



Contrary to the Spirit: Concerns about ABR Implementation and the Use of Evidence-based Practices

Proper implementation of the ABR requires guidance from a number of different professional fields, including law, school administration, education, and the social and psychological behavioral sciences. The purpose of the “Contrary to the Spirit” series of papers is to examine certain implementation issues from a behavioral science perspective, toward the goal of developing implementation strategies that are not only compliant with the statute, but also effective at preventing bullying and promoting the safety and well-being of students.

The law has had some specific effects that are contrary to its intended purpose, i.e., to encourage or require schools to address bullying effectively and provide emotionally and physically safe environments for students. It is my hope that the comments in this document will help in the development and issuance of detailed guidance for schools on the specific points raised, as well as legislative revisions that will further the spirit of the law & the safety of students in New Jersey schools.

Papers #1-#3 in the *Contrary to the Spirit* series address the following three concerns:

1. Lack of clarity regarding the difference between the scientific definition of bullying (power imbalance, one-sided, not-conflict) vs. the statutory definition of bullying, and concerns that failure to distinguish the two will lead to the use of criteria not included in the statute to justify non-HIB determinations in school investigations. For example, the use of “mutuality” as a criterion provides a loophole for schools to “reasonably” avoid ABR requirements, thus sidestepping the law. This reasoning has already been incorporated into an OAL Initial Decision. *NOTE: This concern is addressed in more detail in a different working paper, “Falling Apples: Analysis of the impact and advisability of efforts to amend or interpret the statutory definition of HIB to incorporate “power imbalance” or “conflict vs. bullying” elements.”*
2. For some students, the current requirements of the law have made it more difficult for them to seek help when they are bullied or know someone who is bullied; this impact is felt most heavily by students who are targets of anti-LGBT bullying. These students fear that reporting and investigation procedures, including parental notices, will “out” them to peers and family and/or spur rumors that they are LGBT, thus decreasing, not increasing, their safety both at school and at home. Specific guidance is suggested to address this issue.
3. Current New Jersey laws pertaining to the conduct of student surveys in schools impede efforts by schools to collect important program-relevant information about students’ experiences and perspectives, and produces measurable bias (inaccuracies) in schools’ efforts to assess needs, develop anti-bullying programs, and evaluate program effectiveness. Recent efforts to address this issue ended in a veto. The impact on schools’ ability to collect information that can help keep students safe has been documented by research in a New Jersey public school.

About the Author: *Dr. Rodriguez Rust is a sociologist with over 25 years of teaching and research experience on topics related to prejudice, organizational structure, survey research, group behavior, and cultural and LGBT diversity, including tenured positions in post-secondary education, and seven years of experience providing consulting and educational services related to bullying prevention and diversity awareness to New Jersey public schools.*

“Contrary to the Spirit: Concerns about ABR Implementation and the Use of Evidence-Based Practices”
by Dr. Paula C. Rodriguez Rust, www.SpectrumDiversity.org, DrPaula@SpectrumDiversity.org
Originally written March 21, 2013; Revised, March, 2014
Distribution permitted, and comments welcome

Contrary to the Spirit: Concern #2

Unintended Negative Impact of ABBOR on victims of Anti-LGBT Bullying

Summary:

For some students, the current requirements of the law have made it more difficult for them to seek help when they are bullied or know someone who is bullied; the impact is particularly profound on students who are targets of anti-LGBT bullying, because they fear that the reporting and investigation process will “out” them to peers, school personnel, and their parents, and that their situation both in school and at home will be worsened rather than improved as a result. These students, therefore, have been placed at greater risk; whereas before the ABBOR, they could seek private support from a trusted adult in school, under the ABBOR many choose not to seek support at all. Specific and detailed school guidance will help schools implement the law in ways that protect this group of students as well as it protects other students.

Details of the Argument, the Concern, and the Recommendation:

- The ABBOR requires the reporting and investigation of incidents of possible HIB for the purpose of ensuring that such incidents are known to school personnel and responded to effectively. However, the requirement that school personnel report suspected incidents of HIB has had the **counterproductive effect of causing some students to be less willing to report incidents to school personnel**, because the students do not want to become known as “tattle-tales” or become responsible for causing another student to get into trouble, or because they simply want the problem solved without “making a big deal out of it.” In the past, these students would tell adults because they were looking for support or quiet resolutions; now they know that if they tell, it will become a reported incident and a matter of record, so they hesitate to seek support or help. The unintended negative consequence is that incidents go un-reported that would otherwise have been brought to the attention of at least one adult. **In large part, the unintended effect of suppressing student reporting can be addressed by providing schools with appropriate guidance**, e.g., maintaining the anonymity of student reporters, responding with more remedial action and avoiding the excessive use of discipline, treating the handling of incidents as a process of guidance and learning rather than a process of labeling and punishing offenders, active rather than passive follow-up, communication procedures that involve notification of all school personnel with supervisory responsibilities over the students involved in a reported incident to increase vigilance and reduce repetition and retaliation, etc., etc.
- **However, this unintended consequence of suppressing student reporting has had an additional, and particularly damaging, impact on one particular group of students—students who are victims of anti-LGBT bullying.** Like other students, these students might hesitate to report their victimization to adults because they fear becoming labeled as tattle-tales, they fear retaliation, etc. But these students have another fear, i.e., that the process of reporting and investigating incidents of anti-LGBT bullying will “out” them to not only their peers and school personnel, but also to their parents. This fear exists whether or not the victimized student is actually LGBT; if s/he is LGBT, then the fear is that peers, school personnel and their parents will find out that they are LGBT, and if they are not LGBT, then the fear is that the rumor that they are LGBT will spread throughout the school and to their parents. In the past, students who were victims of anti-LGBT bullying often survived school by finding an adult in school—

“Contrary to the Spirit: Concerns about ABR Implementation and the Use of Evidence-Based Practices”
by Dr. Paula C. Rodriguez Rust, www.SpectrumDiversity.org, DrPaula@SpectrumDiversity.org

Originally written March 21, 2013; Revised, March, 2014

Distribution permitted, and comments welcome

often a teacher or SAC—to whom they could talk, and seek support. In other words, they found a safe haven to which they could go to regroup, knowing that they only needed to survive until graduation, and then they could go on with their lives. Now, they know that if they seek support, their experiences will be reported and lead to an investigation and the involvement of multiple people, including their parents. They might fear becoming known among their peers as a victim of anti-LGBT bullying; they might fear that prejudices among their peers and other adults will make their environment more, not less, hostile than it was before the incidents were reported, and they know that, at some point in the reporting process, under the ABBOR, the school must notify their parents that they were involved in a suspected incident of HIB. They fear that this notice will either inform their parents of the distinguishing characteristic (being LGBT, or perceived to be LGBT) that qualifies their experience as an incident of legal HIB or, if the notice does not contain this information, they fear having to answer questions about the incident from their parents that would lead to their either having to lie, or coming out to their parents before they are psychologically ready to do so. Students who are LGBT might not be out to their parents, and some of them might not be out because they fear emotional or physical violence from parents who would not be accepting of this information. Since the ABBOR went into effect, therefore, the “safety net” that was supposed to be strengthened by the ABBOR has, in effect, been pulled out from under many students who are victims of anti-LGBT bullying. Whereas before the ABBOR, they could at least seek private support from individual trusted adults, after the ABBOR, many cannot even seek private support for fear that the legal requirements on the adult will cause their victimization at school to intensify, and out them to their parents before they or their parents are ready to handle this information.

- **The ABBOR has also placed GSA advisors in a difficult position.** The purpose of GSAs (Gay-Straight Alliances) are multiple, and one purpose is to provide an arena in which students can support each other in a school environment that might or might not be hostile to them. **A GSA advisor who is present during these meetings might be required to report some of the incidents that students mention in an effort to seek support and ideas from each other;** knowing that the adult is required to report such things can severely inhibit student discussion during GSA meetings, and limit students’ ability to benefit from membership in the GSA, compromising one of the few sources of support that LGBT students have in a high school environment.
- **Guidance for schools can help, but it must be very detailed and specific to this issue.** School personnel are becoming increasingly educated about issues of sexual orientation and gender identity diversity, and in many schools in New Jersey, the general climate among school personnel with regard to LGBT students is very positive. However, even in these schools, the procedures put into place in compliance with the ABBOR, can have this unintended negative impact on students who are victimized by anti-LGBT bullying. For example, standard HIB-reporting forms collect information that can be used to assess whether or not the incident meets the criteria for legal HIB; in the case of anti-LGBT bullying, the form would therefore require the reporting school employee to document the fact that the distinguishing characteristic was perceived or actual sexual orientation. Although these incident reports should be kept confidential, they also serve as the basis for other reporting procedures, e.g., notices to parents and reports to boards of education, so **strict procedures for safeguarding this information must be developed that take into account the fact that the motivating characteristic itself, especially in the case of anti-LGBT bullying, should be considered confidential information.** If a student is targeted for racial or religious reasons, informing a parent about the motivation for the harassment does not reveal

confidential information that the parent does not already have—the parent already knows that their child is African-American, Muslim, Sikh, or Korean; unless school personnel have considered the specific impact of their reporting, documentation, and notification procedures on students who are victims of anti-LGBT bullying, these procedures might not provide the safeguards needed by students who are victims of anti-LGBT bullying.

- Furthermore, even in schools that have considered this issue and developed procedures that safeguard this information, unless students know that school personnel will protect this information, they will still fear that seeking support in the face of anti-LGBT bullying will result in their being outed to peers, other school personnel, and their parents, because they know that the HIB reporting procedure involves investigations and notices to parents. **Therefore, it is also important that schools receive guidance not only in drafting notices to parents and in summarizing confidential incident reports when reporting to boards, etc., but that they also receive guidance about informing students of the safeguards they have put into place, and of their sensitivity to the concerns of students regarding the protection of information about those who are victims of anti-LGBT targeting.** This reassurance must be provided to all students, not only those who are already known to the school as victims of anti-LGBT bullying, because it must reach those students who have kept their victimization a secret from school personnel.
- **Strategies for Schools to Reduce the Harmful Impact of the ABR Reporting Requirements on Students who Are Targets of Anti-LGBT Bullying.** *Note: The State of Massachusetts, which also has a law requiring the reporting of bullying, has issued guidance on this point; see <http://www.doe.mass.edu/bullying/PNguidance.html>*
 - Information about a student’s perceived or actual sexual orientation, gender identity, or gender expression should be considered confidential information belonging to the student. No assumption should be made that a parent is already aware of this information, and this information should not be disclosed to the parent without the consent of the student.
 - Notification letters to parents should not disclose the distinguishing characteristic upon which an incident of possible or affirmed HIB was based.
 - When an investigation is conducted into an incident of anti-LGBT HIB, information about a student’s actual or perceived sexual orientation, gender identity should not be shared with students and staff who are interviewed as part of the investigation.
 - The student who was the target of an incident of possible HIB involving actual or perceived sexual orientation, gender identity, or gender expression, should have an opportunity to meet with the ABS so that the ABS can explain to the student exactly what the process of reporting and investigating the incident will entail, including the procedures that will be used to safeguard information about the motivating characteristic involved in the incident.
 - Prior to parental notification, the student should be told exactly when their parents will be notified, and exactly what information will be given to their parents in the notification. For example, any letter that will be sent home to the parents should be shown to the student first, so that the student will know exactly what information is to be shared with the parents and can prepare for the parents’ responses to that information.
 - The student should meet with a qualified counselor to discuss the possible responses their parents might have upon notification, so that the student can

prepare to handle each possible response. For example, if the letter does not name the distinguishing characteristic, the parents might ask “why did they pick on you?” or “what did they say to you?” and the student needs to plan a response to this question. The student might have to choose between lying to their parents in order to remain physically safe, vs. revealing their sexual orientation or gender identity to their parents at the risk of not only their physical safety, but also their psychological well-being if they were not ready to share that information with their parents. The student needs guidance to think through the range of possible responses a parent might have if the student’s sexual orientation or gender identity is revealed to or surmised by the parents, including acceptance, fear, denial, religious condemnation, shaming, and physical violence. The student might need to think about whether or not there is a safe home s/he can go to, at least temporarily, if their parents react violently.

Contrary to the Spirit: Concern #3

Effect of New Jersey Laws Requiring Active Parental Consent for Certain Student Surveys Has A Documented Impact on School's Ability to Collect Information Relevant to the Development of Programs to Ensure Student Safety Against Bullying

Summary:

Current New Jersey laws pertaining to the conduct of student surveys in schools impede efforts by schools to collect important program-relevant information about students' experiences and perspectives, and produces measurable bias (inaccuracies) in schools' efforts to assess needs, develop anti-bullying programs, and evaluate program effectiveness. This impact has been documented by research in a New Jersey public school. Recent legislation designed to help address this problem was vetoed by Gov. Christie.

Details of the Argument, the Concern, and the Recommendation:

- **Current New Jersey laws go beyond the requirements of Federal law** with regard to outlining the circumstances under which schools must obtain "active parental consent" for students to participate in surveys.
- **With regard to the conduct of student surveys, school districts under the advice of their board attorneys often require active parental consent even for surveys for which it might not or would not be needed**, because requiring active parental consent when it might not be necessary is perceived as "erring on the safe side." However, as will be seen below, requiring active parental consent limits the school's ability to acquire data that will help the school address safety issues in the school climate; therefore, requiring active parental consent when not legally necessary is only "safer" for the *school* from a legal point of view; it compromises, rather than enhances, *student* safety from a bullying prevention point of view. Therefore, requiring active parental consent when unnecessary should not be seen as "erring on the safe side."
- **The requirement for active parental consent reduces response rates, thus compromising the quality of the data collected. When this data is being collected for the purpose of identifying safety issues in schools and developing programs to address safety issues such as bullying, this means that schools' efforts to develop programs that will effectively enhance student safety are compromised.**
- **The impact of active parental consent requirements is strongest in disadvantaged districts, i.e., arguably the districts that are most in need of programs to support the safety and welfare of students.** In districts whose students are already struggling due to social and economic disadvantage, the requirement of active parental consent depresses student survey response rates even more than in economically advantaged districts. Parents in such districts are less likely to return consent forms for a number of reasons, including work hours, attention paid to children's schooling, distrust, language difficulties, etc. The result is that the impact of the parental consent requirement is strongest in the districts that are arguably most in need of accurate information to support student safety, as well as most in need of avenues for encouraging student involvement and investment in the school climate.
- **Research evidence from a New Jersey school documents the impact that the requirement for active parental consent has on the quality of assessment data.** I have been providing student survey services to schools in New Jersey since 2007, and

"Contrary to the Spirit: Concerns about ABR Implementation and the Use of Evidence-Based Practices"
by Dr. Paula C. Rodriguez Rust, www.SpectrumDiversity.org, DrPaula@SpectrumDiversity.org

Originally written March 21, 2013; Revised, March, 2014

Distribution permitted, and comments welcome

conducting survey research in other populations since 1985. One K-8 district that had been conducting the survey annually only among those students who received active parental consent, received permission from their board attorney in 2011 to conduct the survey without active parental consent. The result was an increase in the response rate from 35% in 2010 to 82% in 2011. This dramatic increase in response rate demonstrates the impact that the requirement for active parental consent has on the district's ability to assess student needs for anti-bullying programming; it suppressed student participation in this process by more than half, preventing almost half of the student body—47%--from participating in this effort by the district to find out what students experience and have to say about bullying in their school.

- Furthermore, the 2011 findings from this district provide **quantified evidence of the fact that the lowered student participation as a result of the active parental consent requirement biases and distorts the findings of student surveys.** In the 2011 survey, students were asked if they had participated in the survey the year before. Comparing the 2011 responses of those students who had participated in the survey in 2010 to the 2011 responses of the students who did not participate in the survey in 2010, therefore, provides a direct measure of the degree of distortion of the findings that would have been introduced if the 2011 survey had, like the 2010 survey, been conducted with the requirement of active parental consent. The details of this evidence follow, in the next bullet.
- **The findings show that students who are excluded from participating in a survey by the requirement for active parental consent are more likely to be the targets of bullying, less likely to feel that they can trust adults in school, and perceive greater school climate problems in their school than students who receive parental consent to participate in school surveys.** For example, findings from the above-mentioned school district show that, in elementary grades, those students who did not participate under the active parental consent requirement were *more than twice as likely* as those who did to report that they had been the targets of verbal peer harassment (24% vs 11%). Among intermediate grade students, those who did not participate in the survey under the active parental consent requirement were 14% less likely than those who did to say that they felt safe at school (38% vs. 52%). Among middle schoolers, those who did not participate in the survey under the active parental consent requirement were less likely than those who did to say that there was at least one adult in the school that they could talk to if they had a problem like bullying (76% vs. 91%). In other words, the requirement for active parental consent suppresses the voices of those students whose voices most need to be heard by school personnel who are developing anti-bullying programs and whose voices are least likely to be heard through other venues, i.e., those students who are experiencing victimization or unsafe school climates and who are less trusting of the adults in their school.
- **Legislative Change and Legal Guidance Needed.** Legislative changes might include revising the state requirements for active parental consent to match federal requirements, specifically exempting anti-bullying and school climate surveys from excessively broad requirements for active parental consent, and/or providing schools with a counter-motivation to the currently unopposed motivation they now have for requiring active parental consent for all surveys just to “be on the safe side.” Guidance for schools regarding the limits of the requirement for active parental consent, including statements that active parental consent can compromise the quality of the data collected and its usefulness as an assessment tool, and encouragement for schools to conduct surveys without active parental consent when legally permitted, especially if

this guidance is written by attorneys with school/district interests in mind and communicated to school board attorneys, can help guide schools toward a more balanced interpretation of the requirement for active parental consent and toward the collection of more accurate and useful assessment data.

- **Regardless of any changes in the law or in the guidance provided to schools, under some circumstances schools will still be required by federal or state law to require active parental consent for some surveys.** In these circumstances, schools would benefit from guidance in the drafting of active parental consent letters. Although these letters must contain certain information about parental rights, the wording used to describe these rights, and the explanations given for the survey, can have an impact on parents' willingness to provide consent. In one district that I worked with, the parental consent letter explained to parents that they had a right to withhold consent for their children to do the survey, and asked for their signature to provide consent for their child to do the survey; one parent commented that "I felt that I was being asked to give up my rights." In that district, 54% of the students obtained parental consent. In another district, the parental consent letter contained the same information about parental rights, but also included an appeal from the principal explaining the purpose of the survey; in that school, 95% of students received parental consent. When parental consent letters frame consent in terms of "giving permission to your child to participate in an effort to evaluate our school," parents are much more willing to provide consent than when they are informed that they have a right that they can waive by signing the consent form. Model letters do exist online, but they are worded to serve the legal function of informing the parent of their legal rights only and use wording that is off-putting to many parents. Schools need guidance in the wording of letters for anti-bullying surveys that will not only fulfill the necessary legal function, but will also explain to parents the purpose of the survey in making their child's school safer, the fact that the survey is not an evaluation of their child but rather their child's opportunity to evaluate their school and to have a voice in school anti-bullying programming, an appeal for parental permission so that the school can engage students in the process of making school safer, etc.