



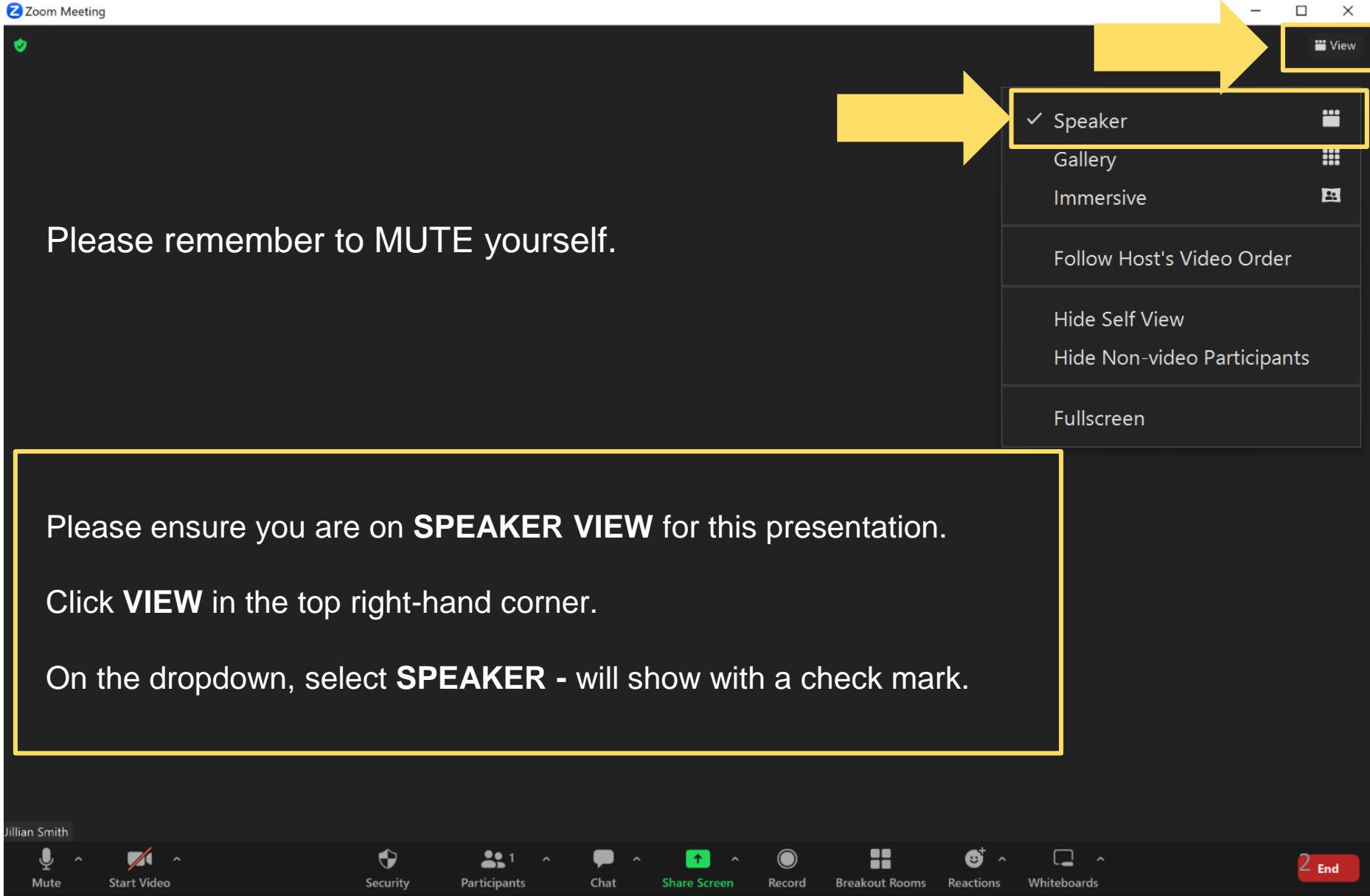
***SUB-FUND MEETING***

# The Future of Special Education Litigation

January 4, 2024 | 9:30 AM - 12:00 PM



# MEETING RECOMMENDATION



Zoom Meeting

View

✓ Speaker

Gallery

Immersive

Follow Host's Video Order

Hide Self View

Hide Non-video Participants

Fullscreen

Please remember to MUTE yourself.

Please ensure you are on **SPEAKER VIEW** for this presentation.

Click **VIEW** in the top right-hand corner.

On the dropdown, select **SPEAKER** - will show with a check mark.

Jillian Smith

Mute Start Video Security Participants Chat Share Screen Record Breakout Rooms Reactions Whiteboards

2 End

# DR. ANTHONY DRAGONA

*Union City BOE*

Chairman  
*NJEIF*



# WELCOME!





## CONTINUING EDUCATION CREDITS

1. 2 QPA – 2 Office Administration & General Duties “or” Ethics | Course Code 16578

**\*\* Must be present for the entire program. This will be verified by the recording attendance, therefore, please make sure your name is properly displayed on the camera. \*\***

## CEC EVALUATION FORMS

PLEASE GO TO NJSIG WEBSITE to download **appropriate** Evaluation Form:

ERIC NORTH: <https://www.njsig.org/sub-funds/eric-north>

NJEIF: <https://www.njsig.org/sub-funds/njeif>

MOCSSIF: <https://www.njsig.org/sub-funds/mocssif>

QPA CREDITS: Please complete the form and return to:

- ERIC NORTH: [GGB\\_NJSIG\\_CECredits@ajg.com](mailto:GGB_NJSIG_CECredits@ajg.com)
- NJEIF: [GGB\\_NJSIG\\_CECredits@ajg.com](mailto:GGB_NJSIG_CECredits@ajg.com)
- MOCSSIF: MICHELE EULNER - [MICHELE.EULNER@ALLIANT.COM](mailto:MICHELE.EULNER@ALLIANT.COM)

Evaluation Forms must be returned by **January, 28, 2024.**

*Certificates will only release upon confirmation of attendance and receipt of Completed Evaluation Form.*

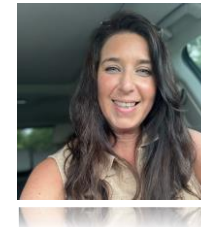
# SUB-FUND COMMITTEES & CHAIRS



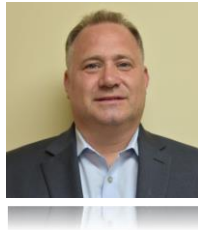
**Dr. Chris Russo**  
*West Windsor –  
Plainsboro Regional  
School District  
Chair, NJSIG BOT*



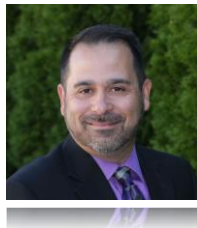
**Dr. Anthony N. Dragona**  
*Union City BOE*



**Kelly Brazelton**  
*Monmouth County  
Vocational BOE*



**Steven Somick**  
*North Bergen  
School District*



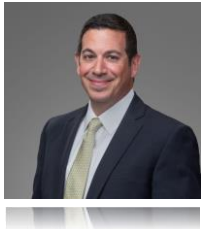
**Keith A. Rosado**  
*Westwood Regional School  
District*

## EDUCATIONAL PARTNERS

### NJ DIVISION ON CIVIL RIGHTS

Educational Partnership: Training Thursday which offer training aimed at preventing and addressing discrimination. These interactive sessions educate participants about their rights and responsibilities

**Elissa Zylbershlag, Director, Education and Training**  
[elissa.zylbershlag@njcivilrights.gov](mailto:elissa.zylbershlag@njcivilrights.gov) | 609-954-0953 | [www.NJCivilRights.gov](http://www.NJCivilRights.gov)



### CLEARY, GIACOBBE, ALFIERI, JACOBS, LLC

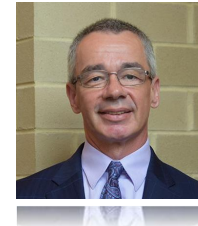
Educational Partnership: NJSIG NEPHA Hotline Administrator, Family Medical Leave Act Training and etc.

**Bruce W. Padula, Esq. and Jodi S. Howlett, Esq.**  
[bpadula@cgajlaw.com](mailto:bpadula@cgajlaw.com) | [jhowlett@cgajlaw.com](mailto:jhowlett@cgajlaw.com) | 732-583-7474 | [www.cgajlaw.com](http://www.cgajlaw.com)

### NJPSA FEA LEGAL ONE

Educational Partnership: All hot topics, School Law Central Newsletter, Podcast, Webinars and more!

**David Nash, Esq., Director of Legal Education and National Outreach**  
[dnash@njpsa.org](mailto:dnash@njpsa.org) | 609-860-1200 | [www.njpsa.org/legalonnj](http://www.njpsa.org/legalonnj)



### CAPEHART SCATCHARD

Educational Partnership: Workers' Compensation Insight, Workers' Compensation Newsletter and Blog, Workers' Compensation Training Seminars

**John H. Geaney Esq.**  
[geaney@capehart.com](mailto:geaney@capehart.com) | 856-914-2063 | [www.capehart.com](http://www.capehart.com)

# TRAINING THURSDAYS NEW JERSEY DIVISION ON CIVIL RIGHTS



## Understanding the Needs of LGBTQIA+ Youth

**CEC: 1 Office Administration & General Duties and 1 Ethics | Course code: 16604**

**Audience:** School Administrators/Leaders which may include Superintendent, Assistant Superintendent, Human Resources, Business Administrator, Assistant Administrator, Assistants and/or anyone from the district that will benefit. Social Services providers are also invited. Educators, youth advocates, and others who work with your people.

**Description:** New Jersey has been at the forefront of fostering equality for its LGBTQIA+ young people, including strong protections in the NJ Law Against Discrimination, Incorporation of LGBTQIA+ content in school curricula, and the extension of rights for transgender people. Yet, LGBTQIA+ youth remain a disproportionate risk for bullying, harassment, homelessness, suicide, and involvement in the foster care and law enforcement systems. This interactive training will introduce participants to the varied identities and experiences of LGBTQIA+ youth, explore the types of bias and discrimination they face, and offer strategies for protecting their rights in various settings.

Thursday, January 11  
9:30am – 11:30am

Zoom:  
[https://njoag.zoomgov.com/meeting/register/vJlSd--tpz0vE8OSVoZMXGrZ7x3Rl1bz\\_P0](https://njoag.zoomgov.com/meeting/register/vJlSd--tpz0vE8OSVoZMXGrZ7x3Rl1bz_P0)

Thursday, January 18  
9:30am – 11:30am

Zoom:  
<https://njoag.zoomgov.com/meeting/register/vJlsc-iprjlvHQ9jjNodSnTw60wkHSzAYDo>

**\*\* MUST REGISTER \*\***

# LEGAL ONE TRAINING SESSION



## Legal Requirements Related to Addressing Microaggressions and Implicit Bias

Thursday, February 8  
9am – 12pm

**Registration Link:**

<https://njpsa-org.zoom.us/meeting/register/tZMuf-grqz0jHdIm7Ph1o91JFXz-O1Kt3d9f>

**Description:** School districts have strong legal obligations to identify, address, remediate, and prevent discrimination in our public schools. While school leaders generally understand their obligations to address over, explicit acts of discrimination, the legal obligations involved become much more nuanced and complex when it comes to addressing microaggressions and implicit bias. In this session, participants will gain a great understanding of how to address these less obvious forms of discrimination.

**Topics to be discussed include:**

- Developing a common understanding of the meaning of key legal terms including microaggression, implicit bias, and disparate impact
- Understanding various common scenarios where microaggressions may occur and/or implicit biases may emerge in the school district setting
- Legal obligations related to identifying, addressing, remediating and preventing more subtle forms of discrimination in the workplace
- Lessons to be learned from litigation regarding school districts
- Policies, protocols, and other key legal considerations that reduce the potential for subtle forms of discrimination to arise and which reduce potential legal liability for school districts.



# JAY LYNCH

Area Executive VP | Regional Director  
*Alliant*

Sub-fund Administrator  
*MOCSSIF*

## SUB-FUND ADMINISTRATOR REPORT



# DIRECTOR'S REPORT

**Thursday, May 9, 2024 – In-Person 9:00am – 1:00pm**

**Topic:** Workers Compensation Symposium and other topics

**Description:** Workers compensation insurance represents 50% of the premiums paid by school districts and is the one part of end insurance portfolio that can positively manage through sound reporting investigation and training programs. this program will provide guidance on how to investigate works it's follow-up on the injuries, and manage or implement your return it to work program. We will also tackle title 18A and how this law has impacted communications with employees who have been out for more than a year.

**Location:** Hilton East Brunswick

3 Tower Center Blvd, East Brunswick, NJ 08816



# DIRECTOR'S REPORT

- Property Casualty Overview – NJSIG 2024-25
- How Workers' Compensation Costs are calculated
- 2024 NJ State Rates recently released – **ANOTHER DECREASE!**

| Class Code            | 22-23   | 23-24   | 24-25   | YOY Change |
|-----------------------|---------|---------|---------|------------|
| 8868 Prof             | \$1.36  | \$1.35  | \$1.27  | -6%        |
| 9106 Non-Professional | \$12.44 | \$11.60 | \$10.68 | -8%        |

- Budget Development



# DIRECTOR'S REPORT

## Review Your Reserves

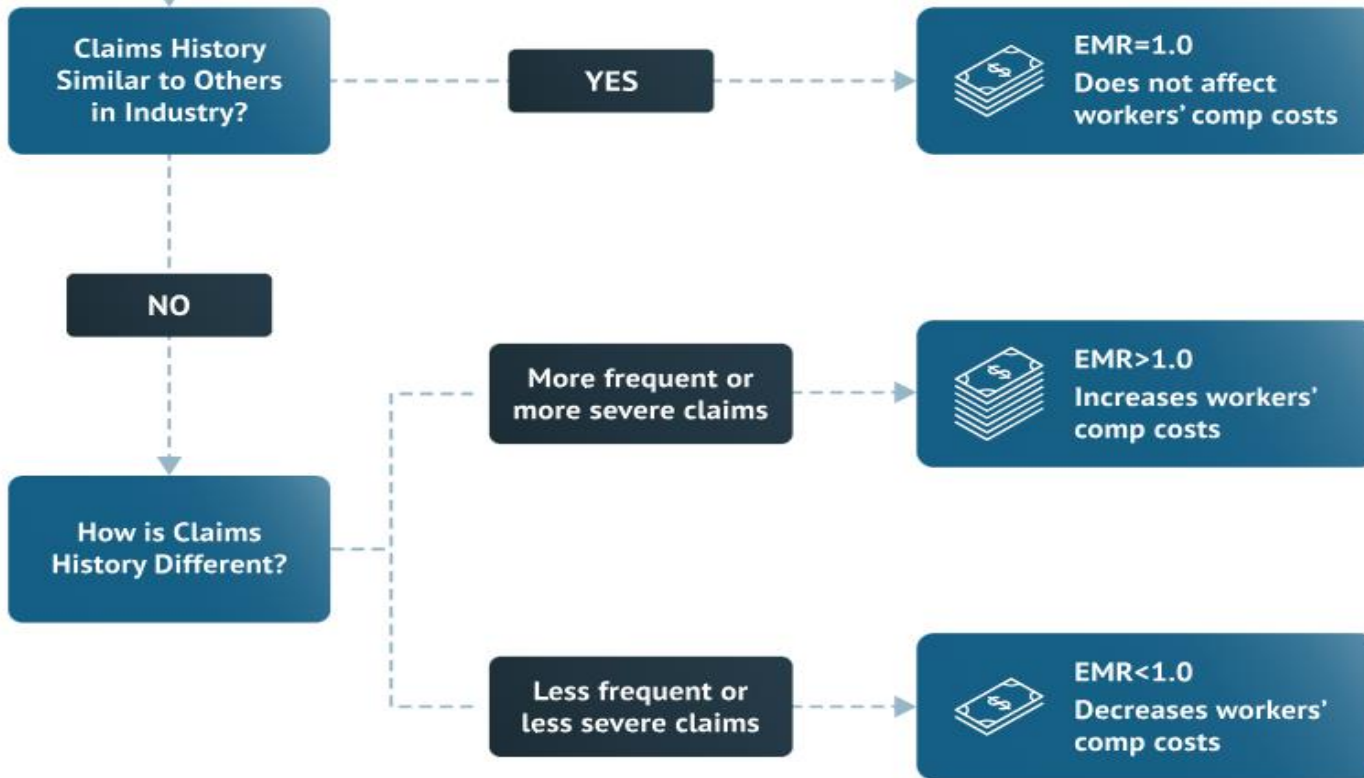


Illustration BY: Nathan Weller, FitSmallBusiness



# DIRECTOR'S REPORT

- Other Lines – Too Early to Tell...
- Property Insurance
- Cyber Insurance
- General Liability, Excess Liability, Auto Liability and Physical Damage, School Board Legal (Educators Legal Liability)



# IVY DAVIS

Senior Business Development Specialist  
*NJSIG*



## NJSIG UPDATES



# WORKERS' COMP INTAKE PROGRAM



## REPORT A WORKERS' COMPENSATION CLAIM

NJSIG offers **three** easy ways to file a workers' compensation incident report.

### Business Hours:

8:00 AM - 5:00 PM  
Monday - Friday

*After standard business hours:  
Please leave a message about your injury and you will be contacted within one (1) business day by an intake representative.*



## 1 CALL 609-543-3377

NJSIG intake representatives are available during standard business hours. The injured employee will be directed to treatment.

English & Spanish team members available.

## 2 REPORT ONLINE

Complete First Report of Injury (FROI) by visiting:  
[www.njsig.org/froi](http://www.njsig.org/froi)

If you indicated a need for treatment on the FROI form, you will be contacted by a workers' compensation specialist in 24 to 48 business hours.

## 3 DOWNLOAD & SEND

Download FROI in English or Spanish by visiting:  
[www.njsig.org/reporting-claims#workerscomp](http://www.njsig.org/reporting-claims#workerscomp)

Email fully completed FROI forms to: [froinjsig.org](mailto:froinjsig.org)  
or fax 609-386-2188.

For additional training or supplies, please reach out to Ivy at [IDavis@njsig.org](mailto:IDavis@njsig.org)

# Sub-fund Pages - NJSIG.org



**ERIC North**  
 Educational Risk & Insurance Consortium — North  
 Counties: Mercer, Middlesex, Somerset, Union  
 Established: 2000  
 Sub-fund Administrator: Arthur J. Gallagher  
 Sub-fund Administrator Contact: Latonya Brennan  
 Member Services Representative: Ivy Davis

Upcoming Sub-fund Events:  
 ERIC North/NJEIF Joint... 9:30AM Oct 5th, 2023  
 ERIC North/NJEIF Joint... 9:30AM Jan 4th, 2024  
 ERIC North/NJEIF Joint... 9:00AM May 9th, 2024

Sub-fund Resources:  
 2023-2024 ERIC NORTH Sub-fund Planning Brochure  
 NJSIG WC Manual  
 NJSIG WC Process Chart  
 Coverages at a Glance  
 Personal Auto on School Property  
 Personal Property Damage

Sub-fund Meeting Materials:  
 The Power of Title 59 N.J. Tort Claims Act (January 12, 2023)



**NJEIF**  
 North Jersey Educational Insurance Fund  
 Counties: Bergen, Essex, Hudson  
 Established: 1999  
 Sub-fund Administrator: Arthur J. Gallagher  
 Sub-fund Administrator Contact: Latonya Brennan  
 Member Services Representative: Ivy Davis

Upcoming Sub-fund Events:  
 ERIC North/NJEIF Joint... 9:30AM Oct 5th, 2023  
 ERIC North/NJEIF Joint... 9:30AM Jan 4th, 2024  
 ERIC North/NJEIF Joint... 9:00AM May 9th, 2024

Sub-fund Resources:  
 2023-2024 NJEIF Sub-fund Planning Brochure  
 NJSIG WC Manual  
 NJSIG WC Process Chart  
 Coverages at a Glance  
 Personal Auto on School Property  
 Personal Property Damage

Sub-fund Meeting Materials:  
 The Power of Title 59 N.J. Tort Claims Act (March 1, 2023)



<https://www.njsig.org/sub-funds/njeif>

**MOCSSIF**  
 Monmouth Ocean County Shared Services Insurance Fund  
 Counties: Monmouth, Ocean  
 Established: 1998  
 Sub-fund Administrator: Boynton & Boynton, a division of Alliant Insurance Services, Inc.  
 Sub-fund Administrator Contact: Jay Lynch, Ron Gillaspie  
 Member Services Representative: Ivy Davis

Upcoming Sub-fund Events:  
 MOCSSIF Sub-fund M... 9:30AM Oct 5th, 2023  
 MOCSSIF Sub-fund M... 9:30AM Jan 4th, 2024  
 MOCSSIF Sub-fund M... 9:00AM May 9th, 2024



<https://www.njsig.org/sub-funds/mocssif>



# Jill Deitch, Esq.

Executive Director  
*NJSIG*



## NJSIG Executive Update





# NJSIG CYBER LIABILITY PROGRAM

**Standard Deductible: \$250,000**

*Reduced from deductible set by Beazley*

In order to qualify for the reduced deductible (referenced below), each of the member's software, services/devices accessed by the perpetrator(s), & employees who unintentionally committed an act, must meet the minimum cyber controls at the time of the incident.

## MINIMUM CYBER CONTROLS:



### MULTIFACTOR AUTHENTICATION

Authentication using two or more factors to achieve authentication. Since passwords are vulnerable to compromise and theft, requiring a user to prove their identity with both something they know and something they have, enhances the security of a system.



### ENDPOINT PROTECTION PLATFORM

Safeguards implemented through software to protect end-user machines such as workstations and laptops against attack. Helps detect threats and protect your organization from advanced forms of malware that anti-virus software programs do not catch.



### INFORMATION TECHNOLOGY SECURITY AWARENESS TRAINING

Explains proper rules of behavior for the use of agency information systems and information. Teaches employees to understand vulnerabilities and threats so they are better able to avoid unsafe actions/practices that could lead to a cyber breach. Employee training must have taken place one year of the incident and must include a simulated phishing email program.



### SYSTEM BACKUPS

A copy of files and programs made to facilitate recovery if necessary. A system backup protects against all forms of data loss, that could be caused by human error, physical damage, hardware failure, virus attacks, power failure, and natural disasters. Successful test recovery must have been performed within 6 months of incident and air-gapped (separate from network).

NJSIG will reimburse members for a portion of their Beazley retention only if the Minimum Cyber Controls criteria is satisfied at the time of the incident.

- Member total revenues less than \$100,000,000 = **\$25,000 deductible.**
- Member total revenues greater than or equal to \$100,000,000 = **\$50,000 deductible.**

*This document does not alter, amend or edit the policy forms. Refer to the policy wording for actual limits, terms, conditions, deductibles and exclusions.*

# NJSIG CYBER LIABILITY PROGRAM

# The Future of Special Education Litigation



**Jodi S.  
Howlett, Esq.**

*Partner*  
Cleary, Giacobbe, Alfieri,  
Jacobs, LLC



**David  
Nash, Esq.**

*Director*  
Legal Education & National Outreach  
NJPSA/FEA/LEGAL ONE



**John  
Worthington, Esq.**

*Coordinator*  
Special Education Law  
NJPSA/FEA/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.

# Topics

- Dispute Resolution
- Discriminatory Discipline Practices
- State Complaint Investigations
- Guidance on Discipline Practices
- Potential Litigation over extending Services to Age 22 for Eligible Students with Disabilities
- Seclusion/Restraint
- Threat Assessment and Students with Disabilities
- Obtaining Damages on Behalf of Students with Disabilities
- Bullying, FAPE and Students with Disabilities
- Scenarios

*The Future of  
Special Education Litigation*

# DISPUTE RESOLUTION

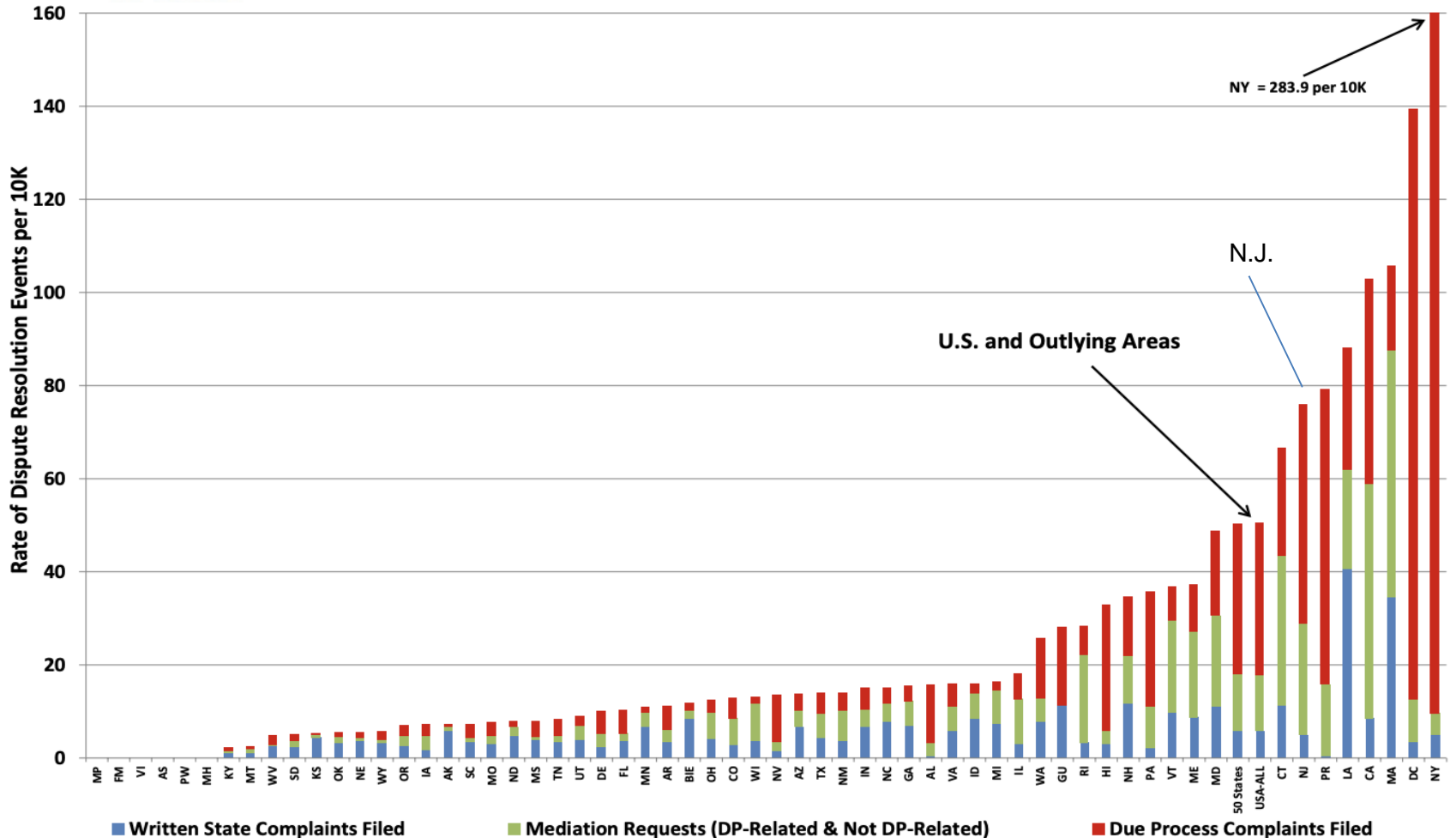


# Dispute Resolution Data

Source: Center for Appropriate Dispute Resolution in Special Education



## Total Dispute Resolution Activity by State/Entity Per 10K Child Count: 2020-21



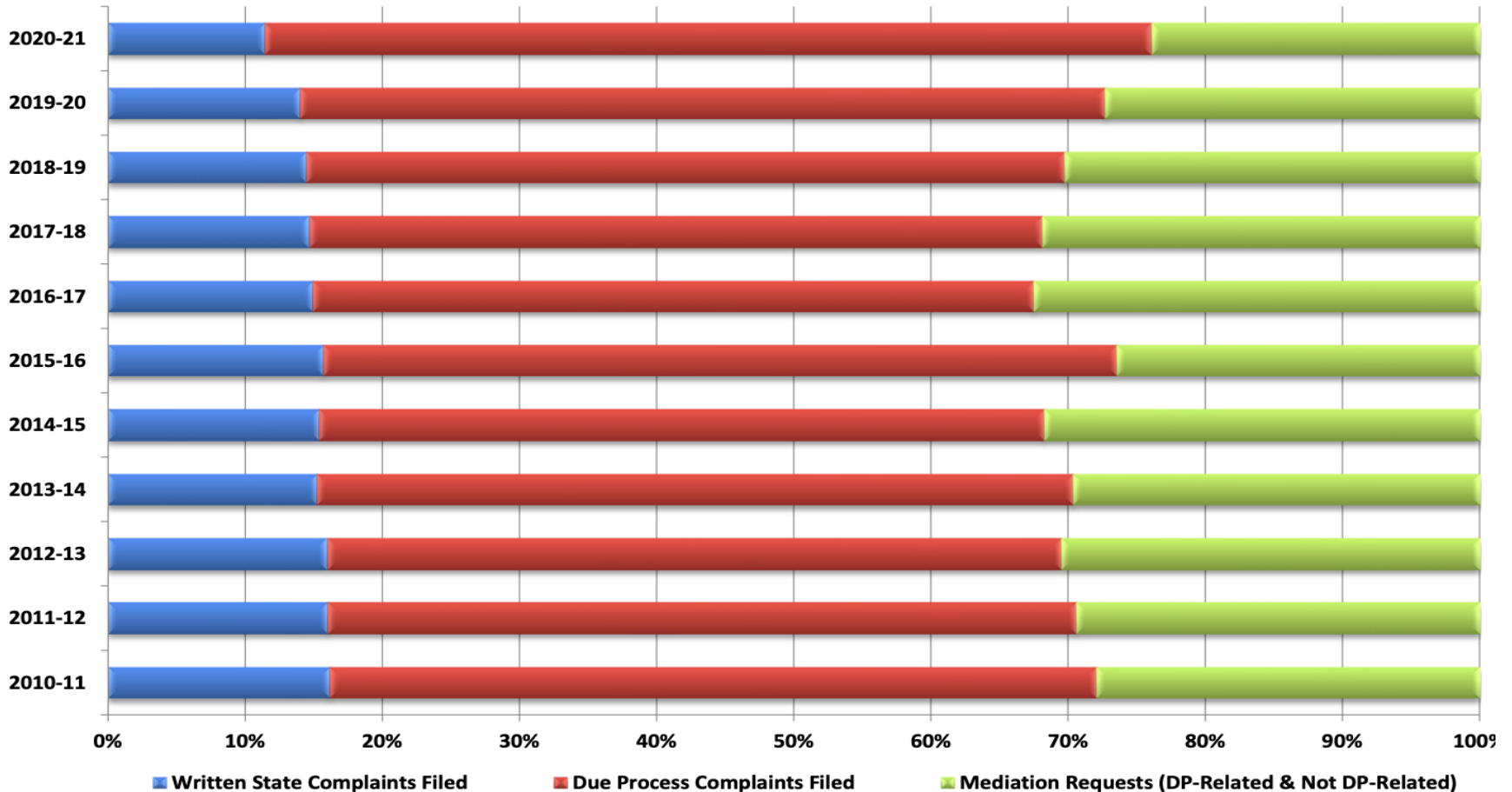
# Dispute Resolution Data

Source: Center for Appropriate Dispute Resolution in Special Education



## Relative Use of Dispute Resolution Options: U.S. and Outlying Areas

Note: 100% = The sum of requests for all dispute resolution processes





# Trends in Litigation

- Several cases in Federal court challenging calculation of the 45-day due process hearing timeline
  - Changes to due process procedures appear likely
  - Special Education Unit
  - Hearing date scheduling
  - Number of hearing dates
- Appears to be more applications to remove students for dangerousness
- There **does not** appear to be a significant increase in applications for compensatory services
- Numerous cases on stay put/placement pending appeal (ER applications)
- Districts have the burden of proof, and proffered witnesses must demonstrate that they know the student and programs available

# Dispute Resolution Decisions

- M.S. v. East Brunswick, (OAL: 9-16-2022)
  - **Stay Put**: Invoked when parent files for Mediation/Due Process
  - **Automatic Injunction** - No need to meet 4 requirements for injunctive relief (Harm and success being key)
  - **Stay-put** = current educational programming and services - Not necessarily the current physical placement
  - Seems to imply that after a stay put is invoked, it cannot be altered by order of the court.
- J.M. v. Ewing Twp. BOE, (OAL 8-31-2022)
  - District must demonstrate that a student is a danger in order obtain an order to remove the student for up to 45 days
    - Physical danger to others asserted
    - No violent or aggressive behaviors established
    - No serious injuries inflicted
    - **NOTE**: The ALJ appears to have conflated drugs, weapon, and serious bodily injury (Three reasons for a district automatic removal) with the standard to assess dangerousness. **This IS NOT CORRECT**

# Dispute Resolution Decisions

- Various Cases: **Consent for a reevaluation** can be compelled through litigation if a school district can provide a “**reasonable basis**” for the need to do so.
  - Can compel the **evaluator chosen by the district**
  - Can compel **the setting for conducting the assessment**
  - Refusal to provide a **parentally obtained assessment(s)** can serve as a basis to order consent for a district assessment
  - The district must be permitted to obtain necessary information to assess continued eligibility for special education and related services and the instruction and services to be provided: Cannot stop declassification by refusing permission to evaluate the student.
  - **Standard**: Articulate reasonable grounds for seeking consent to conduct the assessment(s).

## Dispute Resolution Decisions

- Various Cases: Basis for assessing whether a school district is offering, or did offer, the student a FAPE:
  1. Reasonableness of the IEP **at the time it was developed**
  2. Judged based on the evidence **known to the district at the time the IEP was developed**
  3. Was the IEP **reasonably calculated to provide a FAPE at the time it was developed?**

# Dispute Resolution Decisions

- M.D. v. Essex County Vo-Tech, (OAL 8-26-2022)
  - Emergent Relief: Seeking compensatory services (transition) **for failure to get the student into college**
  - Asserted that there was a failure to provide transcripts and assist in the application process
  - District: student met graduation requirements but refused to accept diploma after walking at graduation
  - **Would not order the services in an ER application. Could still address it in the underlying case.**
- S.L. v. Caldwell-West Caldwell BOE, (OAL 8-19-2022)
  - Seeking an order allowing the student to play football
  - Application denied
    - Athletics is a privilege, not a right
    - **Nothing in the the IEP requires participation in football (This could have changed the decision if the IEP mandated it)**
    - Training for the sport does not create a right to participate if violate code of conduct requirements

# Dispute Resolution Decisions

- J.L. v. Sterling H.S. BOE, (OAL 8-17-2022)
  - Failed to update goals in the new IEP, even though new special education subjects were added
  - No progress reports were prepared setting forth progress toward achieving any goals in the IEP
  - No report cards were introduced demonstrating progress or performance
  - The district removed the student from his placement and into a special class program based on dangerousness without filing for a due process hearing. **This resulted in a stay-put violation.**
  - **Compensatory services were ordered based on these failures by the district.**

# Dispute Resolution Decisions

- D.L. v. Ramapo Indian Hills Regional BOE, (OAL 8-9-2022)
  - Flawed testimony by a district employee with respect to the appropriateness of the IEP. Not an LD, School Psych., Social Worker or SLS, and never served as a CST member
  - **Failure to call appropriate district personnel as witnesses**
  - **Resulted in a failure to demonstrate that a FAPE was provided**
- L.W. v. Jersey City BOE, (OAL 8-9-2022)
  - 2-year statute of limitations
  - **The student does not get a separate statute of limitations period and the ability to file after they turn 18 and become the “parent.”**
  - Must articulate an appropriate exception to exceed two years
    - E.g. Failure to provide written notice

# Dispute Resolution Decisions

- M.N. v. Sparta Twp. BOE, District Court of N.J. (April 12, 2022)
- “[T]he Court finds that a **high school diploma based solely on passing a GED exam does not constitute a regular high school diploma under 34 C.F.R. 300.102(a)(3)(iv)**
  
- **But See: Board of Education of Township of Sparta, Sussex County v. M.N. on behalf of A.D.**, Superior Court of New Jersey, Appellate Division. May 24, 2023
- At the direction of the Legislature, the DOE promulgated regulations, including [N.J.A.C. 6A:8-5.2\(d\)](#), to establish graduation standards for public high school students. The DOE has concluded as a matter of education policy that students who are not enrolled in school and achieve a passing score on the GED shall be awarded a high school diploma. That specific policy determination by the DOE represents the alignment with state standards required by [34 C.F.R. § 300.102\(a\)\(3\)\(iv\)](#). Under our standard of review, there is no basis to undo DOE's policy determination on this question. It is well settled that we defer to the DOE's expertise in interpreting federal and state statutes and regulations within its implementing and enforcing responsibility. [E.S. v. Div. of Med. Assistance](#), 412 N.J. Super. 340, 355 (App. Div. 2010). Any arguments raised by defendants which were not addressed here lack sufficient merit to warrant further discussion in a written opinion. [R. 2:11-3\(e\)\(1\)\(E\)](#).



*The Future of  
Special Education Litigation*

# DISCRIMINATORY DISCIPLINE PRACTICES



## Differential Treatment Scenario

- District A is aware that a local gang that predominately includes Latino students has recently begun aggressively recruiting students
- With this knowledge, school administrators have been directed to immediately disperse any gathering of three or more Latino students in a hallway, on a playground, or in other unstructured setting to reduce opportunities for gang recruitment to occur

## Disparate Impact Scenario

- District B is concerned about student misbehavior issues that increased in light of the pandemic. In order to assist teachers in restoring order in classrooms, the district has directed that teachers immediately send any student who is being “disrespectful” or “insubordinate” to the principal’s office.
- After 3 months, data on referrals indicates that students of color have been referred at twice the rate of other students, students who are Multilingual Learners are 50% more likely to be referred and that students eligible for free or reduced lunch are 80% more likely to be referred. Data also indicates that 75% of the referrals are made by 10% of the teachers.

# Disparate Impact Examples

- The following is a non-exhaustive list of policies or practices that evidence currently demonstrates may have a disparate impact on Black students, other students of color, students with disabilities, LGBTQIA+ students, or students from any other protected classes:
  - Zero-tolerance policies that are not mandated by state or federal law;
  - Discipline policies that permit suspension or expulsion for minor or subjective infractions, such as “insubordination,” “disrespect,” or “misbehavior”;
  - A school’s use of school resource officers or other law enforcement personnel to impose or enforce discipline, particularly for non-violent and non-drug related student misconduct;
  - A school’s use of restraint and seclusion, sometimes referred to as the use of “isolation rooms”; and
  - A school’s practice of making court or law enforcement referrals for students deemed truant under N.J.S.A. 18A:38-25 without first following the procedures outlined in N.J.A.C. 6A:16-7.6(a), including making an individualized, case-by-case determination regarding the need for a court referral, pursuant to N.J.A.C. 6A:16-7.6(a)(4)(iii).<sup>69</sup>

# Student Discipline

See NJ Division  
on Civil Rights  
[August 28, 2023  
announcement](#)

- See [Discriminatory Discipline Guidance](#)
- See [Compliance Checklist](#)
- See [Administrator's Cheat Sheet](#)

See NJDOE  
Broadcast Email  
on Improving  
Discipline  
Practices

- [ImprovingDisciplinePractices.pdf \(nj.gov\)](#)

## Guidance on Discrimination in School Discipline

- **Key Point** - The LAD holds those in charge of administering student discipline accountable not only for disciplinary decisions that are made with an **explicitly discriminatory intent**, but also if their disciplinary decisions have a **discriminatory impact**.

### Examples of Differential Treatment

- **Different levels of discipline for the same offense.** Two students in a fight; no fact differential. Black student gets a four day suspension, white student gets a two day suspension.
- Classroom teacher does not refer white students to the principal's office for **“disruptive,” “disrespectful,” “insubordinate,” or other subjective behaviors**, but tends to refer Black or Latinx/e students to the principal's office for the same types of conduct; may be discrimination based on race, national origin, or other protected characteristics.

# Guidance on Discrimination in School Discipline

## Examples of Differential Treatment

- A school that would require a student with a disability to undergo a psychiatric examination in order to return from a suspension but does not require non-disabled students to undergo a psychiatric examination after a suspension based on similar behavior, would violate the LAD based on disability.
- School's staff **enforces a prohibition on “tight clothing”** against girls wearing tight pants, but not against boys wearing tight pants, or enforces a prohibition on exposing undergarments against a girl whose bra strap is showing but not against a boy whose boxer shorts are visible, that may constitute discrimination based on gender.
- School's staff consistently disciplines Black and Latinx/e girls for violating the school's dress code, but overlooks white girls wearing similar attire, that may constitute discrimination based on race, national origin, or other protected characteristics.

# Guidance on Discrimination in School Discipline

## Examples of Differential Treatment

- School's security guards or hall monitors consistently ask Black students for their hall passes or student IDs, while allowing white students to walk through the halls unquestioned; that may constitute discrimination based on race.
- A dress code that penalizes students for wearing their hair in braids, cornrows, afros, dreadlocks or any style associated with being Black would violate the LAD based on race.
- **Procedural differences** - Schools can violate the NJLAD if they follow a different process when disciplining students of a specific protected class. If school officials fail to follow federal or state procedural requirements when disciplining students of a certain protected class, but follow those requirements when disciplining students of another protected class, the school may violate the NJLAD.



# Guidance on Discrimination in School Discipline

## Differential Treatment Checklist

To ensure that their discipline policies and practices comply with the NJLAD, school administrators should:

- **Review their schools' disciplinary policies** to ensure no policy **treats students differently** based on actual or perceived protected class status unless that differential treatment is itself required by federal law, state law, or a student's valid IEP or 504 plan;
- **Review their schools' disciplinary policies** to ensure that no policy **penalizes students** for something "inextricably intertwined or closely associated with" protected class status or characteristic;
- **Supervise the drafting and revision of school disciplinary policies** to ensure that no policy is drafted or revised with the **intent to target students** based on protected class status.
- **Monitor and review disciplinary decisions** to ensure students receive the **same or similar discipline** for engaging in the same misconduct, unless the difference in discipline is the result of school officials' compliance with federal or state statutory or regulatory requirements when disciplining students with disabilities or a student's valid IEP or 504 plan;

# Guidance on Discrimination in School Discipline

## Disparate Impact

- Under a disparate impact theory, a school may be found to violate the NJLAD if it uses a discipline policy or practice that **impacts students of one protected class more severely** than it does students of another protected class unless it can show that the policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest.
- Examples of policies or practices that evidence currently demonstrates may have a disparate impact on Black students, other students of color, students with disabilities, LGBTQIA+ students, or students from any other protected classes:
  - Zero-tolerance policies that are not mandated by state or federal law;
  - Discipline policies that permit suspension or expulsion for minor or subjective infractions, such as “insubordination,” “disrespect,” or “misbehavior”;

# Guidance on Discrimination in School Discipline

## Disparate Impact

- Examples of policies or practices that evidence currently demonstrates may have a disparate impact on Black students, other students of color, students with disabilities, LGBTQIA+ students, or students from any other protected classes:
  - A school’s use of school resource officers or other law enforcement personnel to impose or enforce discipline, particularly for non-violent and non-drug related student misconduct;
  - A school’s use of restraint and seclusion, sometimes referred to as the use of “isolation rooms”; and
  - A school’s practice of making court or law enforcement referrals for students deemed truant under *N.J.S.A. 18A:38-25* without first following the procedures outlined in *N.J.A.C. 6A:16-7.6(a)*, including making an individualized, case-by-case determination regarding the need for a court referral, pursuant to *N.J.A.C. 6A:16- 7.6(a)(4)(iii)*.

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# SETTLEMENT AGREEMENT: STATE COMPLIANT INVESTIGATIONS



## New Settlement: Complaint Investigations

- Signed April 24, 2023
- Key Elements of the Agreement:
  - Numerous documents were revised
    - PRISE
    - Procedure manual
    - Model complaint form
  - Translation of these documents
  - Broadcast memos targeted to various groups notifying them of the terms of the settlement agreement

## New Settlement: Complaint Investigations

- Enforcement procedures for corrective action plans
- Staff training
- Reservation of the right to litigate certain claims
- The NJOSE will now investigate substantive allegations concerning:
  - Identification
  - Evaluation
  - Program/Placement
  - FAPE denial

# Broadcast Memo & New Brochure On State Complaints



## STATE OF NEW JERSEY DEPARTMENT OF EDUCATION

A Memo from the New Jersey Department of Education

Date: June 19, 2023  
To: Local Educational Agency Leads, Administrators of Approved Private Schools for Students with Disabilities (APSSD)  
Route To: Directors of Special Services, Special Education Parent Advisory Groups (SEPAGs)  
From: Kathy Ehling, Assistant Commissioner  
Division of Educational Services

### Updated Materials on the Office of Special Education Website

The purpose of this memo is to advise that the New Jersey Department of Education's Office of Special Education (OSE) [website](#) includes new and updated special education materials. The materials include an updated version of the [Parental Rights in Special Education \(PRISE\) booklet](#) and an updated [Model Complaint Form](#), also included in the updated PRISE. Local educational agencies (LEAs) and Approved Private Schools for Students with Disabilities (APSSDs) that distribute these materials are directed to discard the previous versions of these documents, and immediately distribute the updated versions. Additionally, if the website of a LEA or APSSD includes these documents, please verify that the previous version is removed and that it is replaced with a link to the current version.

The OSE has also posted a new Special Education [Complaint Investigation Pamphlet](#) and a new [chart](#) that explains the differences between a request for a due process hearing and a State complaint.

Questions should be directed to the OSE's Complaint Investigation Unit at (609) 376-9060 or [oseinfo@doe.nj.gov](mailto:oseinfo@doe.nj.gov).

c: Members, State Board of Education  
NJDOE Staff  
Statewide Parent Advocacy Network  
Garden State Coalition of Schools  
NJ LEE Group

|                      | <b>Written State Complaint</b>   | <b>Request for a Due Process Hearing</b>  |
|----------------------|--|---|
| What is it?          | A written document used to communicate that a public agency (e.g., school district) has not followed the IDEA, and to request an investigation.  | A process used to resolve a formal complaint made by a parent or public agency (e.g., school district), who are together referred to as “the parties.”  |
| Who can file?        | Any person or organization may file a written state complaint.   | A parent or school district may file a due process complaint/hearing request.   |
| What issues?         | Available anytime there is a concern that a public agency violated the requirements of federal or state special education statutes or regulations with respect to a particular child or system-wide.   | Used to resolve disagreements relating to the identification, evaluation, educational placement or provision of a free, appropriate public education (FAPE) to a child who needs or is suspected of needing special education and related services.   |
| Time frame?          | Written state complaints must allege a violation that occurred not more than one year prior to the date that the complaint is received.  | A request for a due process hearing must be filed within two years of the date the petitioner knew or should have known of the action being challenged through due process.   |
| Decision maker?      | The state is responsible for ensuring that an investigation is done, if necessary, and a decision is made about the complaint.   | An administrative law judge makes the decision.   |
| What is the process? | <p>An investigator:</p> <ul style="list-style-type: none"> <li>• Reviews information related to the complaint.</li> <li>• May interview individuals related to the complaint.</li> <li>• Makes findings and a determination based on applicable law</li> </ul> <p>The written decision must be issued no later than 60 calendar days from the date the complaint was filed, unless the timeline is extended.</p> | <p>An administrative law judge:</p> <ul style="list-style-type: none"> <li>• Oversees the hearing timeline, including all pre-hearing activities.</li> <li>• Conducts the hearing and manages procedural matters.</li> <li>• Uses applicable law to write a decision based on evidence and testimony presented at the hearing.</li> </ul> <p>The written decision must be issued within 45 calendar days from the end of the resolution period, unless a party requests a specific extension of the timeline.</p> |
| Stay-Put?            | There is no entitlement to “stay-put” following the filing of a written state complaint.   | From the date that the complaint is filed until the decision is final, the child stays in his or her current educational placement, unless the parent and the school district agree otherwise – this is called “pendency” or “stay-put.”  |



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# NEW: NJDOE RELEASES GUIDANCE ON IMPROVING DISCIPLINE PRACTICES



## September 20, 2023 Broadcast on Discipline

- Restorative Justice in Education Pilot  
<https://sites.google.com/kean.edu/restorativejusticeineducation>
- Restorative justice in education, which includes restorative practices, does not stop at addressing misconduct in the school community. When implementing restorative justice, school discipline aims to repair harm inflicted on the school community as well as elicit empathy from those who caused the harm. When implemented with fidelity, restorative practices can transform educational experiences for staff and students, and research has found that adopting restorative practices can be an effective way to address the discipline disparities negatively affecting Black and Hispanic students. **As authorized through P.L.2019, c. 412, the NJDOE is currently administering the Restorative Justice in Education Pilot Program, which supports a cohort of schools in implementing trauma-sensitive restorative justice practices in schools.** LEAs selected for this project began participation in Fall 2021 and can serve as potential models for other LEAs interested in implementing restorative practices. The linked website includes a host of resources LEAs can use to begin their journey to incorporate restorative practices into their school discipline policies.

# September 20, 2023

## Broadcast on Discipline

- **Coordinated Early Intervention Services Funds/Significant Disproportionality** LEAs may opt to set aside 15% of the Individuals with Disability Education Act (IDEA) Part B Basic and Preschool award for Coordinated Early Intervention Services (CEIS). CEIS are services provided to students in kindergarten through grade twelve who are not currently identified as needing special education or related services, but who need additional academic and behavioral supports to succeed in a general education environment. LEAs may use CEIS funds in a variety of ways, including but not limited to, the provision of behavioral interventions and supports, professional development and creating or enhancing a Multi-Tiered System of Supports such as the New Jersey Tiered System of Supports to support the academic and behavioral needs of students in general education.
- **Codes of Student Conduct:** LEAs are encouraged to review current codes of student conduct policies to consider revisions that discourage the overuse of exclusionary discipline like suspension or expulsion when addressing student misconduct. One of the regulatory requirements is that the code of student conduct include “a description of school responses to violations of behavioral expectations established by the district board of education that, at a minimum, are graded according to the severity of the offenses, and consider the developmental ages of the student offenders and their histories of inappropriate behaviors that shall include a continuum of actions designed to remediate and, where necessary or required by law, to impose sanctions” (N.J.A.C. 6A:16-7.1(c)5i). LEAs are encouraged to implement innovative strategies for increasing family engagement to strengthen the school and family partnership, which can lead to improved student behaviors and improved student performance.

## September 20, 2023 Broadcast on Discipline

- **Student Suspensions** Suspensions should be utilized judiciously as suspensions reduce students' participation in academic and social emotional learning experiences critical to positive development. However, if a LEA determines that a suspension is the appropriate response to a violation of the code of student conduct, LEAs should be mindful of the requirements to assist students whose social, emotional, or behavioral needs may manifest as misconduct. Pursuant to P.L.2019, c.479, principals are required to convene a meeting between a student that has experienced multiple suspensions and a school psychologist, school counselor, school social worker, student assistance coordinator, or member of the school's intervention and referral services team to identify any behavior or health difficulties experienced by the student.
- As appropriate, LEAs should provide supportive interventions or referrals to school or community resources that may assist the student in addressing identified difficulties. When school leaders and other school personnel involved in school discipline and behavior management are considering intensive interventions for students, explore NJ Mental Health Cares Directory of Services and/or the New Jersey Department of Human Services' Directory of Mental Health Services. In addition, the New Jersey Comprehensive School-Based Mental Health Resource Guide includes guidance to support universal interventions along with more intensive services available to address the mental health needs for students.

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**NEW: POTENTIAL LITIGATION  
OVER EXTENDING ELIGIBILITY  
FOR SPECIAL EDUCATION  
UNTIL A STUDENT'S  
22<sup>ND</sup> BIRTHDAY**



## Potential Litigation: Age 22

- Pennsylvania recently changed its requirements based on a lawsuit filed by disability groups and extended eligibility for special education and related services **until a student's 22<sup>nd</sup> birthday**.
- The change was based on the PA Education Department's reading of the applicable provisions in IDEA
  - Because PA allows persons to attend adult education programs through age 22, it was determined that IDEA required special education services until a person's 22<sup>nd</sup> birthday
- N.J.A.C. 6A:20 allows adult education programs to be in place for those over age 16 and provides for a state-issued high school diploma for those successfully completing such programs.
- At least three school districts have now sued Pennsylvania arguing that the change was illegally implemented.
- Based on this change in policy in PA, and considering N.J. allows those over age 16 to receive state-issued H.S. diplomas if they successfully complete an adult program, and that other states have made similar changes, **there is the potential for similar litigation in New Jersey**.

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# SECLUSION / RESTRAINT OF STUDENTS WITH DISABILITIES



# Physical Restraint/Seclusion Legislation in N.J.

- P.L. 2017, c.291
- **Only** addresses students with disabilities
- Applies to school districts, Educational Services Commissions, and APSSDs
- Limits use of physical restraint – only in an **emergency** in which the student is exhibiting behavior that places the student or others in imminent physical danger
- Only restrain in **prone position** with prior written authorization of primary care doctor
- Staff members using restraint **annually trained**
- Immediate **parental notice** with written notice within 48 hours
- **NOTE: Provisions with respect to seclusion and data collection are proposed for amendment: A4675**
  - Immediate notification when seclusion is used
  - Data on number of times restraint or seclusion is used
  - **Data on students required to get medical clearance to return to school when they are a danger**



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**THREAT ASSESSMENT /  
SCHOOL SECURITY /  
MENTAL HEALTH CLEARANCES  
& STUDENTS WITH DISABILITIES**



## Risk Assessment vs. School Clearance

- NJDOE issued a School-Based Mental Health Resource Guide in Feb. 2022, updated in June.
- **Risk Assessment** – Interview/informal assessment to identify the crisis type and severity; not every student will require a formal assessment.
- **School Clearance** – The need to formally rule out the risk of harm to self or others, in order for a student to return to school.

## Informal Removals & Special Education Considerations

- To remove a student with a disability when the district believes **it is dangerous for the student to be in the current placement and the parent and the district cannot agree to an appropriate placement**, the district shall request an expedited hearing. N.J.A.C. 6A:14-2.7(n).

# Informal Removals & Special Education Considerations

## § 300.532 Appeal.

**(a) General.** The parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 and 300.531, or the manifestation determination under § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b).

### **(b) Authority of hearing officer.**

**(1)** A hearing officer under § 300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.

**(2)** In making the determination under paragraph (b)(1) of this section, the hearing officer may—

**(i)** Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 300.530 or that the child's behavior was a manifestation of the child's disability; or

**(ii)** Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

# USDE Guidance: July 2022



U.S. Department of Education

- USDE Guidance on Supporting SWD under IDEA and Section 504 in the Discipline Context
- <https://www.ed.gov/news/press-releases/new-guidance-helps-schools-support-students-disabilities-and-avoid-discriminatory-use-discipline>

## NJDOE Guidance: Dangerousness

- N.J.A.C. 6A:14-1.1(d), requires that special education and related services be provided to students with disabilities at public expense, with no charge to the parents. **A clearance by a psychiatrist or other medical professional as a requirement to return to school is considered an assessment provided at public expense.** LEAs shall not require parents or guardians to incur the cost of a psychiatric clearance.
- Considerations for Students Identified as Potentially a Student with a Disability
  - The IDEA and N.J.A.C. 6A:14-3.3(f), require that the disciplinary requirements set forth in federal and state special education regulations apply to students who are identified as potentially having a disability. Students who have been referred to the child study team or are undergoing an evaluation to determine eligibility for special education are considered potentially a student with a disability. **Any removal from school, including removal pending psychiatric clearance, is subject to the protections in the IDEA and N.J.A.C. 6A:14-2.8, and N.J.A.C. 6A:16- 7.2 and 10.**

## Psychiatric Clearance

- If a district is seeking a psychiatric clearance, by implication it is because the district feels the student is a danger to him/herself or others.
- As such, a court order in an expedited due process hearing is needed to effectuate the removal and clearance.
- All days that the student is out for a psychiatric clearance count as days of removal for discipline purposes.
- There is still a duty to educate the student in accordance with IDEA and state law.

## Psychiatric Clearance

- Can/would a district seek a psychiatric clearance if dangerousness wasn't a factor?
  - Can you articulate another reason for such clearance?
  - Absent a legitimate non-danger-based reason, the procedures in IDEA and state regulations must be followed.
  - Even if a legitimate reason is proffered, all days out seeking the clearance must be considered days of removal for discipline purposes (general education and special education laws).
- Not seeking a judge's order could be a liability issue. Illegal removal from school and denial of FAPE.
  - *Perez v Sturgis* (The parent wouldn't necessarily have to seek compensatory services. Monetary damages instead.)



## Psychiatric Clearance

### **What if the District Feels the Student is Dangerous (Self or others)?**

- Suspension for up to 10 days
- Due Process and ER (IAES)
- Change Placement

## Threat Assessments

- A judge can order:
  - A change in placement to an IAES
  - A return to school/program if no threat/danger is established by the school district
  - That a student be assessed (psychological) to determine whether he/she is a threat to self or others
  - Other remedies as determined appropriate
- Short-term removals to ensure student/staff safety are always permitted while the application is pending in the OAL

## General Due Process Rights

- Case law treats any day that a student is kept out of school for a mental health examination as a day of suspension/removal
- If a district requires a student to undergo a mental health assessment, the district is liable for payment
- Any student with 10 or more days of suspension/removal is entitled to a hearing before the board of education

## General Due Process Rights



What does the school need to do to prove a child is dangerous and place the student in a court ordered interim alternative educational setting?

# Collect Substantial Evidence of Dangerousness

- Incident reports
  - Describe the behavior
  - Document the time and date
  - Frequency and intensity
  - Impact of the behavior on the school, the child, and other students
  - Nurses reports showing harm to self, others, or staff
- Take pictures of property damage the day of the incident
- Gather written accounts by other students (if age appropriate) – that day
- Gather written accounts by staff



# General Due Process Rights

## Preparation for an Expedited Due Process Hearing

| Check completed          | Description of records to prepare for hearing  |
|--------------------------|--|
| <input type="checkbox"/> | <p><b>Gather records concerning the latest conduct.</b></p> <ul style="list-style-type: none"> <li>• Discipline forms (e.g., records from the investigation and regular education discipline process, such as incident reports and witnesses' statements)</li> <li>• Police reports</li> <li>• Statements of staff and students who witnessed the incident or who witnessed relevant events prior to the incident</li> </ul>   |
| <input type="checkbox"/> | <p><b>Gather other disciplinary records.</b></p> <ul style="list-style-type: none"> <li>• Discipline history</li> <li>• Prior discipline referrals</li> <li>• Prior incident reports</li> </ul>  |
| <input type="checkbox"/> | <p><b>Gather records of prior risky or injurious behavior.</b></p> <ul style="list-style-type: none"> <li>• Incident reports</li> <li>• Teacher testimony and written observations</li> <li>• Records showing changes in the severity and/or frequency of the behavior over time</li> <li>• Parents' statements concerning the student's at-home behavior</li> <li>• Psychiatric, hospitalization, and other relevant mental health records (if the parents consent to their release)</li> </ul> |
| <input type="checkbox"/> | <p><b>Gather education records showing the supports the student receives.</b></p> <ul style="list-style-type: none"> <li>• IEP or 504 plan</li> <li>• FBA</li> <li>• BIP</li> <li>• Safety plan</li> <li>• Crisis plan</li> </ul>  |
| <input type="checkbox"/> | <p><b>Gather documentation of IEP or 504 plan/BIP implementation.</b></p> <ul style="list-style-type: none"> <li>• Behavioral intervention tracking sheets</li> <li>• Other IEP specialized instruction and related services tracking data</li> <li>• Testimony concerning implementation of the IEP or 504 plan, including behavioral interventions and supports</li> </ul>   |

## Proposed Legislation: S3554

- 2. a. A school district, an educational services commission, and an approved private school for students with disabilities that removes a student from school and requires the student to undergo a mental health clearance shall adopt a policy that complies with the regulations adopted by the State Board of Education pursuant to section 7 of this act and also provides that:
  - (1) **removal for a mental health clearance is used only in an emergency** in which the student is exhibiting behavior at the time of removal that places the student or others in immediate physical danger. In the case of a student classified as eligible for special education programs and services, the school district, educational services commission, or approved private school for students with disabilities shall consult with the child study team prior to removal;
  - (2) **the removal is documented in writing in sufficient detail** to enable the information to be used in the mental health clearance and by staff to address student behavior;
  - (3) **upon the student's return to school, in the case of a classified student, the child study team shall review and update the student's Individual Education Program (IEP), and in the case of a student with a plan prepared pursuant to section 504 of the federal "Rehabilitation Act of 1973,"** (504) 29 U.S.C. s.794, the 504 team shall review and update the student's 504 plan. In the case of a general education student, the school district, educational services commission, or approved private school for students with disabilities shall evaluate the student in accordance with the provisions of the "Individuals with Disabilities Education Act," (IDEA) 20 U.S.C. s.1400 et seq. If the evaluation determines that the student is not eligible for classification under the IDEA, the student shall be referred for evaluation under the federal "Rehabilitation Act of 1973," 29 U.S.C. s.794;

## Proposed Legislation: S3554

- **(4) the student’s parent or guardian is immediately notified when the decision is made to remove a student from school for a mental health clearance,** which notification may be by telephone or electronic communication. A full written report of the incident leading to the student’s removal shall be provided to the parent or guardian within 48 hours of when the decision was made;
- **(5) appropriate instruction is provided to a student who is removed from school for more than five days. In the case of a student with an IEP or 504 plan, the instruction shall be consistent with that plan;**
- **(6) the family bears no cost for the mental health clearance** necessary for the student’s return to school, except as otherwise provided pursuant to subsection a. of section 3 of this act; and
- **(7) every reasonable effort is made to ensure a student’s prompt return to school.**
- The school district, educational services commission, and approved private school for students with disabilities shall post the policy on its website. The website shall also include a list of employees who serve as a point of contact on the removal of students for a mental health clearance.



## Best Practices

- Coordinate with the work of the threat assessment teams formed beginning with the 2023-24 school year
  - CST members should be members of the threat assessment teams
  - Develop policies and procedures that protect the rights of all students, including SWD, and maintain a safe environment in each school
  - Proactively assess behaviors and student needs

## Depression Screening

- P.L. 2021 c. 237 (9/28/2021) Establishes Mental Health Screening in Schools Grant Program in DOE; The purpose of the grant program shall be to provide funding and resources to allow school districts to implement depression screening programs to identify students in the grades seven through 12 who are at risk of depression.
- School district that receives an award under the grant program shall make available to each student in the grades seven through 12 an annual health screening for depression.
- Appropriation - \$ 1,000,000. Mental Health Screening in the Schools
- Grant Fund; \$ 750,000; DOE \$ 250,000 for implementation of the program.

# Threat Assessment Teams

- **P.L. 2022, c.83 (8/1/2022)** – BOE shall develop and adopt a policy establishing a threat assessment team at each school. 7/1/2023
- Purpose - to provide school teachers, administrators, and other staff with assistance in identifying students of concern, assessing those students' risk for engaging in violence or other harmful activities, and delivering intervention strategies to manage the risk of harm for students who pose a potential safety risk, to prevent targeted violence in the school, and ensure a safe and secure school environment that enhances the learning experience for all members of the school community.
- Threat assessment team shall be multidisciplinary in membership and, to the extent possible, *shall include the following individuals: a school psychologist, school counselor, school social worker, or other school employee with expertise in student counseling; a teaching staff member; a school principal or other senior school administrator; a safe schools resource officer or school employee who serves as a school liaison to law enforcement; and the school safety specialist, if that individual is not already part of the team, and additional school employees as appropriate.*

## Threat Assessment Teams

- Each member of the threat assessment team shall participate in training provided by the school safety specialist, consistent with the guidelines developed by the DOE.
- Training shall ensure that the threat assessment team is able to accurately assess student behavior and to ensure that threat assessment teams do not have a disparate impact on students based on their race, ethnicity, homelessness status, religious belief, gender, gender identity, sexual orientation, or socioeconomic status. The training shall, at a minimum, include training on adverse childhood experiences, childhood trauma, cultural competency, and implicit bias.
- DOE, in consultation with State law enforcement agencies and the New Jersey Office of Homeland Security and Preparedness, shall develop guidelines for school districts, charter schools, and renaissance school projects regarding the establishment and training of threat assessment teams pursuant to this act. The DOE shall provide training through the New Jersey School Safety Specialist Academy for the school safety specialists.

# Threat Assessment Teams Guidance

- NJDOE Broadcast Email July 19
  - [K-12 Behavioral Threat Assessment and Management Teams Guidelines](#)
- Definition of terms
- Steps for Building Threat Assessment Team
- Steps for Conducting Threat Assessment
- Guidance indicates district may choose to have 1 districtwide team, OR team in each school OR both



STATE OF NEW JERSEY

## DEPARTMENT OF EDUCATION

A Memo from the New Jersey Department of Education

Date: July 19, 2023  
To: Local Educational Agency Leads  
Route To: Principals, School Safety Specialists, School Administrators, School Social Workers, School Psychologists, School Counselors, School Faculty  
From: Christopher Irving, Ed.D., Assistant Commissioner  
Division of Field Support and Services

### K-12 Behavioral Threat Assessment and Management Teams Guidelines

On August 1, 2022, Governor Phil Murphy signed into law [N.J.S.A. 18A:17-43.4](#), requiring the establishment of a multi-disciplinary threat assessment team in each public school, charter school, and renaissance school project. The purpose of a threat assessment team is to provide teachers, administrators, and other staff with assistance in identifying students with behaviors of concern, assessing those students' risk for engaging in violence or other harmful activities, and delivering intervention strategies to manage the risk of harm for students who pose a potential safety risk.

The law also requires the board of education of each school district and the board of trustees of each charter school or renaissance school project to develop and adopt a policy for the establishment of a multi-disciplinary threat assessment team at each school. Any policy developed by a school district, charter school or renaissance school project concerning the establishment of a multi-disciplinary threat assessment team must be aligned with the *Guidance on the Establishment and Training of K-12 Behavioral Threat Assessment and Management Teams (BTAM)*, developed by the New Jersey Department of Education (NJDOE) in consultation with the New Jersey Office of Homeland Security and Preparedness and State law enforcement agencies.

In order to fulfill its role in the establishment and training of K-12 BTAM teams, the NJDOE Office of School Preparedness and Emergency Planning (OSPEP) is providing ongoing Basic Training, Advanced Training, and General Awareness sessions for BTAM teams and school communities through the U.S. Department of Justice's Bureau of Justice Assistance Students, Teachers, and Officers Preventing School Violence Act grant program. More information on upcoming training sessions and additional BTAM resources and services can be found on the [OSPEP Webpage](#).

For questions, please email OSPEP at [school.security@doe.nj.gov](mailto:school.security@doe.nj.gov).

c: Members, State Board of Education  
NJDOE Staff  
Statewide Parent Advocacy Network  
Garden State Coalition of Schools  
NJ LEE Group

# Threat Assessment Teams Guidance

- Multidisciplinary Threat Assessment Team Threat Assessment Team Members In accordance with N.J.S.A. 18A:17-43.4, the threat assessment team established by a board of education or a board of trustees, must be multidisciplinary in membership and, to the extent possible, must include the following individuals:
  - a school principal or other senior school administrator;
  - a school psychologist, school counselor, school social worker, or other school employee with expertise in student counseling;
  - a safe-schools resource officer or school employee who serves as a school liaison to law enforcement;
  - the school safety specialist (designated pursuant to N.J.S.A.18A:17-43.3); and
  - a teaching staff member.
  - Additional school employees may serve as regular members of the threat assessment team or may be consulted during the threat assessment process, as determined to be appropriate by the team. If a student has an individualized education plan (IEP), 504 plan, and/or functional behavioral assessment (FBA) plan the threat assessment team must consult with the appropriate staff or team to determine whether the reported behavior is already part of known baseline behavior or is already being managed under the student's IEP, 504 plan, or FBA plan and addressed in a manner that is required by N.J.A.C.6A:14 and all other Federal and State special education laws.

## School Security Drills

- **P.L. 2021 c. 365 (1/10/2022)** - Ensures student well-being during school security drills when students are present.
  - Includes clear developmentally and age-appropriate messaging to students and staff at the conclusion of the drill that the event is a drill and no current danger exists;
  - Does not expose students to content/imaging that is not developmentally or age-appropriate;
  - Is paired with trauma-informed approaches to address any student inquiries or concerns that may arise as a result of a school security drill;
  - Requires written parental notice after drill has occurred that it was only a drill

# School Security Drills

## NJ School Drill Law (N.J.S. 18A:41-11)



Schools are required to conduct one Fire drill and 1 school security drill each month with a minimum of two of the following per year.

- (a) Active Shooter
- (b) Evacuation (non-fire)
- (c) Bomb Threat and
- (d) Lock Down.



# School Security Drills

School Security Drill Update: A-5727/S-3726 requires the following guidance and procedures for school districts conducting school security drills when students are present:

Drills will include clear, developmentally and age-appropriate messaging to students and staff at the conclusion of the drill that the event is a drill and no current danger exists;

Drills cannot include the use of fake blood, real or prop firearms, or the simulations of gun shots, explosions, or other sounds or visuals that may induce panic or a traumatic response from a student or school district employee;

**Drills must be accessible to students with disabilities and mental health conditions, and provide all necessary accommodations for these students**

## Recent Cases

- Christine C. o/b/o D.C. v. Hope Township Board of Education, DNJ (February 2, 2021); EDS 17825-16
  - Eighth grader with an IEP transferred to the Hope Township School District for the 2016-2017 school year.
  - Incident: October 6, 2016 – Student was yelling, hid from teachers, tried to leave the building, and said that he had assaulted a teacher before. The District placed the school on lockdown, called the police, and sent the student home, placing him on home instruction.
  - District did not obtain the parent's consent, propose home instruction through the IEP process, or seek an expedited hearing to seek the student's removal because he was a danger to himself or others pursuant to N.J.A.C. 6A:14-2.7(n).

## Recent Cases

- Christine C. o/b/o D.C. v. Hope Township Board of Education, DNJ (February 2, 2021); EDS 17825-16, Con't.
  - Actions taken by the district: Attempted to conduct additional evaluations, obtain releases to speak with the student's private providers, and sought alternative placements for the student – all of which were met by some resistance by the parent.
    - Through this process, the district also learned that the student had been hospitalized before and had a behavior intervention plan in the previous district.
    - On October 21, 2016, the district received paperwork from St. Luke's Hospital that that student has a "mood disorder."

## Recent Cases

- Christine C. o/b/o D.C. v. Hope Township Board of Education, DNJ (February 2, 2021); EDS 17825-16, Con't.
  - ALJ's Decision: Attempted to conduct additional evaluations, obtain releases to speak with the student's private providers, and sought alternative placements for the student – all of which were met by some resistance by the parent.
  - The district's "procedural error is not what deprived D.C. of 17 days of educational opportunity. The blame for the disruption to D.C.'s education falls squarely at his mother's feet. Her lack of honesty prevented [the district] from properly planning for her son's education.
  - The ALJ concluded that the student's break in educational services was not caused by a denial of FAPE and the student was not entitled to compensatory education.

## Recent Cases

- Franklin Township Board of Education v. V.A. & C.H. o/b/o A.H. EDS 2022-33767 (January 19, 2022)
  - Facts:
    - Student’s behavior continued to escalate (disruptive in class, punched another student in the face, noted in a classroom assignment that a wish would be to get away with killing people, sent a message to his teacher with a picture of his grandmother with a gun as an icon, and posted a video of himself at home holding a gun and “dry firing”).
    - Alarm, anxiety and fear among students and staff members – parents came to pick their children up from school.
    - Referral made to Psychiatric Emergency Screening Services.

## Recent Cases

- Franklin Township Board of Education v. V.A. & C.H. o/b/o A.H. EDS 2022-33767 (January 19, 2022)
  - Facts:
    - From the screening, he was not found to be a danger to himself or others.
    - However, the district still filed both an expedited due process petition and a motion for emergent relief seeking an order to place the student on home instruction, pending placement in an out-of-district placement.

## Recent Cases

- Franklin Township Board of Education v. V.A. & C.H. o/b/o A.H. EDS 2022-33767 (January 19, 2022)
  - ALJ's Decision:
    - The District has an obligation to take the student's threats and actions seriously in order to ensure a safe educational environment for students and employees.
    - The student's educational needs will continue to be met while on home instruction and awaiting an appropriate placement that will address his behavioral and therapeutic needs.

## Case Law – Excluding Student & Addressing Mental Health

E.Z. o/b/o D.Z. v. Audubon SD and Hampton Academy (NJ Adm. July 13, 2016)

- Student was suspended for 3 days from Hampton Academy for behavior alleged to be dangerous to student and others. District made reentry conditional on student having a psychiatric evaluation by district chosen doctor. Parent refused and student was withdrawn from Academy by district and placed on home instruction. New IEP issued, with online home instruction.
- ALJ held violation of due process rights. Required to hold Manifestation Determination when student was out 10 days. Had no right to unilaterally change placement. District ordered to return student to Academy and provide compensatory services for more than 50 days of removal.



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# LAWSUITS FOR DAMAGES ON BEHALF OF STUDENTS WITH DISABILITIES



## **Fry v. Napoleon Community Schools, 137 S. Ct. 743 (2017)**

- **Legal Issue** – Must plaintiffs exhaust IDEA administrative remedies before pursuing claim under Section 504 and Title II of ADA in case involving denial of access for service dog?
- **Underlying Facts** – E.F. is a student from Michigan with a severe form of cerebral palsy. Her service dog Wonder assists her with daily life activities. As such, EF's parents requested permission for Wonder to join her at school. The school refused, and instead offered a one-to-one aide.
- The parents decided to homeschool EF instead.
- The parents also filed a complaint with Office for Civil Rights, asserting violations of Section 504 and Title II of the ADA, and the OCR agreed with the parents.

## **Fry v. Napoleon Community Schools, 137 S. Ct. 743 (2017)**

- The district then offered to accept child back with her service dog.
- The parents instead chose to enroll EF in private school they felt was more welcoming to her service dog and filed a lawsuit in Federal court for a denial of access for EF's service dog and alleging violations of Section 504 and Title II of the ADA.
- The district then sought to have case dismissed for failure to exhaust administrative remedies under the IDEA.
- Essentially, the district argued that because EF is a student with disabilities under IDEA, the parents cannot file in Federal court until all administrative remedies under IDEA, such as mediation and a due process hearing, have occurred.
- The district court agreed and granted the district's motion to dismiss the case, and Sixth Circuit affirmed that decision.
- The parents then appealed to Supreme Court, and the court took the case.

## Fry v. Napoleon Community Schools, 137 S. Ct. 743 (2017)

- **Holding:** Exhaustion of administrative remedies **is required** when the gravamen, or crux of the plaintiff's suit, is a denial of a FAPE, which is the only relief available under IDEA. If the gravamen is something other than a FAPE denial, exhaustion **is not required**. The case was remanded to determine the gravamen of plaintiff's complaint.
- The Court held that no "magic words" are required in the pleadings. To make this determination. The important inquiry is what relief the suit in fact seeks, and whether that relief is available under the IDEA.
- The inquiry is based on what the plaintiff actually sought, not what type of relief they *could have* sought. If the gravamen of the complaint is denial of a FAPE, exhaustion is required, even if the complaint is not so precisely framed as seeking that type of relief.

**Fry v. Napoleon Community Schools,  
137 S. Ct. 743 (2017)**

**Fry Analysis Questions**

- Guiding questions to determine the gravamen of a complaint:
  - Could the plaintiff have brought essentially the same claim if the conduct occurred at a public facility other than a school?
  - Could an adult have pressed essentially the same grievance?
  - Did the plaintiff's pursue IDEA's administrative remedies at the outset of the proceedings?
    - **Fry v. Napoleon Community Schools, 137 S. Ct. 743, 756-757 (2017)**

# Perez v. Sturgis

Certiorari to the Sixth Circuit  
US Supreme Court 21-887  
Decided March 21, 2023

Gorsuch wrote the opinion of Unanimous Court

Issue – Should ADA claims be precluded until the exhaustion of remedies under the IDEA?

No. IDEA does not preclude a plaintiff to seek remedies under “other federal laws protecting the rights of children with disabilities”

## Perez v. Sturgis

- Hearing Impaired student attended Sturgis Public School from ages 9 through 20.
- Student was told he would not be permitted to graduate with his class.
- Parents/Student filed IDEA claim alleging failure to provide FAPE with the Michigan Department of Education. Alleged unqualified interpreters and misrepresentation of educational progress.
- Parties settled the IDEA claim – additional schooling (forward looking).

## Perez v. Sturgis

### Exhaustion of IDEA Remedies when the Relief Sought is not Available Under IDEA

- The Fry and Perez cases clarify that exhaustion under IDEA is only required if the relief sought is available under IDEA's statutory scheme.
- Because the scope of relief is limited under IDEA, the Supreme Court has limited the scope of its exhaustion requirement accordingly



# Perez v. Sturgis

## Key Takeaways

1. **Compensatory damages are not available under IDEA**
2. **Compensatory damages are not the same as equitable compensatory services** based on a denial of a FAPE, which are available under IDEA
3. **If IDEA cannot provide relief**, exhaustion of administrative remedies under IDEA is not required prior to filing litigation pursuant to other anti-discrimination laws
4. **Section 1983** is not available to remedy violations of IDEA
5. **The court declined to decide** whether compensatory damages may be obtained under the ADA, and remanded the case for further proceedings
6. **The court also declined to decide** whether IDEA's exhaustion requirement is susceptible to a judge-made futility exception

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# **BULLYING, FAPE AND STUDENTS WITH DISABILITIES**



# Bullying and Cyberbullying

- Schools have a duty to address harassment, intimidation and bullying that occur on and off school grounds
  - *Off school grounds*: if the HIB causes material and substantial disruption to the school environment
- Schools have a duty to do whatever is reasonable to STOP harassment, intimidation and bullying
  - *L.W. v. Toms River Reg'l Bd. of Ed.* (N.J. 2007)
- Anti-Bullying Bill of Rights Act of 2011 has reporting & investigation procedures

## USDOE Dear Colleague Letter from 10/21/14

- Bullying can impact student's ability to receive FAPE
- Negative impact may occur whether or not bullying was motivated by student's disability
- ***Need to convene IEP Team in all cases where HIB is confirmed and student with disability is the victim***
- Best practice to convene team whether student with disability is victim or aggressor

## Bullying & Special Education

- If behavior would otherwise be HIB, still must classify as HIB even if behavior is manifestation of student's disability
- **Need to consider student's disability when determining discipline, remediation or other response to HIB**
- Need to work with case manager throughout process, including during initial interview

## HIB and Child-Find

***Krebs v. New Kensington-Arnold Sch. Dist.***, 2016 WL 6820402 (W.D. Pa. 2016)

- District Court denied school district motion to dismiss claim involving alleged violations of Section 504, Title II, and IDEA.
- Case involved 14 year old girl who hanged herself after being bullied from 6<sup>th</sup> grade to 9<sup>th</sup> grade.
- Child find obligation may have been violated when district failed to identify student as potentially having a disability where the student was suffering from anxiety, depression and anorexia nervosa, her grades had dropped from A/B to F's, and who had lost more than 30 pounds.
- Impact – Some students may develop disabilities as a result of severe and persistent bullying. District may have affirmative obligation to evaluate even prior to parent request if district should have known about potential disability.

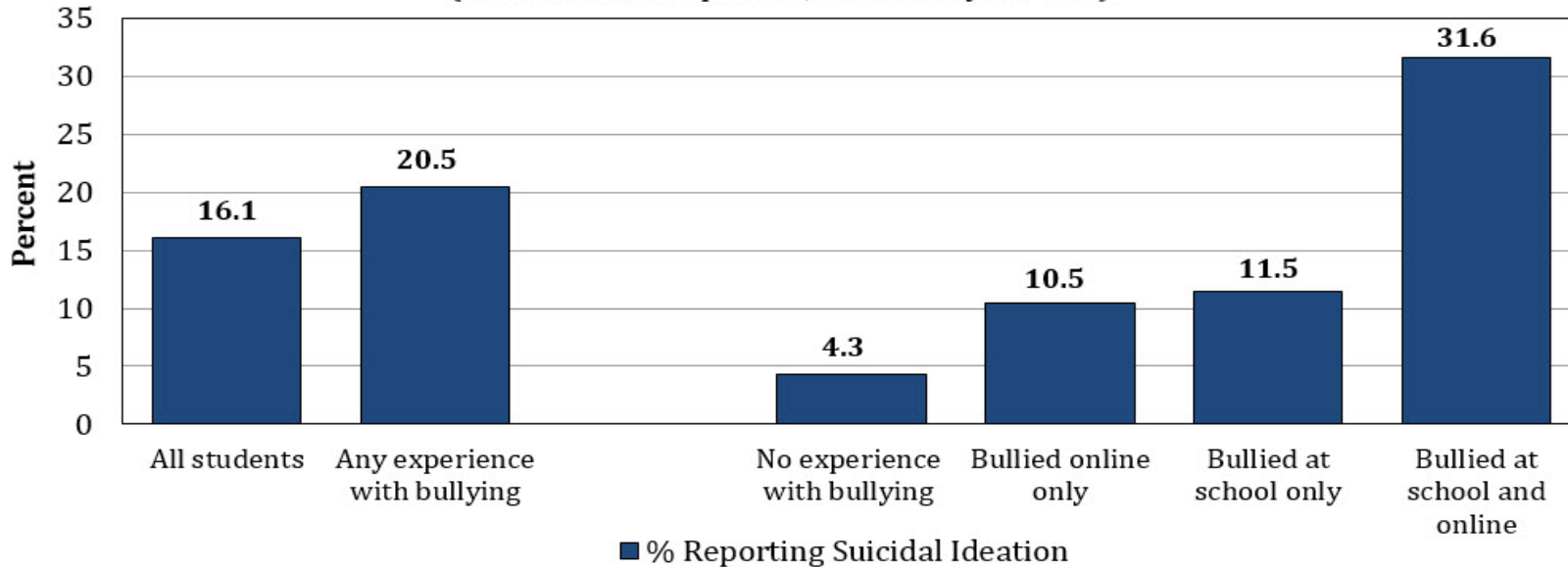
## Recent Developments - HIB

- NJDOE [7/20/23 Broadcast email – Revised HIB Reporting Form for Staff](#)
  - Revised 338 Form, makes clear no anonymous reporting by staff members
- 7/26/23 - [\\$9.1 Million settlement reached](#) in case involving suicide and alleged failure to address HIB
  - Increased risk of suicidal ideation for students who experience HIB
- NJDOE 10/19/23 – Family 338 Form available in multiple languages

# Recent Developments - HIB

## Bullying and Suicide among Middle and High School Students

(national U.S. sample of 2,700 12-17 year-olds)



Sameer Hinduja and Justin W. Patchin (2016)

Cyberbullying Research Center  
[www.cyberbullying.org](http://www.cyberbullying.org)



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# SCENARIOS



## Scenario 1:

- Steve was a third-grade student in June of 2023. The week before the end of the school year, Steve's teacher and parents both referred Steve for an evaluation for special education and related services. Prior to that, Steve had been referred to I&Rs, and numerous interventions had been tried to address Steve's reading issues, but none had had a positive impact. All interventions were documented. Because of the timing of the referral, and considering that the applicable staff were 10-month employees, the district did not hold an identification meeting until September 16, 2023, and did not complete the evaluation for special education and related services, determine Steve eligible, and begin providing instruction and services until December 14, 2023. The district indicated that it had to have its CST members back before referral and evaluation procedures could be initiated.

## Scenario 1: Questions

- Was the district correct that it could delay Steve's evaluation based on **staffing issues**?
- Must Steve be provided compensatory services?
- If so, how would the services to be provided be determined?

## Scenario 2:

- Amy was a tenth-grade student with disabilities in the 2020-2021 school year.
- For the 2020-2021 school year, Amy's parents opted for all virtual instruction for her and her siblings because Amy's mother was undergoing cancer treatment and they did not want to risk bringing COVID-19 into the home. The school district operated full-time in-person in the 2020-2021 school year but granted the request for all virtual instruction in accordance with State guidance.
- In prior school years, Amy had performed well, and the special education instruction and related services provided to her were effective and progress was documented for her goals each year.
- In the 2020-2021 school year, Amy's attendance for virtual instruction was sporadic, and her performance was poor. Amy failed to achieve adequate progress on almost all goals in her IEP for the year.
- When Amy returned to in-person instruction in the 2021-2022 school year, her performance and attendance both improved significantly, and she once again made progress on the goals in the IEP.

## Scenario 2: Questions

- Is Amy entitled to compensatory services?
- Does the fact that the schools were open full-time, but Amy's parents chose all virtual instruction, which clearly did not work for Amy, matter?
- If compensatory services should be provided, what should Amy receive now that she is again performing well?
- Is it too late for Amy's parents to seek compensatory services now that more than 2 years have passed since the pandemic impacted the provision of educational services?

## Scenario 3:

- In the 2022-2023 school year, the only SLS in your school building has a medical emergency, and cannot work October 2022 through March 2023. It takes the district 3 months to find a replacement, and during that time no students in the building are provided speech-language services, and no speech evaluations are performed for students in the building.

## Scenario 3: Questions

- Are students in the building entitled to compensatory services?
- Those that were receiving services?
- Those that had delayed evaluations?
- If so, what?
- How could the district have better addressed this issue?

## Scenario 4:

- Mark is referred for an evaluation for special education and related services. Mark's parents insist that he receive a neurodevelopmental assessment from the ABC children's hospital as part of the evaluation, and the district agrees. Because of the difficulty in scheduling the neurodevelopmental assessment, Mark's initial evaluation is delayed 45 days. Mark is ultimately determined to have a learning disability (dyslexia) and to be eligible for special education and related services. Services begin for Mark 135 days after his parents consent to the initial evaluation.



## Scenario 4: Questions

- Can an initial evaluation be delayed if a particular assessment is determined necessary, and an outside evaluator is needed to do the assessment?
- Does the fact that Mark's parents insisted on the assessment matter?
- Must Mark be provided compensatory services?

## Scenario 5:

- Juan, a Sophomore in your high school, moved into the district this summer. Juan has limited English language skills, as he has lived in the country for only 3 months. Juan's parents made a request for evaluation for eligibility for special education and related on the first day of school. Juan has consistently performed poorly in class and on assessments, but at the identification meeting, the district delayed evaluating Juan until it provided LEP services and sees how he performs.

## Scenario 5: Questions

- Was the district correct in determining to provide LEP services before conducting an evaluation for eligibility for special education and related services?
- Can a student receive LEP and special education and related services at the same time?
  - What legal protections does Juan have under LEP laws?
  - What legal protections does Juan have under IDEA?
- Must Juan be provided compensatory services?
  - If so, what?

## Scenario 6:

### **Attendance/School Avoidance**

- Steve is a 7<sup>th</sup> grade student in your school (a k-8 building). Prior to the school closure, Steve was exhibiting attendance issues, and had been meeting with a counselor at the school to address mental health issues affecting his ability to attend school. For the 2020-2021 school year, your school utilized a hybrid model consisting of a combination of in-person and virtual instruction days for students. On the virtual days, Steve's participation in synchronous classes was sporadic, as was his attendance on in-person days. When the school opened for full-time in-person instruction, Steve's attendance continued to be sporadic, and remained so through the 2021-2022 and 2022-2023 school years and into the current school year. Steve's parents have consistently indicated that they simply could not/cannot get him to attend school, as he has indicated that he fears getting COVID-19 and cannot go to a building full of many unvaccinated people.

## Scenario 6: Questions

### Discussion Questions

- Describe the steps you would take to address whether Steve should be provided compensatory services.
- What additional information would you need?

## Scenario 7:

- John struggled in school from 1<sup>st</sup> grade through grade 6. Throughout that time, John's parents kept asking for an evaluation for eligibility for special education and related services, but the district indicated that it was addressing John's issues through I&Rs and interventions, and insisted that a referral and evaluation were not necessary. John was again struggling in 7<sup>th</sup> grade when his parents unilaterally placed him in the ABC private school for students with disabilities, where John thrived and made great progress for the year. John's parents then sued your district for a determination that he is, and had been since first grade, eligible for special education and related services, that the district improperly failed to evaluate John, and for reimbursement for the private placement and prospective placement in the ABC school.

## Scenario 7: Questions

- Can John's parents seek a retroactive determinization of eligibility and reimbursement for the private placement?
- Can they seek prospective placement without John ever having been evaluated?
- Did the district proceed appropriately in this case?

## Scenario 8:

- Sarah is a seventh-grade student in your district who has been found to have been the victim of HIB. Sarah was bullied online and in-person for several months based on her learning disability, and her attendance and grades were found to have suffered because of the bullying, thus demonstrating the significant impact needed to determine HIB. The ABS has contacted you (Sarah's case manager) to work to implement strategies to address the impacts of the bullying going forward and improve her attendance and performance. Sarah's parents request a change to an out-of-district for Sarah, as they don't believe she can attend your school with the perpetrators of the bullying and still receive the FAPE to which she is entitled.



## Scenario 8: Questions

- Can Sarah's parents seek a change of placement based on HIB?
- Can they file for a due process hearing to obtain such a placement?
- Can they seek compensatory services based on the bullying?

# Conclusion



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*THANK YOU!*



**QUESTIONS?**



# KELLY BRAZELTON

*MOCSSIF Chairperson  
Monmouth County Vocational BOE*

## CLOSING REMARKS

