

BACCIEC & ERIC South Joint Meeting

February 3, 2023

Agenda

BACCEIC & ERIC South Joint Meeting February 3, 2023

WELCOME | Al Kirk, Conner Strong and Buckelew
BACCEIC & ERIC South Sub-fund Administrator

Topics:

- Property and casualty insurance coverage basics
- NJSIG's Safety and Risk Management Services
- Budget Guidance and Overview of Current Insurance Market

NJSIG EXECUTIVE DIRECTOR REPORT | Joe Semptimphelter, on behalf of 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

- David Nash, 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



Al Kirk

Conner Strong & Buckelew

BACCEIC & ERIC South Sub-fund
Administrator

Welcome



Al Kirk

BACCEIC & ERIC South
Sub-fund Administrator



Plan of Risk Management

Reporting Claims | Districts | Brokers | Resources | About | Contracting | Contact

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BACCEIC & ERIC South Joint Virtual Sub-Fund Meeting

Date:
Friday, February 3rd, 2023

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

Description:
Zoom meeting details will be sent by email.

Contact:
Joe Semptimphelter
jsemptimphelter@njsig.org
(609) 386-6060 x3044

February 2023						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
				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				

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



Coverages at a Glance

Al Kirk

BACCEIC & ERIC South
Sub-Fund Administrator



Coverages at a Gl

Coverage	Overview	Key Information / Examples
AUTO	<ul style="list-style-type: none"> Auto insurance provides for bodily injury and property damage for the named insured's legal liability as per the policy 	<ul style="list-style-type: none"> Applies to collision, comprehensive, theft, vandalism, and more Covers vehicle damage for owned, non-owned, hired
CRIME	<ul style="list-style-type: none"> Crime coverage protects the named insured for monetary theft, employee dishonesty and forgery that aren't covered under the property policy 	<ul style="list-style-type: none"> Theft of money inside the premises and outside of the premises in the custody of a messenger Check forgery and alteration Dishonest acts committed by employees with intent to cause loss and obtain improper financial benefits
CYBER LIABILITY	<ul style="list-style-type: none"> Provides coverage for computer network related intrusions, ransomware and 3rd party liability to others. 	<ul style="list-style-type: none"> Notification costs after a breach of private data Restoration after a covered cyber event Insurers have minimum requirements including MFA training and back-ups/test recovery Computer forensic costs to determine extent of the breach
ENVIRONMENTAL	<ul style="list-style-type: none"> Environmental Impairment / Pollution Liability fills the coverage gaps created by pollution exclusions in liability and property insurance policies Policies can vary greatly 	<ul style="list-style-type: none"> Coverage is provided for losses arising from the release or escape of pollutants Can include bodily injury, property damage, cleanup expenses, defense costs

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



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



Loss Control and Risk Management Services

Al Kirk

BACCEIC & ERIC South
Sub-fund Administrator

***To schedule training, email riskcontrol@njsig.org**

Benefits of Membership & Training:

Safety & Risk Consultation	NJSIG's Safety and Risk Control Representatives can review the member's loss history and create a safety and risk control plan. To schedule a consultation, email riskcontrol@njsig.org .
School Property Inspections	NJSIG regularly conducts inspections of its members' schools with Property coverage at no additional cost. Members are encouraged to schedule a pre-QSAC inspection to assist with New Jersey Department of Education reporting requirements. To schedule an inspection, email riskcontrol@njsig.org .
Playground Inspections	Members with Property coverage can have their district's playgrounds inspected by a certified playground inspector at no additional cost. To schedule an inspection, email riskcontrol@njsig.org .
In-House Training	NJSIG's Safety and Risk Control Representatives are available upon request to provide in-house trainings related to slips, trips and falls, non-violent crisis intervention and more. Trainings can be conducted at the member's facility or at NJSIG.
Verbal De-Escalation Training	NJSIG's Safety and Risk Control Representatives are certified by Crisis Prevention Institute (CPI), an international training organization specializing in the safe management of disruptive and assaultive behavior. Upon request, representatives can train employees on how to de-escalate tense situations with people of all ages. Members are responsible only for the cost of materials and certification - \$25 per employee.
VectorSolutions (formerly SafeSchools) Online Training	NJSIG offers more than 300 online courses through VectorSolutions (formally SafeSchools) at no cost to members. This includes, but it is not limited to, all courses that the New Jersey Department of Education requires. Real-time results are recorded and administrative reports are delivered to the members to facilitate easy compliance. To learn more about VectorSolutions, please call 800-434-0154, email support.education@vectorsolutions.com , or visit www.SafeSchools.com .



Loss Control and Risk Management Services

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Sub-fund Administrator



MEL SAFETY INSTITUTE

Visit!

<https://melsafetyinstitute.org/>

MSI Live Webinar Training:

QPA Credit Eligible:

- Dealing with Difficult People
- Employee Conduct and Violence Prevention in the Workplace
- Ethical Decision Making
- Ethics for NJ Local Government Employees
- Implicit Bias in the Workplace
- Indoor Air Quality Designated Person Training
- Leadership Skills for Supervisors Workshop
- Microlearning Theory and Practice
- Practical Leadership – 21 Irrefutable Laws
- Preparing for First Amendment Audits
- Preparing for the Unspeakable
- Protecting Children from Abuse in NJ Local Government Programs
- And more...

Other Relevant Courses:

- Accident Investigation
- Asbestos Awareness
- Back Safety / Material Handling
- Chainsaw, Chipper, Mower Safety
- Coaching the School Bus Driver
- Leaf Collection Safety Awareness
- Lock Out/Tag Out
- Playground Safety Inspections
- Personal Protective Equipment
- Safety Committee Best Practices
- Snow Plow/Snow Removal Safety
- Schools: Chemical Lab Safety for Science Teachers
- And more...



Loss Control and Risk Management Services

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BACCEIC & ERIC South
Sub-fund Administrator

eRiskHub® Portal
NetDiligence®

Visit!

<https://www.eriskhub.com/njsig>



As a **New Jersey Schools Insurance Group** Package policyholder, you will receive complimentary access to the eRiskHub portal, powered by NetDiligence®. eRiskHub provides tools and resources to help you understand your exposures, establish a response plan and minimize the effects of a breach on your organization.

Key Features

Incident Roadmap

Suggested steps to take following a network or data breach incident, free consultation with a Breach Coach® and access to a breach response team

News Center

Cyber news feeds, threat intelligence, and security, legal, and compliance blogs

Risk Manager Tools

Cost calculators, research tools for causes of incidents and cyber claims payouts, and sample policies, including one for remote working

Cybersecurity Awareness

Resources for ongoing employee education, including general security awareness, anti-phishing, and IP/trade secrets

Ransomware Resources

A guide on must-have ransomware safeguards, ransomware stress test, mock ransomware exercise, and a short ransomware self-assessment survey that can help you reduce your exposure to ransomware and other exploit threats

If you are a NJSIG Package policyholder, please register now.

1. Go to <http://www.eriskhub.com/njsig>
2. Complete the New User Registration form in the center of the webpage. Your Access Code is 364264.
3. Once you've completed registration, you can log in immediately.

Al Kirk

BACCEIC & ERIC South
Sub-fund Administrator

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

- Target release of MODs/Sub-Fund Deviations: Mid-February
- Business Administrators should review their workers' compensation claims data to see if there are any open claims that should be reviewed for accuracy prior to their modification factor being calculated.
- Business Administrators should review payroll classification to ensure the accuracy of their calculations.
- 2023 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%



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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



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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

Al Kirk

BACCEIC & ERIC South
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 2nd 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

Al Kirk

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Visit!

["Unfair and Unbalanced" Court System in NJ](#)



Social Inflation Impacting Liability Rates

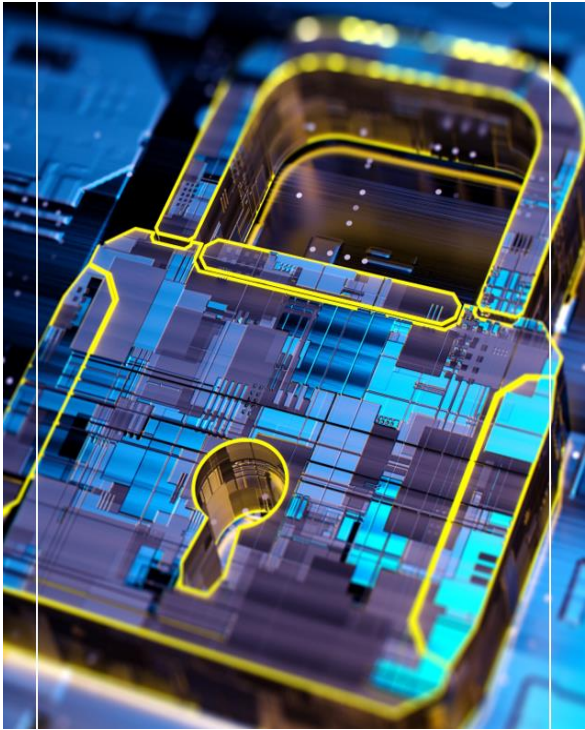
Rising costs of insurance claims resulting from changing societal views and trends.

- 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

Al Kirk

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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).*



**Joe Semptimphelter on
behalf of Jill Deitch, Esq.**

NJSIG Executive Director

NJSIG Executive Report



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 operators of vehicles used in ride-sharing arrangements, taxicabs, motor vehicles with a capacity of more than six passengers, which are owned and operated directly by businesses engaged in the practice of mortuary science when those vehicles are used exclusively for providing transportation related to the provision of funeral services and which shall not be used in that capacity at any time to pick up or discharge passengers to any airline terminal, train station, or other transportation center, or for any purpose not directly related to the provision of funeral services.

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

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

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

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



Evolution of the Legal Landscape for School District Tort Liability

Stephen Tucker, Esq.
NJSIG General Counsel

Student Transportation

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

CHAPTER 152

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

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

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

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

2. This act shall take effect immediately.

Approved December 17, 2018.



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

Student Transportation

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

CHAPTER 160

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

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

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

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

b. An employer shall ensure that all school bus drivers and school bus aides are trained for the functions of their positions.

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

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

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

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

2. This act shall take effect immediately.

Approved December 17, 2018.

The screenshot shows the State of New Jersey Department of Education website. At the top right, it identifies Governor Phil Murphy and Lt. Governor Sheila Oliver, along with navigation links for Home, Services A to Z, Departments/Agencies, and FAQs. A search bar and language selection options are also present. A horizontal menu lists various user groups: Home, About Us, Educators, Families, Administrators, News, and Contact Us. A vertical sidebar menu on the left lists various topics, with 'Student Transportation' highlighted. The main content area features a 'School Finance' section and a 'Student Transportation' section under 'Safety & Training'. The 'Student Transportation' section includes several links with update dates: 'School Bus Driver and Aide Training for Interacting with Students with Special Needs - Updated 9/27/16', 'Training Requirements for School Bus Drivers and School Bus Aides - Updated 7/25/18', 'School Bus Safety Brochure - Updated 3/16/12', 'School Bus Safety Manual - Updated 9/5/13', and 'National School Transportation Specifications and Procedures'.



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.

⁵⁰ *50 The opinion of the court was delivered by

⁸⁵ 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.

I.

We summarize the facts from the motion record.

The Collision

On February 22, 2019, plaintiff T.B. (Tom)¹ 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.



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

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To Regulation

Search District Policies

District Policies TOC

District Policy

8660 - TRANSPORTATION BY PRIVATE VEHICLE (M)

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

M

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

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

Qualifications for volunteer drivers shall include:

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

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

Other factors to be considered are:

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

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

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

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

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

Adopted: 17 December 2013

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Justia > US Law > US Codes and Statutes > New Jersey Revised Statutes > 2015 New Jersey Revised Statutes > Title 18A - EDUCATION > Section 18A:39-20.1 - Transportation of students in 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.



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-3638-16T1
SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

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

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

DOCKET NO. A-3638-16T1

10-05-2018

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

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

OSTRER, J.A.D.

Matthew Van Natten, attorney for appellants.

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

Before Judges Sabatino, Ostrer and Rose.

The opinion of the court was delivered by

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

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

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

340 *340 I.

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

Evolution of the Legal Landscape for School District Tort Liability

Stephen Tucker, Esq.
NJSIG General Counsel

Student Supervision

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

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

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Department of Education

Office of Student Protection

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

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

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

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

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

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

CHAPTER 5

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

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

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

1. As used in this act:

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

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

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

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

a. Requires the applicant to provide:

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

- (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

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Armed School Personnel

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

New Jersey School Boards Association

About NJSBA Our Services

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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

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 Law Enforcement Risk Control Consultant – J.A. Montgomery



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School Resource Officers

The advantages and disadvantages of Sworn Law Enforcement Personnel (Full Time, Class II, Class III) versus a Civilian – Retired Police Officer.

		Risk Analysis Civilian Personnel Retired Officer Program – RPO Sworn Law Enforcement Personnel (Full Time, Class II, Class III) Carrying Firearms in Schools / Providing Security		10/31/22
This resource is intended for general information purposes only. It should not be construed as legal advice or legal opinion regarding any specific or factual situation. Always follow your organization's policies and procedures as presented by your manager or supervisor. For further information regarding this resource, contact your J.A. Montgomery Law Enforcement Consultant © All rights reserved.				
Issue	Civilian - Retired Police Officer (RPO)		Police Officer (Full Time, Class II, Class III)	
	(+) Potential Positive Considerations	(-) Potential Negative Considerations	(+) Potential Positive Considerations	(-) Potential Negative Considerations
General Staffing Costs:	It is possible that a non-sworn officer (full-time, Class II, or Class III) may be less expensive to implement due to hourly salary costs and the time needed for training. It may be upfront, but will it be when an incident occurs? Parents may feel that the district believes their children are only worth retired non-law enforcement personnel and not worth spending extra funds to protect them	As for salary or staffing costs, possibly none, as salary burdens may be solely the responsibility of the school district.	It is possible that the school district and municipality may agree upon shared costs. An abundance of training is likely available at the law enforcement agency, which may be provided as part of the officer's regular employment with the agency.	Cost

Evolution of the Legal Landscape for School District Tort Liability

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NJSIG General Counsel

Anti-bullying Requirements

P.L. 2022., c. 338;

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

The screenshot shows a webpage with a navigation bar containing links for 'OSSS Home', 'School Health Services', 'Safe & Positive Learning Environments', 'Student Wellness', 'Afterschool Programs', and 'NJT'. The main content area has a breadcrumb trail: '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'. The main heading is '2022 Amendments to New Jersey's Anti-Bullying Bill of Rights Act (ABR): FAQs & Resources'. The text below states: 'New Jersey has been a leader in the establishment of a strong statutory, regulatory policy and program framework to support the prevention, remediation and reporting of HIB in schools. Provided on this webpage are the required harassment, intimidation and bullying (HIB) incident reporting forms, the updated [Model Policy for Preventing HIB](#) and a list of frequently asked questions concerning the 2022 amendments to New Jersey's [Anti-Bullying Bill of Rights Act \(ABR\)](#) and [N.J.A.C. 6A:16-7.7 and 7.8](#).' Below this is a sub-heading 'Addressing Harassment, Intimidation, and Bullying in Schools: Frequently Asked Questions' and a paragraph: 'The [Anti-Bullying Bill of Rights Act \(ABR\)](#) was authorized in January, 2011 and amended in January 2022. The Frequently Asked Questions pertain to the amendments enacted in January 2022, and have been updated as of August 2022.' At the bottom of the page, a teal box contains the question: 'Are there new requirements for the way that local educational agencies (LEAs) address harassment, intimidation, and bullying (HIB) in schools?' with a dropdown arrow.

The cover page features the State of New Jersey Department of Education logo at the top left. The title is 'Model Policy and Guidance for Prohibiting Harassment, Intimidation and Bullying on School Property, at School Sponsored Functions and on School Buses (Revised August 2022)'. Below the title is an 'Introduction' section. The text reads: '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.' It continues: '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 "harmful community member" instead of "offender and victim" if the LEA determines that language is more responsive to local community circumstances.' It then states: 'The document is divided into three parts, as described below:' followed by a bulleted list:

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




Evolution of the Legal Landscape for School District Tort Liability

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
A Memo from the New Jersey Department of Education

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

Restraint and Seclusion Guidance for Students with Disabilities

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

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

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

Table 1: Definitions

Term	Definition
Physical Restraint	State law defines physical restraint as the use of a personal restriction that immobilizes or reduces the ability of a student to move all or a portion of his or her body.
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:

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

CHAPTER 291

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

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

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

- 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.

- 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;
 - 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;
 - 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;
 - 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;
 - 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
 - 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.

- 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,



Date: December 14, 2022
To: Local Education Agency Leads and Administrators of Approved Private Schools for Students with Disabilities
Route To: Directors of Special Services, School Principals, District Homeroom Administrators, Data Coordinators, Anti-Bullying Coordinators
From: Kathy Ehling, Assistant Commissioner
Division of Educational Services

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 parents/guardians of students regarding the mandatory collection of data regarding the use of restraint and seclusion.

Background

In January 2018, Public Law 2017, Chapter 291 was signed into law. The law narrows the conditions under which staff in school districts, educational services commissions (ESCs), and approved private schools for students with disabilities (APSSDs) may use restraint and seclusion techniques, particularly on students with disabilities. Further, the law required 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 July 2018, in response to this law, the NJDOE issued the [key provisions and definitions](#) to be included in the guidance. This guidance was informed by representatives from school districts, ESCs, APSSDs, 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 NJDOE'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 due 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 webpage](#).

Questions concerning the SSDS should be directed to ssds@doe.nj.gov. Questions regarding discipline, including the use of restraint and seclusion, should be directed to oseinfo@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.”

The screenshot shows the JUSTIA US Law website interface. At the top, there is a search bar and navigation links for 'Find a Lawyer', 'Ask a Lawyer', 'Research the Law', 'Law Schools', 'Laws & Regs', 'Newsletters', and 'Marketing Solutions'. The breadcrumb trail indicates the path: 'Justia > US Law > US Codes and Statutes > New Jersey Revised Statutes > 2013 New Jersey Revised Statutes > Title 59 - CLAIMS AGAINST PUBLIC ENTITIES > disease or controlling communication of disease'. A link is provided to 'View the 2021 New Jersey Revised Statutes | View Previous Versions of the New Jersey Revised Statutes'. The main content area displays the title '2013 New Jersey Revised Statutes Title 59 - CLAIMS AGAINST PUBLIC ENTITIES Section 59:6-3 - Prevention of disease or controlling communication of disease'. Below this, the 'Universal Citation' is listed as 'NJ Rev Stat § 59:6-3 (2013)'. The text of the statute is provided: '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.' The citation 'L.1972, c. 45, s. 59:6-3.' is also shown.



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...”

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[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.

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

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

59:9-2 Judgments, interest, limitations.

59:9-2. a. No interest shall accrue prior to the entry of judgment against a public entity or public employee on the basis of a bodily injury or products liability.

b.No judgment shall be granted against a public entity or public employee on the basis of a bodily injury 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 suffering or for medical expenses in excess of \$3,600.00. For purposes of this section medical treatment and medical expenses are in excess of \$3,600.00. For purposes of this section medical treatment and medical expenses are in excess of \$3,600.00. For purposes of this section medical treatment and medical expenses are in excess of \$3,600.00.

e.If a claimant receives or is entitled to receive benefits for the injuries allegedly incurred from a public entity or public employee from any other source other than a joint tortfeasor, such benefits shall be deducted from the amount of any award recovered by such claimant; provided, however, that nothing in this section shall affect the rights of a beneficiary under a life insurance policy. No insurer or other person shall be liable under a subrogation provision in an insurance contract against a public entity or public employee for the payment of such benefits.

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

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Brooks v. Odom

[Annotate this Case](#)

SYLLABUS

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

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

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

POLLOCK, J., writing for a unanimous Court.

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

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



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. Every claim is handled on it's own individual merit and circumstance.

NJ Title 59 - Claims Against Public Entities

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

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

FILING A CLAIM:

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

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

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

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

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

If you have any questions about a claim that has been files, please contact NJSIG at 609-386-6060 or visit www.njsig.org for more information.






David Nash, Esq.
LEGAL ONE

Recent Developments on Equity and the Law





NJPSAFE

— LEGAL ONE —

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

Recent Developments on Equity and the Law

February 3, 2023

David Nash, Esq.
LEGAL ONE Director

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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 3rd 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, religious, 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

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Q & A

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



Thank You!

