

# **School Liability: Claims Alleging Child Sexual Abuse**

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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.



## School Liability: Claims Alleging Child Sexual Abuse

### Topics for today:

- Types of child sexual abuse claims that can be made against school districts
- Policies and trainings required to prevent and report child sexual abuse
- "Pass the trash" law, which requires school districts to make inquiries regarding child sexual abuse before hiring new employees
- New legislation that significantly extends the time during which a lawsuit alleging sexual abuse can be filed and eliminates certain legal protections for public entities/employees



## What type of child sexual abuse claims can be made against school districts?

- Teacher/student sexual abuse claims:
  - Negligent hiring: BOE knew or should have known perpetrator was likely to commit abuse
  - BOE failed to identify/stop the abuse; knew or should have known of abuse
- Student/student sexual abuse claims:
  - BOE failed to supervise



Case example:  
Frugis v. Bracigliano, 177 N.J. 250 (2003)

- Elementary school principal convicted of official misconduct for photographing students in provocative poses (found 176 photos)
- Parents of 2 students sued principal & Elmwood Park BOE
- For entire 8-year tenure principal covered the window to his office door in violation of N.J.A.C.
- Secretary testified that principal's door was always locked during visits and that she heard the click of camera and pop of flashbulbs



Case example, cont'd:  
Frugis v. Bracigliano, 177 N.J. 250 (2003)

- Teacher witnessed principal rocking back and forth against a first-grader
- School nurse witnessed principal put his arms around a boy and push against him in nurse's office
- Teacher witnessed principal rocking back and forth against a student and hitting him with his stomach
- BOE & Superintendent knew the principal attended the weigh-ins of naked athletes on the high school's varsity wrestling team, but took no action



Case example, cont'd:  
Frugis v. Bracigliano, 177 N.J. 250 (2003)

- NJ Supreme Court held BOE negligent as a matter of law, because:
  - BOE disregarded critical information about the principal that called for scrutiny of his activities
  - BOE did not implement effective reporting procedures
  - Staff members knew of no procedures to report principal's inappropriate contact with students



### How to Protect Against Abuse

- Adopt policies and procedures for reporting suspected sexual abuse
- Adopt policies and procedures for preventing the opportunity for such abuse
- Provide training for teachers and students:
  - on how to identify abuse; and
  - on the district's policies for reporting abuse
- Conduct thorough background checks (DOE "pass the trash" forms, coming up later)



New Recommendations for Policies/Trainings  
Coming Soon

•Task Force on Child Sexual Abuse:

P.L. 2019, c. 107 establishes a task force within the NJ Dept. of Ed. to make recommendations for reducing child sexual abuse, including recommendations for school policies and training that address child sexual abuse, specifically



Current Legal Requirements:  
Policies

•N.J.S.A. 18A:36-25 - requires "All school districts . . . to establish policies designed to provide for the early detection of missing and abused children. These policies shall include provisions for the notification of the appropriate law enforcement and child welfare authorities when a potential missing or abused child situation is detected."



Current Legal Requirements:  
Policies

•N.J.A.C. 6A:16-11.1 - elaborates on the specifics required to be included in the BOE's policies and procedures addressing missing, abused, or neglected children, i.e.:

- reporting to law enforcement;
- assigning liaison with child protective services;
- cooperating with child welfare and law enforcement authorities;
- releasing student to child welfare authorities;
- releasing records, etc.



Current Legal Requirements:  
Trainings

•N.J.A.C. 6A:16-11.1(a)8:

- Requires BOE's to provide training for school employees, volunteers and interns on the district's policies and procedures for the early detection of missing and abused children
- New school employees, volunteers or interns are required to receive such training as part of their orientation
- Frequency of additional training is determined by the BOE



### Current Legal Requirements: Trainings

• Training for new teachers: Starting in the 2020-2021 school year: P.L. 2019, c. 109 will require all candidates for teaching certification to be trained on:

- (1) recognizing child/sexual abuse, and
- (2) the requirements to report child/sexual abuse



### NJSIG-Sponsored Trainings

• NJSIG provides its members with free online training through SafeSchools that specifically addresses sexual abuse in schools:

- Sexual Misconduct: Staff-to-Student (35 mins, available in Spanish)
- Sexual Harassment: Student Issues & Response (32 mins)
- Sexual Harassment: Staff-to-Student (27 mins, available in Spanish)

• For more information about SafeSchools, call 1-800-434-0154, email [info@safeschools.com](mailto:info@safeschools.com), or visit [www.SafeSchools.com](http://www.SafeSchools.com)



### Policies & Trainings: Resources

#### Resources:

- Preventing Child Sexual Abuse Within Youth-serving Organizations - Centers for Disease Control and Prevention:
  - <https://www.cdc.gov/violenceprevention/pdf/preventingchildsexualabuse-a.pdf>
- White House Task Force to Protect Students from Sexual Assault, September 2016: Considerations for School District Sexual Misconduct Policies:
  - <https://www.justice.gov/archives/ovw/page/file/900716/download>



### How to Protect Against Abuse

#### Take away:

- Adopt policies/procedures for reporting suspected sexual abuse
- Adopt policies/procedures for preventing the opportunity for such abuse
- Provide training for teachers and students:
  - on how to identify abuse; and
  - on the district's policies for reporting abuse
- Look out for recommendations on policies and trainings from the NJ Dept. of Ed. Task Force
- Conduct thorough background checks (coming up next!)



“Pass the trash” law

- P.L. 2018, c. 5, colloquially referred to as the “pass the trash” law, went into effect June 1, 2018. N.J.S.A. 18A:6-7.6 -7.13
- The law prohibits schools or independent contractors hired by schools from employing any person who will have regular contact with students unless the district contacts the person’s former and current employers and requests information regarding child abuse and sexual misconduct.



“Pass the trash” law

How it’s implemented:

The district must require all job applicants to provide contact information for his/her:

- (1) current employer;
- (2) former school employers for last 20 years;
- (3) all former employers for last 20 years where applicant had regular contact with students.

N.J.S.A. 18A:6-7.7.



“Pass the trash” law

What is required from the applicant:

The applicant must provide the district with a written statement (sample DOE form) addressing whether s/he:

- (1) Was ever the subject of any child abuse or sexual misconduct investigation
- (2) Was ever disciplined at a job or left a job because of a child abuse or sexual misconduct investigation or finding
- (3) Had a license or certificate suspended or revoked because of allegations of a child abuse or sexual misconduct investigation or finding



“Pass the trash” law

What is required from the district:

- The district must then ask those same three questions of all the current and former employers listed by the applicant (sample DOE form)
- If a current or former employer responds to any question in the affirmative, the district must request additional information (sample DOE form)



### "Pass the trash" law

#### How to conduct the review:

- The child abuse/sexual misconduct employment history review may be conducted through telephonic, electronic, or written communications.
- If the review is conducted by telephone, the results of the review must be documented in writing by the prospective employer. N.J.S.A. 18A:6-7.7.



### "Pass the trash" law

#### Employment forms:

- The NJ Department of Education has prepared sample forms that can be used by schools to complete the required employment history review.
- The forms are not mandatory, but recommended.
- The forms are available online at:  
<https://nj.gov/education/crimhist/preemployment/index.html>



### "Pass the trash" law

#### Limits of review:

- not required for current employees, as long as they remain employed by the same district
- only required for positions requiring regular contact with students
- not required for applicants the district does not want to employ



### "Pass the trash" law

#### Take away:

- Make sure you are using the NJ Department of Education employment forms to complete the required employment history review
- If you choose to create your own forms, the forms should be reviewed by Board counsel first
- This review is more important than ever, given the expanded liability of public entities in sexual abuse cases, which is up next...



New Legislation re:  
Sexual Abuse Claims

- May 13, 2019, Gov. Murphy signed S-477 into law, which will go into effect on Dec. 1, 2019
- New law significantly extends the statute of limitations for sexual abuse lawsuits:
  - Claims resulting from sexual abuse committed against a minor on or after Dec. 1, 2019 may be filed up until the victim turns 55 or within seven years from the date of discovery of the injury — whichever date is later;
  - For adult victims, suit must be filed within seven years of discovering the injury



New Legislation re:  
Sexual Abuse Claims

- The law also creates a two-year window for parties to bring lawsuits based on sexual abuse that would be time-barred even with the new statute of limitations.
- I.e., sexual abuse claims that occurred prior to December 1, 2019 may be brought within two years of the effective date of the law, i.e., December 1, 2019.



New Legislation re:  
Sexual Abuse Claims

Why is this significant?

- Victims may come forward, as they will not face the immediate dismissal of their claims on SOL grounds
- Public support also increasing: #MeToo Movement, Catholic Church abuse scandals, Grand Jury Report in Pennsylvania that accused 300 clergy members of sexual assault



New Legislation re:  
Sexual Abuse Claims

- Defense of sexual abuse cases is difficult:
  - memories have faded
  - witnesses may have left, retired or died
    - witnesses to the abuse
    - individuals to whom the victim may have confided
    - perpetrators themselves
  - student records, medical records may be hard to find
  - the lack of any evidence other than the victim's testimony can make a claim particularly hard to defend
- Damages can be high (sympathy factor) and unpredictable





### New Legislation re: Sexual Abuse Claims

Expanded liability of public entities in sexual abuse cases: Tort Claims Act carve-out (A-5392, S-4749)

- No immunity for claims "that a willful, wanton or grossly negligent act of a public entity or public employee resulted in a sexual assault, any other crime of a sexual nature" or other sexual misconduct, "against a person"
- No immunity for claims "that the negligent hiring, supervision, or retention of any public employee resulted in a sexual assault, any other crime of a sexual nature" or other sexual misconduct, "against a minor under the age of 18."



### New Legislation re: Sexual Abuse Claims

#### Take away:

- Find your old insurance policies
- Take reports of possible sexual abuse very seriously
- Never take any steps to hide or cover up suspected abuse, that could jeopardize coverage
- Sexual abuse claims will now be harder to defend for public entities/employees, given the TCA carve out
- All the more reason to provide focused training, establish proper reporting procedures & conduct thorough background checks



### Mandatory Recess Law

Mandatory Daily Recess Law P.L. 2018, c.73 (N.J.S.A. 18A:35-4.31)

- Beginning with the 2019-2020 school year, public school districts must provide:
  - a daily recess period
  - of at least 20 minutes
  - for students in grades K-5
  - outdoors, if feasible
  - students can only be denied recess for violating the code of student conduct; no more than twice per week
- NJ Dept. of Ed. "Frequently Asked Questions" on mandatory recess law available here: <https://homeroom5.doe.state.nj.us/broadcasts/> and included in your packet.



### Deaf Student's Bill of Rights

- New Jersey has more than 1,500 hearing impaired students receiving special education
- New law, S2044, creates "Deaf Student's Bill of Rights"
- Goes into effect on Sept. 4, 2019
- Law is included in your packet, and available here: <https://www.njleg.state.nj.us/2018/Bills/PL19/2044.htm>



### Deaf Student's Bill of Rights

- BOR requires schools districts to provide:
  - Access to appropriate screening and assessment of hearing, vision, and communication capabilities;
  - Access to early intervention;
  - Information for families on placement considerations and available educational options;
  - Opportunities to meet and associate with adult role models who are deaf, hard of hearing, or deaf-blind;
  - Opportunities to meet and associate with their peers;



### Deaf Student's Bill of Rights, cont'd

- BOR requires schools districts to provide (cont'd):
  - A placement best suited to the student's individual needs;
  - Full support services;
  - Information to families on the medical, ethical, cultural, and linguistic issues of the deaf community; and
  - Access to mental health and support services in the student's primary mode of communication, including American Sign Language



### Deaf Student's Bill of Rights, cont'd

- Per statute: Deaf Student's BOR not intended to give greater rights or protections than the IDEA, Section 504 of the federal "Rehabilitation Act of 1973," or any other federal law.
- A second bill, S2045/A-1893, establishes a Working Group on Deaf Education, within the Department of Education, that will make recommendations on issues related to the early linguistic development of children who are deaf or hard of hearing.



**Thank you!**

