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Legal Issues in Student Health

NJAAP School Health Conference

October 16, 2024

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Presenters

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Presentation Materials

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Key Topics

- Dealing with Challenging Parents
- Cell Phone Policy, Social Media and Mental Health Impact
- Student Athlete Medical Clearance v. Acceptance by School Physician & Implied Consent
- FERPA, HIPAA, Doctor's Notes, and Emergencies
- School Refusal, Attendance and Truancy
- Addressing Gender Identity
- Addressing Field Trips
- Reasonable Accommodations and Student Placement
- Security Drills, Threat Assessment, Restraint and Special Needs Children
- Immunization Requirements
- Required Health Screenings and Administration of Medication
- Sick Leave Expansion for Staff and the Role of the School Nurse
- Substance Use Protocols / Student Tampering

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DEALING WITH CHALLENGING PARENTS

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Key Points to Remember

- Both parents are assumed to have equal rights UNLESS there is a court order saying otherwise
- Verbal harassment or threats should never be tolerated. Seek help from administration/security when necessary.
- Parents cannot selectively opt out of some vaccination requirements
- Parents cannot prevent a child from receiving needed medical care if nurse deems it necessary
- If parent assumes responsibility to pick up child who is suspected of being under the influence, parent must go immediately for medical exam
  - Failure to do would require district to contact DCPP and law enforcement and assume positive result

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CELL PHONE POLICY, SOCIAL MEDIA AND MENTAL HEALTH IMPACT

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Social Media and Youth Mental Health: *Surgeon General's Report*

- https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf
  - Nearly 40% of children ages 8–12 use social media
  - Frequent social media use may be associated with distinct changes in the developing brain in the amygdala (important for emotional learning and behavior) and the prefrontal cortex (important for impulse control, emotional regulation, and moderating social behavior), and could increase sensitivity to social rewards and punishments
  - Adolescents may experience heightened emotional sensitivity to the communicative and interactive nature of social media.
  - Adolescent social media use is predictive of a subsequent decrease in life satisfaction for certain developmental stages including for girls 11–13 years old and boys 14–15 years old.

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Limiting Cell Phone Use in Schools

- Surgeon General report on mental health and well-being of parents
  - Cites monitoring cell phone use as major source of stress
- California enacts new law
- School districts across U.S. act to restrict cell phone use
- NJDOE webpage addressing cell phone use
- NJDOE webpage addressing Artificial Intelligence
- *Please share your experiences with the NJDOE at SocialMediaCommission@doe.nj.gov*

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STUDENT ATHLETE MEDICAL CLEARANCE

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Updated PPE Forms

- See NJDOE May 22, 2024 Broadcast email
  - 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.

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Impact of Updated PPE Forms

- School physician is not “clearing” students, but instead accepting clearance from treating medical professional
- NJDOE says that if History Form and Physical Exam form are submitted, district should assume implied consent from parent
- NJDOE indicates that school districts MAY CHOOSE to still require submission of History Form and Physical Exam if they wish to do so

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FAQs on PPE Forms, Process

- See NJDOE FAQs
- ***Q9. Can an e-mail serve as written notification stating the school physician reviewed and approved the PPE Form?***
  - No. N.J.A.C. 6A:16-2.2(h)1. iv and N.J.A.C. 6A:16-2.3(a)4iv require the LEA to "provide to the parent written notification signed by the school physician stating approval of the student's participation in athletics based upon the medical report or the reasons for the school physician's disapproval of the student's participation." An email notifying a parent of their student's approval or disapproval to participate in athletics alone does not meet these requirements. **However, email may be used to transmit written notification to parents of students indicating the school physician's approval or disapproval of their participation in athletics. Once the form is signed electronically or stamped, then it may be forwarded to the parent.**

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Remember …

- If school personnel (nurse, school doctor, coach, etc.) see something concerning that may impact ability of student to participate, have duty to act EVEN IF student has been medically cleared by family doctor
- School district always has the right to verify authenticity of doctor's notes and clarify any information received
  - E.g. why is the student athlete cleared for certain sports and not others?

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FERPA, HIPAA, DOCTOR'S NOTES, AND EMERGENCIES

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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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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.
- FERPA permits disclosure of personally identifiable information **in connection with an emergency** if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

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SCHOOL REFUSAL, ATTENDANCE, TRUANCY

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School Refusal

- Significant, growing issue for schools
- Root cause often difficult to determine
  - In some cases, may be HIB
  - In some case, may be issues related to parent - e.g. Munchausens by Proxy or Fictitious Disorder Imposed on Another (FDIA) – See Cleveland Clinic
- Obligation to provide home instruction if student is capable of doing work
- Need to determine if absences are excused or unexcused per local district policy
- Obligation to address chronic absenteeism

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Action Plan for Chronic Absenteeism

- NJ requires any school district where more than 10% of students are chronically absent to develop an action plan
- School Avoidance Alliance. (2024). School avoidance 101. Retrieved from https://schoolavoidance.org/school-avoidance-101/
- See NJDOE Website – Student Attendance
- See New Jersey Department of Education. (2022). Data based decision making for addressing chronic absenteeism. Retrieved from https://www.nj.gov/education/safety/sandp/attendance/docs/DataBasedDecisionMakingChronicAbsenteeism.pdf
- See Appendix A: Sample School Corrective Action Plan Template for Addressing Chronic Absenteeism (PDF)

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Truancy

- Truancy occurs when a student between the ages of 6 and 16 has 10 or more cumulative unexcused absences
  - Parent/guardian may be charged with a disorderly persons offense
    - 1st Offense – up to $25 fine
    - Subsequent Offenses – up to $100 fine
    - Each day of unexcused absence is a separate offense
  - Student may be referred to Family Part of Superior Court
    - District must do case by case review of reasons for absences to determine if referral is necessary
  - Truant student may be found to be a juvenile delinquent if the parent is unable to get the student to attend school

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ADDRESSING GENDER IDENTITY

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DOE Transgender Student Guidance - In School

- NJDOE Guidance and GLSEN Definitions
- Terminology – e.g., nonbinary, gender identity, sexual orientation, use of "they"
- Records – No need for legal name change to change records, including transcript, IEP, diploma, etc.
- Restrooms/Locker Rooms – right to access based on gender OR if **student prefers** offer option of gender neutral restroom / changing area
- Athletics – Right to participate based on gender
- Name and pronoun use, student ID, student dress
- Safe and Supportive Environment – staff training, equal access, HIB, social and emotional learning
- ***NOTE NJ AG has gotten preliminary injunctions banning district policies that would require outing of transgender students***

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AAP and AMA on Gender Affirming Care

- American Academy of Pediatrics Policy Statement Urges Support of Transgender and Gender Diverse Children and Adolescents

- American Medical Association reinforces opposition to restrictions on transgender medical care
  - In April 2021, the AMA delivered a letter (PDF) to the National Governors Association urging its members to oppose legislative dictates that inappropriately limit the range of options physicians and families may consider when making decisions for gender-diverse pediatric patients.
  - The letter cited evidence demonstrating that forgoing gender-affirming care can have tragic consequences for transgender individuals who face increased risk of anxiety, stress, substance use disorder and suicide.

- U.S. DOJ Sues Tennessee Over Ban on Transgender Care

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ADDRESSING FIELD TRIPS

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Planning for the Foreseeable …

- What if a student has special needs and a parent is unable or unwilling to attend the field trip as a chaperone?
- What if the parent is NOT a chaperone, but just shows up and lingers?
- What if a nurse is present and a student becomes sick or is injured? What is the nurse's liability?
- What if the trip is outside New Jersey and the nurse is not licensed in that state or country?
- What if a student is suspected of being under the influence on a field trip?
- What if a student needs to be hospitalized on a field trip?
- What if a student needs to be disciplined on a field trip?

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Students with Special Needs

- Must be allowed to participate in field trips to the same extent as all other students. Participation cannot be conditioned upon a parent being able to attend the field trip. This may require a school nurse to be on the field trip, depending on the needs of the student. See 34 C.F.R. § 104.33(a).
- Transporting specialized equipment – See N.J.A.C. 13:20-49D-14
  - Crutches, walkers, oxygen bottles, ventilators
  - Must be securely fastened at mounting location able to withstand pulling force up to 5 times the weight of the item OR retained in a closed, latched compartment

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Nursing Licensure Compact

- Provides specific authorization to practice nursing in states included in the compact
- Must apply to receive multi-state license
- New Jersey Board of Nursing Information on Applying for NJ Multi-State License
- National Information - Compact Nursing States List 2024 | Licensure Map (nurse.org)
- In those states not participating in Compact, or for those who don't have license, need to determine that State's requirements for school nurse, contact State Nursing Board
- For outside of country, need to continue to implement NJ requirements for student care, may not permit lower standard (e.g., lower drinking age in other countries)

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REASONABLE ACCOMMODATIONS AND STUDENT PLACEMENT

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Section 504

- See OCR Parent and Educator Resource Guide to Section 504
- Need to work with families to provide reasonable accommodations for students
- If student is able to be in school with supports other than a medical doctor, student is entitled to attend

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Reasonable accommodations

- The test to determine the reasonableness of a modification is whether it **alters the essential nature of the program** or imposes an **undue burden** or hardship in light of the overall program.
- Courts "should be mindful of the need to **strike a balance between the rights of the student and h[er] parents and the legitimate financial and administrative concerns of the [s]chool [d]istrict,"**

  Ridley Sch. Dist. v. M.R., 680 F.3d 260, 280–81 (3d Cir. 2012)

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Least Restrictive Environment

- LRE is a key component of a Free, Appropriate, Public Education
- New Jersey has been identified as a State that needs to do more to ensure LRE
- LRE is NOT ALWAYS in local school district
  - Permissible to consider health and safety of other students and staff
  - Important to document efforts to develop and revise Behavior Intervention Plans

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SECURITY DRILLS, THREAT ASSESSMENT, RESTRAINT AND SPECIAL NEEDS CHILDREN

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School Security Drills

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

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School Security Drills

- **P.L. 2021 c. 365 (1/10/2022)** - Ensures student well-being during school security drills when students are present.
  - Includes clear developmentally and age-appropriate messaging to students and staff at the conclusion of the drill that the event is a drill and no current danger exists;
- **P.L. 2023, c. 212 (1/8/2024)** Requires certain documentation of needs of students with disabilities during school security drills and emergency situations and in school security plans; and requires staff training on needs of students with disabilities in emergency planning.
  - Requires consideration of unique needs of each student and written plan for students who need accommodations

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P.L. 2023 c. 212 – Written Plan

- 4b. If it is determined that a student requires supplementary supports, modifications, accommodations, or services in order to safely and fully participate in a fire drill or school security drill, a written plan shall be maintained in the student record. The written plan shall:
  - (1) describe the anticipated mobility, sensory, medical, social, communication, emotional, regulatory, and decision-making support needs of the student during a fire drill or school security drill and during an actual emergency situation;
  - (2) describe the supports, modifications, accommodations, and services to be provided to the student during a fire drill or school security drill and during an actual emergency situation; and
  - (3) describe the role of school employees in supporting the student during a fire drill or school security drill and during an actual emergency situation, including the need for any specific training of school employees.
- c. A school district and, if applicable, a nonpublic school shall on a regular basis, but not less than once annually, perform a review of any determinations made pursuant to this section to evaluate the school security needs of a student.

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Threat Assessment Teams

- P.L. 2022, c. 83 – Governor Murphy signs law mandating Threat Assessment Teams
  - Goes into effect for 23-24 school year
  - Team members include:
- The threat assessment team, which is to be established by a board of education or board of trustees in each district, shall be multidisciplinary in membership, including:
  - A school psychologist, school counselor, school social worker, or other school employee with expertise in student counseling;
  - A teaching staff member;
  - A school principal or other senior school administrator;
  - A safe schools resource officer or school employee who serves as a school liaison to law enforcement; and
  - The designated school safety specialist.
  - **NOTE THAT NURSE CAN BE CRITICAL MEMBER OF TEAM, ALTHOUGH NOT MANDATED UNDER STATE LAW**

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NJ Red Flag Law and Nurses

- P.L. 2018, c.34 – Requires firearms seizure when certain health care professional determines patient poses threat of harm to self or others. Duty to warn extends to *"[a]ny person who is licensed in the State of New Jersey to practice psychology, psychiatry,* ***medicine, nursing****, clinical social work, or marriage and family therapy."*

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Physical Restraint/Seclusion Legislation in N.J.

- P.L. 2017, c.291
- **Only** addresses students with disabilities
- Applies to school districts, Educational Services Commissions, and APSSDs
- Limits use of physical restraint – only in an **emergency** in which the student is exhibiting behavior that places the student or others in imminent physical danger
- Only restrain in **prone position** with prior written authorization of primary care doctor
- Staff members using restraint **annually trained**
- Immediate **parental notice** with written notice within 48 hours
- *RECENT REVISION TO LAW requires districts to track and report use of restraint and seclusion for ALL STUDENTS and include demographic breakdown in SSDS*

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Key Considerations

- Where contact is required for students with disabilities, spell out in IEP or 504 plan
- Include protocols for staff to avoid even the perception of improper contact (physical, verbal, electronic)
- Provide staff with guidance on other situations where contact with students is necessary
  - E.g., athletics, dance, music, etc.

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IMMUNIZATION REQUIREMENTS

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Existing Immunization Requirements

- A student coming to New Jersey from another state or country has 30 days to provide documentation of required immunizations and must be allowed to enroll in school during that time period
- Homeless child cannot be barred from enrolling and attending school while getting immunizations
- There are medical and religious exemptions for immunizations. Medical exemptions are rare.
- *With the exceptions noted above, children cannot otherwise be permitted to attend school without required immunizations*
- *Failure to enforce existing immunization requirements raises potential for significant legal liability, could lead to possible disciplinary action for school staff who permit or direct noncompliance with legal requirement*

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Enforcing Immunization Requirements – 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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REQUIRED HEALTH SCREENINGS AND ADMINISTRATION OF MEDICATION

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Health Screenings by School District

- Screenings must be conducted by school physician, school nurse, or other school personnel properly trained
- NJ School Districts must conduct the following health screenings under N.J.A.C. 6A:16-2.2(l)
  - Height, weight, blood pressure annually for students in K-12
  - Visual acuity biennially for students in K-10
  - Auditory acuity annually in K-3, 7, 11
  - Scoliosis biennially between ages of 10 and 18

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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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Accessibility of Naloxone

- See NJDOH announcement – September 13, 2024
- In order to obtain naloxone, school districts must place orders through their respective County Office. To do so, school districts will submit a simple form to their County Office with their request for naloxone.
- Naloxone will be ordered by the case, and each case contains 12 nasal sprays, or 24 total doses.
- Each County Office will then submit an order for naloxone kits for all the districts within their county through the Naloxone DIRECT portal.
- The naloxone cases are then delivered to the County Offices, which then distribute the orders to school districts. If a school district has a question about ordering naloxone kits or would like to place an order, they should contact their County Office of Education.
- NOTE that P.L. 2018, Chapter 106 – Requires Opioid Antidotes in Schools and Permits Emergency Administration by School Nurse or Trained Employee

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SICK LEAVE EXPANSION AND THE ROLE OF THE SCHOOL NURSE

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Sick Leave Expansion

- P.L. 2023, c. 95 – Governor signs expansion of sick leave
- Revised law identifies 8 different categories of permissible use of sick leave
- Prior definition of sick leave greatly expanded
- Used to be limited to personal disability or illness, or because of exclusion on account of a contagious disease or being quarantined

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Role of School Nurse

- Address Need for Emergency Care for Anyone in Building (including staff)
- Avoid becoming “go to” for non-emergent care
- Encourage staff members with unique health care needs to communicate with HR, develop 504/emergent care plans if necessary

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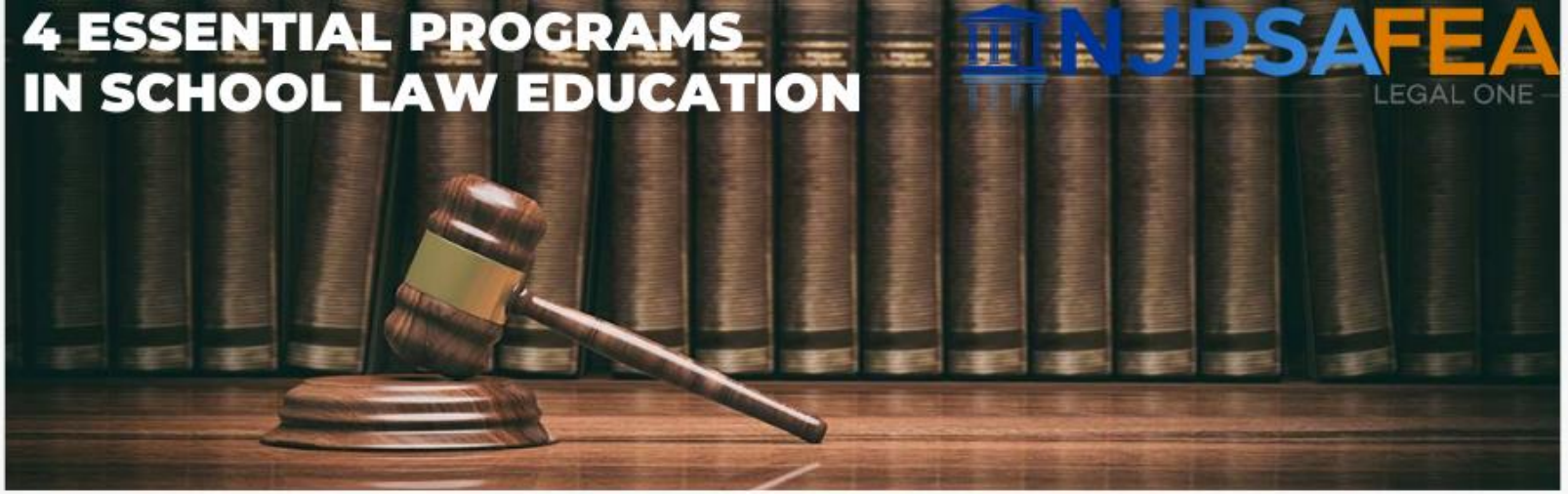

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