



# The Power of Title 59 NJ Tort Claims Act and the Management of Claims Against Boards of Education

# Agenda

## ERIC North MOCSSIF Joint Meeting January 12, 2023

**WELCOME** | Dr. Christopher Russo, West Windsor Plainsboro Board of Education  
NJSIG & ERIC North Chairperson

**NJSIG EXECUTIVE DIRECTOR REPORT** | Jill Deitch, Esq., NJSIG Executive Director

### **SUB-FUND ADMINISTRATORS REPORT**

MOCSSIF Sub-fund Administrator | Jay Lynch, Senior Vice President - Practice Leader

**PROGRAM INTRODUCTION** | Latonya A. Brennan, ERIC NORTH Sub-fund Administrator

### **PRESENTATION:**

The Power of Title 59 New Jersey Tort Claims Act and the Management of Claims Against Boards of Education

**DLGS course #16231**

- Stephen Tucker, Esq. | NJSIG General Counsel

### **Topics:**

- Property and casualty insurance coverage basics
- Evolution of the legal landscape for school district tort liability

### **QUESTION & ANSWERS**

Ivy Davis, Senior Business Development Specialist. New Jersey School Insurance Group

**OLD BUSINESS | NEW BUSINESS | ADJOURNMENT**



# Dr. Christopher Russo

West Windsor Plainsboro BOE

# Welcome!



**Jill Deitch, Esq.**

NJSIG Executive Director

# NJSIG Executive Report



**Jay Lynch**

Alliant

MOCSSIF Sub-fund Administrator

# Sub-fund Administrator Report



# Director's Report

**Jay Lynch**

Alliant / MOCSSIF Sub-fund Admin

## 2023 In-Person Training Day Save the Date:

**Thursday May 18, 2023**

- **Topic:** Professional Liability Refresher
- **Location and Time:** TBD



# Director's Report

**Jay Lynch**

Alliant / MOCSSIF Sub-fund Admin

- **Property Casualty Overview - NJSIG 2023-24**
- **Budget Development: Experience Modification Factors and Sub-fund Deviation Calculations**
  - Target: Mid-February for release
  - Business Administrators should review their workers' compensation claims data to see if there are any open claims that should be reviewed for accuracy prior to their modification factor being calculated.
  - Business Administrators should review payroll classification to ensure the accuracy of their calculations.

## 2023 NJ State Rates

Class Code	22-23	23-24	Change
8868 Prof	\$1.36	\$1.35	-1%
9106 Non-Professional	\$12.44	\$11.60	-6.8%



# Director's Report

Jay Lynch

Alliant / MOCSSIF Sub-fund Admin



## New Jersey Workers Compensation Payroll Reporting Guide

Please consider the following when estimating your payroll classification for the purposes of Workers Compensation;

### Professional (8868)

Administrators (even those associated with Transportation/Maintenance)  
Cafeteria Aides  
Clerical (even those associated with Transportation/Maintenance)  
Nurses  
Supervisors  
Playground Aides  
Secretarial  
Substitute Teachers  
Stipends Paid to Teachers (unless a reimbursement or expense)  
Teachers  
Teacher Aides

### Non Professional (9106)

Bus Drivers  
Security Officers/SRO's  
Maintenance/Custodial  
Bus Mechanics  
Bus Aides/Monitors  
Cafeteria (not aides)  
Custodial

- If you are estimating overtime into your payrolls, remember that overtime paid in excess of normal rate of pay, should be deducted.
- Estimated payroll does not need to include salary paid to any employee out on workers compensation
- Estimated payroll does not need to include severance pay unless for vacation.
- Estimated payroll does not need to include pay for unused sick time if under a formal plan.
- Estimated payrolls should include; all salaries, wages, commissions, bonuses, vacation, holiday, and sick time paid. The guideline here is that whatever is reported to the IRS on Schedule B (Form 941) needs to be included within





# Director's Report

Jay Lynch

Alliant / MOCSSIF Sub-fund Admin

## How Workers' Compensation Costs are Calculated:

- **Modification Factors:** calculated by NJSIG (factors three-year window of experience- not included in current year)
- **Deviation:** Based on sub-fund performance and provides a discount against the state rates
- **State Rates:** Promulgated by the State of New Jersey
- **Salary:** Professional/Non-Professional



# Director's Report

**Jay Lynch**

Alliant / MOCSSIF Sub-fund Admin

## General Market Outlook:

- **Property Insurance**
  - NJSIG tools to manage costs
  - Review the total pool aggregate limit
  - Assess the pool retention
  - Emphasize the historic good results
  - Create competition for the reinsurance business



# Director's Report

**Jay Lynch**

Alliant / MOCSSIF Sub-fund Admin

## General Market Outlook:

- **Cyber Insurance**
  - Multi-Factor Authentication (MFA)
  - Endpoint Detection and Response (EDR)
  - Segregation of Backups from Network
  - Patching
  - Virtual Private Network
  - Employee Training



# Director's Report

**Jay Lynch**

Alliant / MOCSSIF Sub-fund Admin

## General Market Outlook:

- **General Liability and Excess Liability**
  - Sexual Abuse and Molestation (SAM) claims
  - Recent state legislation has public entities being drawn into claims from as far back as the 1970s and 1980s
  - Average Daily Attendance (ADA or student enrollment) and loss history for specific to the district will also impact pricing for General Liability.



# Director's Report

**Jay Lynch**

Alliant / MOCSSIF Sub-fund Admin

## General Market Outlook:

- **Auto Liability & Physical Damage**
  - NJSIG had an uptick in auto claims last year which is consistent with industry trends



# Director's Report

**Jay Lynch**

Alliant / MOCSSIF Sub-fund Admin

## General Market Outlook:

- **School Board Legal Liability**
  - Based on previous multiple year rate increases and loss control efforts – the industry has begun to see stabilization in this line of coverage.



# Director's Report

**Jay Lynch**

Alliant / MOCSSIF Sub-fund Admin

## General Market Outlook:

- **Closing**

- NJSIG remains committed to a fiscally responsible approach in developing both a coverage and pricing strategy for members.
- NJSIG maintains a strong surplus position necessary in providing a cushion against unexpected risk or loss development and can help offset future premium increases.



# Latonya A. Brennan:

Arthur J. Gallagher

ERIC NORTH Sub-fund Administrator

# Program Introduction





# Claims Process Handouts


**Latonya A. Brennan**

ERIC North Sub-fund Administrator

For meeting materials, visit:

ERIC North: <https://www.njsig.org/events/315/>

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## Did personal property of a non-district employee get damaged by school property?


**Disclaimer:** This document has been prepared for school officials only as information and guidance. Every claim is handled on it's own individual merit and circumstance.

### NJ Title 59 - Claims Against Public Entities

In event that a personal item or property was damaged on / from school owned property, the owner of the damaged property must file a claim through their own insurance provider, even if the district may be at fault.

This is derived from NJ Title 59 - Claims Against Public Entities. Title 59 is the NJ Tort Claims Act passed in 1972 which provides uniform principles and provisions for protection of schools and municipalities. Simply stated, a municipality / school district in the state of New Jersey is protected if a third party attempts to recover money for damages or file a tort claim.

There is potential that the property owner can recover damages, **however, there are many factors to be considered!**



**CLAIM:** To file a claim, the following information must be provided to the School Business Office. This documentation order to file a claim:

- Own name, contact number, email, date of incident, description of damage, cause of damage, etc.
- Provide any photographs
- Copy of owner's "Damaged Insurance" declaration page showing deductibles and limits
- Estimate to repair
- Police report

Upon receipt of this information, the district will present it to New Jersey Schools Insurance Group (NJSIG) for further coverage determination. At that time, NJSIG adjuster will be assigned and will contact the owner of the property directly.

If you have any questions about a claim that has been filed, please contact NJSIG at 609-386-6060 or visit [www.njsig.org](http://www.njsig.org) for more information.



## Did a school district employee's automobile get damaged during the scope of their employment?

**Disclaimer:** This document has been prepared for school officials only as information and guidance. Every claim is handled on it's own individual merit and circumstance.

### NJ Title 59 - Claims Against Public Entities

In event that a "personal auto" is damaged on district property, the owner of the automobile must file a claim through their own insurance provider, even if the district may be at fault. This is derived from NJ Title 59 - Claims Against Public Entities. Title 59 is the NJ Tort Claims Act passed in 1972 which provides uniform principles and provisions for protection of schools and municipalities. Simply stated, a municipality / school district in the state of New Jersey is protected if a third party attempts to recover money for damages or file a tort claim.

There is a potential that the owner of the automobile can recover their deductible if the district's insurance carrier deems that the district is at fault or if the vehicle was being used at the direction of the board of education.

**FILING A CLAIM:**

In order for the district to file a claim, the following information needs to be collected from the district employee to be sent to the School Business Office. The district will need all of this documentation order to file a claim.

- Provide the following incident details:
  - Owner's name, contact number, email, date of incident, description of damage, cause of damage, etc.
- Provide any photographs
- Copy of owner's "Damaged Insurance" declaration page showing deductibles and limits
- Estimate to repair
- Police report

Upon receipt of this information, the district will present their findings to New Jersey Schools Insurance Group (NJSIG) for further coverage determination. At that time, an NJSIG adjuster will be assigned, and will contact the owner of the auto directly.

Examples of an automobile damage during the scope of their employment include, but are not limited to:

- An accident involving a district owned vehicle
- A tree/tree branch falling on vehicle
- An icicle falling from a building or object onto vehicle

If you have any questions about a claim that has been filed, please contact NJSIG at 609-386-6060 or visit [www.njsig.org](http://www.njsig.org) for more information.



# Claims Process Handouts

**Latonya A. Brennan**  
ERIC North Sub-fund Administrator

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**NJSIG**  
NEW JERSEY SCHOOLS  
INSURANCE GROUP

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## ERIC North Sub-fund Meeting

Date: **Thursday, January 12th, 2023**

Time: **10:00 AM**  
Ends At: 12:00 PM

**Description:**  
The Power of Title 59 New Jersey Tort Claims Act and the Management of Claims Against Boards of Education

**Contact:**  
Ivy Davis  
[idavis@njsig.org](mailto:idavis@njsig.org)  
(609) 386-6060 x3029

Administrators / Insurance:  
Trustee / Insurance  
CAIP  
Reservation of Rights Letter  
Title 59: Personal Property Damage  
Title 59: Personal Auto Damage

Business Administrators / Principals / Superintendents

- L.E. v. Plainfield Pub. Sch. Dist.
- P.L.2019, c.120: Actions against public entities and public employees arising from acts of sexual abuse

Plan of Risk Management

January 2023

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
				11	12	13
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Key:  
General (orange), ERIC North (red), CAIP (purple), Trustee (blue), ERIC West (pink), ERIC South (green), BACCEIC (light blue), NJEIF (cyan), MOCSSIF (brown)



# Coverages at a Glance

**Latonya A. Brennan**  
ERIC North Sub-fund Administrator



## Coverages at a Glance

Coverage	Overview	Key Information / Examples
<b>AUTO</b>	<ul style="list-style-type: none"> <li>Auto insurance provides for bodily injury and property damage for the named insured's legal liability as per the policy</li> </ul>	<ul style="list-style-type: none"> <li>Applies to collision, comprehensive, theft, vandalism, and more</li> <li>Covers vehicle damage for owned, non-owned, hired</li> </ul>
<b>CRIME</b>	<ul style="list-style-type: none"> <li>Crime coverage protects the named insured for monetary theft, employee dishonesty and forgery that aren't covered under the property policy</li> </ul>	<ul style="list-style-type: none"> <li>Theft of money inside the premises and outside of the premises in the custody of a messenger</li> <li>Check forgery and alteration</li> <li>Dishonest acts committed by employees with intent to cause loss and obtain improper financial benefits</li> </ul>
<b>COMPUTER</b>	<ul style="list-style-type: none"> <li>Provides coverage for computer network related intrusions, ransomware and third party liability to others.</li> </ul>	<ul style="list-style-type: none"> <li>Notification costs after a breach of private data</li> <li>Restoration after a covered cyber event</li> <li>Insurers have minimum requirements including MFA, training and back-ups/test recovery</li> <li>Computer forensic costs to determine extent of the breach</li> </ul>
<b>ENVIRONMENTAL</b>	<ul style="list-style-type: none"> <li>Environmental Impairment / Pollution Liability fills the coverage gaps created by pollution exclusions in liability and property insurance policies</li> <li>Policies can vary greatly</li> </ul>	<ul style="list-style-type: none"> <li>Coverage is provided for losses arising from the release or escape of pollutants</li> <li>Can include bodily injury, property damage, cleanup expenses, defense costs</li> </ul>

For meeting materials, visit:  
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Coverage	Overview	Key Information / Examples	Form
<b>GENERAL LIABILITY / 18A</b>	<ul style="list-style-type: none"> <li>General Liability insurance protects the named insured for bodily injury and property damage for which the named insured is legally obligated to pay, subject to policy terms and conditions</li> <li>18A Statutory Coverage/ Defense Only Coverage</li> </ul>	<ul style="list-style-type: none"> <li>Applies to slips, trips and falls, physical attacks, sexual abuse cases, HIB, and more.</li> <li>18A includes ethics complaints, quasi criminal complaints</li> </ul>	<ul style="list-style-type: none"> <li>Occurrence</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>Document incident</li> <li>Report</li> <li>Investigate</li> </ul>
<b>PROPERTY</b>	<ul style="list-style-type: none"> <li>Property insurance protects buildings and personal property</li> <li>Damages to school property that may be caused by a covered peril</li> </ul>	<ul style="list-style-type: none"> <li>Covered for all perils unless specifically excluded</li> <li>Includes flood (higher deductible/Flood Zone Cert)</li> <li>Statement of Value: All scheduled property</li> <li>Property should be reported timely.</li> </ul>	<ul style="list-style-type: none"> <li>Occurrence</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>Document incident</li> <li>Include pictures</li> <li>Report</li> </ul>
<b>SCHOOL BOARD LEGAL LIABILITY / ERRORS AND OMISSIONS</b>	<ul style="list-style-type: none"> <li>School Board Legal Liability protects the named insured on the job</li> <li>Specialized liability coverage (includes defense costs) for teachers, school leaders, district officers, and board members</li> </ul>	<ul style="list-style-type: none"> <li>For acts, errors, and omissions arising from services provided by the named insured while acting in the scope of their duties</li> <li>Covers hostile workplace, discrimination, sexual harassment, wrongful termination and more.</li> <li>If Coverage B is selected: Covered for Due Process/ Individual Education Plan (IEP). <i>(This is a defense only coverage)</i></li> </ul>	<ul style="list-style-type: none"> <li>Typically Claims Made – must be reported within policy period</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>Document incident</li> <li>Report immediately</li> </ul>
<b>WORKERS' COMPENSATION</b>	<ul style="list-style-type: none"> <li>Employer Responsibility/ Risk Management</li> <li>Provide Safe Place</li> <li>Safe Tools</li> <li>Qualified Workers</li> <li>Create Safety Rules</li> <li>Enforce Safety Rules</li> <li>Warn of any Dangers</li> </ul>	<ul style="list-style-type: none"> <li>Required for workers with work-related injuries or illnesses</li> <li>Pays up to 70% of the injured employee's salary</li> </ul>	<ul style="list-style-type: none"> <li>Occurrence</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>Document incident</li> <li>Call QualLynx at 800.425.3222 to trigger process</li> <li>Investigate</li> </ul>
<b>SUPPLEMENTAL INDEMNITY</b>	<ul style="list-style-type: none"> <li><u>Supplemental Indemnity is optional</u></li> <li>18A: must pay 100% of annual salary for one year</li> <li>Applies to full-salary employees</li> <li>Injured in the course and scope of employment, less wage loss</li> </ul>	<ul style="list-style-type: none"> <li>Pays the remaining 30% of the injured employee's salary</li> <li>Max benefit period: 52 weeks</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>

Developed for ERIC NORTH and MOCSSIF's sub-fund training session on January 12, 2023.  
\* This document is to be used as a reference guide only. Please refer to your district's policies for terms and conditions.



**Stephen Tucker, Esq.**

NJSIG General Counsel

**The Power of  
Title 59 NJ Tort  
Claims Act and  
the Management  
of Claims  
Against Boards  
of Education**



# Introduction

**Stephen Tucker, Esq.**  
NJSIG General Counsel

- This presentation is from the perspective of NJSIG.
- NJSIG is member-owned and operated.
- If NJSIG collects too much in contributions, then money is returned back to the members:
  - COVID-19 Return
  - Safety Grants
- NJSIG represents the collective interests of all school districts that participate.
- Consult with your risk manager and your board attorney when reviewing coverage determination letters.



# Property and Casualty Insurance Coverage Basics

**Stephen Tucker, Esq.**

NJSIG General Counsel

## Reporting a Claim:

- All coverages are purchased by the Board of Education, for the benefit of the entity and employees acting within the scope of their employment.
- Once you have submit a claim, you will receive a written claim acknowledgement.



# Property and Casualty Insurance Coverage Basics

**Stephen Tucker, Esq.**  
NJSIG General Counsel

## Reporting a Claim:

### Workers' Compensation vs. General Liability:

- Workers' compensation is generally a very straightforward line of coverage because it is what we call a statutory coverage.
- General liability coverage is not a statutory coverage, and thus the terms are set by the coverage/policy.

When a claim receipt acknowledgement letter is anything other than an unconditional acceptance of a claim, it's referred to as a reservation of rights letter.



# Property and Casualty Insurance Coverage Basics

**Stephen Tucker, Esq.**

NJSIG General Counsel

## Reporting a Claim: Reservation of Rights Letter

- What is a reservation of rights letter, and why I am receiving it?
  - Notice that NJSIG is handling the claim.
  - Accepting responsibility for the defense and indemnification of a claim.
  - Denying responsibility for the claim.
  - Providing the defense of a claim.
  - ...and more





# Property and Casualty Insurance Coverage Basics

**Stephen Tucker, Esq.**  
NJSIG General Counsel

## Reporting a Claim:

# Not all risk is insurable!



# Property and Casualty Insurance Coverage Basics

**Stephen Tucker, Esq.**

NJSIG General Counsel

## Reporting a Claim:

### Insurance:

in·sur·ance

/in 'SHoorəns, 'in, SHərəns/

*Noun*

“A thing providing protection against a possible eventuality.”



# Property and Casualty Insurance Coverage Basics

**Stephen Tucker, Esq.**  
NJSIG General Counsel

## Reservation of Rights Letter SAMPLE



New Jersey Schools Insurance Group  
6000 Midlantic Drive, Suite 300 North  
Mount Laurel, New Jersey 08054  
www.njsig.org

January 12, 2023

**VIA USPS**

Board of Education Member

**Re: Coverage determination**  
**Claim number:** 000001GL23  
**Member:** Board of Education  
**Policy number:** P-000-ZA  
**Petitioner:** Concerned Citizen  
**Respondent:** Board of Education Member

Dear Business Administrator:

This office is responsible for administering claims asserted against members of the New Jersey Schools Insurance Group ("NJSIG"), which includes the Board of Education. Please be advised that I am the adjuster assigned to handle this matter. Please direct further correspondence to this office using our claim number. Please accept this letter in response to your request for a coverage determination in the above-referenced matter under NJSIG general liability policy number P-000-ZA.

For the reasons stated below, NJSIG hereby agrees to defend you in the Action pursuant to the Policy's 18A STATUTORY PAYMENTS extension of coverage, subject to the review of, and consent of the Board of Education, and with the understanding that NJSIG does so in accordance with the terms and conditions of the instant reservation of rights letter and under a reservation of rights of all parties under the Policy.

### 1. The claim

As you know, a petition was filed with the School Ethics for the State of New Jersey against Board of Education Member ("the Action"). In the petition, Concerned Citizen alleges that Board of Education Member violated the New Jersey School Ethics Act. Specifically, Concern Citizen alleges that Board of Education Member

voted to award of a contract to a vendor because Board of Education Member had a friendship with the vendor. A copy of the complaint is attached as Exhibit A for your reference.

### 2. General Liability Policy P-000-ZA

NJSIG acknowledges that the Board of Education is a general liability fund member for the 2022/2023 fund year under policy number P-000-ZA ("the Policy") with a policy term of July 1, 2023 through July 1, 2024. As applicable to the present Action, the 18A STATUTORY PAYMENTS extension of the Policy is limited to a \$100,000 annual aggregate for defense costs. There is a \$5,000 deductible per claim for the "18A STATUTORY PAYMENTS" extension of coverage. A copy of the Policy is attached as Exhibit B for your reference.

With regard to the extension of coverage for 18A STATUTORY PAYMENTS the Policy provides, in pertinent part:

The Group agrees to pay or otherwise indemnify the Named Insured for "18A STATUTORY PAYMENTS".

The Group shall have the right and duty to defend the Named Insured in any suit seeking "18A STATUTORY PAYMENTS", and may make such investigation and settlement of any claim or suit as it deems expedient, but the Group shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Group's liability has been exhausted by payment of judgments, settlements, or defense costs. The Group shall have the right to select defense counsel and the Insured shall not engage counsel without consultation and approval by the Group.

The defense costs provided by this extension are limited to a \$100,000 annual aggregate and are included within the Limits of Liability provided under Article 5. D. 1. NJSIG-G1 (7/21) and subject to a \$5,000 deductible per claim or the General Liability deductible, whichever is greater.

[NJSBAIG-G3 (7/17), Page 1 of 1]

N.J.S.A. 18A:16-6 provides that:



# Property and Casualty Insurance Coverage Basics

**Stephen Tucker, Esq.**  
NJSIG General Counsel

## Reservation of Rights Letter SAMPLE

Whenever any civil or administrative action or other legal proceeding has been or shall be brought against any person holding any office, position or employment under the jurisdiction of any board of education, including any student teacher or person assigned to other professional pre-teaching field experience, for any act or omission arising out of and in the course of the performance of the duties of such office, position, employment or student teaching or other assignment to professional field experience, the board shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom; provided that

a. no employee shall be entitled to be held harmless or have his defense costs defrayed in a disciplinary proceeding instituted against him by the board or when the employee is appealing an action taken by the board; and

b. indemnification for exemplary or punitive damages shall not be mandated and shall be governed by the standards and procedures set forth in N.J.S. 59:10-4.

Any board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

[N.J.S.A. 18A:16-6]

“The only question to be answered when a school board employee seeks civil indemnification under N.J.S.A. 18A-16-6 is whether the employee was acting within the scope of his or her employment duties; a conviction or other unfavorable disposition in a related criminal matter answers that question in the negative.” L.A. v. Bd. of Educ. of City of Trenton, Mercer Cty., 221 N.J. 192, 205-06 (2015).

### 3. Coverage

With regard to the 18A STATUTORY PAYMENTS extension under the Policy, “the only question to be answered” is whether you were acting within the scope of your employment at the time of the conduct alleged in the first amended complaint. See L.A., 221 N.J. at 205-06. NJSIG will provide coverage as outlined below because, at this time, you have represented to us that you were acting within the scope of your employment as a member of the Board of Education.

Thus, while a factual record is developed upon which a final determination can be made, NJSIG will provide you with coverage for defense costs only under the 18A STATUTORY PAYMENTS extension. Please note that there is no coverage for bodily injury damages under the 18A STATUTORY PAYMENTS extension, and that this extension of the Policy covers only defense costs up to an annual aggregate limit of **\$100,000, and is subject to a \$5,000 deductible**.

### 4. Conclusion

For the reasons stated above, NJSIG hereby agrees to defend you in the Action pursuant to the Policy’s 18A STATUTORY PAYMENTS extension of coverage, subject to the review of, and consent of the Board of Education, and with the understanding that NJSIG does so in accordance with the terms and conditions of the instant reservation of rights letter and under a reservation of rights of all parties under the Policy. NJSIG expressly reserves the right to seek a declaration from the Commissioner of Education and/or any other appropriate adjudicatory body at an appropriate time once a factual record has been developed to determine the applicability of N.J.S.A. 18A:16-6 in this matter.

Any action that NJSIG may take to investigate and/or defend this matter is not to be construed as a waiver of the policy terms and conditions. NJSIG reserves the right to further disclaim coverage at a later time. Your rights are also fully reserved. You may accept or reject the terms and conditions set forth in the instant reservation of rights letter.

**NJSIG has assigned the Offices of Great Law, LLC** to represent you in the Action. You may select independent counsel of your own choosing. To the extent that you select independent counsel of your own choosing, NJSIG may review your proposed counsel for approval by NJSIG and shall pay such approved counsel reasonable and customary defense fees, costs and disbursements.

Sincerely,

Claims Examiner

Enclosures

cc: Board of Education  
Insurance broker for the Board of Education



# Coverages at a Glance

Stephen Tucker, Esq.  
NJSIG General Counsel

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## Coverages at a Glance

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\* This document is to be used as a reference guide only. Please refer to your district's policies for terms and conditions.

Coverage	Overview	Key Information / Examples	Form
<b>GENERAL LIABILITY / 18A</b>	<ul style="list-style-type: none"> <li>General Liability insurance protects the named insured for bodily injury and property damage for which the named insured is legally obligated to pay, subject to policy terms and conditions</li> <li>18A Statutory Coverage/ Defense Only Coverage</li> </ul>	<ul style="list-style-type: none"> <li>Applies to slips, trips and falls, physical attacks, sexual abuse cases, HIB, and more.</li> <li>18A includes ethics complaints, quasi criminal complaints</li> </ul>	<ul style="list-style-type: none"> <li>Occurrence</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>Document incident</li> <li>Report</li> <li>Investigate</li> </ul>
<b>PROPERTY</b>	<ul style="list-style-type: none"> <li>Property insurance protects buildings and personal property</li> <li>Damages to school property that may be caused by a covered peril</li> </ul>	<ul style="list-style-type: none"> <li>Covered for all perils unless specifically excluded</li> <li>Includes flood (higher deductible/Flood Zone Cert)</li> <li>Statement of Value: All scheduled property</li> <li>Property should be reported timely.</li> </ul>	<ul style="list-style-type: none"> <li>Occurrence</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>Document incident</li> <li>Include pictures</li> <li>Report</li> </ul>
<b>SCHOOL BOARD LEGAL LIABILITY / ERRORS AND OMISSIONS</b>	<ul style="list-style-type: none"> <li>School Board Legal Liability protects the named insured on the job</li> <li>Specialized liability coverage (includes defense costs) for teachers, school leaders, district officers, and board members</li> </ul>	<ul style="list-style-type: none"> <li>For acts, errors, and omissions arising from services provided by the named insured while acting in the scope of their duties</li> <li>Covers hostile workplace, discrimination, sexual harassment, wrongful termination and more.</li> <li>If Coverage B is selected: Covered for Due Process/ Individual Education Plan (IEP). <i>(This is a defense only coverage)</i></li> </ul>	<ul style="list-style-type: none"> <li>Typically Claims Made – must be reported within policy period</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>Document incident</li> <li>Report immediately</li> </ul>
<b>WORKERS' COMPENSATION</b>	<ul style="list-style-type: none"> <li>Employer Responsibility/ Risk Management</li> <li>Provide Safe Place</li> <li>Safe Tools</li> <li>Qualified Workers</li> <li>Create Safety Rules</li> <li>Enforce Safety Rules</li> <li>Warn of any Dangers</li> </ul>	<ul style="list-style-type: none"> <li>Required for workers with work-related injuries or illnesses</li> <li>Pays up to 70% of the injured employee's salary</li> </ul>	<ul style="list-style-type: none"> <li>Occurrence</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>Document incident</li> <li>Call QualLynx at 800.425.3222 to trigger process</li> <li>Investigate</li> </ul>
<b>SUPPLEMENTAL INDEMNITY</b>	<ul style="list-style-type: none"> <li><u>Supplemental Indemnity is optional!</u></li> <li>18A: must pay 100% of annual salary for one year</li> <li>Applies to full-salary employees</li> <li>Injured in the course and scope of employment, less wage loss</li> </ul>	<ul style="list-style-type: none"> <li>Pays the remaining 30% of the injured employee's salary</li> <li>Max benefit period: 52 weeks</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>



## Part II:

# Evolution of the Legal Landscape for School District Tort Liability



# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**  
NJSIG General Counsel

## Student Transportation

- **P.L. 2018, c.118:** Requires certain school buses to be equipped with lap and shoulder seat belts

For meeting resources, visit:

ERIC North: <https://www.njsig.org/events/315/>

MOCSSIF: <https://www.njsig.org/events/316/>

### CHAPTER 118

AN ACT concerning school buses and amending P.L.1992, c.92.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1992, c.92 (C.39:3B-10) is amended to read as follows:

C.39:3B-10 School bus safety equipment required.

1. In addition to the requirements in Federal Motor Vehicle Safety Standard No. 222 (49 C.F.R. s.571.222) concerning school bus passenger seating and crash protection, each school bus as defined in R.S.39:1-1 shall be equipped with seats of a minimum seat back height of 28 inches, or 24 inches as measured from the seating reference point, and three-point lap and shoulder seat belts for each seating position on the bus or other child restraint systems that are in conformity with applicable federal standards. The design and installation of seat belts or other child restraint systems that are in conformity with applicable federal standards shall conform to the regulations promulgated by the State Board of Education, in consultation with the Chief Administrator of the New Jersey Motor Vehicle Commission. The State board shall promulgate regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), for the design and installation of seat belts or other child restraint systems that are in conformity with applicable federal standards.

As used in this section "seating reference point" shall be defined as the term is defined in 49 C.F.R.s.571.3.

2. This act shall take effect immediately and shall be applicable to school buses manufactured on or after the 180th day following enactment.

Approved August 25, 2018.



# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**  
NJSIG General Counsel

## Student Transportation

- **P.L.2018, c.151:** Requires bus drivers 70 and older for the BOE to submit proof of physical fitness every year, requires bus drivers 75 and older for the BOE to submit proof of physical fitness twice a year

For meeting resources, visit:

ERIC North: <https://www.njsig.org/events/315/>

MOCSSIF: <https://www.njsig.org/events/316/>

### CHAPTER 151 (CORRECTED COPY)

AN ACT concerning medical examinations for certain special licenses and amending R.S.39:3-10.1 and P.L.1975, c.284.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. R.S.39:3-10.1 is amended to read as follows:

Licensing of bus drivers, exceptions.

39:3-10.1. No person shall drive any motor vehicle or trackless trolley with a capacity of more than six passengers used for the transportation of passengers for hire or for the transportation of passengers to or from summer day camps or summer residence camps or any bus as defined by the chief administrator used for the transportation of passengers, or any bus used to transport children to and from school pursuant to N.J.S.18A:39-1 et seq. or when being used by a private school to transport children to and from school, unless specially licensed so to do by the chief administrator or in the case of a nonresident, licensed pursuant to the laws of the nonresident's state of residence with respect to the licensing of bus drivers, except that this provision shall not apply to the operators of vehicles used in ride-sharing arrangements, taxicabs, motor vehicles with a capacity of more than six passengers, which are owned and operated directly by businesses engaged in the practice of mortuary science when those vehicles are used exclusively for providing transportation related to the provision of funeral services and which shall not be used in that capacity at any time to pick up or discharge passengers to any airline terminal, train station, or other transportation center, or for any purpose not directly related to the provision of funeral services.

Such license shall not be granted by the chief administrator until the applicant therefor is at least 18 years of age and has passed a satisfactory examination in ascertainment of the applicant's driving ability and familiarity with the mechanism of said vehicle and has presented evidence, satisfactory to the chief administrator of the applicant's previous experience (including proof that the applicant has had at least three years of driving experience), good character, and physical fitness in the form of a medical examination and accompanying medical certificate completed by a medical examiner listed on the National Registry of Certified Medical Examiners maintained by the Federal Motor Carrier Safety Administration. The accompanying medical certificate shall contain the medical examiner's National Registry of Certified Medical Examiners number. Said license shall be effective until suspended or revoked by the chief administrator; provided, the special licensee is also the holder of a license as provided for in R.S.39:3-10.

Every holder of a special license issued pursuant to this section shall furnish to the chief administrator satisfactory evidence of continuing physical fitness in the form of a medical examination and accompanying medical certificate completed by a medical examiner listed on the National Registry of Certified Medical Examiners maintained by the Federal Motor Carrier Safety Administration, good character, and experience at the time of application renewal or such other time as the chief administrator may require, and in such form as the chief administrator may require.

In addition to the medical examination required of every holder of a special license issued pursuant to this section, every holder of a special license issued pursuant to this section for the transporting of children to and from schools, pursuant to N.J.S.18A:39-1 et seq.:

- a. who is 70 years of age or older shall annually furnish to the holder's employer for review by the commission at the commission's biannual inspection satisfactory evidence of





# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**  
NJSIG General Counsel

## Student Transportation

- **P.L.2018, c.152:** Requires BOE to verify bus driver that has their license suspended is no longer driving for the BOE within one day

### CHAPTER 152

**AN ACT** concerning school bus drivers and supplementing chapter 39 of Title 18A of the New Jersey Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.18A:39-19.6 Suspended, revoked school bus driver license; notification required.

1. If a board of education or a contractor that provides pupil transportation services under contract with a board of education is notified by the Department of Education that a school bus driver employed by the board or contractor has had his bus driver's license suspended or revoked, the employing board of education or contractor, within one business day of the notification, shall provide a statement to the department verifying that the school bus driver no longer operates a school bus for the board or contractor.

2. This act shall take effect immediately.

Approved December 17, 2018.

For meeting resources, visit:

ERIC North: <https://www.njsig.org/events/315/>

MOCSSIF: <https://www.njsig.org/events/316/>



# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**  
NJSIG General Counsel

## Student Transportation

- **P.L.2018, c.159:** Compliance with federal regulations

### CHAPTER 159

**AN ACT** concerning the regulation of school bus operations and supplementing Title 39 of the Revised Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.39:3B-27 Compliance with certain federal regulations required for school bus operations.

1. In addition to the provisions of any State law, rule, or regulation containing more stringent requirements, provided that those requirements are compatible with federal law, and notwithstanding the provisions of any State law, rule, or regulation to the contrary, school bus operations in this State shall comply with the requirements of Part 40 of Title 49 of the Code of Federal Regulations and Chapter III of Title 49 of the Code of Federal Regulations, as amended and supplemented, including, but not limited to: Part 303, Part 325, Part 350, Part 365, Part 366, Part 369, Part 373, Part 374, Part 376, Part 379, Part 380, Part 381, Part 382, Part 385, Part 386, Part 387, Part 389, Part 390, Part 391, Part 392, Part 393, Part 395, Part 396, Part 399, and any other part of Chapter III of Title 49 of the Code of Federal Regulations that the Chief Administrator of the New Jersey Motor Vehicle Commission, in consultation with the Commissioner of Education, determines is in the public interest to be applicable to school bus operations.

2. This act shall take effect 180 days following the date of enactment.

Approved December 17, 2018.

For meeting resources, visit:

ERIC North: <https://www.njsig.org/events/315/>

MOCSSIF: <https://www.njsig.org/events/316/>



# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**  
NJSIG General Counsel

For meeting resources, visit:  
ERIC North: <https://www.njsig.org/events/315/>  
MOCSSIF: <https://www.njsig.org/events/316/>

**Student Transportation Safety & Training:**  
[Click here](#) for more information.



# Student Transportation

- P.L.2018, c.160:** Training required for school bus drivers, aides twice per year.

**CHAPTER 160**

**AN ACT** concerning the training of school bus drivers and school bus aides and supplementing chapter 39 of Title 18A of the New Jersey Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.18A:39-19.1a Training required for school bus drivers, aides.

1. a. As used in this section, "employer" means a board of education that provides pupil transportation services under contract with a board of education.

b. An employer shall ensure that all school bus drivers and school bus aides receive the training and education necessary to perform the functions of their positions.

c. An employer shall administer a safety education program for school bus drivers and school bus aides that it employs, which shall include:

- (1) training on accident and discipline;
- (2) training on accident and emergency procedures;
- (3) training on conducting school bus emergency exit drills;
- (4) training on loading and unloading procedures;
- (5) training on school bus stop loading zone safety;
- (6) inspecting the school vehicle for students left on board at the end of the school day;
- (7) the use of a student's education records, including the employer's records, to ensure the privacy of the student and the student's records, if applicable.

d. In addition to the training requirements in subsection c. of this section, an employer shall administer to school bus drivers a safety education program that includes training on driving techniques and railroad crossing procedures.

e. The employer shall administer the safety education program set forth in subsections c. and d. of this section twice per calendar year.

2. This act shall take effect immediately.

Approved December 17, 2018.

# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**  
NJSIG General Counsel

## Student Transportation

Transportation of students in private passenger autos, in particular for after school sports is lawful as long as the requirements of N.J.S.A. 18A:39-20.1

For meeting resources, visit:  
ERIC North: <https://www.njsig.org/events/315/>  
MOCSSIF: <https://www.njsig.org/events/316/>

< Prev Next >

To Regulation

Search District Policies

District Policies TOC

### District Policy

#### 8660 - TRANSPORTATION BY PRIVATE VEHICLE (M)

Section: Operations  
Date Created: December 2013  
Date Edited: December 2013

#### M

Student transportation to and from school related student activities normally will be provided in Board owned vehicles and by Board employees who are licensed bus drivers. However, volunteers may transport students to and from school related student activities in unusual circumstances or when a group is too small in number to make economical use of Type I or Type II (school bus or van) vehicles.

Volunteer drivers must be school district employees or parent(s) or legal guardian(s) who are willing to provide transportation to and from school related activities.

Qualifications for volunteer drivers shall include:

1. A valid driver's license with no convictions for moving violations during the last two years;
2. A private passenger vehicle of eight or fewer capacity with a current inspection sticker; and
3. Statutorily required insurance of at least the minimum coverage.

The Superintendent, or in an emergency, the Building Principal, must give advance approval to the activity and to the volunteer driver. To be approved, drivers must provide evidence of compliance with the qualifications listed above.

Other factors to be considered are:

1. Students will be picked up and/or dropped off in a safe area;
2. Adequate supervision will be provided to ensure safety;
3. Parent(s) or legal guardian(s) will be notified in advance that a volunteer driver will be providing transportation and must give written approval; and
4. Volunteer drivers shall be reimbursed for all expenses incurred including the Board approved mileage rate per mile.

In the event of an accident in which a student is riding in a volunteer's private passenger automobile, the first respondent would be the student's parent(s) or legal guardian(s)' automobile insurance carrier. The New Jersey No Fault Law provides unlimited medical expenses, and further provides that these expenses will be paid by the parent(s) or legal guardian(s)' automobile insurer regardless of the ownership of the vehicle in which a student is injured and regardless of fault.

If the parent(s) or legal guardian(s) do not have automobile insurance or if litigation results, then the insurer or the owner of the car involved in the accident will respond first. The Board of Education's insurance coverage will be in effect when claims are larger than the insurance carried by the owner of the vehicle.

Expenses incurred by school Board personnel as a result of injuries suffered while operating private passenger vehicles on school business will be covered by workers' compensation benefits.

N.J.S.A. 18A:16-6; 18A:25-2; 18A:39-20.1  
N.J.A.C. 6A:27-7.6; 6A:27-7.7

Adopted: 17 December 2013



# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**  
NJSIG General Counsel

Transportation Contracts Procedures and Forms:  
[Click here](#) for more information.

# Student Transportation

The screenshot shows the State of New Jersey Department of Education website. At the top, it features the state seal and the text "STATE OF NEW JERSEY DEPARTMENT OF EDUCATION". To the right, it lists "Governor Phil Murphy • Lt. Governor Sheila Oliver" and provides links for "NJ Home", "Services A to Z", "Departments/Agencies", and "FAQs". There is a search bar with "NJ DOE" selected and a "Search" button. Below the search bar is a "Select Language" dropdown menu. A navigation bar contains links for "Home", "About Us", "Educators", "Families", "Administrators", "News", and "Contact Us". The main content area is titled "School Finance" and "Student Transportation". Under "Student Transportation", there is a section for "Transportation Contracts Procedures and Forms" which includes a list of bullet points and links to various documents.

STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION

Governor Phil Murphy • Lt. Governor Sheila Oliver  
NJ Home | Services A to Z | Departments/Agencies | FAQs

NJ DOE Search Search

Select Language

DOEA to Z: A B C D E F G H I J K L M N O P Q R S T U V W X Y Z #

Home About Us Educators Families Administrators News Contact Us

## School Finance

- School Finance Home
- Accounting and Financial Reporting
- Accounting and Fiscal Guidance
- Annual School District Budget
- Community Eligibility Provision (CEP) Information
- Data Submission and Information
- Indirect Cost Rate
- Nonpublic School Services
- Private Schools for Students with Disabilities
- State Aid, Funding Formula & Payments
- Student Transportation
- Taxpayers' Guide to Education Spending (TGES)
- About School Finance/Contact Us

## Student Transportation

### Transportation Contracts Procedures and Forms

- The Consumer Price Index (CPI) for student transportation contract renewals for the 2022-2023 school year is 1.91%.
- The bid threshold for quoted (unanticipated) and parental student transportation contracts is \$20,200.00, effective July 1, 2021 to June 30, 2023.

- [Contracting Transportation Services](#) - Updated 7/18/13 (2148 kb PDF)
- [Sample Bid Specifications for Transportation To and From School](#) - Updated 2/20 (37 kb Microsoft Word)
- [Sample Bid Forms for Transportation To and From School](#) - Updated 8/22/19 (319 kb Microsoft Word)
- [Sample Bid Specifications for School Related Activities Transportation](#) - Updated 4/16/19 (70 kb Microsoft Word)
- [Sample Bid Forms for School Related Activities Transportation](#) - Updated 6/18/19 (288 kb Microsoft Word)
- [Sample School Related Activities Transportation Bid Sheet](#) - Updated 6/18/19 (43 kb Microsoft Excel)
- [Student Transportation Contract Forms](#)



# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**  
NJSIG General Counsel

## Student Supervision

- L.E. v. Plainfield Pub. Sch. Dist., 456 N.J. Super. 336 (Super. Ct. App. Div. 2018)

“Consistent with this authority, we conclude that school personnel’s supervisory responsibilities may extend to the prevention of unwanted sexual encounters between students.”

For meeting resources, visit:  
ERIC North: <https://www.njsig.org/events/315/>  
MOCSSIF: <https://www.njsig.org/events/316/>

DOCKET NO. A-3638-16T1  
SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

### L.E. v. Plainfield Pub. Sch. Dist.

456 N.J. Super. 336 (App. Div. 2018) · 194 A.3d 105  
Decided Oct 5, 2018

DOCKET NO. A-3638-16T1

10-05-2018

L.E. and P.T., Plaintiffs-Appellants, v. The PLAINFIELD PUBLIC SCHOOL DISTRICT, Plainfield Board of Education, Ann Nettingham, Angela Bento and Anna Belin-Pyles, Defendants/Third Party Plaintiffs-Respondents, v. A.D. and R.B., Third Party Defendants.

Matthew Van Natten, attorney for appellants. Nirenberg & Varano, LLP, attorneys for respondents (Howard M. Nirenberg, Hackensack, of counsel; Sandra N. Varano, on the brief).

OSTRER, J.A.D.

Matthew Van Natten, attorney for appellants.

Nirenberg & Varano, LLP, attorneys for respondents (Howard M. Nirenberg, Hackensack, of counsel; Sandra N. Varano, on the brief).

Before Judges Sabatino, Ostrer and Rose.

The opinion of the court was delivered by

<sup>339</sup> OSTRER, J.A.D.\*339 Plaintiffs L.E. and her mother, P.T., allege that defendants, a school district and several of its employees, negligently supervised L.E. and two teenage male students on school grounds; failed to protect L.E. from a sexual assault; and failed to undertake an adequate investigation after L.E.'s delayed report. Plaintiffs allege that L.E. suffered psychological injury as a result. They appeal from the summary judgment dismissal of their complaint.

We conclude defendants owed L.E. a duty to exercise reasonable care in supervising her and fellow students during the school day; and plaintiffs' expert provided sufficient evidence for a jury to reasonably conclude that defendants failed to fulfill that duty. The court erred in determining that two provisions of the Tort Claims Act (TCA or Act) – N.J.S.A. 59:5-4, governing the failure to provide police protection services, and N.J.S.A. 59:3-5, governing the failure to enforce laws – shield defendants from liability for the negligent supervision of the students preceding the assault. However, we agree with the trial court that plaintiffs failed to establish a reasonable standard of care governing the appropriate response to L.E.'s report of the assault, or that she suffered any harm from the alleged shortcomings in the post-assault investigation.

Therefore, we reverse in part, and affirm in part, the trial court's order granting summary judgment.

340 \*340 I.

We view the facts in the light most favorable to plaintiffs. *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 536, 666 A.2d 146 (1995). June 23, 2011, was the last day of L.E.'s high school freshman year. She was on the playground for a scheduled gym class, but most students had "skipped" that day. The boys' and girls' gym classes were combined, but there was no real instruction. L.E. testified, "We didn't really have a class. Nobody came. We're just, it was like a free day." She said no teachers or security guards were present on the playground.

# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**  
NJSIG General Counsel

## Student Supervision

**P.L. 2019, c. 239:** Extended the statute of limitations for sexual assault claims, and eliminated immunities for public entities in most claims alleging sexual assault.

For meeting resources, visit:  
ERIC North: <https://www.njsig.org/events/315/>  
MOCSSIF: <https://www.njsig.org/events/316/>

### CHAPTER 239

AN ACT concerning civil actions against public entities and public employees arising from acts of sexual abuse and amending P.L.2019, c.120.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 7 of P.L.2019, c.120 (C.59:2-1.3) is amended to read as follows:

C.59:2-1.3 Liability for public entity, employee.

7. a. Notwithstanding any provision of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., to the contrary:

(1) immunity from civil liability granted by that act to a public entity or public employee shall not apply to an action at law for damages as a result of a sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1) being committed against a person, which was caused by a willful, wanton or grossly negligent act of the public entity or public employee ; and

(2) immunity from civil liability granted by that act to a public entity shall not apply to an action at law for damages as a result of a sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1) being committed against a minor under the age of 18, which was caused by the negligent hiring, supervision or retention of any public employee.

b. Every action at law involving a public entity or public employee as described in subsection a. of this section shall be subject to the statute of limitations set forth in section 2 of P.L.2019, c.120 (C.2A:14-2a), and may be brought during the two-year period set forth in subsection a. of section 9 of P.L.2019, c.120 (C.2A:14-2b), notwithstanding that the action would otherwise be barred through application of the statute of limitations.

2. This act shall take effect on December 1, 2019, the same day that P.L.2019, c.120 (C.2A:14-2a et al.) takes effect, and shall apply to any cause of action filed on or after that date, as well as any cause of action filed prior to that effective date that has not yet been finally adjudicated or dismissed by a court as of that effective date.

Approved August 9, 2019.



# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**  
NJSIG General Counsel

[Click here](#) more information for your Human Resources Directors and Supervisors

## Hiring of School Personnel

P.L. 2018, c. 5

January 5, 2023 | COVID-19 Information

OFFICIAL SITE OF THE STATE OF NEW JERSEY NJ.gov | Services | Agencies

Department of Education

Office of Student Protection

Office of Student Protection | Instructions | Forms | Chief School Administrator Letters | Pre-Employment Resources 5

Home / Office of Student Protection / Pre-Employment Resources P.L. 2018, c. 5

### Pre-Employment Resources P.L. 2018, c. 5

Effective June 1, 2018, [P.L. 2018, c. 5](#) requires that all school districts, charter schools, nonpublic schools, and contracted service providers regarding child abuse and sexual misconduct of prospective employees who will have regular contact with students. Consistent with the requirements of the statute, the Department of Education has developed employment forms that hiring entities may use to complete the required employment history review. When the forms provided below, the hiring entity is still required to comply with the terms of the statute. Please note that this employer history review requirements.

The resources below include two forms and a list of frequently asked questions regarding the implementation of P.L. 2018, c. 5:

- [Sexual Misconduct/Child Abuse Disclosure Release](#)
- [Sexual Misconduct/Child Abuse Disclosure Information Request](#) (follow-up form)
- [Frequently Asked Questions](#)

For meeting resources, visit:  
ERIC North: <https://www.njsig.org/events/315/>  
MOCSSIF: <https://www.njsig.org/events/316/>

### CHAPTER 5

AN ACT concerning school employees and supplementing chapter 6 of Title 18A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.18A:6-7.6 Definitions relative to certain school employees.

1. As used in this act:

“Child abuse” means any conduct that falls under the purview and reporting requirements of P.L.1971, c.437 (C.9:6-8.8 et seq.) and is directed toward or against a child or student, regardless of the age of the child or student.

“Sexual misconduct” means any verbal, nonverbal, written, or electronic communication, or any other act directed toward or with a student that is designed to establish a sexual relationship with the student, including a sexual invitation, dating or soliciting a date, engaging in sexual dialogue, making sexually suggestive comments, self-disclosure or physical exposure of a sexual or erotic nature, and any other sexual, indecent or erotic contact with a student.

C.18A:6-7.7 Requirements for certain school employees.

2. A school district, charter school, nonpublic school, or contracted service provider holding a contract with a school district, charter school, or nonpublic school shall not employ for pay or contract for the paid services of any person serving in a position which involves regular contact with students unless the school district, charter school, nonpublic school, or contracted service provider:

a. Requires the applicant to provide:

(1) A list, including name, address, telephone number and other relevant contact information of the applicant’s:

- current employer;
- all former employers within the last 20 years that were schools; and
- all former employers within the last 20 years where the applicant was employed in a position that involved direct contact with children; and

(2) A written authorization that consents to and authorizes disclosure of the information requested under subsection b. of this section and the release of related records by the applicant’s employers listed under paragraph (1) of this subsection, and that releases those employers from liability that may arise from the disclosure or release of records;

(3) A written statement as to whether the applicant:

(a) has been the subject of any child abuse or sexual misconduct investigation by any employer, State licensing agency, law enforcement agency, or the Department of Children and Families, unless the investigation resulted in a finding that the allegations were false or the alleged incident of child abuse or sexual misconduct was not substantiated;

(b) has ever been disciplined, discharged, nonrenewed, asked to resign from employment, resigned from or otherwise separated from any employment while allegations of child abuse or sexual misconduct were pending or under investigation, or due to an adjudication or finding of child abuse or sexual misconduct; or

(c) has ever had a license, professional license, or certificate suspended, surrendered, or revoked while allegations of child abuse or sexual misconduct were pending or under investigation, or due to an adjudication or finding of child abuse or sexual misconduct; and





# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**  
NJSIG General Counsel

## Armed School Personnel

P.L. 2016, c. 68; P.L. 2019, c. 51

For meeting resources, visit:

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New Jersey School Boards Association

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Home > News & Information > School Leader > MAY/JUNE 2017 • VOLUME 47 • 6 > Law Enforcement in Schools: A New Option is Available for New Jersey

By Jonathan Pushman

As New Jersey's school boards seek to make their schools safer and more secure, one step many have considered is whether to place a law enforcement presence in schools. Boards of education making that decision now have a new option.

Beginning June 1, school boards across New Jersey will have a new alternative as the result of a recent law that creates a type of law enforcement personnel specifically trained and hired to provide security in and around schools. This new category of officer will be known as a Class Three Special Law Enforcement Officer (SLEO), and it has the potential to serve as a safety-enhancing, cost-beneficial resource for districts.

**Choices in Law Enforcement** It is almost universally accepted that a school resource officer (SRO) is the ideal choice when placing a law enforcement presence in a school. An SRO is a specially-trained sworn police officer who is assigned full-time to protect the children, staff, and property in New Jersey's public schools. The mandatory training they receive ensures they are adequately prepared to face challenges that are unique to the school climate, and handle them appropriately.

The NJSBA School Security Task Force, a group convened in March 2013 as a part of the NJSBA's Safe and Secure Schools Project, in response to the deadly December 2012 shootings at Sandy Hook Elementary School in Connecticut, studied all aspects of school security. In its 2014 final report, the task



# Evolution of the Legal Landscape for School District Tort Liability

**Dr. Christopher Russo**

West Windsor Plainsboro BOE  
NJSIG & ERIC North Chairperson

## School Resource Officers

- The advantages and disadvantages of a school resource officer versus class three officer.



# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**  
NJSIG General Counsel

## Anti-bullying Requirements

P.L. 2022., c. 338;

This law specifically requires a district to amend its anti-bullying policy to conform with the model policy available from the Department of Education.

The screenshot shows a webpage from the New Jersey Department of Education (NJDOE). The page title is "Keeping Our Students Safe, Healthy & In School". The navigation bar includes "OSSS Home", "School Health Services", "Safe & Positive Learning Environments" (highlighted), "Student Wellness", "School Programs", and "NJSS". The breadcrumb trail is "Home / Keeping Our Students Safe, Healthy & In School / Safe & Positive Learning Environments / 2022 Amendments to New Jersey's Anti-Bullying Bill of Rights Act (ABR): FAQs & Resources". The main heading is "2022 Amendments to New Jersey's Anti-Bullying Bill of Rights Act (ABR): FAQs & Resources". The text states: "New Jersey has been a leader in the establishment of a strong statutory, regulatory policy and program framework to support the prevention, remediation and reporting of HIB in schools. Provided on this webpage are the required harassment, intimidation and bullying (HIB) incident reporting forms, the updated [Model Policy for Preventing HIB](#) and a list of frequently asked questions concerning the 2022 amendments to New Jersey's [Anti-Bullying Bill of Rights Act \(ABR\)](#) and [N.J.A.C. 6A:16-7.7 and 7.8](#)." Below this is a section titled "Addressing Harassment, Intimidation, and Bullying in Schools: Frequently Asked Questions" with a sub-heading "The [Anti-Bullying Bill of Rights Act \(ABR\)](#) was authorized in January, 2011 and amended in January 2022. The Frequently Asked Questions pertain to the amendments enacted in January 2022, and have been updated as of August 2022." A sidebar on the right titled "Resources" lists: "Model Policy for Prohibiting HIB (August 2022)", "HIB Incident Form for Families (PDF)", "HIB Incident Form for Families (Word)", "HIB Incident Form for LEAs", and "School Climate State Coordinator Contact Information: HIB@doe.nj.gov". A footer note says "The NJDOE will continue to update this page as new resources are made available to support local". A yellow arrow points from the right towards the breadcrumb link "2022 Amendments to New Jersey's Anti-Bullying Bill of Rights Act (ABR): FAQs & Resources".

[Click here](#) for the link.



# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**  
NJSIG General Counsel

# Anti-bullying Requirements

Model policy:

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## Model Policy and Guidance for Prohibiting Harassment, Intimidation and Bullying on School Property, at School Sponsored Functions and on School Buses (Revised August 2022)

### Introduction

This document is designed to provide guidance to local educational agencies (LEAs) in the development, establishment and implementation of policies, procedures and programs for the prevention, intervention and remediation of harassment, intimidation and bullying (HIB) behavior in schools, in accordance with the *Anti-Bullying Bill of Rights Act (ABR)* (N.J.S.A. 18A:37-13 *et seq.*) and N.J.A.C. 6A:16-7.7, Harassment, Intimidation and Bullying.

The language used in this document aligns to the language included in the ABR and the New Jersey Administrative Code. LEAs may choose to use terms like “families and caregivers” in place of “parents or guardians” in their local policies if determined that those terms are more inclusive of the local community. Similarly, an LEA may choose to utilize terms like “aggressor” and “harmed community member” instead of “offender and victim” if the LEA determines that language is more responsive to local community circumstances.

The document is divided into three parts, as described below:

- **Part 1: Background** includes information on the legal context and key points for HIB policies and procedures.
- **Part 2: Use of the Model Policy and Guidance** includes an explanation of this document and guidance for appropriate uses of the document.
- **Part 3: Model Policy Development: Issues for Consideration, Sample Policy Language and Requirements** contains 10 specific sections, each providing statutory and regulatory requirements, sample or suggested model policy language where appropriate, and issues for district boards of education to consider in the development of their locally determined HIB policies and procedures.



# Evolution of the Legal Landscape for School District Tort Liability

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## Student Restraint/Seclusion

P.L. 2017. C. 291

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### CHAPTER 291

AN ACT concerning the use of physical restraint and seclusion techniques on students with disabilities and supplementing chapter 46 of Title 18A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.18A:46-13.4 Definitions relative to use of physical restraint, seclusion techniques on students with disabilities.

1. As used in this act:

“Physical restraint” means the use of a personal restriction that immobilizes or reduces the ability of a student to move all or a portion of his or her body.

“Seclusion technique” means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving, but does not include a timeout.

“Timeout” means a behavior management technique that involves the monitored separation of a student in a non-locked setting, and is implemented for the purpose of calming.

C.18A:46-13.5 Use of physical restraint on students with disabilities.

2. a. A school district, an educational services commission, or an approved private school for students with disabilities that utilizes physical restraint on students with disabilities shall ensure that:

(1) physical restraint is used only in an emergency in which the student is exhibiting behavior that places the student or others in immediate physical danger;

(2) a student is not restrained in the prone position, unless the student’s primary care physician authorizes, in writing, the use of this restraint technique;

(3) staff members who are involved in the restraint of a student receive training in safe techniques for physical restraint from an entity determined by the board of education to be qualified to provide such training, and that the training is updated at least annually;

(4) the parent or guardian of a student is immediately notified when physical restraint is used on that student, which notification may be by telephone or electronic communication. A full written report of the incident of physical restraint shall be provided to the parent or guardian within 48 hours of the occurrence of the incident;

(5) each incident in which a physical restraint is used is carefully and continuously visually monitored to ensure that it was used in accordance with established procedures set forth in a board policy developed in conjunction with the entity that trains staff in safe techniques for physical restraint, in order to protect the safety of the child and others; and

(6) each incident in which physical restraint is used is documented in writing in sufficient detail to enable the staff to use this information to develop or improve the behavior intervention plan at the next individualized education plan meeting.

b. A school district, an educational services commission, and an approved private school for students with disabilities shall attempt to minimize the use of physical restraints through inclusion of positive behavior supports in the student’s behavior intervention plans developed by the individualized education plan team.

C.18A:46-13.6 Use of seclusion techniques on students with disabilities.

3. a. A school district, an educational services commission, or an approved private school for students with disabilities that utilizes seclusion techniques on students with disabilities shall ensure that :



# Evolution of the Legal Landscape for School District Tort Liability

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# Student Restraint/Seclusion

P.L. 2017. C. 291

For State House Complex access information as of March 22, 2022, [click here](#) for details. For State House tours, call 609-847-3150.

*Bill S3027*  
Session 2022 - 2023

Requires parental notification when seclusion technique is utilized on student with disabilities; requires DOE to collect data on students disabilities regarding exclusion from school pending psychiatric clearance and utilization of restraints and seclusion.

**STATE OF NEW JERSEY**  
**DEPARTMENT OF EDUCATION**  
A Memo from the New Jersey Department of Education

Date: July 10, 2018  
To: Chief School Administrators, Charter School and Renaissance School Project Leads  
Route To: Directors of Special Education  
From: John Worthington, Director  
Office of Special Education Policy and Procedure

**Restraint and Seclusion Guidance for Students with Disabilities**

In January 2018, Public Law 2017, Chapter 291 was signed into law, establishing certain requirements for the use of restraint and seclusion with students with disabilities in school districts, educational services commissions (ESCs), and approved private schools for students with disabilities (APSSDs). The law sets forth criteria to which schools must adhere when employing the use of physical restraints and seclusion techniques on students with disabilities. Further, the law requires the New Jersey Department of Education (NJDOE) to establish guidelines for school districts, ESCs and APSSDs to ensure that a review process is in place to examine the use of physical restraints or seclusion techniques in certain circumstances.

In response to this law, the NJDOE’s Office of Special Education Policy and Procedure met with stakeholders to elicit feedback on key provisions and elements that should be included in the guidance document. The Office of Special Education Policy and Procedure invited representatives from school districts, ESCs, APSSDs, attorneys representing parents and districts, and representatives from statewide advocacy groups. In addition to reflecting stakeholder input, the guidance incorporates the 15 principles set forth in the May 2012 document, [Restraint and Seclusion: Resource Document](#), published by the U.S. Department of Education (USDOE).

**Definitions**  
The definitions listed below in Table 1 include language from P.L. 2017. C. 291, as well as information provided by the USDOE’s Office for Civil Rights in the [Civil Rights Data Collection \(CRDC\) document](#).<sup>1</sup>

Table 1: Definitions

Term	Definition
<b>Physical Restraint</b>	State law defines physical restraint as the use of a personal restriction that immobilizes or reduces the ability of a student to move all or a portion of his or her body.
<b>Mechanical Restraint</b>	State law does not define mechanical restraint. However, the USDOE has defined it as, “The use of any device or equipment to restrict a student’s freedom of movement. This term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as:

<sup>1</sup> Beginning with the 2009-10 school year, the USDOE’s Office for Civil Rights revised the Civil Rights Data Collection (CRDC) to require the reporting of the total number of students subjected to restraint or seclusion by sub-groups, as well as the total number of instances restraint or seclusion occurred. The CRDC also defined key terms concerning restraint and seclusion.



# Evolution of the Legal Landscape for School District Tort Liability

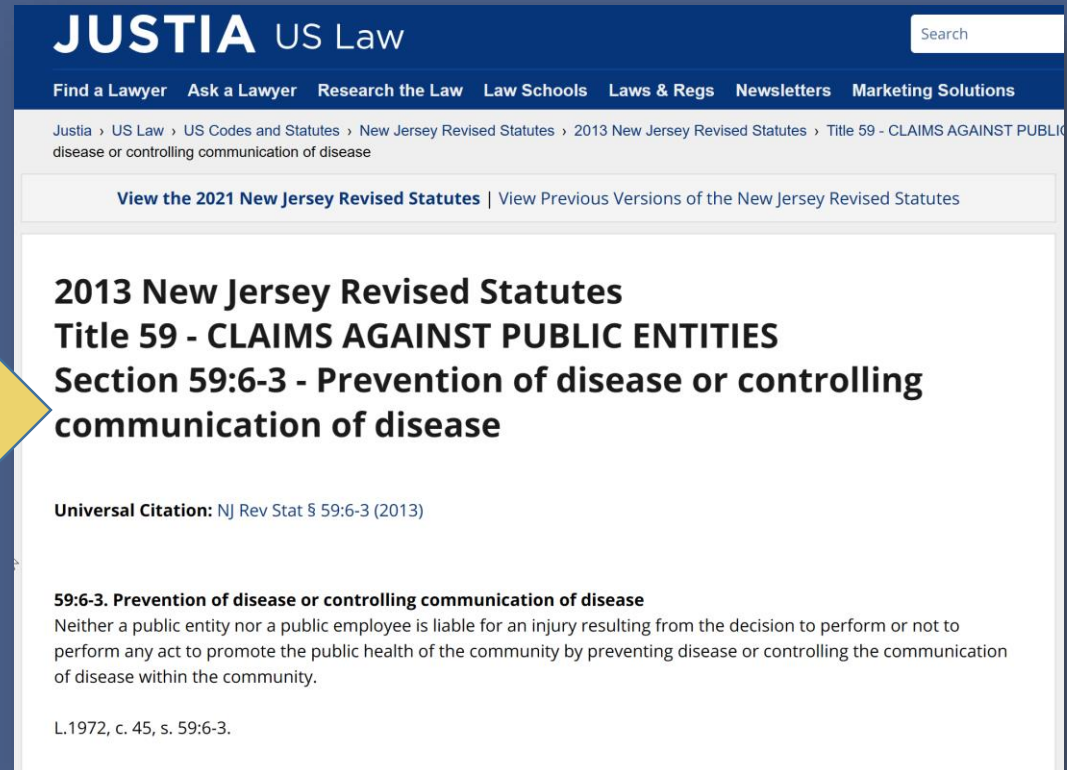
**Stephen Tucker, Esq.**  
NJSIG General Counsel

## Infectious Disease

N.J.S.A. 59:6-3

“Neither a public entity nor a public employee is liable for an injury resulting from the decision to perform or not to perform any act to promote the public health of the community by preventing disease or controlling the communication of disease within the community.”

For meeting resources, visit:  
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### 2013 New Jersey Revised Statutes

#### Title 59 - CLAIMS AGAINST PUBLIC ENTITIES

#### Section 59:6-3 - Prevention of disease or controlling communication of disease

**Universal Citation:** NJ Rev Stat § 59:6-3 (2013)

**59:6-3. Prevention of disease or controlling communication of disease**  
Neither a public entity nor a public employee is liable for an injury resulting from the decision to perform or not to perform any act to promote the public health of the community by preventing disease or controlling the communication of disease within the community.

L.1972, c. 45, s. 59:6-3.



# Evolution of the Legal Landscape for School District Tort Liability

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NJSIG General Counsel

## Infectious Disease

N.J.S.A. 59:6-4

“Failure to make physical or mental examination or to make adequate physical or mental examination...”

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### 2013 New Jersey Revised Statutes Title 59 - CLAIMS AGAINST PUBLIC ENTITIES Section 59:6-4 - Failure to make physical or mental examination or to make adequate physical or mental examination

Universal Citation: NJ Rev Stat § 59:6-4 (2013)

**59:6-4. Failure to make physical or mental examination or to make adequate physical or mental examination**  
Failure to make physical or mental examination or to make adequate physical or mental examination. Except for an examination or diagnosis for the purpose of treatment, neither a public entity nor a public employee is liable for injury caused by the failure to make a physical or mental examination, or to make an adequate physical or mental examination, of any person for the purpose of determining whether such person has a disease or physical or mental condition that would constitute a hazard to the health or safety of himself or others. For the purposes of this section, "public employee" includes a private physician while actually performing professional services for a public entity as a volunteer without compensation.

L.1972, c. 45, s. 59:6-4. Amended by L.1983, c. 184, s. 1, eff. May 11, 1983.





# Evolution of the Legal Landscape for School District Tort Liability

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## Existing Tort Issues Collateral Source Rule:

Under the Tort Claims Act, though, when an individual is privately insured, their private insurance will be the primary source of recovery by law under the collateral source rule, N.J.S.A. 59:9-2(e).



# Evolution of the Legal Landscape for School District Tort Liability

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NJSIG General Counsel

# Existing Tort Issues Collateral Source Rule:

**Deductible discussion:**  
Brooks v. Odom; Fiscal burden discussion.

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### 2013 New Jersey Revised Statutes Title 59 - CLAIMS AGAINST PUBLIC ENTITIES Section 59:9-2 - Judgments, interest, limitations.

**Universal Citation:** NJ Rev Stat § 59:9-2 (2013)

**59:9-2 Judgments, interest, limitations.**

59:9-2. a. No interest shall accrue prior to the entry of judgment against a public entity or public employee on the basis of a claim for damages shall be awarded against a public entity.

b. No judgment shall be awarded against a public entity or public employee for pain and suffering, permanent disfigurement or dismemberment or for expenses arising out of the injury, including prosthetic devices and ambulance, hospital or other medical services rendered for necessary surgical, medical and dental treatment, if a claimant receives or is entitled to receive benefits for the injuries allegedly incurred from any other source other than a joint tortfeasor, such benefits shall be deducted from the award shall be deducted from the amount of damages recovered by such claimant; provided, however, that nothing in this section shall affect the rights of a beneficiary under a life insurance policy. No insurer or other person shall be liable under a subrogation provision in an insurance contract against a public entity or public employee for the payment of such benefits.

L.1972, c.45, s.59:9-2; amended 2000, c.126, s.32.

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## Brooks v. Odom

Annotate this Case

SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

Bertha Brooks, et al. v. Willie Mae Odom, et al. (A-132-96)

Argued April 28, 1997 -- Decided July 15, 1997

POLLOCK, J., writing for a unanimous Court.

There are two issues raised in this appeal; 1) what constitutes a "permanent loss of bodily function" under the New Jersey Tort Claims Act (the Act); and 2) whether Bertha Brooks may recover from Willie Mae Odom and New Jersey Transit Corporation (NJT) her co-payments and deductible amounts under her health insurance policy.

On November 18, 1991, as Bertha Brooks (plaintiff) was entering her parked car, an NJT bus driven by Willie Mae Odom struck the car door, knocking plaintiff into the car. Plaintiff was taken to the emergency room at Newark Beth Israel Hospital, where she complained of pain in her neck, back, and head. The hospital took x-rays, prescribed medication, and fitted plaintiff with a cervical collar, and released her.



# Evolution of the Legal Landscape for School District Tort Liability

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NJSIG General Counsel

## Existing Tort Issues Collateral Source Rule:

### Example:

When a tree branch on school property falls and damages a private party's property. Under the collateral source rule, their insurance must respond first. If something like this happens, you should simply direct them to file a claim with NJSIG.

For meeting resources, visit:  
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**Did a school district employee's automobile get damaged during the scope of their employment?**

**Disclaimer:** This document has been prepared for school officials only as information and guidance. Every claim is handled on its own individual merit and circumstance.

**NJ Title 59 - Claims Against Public Entities**

In event that a "personal auto" is damaged on district property, the owner of the automobile must file a claim through their own insurance provider, even if the district may be at fault. This is derived from NJ Title 59 - Claims Against Public Entities. Title 59 is the NJ Tort Claims Act passed in 1972 which provides uniform principles and provisions for protection of schools and municipalities. Simply stated, a municipality / school district in the state of New Jersey is protected if a third party attempts to recover money for damages or file a tort claim.

There is a potential that the owner of the automobile can recover their deductible if the district's insurance carrier deems that the district is at fault or if the vehicle was being used at the direction of the board of education.

**FILING A CLAIM:**

In order for the district to file a claim, the following information needs to be collected from the district employee to be sent to the School Business Office. The district will need all of this documentation order to file a claim.

- Provide the following incident details:
  - Owner's name, contact number, email, date of incident, description of damage, cause of damage, etc.
- Provide any photographs
- Copy of owner's "Damaged Insurance" declaration page showing deductibles and limits
- Estimate to repair
- Police report

Upon receipt of this information, the district will present their findings to New Jersey Schools Insurance Group (NJSIG) for further coverage determination. At that time, an NJSIG adjuster will be assigned, and will contact the owner of the auto directly.

Examples of an automobile damage during the scope of their employment include, but are not limited to:

- An accident involving a district owned vehicle
- A tree/tree branch falling on vehicle
- An icicle falling from a building or object onto vehicle

If you have any questions about a claim that has been filed, please contact NJSIG at 609-386-6060 or visit [www.njsig.org](http://www.njsig.org) for more information.



**Ivy Davis**

Sr. Client Relations Rep.

# Q & A

**Please type your questions in  
the chat feature!**



**Dr. Christopher Russo**  
West Windsor Plainsboro BOE  
NJSIG & ERIC North Chairperson

# Closing Remarks



# Thank You!

