



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

## What's Changed and What Hasn't: Understanding Evolving Legal Obligations in School Health

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## Key Topics

- The Role of the School Nurse and Non-Certified Nurse
- The impact of shifting federal priorities on your legal obligations related to school health
  - protecting the rights of undocumented students
  - Protecting the rights students who are members of the LGBTQIA+ community
  - Addressing Diversity, Equity, and Inclusion
  - Implementing FERPA
- Understanding the latest guidance from the New Jersey Department of Education and Department of Health impacting public schools
  - Addressing field trips and student transportation needs
  - Implementing protocols for addressing outbreaks, norovirus, adrenal insufficiency, and concussions
- Identifying and addressing foreseeable health issues for students during transportation to and from school
- Your questions!

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## THE ROLE OF THE SCHOOL NURSE AND NON-CERTIFIED NURSE

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### The Role of the School Nurse

- See N.J.S.A. 18A:40-1 and 3.3
  - Requires all school districts to employ a school nurse
- See N.J.A.C. 6A:16-2.3(b)
  - 17 specific responsibilities outlined in code, including:
    - Carrying out written orders of the medical home and standing orders of the school physician;
    - Conducting health screenings;
    - monitoring vital signs and general health status for emergent issues for students suspected of being under the influence;
    - Maintaining student health records;
    - **Recommending to the school principal students who shall not be admitted to or retained in the school building based on a parent's failure to provide evidence of the child's immunization;**

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## The Role of the School Nurse

- See N.J.A.C. 6A:16-2.3(b) (cont'd)
  - Recommending to the school principal exclusion of students who show evidence of communicable disease;
  - Directing and supervising the emergency administration of epinephrine and glucagon, and training school staff designated to serve as delegates,
  - Administering asthma medication through use of a nebulizer;
  - **Directing and supervising the health services activities of any school staff to whom the certified school nurse has delegated a nursing task;**
  - Classroom instruction in areas related to health education;
  - Reviewing and summarizing available health and medical information regarding the student and transmitting a summary of relevant health and medical information to the child study team

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## The Role of the School Nurse

- See N.J.A.C. 6A:16-2.3(b) (cont'd)
  - Writing and updating, at least annually, the individualized health care plans and the individualized emergency healthcare plans for students' medical needs, and instructing staff as appropriate;
  - Writing and updating, at least annually, any written healthcare provisions required under Section 504;
  - **Assisting in the development of and implementing healthcare procedures for students in the event of an emergency;**
  - Instructing teachers on communicable disease and other health concerns;
  - Reviewing completed health history update questionnaires and sharing with the school athletic trainer for review, if applicable; and
  - Providing other nursing services consistent with the nurse's educational services certification endorsement as a school nurse issued by the State Board of Examiners and current license approved by the State Board of Nursing.

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## Certified School Nurse

- N.J.A.C. 6A:16-1.3 "Certified school nurse" means a person who holds a current license as a registered professional nurse from the State Board of Nursing and an educational services certificate, school nurse or school nurse/non-instructional endorsement from the Department of Education pursuant to N.J.A.C. 6A:9B-14.3 and 14.4.

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## FERPA and HIPAA

- See [Joint Guidance on Application of FERPA and HIPAA](#)
- Generally schools are not governed by HIPAA
- ***Where the HIPAA Privacy Rule applies, does it allow a health care provider to disclose protected health information (PHI) about a student to a school nurse or physician?***
- Yes. The HIPAA Privacy Rule allows covered health care providers to disclose PHI about students to school nurses, physicians, or other health care providers for treatment purposes, **without the authorization of the student or student's parent**. For example, a student's primary care physician may discuss the student's medication and other health care needs with a school nurse who will administer the student's medication and provide care to the student while the student is at school.

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### FERPA—Q & A on doctor notes

- Q. If a school wants to contact a child's doctor about an inaccuracy on an excuse note, do we need any special permission or may we contact the doctor directly?
- A. Under FERPA, the 2008 regulations changed the definition of "disclosure" to permit a school to contact the stated source of a record (such as a doctor's note) for verification purposes. This is not considered a disclosure and, therefore, does not violate FERPA. In other words, FERPA permits a targeted release of records back to the stated source for verification purposes.

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### 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 **Student Assistance Coordinator**, 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 or 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...

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## Suspicion of Under Influence Medical Exam

- Must be MD or DO for medical exam for suspected under the influence. NOT PA or APN.
- Must arrange for immediate medical exam – window should be small (e.g. 2 hours)
- Drug testing requirement must be spelled out in district policy (not automatic under state law)
- NOTE from doctor must be provided to district within 24 hours (If exam took place and note is delayed then must allow to return to school)

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## Principal's Role to Enforce Immunization Requirements

- See N.J.A.C. 6A:16-2.2
- (a) Each school district shall ensure immunization records are reviewed and updated annually pursuant to N.J.A.C. 8:57-4.1 through 4.24.
- **(b)** Each school district shall ensure a **principal or the principal's designee** does not knowingly admit or retain in the school building a student whose parent has not submitted acceptable evidence of the child's immunization, according to the schedule specified at N.J.A.C. 8:57-4, Immunization of Pupils in School.

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## THE IMPACT OF SHIFTING FEDERAL PRIORITIES

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## Shifting Federal Priorities

- See Article, [Shifting Federal Priorities and the Impact on New Jersey School Law and Finance](#)
- Executive Order v. Regulation v. Statute v. Constitution
  - EO must be consistent with regs, statutes, constitutional rights
- State Law v. Federal Law
  - Education is primarily a state responsibility, but potential impact on federal funding
- Withholding of Funding
  - Cannot impound funds that have been approved
- Case Law
  - Title IX decision
  - Pending litigation challenging EOs

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## Dear Colleague Letter and Response

- February 14 – USDE issues [Dear Colleague letter](#) directing K-12 and Higher Ed cease all DEI initiatives
- February 28 – USDE provides [FAQs](#) to clarify and justify Feb 14 letter, purported legal authority
- March 6 – NJ [joins with coalition of states](#) to provide response to USDE guidance

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## Scope of Title IX

- Covers all public schools and institutions of higher education
- Addresses discrimination linked to gender
- Protections both students AND staff members
- Protects against retaliation for reporting issues
  - e.g. *Jackson v. Birmingham Public Schools*, 544 U.S. 167 (2005)
  - Coach could not be fired for complaining about inequitable treatment of girls basketball team
- Overlaps with other laws, provides additional due process for parents
- Reverted back to 2020 Regulations which does not extend Title IX protections to transgender athletes. HOWEVER ...

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## Gender Identity & Athletics

- NJSIAA
  - Transgender student shall be able to participate in accordance with birth sex or gender identity
    - Same as NJDOE Transgender Student Guidance for School Districts
  - Only legitimate challenges are safety and/or fairness in competition
  - Situations determined on case-by-case basis
  - Policy – See pp 44-45:  
<https://www.njsiaa.org/sites/default/files/documents/2024-08/njsiaa-policies-and-procedures-24-25-.pdf>
  - FAQ:  
<https://www.njsiaa.org/sites/default/files/documents/2020-10/transgender-faqs-approved-11-15-17.pdf>

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## Addressing Gender Identity

- See **February 10, 2025 – Superior Court of NJ Decision**
  - *Platkin v. Middletown Township BOE (restraining district policies inconsistent with NJDOE guidance regarding parental notice)*
    - <file:///E:/Title%20IX/Title%20IX%20-%20Feb%2010,%202024/NJ%20Transgender%20Policy%20Decision%20-%20February%202025%20-%20a0037-23a0046-23a0118-23.pdf>
- P.L. 2017, c. 137 - Required NJDOE to develop guidance
- NJDOE [Guidance and Resources Regarding Transgender Students](#)
- Definitions – e.g., gender identity, gender expression, sexual orientation, cisgender, transgender
- 2018 Guidance makes clear schools honor what student tells them regarding gender identity
- Parental consent not required
- Need to ensure student is not “outed” to others, include parents
- Need to revise student records UNLESS doing so would out the student
- Need to allow access to locker rooms, restrooms based on gender identity

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## Health Curriculum v. D,E,I

See NJDOE 4/14/22 memo - [Clarification Regarding 2020 New Jersey Student Learning Standards – Comprehensive Health and Physical Education](#)

- 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 FOR 18A:35-4.35!**

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## 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.

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### Other Related Curriculum Requirements

- Dating Violence - 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
- 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 - N.J.S.A. 18A:35-4.7**
- **Political, economic, social contributions of LGBTQ individuals and individuals with disabilities – N.J.S.A. 18A:35-4.35 to 4.36**
- Information Literacy, adoption of NJSLs – N.J.S.A. 18A:7F-4.4

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### Continue to ...

- Honor what students tell you regarding gender identity and follow NJDOE guidance
- Provide a safe, affirming environment for all students regardless of citizenship status
- Implement the New Jersey Student Learning Standards

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## LATEST FROM THE NJDOE

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## March 26 Memo - Field Trips

- NJDOE March 26, 2025 Broadcast Memo: [Guidance on School Nursing Services: Field Trips, Substitute Coverage, and Compliance Considerations](#)
  - When an individual student requires health services during a field trip or school-sponsored event, failure to provide those services may constitute a violation of the student's rights under Section 504 of the Rehabilitation Act. Decisions regarding how to meet student health needs should be made collaboratively, involving the student's parents or guardians, healthcare professionals, including the school nurse, and school administrators

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## March 26 Memo – Field Trips

- NJDOE March 26 Broadcast Memo:
  - Additionally, for field trips that take students out of state, school nurses should review the [Nurse Licensure Compact \(NLC\)](#) to determine whether their New Jersey licensure permits them to provide health services in the destination state. Districts should ensure compliance with all applicable licensure requirements and, if necessary, make alternative arrangements for student health services in advance of the trip.

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## March 26 Memo – Absences and Subs

- NJDOE March 26 Broadcast Memo:
  - Addressing School Nurse Absences and Substitute Availability
  - Local educational agencies (LEAs) may encounter challenges in maintaining adequate nursing services when a school nurse is absent. To serve as a substitute school nurse in New Jersey, an individual must hold a valid New Jersey Registered Professional Nurse (RN) license. Licensed Practical Nurses (LPNs) are not eligible to serve as substitute certified school nurses.
  - Per N.J.A.C. 6A:9B-7.3, individuals holding a substitute school nurse certificate may serve in the same assignment for a maximum of 20 instructional days per school year. Substitute school nurses who hold a standard school nurse certificate may serve for up to 60 instructional days per school year. If an LEA requires substitute nursing coverage beyond these limits, it must notify the Executive County Superintendent.

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## March 26 Memo – Compliance Strategies

- To ensure continuity of student health services, LEAs may consider the following strategies:
  - Develop a robust substitute nursing pool, including active recruitment, competitive pay rates, flexible scheduling, and orientation programs that provide access to and training on local electronic health records.
  - Hire per diem, float, or part-time nursing staff to provide additional coverage.
  - Contract with a nursing agency to secure appropriately certified substitute school nurses as needed.
  - Notify parents when the school nurse is absent, and coverage is unavailable. Notifications should include district policies on medical emergencies and how individual student health needs will be addressed.
  - Remind parents of their option to visit the school to administer routine medications.
  - Establish agreements with neighboring school districts to share nursing coverage when substitutes are unavailable. Partner with a local educational services commission or special services school district to access additional nursing resources.

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## Noncertified Nurse

- N.J.A.C. 6A:16-1.3 "Noncertified nurse" means a person who holds a current license as a professional nurse from the State Board of Nursing and is employed by a district board of education or nonpublic school, and who is not certified as a school nurse by the Department of Education.

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## Noncertified Nurse

- N.J.A.C. 6A:16-2.3(c) School districts may appoint a noncertified nurse **under the supervision** of a certified school nurse to supplement the services of a certified school nurse provided that:
  - 1. The noncertified nurse shall be assigned to the same **school building or complex** as the certified school nurse pursuant to N.J.S.A. 18A:40-3.3.a.
  - 2. A noncertified nurse is limited to providing services only as permitted under the noncertified nurse's license issued by the State Board of Nursing. (See <https://legalclarity.org/lpn-scope-of-practice-in-new-jersey-what-you-need-to-know/>)

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## Noncertified Nurse

- LPN scope of practice includes medication administration
- LPN must be supervised by CSN. As per NJ Board of Nursing
  - Supervision does not necessarily require direct continuing presence of CSN
  - May instead be “intermittent observation, direction, and occasional physical presence” of CSN

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## Substitute Nurse

- 6A:9B-7.5 Substitute credential for positions not requiring instructional certificates
- (a) The Board of Examiners may issue a substitute school nurse/non-instructional credential to the holder of a valid New Jersey registered professional nurse license.
  - 1. A substitute school nurse/non-instructional may serve a total of 60 instructional days in the same position in one school district during the school year.

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## Transportation for Students with Disabilities

- NJDOE February 12 [Broadcast Memo](#)
  - Transportation Considerations for Students with Disabilities
- Provides practical information, discussion prompts, and best practices to support collaborative planning and ensure transportation arrangements meet the unique needs of students with disabilities
- NJDOE January 29 [Broadcast Memo](#)
  - Student Information Card for Transportation of Students with Disabilities and Information Sharing with Bus Driver and Bus Aide

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## Adrenal Insufficiency Guidance

- See NJDOE November 27, 2024 [Broadcast Memo](#)
  - Model Policy and Guidance
- Guidance developed to assist in establishing a policy for the emergency administration and delegation of hydrocortisone sodium succinate to pupils with adrenal insufficiency.

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## Recent NJDOE Guidance

- See NJDOE Broadcast Email – 12/13/23 [Delegation of Medication Administration in School Settings](#)
- Makes clear that Certified School Nurses must operate under education laws in addition to general requirements for Registered Nurse, and must follow all restrictions for School Nurses related to administration of medication

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## Persons Authorized to Administer Medication

- School Physician
- Certified School Nurse OR Noncertified nurse
- Substitute School Nurse
- Student's Parent
- Student approved to self-administer
- Other school employee trained and designated by the certified school nurse to administer epinephrine, opioid antidotes or glucagon

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## Statutes Regarding Administration of Medication

- N.J.S.A. 18A:40-12.3 permits the self-administration of medication by a pupil for asthma or other potentially life-threatening illnesses, a life-threatening allergic reaction, or adrenal insufficiency.
- N.J.S.A.18A:40-12.5 – Epinephrine administration policy
- N.J.S.A. 18A:40-12.6c requires the school nurse to recruit and train volunteer designees to administer epinephrine via an auto injector when the nurse is not present.
- N.J.S.A. 18A:40-12.7 – Requirement to have and maintain for the use of pupils at least one nebulizer in the office of the school nurse or a similar accessible location
- N.J.S.A. 18A:40-12.14 requires the school nurse to designate the administration of glucagon to a student with diabetes who is experiencing severe hypoglycemia when a school nurse is not physically present at the scene.
- N.J.S.A. 18A:40-12.15 allows for students with diabetes to self-manage their care and administer medication related to their diabetes.
- N.J.S.A. 18A:40-12.24 directs the school nurse and trained school personnel to administer opioid antidotes in the event that someone is believed to be experiencing an opioid overdose
- N.J.S.A. 18A:40-12.30 requires the school nurse to designate the administration of hydrocortisone sodium succinate to employees who volunteer when the nurse is not available.

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## Sports Pre-Participation Physical

- See May 22, 2024 NJDOE [Broadcast memo](#)
- There has been a change in the requirements for submission of the updated PPE. The History Form and the Physical Examination Form within the packet do not need to be submitted to the student's school. The History Form and the Physical Examination Form should be kept by the healthcare provider who completes the PPE. Only the completed Medical Eligibility Form should be submitted to the school.
- The Medical Eligibility Form provides space for the healthcare provider to share relevant health information with the school if necessary and includes a recommendation regarding the student's ability to participate in athletics.
- It is important to note that the PPE must be conducted by a licensed physician, advanced practice nurse, or physician assistant who has completed the student athlete cardiac assessment professional development module developed by the NJDOE.
- See also NJSIAA [Sports Medical Clearance Information](#) page

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## NJDOE Protocols/Guidance

- [Guidelines for the Care of Students with Diabetes in the School Setting](#)
- [Guidelines for the Management of Life-Threatening Food Allergies in Schools](#)
- [Guidelines for the Emergency Administration of an Opioid Antidote within Schools](#)
- [Model Policy and Guidance for Districts on the Prevention and Treatment of Sports-Related Head Injuries and Concussions](#) (Aug. 2023)
- [Model Policy and Guidance for Districts on Self-Administration of Medication and Delegation of Hydrocortisone Sodium Succinate for Students with Adrenal Insufficiency](#) (Oct. 2024)
- NJ Department of Human Services - [Opioid Overdose Response & Prevention Information](#)
- [Training Protocols for the Emergency Administration of Epinephrine](#)
- [NJDOE Mental Health Resource Guide](#)
- Janet's Law [FAQs](#)

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## YOUR QUESTIONS

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### Lack of Coverage by School Nurse

- School Building uncovered
- One school nurse assigned for multiple buildings
- Athletic Events (home and away)
- Field Trips
- Substitute School Nurse
- LPN
- Delegation to Staff
- Delegation to Student
- Over the Counter Medication

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## Other Questions

- What has changed regarding DEI?
- Most common legal issues for school nurses?
- Can nurse delegate to other staff administration of nasal valium, nasal epinephrine?
- When delegated staff members are trained by the nurse are they working under the nurse's license? Is the nurse responsible for any mistakes?
- What if a nurse delegates administration of other medications that are not specifically permitted to be delegated under New Jersey law?
- What if a parent gives written permission for their child to self-administer other medications? What if the parent says you can order a standing physician's order and their child does not need the medications that the district has on file?
- What rules and protections apply for trips to other countries?
- What is the role of the school nurse in treating staff? Assessing staff for workers comp claims?

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## Final Thoughts

- Remember you are part of a team. Don't feel the need to act alone or solve the unsolvable.
- Document concerns and ask for help when necessary.
- Remind others that the protocols you are insisting be followed are not YOUR protocols. They are based on legal requirements and acting to protect the health and safety of children.
- Remind others that following protocols also protects staff members from potential discipline and legal liability.
- What you do matters!

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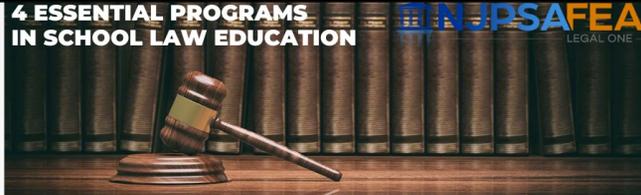
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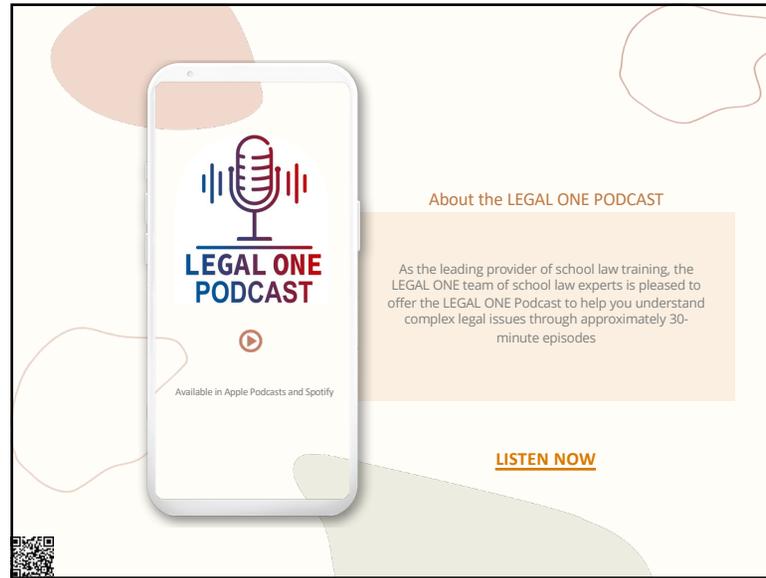
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