

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

# Agenda

**ERIC West &  
NJEIF**

**Joint Meeting  
March 1, 2023**



**WELCOME** | Jack Zisa & Gail White – Scirocco Group  
NJEIF Sub-fund Administrator

**Topics:**

- Property and casualty insurance coverage basics
- NJSIG's Safety and Risk Management Services

**DIRECTOR'S REPORT** | Dominick Cinelli & Bob Gemmell  
ERIC West Sub-fund Administrator

**Topics:**

- Budget Guidance and Overview of Current Insurance Market

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

**PRESENTATION:**

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

- Stephen Tucker, Esq. | NJSIG General Counsel

**Topics:**

- Evolution of the legal landscape for school district tort liability

**PRESENTATION:** Recent Legal Developments

- Sandra Jacques, Esq. | LEGAL ONE

**Topics:**

- Navigating Sensitive Legal Issues in the Health Curriculum and Other Content Areas
- Addressing Gender Identity in Schools
- Latest Guidance on Implementing Revisions to NJ's Anti-Bullying Bill of Rights
- New Guidance on Tracking Restraint and Discipline and Addressing Disparities Linked to Protected Classes

**QUESTION & ANSWERS  
ADJOURNMENT**

**Jack Zisa & Gail White**  
 NJEIF  
 Sub-fund Administrator



Plan of Risk Management  
 Log In

Reporting Claims    Districts    Brokers    Resources    About    Contracting    Contact

## ERIC West & NJEIF Joint Virtual Sub-fund Meeting

Date:  
**Wednesday, March 1st, 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**  
 Check your Meeting Invitation for a Zoom link.

**Contact:**  
**Joe Semptimpheiler**  
 jsempimpheiler@njsig.org  
 (609) 386-6060 x3044

March 2023

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

- Key:
- General
  - ERIC North
  - ERIC West
  - ERIC South
  - Trustee
  - BACCEIC
  - NJEIF
  - CAIP
  - MOCSSIF



# Claims Process Handouts

**Jack Zisa & Gail White**  
 NJEIF Sub-fund Administrator

**For meeting materials, visit:**  
**ERIC West:** <https://www.njsig.org/events/317>  
**NJEIF:** <https://www.njsig.org/events/318>



## 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, 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



**NOTE:** 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.

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.

- 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



## 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 the documentation in 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/ree branch falling on vehicle
- An article 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.

# Coverages at a Glance

**Jack Zisa & Gail White**  
 NJEIF Sub-fund Administrator



## Coverages at a Glance



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, HIV, and more.</li> <li>18A includes ethics complaints, quasi criminal complaints</li> </ul>	<ul style="list-style-type: none"> <li>Occurrence</li> <li>Recommendations:               <ul style="list-style-type: none"> <li>Document incident</li> <li>Report</li> <li>Investigate</li> </ul> </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 Cat)</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> <li>Recommendations:               <ul style="list-style-type: none"> <li>Document incident</li> <li>Include pictures</li> <li>Report</li> </ul> </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). (This is a defense only coverage)</li> </ul>	<ul style="list-style-type: none"> <li>Typically Claims Made – must be reported within policy period</li> <li>Recommendations:               <ul style="list-style-type: none"> <li>Document incident</li> <li>Report immediately</li> </ul> </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> <li>Supplemental Indemnity is optional</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>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> <li>Recommendations:               <ul style="list-style-type: none"> <li>Document incident</li> <li>Call QualityMx at 800.425.3222 to trigger process</li> <li>Investigate</li> </ul> </li> </ul>
<b>SUPPLEMENTAL INDEMNITY</b>		<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>

Updated 1.11.23

Page 2

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 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> <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/restore recovery</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>Computer forensic costs to determine extent of the breach</li> <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>

Developed for ERIC NORTH and NJOCSSIF's sub-fund training session on January 17, 2023.  
 \* This document is to be used as a reference guide only. Please refer to your district's policies for terms and conditions.

For meeting materials, visit:  
 ERIC West: <https://www.njsig.org/events/317>  
 NJEIF: <https://www.njsig.org/events/318>



# Budget Development & Rate Guidance

**Dominick Cinelli & Bob Gemmell**

ERIC West Sub-fund Administrator



## Budget Development: Experience Modification Factors and Sub-fund Deviation Calculations

- Individual MODs/Sub-Fund Deviations have been released to Brokers
- Business Administrators should review payroll classification to ensure the accuracy of their calculations.
- 2023 New Jersey Compensation Rating and Inspection Bureau Rates

Class Code	Classification Description	22-23	23-24	Change
8868	School - Professional	\$ 1.36	\$ 1.35	-0.7%
9106	School - Non-Professional	\$12.44	\$11.60	-6.8%

## Budget Development & Rate Guidance

**Dominick Cinelli &  
Bob Gemmell**

ERIC West Sub-fund Administrator



## NJSIG Workers' Compensation Payroll Reporting Guide

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

### Professional (Classification Code 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 (Classification Code 9106):

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

## Budget Development & Rate Guidance

**Dominick Cinelli &  
Bob Gemmell**

ERIC West Sub-fund Administrator

## NJSIG Workers' Compensation Payroll Reporting Guide

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

- If you are including overtime into your estimated payrolls, overtime paid in excess of normal rate of pay should be deducted.
- If your school or district is small, and the Transportation, Maintenance, Cafeteria, Custodial and/or Grounds Supervisor also performs some or all of the same "Non-Professional"(Code 9106) duties performed by the staff he or she supervises, please list this Supervisor's salary as "Non-Professional."
- Estimated payroll does not include salary paid to any employee currently out on workers' compensation.
- Estimated payroll does not include severance pay unless it is for vacation.
- Estimated payroll does not 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. Guideline: whatever is reported to the IRS on Schedule B (Form 941) needs to be included within your payroll estimate, less bonus overtime.





# Overview of the Current Property & Casualty Insurance Market

**Dominick Cinelli & Bob Gemmell**

ERIC West Sub-fund Administrator

**Visit!**

*Billion-Dollar Weather and Climate Disasters*



## Catastrophic Weather Events

The 2022 Atlantic hurricane activity saw 14 named wind events, including Hurricanes Ian and Nicole which made landfall. According to the [Insurance Information Institute](#), Hurricane Ida (2021) was the 2<sup>nd</sup> costliest hurricane on record, with \$36B in insured losses. Top of the list is Hurricane Katrina, with approximately a \$90B insured loss in 2021 dollars. Hurricane Ian is currently estimated to be a \$50-60B insured loss event.

December's historic Winter Storm Elliott, a powerful arctic front caused significant impact across much of the nation, bringing heavy rains, snow, ice and high winds that sent temperatures plummeting. More than 200 million people were under a winter weather advisory or warning and more than a million people from Texas to Maine, were left without power. Additional impacts were widespread frozen water pipes that led to extensive water damage in many homes, businesses and to other critical infrastructure. Projected insured costs is in the billions.

## Inflation

Global inflation as well as financial and economic uncertainty are unmodeled factors causing an increase in the cost of capital. These factors are also putting pressure on rates to rise as markets focus on profitability. The continued hike in interest rates equate to rising capital costs, with investors wanting the best rate of return on their capital.

## Replacement Valuations

The days of static/unchanged reported building, contents and business income valuations from year-to-year are gone, with carriers now penalizing accounts that don't proactively adjust reported valuations. Carriers say that insurance to value (ITV) is off by 30% or more. The difference in valuation that markets feel is needed varies greatly by region.

## Reinsurance Renewals

Reinsurance renewals are more difficult than the last cycle. Larger players in the space have publicly stated that they will be focusing on profitability rather than growth as well as focusing on eliminating ambiguity by red lining all-perils catastrophe coverage.

## Overview of the Current Property & Casualty Insurance Market

**Dominick Cinelli & Bob Gemmell**

ERIC West Sub-fund Administrator

### Visit!

"Unfair and Unbalanced" Court System in NJ



## Social Inflation Impacting Liability Rates

Rising costs of insurance claims resulting from changing societal views and trends.

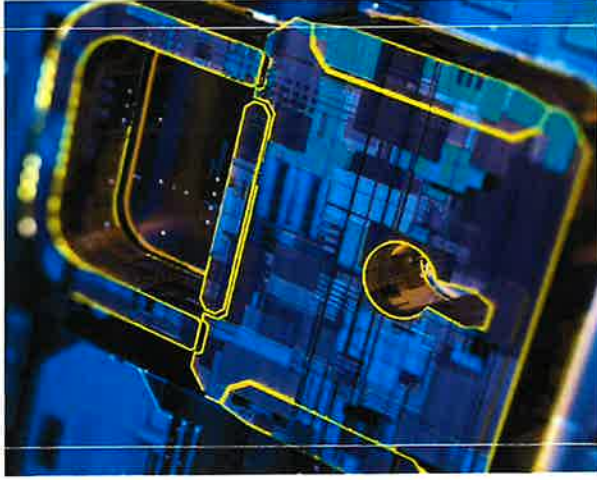
- Contributing Factors:
  - Increasing Litigation
  - Broader Contract Interpretations/More Plaintiff Friendly Legal Decisions
  - Larger Jury Awards (**Nuclear Verdicts**)
    - U.S. Chamber of Commerce Institute for Legal Reform's studies call New Jersey the fourth-most expensive state in the country for lawsuit costs and say it ranks eighth in the nation for "nuclear verdicts," its term for civil judgments that exceed \$10 million.
  - Anti-Corporate Sentiment
- Complexities:
  - Organized, Sophisticated Plaintiff's Bar
  - Trolling Online/Years of Consistent Ads
  - Litigation Funding
  - Erosion of Tort Reform
- Social inflation is hard to predict, making underwriting and pricing risk a challenge.

## Overview of the Current Property & Casualty Insurance Market

**Dominick Cinelli &**

**Bob Gemmell**

ERIC West Sub-fund Administrator



## Minimum Cyber-Security Protocols

### Implementation of Multi-Factor Authentication (MFA)

- *Applied for all privileged users, users with remote access to network, remote email and off-network backups*

### Implementation of an Endpoint Detection and Response (EDR) Solution

- *Just having antivirus security at your endpoints is not enough; you must be able to detect the actual or potential threats in real-time and be able to respond.*

### Annual Information Technology Security Awareness and Training

- *Training program must include simulated cybersecurity attack testing to ensure employees respond in accordance with the established procedures.*

### Segregation of Back-ups from the network

- *All critical data and applications must be backed-up off-network ("air-gapped") weekly, and such shall be recovery tested (every 6 months).*

**Jill Deitch, Esq.**

NJSIG Executive Director

# NJSIG Executive Report





**Throughout the presentations, if you have any questions, please put them in the chat box.**



**Ivy Davis –**

**NJEIF Representative**

Senior Business Development Specialist

[idavis@njsig.org](mailto:idavis@njsig.org)

609-386-6060 x 3029

**Joe Semptimpfelter –**

**ERIC West Representative**

Senior Business Development Specialist

[jsemptimpfelter@njsig.org](mailto:jsemptimpfelter@njsig.org)

609-386-6060 x 3044

**Questions can be  
directed to your  
respective  
Member Services  
Representative**



**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 intended as a summary of law only, and is not meant as legal advice. Please consult your attorney to obtain legal advice.





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

# 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

### 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

### 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 operation of vehicles used in ride-sharing arrangements, taxicab, motor vehicles with a capacity of more than six passengers, which are owned and operated directly by businesses engaged in the practice of passenger service 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 airfare 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 thereof 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 license 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.

# 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.



# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**

NJSIG General Counsel



## Student Transportation

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

### CHAPTER 471

AN ACT concerning school bus safety, supplementing chapter 39 of Title 18A of the New Jersey Statutes, and making an appropriation.

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

C.18A:39-34 Office of School Bus Safety established.

1. a. There is established in the Department of Education the Office of School Bus Safety. The purpose of the office is to oversee the school busing industry and to coordinate enforcement and accountability among the department, school bus drivers, and school bus contractors.

b. The Commissioner of Education shall establish the office, which shall consist of individuals qualified by training and experience related to the school bus industry in order to perform the duties of the office. The staff shall be supervised by a person of recognized judgment, integrity, and objectivity, and shall be skilled in communication, conflict resolution, and professionalism.

c. The office shall be responsible for the work of such professional and clerical staff as may be necessary to carry out the office's responsibilities.

C.18A:39-35 Office duties.

2. a. The duties of the Office of School Bus Safety shall include, but need not be limited to, the following:

(1) reviewing a school bus driver's information collected by the Commissioner of Education pursuant to section 6 of P.L.1989, c.104 (C.18A:39-19.1);

(2) obtaining statements of assurance from school districts or contractors that all training certifications for school bus drivers from employers pursuant to subsection b. of section 2 of P.L.2015, c.123 (C.18A:39-19.3) are complete;

(3) assisting in the development of a student information card pursuant to section 3 of P.L.2015, c.123 (18A:39-19.4);

(4) reviewing statements provided by a board of education or contractor that verify a school bus driver, whose bus driver's license is suspended or revoked, no longer operates a school bus for the board or contractor pursuant to section 1 of P.L.2018, c.152 (C.18A:39-19.6);

(5) coordinating with the Motor Vehicle Commission and the Department of Law and Public Safety on the sharing of information regarding matters related to school bus safety. The Motor Vehicle Commission and the Department of Law and Public Safety shall, pursuant to a valid Memorandum of Understanding and to the extent permitted by law, share information with the office to assist in effectuating the provisions of this act.

# Evolution of the Legal Landscape for School District Tort Liability

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



# Student Transportation

No. A-1405-21  
Superior Court of New Jersey, Appellate Division

## T.B. v. Novia

472 N.J. Super. 80 (App. Div. 2022) • 275 A.3d 47  
Decided May 3, 2022

DOCKET NO. A-1405-21, A-1406-21  
05-03-2022

T.B., an infant by his Guardian Ad Litem, E.B., and E.B. and R.B., individually and as parents of T.B., Plaintiffs-Respondents, v. Alexis NOVIA, Patrick Novia, and Woodbridge Township School District, a public entity of the State of New Jersey, Defendants, and Woodbridge Township Board of Education, a public entity of the State of New Jersey, and Township of Woodbridge, a public entity of the State of New Jersey, Defendants-Appellants.

Roshan D. Shah argued the cause for appellant Woodbridge Township Board of Education (Anderson & Shah, LLC, attorneys; Roshan D. Shah, of counsel and on the brief; Erin Donegan, on the brief). Brian A. Bontempo argued the cause for appellant Township of Woodbridge (James P. Nolan and Associates, LLC, attorneys; Brian A. Bontempo, on the brief). Robert G. Goodman, Woodbridge, argued the cause for respondents (Palmisano & Goodman, PA, attorneys; Robert G. Goodman, on the briefs).

MAYER, J.A.D.

Roshan D. Shah argued the cause for appellant Woodbridge Township Board of Education (Anderson & Shah, LLC, attorneys; Roshan D. Shah, of counsel and on the brief, Erin Donegan, on the brief).

Brian A. Bontempo argued the cause for appellant Township of Woodbridge (James P. Nolan and Associates, LLC, attorneys; Brian A. Bontempo,

on the brief).

Robert G. Goodman, Woodbridge, argued the cause for respondents (Palmisano & Goodman, PA, attorneys; Robert G. Goodman, on the briefs). Before Judges Sabatino, Mayer, and Bishop-Thompson.

\*10 The opinion of the court was delivered by

MAYER, J.A.D. \*85 By leave granted, defendants Woodbridge Township Board of Education (Board) and Township of Woodbridge (Township) appeal from December 9, 2021 orders denying their motions for summary judgment. We affirm the order denying summary judgment to the Board and reverse the order denying summary judgment to the Township.

We summarize the facts from the motion record.

### The Collision

On February 22, 2019, plaintiff T.B. (Tom) and his twin brother, K.B. (Kurt), were freshmen attending Colonia High School. That afternoon, the brothers walked home from school along New Dover Road. While driving on New Dover Road, defendant Alexis Novia became distracted by a deer, lost control of her car, and struck Tom. Tom suffered significant injuries, including internal bleeding, multiple broken bones, lacerations to his organs and face, and a skull fracture. As a result of his injuries, Tom had difficulty walking, eating, and speaking. He continues to have trouble performing activities of daily living.

casetext



# 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

[To Register](#)
[Next >](#)  
[Search District Policies](#)  
 District Policies TOC

## JUSTIA US Law

Find a Lawyer Ask a Lawyer Research the Law Law Schools Law & Reg. Knowledge Marketing Solutions  
 Justia US Law US Codes and Statutes New Jersey Revised Statutes 2015 New Jersey Revised Statutes Title 18A - EDUCATION Section  
 certain vehicles

View the 2021 New Jersey Revised Statutes | View Previous Versions of the New Jersey Revised Statutes

### 2015 New Jersey Revised Statutes Title 18A - EDUCATION Section 18A:39-20.1 - Transportation of students in certain vehicles.

Universal Citation: NJ Rev Stat § 18A:39-20.1 (2015)

#### 18A:39-20.1 Transportation of students in certain vehicles.

1. a. Notwithstanding any statute or regulation to the contrary, any board of education, governing body of a nonpublic school or State agency may authorize qualified school personnel, State employees or parents, to transport school children to and from related school activities in a private vehicle with a capacity of eight or less. Any person authorized by a board, body or agency to provide such transportation services shall not be required to be licensed or regulated as a school bus driver. Such transportation shall be exempt from all registration, equipment, inspection and maintenance requirements imposed on the transportation of pupils by school bus.

b. Notwithstanding any statute or regulation to the contrary, any board of education, governing body of a nonpublic school or State agency may authorize a person certified as a mobility assistance vehicle technician to transport a student with medical needs to and from school or related school activities in a mobility assistance vehicle. Any certified mobility assistance vehicle technician authorized by a board, body or agency to provide such transportation services shall not be required to be licensed or regulated as a school bus driver. Such transportation shall be exempt from all registration, equipment, inspection and maintenance requirements imposed on the transportation of students by a school bus.

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 student to and from school related student activities in unusual circumstances or when a group of too small in number to make economical use of Type I or Type II (school bus or van) vehicle.

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 expense coverage for the injured party. However, the injured party's medical expenses are subject to the applicable automobile insurance policy's applicable provisions 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 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



## 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.”

DOCKET NO. A-3638-1671  
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 107  
Decided 04/2/2018

DOCKET NO. A-3638-1671  
10-05-2018

L.E. and P.T., Plaintiffs-Appellants, v. The Plainfield Public School District, Plaintiff-Board of Education, Ann Reisinger, Defendant-Third Party Plaintiff-Respondent, 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, Ostler and Rose.

The opinion of the court was delivered by OSTRER, J.A.D.:<sup>19</sup> Plaintiffs L.E. and her mother, P.T., allege that defendants, a school district and several of its employees, negligently

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, Ostler and Rose.

The opinion of the court was delivered by OSTRER, J.A.D.:<sup>20</sup> 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 supervise her and to protect her from sexual assault. The school district 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 plaintiffs’ claims from Claim 1 and 2 were barred by N.J.S.A. 2A:5A-4, which provides police protection services, and N.J.S.A. 2A:5A-5, governing the failure to enforce laws – shield defendants from liability for the negligent supervision of the students preceding the assault. The court also erred in concluding 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.

<sup>19</sup> We view the facts in the light most favorable to plaintiffs. Brill v. Guardian Life, Inc., 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 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.

<sup>20</sup> We view the facts in the light most favorable to plaintiffs. Brill v. Guardian Life, Inc., 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 roll 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.

### 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

Department of Education

Office of Student Protection

Office of Student Protection / Information / Forms / [Child School Administrator Links](#) / Pre-Employment Resources

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 servi regarding child abuse and sexual misconduct of prospective employees who will have regular contact with students. Consister Education has developed employment forms that hiring entities may use to complete the required employment history review. I 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 \(follow-up form\)](#)
- [Frequency Asked Questions](#)

## 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 et seq.) and is directed toward or against a child or student, regardless of the age of the child or student, 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 requires the applicant to provide:

- (1) A list, including name, address, telephone number and other relevant contact information of the applicant;
  - (a) current employer;
  - (b) all former employers within the last 20 years that were schools; and
  - (c) 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;

a. Requires the applicant to provide:

- (1) A list, including name, address, telephone number and other relevant contact information of the applicant's:
  - (a) current employer;
  - (b) all former employers within the last 20 years that were schools; and
  - (c) 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



New Jersey School Boards Association

About NJSBA

Our Service

Law Enforcement in Schools: A New Option is

### 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

**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.

## Keeping Our Students Safe, Healthy & in School

Home / Keeping Our Students Safe, Healthy & in School / Safe & Positive Learning Environments / Harassment, Intimidation and Bullying (HIB) / 2022 Amendments to New Jersey's Anti-Bullying Bill of Rights Act (ABR): FAQs & Resources

### 2022 Amendments to New Jersey's Anti-Bullying Bill of Rights Act (ABR): FAQs & Resources

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 Prohibiting 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:16-7.2 and 7.6](#).

#### Addressing Harassment, Intimidation, and Bullying in Schools: Frequently Asked Questions

The [Anti-Bullying Bill of Rights Act \(ABR\)](#) was enacted in January, 2013 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.

[As the original request to the state for a educational regulatory update addressed harassment, intimidation and bullying \(HIB\) in schools.](#)



### 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 this 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

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

[Click here for Proposed Amendment](#)



# Student Restraint/Seclusion P.L. 2017. C. 291

**STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION**

Date: July 10, 2018  
 To: Chief School Administrators, Charter School and Renaissance School Project Leads  
 From: Directors of Special Education  
 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 physical 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 school districts, ESCs and APSSDs must adhere when employing the use of physical restraint 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
Physical Restraint	State law defines physical restraint as the use of a person's physical force to restrict a student's freedom of movement of his or her body.
Mechanical Restraint	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 subgroup, as well as the total number of instances of restraint or seclusion occurred. The CRDC also defined key terms concerning restraint and seclusion.

**CHAPTER 291**

An Act concerning the use of physical restraint and seclusion techniques on students with disabilities and amending Chapter 46 of Title 18A of the New Jersey Statutes.

BILE 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 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;

- (1) a student is not restrained in the prone position, unless 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 used on that student, which notification may be by telephone or electronic communication;
- (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 the individualized education plan for the student and the individualized education techniques for physical restraint, in order to protect the safety of the child and others; and
- (6) 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

**Stephen Tucker, Esq.**

NJSIG General Counsel



# Student Restraint/Seclusion

## CHAPTER 387 CORRECTED COPY

AN ACT concerning student disciplinary actions and amending P.L.1995, c.235 and P.L.1982, c.163.

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

1. Section 3 of P.L.1995, c.235 (C.18A:7E-3) is amended to read as follows:

- C.18A:7E-3 Report card information.
3. Report cards issued pursuant to section 2 of P.L.1995, c.235 (C.18A:7E-2) shall include, but not be limited to, the following information for:
  - a. the school district and for each school within the district, as appropriate:
    - (1) results of the elementary assessment programs;
    - (2) results of the Early Warning Test;
    - (3) results of the High School Proficiency Test;
    - (4) daily attendance records for students and professional staff;
    - (5) student graduation and dropout rates;
    - (6) annual student scores on the Scholastic Aptitude Test;
    - (7) total student enrollment, percentage of limited English proficient students, percentage of students in advanced placement courses, and any other school characteristics which the commissioner deems appropriate;
    - (8) instructional resources including teacher/student ratio, average class size and amount of instructional time per day, as calculated by formulas specified by the commissioner;
    - (9) a written narrative by the school principal or a designee which describes any special achievements, events, problems or initiatives of the school or district;
    - (10) data identifying the number and nature of all reports of harassment, intimidation, or bullying;
    - (11) indicators of student career readiness;
    - (12) the number and percentage of students who were chronically absent, as defined in rules and regulations promulgated by the Commissioner of Education within 90 days of the effective date of P.L.2018, c.23 (C.18A:38-25.1 et al.), including the number and percentage of students who were chronically absent disaggregated by multiple student subgroups to be determined by the commissioner;
    - (13) the number, percentage, and demographics, including race, gender, disability, grade level, and eligibility for free or reduced-price lunch under the National School Lunch Program,



STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION

DATE: December 24, 2022  
TO: Directors from Agency Leads and Administrators of Approved Private Schools for Students with Disabilities  
FROM: Directors of Special Services, School Principals, District Home Room Administrators, Data Coordinators, Attending Coordinators  
SUBJECT: Mandatory Restraint and Seclusion Data Collection/Student Safety Data System Opening

**Mandatory Restraint and Seclusion Data Collection/Student Safety Data System Opening**  
The purpose of this memorandum is to provide guidance to local education agencies (LEAs), students, and guardians of students regarding the mandatory collection of data regarding the use of restraint and seclusion.

**Background**  
In January 2018, Public Law 2017, Chapter 261 was signed into law. The law narrows the conditions under which students with disabilities (SWDs) may be suspended or expelled from school, and approved private schools for students with disabilities (APSSS) may be suspended or expelled from school. Additionally, the law requires LEAs to establish guidelines for school suspension and expulsion procedures. The new process is in place to examine the use of physical restraints or seclusion techniques in certain circumstances.

In July 2018, in response to this law, the NDOE issued the [new policies and definitions](#) to be included in the guidance. This guidance was informed by representatives from school districts, ESCs, APSSOs, attorneys representing parents and districts, and statewide advocacy groups and it incorporated the 32 principles set forth in the [2017 Department of Education and Statewide Advocacy Groups](#), published by the U.S. Department of Education.

**Mandatory Data Collection**  
Additionally, N.J.S.A. 18A:17-48 was amended to require that the Commissioner of Education post a database to the NDOE's website which contains, at a minimum, "school level totals for each category of student disciplinary actions, including in-school suspensions, out-of-school suspensions, expulsions, use of physical restraint or seclusion techniques, referrals to law enforcement, and arrests, as well as demographic information of the districts, ESCs and APSSOs, to ensure that a review process is in place to examine the use of physical restraints or seclusion techniques in certain circumstances."

In July 2018, in response to this law, the NDOE issued the [new policies and definitions](#) to be included in the guidance. This guidance was informed by representatives from school districts, ESCs, APSSOs, attorneys representing parents and districts, and statewide advocacy groups and it incorporates the 15 principles set forth in the May 2012 document, [Restraint and Seclusion: Resource Document](#), published by the U.S. Department of Education.

**Mandatory Data Collection**  
Additionally, N.J.S.A. 18A:17-48 was amended to require that the Commissioner of Education post a database to the NDOE's website which contains, at a minimum, "school level totals for each category of student disciplinary actions, including in-school suspensions, out-of-school suspensions, expulsions, use of physical restraint or seclusion techniques, referrals to law enforcement, and arrests, as well as demographic information of the students who received the disciplinary action." In response to this amendment, LEAs are required to report restraint and seclusion data for the 2022-2023 school year.

**Reporting Restraint and Seclusion Data**  
Reporting of incidents of restraint and seclusion will take place through the Student Safety Data System (SSDS). The SSDS is now open for reporting for the 2022-2023 school year and the report period 1 submission date is January 31, 2023. Access to the SSDS, along with online resources to support this new data submission, are available on the [Student Safety Data System Website](#).

Questions concerning the SSDS should be directed to [ssds@doe.nj.gov](mailto:ssds@doe.nj.gov). Questions regarding discipline, including the use of restraint and seclusion, should be directed to [disc@doe.nj.gov](mailto:disc@doe.nj.gov).



# 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.”

**JUSTIA US LAW**

Find a Lawyer • Ask a Question • Research a Case • Law Schools • Legal News & Alerts • History & Events • Mutual Fund Statistics • Mutual Fund Subscriptions

Home > US Law > US Code and Statutes > New Jersey Revised Statutes > 2013 New Jersey Revised Statutes > Title 59 - CLAIMS AGAINST PUBLIC ENTITIES > Section 59:6-3 - Prevention of disease or controlling communication of disease

View the 2021 New Jersey Revised Statutes | View Previous Versions of the New Jersey Revised Statutes

**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. 898-3.

**JUSTIA US LAW**

Find a Lawyer • Ask a Question • Research a Case • Law Schools • Legal News & Alerts • History & Events • Mutual Fund Statistics • Mutual Fund Subscriptions

Home > US Law > US Code and Statutes > New Jersey Revised Statutes > 2013 New Jersey Revised Statutes > Title 59 - CLAIMS AGAINST PUBLIC ENTITIES > Section 59:6-3 - Prevention of disease or controlling communication of disease

View the 2021 New Jersey Revised Statutes | View Previous Versions of the New Jersey Revised Statutes

**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. 898-3.

# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**

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...”

**JUSTIA** US Law

Search

Find a Lawyer Ask a Lawyer Research the Law Law Schools Laws & Regs Newsletters Marketing Solutions

Justia > US Law > US Codes and Statutes > New Jersey Revised Statutes > 2013 New Jersey Revised Statutes > Title 59 - CLAIMS AGAINST PUBLIC ENTITIES > Section 59:6-4 - Failure to make adequate physical or mental examination

[View the 2021 New Jersey Revised Statutes](#) | [View Previous Versions of the New Jersey Revised Statutes](#)

### 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

**Stephen Tucker, Esq.**

NJSIG General Counsel



## 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

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



## Existing Tort Issues Collateral Source Rule:

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

JUSTIA US Law

Find a Lawyer Ask a Lawyer Research the Law Law Schools Laws & Regs Newsletters Marketing Solutions

Juris - US Law - US Codes and Statutes - New Jersey Revised Statutes - 2013 New Jersey Revised Statutes - Title 59 - CLAIMS AGAINST PUBLIC ENTITIES, LIMITATIONS.

View the 2021 New Jersey Revised Statutes | View Previous Versions of the New Jersey Revised Statutes

JUSTIA US Law

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

Universal Citation: N.J. 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 products liability.
- b. No judgment shall be granted against a public entity or public employee on the basis of or products liability.
- c. No punitive or exemplary damages shall be awarded against a public entity.
- d. No damages shall be awarded against a public entity or public employee for pain and injury; provided, however, that this limitation on the recovery of damages for pain and permanent loss of a bodily function, permanent disfigurement or dismemberment or expenses are in excess of \$3,600.00. For purposes of this section medical treatment of reasonable value of services rendered for necessary surgical, medical and dental treatment, injury, sickness or disease, including prosthetic devices and ambulance, hospital or private care, if a claimant receives or is entitled to receive benefits for the injuries allegedly incurred from a source other than a joint tortfeasor, such benefits shall be deducted from the award which duplicates any benefit contained in the award shall be deducted from a public employee 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.

L. 1972, c. 45, s. 59:9-2; amended 2000, c. 125, s. 32.

Search

### Brooks v. Odom

#### 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, fitted plaintiff with a cervical collar, and released her.

Annotate this Case

# Evolution of the Legal Landscape for School District Tort Liability

**Stephen Tucker, Esq.**

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.



### 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, and is not intended to constitute an offer of insurance or any other financial product. It is not to be relied upon in any legal proceeding. It is the property of NJSIG and is to be handled on its own individual merit and circumstances.

### 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, which was passed in 1972. 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 information in 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 (NJSG) for coverage determination. Once the NJSG 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/ice 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 800-333-3660 or visit [www.njsig.org](http://www.njsig.org) for more information.



*Law, Ethics and Governance for All Leaders, including an  
Overview of New and Emerging Issues*

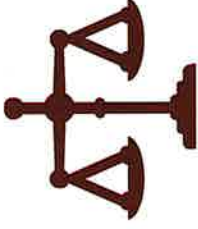
## **Recent Developments on Equity and the Law**

**March 1, 2023**

**Sandra Jacques, Esq.**  
LEGAL ONE

# **DISCLAIMER**

This presentation is intended as a summary of law only and is not meant as legal advice.  
Please consult your attorney to obtain legal advice.



Participants are authorized to use the LEGAL ONE materials provided in this training to offer turnkey training within the respective participant's school district or place of employment, provided that participants provide proper credit to LEGAL ONE for having developed said materials and further provided that such turnkey training is offered at no charge.

## Key Topics

- An Overview of NJ LAD
- Latest Guidance on Tracking Restraint and Discipline and Addressing Disparities
- Navigating Sensitive Issues in the Curriculum
- Addressing Gender Identity in School
- Latest Guidance on Addressing HIB
- Putting It All Together – The Comprehensive Equity Plan



# NJ Law Against Discrimination

- Enacted in 1945, first of its kind state civil rights law
- Provides strong protections based on a wide range of protected characteristics
- Covers employment, places of public accommodation, housing, business transactions
- Amended in 1992 to cover sexual orientation
- Amended in 2006 to cover gender identity
- 2007 – LW v. Toms River – applies to students, requires comprehensive, pro-active approach
- Amended in 2019 – CROWN Act – spurred by South Jersey HS Wrestler – covers factors inextricably linked to race, such as hair type, hair texture, hair style
- Expands protections provided under federal law
- Generally relied on by plaintiffs more than comparable federal law

## New Legislation – Reporting Discipline Data on School District Website

- **P.L. 2021, c.387** – Requires School Report Card to include information on the number, percentages, and demographics of students who receive one or more suspensions, or are subject to physical restraint or seclusion techniques, or who were reported to or arrested by law enforcement pursuant to the MOA between Education and Law Enforcement.
- Demographics include race, gender, disability, grade level, eligibility for free or reduced lunch
- *Note Comprehensive Equity Plan for 2022-25 must be in place prior to July 1, 2023*

## Implementing P.L. 2021 c.387

- Requires NEW recordkeeping on restraint and seclusion, beyond prior federal law
- Need to rely on broad definition of restraint used for students with disabilities under P.L. 2017, c. 291
- See NJDOE [December 14, 2022 Broadcast Email](#)
- Requirement to enter data into SSDS retroactive to start of 22-23 school year
- Reporting will take place through the Student Safety Data System (SSDS). The SSDS is now open for reporting for the 2022-2023 school year and the report period 1 submission due date was January 31, 2023.

# Health Curriculum v. D,E,I

See Health Education clarification in [NJDOE Broadcast Email - 4/14/22](#)

- Addresses “numerous misrepresentations”
- Reviews standards related to gender (Grade 2), human sexual development (Grade 5), making healthy decisions about sex (Grade 8)
- Cites statute allowing parental opt out for any portion of health, family life, sex education under N.J.S.A. 18A:35 - 4.7

See [NJDOE Diversity, Equity, Inclusion Educational Resources - K-12 D,E,I \(N.J.S.A. 18A:35-4.36a\)](#) and MS and HS [LGBTQ, Disabilities \(N.J.S.A. 18A:35-4.35\)](#)

- No opt out for instruction in grades K-12 at an appropriate place about economic diversity, equity, inclusion, tolerance, and belonging in connection with gender and sexual orientation, race and ethnicity, disabilities, and religious tolerance.
- No opt out for instruction on the political, economic, and social contributions of persons with disabilities and lesbian, gay, bisexual, and transgender people at the middle and high school level.
- **NOTE THERE IS NO OPT OUT FOR SCHOOL DISTRICTS!**

# P.L. 2021, c.32 - What the Statute Says

## **C.18A:35-4.36a Curriculum to include instruction on diversity and inclusion.**

1. a. Beginning in the 2021-2022 school year, each school district shall **incorporate instruction on diversity and inclusion** in an appropriate place in the curriculum of students in grades **kindergarten through 12** as part of the district's implementation of the New Jersey Student Learning Standards.
  - b. The instruction shall:
    - (1) highlight and promote diversity, including **economic diversity**, equity, inclusion, tolerance, and belonging in connection with **gender and sexual orientation, race and ethnicity, disabilities, and religious tolerance**;
    - (2) examine the impact that **unconscious bias** and economic disparities have at both an individual level and on **society as a whole**; and
    - (3) encourage safe, welcoming, and inclusive environments for all students regardless of race or ethnicity, sexual and gender identities, **mental and physical disabilities**, and religious beliefs.
  - c. The Commissioner of Education shall provide school districts with sample learning activities and resources designed to promote diversity and inclusion.
2. This act shall take effect immediately. Approved March 1, 2021.

## Foreseeable Legal Issues Related to

### Ch. 32 - Students

- Student attempts to discuss current events that may be sensitive, potentially related to race, ethnicity, religion, gender identity, sexual orientation
- Insensitive student comments linked to protected characteristics
- Students sharing personal experiences and information regarding peers related to acts of discrimination

## Foreseeable Legal Issues Related to

### Ch. 32 - Adults

- Parental objections, attempt to opt out
- Teacher/staff objections to implementing curriculum on religious/moral grounds
- Ill-conceived teacher assignments that cause harm for students
- Board member objections, attempts to block implementation of curriculum

## New Legislation – AAPI Instruction

- **P.L. 2021, c.416** – Requires boards of education to include instruction on the **history and contributions of Asian Americans and Pacific Islanders** in an appropriate place in the curriculum grades K-12. Must adopt inclusive instructional materials and seek input from Commission on Asian Heritage. Went into effect for the 2022-23 school year.



## New Law – Climate Change

- NJ Signs Requirement to [Address Climate Change in Curriculum](#)
- Report on [K-12 Climate Change Education Needs in NJ – Sustainable NJ and NJSBA](#)
- [NJDOE Resources – Climate Change](#)
- Implementation in 22-23 school year

## Other Related Curriculum Requirements

- Holocaust and genocide instruction - N.J.S.A. 18A:35-28
- African American History - See N.J.S.A. 18A:35-1
- Dating Violence - See N.J.S.A. 18A:35-4.23
- Sexual Assault Prevention - N.J.S.A. 18A:35-4.3
- Dangers of Sexting - N.J.S.A. 18A:35-4.33
- Deaf Students' Bill of Rights - N.J.S.A. 18A:46-2.7
- Digital Citizenship/Social Media - N.J.S.A. 18A:35-4.17 and 4.27
- Parental opt out limited to health, family education or sex education - See N.J.S.A. 18A:35-4.7

# New Law – Information Literacy

- New Jersey enacts [first in nation information literacy law](#)
- Each school district will incorporate instruction on information literacy in an appropriate place in the curriculum of students in grades kindergarten through 12 as part of the district's implementation of the New Jersey Student Learning Standards. The guidelines will include, at a minimum, the following:
  1. the research process and how information is created and produced;
  2. critical thinking and using information resources;
  3. research methods, including the difference between primary and secondary sources;
  4. the difference between facts, points of view, and opinions;
  5. accessing peer-reviewed print and digital library resources;
  6. the economic, legal, and social issues surrounding the use of information; and
  7. the ethical production of information.

## Recent Legislation – LGBT and People with Disabilities Instruction

- *N.J.S.A. 18A:35-4.35-36* requires boards of education to include instruction on the **political, economic, and social contributions of persons with disabilities and lesbian, gay, bisexual, and transgender (LGBT) people** in appropriate places in the middle school and high school curriculum. The law also requires boards of education to adopt inclusive instructional materials that portray the cultural and economic diversity of society including the political, economic, and social contributions of person with disabilities and LGBT people, where appropriate.

## Be Careful What You Say ...

**Board Member Reaction to New Law on contributions of LGBT people** - Hackensack School Board Trustee sent emails to the acting Superintendent indicating that she was “disgusted and appalled” by the January 31, 2019 law requiring public schools to teach LGBTQ History.

"I find it repugnant that someone's sexual preferences have anything to do with their contributions or achievements in society,"  
"Everywhere I turn, this alternate lifestyle narrative is being shoved (down) our children's throats. Where does it end???"  
Emails were obtained through Open Public Records Act request.

## Rainbow Flag - Human Rights v. Political Expression

- School Ethics Case against BOE member Noelle O’Donnell - Hunterdon Central Board Member did not violate ethics act by wearing rainbow flag mask
  - “In today’s culture and climate,” the commission [wrote in its ruling](#), “it is now more important than ever that all students feel included, and represented, and (O’Donnell’s) decisions were an attempt to support a particular group of students who felt threatened by an impending decision regarding curriculum and books.”
- Hunterdon Central Regional [defends drag show](#) put on by student club
- [Rainbow Flag removed](#) from Long Valley Middle School, Washington Twp (Morris County)

# NJDOE Guidance on Transgender Student Rights

- NJDOE 2018 [Guidance and Resources Regarding Transgender Students](#)
- Definitions – gender identity, gender expression, sexual orientation, cisgender, transgender
- Student Gender Identity – Parent consent, court order name change not required; parent notification
- Name and pronoun use – Driven by student may require use of “they” in some cases for individual
- Safe and Supportive Environment – staff training, equal access, HIB, social and emotional learning
- Confidentiality and Privacy
- Student Records – Revised UNLESS parents are unaware
- Student Activities, Athletics – aligned with gender identity
- Restrooms and locker rooms – aligned with gender identity or private restroom/changing area if student prefers

# Gregory Janicki v. Washington Twshp SD – 8/31/2021

## Facts:

– Conduct Unbecoming Charges & Other Just Cause Charges filed against tenured Music Teacher.

– Allegations that he skipped training sessions/meetings re: LGBTQ issues, and other unprofessional behavior in relation to the SD’s LGBTQ policies. He also engaged in conduct that is “antagonistic and discriminatory towards students and coworkers in the LGBTQ community, causing turmoil with staff members, and putting the SD at risk for violation state/federal anti-discrimination laws and directives.”

– Progressive Discipline demonstrated – Increment Withholding

– See also 3/25/21 Prior Arbitration Decision – MTD granted

Decision: Sustained. Teacher Dismissed.



## No Protection for “Furries”

- NJLAD and federal law do not provide any protection for individuals to have right to dress as, or identity as, animals
- No legal obligation to accommodate students who wish to dress as animals
- No evidence this is occurring in any widespread manner

## Revisions to HIB Law

- P.L. 2021, c. 338 – went into effect for 22-23
- Includes provisions for parental accountability in cases of cyber harassment
- Requires results of HIB investigations to be placed in student cumulative file
- Requires documentation of discipline, counseling, intervention services provided
- Heightened scrutiny - Preliminary Determinations
- Requires student intervention plan after 3<sup>rd</sup> confirmed HIB incident

## NJDOE Forms for Reporting HIB

- See NJDOE Broadcast Email – 8/29/22
  - Implementing Amendments to the Anti-Bullying Bill of Rights Act
  - Includes Revised Model Policy

## Concerns with NJDOE Guidance

- NJDOE Model Form 338 gives option for a staff member to anonymously report HIB, HOWEVER that is not permissible under HIB law – staff must verbally report issue to principal same day incident occurs, no longer anonymous, then follow up with written report
- NJDOE FAQ indicates that Student Intervention Plan mandated only if 3 confirmed cases in one school year, HOWEVER law does not limit SIP to 3 cases in any one year

# Reporting Suspected Bias-Related Acts and the

## Link to Suspected HIB

- Must report to local law enforcement and bias investigation officer for county prosecutor’s office whenever school employees “develop reason to believe a bias-related act has been committed or is about to be committed.”
- “Bias-related act” means any act “that is motivated in whole or in part by racial, gender, disability, religion, sexual orientation, or ethnic prejudice.”
- Note that the reference to “gender” extends to acts motivated by prejudice related to gender identity or gender expression.
- Does NOT have to rise to level of a crime.
- Includes any allegation of HIB involving one of the above protected classes.
- See N.J.A.C. 6A:16-6.3(e)

## Comprehensive Equity Plan

- Goal to assure equal access and equity in the district's educational programs and all aspects of district operations
- Rewritten every three years
- School districts given option of extending 2019-22 plan for one year
- For those who took option, must develop new plan to go into effect for 23-24 school year
- See <https://www.nj.gov/education/equity/cep/>

## CEP – Who is Responsible?

- Developed and implemented by Affirmative Action Team/Affirmative Action Officer
- Should have all aspects of district operations represented on team – administration, curriculum, athletics, HR, facilities, budget, etc.
- Need to show effort to garner community input

## Just a Compliance Document?

- Has the CEP historically been viewed as a compliance document that must be done?
- Have you satisfied state monitors without having to make much effort and wondered why work harder when it is not necessary for compliance?
- If so, what has contributed to that view?
- How does this “compliance document” framework influence the level of ownership that you and other staff take in the Comprehensive Equity Plan?
- Is it worth the effort to reframe???



## Why Make the Effort?

- Reduced potential legal liability, shows good faith and due diligence
- Lack of meaningful process may INCREASE potential legal liability
- Real progress on the issues of equity will benefit all students, all staff, the entire school community
- Critical to break school-to-prison pipeline, cycle of poverty, long-term impact of systemic discrimination
- Real commitment can inspire others, have exponential impact over time

# Key Discussion Questions – Board

## Responsibility

- In what ways are current board policies supporting our district's efforts to promote equity for all stakeholders?
- How effective have current policies been in closing equity gaps?
- What new or revised policies should be considered?
- Are policies being consistently implemented at all levels?
- What can the board do to promote engagement of all stakeholders, including staff, students, parents and the community?

## Key Discussion Questions – Staff Development

- What measures are used to assess the effectiveness of professional development?
- What process is used to determine current and emerging professional development needs?
- What impact has professional development had in terms of addressing implicit racial, cultural, religious and other staff biases?
- What new professional development is needed in light of recent statutory changes, case law and local needs?

## Key Discussion Questions – School and Classroom Practices

- What school and classroom practices have been put in place in the past 3 years to promote equity?
- How effective have those practices been? How do we know?
- What discrepancies exist from class to class or school to school in school and classroom practices?
- What changes in curriculum and/or instructional strategies should be considered and why?

## Key Discussion Questions – Employment Practices

- How closely does your current staffing mirror your student population in terms of race, ethnicity, gender and other factors?
- What can be done to enhance current recruitment efforts to promote greater staff diversity?
- How well do current procedures ensure a fair and equitable hiring process?
- What revisions to current procedures should be considered in light of the Equal Pay Act and other recent developments?

# Leveraging Meaningful Change

- Do not work in isolation – Have a true and representative Affirmative Action Team
- Frame the review in a positive light, looking to further district commitment to diversity, equity and inclusion
- Look at impact and outcomes, not just intent
- Celebrate successes, even if small
- Provide a safe environment for difficult conversations
- Begin early
- Review progress regularly
- View all aspects of district operations through an equity lens



## For More Information

- Visit our website for more courses that can support your work at <http://www.njpsa.org/legalonenj/>
- If you have any questions about this presentation or suggestions for future seminars, please send an email to [legalone@njpsa.org](mailto:legalone@njpsa.org)



## Content Library



**LEGAL ONE** is the leading provider of education law workshops, online courses, and webinars for school leaders and teachers on critical legal issues. New programs will be added throughout the year, so be sure to check out the **LEGAL ONE Content Library** for our latest legal professional learning offerings.

For a full list of all of our upcoming workshops, please visit the

**[Live Calendar for all of FEA \(Including LEGAL ONE\)](#)**

*Please note that you do not have to be a member to attend our workshops. **Everyone** is welcome to participate and take advantage of our outstanding professional learning opportunities.*





**Available in Apple Podcasts, Google Podcasts, and Spotify.**

How can you understand your legal rights and responsibilities? Especially with limited time, laws that are constantly evolving, and the fact that you are always on the move? Whether you are a parent, teacher, school leader, college student or just have an interest in school law, the LEGAL ONE Podcast provides a great option for you.

As the leading provider of school law training, the LEGAL ONE team of school law experts is pleased to offer the LEGAL ONE Podcast, a weekly podcast that helps you understand complex legal issues. Each episode will be hosted by a LEGAL ONE attorney, include information on recent developments in school law and provide tips for promoting collaboration between parents and schools.



<http://nipsa.org/the-legal-one-podcast/>

# Q & A

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

**Ivy Davis**

Sr. Business Development Specialist

**Joe Semptimphelter**

Sr. Business Development Specialist



# Thank You!



