Bridgewater-Raritan Reg. Sch. Dist.,
OAL Dkt. No. EDU 10208-13 Initial Decision (Sept. 25, 2014) aff'd by Commissioner (Nov. 12, 2014)

The ALJ found that the student substantially interfered with the orderly operation of the school because “the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct.”

The ALJ also found that the student’s verbal and electronic communications substantially interfered with the victim’s “rights to be secure and to be left alone.”

The ALJ also noted that other students who witnessed the behavior were “so affected by it that they reported [the offender’s] behavior to school officials.” (However, remember that reporting alone cannot be sufficient to find an impact or all HIB allegations would meet this threshold).

The Commissioner affirmed the ALJ’s decision finding that the statutory definition of HIB encompasses sexual harassment where all other elements of the statutory definition are met.

Substantially Disrupts or Interferes

D.D.K. o/b/o D.K. v. BOE of the Township of Readington

EDU-07682-15, Initial Decision (October 6, 2016) , aff'd (November 11, 2016)

Facts:

- Two incidents of HIB were alleged:
 - D.K. was allegedly called a “know it all” on the bus and another student said, “I hope you get brain damage” and bumped his school bag.
 - A student made comments about his Korean descent by asking why he was wearing yellow for spirit day because, “you’re already yellow...you’re Asian.”
- The ABS investigated and found that the first incident was a student conflict about their ability in math and, therefore, was not the result of a distinguishing characteristic.
- The ABS investigated the second incident and found that it was based on an actual or perceived characteristic, it was insulting or demeaning, and it occurred on school grounds; however, it did not substantially disrupt or interfere with the orderly operation of the school or the rights of other students. This finding was based on the fact that D.K. stated: “fortunately, this was not problematic for my learning experience, but it ticked me off at the time.”

ALJ Decision:

- The ALJ affirmed the findings of the District stating substantially the same reasons as set forth by the ABS, including noting D.K.’s grades (A’s), his attendance during the school year, and that he had not sought counseling; however, the ALJ also concluded that it was not established that the offender’s actions were based on an actual or perceived characteristic.

Substantially Disrupts or Interferes

D.D.K. o/b/o D.K. v. BOE of the Township of Readington

EDU-07682-15, Initial Decision (October 6, 2016) , aff'd (November 11, 2016)

Commissioner Decision:

- The Commissioner affirmed the decision; however, the Commissioner did not agree with the ALJ's reasoning in the second incident.
- The Commissioner found that with regard to the second incident, he was “constrained to agree that petitioner failed to meet his burden of demonstrating that the comments substantially disrupted or interfered with the orderly operation of the school or the rights of other students.”
- In reaching this conclusion, the Commissioner cited D.K.'s comments as well as a student witness statement that D.K. did not appear upset.
- The Commissioner also analyzed the matter based on prior case law regarding the substantial disruption standard. In *G.H. and G.H. o/b/o K.H. v. Franklin Lakes Board of Education*, OAL Dkt. No. EDU 13204-13 (Feb. 24, 2014), adopted (April 10, 2014), a substantial disruption was found when “students are so upset or embarrassed that they are not ‘fully available for learning’” and in *T.R. and T.R. o/b/o E.R. v. Bridgewater-Raritan Regional Board of Education*, OAL Dkt. No. 10208-13 (Sept. 25, 2014) adopted (Nov. 10, 2014), where students are so affected that they report the incident, the orderly operation of the school may be disrupted.
- Under these prior cases, the Commissioner found that D.K. indicated that the comments were not problematic for his learning experience and other students did not appear affected. Additionally, no other evidence to the contrary was presented.

HIB: Breaking it Down

- * It must take place on school property, at any school-sponsored function, on a school bus; or
- * Off school grounds as provided for in N.J.S.A. 18A:37-15.3, in cases in which a school employee is made aware of such actions and subject to the following restrictions:
 - * Only when discipline is *reasonably necessary* for the student's physical or emotional safety, security and well-being or for reasons relating to the safety, security or well-being of other students, staff or school grounds, pursuant to N.J.S.A. 18A:25-2 and N.J.S.A. 18A:37-2; **and**
 - * Only when the conduct, which is the subject of the proposed consequence *materially and substantially*, interferes with the requirements of appropriate discipline in the operation of the school.

Off School Grounds

Dunkley v. Board of Education of the Greater Egg Harbor Regional High School District,
2016 WL 6134518 (D.N.J. October 20, 2016)

- * A high school student brought claims against the Board alleging violations of his First Amendment rights when it suspended him for making out-of-school posts on social media outlets that contained comments on fellow students.
- * The student posed at YouTube video criticizing a football teammate for which he was suspended for two days.
- * The student also co-owned a Twitter account that had disparaging comments about several students for which he was suspended for nine days. A juvenile complaint was also filed for his Twitter postings.
- * Parents and students reported the Twitter account.
- * The student initially denied involvement in the Twitter account, but the co-owner admitted that the postings were shared and Dunkley ultimately admitted to some postings.
- * The District found he violated the Anti-Bullying Bill of Rights Act.

Off School Grounds

Dunkley v. Board of Education of the Greater Egg Harbor Regional High School District,
2016 WL 6134518 (D.N.J. October 20, 2016)

- * Plaintiff alleged that his postings were innocuous and not disruptive to the school.
- * The District argued that they were HIB, they disparaged other students, and along with his initial denial of involvement, caused a substantial disruption to the school and implicated the District's responsibility to respond under the Act.
- * The Court looked both to a student's right to free speech in school as well as a school's authority to limit expressive conduct outside of school.

Off School Grounds

Dunkley v. Board of Education of the Greater Egg Harbor Regional High School District,
2016 WL 6134518 (D.N.J. October 20, 2016)

- * The Court found off campus speech can be disciplined “if a school can point to a well-founded expectation of disruption...”.
- * The Court found that Plaintiff’s rights were not violated where Plaintiff’s speech “was of the type the school was permitted – and indeed required to – restrict.”
- * Additionally, students complained, the administration had to investigate, which took them away from their school duties, and the disruption was compounded by Plaintiff lying about his involvement.
- * The Court found that combined this constituted the “material and substantial disruption” to the “work and discipline of the school” requirement necessary to discipline for out-of-school speech.




Off School Grounds

Dunkley v. Board of Education of the Greater Egg Harbor Regional High School District,
2016 WL 6134518 (D.N.J. October 20, 2016)



- * The Court also compared Plaintiff's Twitter posts to prior cases involving parody pages of administrators, which it deemed were not analogous because they insulted the principal but did not substantially disrupt the school environment, and a hate website made by another student that was analogous, because it violated the school's HIB policy and was disruptive to the school. *See Kowalski v. Berkeley Cty. Sch.*, 652 F.3d 565, 368-69 (4th Cir. 2011).
- * The Court noted that technology today makes it very difficult to trace First Amendment boundaries along the physical school campus.
- * Ultimately, the Court found that "the First Amendment does not protect student speech that amounts to harassment, intimidation, or bullying of other students."

Proposed Regulations


Proposed Amendments to HIB Regulations

Proposed Rule	Summary
N.J.A.C. 6A:16- 7.7(a)2iii	Add “a statement that bullying is unwanted, aggressive behavior that may involve a real or perceived power imbalance.” 
N.J.A.C. 6A:16- 7.7(a)2v and 2vi(1)	Require districts to take into account “the nature of the student’s disability, if any, and to the extent relevant” when determining the appropriate remedial action and consequences for a student who commits HIB.
N.J.A.C. 6A:16- 7.7(a)2viii	Add “committed by an adult or youth against a student” to clarify that all alleged acts of HIB against a student are to be reported. 
N.J.A.C. 6A:16- 7.7(a)2ix(1)	Specify the district’s policy may include a process by which the principal, or his/her designee, in consultation with the ABS, makes a preliminary determination as to whether a reported incident or complaint is a report of an act of HIB prior to initiating an investigation. 




Proposed Amendments to HIB Regulations

Proposed Rule	Summary
N.J.A.C. 6A:16- 7.7(a)2ix(1)	Prohibit the investigation of complaints concerning adult conduct by an individual who is a member of the same bargaining unit as the individual who is subject to the investigation. 
N.J.A.C. 6A:16- 7.7(a)2ix(2)	Provide a procedure for investigating incidents off school grounds for students in approved private schools for students with disabilities when the complaint is received by the BOE. The district BOE's ABS conducts the investigation in consultation with the approved PSSD.
N.J.A.C. 6A:16- 7.7(a)2xi, xi(1) and (2)	Establish that parents or guardians requesting a hearing before the district BOE must do so within 45 calendar days after receiving the written information about the investigation. Add statutory requirement that the BOE must hold a hearing within 10 business days of the request. 

Proposed Amendments to HIB Regulations

Proposed Rule	Summary
N.J.A.C. 6A:16- 7.7(d)	Remove “school district employee” thereby requiring any school administrator to initiate or conduct investigations upon reports of HIB from any individual or may be subject to disciplinary action.
N.J.A.C. 6A:16- 7.7(e)3	Include “any report(s) and/or findings of the school safety/school climate team(s)” in the district BOE’s required annual reevaluation, reassessment, and review of its HIB policy. 
N.J.A.C. 6A:16- 7.7(e)3i and (e)4i	Include “law enforcement” in the planning of programs or other responses to the annual review of the HIB policy and in the planning of programs, approaches, and initiatives designed to create school wide conditions to prevent HIB.
N.J.A.C. 6A:16- 7.7(e)5	Include a requirement that when a district BOE revises its HIB policy, a copy must be submitted to the executive county superintendent within 30 days.

Proposed Amendments to HIB Regulations

Proposed Rule	Summary
N.J.A.C. 6A:16- 7.7(h)	Replace the name of the school safety team with “school safety/school climate team” to reflect its intended role. 
N.J.A.C. 6A:16- 7.7(h)1	Specify that the school safety/school climate team consist of the principal or his or her designee and the following members appointed by the principal: a teacher in the school; the school anti-bullying specialist; a parent of a student in the school; and other members determined by the principal. Also, require the team shall be chaired by the school anti-bullying specialist. 
N.J.A.C. 6A:16- 7.7(h)1i and ii	Add rule to specify that parents and other members of the school safety/school climate team, who are not authorized to access student records, are limited to general school climate issues and prohibit them from participating in activities that could compromise student confidentiality. 

Case Law Update

HIB and First and Fourteenth Amendment

Melynk v. Teaneck Board of Education et al.,
2016 WL 6892077 (D.N.J. Nov. 22, 2016)(unpublished)

The District Court granted Defendants' motion to dismiss Plaintiff's action alleging that disciplining her for a violation of the Act violated her First and Fourteenth Amendment rights.

The teacher led a class discussion on "Six to Eight Black Men" as part of the curriculum, which concerns the Dutch holiday tradition of people dressing up the Zwarte Piet character, a black man, who accompanies Santa Claus. The teacher, who is of Dutch ancestry and has relatives that live in the Netherlands, told her class that the tradition persists in the Netherlands and she showed a picture of her relatives dressed in black face.

An African-American student responded that she found the picture racist and offensive. The teacher responded that it was a reflection of "cultural differences." The student reiterated that it was offensive. Melynk responded, "in defense of her family . . . that it was a cultural difference," and the Dutch had ended slavery long before the USA.

HIB and First and Fourteenth Amendment

Melynk v. Teaneck Board of Education et al.,
2016 WL 6892077 (D.N.J. Nov. 22, 2016)(unpublished)

The District investigated the allegation under the Act and found Melynk violated the statute and a written reprimand was placed in her file.

Melynk attempted to appeal, but was advised no right of appeal existed.

She filed a grievance under the collective negotiations agreement and went to binding arbitration. On January 31, 2015, the arbitrator found in her favor and ordered the warning removed from her file. On May 29, 2015, the New Jersey Superior Court confirmed the arbitrator's decision.

Melynk brought this action on January 12, 2016 alleging that the Defendants' actions violated her First and Fourteenth Amendment rights and sought monetary damages and injunctive relief declaring the HIB Policy null and void. Defendants moved to dismiss.

HIB and First and Fourteenth Amendment

Melynk v. Teaneck Board of Education et al.,
2016 WL 6892077 (D.N.J. Nov. 22, 2016)(unpublished)

As Applied First Amendment Challenge: Public employees' speech is protected in limited circumstances where an employee is speaking as a citizen on a matter of public concern. This did not apply to Melynk who was speaking as an educator as part of the curricular speech in a non-public setting, her classroom. Therefore, the speech was not of public concern.

Facial First Amendment Challenge: Melynk asserted that the HIB policy was overbroad and vague. The Court found the policy was not overbroad; it did not prohibit a substantial amount of protected expression. In fact, Melynk could not offer any speech that would fall under this construction. The court also found it was not vague; i.e., men of common intelligence must necessarily guess at its meaning.

Fourteenth Amendment/Due Process: The Third Court applies the same test for vagueness to procedural due process claims. Since it is not vague, Melynk must show a fundamental right that was infringed, which she did not do.

Melynk's claims were dismissed.

HIB – Actual or Perceived Characteristic

L.P. and H.P. o/b/o L.P. v. BOE of the Morris Regional School District,
EDU 04462-16, Initial Decision (June 10, 2016) *aff'd* Comm'r (July 25, 2016)

Facts:

- Parents alleged that their child was harassed as a result of being a new and younger member of the fencing team who had superior skills in comparison to the alleged offender, B.S.
- The alleged harassment occurred after L.P. accidentally injured a teammate and B.S. held it over her head all season by reminding L.P. that she could have been kicked off the team.
- The district investigated and found that the conduct did not meet the definition and was instead a student conflict.

HIB – Actual or Perceived Characteristic

L.P. and H.P. o/b/o L.P. v. BOE of the Morris Regional School District,
EDU 04462-16, Initial Decision (June 10, 2016) *aff'd* Comm'r (July 25, 2016)

ALJ Decision:

- * Following a motion to dismiss for failure to state a claim filed by the Board, the ALJ found that there were no facts in dispute and the Board was entitled to a decision as a matter of law. The conduct demonstrated a **conflict** between the girls, but was not bullying under the Act:
- * “a dispute between students such as a relationship falling apart between former friends, a fight over a piece of property, or some form of personal vendetta of one against another is not conduct based on a ‘distinguishing characteristic’ of the victim...”

HIB – Actual or Perceived Characteristic

L.P. and H.P. o/b/o L.P. v. BOE of the Morris Regional School District,
EDU 04462-16, Initial Decision (June 10, 2016) *aff'd* Comm'r (July 25, 2016)

Commissioner Decision:

- * The Commissioner affirmed the decision finding that B.S.'s conduct was not based on a distinguishing characteristic and holding that “it is well established that conduct that is motivated by a personal dispute such as specific roles on a sports team, albeit potentially harmful, does not fall within the definition of bullying under the Act.
- * The Commissioner found the conduct was motivated by “the relationship between the two team members and the dynamics of the fencing team...”

HIB – Actual or Perceived Characteristic

R.A. o/b/o B.A. v. BOE the Township of Hamilton,
EDU 10485-15, Initial Decision (May 12, 2016) *aff'd* Comm'r (June 22, 2016)

Facts:

- Parents alleged that their was child a victim of a series of incidents stemming from the fact that she attended a party to which the other girls were not invited and culminated with girls kicking B.A.'s lunch bag out of the classroom and then back in.
- The Parents alleged that there was a power differential with a negative impact on the student with less power, B.A.

HIB – Actual or Perceived Characteristic

R.A. o/b/o B.A. v. BOE the Township of Hamilton,
EDU 10485-15, Initial Decision (May 12, 2016) *aff'd* Comm'r (June 22, 2016)

ALJ and Commissioner Decisions:

- On a motion for summary decision, the ALJ found that the events between B.A. and the other students were **not** based on a distinguishing characteristic.
- The ALJ also did not accept the parents' argument that a power imbalance was sufficient to find a violation of the Act. The ALJ stated:

“Although the law originated from the Task Force report, the Legislature made it a requirement that the bullying be based on a distinguishing characteristic, not just a perceived power imbalance. . .being invited to a party is not a distinguishing characteristic that is actionable under [the Act] . . . [and] kicking of the lunch bag . . . also was not motivated by a distinguishing characteristic.”
- The Commissioner affirmed the decision for the reasons set forth by the ALJ.

HIB – Board Hearing

Gibble v. BOE of the Hunterdon Central Regional School District,
EDU 2765-15, Initial Decision (April 12, 2016) remanded Comm'r (July 13, 2016)

Facts:

- A teacher and former wrestling coach was alleged during summer wrestling camp to state to one of the wrestlers – a special education student – that he hoped the student “didn’t have access to any weapons or keys to the gun closet.”
- The coach requested a hearing before the Board; however, the Board advised that he would only be permitted to make a statement.
- The coach appealed the decision stating that the procedural requirements were not followed and he was not afforded due process.

HIB – Board Hearing

Gibble v. BOE of the Hunterdon Central Regional School District,
EDU 2765-15, Initial Decision (April 12, 2016) remanded Comm'r (July 13, 2016)

ALJ Decision:

- The ALJ noted that the requirements of the Act apply equally to charges against a staff member and the staff member in this instance was not afforded the due process guaranteed by the Act. The ALJ, therefore, concluded that any reference to the HIB should be expunged from the staff member's record.

Commissioner Decision:

- The Commissioner concurred with the determination that staff members accused of committing a HIB are entitled to the due process guaranteed by the act; however, the Commissioner found the ALJ erred in ordering all references to the HIB be removed from the staff member's file. The matter was remanded to the Board with orders to provide the staff member a hearing before the Board.

No HIB Finding

C.G. o/b/o S.J. v. BOE of the Township of Plumstead
EDU-04045-16, Initial Decision (October 19, 2016) , aff'd (November 22, 2016)

Facts:

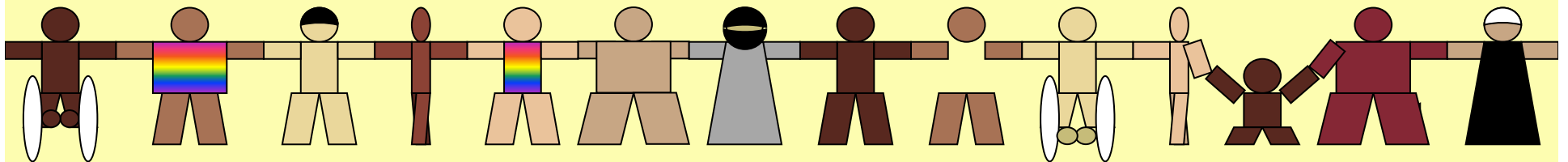
- Parents alleged that S.J. was harassed by a 10th grader by way of a series of internet postings that contained pictures with overlaid text of inappropriate messages about S.J.
- The ABS interviewed nine students and the technology department used extensive efforts to identify the responsibly party. The Ocean County Prosecutor's Office also investigated but was not successful. The ABS concluded that a finding of HIB could not be sustained. The Board affirmed.

ALJ and Commissioner Decisions:

- On motion for summary decision the ALJ found that the Board complied with the procedural and substantive requirements of the Act.
- The Commissioner affirmed the decision for the reasons set forth by the ALJ.

Questions??

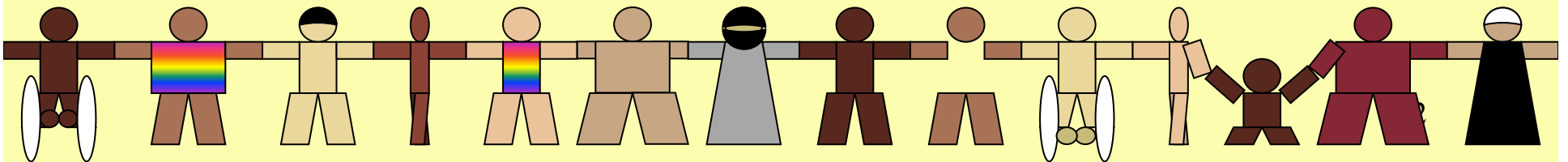
Findings from the 2016 Midland Park School Climate Student Survey



Dr. Paula Rodríguez Rust

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Midland Park Overview of Major Findings

Response Rates

GRADE	NUMBER	RESPONSE RATE 2014	RESPONSE RATE 2016
2 nd	63	91%	90%
3 rd	52	78%	78%
4 th	59	85%	75%
5 th	74	81%	85%
6 th	73	80%	73%
7 th	64	43%	92%
8 th	66	44%	89%
9 th	54	25%	71%
10 th	59	34%	76%
11 th	43	20%	44%
12 th	51	14%	52%

OVERVIEW OF MAJOR FINDINGS

- Over the years since 2011, there has been a very consistent gradual trend toward improved perceptions among students about whether the rules against bullying are fairly applied to all students, for example, from 60% to 86% among 6th graders.
- The percentages of students who said they would feel comfortable telling an adult if they needed help with bullying increased in S2015, and increased again in some grades in S2016.
- The issues that students are most concerned about across grade levels are rumors, name-calling, and social exclusion.

OVERVIEW OF MAJOR FINDINGS

- Findings for the cohort of students that was in sixth grade in S2015 and seventh grade in S2016 are unusually positive in a wide variety of areas; this cohort is in eighth grade in 2016-2017
- Very positive findings in the youngest grades suggest that the future is very promising as well. For example,
 - The percentages of third and fourth graders who said they feel safe increased
 - The percentages of students in grades 2-4 who said they are “happy” and/or “excited” to arrive at school each day increased
 - An unusually high percentage (91%) of S2016 second graders said that “most or all of their peers are nice.”

Examples of Detailed Findings

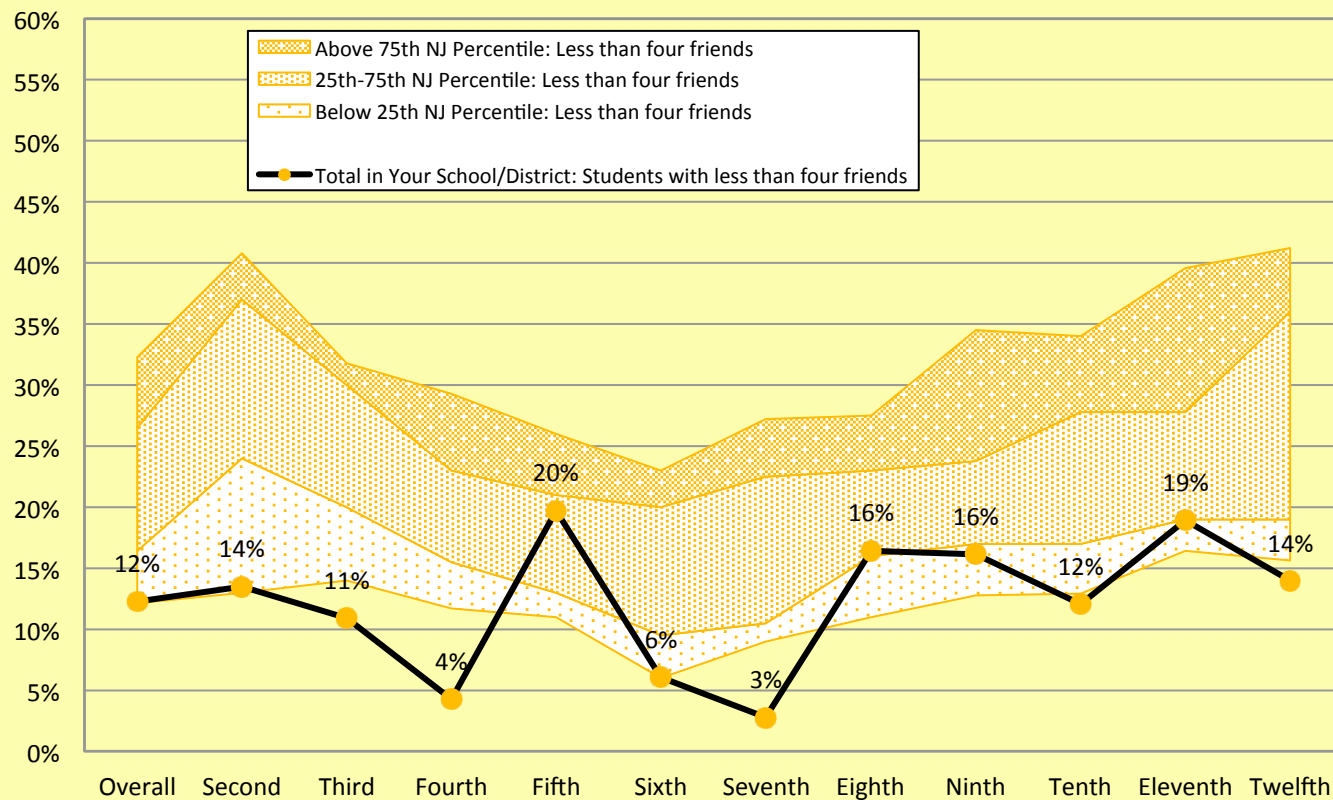
Percentage of Students Reporting Fewer than Four Friends

	2 nd	3 rd	4 th	5 th	6 th	7 th	8 th	HS				
2013	42%	28%	15%	16%	19%	22%	22%	21%				
2014	33%	25%	23%	21%	14%	21%	20%	20%				
2015	5%	6%	14%	7%	3%	13%	7%	13%				
2016	14%	11%	4%	20%	6%	3%	16%	15%				

In S2016, these improvements were maintained in most grades. Some cohort patterns are evident.

Percentage of Students Reporting Fewer than Four Friends

B1.1b: How Many Friends Do You Have in Your School?
Comparison to New Jersey Normative Data



Percentage of Students Who Say They Have a Trusted Adult at School

	2 nd	3 rd	4 th	5 th	6 th	7 th	8 th	HS				
2013	86%	85%	88%	89%	64%	76%	80%	83%				
2014	87%	79%	91%	95%	81%	59%	74%	85%				
2015	89%	82%	85%	84%	86%	75%	71%	69%				
2016	88%	89%	80%	67%	95%	81%	75%	76%				

Having a trusted adult is a **protective** factor; the *higher* the percentages in this table, the better.

Grade 2-5 Students' Perceptions of Problems at School

	2016				2015	
	2 nd	3 rd	4 th	5 th	4	5
Fighting, hitting, pushing	46%	36%	16%	26%	19%	22%
Mean Name-calling	45%	58%	62%	57%	49%	59%
Leaving each other out	56%	58%	62%	43%	47%	55%
Gangs	--	---	9%	11%	8%	16%
Prejudice (race, religion)	--	---	4%	11%	8%	7%
Appearance pressure	--	---	20%	18%	14%	21%
Mean text messages	--	---	18%	15%	14%	22%
Rumors	34%	58%	58%	56%	51%	66%
Teachers say mean things	11%	8%	9%	11%	14%	5%

The question about gangs, in a district with no measurable gang problem, serves as a reference point against which to compare findings about the level of student concern about other issues in school. In general, findings less than 10% indicate there might be some students with individual concerns, but do not indicate school-related climate issue, and findings of 20% or less indicate low levels of concern among students.

Grade 2-5 Students' Perceptions of Problems at School

	2016				2015	
	2 nd	3 rd	4 th	5 th	4	5
Fighting, hitting, pushing	46%	36%	16%	26%	19%	22%
Mean Name-calling	45%	58%	62%	57%	39%	59%
Leaving each other out	56%	58%	62%	43%	37%	55%
Gangs	--	---	9%	11%	8%	16%
Prejudice (race, religion)	--	---	4%	11%	8%	7%
Appearance pressure	--	---	20%	18%	14%	21%
Mean text messages	--	---	18%	15%	14%	22%
Rumors	34%	58%	58%	56%	31%	66%
Teachers say mean things	11%	8%	9%	11%	14%	5%

Mean name-calling, social exclusion, and rumors are concerns throughout elementary school. These three issues are widespread in school districts throughout New Jersey, and indicates issues to be addressed, but are not issues unique to Midland Park.

Grade 2-5 Students' Perceptions of Problems at School

	2016				2015	
	2 nd	3 rd	4 th	5 th	4	5
Fighting, hitting, pushing	46%	36%	16%	26%	19%	22%
Mean Name-calling	45%	58%	62%	57%	49%	59%
Leaving each other out	56%	58%	62%	43%	47%	55%
Gangs	--	---	9%	11%	8%	16%
Prejudice (race, religion)	--	---	4%	11%	8%	7%
Appearance pressure	--	---	20%	18%	14%	21%
Mean text messages	--	---	18%	15%	14%	22%
Rumors	34%	58%	58%	56%	51%	66%
Teachers say mean things	11%	8%	9%	11%	14%	5%

Among second and third graders, concerns about “fighting” usually do not reflect actual aggression, but rather the fact that students are still learning to recognize physical personal space.

Grade 6-12 Students' Perceptions of Problems at School

	6 th 2016	7 th 2016	8 th 2016	HS 2015	HS 2016
Appearance Pressure	19%	15%	17%	12%	15%
Social Exclusion	22%	19%	30%	22%	25%
Name-calling	24%	10%	21%	13%	13%
Racial prejudice	6%	7%	10%	5%	7%
Anti-LGBT prejudice		10%	10%	7%	7%
Physical aggression	15%	11%	11%	5%	5%
Gangs	23%	14%	7%	6%	9%
Unwanted photography		25%	24%	17%	14%
Hurtful posting		17%	12%	11%	13%
Adults insulting students	9%	7%	6%	6%	9%
Adults disrespecting each other		7%	4%	5%	7%
Rumors	45%	24%	32%	30%	31%

Grade 6-12 Students' Perceptions of Problems at School

	6 th 2016	7 th 2016	8 th 2016	HS 2015	HS 2016
Appearance Pressure	19%	15%	17%	12%	15%
Social Exclusion	22%	19%	30%	22%	25%
Name-calling	24%	10%	21%	13%	13%
Racial prejudice	6%				7%
Anti-LGBT prejudice					1%
Physical aggression	15%				6%
Gangs	23%	14%	17%	7%	9%
Unwanted photography		25%	24%	17%	14%
Hurtful posting		17%	12%	11%	13%
Adults insulting students	9%	7%	6%	6%	9%
Adults disrespecting each other		7%	4%	5%	7%
Rumors	45%	24%	32%	30%	31%

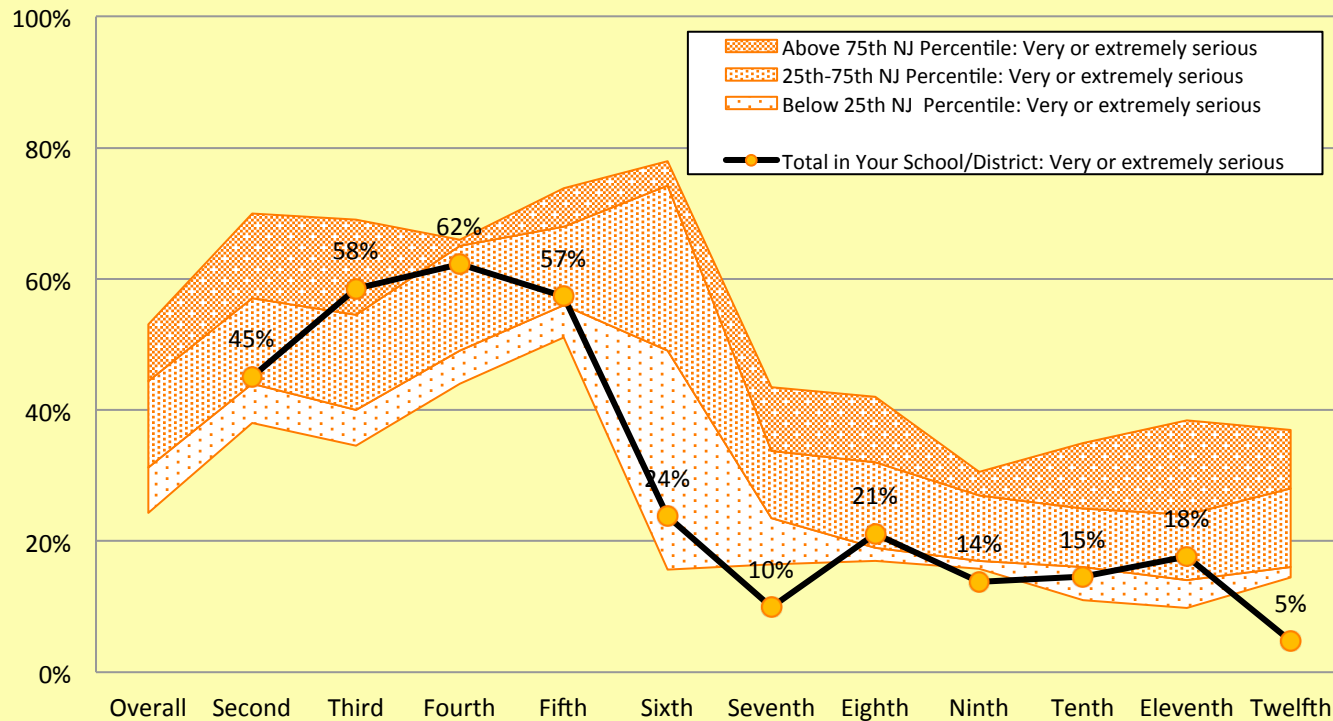
In 2016, the percentages of students who say that an issue is a very or extremely serious problem exceeds 20% in very few areas.

Grade 6-12 Students' Perceptions of Problems at School

	6 th 2015	6 th 2016	7 th 2015	7 th 2016	8 th 2015	8 th 2016	HS 2015	HS 2016
Appearance Pressure	13%	19%	20%	15%	17%	17%	12%	15%
Social Exclusion	14%	22%	34%	19%	34%	30%	22%	25%
Name-calling	13%	24%	37%	10%	20%	21%	13%	13%
Racial prejudice	13%	6%	12%	7%	10%	10%	5%	7%
Anti-LGBT prejudice	--		21%	10%	14%	10%	7%	7%
Physical aggression	14%	15%	14%	11%	2%	11%	5%	5%
Gangs	12%	23%	12%	14%	7%	7%	6%	9%
Unwanted photography	--		24%	25%	19%	24%	17%	14%
Hurtful posting	--		14%	17%	13%	12%	11%	13%
Adults insulting students	11%	9%	5%	7%	3%	6%	6%	9%
Adults disrespecting each other	--		9%	7%	3%	4%	5%	7%
Rumors	35%	45%	42%	24%	28%	32%	30%	31%

Grade 2-12 Students' Perceptions of Problems at School

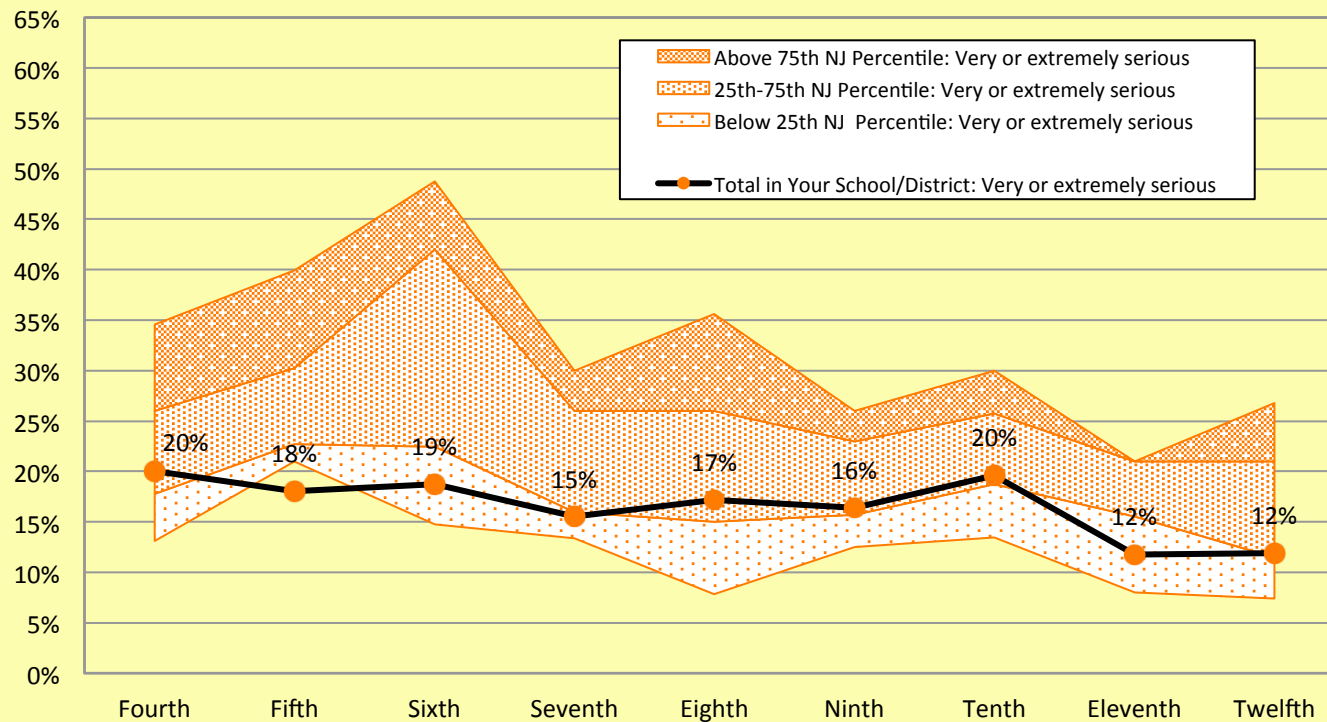
How Serious Is Each of the Following Problems at Your School?
C2.1b: Students Name-Calling Each Other,
Insulting, or Putting Each Other Down
Comparison to New Jersey Normative Data



Compared to normative data, the percentages of students who say that name-calling is a problem are low in most grades.

Grade 2-12 Students' Perceptions of Problems at School

How Serious Is Each of the Following Problems at Your School?
C2.6b: Pressure to Look a Certain Way
(the Right Clothes, Weight, Hair, Style) to Fit in and Be Accepted
Comparison to New Jersey Normative Data

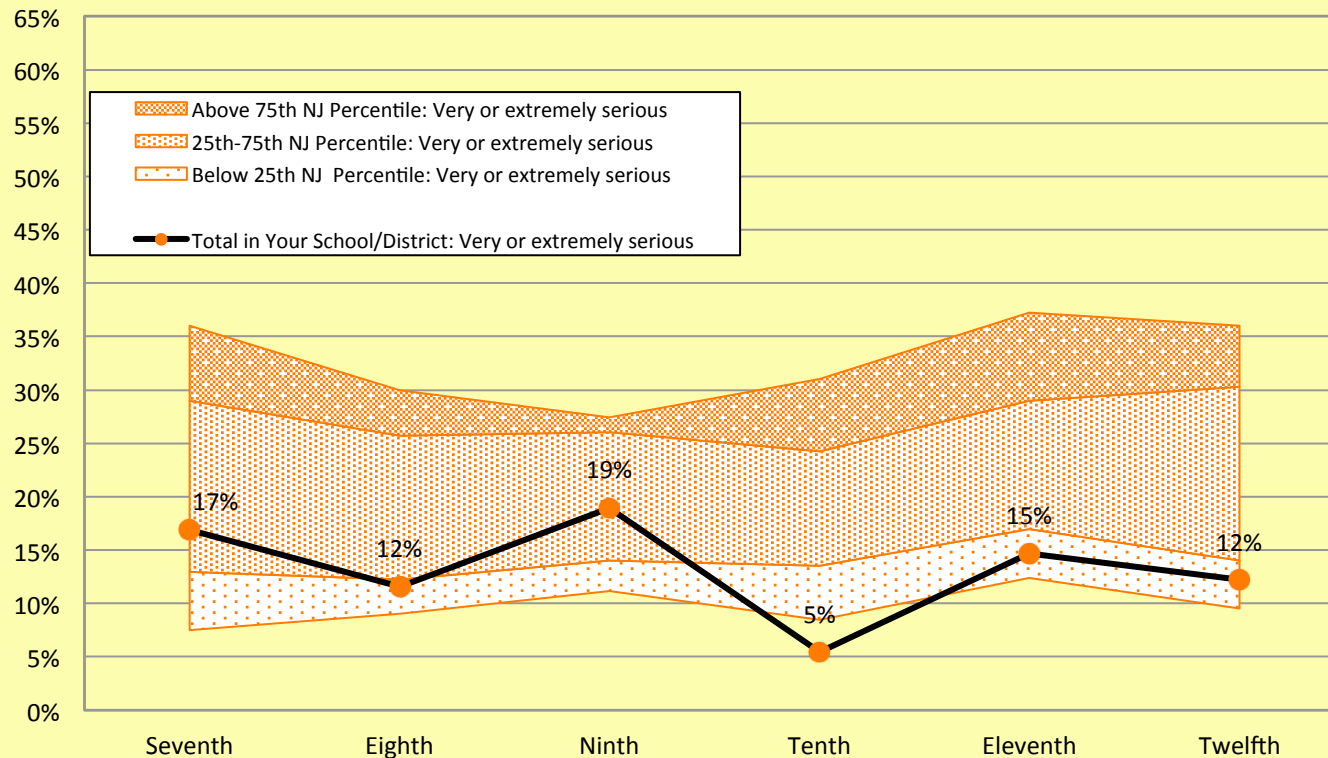


Compared to normative data, the percentages of students who consider “appearance pressure” to be a problem are low.

Grade 2-12 Students' Perceptions of Problems at School

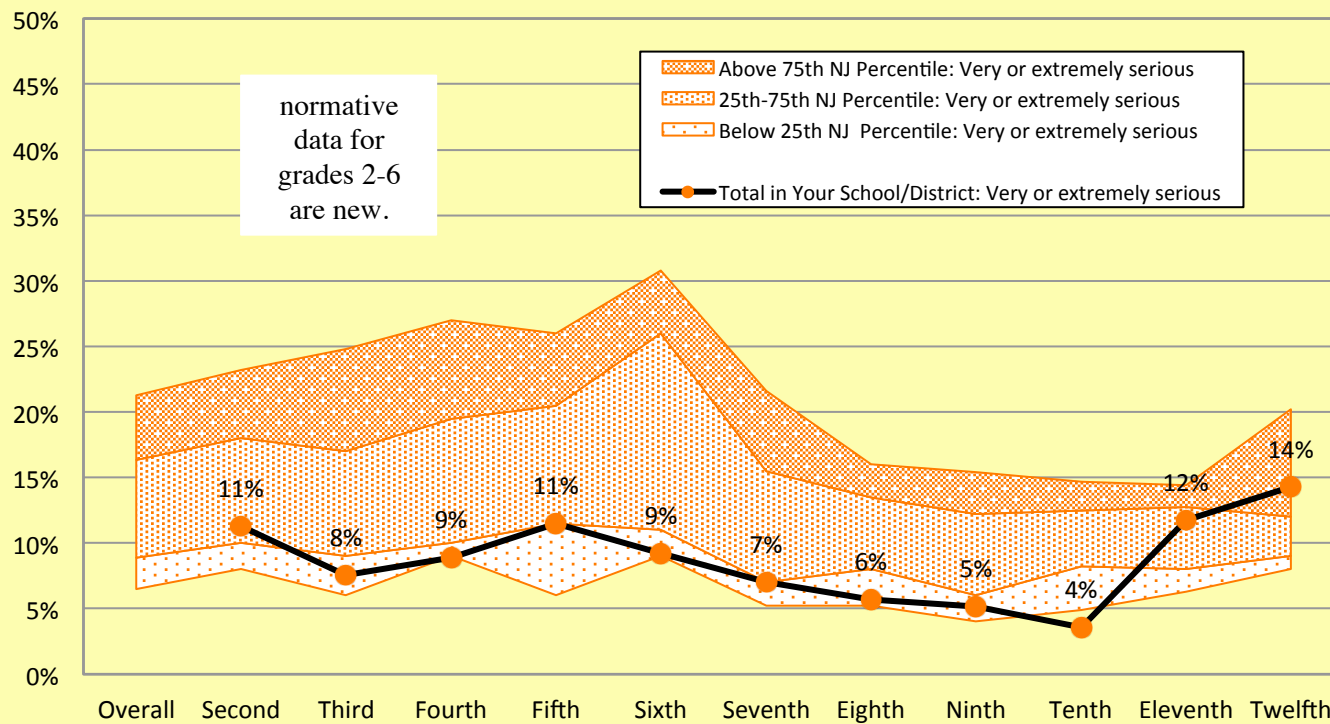
How Serious Is Each of the Following Problems at Your School?
C2.12b: People Posting Things Online that Are Mean or Hurtful to Other People
Comparison to New Jersey Normative Data

Compared to normative data, the percentages of students who consider “posting hurtful things online” to be a problem are low.



Grade 2-12 Students' Perceptions of Problems at School

How Serious Is Each of the Following Problems at Your School?
C2.15b: Teachers or Other Adults in School
Insulting Students or Putting Students Down
Comparison of New Jersey Normative Data



Compared to normative data, the percentages of students who consider “adults insulting students” to be a problem are low in most grades.

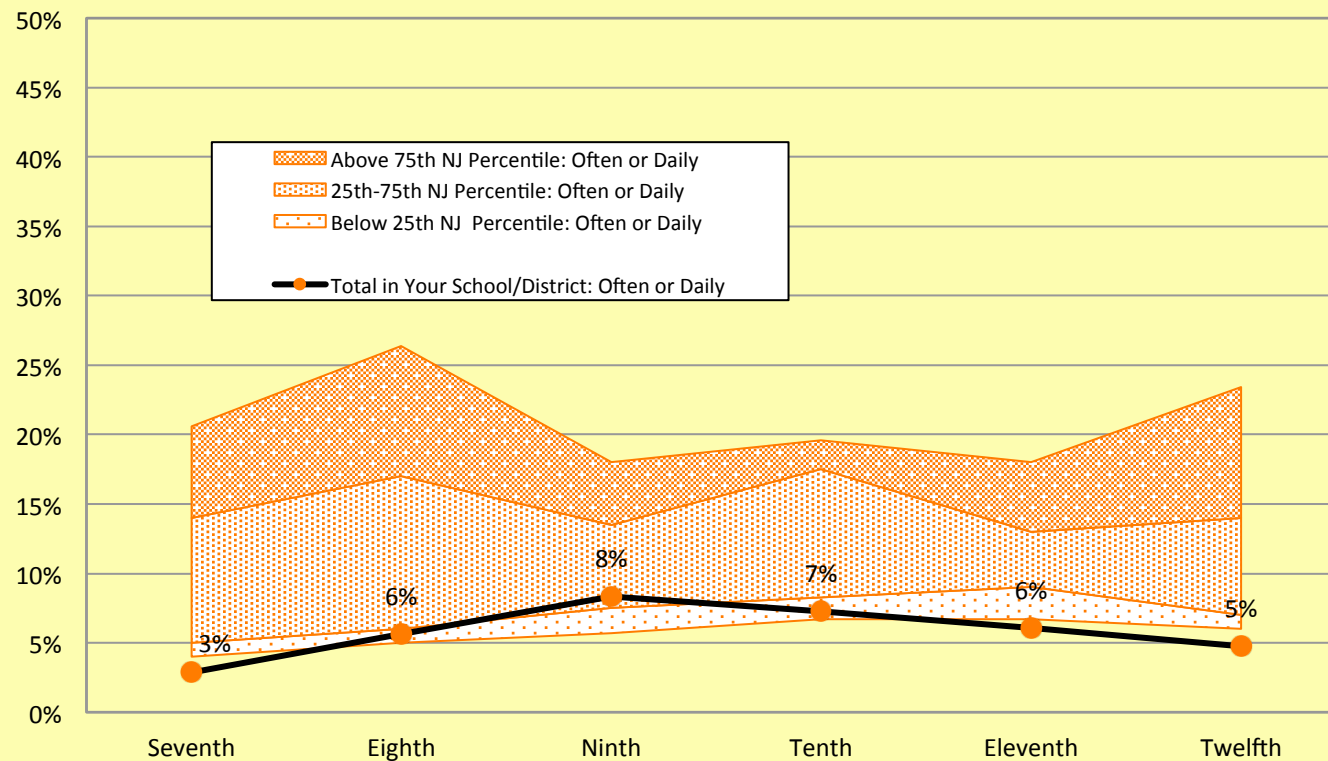
Frequency of Derogatory Language among Students

- In grades 6-8, 17%-35% of students say they frequently hear peers make insulting comments about someone's appearance; **down from 43%-61% in 2011**
- In grades 6-12, 24%-48% of students say they frequently hear peers call each other "dumb," "retard," "stupid," etc. ; **down from 57%-86% in 2011**
- In grades 6-12, 12%-38% of students say they frequently hear peers use the word "gay" as an insult (i.e., "so gay"); **down from 49%-82% in 2011**

Grade 7-12 Students' Perceptions of Derogatory Language Used by Peers at School

In Your School, This Year, How Often Do You Hear Another Student
D2.6b: Say Mean Things about Other Religions or about Someone's Religion?
Comparison to New Jersey Normative Data

Compared to normative data, the percentages of students who frequently hear derogatory comments about religion are very low in every grade.



The Last Time You Heard Someone Say Something Mean to Someone Else... What Did YOU Do?

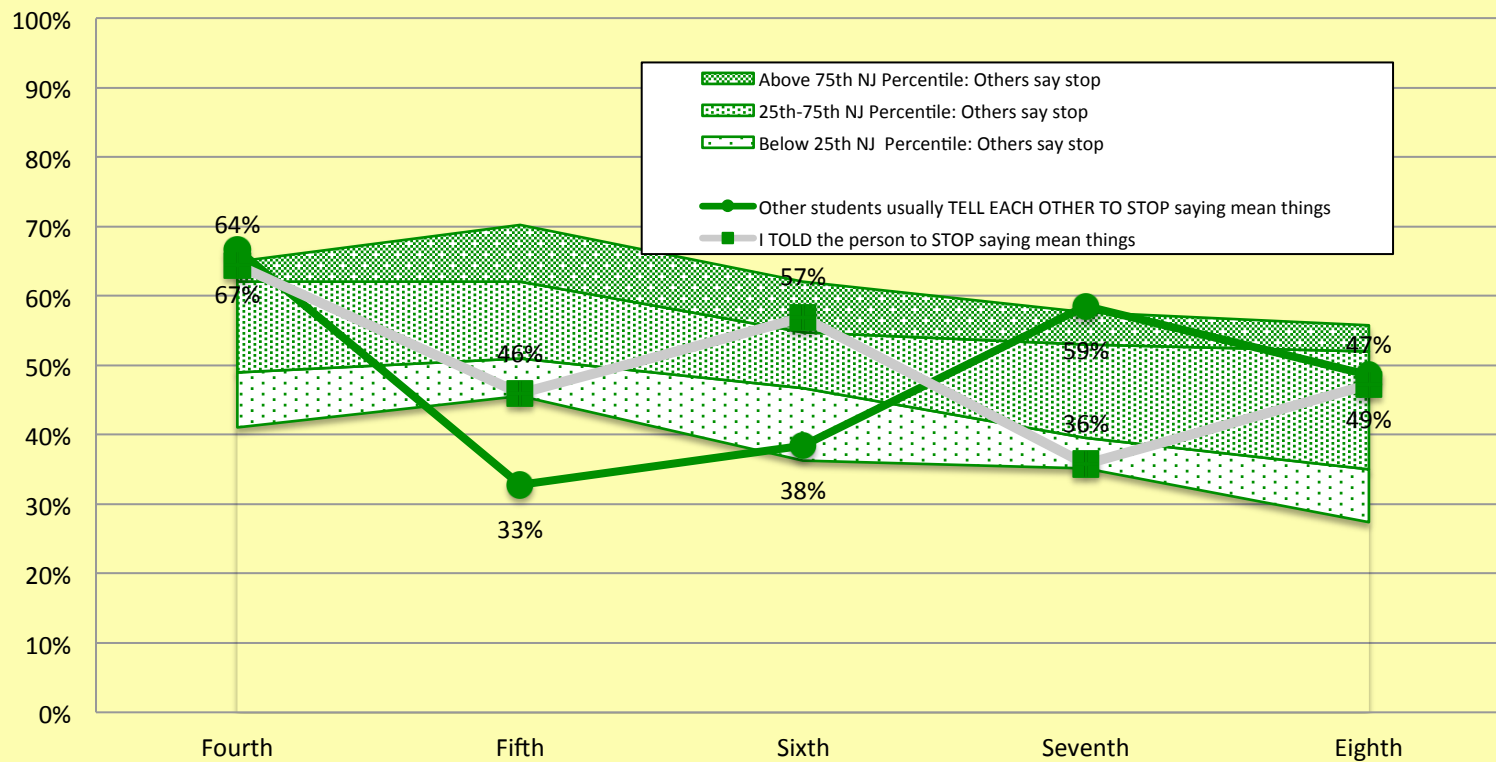
- I told the person to STOP saying mean things
- I TOLD a teacher or another ADULT
- I walked away or IGNORED it
- I WATHED
- I LAUGHED because it sounded funny
- I started SAYING MEAN THINGS too
- I TOLD my friends I thought it wasn't a nice thing to say
- Later, I tried to BE NICE to the person who had the mean things to him/her

What Do OTHER STUDENTS Do?

The Last Time You Heard Someone Say Something Mean to Someone Else... What Did YOU Do? What Do OTHERS Do?

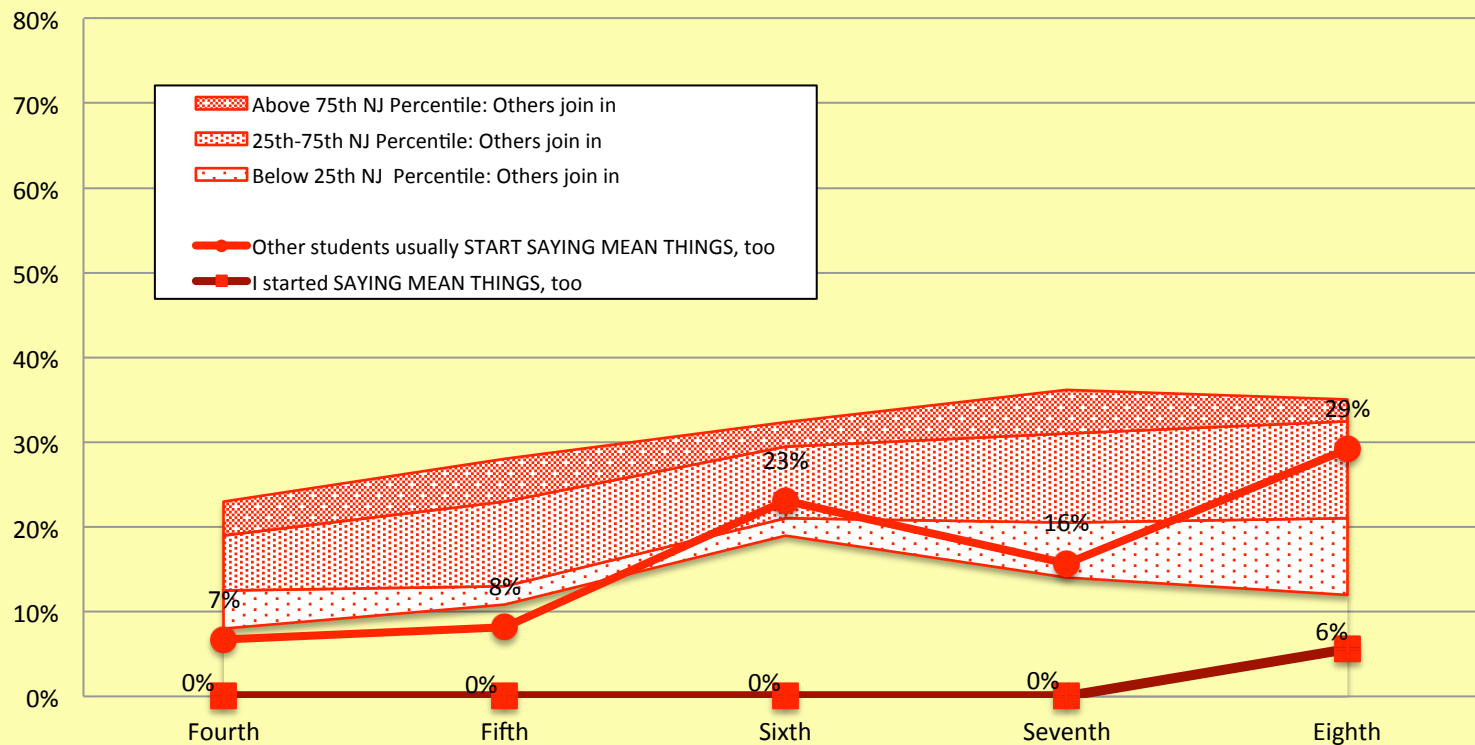
In Your School, When Students Say Hurtful Things to Each Other,
What Do Other Students Do?
The Last Time You Heard Someone Say Something Mean to Someone Else..
What Did YOU Do?

D3.3b: Other Students Tell Each Other to Stop / I Told Them To Stop
Comparison



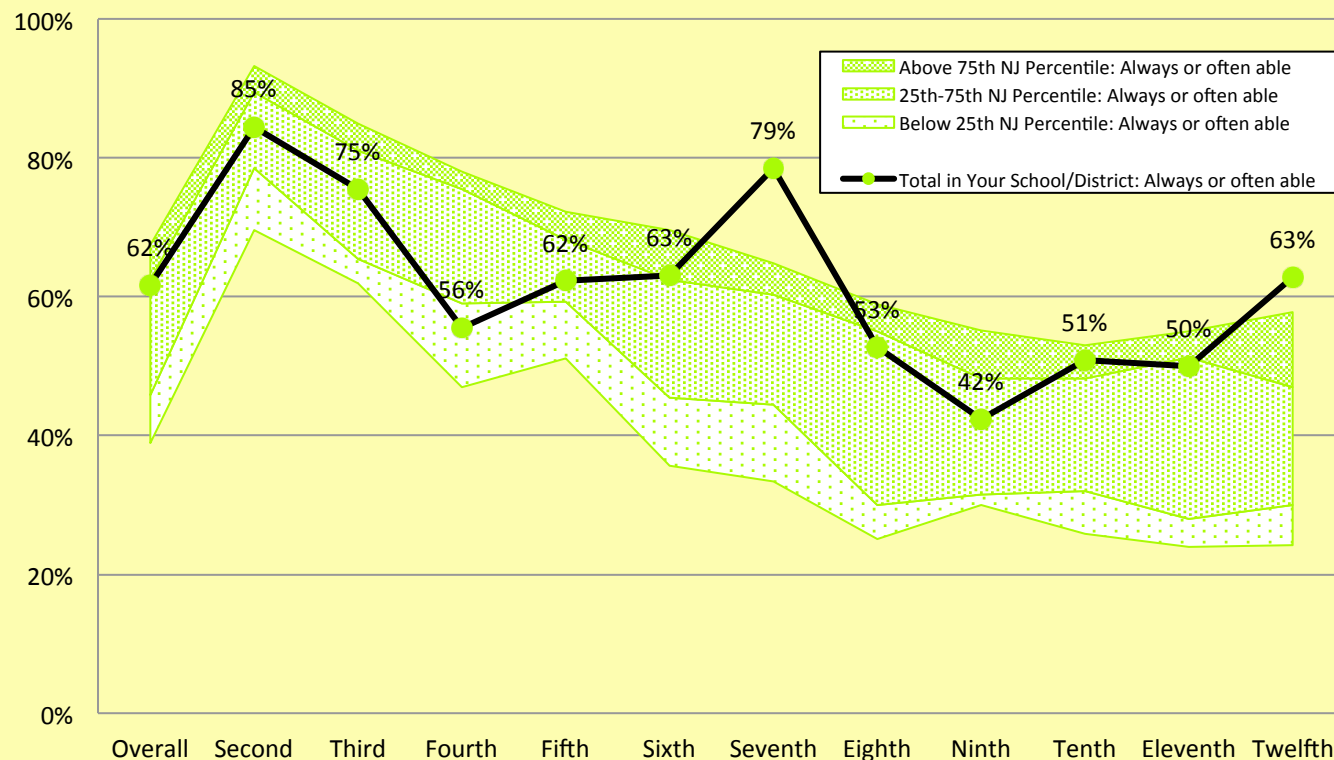
The Last Time You Heard Someone Say Something Mean to Someone Else... What Did YOU Do? What Do OTHERS Do?

In Your School, When Students Say Hurtful Things to Each Other,
What Do Other Students Do?
The Last Time You Heard Someone Say Something Mean to Someone Else..
What Did You Do?
D3.3d: Other Students Start Saying Mean Things, Too / I Said Mean Things
Compar



Grade 2-12 Students' Perceptions of Adults' Ability to Stop Bullying

E2.4b: Are Adults at Your School Usually Able to Stop Students Who Are Bothering or Bullying Other Students?
Comparison to New Jersey Normative Data



Compared to normative data, the percentages of students who say that adults are usually or always able to stop bullying are very high in most grades.

Has this happened to you... (percent saying often, weekly, daily, or more than once a day)?

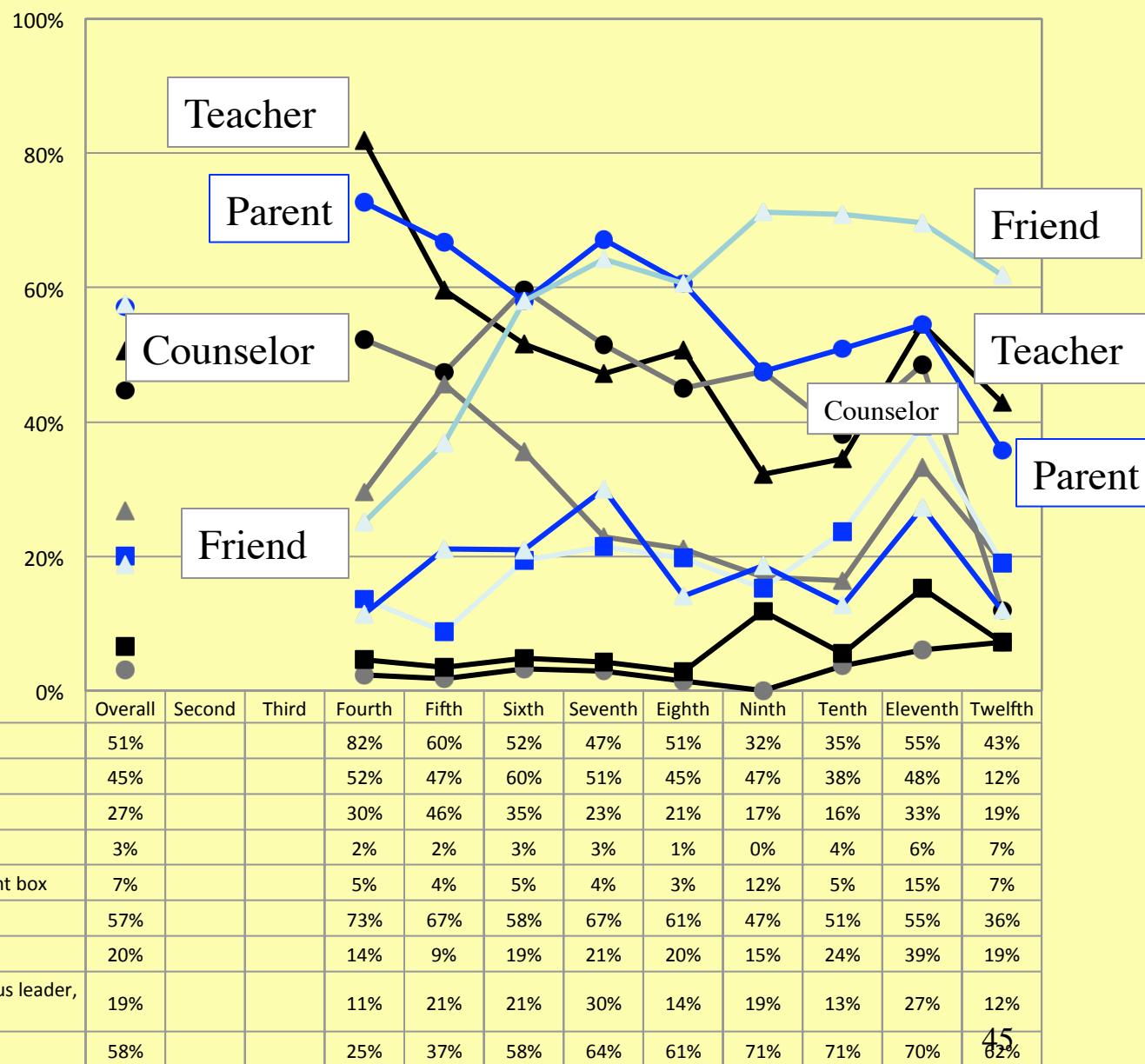
Students were asked about 17 different experiences. The three shown here are those that are generally most common, throughout New Jersey, and the Midland Park percentages indicate typical age-related issues. The fact that an issue is typical does not mean it does not have to be addressed, but it does indicate that these issues are not unique to Midland Park; these are issues facing schools throughout New Jersey.

	<i>Verbal Name-calling</i>		<i>Hurtful Exclusion</i>		<i>Appearance Denigration</i>	
	2015	2016	2015	2016	2015	2016
2 nd grade	11%	6%	8%	4%	5%	4%
3 rd grade	4%	11%	6%	11%	6%	4%
4 th grade	13%	10%	9%	7%	13%	5%
5 th grade	8%	10%	8%	12%	12%	6%
6 th grade	9%	15%	5%	13%	3%	7%
7 th grade	19%	6%	16%	3%	12%	6%
8 th grade	17%	8%	8%	13%	9%	8%
HS	12%	13%	7%	7%	9%	5%

If You Were Having a Problem... Bullying... and You Needed Help, How Would You Get Help?

- Tell a teacher
- Tell a counselor at school
- Tell the principal
- Tell the nurse at school
- Put a note in a bully report or comment box
- Tell my parent/parents/mom or dad
- Tell my older brother or sister
- Tell another adult (aunt, uncle, religious leader, coach
- Tell a friend my own age

E4.1: If You Were Having a Problem... Bullying... and You Needed Help, How Would You Get Help?
Detailed School/District Findings



Students' Reports of Whether Other Students are Nicer, Compared to Last Year

	4 th	5 th	6 th	7 th	8 th	HS			
Much nicer	37%	23%	40%	36%	29%	32%			
Somewhat nicer	34%	30%	21%	26%	26%	29%			
Little nicer	17%	26%	25%	14%	26%	12%			
Not nicer	11%	21%	14%	24%	20%	27%			

In each grade, 73%-89% of students report that other students are nicer this year compared to last year, indicating that the vast majority of students feel positively about changes in their school climate.

(Many students who don't feel that their peers are "nicer," already feel that their peers are "nice.")

Conclusion: Implications

STRATEGIES TO MAINTAIN PROGRESS

- Parents and School Should Work Together to Ensure that:
 - Each student has friends in school who can be supportive
 - Each student can identify an adult at school whom they trust, to whom they could go if they had a problem with another student.
 - Encourage students to help each other; students confide in peers, more than in adults. If a peer is in trouble, tell an adult.⁵⁰

STRATEGIES TO MAINTAIN PROGRESS

- Parents and School Should Work Together to Ensure that:
 - Students are discouraged from using language that is derogatory to others.
 - Students know that harmful social exclusion and rumor-telling are forms of bullying
 - Cyber safety education occurs both at home and at school

STRATEGIES TO MAINTAIN PROGRESS

- Parents and School Should Work Together to Ensure that:
 - Continue to encourage students to include each other and develop positive social relationships with peers in school.
 - The word “bullying” is not used for incidents that involve other types of hurtful behavior that are not bullying.

WHAT CAN YOU EXPECT YOUR SCHOOL TO DO?

- Take all forms of hurtful behavior by students seriously, whether or not the behavior is bullying, and whether or not it is legally defined and reportable as bullying
- Teach students that they share responsibility for creating a school climate that is safe and respectful for all
- Encourage students to tell an adult if they know of someone who is being hurt by someone else
- Respond to all reported incidents with *appropriate* remedial or disciplinary consequences
- Implement strategies to create a positive school climate to discourage bullying and other hurtful behaviors
- Teach all students to respect diversity, and to be able to disagree with others respectfully

WHAT DO YOU NEED TO KNOW ABOUT THE SCHOOL'S PROCEDURES?

- School personnel must protect the confidentiality of all students. The school cannot provide you with information about discipline given another student.
- The school's jurisdiction is limited. If an incident occurred off campus, your recourse might be with law enforcement, and not through the school
- “Tough on Bullying” means appropriate, not extreme, responses; remedial responses are often more effective
- School staff are required to report certain types of incidents within the district, and at the state level.

WHAT CAN YOU DO TO HELP?

- Be familiar with your district's anti-bullying policy
- Know that bullying today is different than it used to be; take it seriously. Listen/talk about it.
- Tell your son/daughter what to do if s/he is bullied (tell an adult). Do not give advice that will put your child in a difficult situation in school (e.g. do not advise to “hit back”)
- Teach your son/daughter what to do if someone else is bullied (tell an adult, stand up for them, help them walk away, etc.)
- Teach about cultural diversity; teach the difference between Respect and Agreement
- If you learn of a situation or incident in the school, tell a member of the school staff immediately

THANK YOU
Have a Safe, Happy,
Productive
and Respectful
School Year