Latest on Vaping, New Instructional Requirements and Addressing Code of Conduct Issues

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Disclaimer

This presentation is intended as a summary of law only, and is not meant as legal advice. Please consult your attorney to obtain legal advice.
Trends in Student Use
Epidemic Levels

E-cigarettes: Reversing Previous Declines

E-CIGARETTE USE SURGE LED TO UPTICK IN OVERALL TOBACCO USE — Reversing Previous Declines

Current Use of Any Tobacco Product

<table>
<thead>
<tr>
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<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
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<tr>
<td>High School Students</td>
<td>27.1%</td>
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<tr>
<td>Middle School Students</td>
<td>7.2%</td>
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Note: All numbers in this document are estimates.
Health Impact of Vapes
Breaking News

• January 2, 2020 - Trump Administration announces ban on some flavored e-cigarettes - https://time.com/5758004/flavored-vape-ban/

• Lung Diseases - EVALI (E-cigarette or Vaping Associated Lung Injury)
  – 2,561 cases 50 states, 2 territories (as of 12/27/19) – see https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html
  – NJ: 1 death; 53 confirmed, 46 probable cases, 1 death (as of 1/6/20) – see https://www.nj.gov/health/fhs/tobacco/vaping/
  – 55 confirmed deaths in 27 states (as of 12/27/19)

• Symptoms
  – cough, shortness of breath, chest pain
  – Nausea, vomiting, or diarrhea
  – Fatigue, fever, or weight loss

• Theories
  – In all cases, some kind of vape product was being used
  – Vitamin E acetate and black market (cannabis)
  – Users inhale oil-like substance that may coat the lungs

• Other concerns
  – Linked to seizures, cardiovascular disease, and depression
Understanding Legal Requirements & Establishing Policies and Protocols
NJ Smoke Free Air Act

- Bans smoking in school, on school grounds, at school events
- Includes ban on electronic nicotine delivery systems
- Includes potential imposition of series of fines for those caught in the act of vaping
- Requires collaboration with local department of health
- Requires signage in schools
- See N.J.S.A. 26:3D-55, et. seq.
Statute on Referral for Medical Exam

• N.J.S.A. 18A:40A-12

• Whenever it shall appear to any teaching staff member, school nurse or other educational personnel ... that a pupil may be under the influence ... that teaching staff member ... shall report the matter as soon as possible to the school nurse or medical inspector, as the case may be, or to a [SAC], AND to the principal or, in his absence, to his designee.

• The principal ... shall immediately notify the parent or guardian and the superintendent of schools ... and shall arrange for an immediate examination of the pupil by a doctor selected by the parent or guardian, or if that doctor is not immediately available, by the medical inspector, if he is available. If a doctor or medical inspector is not immediately available, the pupil shall be taken to the emergency room of the nearest hospital for examination accompanied by a member of the school staff designated by the principal and a parent of guardian of the pupil if available.

• The pupil shall be examined as soon as possible for the purpose of diagnosing whether or not the pupil is under such influence...
Student and Parent Due Process Rights

• Short Term Suspension – right to know what you are accused of and to give your side of the story
• Long Term Suspension (beyond 10 school days) – right to a hearing before the BOE within 30 days
• Students with Disabilities – additional protections under IDEA and Section 504
• Under Goss v. Lopez, school districts may interview students without prior parent notice or permission
2019 Revised Memorandum of Agreement

3.3.8. Electronic Smoking Devices

• “Electronic smoking device” means an electronic device that can be used to deliver nicotine or other substances (e.g., marijuana) to the person inhaling from the device, including, but not limited to, an electronic cigarette, vape pen, cigar, cigarillo, or pipe.

• N.J.S.A. 26:3D-55 bans the use of electronic smoking devices in public places and workplaces, including, but not limited to public and nonpublic elementary or secondary school buildings, BOE buildings and any area of any building of, or on the grounds of, any public or nonpublic elementary or secondary school, regardless of whether the area is an indoor public place or is outdoors.

• Schools are encouraged to develop policies surrounding the use and/or possession of electronic smoking devices.

• Electronic smoking devices should only be reported to law enforcement when there is reasonable suspicion that the device is being used as a nexus for marijuana or other illegal drugs.
NJDOE Memo – July 5, 2019

• Important Message Regarding Teen Vaping and E-Cigarette Usage

• Contains links to resources to assist SD in their efforts regarding these issues

• https://homeroom5.doe.state.nj.us/broadcasts/2019/JUL/05/20323/Important%20Message%20Regarding%20Vaping%20and%20E-Cigarette%20Usage.pdf
Suggested Consequences and Remedial Measures for Students

- 1\textsuperscript{st} Offense – confiscation of products/devices, notification of parents, meeting with SAC or designated staff, participation in tobacco education program, offering information on cessation programs
- 2\textsuperscript{nd} Offense – same as first offense, plus potential for in-school suspension
- 3\textsuperscript{rd} + Offense – same as second offense, plus potential for community service
- Additional consequences if other violations under Code of Student Conduct
- Comply with NJ Smoke Free Air Act
If at any time it appears that a pupil may be under the influence of alcohol or other drugs...

Student must go out for an immediate medical exam. Refer to school district's substance abuse policy pursuant to N.J.A.C. 6A:16-4.3 and N.J.S.A. 18A:40A-9 and 12. "Reporting, notification and examination procedures for students suspected of being under the influence of alcohol or other drugs."

Law enforcement will be contacted, if applicable. Required if student is in possession of CDS.

Under the 2019 MOA with Law Enforcement, Electronic smoking devices should only be reported to law enforcement when there is reasonable suspicion that the device is being used as a nexus for marijuana or other illegal drugs.
If a student was observed to be smoking/using ENDS and/or in possession of an ENDS products...

1. Refer to school nurse to take vital signs to rule out any immediate medical needs

2. Search student, belongings, locker, car (if on school grounds)

3. Notify parent/guardian

4. Notify principal/designee

5. Refer to SAC to determine need for outside services.
6. Student required to complete online tobacco/vaping education, such as Aspire, in an in-school suspension setting.

7. **Schedule follow-up meeting with SAC or certified designee.**

8. Refer students and parent/guardian to cessation resources and prevention information.

9. **Code of Conduct Violation (Refer to School Policy for follow-up).**
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• The pupil shall be examined as soon as possible for the purpose of diagnosing whether or not the pupil is under such influence...
QUESTIONS?
New Instructional Requirements

• **P.L. 2019, c. 222 (8/9/19)** – Requires health curriculum for public school students in grades kindergarten through grade 12 to include instruction on mental health. The instruction in mental health shall be adapted to the age and understanding of the students and shall be incorporated as part of the district’s implementation of the New Jersey Student Learning Standards in Comprehensive Health and Physical Education. 2020-2021 school year.
New Instructional Requirements

• **P.L. 2019, c.16** - Requires school districts to incorporate instruction in grades 6 through 12 on law and meaning of consent for physical contact and sexual activity as part of Student Learning Standards in Comprehensive Health and Physical Education.

• Effective 2019-2020 School Year

• **P.L. 2019, c.185** – Signed July 19, 2019 - Requires school districts to incorporate age-appropriate sexual abuse and assault awareness and prevention education in grades preschool through 12 as part of New Jersey Student Learning Standards in Comprehensive Health and Physical Education.

• Effective 2020-21 School Year
New Instructional Requirements

- **P.L.2018, c.80 (8/10/18)** - Requires school districts to include instruction on consequences of distributing and soliciting sexually explicit images through electronic means (sexting) as part of New Jersey Student Learning Standards in Comprehensive Health and Physical Education. 2019-2020 school year
Instructional Requirement

• **P.L. 2019, c. 6 (1/31/19)** – Requires boards of education to include instruction, and adopt instructional materials, that accurately portray political, economic, and social contributions of persons with disabilities and lesbian, gay, bisexual, and transgender people. Middle school, high school, NJSLS. Board policies and procedures, 2020-2021
• Hackensack School Board Trustee allegedly 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 OPRA

QUESTIONS?
NJDOE Student Safety Data System Guidance for 2019-20

• Incident Categories
• Glossary of Terms
• Scenarios
  – Assault or Fight
  – Criminal Threat or Simple Threat
  – Sexual Contact
  – HIB
  – Theft or Robbery/Extortion
  – Weapons Offense
NJDOE Guidance – Recess Law

• July 5, 2019 – NJDOE Memo
  – Additional Guidance: Implementation of Daily Recess for Kindergarten through Grade 5 Students

• July 5, 2019 – NJDOE FAQ Guidance
Key Aspects of Addressing Student Searches

• Understand what constitutes “reasonable suspicion”
• Utilize the NJDOE School Search Checklist
• Have clear rules on who is allowed to do a student search and when – generally limit to administrators
• Have clear rules on who is allowed to seize student property and when, including electronic devices
• Always have 2 staff members conduct searches
• Understand what searches should be conducted by school officials, and when law enforcement must be contacted
Key Aspects of Addressing Drugs and Alcohol

• Ensure that all staff are properly trained on the indicators a student may be under the influence and their legal reporting obligations
• Review curriculum to assess coverage and effectiveness
• Work with law enforcement, SACs, school physician, counselors, school nurses to identify emerging trends and ensure that everyone understands their role
• Provide for a comprehensive drug and alcohol counseling program that allows students to confidentially share information regular personal and family use
• Recognize the legal requirement to report to law enforcement whenever students are involved in distribution of controlled dangerous substances at school or school-sponsored function
• Have in place a comprehensive strategy to address the opioid crisis
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• The pupil shall be examined as soon as possible for the purpose of diagnosing whether or not the pupil is under such influence...
FERPA—permissible release of education records without consent

• See [USDE FERPA Guidance](#) Released February 12, 2019

• In the K-12 context education records may be released **without consent:**
  − **To school officials with legitimate educational interests**
    ⑥ Note: A contractor, consultant, volunteer or other party to who the school has outsourced institutional services may be considered a “school official” if the person performs an institutional function or service for which the school would otherwise use employees; is under the direct control of the school with respect to use and re-disclosure of records; and is subject to FERPA’s requirements governing use and re-disclosure of personally identifiable information
  − **To schools in which a student seeks to enroll**
  − **In connection with a health or safety emergency**
  − **And other purposes specified in federal regulations.**
HIB, FERPA and Access to Records

• J.L. v. Bridgewater-Raritan Regional School District, 2018 WL 4997195

• Appellate Division, in an unpublished opinion, determined that a district violated parent rights and directed that parents of student found to have engaged in HIB must be provided with
  
  “the full record of the HIB allegations ... including the underlying investigative report, [and] any additional written reports or summaries, and the letter from [the victim’s] parents to the superintendent.”

• Note that since this is an unpublished opinion you should consult your board attorney, since it is not considered binding authority in future cases
FERPA and Access to Video

Letter to Wachter, December 7, 2017, 118 LRP 16522

Pennsylvania school district was advised by the U.S. Department of Education Office of the Chief Privacy Officer that a parent had a right to inspect video footage showing her son’s role in an on-campus hazing incident, even though the parents of other students did not consent to disclosure of their child’s images in the video and the district could not afford technology to block out the faces of other students.
FERPA and Discipline Imposed

Letter to Anonymous, August 1, 2017, 117 LRP 46530

USDE Office of the Chief Privacy Officer reiterated prior OCR guidance that it is permissible to reveal certain information “directly related to the harassed student” regarding the sanction imposed on harassing student to parent of victim, including:

- Stay away order
- Order that the harasser is prohibited from attending school for a period of time (e.g. suspended)
- If a discipline sanction is being appealed

Note that this applies where there is alleged discrimination that is protected under federal discrimination law. Participants should consult board attorney prior to any disclosure of discipline information.
Key Aspects of Addressing Conduct Away from School Grounds

• Schools have legal authority to address conduct away from school grounds if that conduct has the potential to result in substantial disruption to the school environment. See R.R. v. Shore Regional (1970)
• Include information in parent and student handbooks
• Identify actual or potential substantial disruption to the school environment for at least one student
• Recognize need to address issues that may occur over breaks – summer, winter, holiday
• Limitations on what you can do if one of the parties to the incident is outside your jurisdiction (attends another school district)
Key Aspects of Student First Amendment Rights

• Does the speech involve a matter of public policy, a religious matter or a personal matter?
• Is the speech occurring in school on or off school grounds?
• What impact is the speech having on the school environment? On the rights of students?
• Is the speech lewd or “ambiguously lewd”?
• Is the speech a true threat?
• Is the speech promoting drug use or other activity that is illegal or in violation of district policy?
Student Freedom of Speech

• I♥Boobies! (Keep a Breast) bracelets
  – Middle school students wore bracelets in school to bring awareness to breast cancer research
  – Bracelets available through Keep a Breast Foundation
  – School district banned wearing bracelets with word “boobies”
  – Students suspended for refusing to remove them
  – Federal judge found that the ban was not justified because language on bracelet not “vulgar, lewd, indecent or plainly offensive,” did not disrupt school, and commented on a social issue
  – Court introduced concept of “ambiguously lewd” speech
  – Decision was upheld by federal appeals court, with a strong dissent
Morse v. Fredrick
Students’ Sexually Explicit Speech in Schools

• High school student using “lewd” and “vulgar” language during campaign speech—suspension not a 1st Am. violation because of speech’s potential to disrupt school activities
  
  *Bethel v. Fraser (U.S. 1986)*

• Sexting—a minor sending nude photo of a minor to another student may commit a criminal offense
  – student sending photo (not recipient) may be eligible for educational “diversionary” program instead of jail
  – may also violate student code of conduct
  – P.L. 2011, c.128, eff. April 2012
## What Student Speech IS Protected?

- Speech that does not materially and substantially interfere with the operation of the school – VERY BROAD

## What Student Speech is NOT Protected?

- Threats of violence
  - Communication takes many forms - words, symbols, clothing, etc.
- Promoting illegal drugs
- Lewd and vulgar language
- HIB that causes substantial disruption in school
Dress Codes and Speech

• Districts may institute dress code policies in order to enhance learning environment
• Policies cannot interfere with students’ right of free expression
• Policies must comply with New Jersey’s Law Against Discrimination which makes it unlawful for schools to subject students to differential treatment based on race, sex, sexual orientation and gender identity. N.J.S.A. 10:5-12(11)(f)
• Dress codes must be gender neutral
• Dress codes should not be enforced more strictly for transgender and gender non-conforming students than other students

• **Facts:** Following a number of racial disturbances, school district adopted racial harassment policy

• Among other things, policy prohibited students from having or wearing on campus racially divisive items or material creating ill will or hatred

• District suspended high school student for wearing comedian Jeff Foxworthy t-shirt with phrase “Top 10 Reasons You Might Be a Redneck Sports Fan”

• Student’s younger brother wore same t-shirt in middle school without incident

• When older brother’s appeal of suspension denied, filed lawsuit claiming free speech rights violated under First Amendment
Sypniewski v. Warren Hills Regional Bd. of Education – Cont’d

• **Holding:** Student’s suspension violated First Amendment right of free expression

• Although district found term “red neck” offensive, no history that word itself caused actual disruption despite district schools’ past racial troubles

• To limit speech, must point to concrete basis that connotation associated with term strong enough to substantially interfere with operation of school or rights of others
Hairstyle Discrimination Prohibited

• P.L. 2019, c.272 – Prohibits discrimination against persons because of traits historically associated with race, particularly focused on discrimination based on hair texture and style, designated as the “Create a Respectful and Open Workspace for Natural Hair Act” or “CROWN Act”.

• “Race” is inclusive of traits historically associated with race, including, but not limited to, hair texture, hair type, and protective hairstyles.

• “Protective hair styles” includes, but is not limited to, such hairstyles as braids, locks, and twists.
H.S. Wrestler – December 2018

• Buena Regional H.S. Wrestler required to cut his hair or forfeit match

• Video viewed millions of times

• Sparked national debate

• NJ Division on Civil Rights investigation completed on September 18, 2019
H.S. Wrestler – AG Settlement/Guidance

• AG announces settlement and new guidance document -
https://www.nj.gov/oag/newsreleases19/pr20190918a.html

• Referee suspended for 2 years

• NJSIAA rules must be limited to hair length, and cannot be applied in way that discriminates based on hair style

• New AG guidance clarifies that discrimination on the basis of race includes discrimination based on a trait “inextricably intertwined with or closely associated with race,” including hairstyle.
Key Aspects of Addressing Social Media / Electronic Communications

• Ensure that staff members are not improperly using social media to communicate with students

• Supervise all district approved avenues for social media, electronic communications

• Recognize that you are often seeing incomplete information when an incident first comes to your attention

• Warn students about the dangers of identity theft and the need to not share passwords with others

• Provide clear procedures for teachers and other staff on when it is appropriate to seize an electronic device
Social Media and the Law

• How has social media impacted the ways you interact with students? Both positively and negatively?
• How about interactions with parents?
• With staff members?
• What policies do you have in place that address technology use in schools? Are they working?
Student Free Speech: Cyberspeech

• High school student created fake website profile outside school that portrayed principal as drug & alcohol abuser, sex addict, thief; site had open access to viewers; student was disciplined with suspension
  – Discipline was held to violate 1st Am. right of expression because site had not substantially disrupted school
    *Layshock v. Hermitage Sch. Dist.* (3d Cir. 2011)

• Middle school student created website profile of principal with lewd language with limited access to viewers; student disciplined with suspension
  – Suspension held to violate student’s right of expression because it didn’t cause substantial disruption in school
    *J.S. v. Blue Mountain Sch. Dist.* (3d Cir. 2011)
Key Aspects of Addressing Extra-Curricular Activities/Athletics

• Do not have overly broad student athlete “contracts” regarding behavior outside of school

• For positive results related to random drug testing, limit consequences for extra-curriculars, athletics, parking

• Ensure that hazing has been addressed – slippery slope to HIB and beyond

• Address sportsmanship issues – recognize no place for “trash talk”

• Singling out a student for lack of sports proficiency may be a form of HIB
“24/7” Codes of Student Conduct

• Certain provisions of 24/7 school district codes of conduct are unlawful--exceed board authority, N.J.A.C. 6A:16-7.6

• G.D.M. v. Bd. of Ed. of Ramapo-Indian Hills Reg’l High Sch. Dist. (App. Div. 2012) (invalidated policy that denied participation in extracurricular activities due to conduct unrelated to school)

• Many high schools have similar policies and/or have student athletes sign “contracts” agreeing not to engage in certain behaviors such as drinking alcohol, use of controlled dangerous substances or trouble with law enforcement. Certain aspects of those policies and contracts are VOID in light of the Ramapo Indian Hills decision.
Dating Violence

- **Student to student sexual harassment and sexual assault**

- NJ Dating Violence law – little known law, passed in 2011, went into effect same time as Anti-Bullying Bill of Rights

- NJDOE Model Policy on Dating Violence includes specific protocols for investigating and responding to incidents. Every district is required to have a policy.
  - Do you know your policy?
  - Has it ever been used?
  - Do students know it? Parents? Other staff?
Teen Dating Violence Law

• Little-Known statute
• Also went into effect in September, 2011, same time as Anti-Bullying Bill of Rights
• Mandates that school districts address suspected teen dating violence, and adopt board policy
• Key elements of definition:
  – Physical, verbal, emotional abuse
  – Intended to control a dating partner
  – At school grounds or school event
  – Pattern of behavior
Key Aspects of Addressing Dating Violence

• Have a policy in place
• Review your data – if you have zero reported incidents, is that credible?
• Ensure you have a curriculum in place grades 7 – 12
• Work with student groups, raise awareness of need to break the code of silence
• Make sure all staff members understand their responsibility and recognize the signs that a student may be in a dysfunctional relationship
• Stress that dating violence is NOT limited to physical abuse
NJ’s Anti-Bullying Bill of Rights

- NJDOE Model Policy (last updated in 2011)
- Significant revisions in HIB Regulations became effective on July 1, 2018
- Includes protocol for reviewing range of potential responses and factors to consider prior to imposing discipline (see pages 13-17)
- Key question – Have you analyzed the interventions being used? Do you know which are most effective and why? Do you use “counseling” as a response without anything more specific?
HIB Code Amendments

• Topics
  – Initiation of HIB Investigation
    o Does your SD have an approved revised policy?
    o Is it posted on the SD website?
  – Role of Approved Private Schools with Disabilities
    o Question – It is now 2019 – Has your SD received any calls from these schools?
    o Is this being followed? / Who is investigating?
  – Taking Into Account the Circumstances of Incident when Contacting Parents
  – Timeline for Parental Appeals
  – School Safety / Climate Team
  – Recognition of Power Imbalance
    o “Power Imbalance” is NOT a Distinguishing Characteristic by itself
    o If you can identify a Power Imbalance, then you should be able to identify the characteristic(s)
  – Conflict of Interest
  – Student with Disabilities

• Status
  – Approved on November 1, 2017
  – Became Effective July 1, 2018
  – Drop Box Enclosures
    o See Chart Explaining Regulations Changes
    o See Kimberly Harrington Memo and Attachment re: Adoption of Proposed New Rules with Substantive Changes
  – Link to the full text of the code changes:
HIB & Special Ed Students

• Address bullying in electronic IEP.
  – If your drop-down menus do not feature a section for an anti-bullying plan in a student's electronic IEP, it may be an option to use the minutes section to include your plan.
  – The plan may include:
    o Offering the student a "safe harbor"
    o A way to avoid a bully
    o Giving the student preferential seating, and
    o Teaching turn-taking and other social skills.

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Unless it is clear from the school’s investigation into the bullying conduct that there was no effect on the student with a disability’s receipt of FAPE, the school should, as a best practice, promptly convene the IEP team or the Section 504 team to determine whether, and to what extent:

1. The student’s educational needs have changed;
2. The bullying impacted the student’s receipt of IDEA FAPE services or Section 504 FAPE services; and
3. Additional or different services, if any, are needed, and to ensure any needed changes are made promptly.
2019 Revised Memorandum of Agreement
2019 MOA – Mandatory Report

Offenses Summary – Article 3.1

• Whenever any school employee...
  – Has reason to believe a student is in possession of a controlled dangerous substance or related paraphernalia, or is involved or implicated in distribution activities regarding controlled dangerous substances, pursuant to N.J.A.C. 6A:16-6.3 (Article 3.2)
  – In the course of his employment develops reason to believe that a firearm or other dangerous weapon has unlawfully been possessed on or off school grounds, a weapon was used in an assault against a student or other school personnel, or that any student or other person has committed an offense with, or while in possession of, a firearm, whether or not such offense was committed on school grounds or during school operating hours, pursuant to N.J.A.C. 6A:16-5.5, 5.6(d)4 and 6.3(b) (Article 3.6)
  – In the course of his employment develops reason to believe that anyone has threatened, is planning, or otherwise intends to cause death, serious bodily injury, or significant bodily injury to another person under circumstances in which a reasonable person would believe that the person genuinely intends at some time in the future to commit the violent act or to carry out the threat, pursuant to N.J.A.C. 6A:16-6.3(c) through (e) (Article 3.10)
  – In the course of his employment develops reason to believe that a crime involving sexual penetration or criminal sexual contact has been committed on school grounds, or by or against a student during school operating hours or during school-related functions or activities, pursuant to N.J.A.C. 6A:16-6.3(d) (Article 3.12)
2019 MOA – Mandatory Report
Offenses Summary – Article 3.1

• Whenever any school employee...

  – In the course of his employment develops reason to believe that an assault upon a teacher, administrator, other school board employee, or district BOE member has been committed, with or without a weapon, pursuant to N.J.A.C. 6A:16-5.7(d)5 (Article 3.14)

  – In the course of his employment develops reason to believe a “bias-related act” has been committed or is about to be committed on or off school grounds, pursuant to N.J.A.C. 6A:16-6.3(e) (Article 3.16) and

  – In the course of his employment develops reason to believe a student is potentially missing, abused, or neglected, pursuant to N.J.A.C. 6A:16-11.1(a)3i through iii (Article 3.7)
3.3.8. Electronic Smoking Devices

• “Electronic smoking device” means an electronic device that can be used to deliver nicotine or other substances (e.g., marijuana) to the person inhaling from the device, including, but not limited to, an electronic cigarette, vape pen, cigar, cigarillo, or pipe.

• N.J.S.A. 26:3D-55 bans the use of electronic smoking devices in public places and workplaces, including, but not limited to public and nonpublic elementary or secondary school buildings, BOE buildings and any area of any building of, or on the grounds of, any public or nonpublic elementary or secondary school, regardless of whether the area is an indoor public place or is outdoors.

• Schools are encouraged to develop policies surrounding the use and/or possession of electronic smoking devices.

• Electronic smoking devices should only be reported to law enforcement when there is reasonable suspicion that the device is being used as a nexus for marijuana or other illegal drugs.
3.16. Requirement to Report Bias-Related Incidents

- N.J.A.C. 6A:16-6.3(e) – School employees must report a “bias-related act” committed or about to be committed, regardless of the location of the act to principal/administrator.

- “Bias-Related Act” Definition
  - An act that is directed at a person, group of persons, private property, or public property that is motivated in whole or in part by race, color, national origin, ethnicity, gender, gender identity or expression, disability, religion, or sexual orientation.
  - Need not involve conduct that constitutes a criminal offense.
  - All Hate-Crimes are Bias-Related Acts, but not all Bias-Related Acts are Hate-Crimes
  - Such Acts may constitute HIB

- 3.16.1 – Considerations
  - N.J.A.C. 6A:16-6.3(e) requires SD to notify LE and the County Prosecutor’s Office of Bias-Related Acts
  - Responding to Hate Crimes and Bias-Related Acts
    - Principal / Designee, should consider the nature and seriousness of the conduct and the risk that the conduct posed to the health, safety, or well-being of any student, school employee, or member of the general public when making the notification to the LE Agency and the County Prosecutor’s Office.
4.4.6 Coordination of HIB and Criminal Investigations

- HIB investigations should be suspended or “stayed” when deemed appropriate and requested by LE
  - Must be an affirmative request from LE
  - SD must immediately memorialize the request in writing
  - SD must advise parent/guardian of alleged victim/perpetrator:
    - Of Law Enforcement’s request to stay
    - That time limit to file a complaint with OCR is not delayed due to LE’s request for a stay
  - If parent/guardian objects, LE must “seek appropriate legal assistance from the County Prosecutor’s Office to obtain a formal Court Order compelling the stay.”
Reporting to Law Enforcement

• Immediate notification to law enforcement “whenever a school employee in the course of his or her employment develops reason to believe a student has threatened, is planning or otherwise intends to cause death, serious bodily injury, or significant bodily injury to another person under circumstances in which a reasonable person would believe the student genuinely intends at some time in the future to commit the violent act or carry out the threat.” See N.J.A.C. 6A:16-6.3(c).
Factors in Determining Credibility of Threat

• Age / developmental level of student making threat
• Prior history involving students
• Specificity of threat
• Access to means to carry out threat
• Context in which threat was made
Key Aspects of Addressing Equity in Student Discipline

• Are there disparities in discipline outcomes for students based on race, ethnicity, gender, disability?
• Are there cultural biases that influence how staff members react to student behavior?
• What alternatives have been considered to traditional student “discipline”?
• What efforts have been made to work with the student’s family?
• What are reasonable goals to set for closing the gaps in student discipline?
• What are the challenges to meeting those goals?
Key Aspects of Addressing Students with Disabilities

• If behavior would otherwise constitute HIB, it must be labeled as such, even if the aggressor’s behavior is a manifestation of his or her disability

• Need to continuously assess the effectiveness of responses to student behavior and revise as necessary if traditional disciplinary approaches are not effective

• Goal for all students is the Least Restrictive Environment – but it is permissible to consider the health and safety of other students in determining LRE
Excluding Student from School

• When is it appropriate for a school district to require a student to be excluded from school?

• How long may a student be excluded?

• What due process rights do the student and parents have?

• When must DCPP be involved? Law Enforcement? Family Court?
Due Process Rights

• Case law treats any day that a student is kept out of school for a mental health examination as a day of suspension
• Any student with 10 or more days of suspension is entitled to a hearing before the board of education
• Any student with a disability who is kept out for 10 days must have a manifestation determination hearing
• If a district requires a student to undergo a mental health assessment, the district is liable for payment
Expedited Hearing

• A district may request an expedited hearing before an ALJ and may exclude a student with a disability if maintaining the current placement is “substantially likely to result in injury to the child or others.” See 20 U.S.C. 1415(k)(3).
Unique Circumstances Allowing Removal of Student with an IEP

• 1. Possessed a weapon at school, on school premises, or at a school function.
• 2. Knowingly possessed or used illegal drugs while at school, on school premises or at a school function.
• 3. Inflicted serious bodily injury upon another person while at school, on school premises or at a school function.
Key Aspects of Addressing Student Absenteeism, Truancy

• What steps have been taken to work with parents?
• Are the absences considered “excused” or “unexcused”?
• Is home instruction being provided by Day 5 for discipline? Day 10 for illness?
• Is there an action plan in place to address any patterns of unexcused absences?
• What steps are taken when a student is coming to school but cutting classes?
• What are your policy requirements for students to advance to the next grade?
• When is a student considered truant? What steps should be taken in that case?
Required Action in Response to Unexcused Absence

• Up to 4 cumulative unexcused absences
  – School District must notify student’s parents prior to the start of the next school day (reasonable attempt);
  – Identify needed action to encourage attendance.

• Between 5 and 9 cumulative unexcused absences
  – School District must notify student’s parents prior to start of next school day (reasonable attempt)
  – Learn the cause; and
  – Develop an action plan to address patterns of unexcused absences
Required Action in Response to Unexcused Absence

• Action Plan – if 5 to 9 unexcused absences occur, the School District must develop an Action Plan to establish outcomes based on the student’s patterns of unexcused absences, with interventions. NJAC 6A:16-7.6a4(ii)4
Key Tips for Getting to the Truth

• Prepare
• Avoid distractions
• Don’t work alone
• Know your students – what is that student’s “baseline” behavior
• Understand Body Language, Verbal Cues
• Employ key questioning strategies
• Get written statements in advance from alleged victim, witnesses, aggressor
  – If not possible, take verbatim statement
Conclusion

• Thank you for choosing professional development with LEGAL ONE!

• Visit our website for more courses that can support your work at http://www.njpsa.org/legalonenj

• If you have any questions about this presentation or suggestions for future seminars, please send an email to: dnash@njpsa.org
LEGAL ONE Upcoming Professional Learning

January

WEBINAR - Hot Issues in School Law
Jan. 14, 2020; 3:30 pm - 4:30 pm

Hot Issues in Special Education Law
Jan. 14, 2020; 9 am - 3 pm at FEA

Overview of Discrimination Law and the Role of the Affirmative Action Officer
Jan. 15, 2020; 9 am - 3 pm at FEA

Investigating Discrimination Claims
Jan. 21, 2020; 9 am - 3 pm at FEA

Implicit Bias, Equity, Investigations, and the Law Jan. 23, 2020; 9 am - 3 pm at FEA

Bullying Law Update and the Role of the ABS
Jan. 27, 2020; 9 am - 3 pm at FEA

How to Investigate HIB Claims
Jan. 28, 2020; 9 am - 3 pm at FEA

Bullying Response and Prevention: A Systemic Approach
Jan. 29, 2020; 9 am - 3 pm at FEA

Hot Issues in School Law
Jan. 30, 2020; 9 am - 3 pm at MUJC

February

Hot Issues in Special Education Law
Feb. 03, 2020; 9 am - 1 pm at Ramapo
Register at www.tmieducation.com

Student Mental Health: Key Legal Reqs
Feb. 04, 2020; 9 am - 3 pm at FEA

Student Mental Health: Beyond ID &Referral
Feb. 05, 2020; 9 am - 3 pm at FEA

Legal Reqs for Student Code of Conduct
Feb. 07, 2020; 9 am - 3 pm at FEA

Section 504 Explained
Feb. 10, 2020; 9 am - 3 pm at FEA

Investigating Discrimination Claims
Feb. 11, 2020; 9 am - 3 pm at FEA

Webinar - Support Plans for At-Risk Students
Feb. 11, 2020; 3:30 pm - 4:30 pm

Webinar - What’s New in School Employment Law?
Feb. 12, 2020; 3:30 pm - 4:30 pm

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# LEGAL ONE Upcoming Professional Learning

## February
- **Guidance on Student Discipline**  
  Feb. 12, 2020; 9 am - 3 pm at FEA
- **Code of Conduct Investigations**  
  Feb. 18, 2020; 9 am - 3 pm at FEA
- **Legally Compliant IEPs**  
  Feb. 19, 2020; 9 am - 3 pm at FEA
- **Understanding the Law on Special Needs Students**  
  Feb. 21, 2020; 9 am - 3 pm at William W Allen Middle School
- **Laying the Foundation for a Sound HR System**  
  Feb. 25, 2020; 9 am - 3 pm at FEA
- **Social Media & Cyberbullying Issues in Schools**  
  Feb. 26, 2020; 9 am - 3 pm at MUJC

## March
- **Attendance, Residency, and Homelessness Issues**  
  Mar. 3, 2020; 9 am - 3 pm at FEA
- **Preparing for Special Education Mediation and Due Process Hearings**  
  Mar. 4, 2020; 9 am - 3 pm at FEA
- **School Security: Evolving Challenges and Opportunities**  
  Mar. 5, 2020; 9 am - 3 pm at FEA
- **Hot Issues in School Law**  
  Mar. 6, 2020; 9 am - 3 pm at Cherry Hill High School East

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