



# Workers' Compensation Symposium

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Annual In-Person  
Training



# Welcome

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## DR. ANTHONY DRAGONA

Union City

Board of Education

NJEIF Chairperson





# Sub-fund Meeting

ERIC North | MOCSSIF | NJEIF

## Information

- Workers' Compensation Symposium
- Thursday, May 9, 2024
- 9:00am - 1:00pm
- Hilton East Brunswick and Towers  
3 Tower Center Blvd, East Brunswick, NJ

## Credits

- Course Code 16726
  - 2 QPA Credits: Office Administration / General Duties
- *To receive CE credits, evaluation forms must be returned at the end of the session.*

## Agenda

<b>Call to Order &amp; Welcome</b>	Anthony Dragona, Ed.D., NJEIF Chairperson Business Administrator, Union City Public Schools
<b>Sub-fund Administrator Report</b>	Jay Lynch, MOCSSIF Sub-fund Administrator Executive Vice President, Alliant Insurance Services, Inc.
<b>NJSIG Board of Trustees Update</b>	Christopher J. Russo, Ed.D., NJSIG Board of Trustee Chairperson Chair, West Windsor – Plainsboro Regional School District
<b>NJSIG Executive Update</b>	Jill Deitch, Esq., Executive Director, NJSIG
<b>Presenters</b>	John Geaney, Esq., Capehart and Scatchard David Nash, Esq., LEGAL ONE
<b>Questions &amp; Answers</b>	Keith Rosado, NJEIF Chairperson School Business Administrator/Board Secretary, Westwood BOE
<b>Closing Remarks</b>	Kelly Brazelton, MOCSSIF Chairperson School Business Administrator/Board Secretary, Monmouth County Vocational
<b>Old Business / New Business</b>	Kelly Brazelton, MOCSSIF Chairperson School Business Administrator/Board Secretary, Monmouth County Vocational
<b>Adjournment</b>	Thank You!

# WORKERS' COMPENSATION SYMPOSIUM

*Presenters:*



**JOHN H. GEANEY, ESQ.**



**DAVID NASH, ESQ.**



A big **THANK YOU**  
to CAPEHART SCATCHARD  
for opening access to their exhibition for today's attendees!!

THANK YOU JOHN and CAROL!





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# CONTINUING EDUCATION CREDITS

2 QPA

Office Administration & General Duties

Course Code 16726

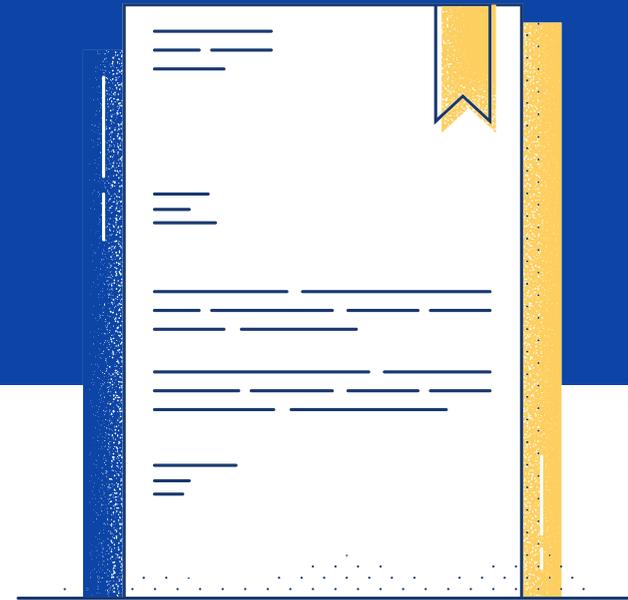
## CEC EVALUATION FORMS

Please find the forms in your MEETING FOLDER.

At the conclusion of today's meeting, hand all completed forms to  
**any Sub-fund Representative:**

- Latonya Brennan
- **Michele Eulner**
- Vicky Sjulander
- Jay Lynch
- Barbara Fitzpatrick
- **Eva Jakowluk**
- Dan Regan
- Amanda DeNapoli

Certificates will only be granted to those who return their forms.



# SUB-FUND COMMITTEES & CHAIRS



**Dr. Chris Russo**  
*West Windsor –  
Plainsboro Regional  
School District  
Chair, NJSIG BOT*



**Dr. Anthony N. Dragona**  
*Union City BOE*



**Kelly  
Brazelton**  
*Monmouth County  
Vocational BOE*



**Steven Somick**  
*North Bergen  
School District*



**Keith A. Rosado**  
*Westwood Regional  
School District*

# EDUCATIONAL PARTNERSHIPS

**Elissa Zylbershlag, Director, Education and Training**  
[elissa.zylbershlag@nicivilrights.gov](mailto:elissa.zylbershlag@nicivilrights.gov) | 609-954-0953 | [www.NJCivilRights.gov](http://www.NJCivilRights.gov)



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## CLEARY, GIACOBBE, ALFIERI, JACOBS, LLC

Educational Partnership: NJSIG NEPHA Hotline Administrator,  
Family Medical Leave Act Training and etc.

**Bruce W. Padula, Esq.**

[bpadula@cgajlaw.com](mailto:bpadula@cgajlaw.com) | 732-583-7474 | [www.cgajlaw.com](http://www.cgajlaw.com)

## NJPSA FEA LEGAL ONE

Educational Partnership: All hot topics, School Law Central Newsletter, Podcast,  
Webinars and more!

**David Nash, Esq., Director of Legal Education and National Outreach**  
[dnash@njpsa.org](mailto:dnash@njpsa.org) | 609-860-1200 | [www.njpsa.org/legalonnj](http://www.njpsa.org/legalonnj)



NJPSA FEA  
LEGAL ONE

CAPEHART  
SCATCHARD



## CAPEHART SCATCHARD

Educational Partnership: Workers' Compensation Insight, Workers' Compensation  
Newsletter and Blog, Workers' Compensation Training Seminars

**John H. Geaney Esq.**

[geaney@capehart.com](mailto:geaney@capehart.com) | 856-914-2063 | [www.capehart.com](http://www.capehart.com)



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**JAY LYNCH**

Area Executive VP | Regional Director  
Alliant

Sub-fund Administrator  
MOCSSIF

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**SUB-FUND  
ADMINISTRATOR  
REPORT**

# BUDGET RECAP

Sub-Fund Year 2024-25  
ERIC North | MOCSSIF | NJEIF

## NJSIG - Workers' Compensation

Sub-fund	ERIC North	MOCSSIF	NJEIF
Professional Rates	<b>-6%</b>	<b>-6%</b>	<b>-6%</b>
Non-Professional	<b>-8%</b>	<b>-8%</b>	<b>-8%</b>

***Everyone gets an A+!!***

Sub-fund	ERIC North	MOCSSIF	NJEIF
Deviations	<b>0.564</b>	<b>0.649</b>	<b>0.642</b>
Change YOY	<b>-6.00%</b>	<b>-5.10%</b>	<b>-1.20%</b>

***Best Credit Deviation - ERIC North | Most Improved - ERIC North  
Tied for Second - Deviations are very close for MOCSSIF and NJEIF and  
represent a significant credit against the state rates.***

*Note that experience modifications and payroll changes are based on individual district performances and profile and will impact final premiums.*

# \$27,752,936

Total amount NJSIG has returned to members since 2020/21 includes Covid Relief Returns, Surplus Returns and Safety Grant Returns.

**NJSIG receives an A+!!**

## **SAFETY GRANTS AWARDED BY SUB-FUND**

**ERIC North**  
**\$637,613**

**MOCCSIF**  
**\$277,662**

**NJEIF**  
**\$397,398**

*Awards are allotted in part by the size of the sub-fund so amounts are relative.*



# BUDGET RECAP

## All Other Lines of Coverage

All Lines Guidance: **6.15%**

Equipment Breakdown: **2.50%**

Property:

- Coastal: **-7.11%**
- Inland: **9.40%**

Cyber: **3.11%**

Crime: **9.20%**

Terrorism: **2.50%**

Environmental: **2.60%**

Errors & Omissions (SBLL): **2.75%**

Supplemental Indemnity: **4%**

General Liability: **5.10%**

Crisis Management: **0%**

Auto Liability: **0.16%**

RESTART: **0%**

Auto Physical Damage: **20.34%**

Timeliness of the budget projections: **A+**



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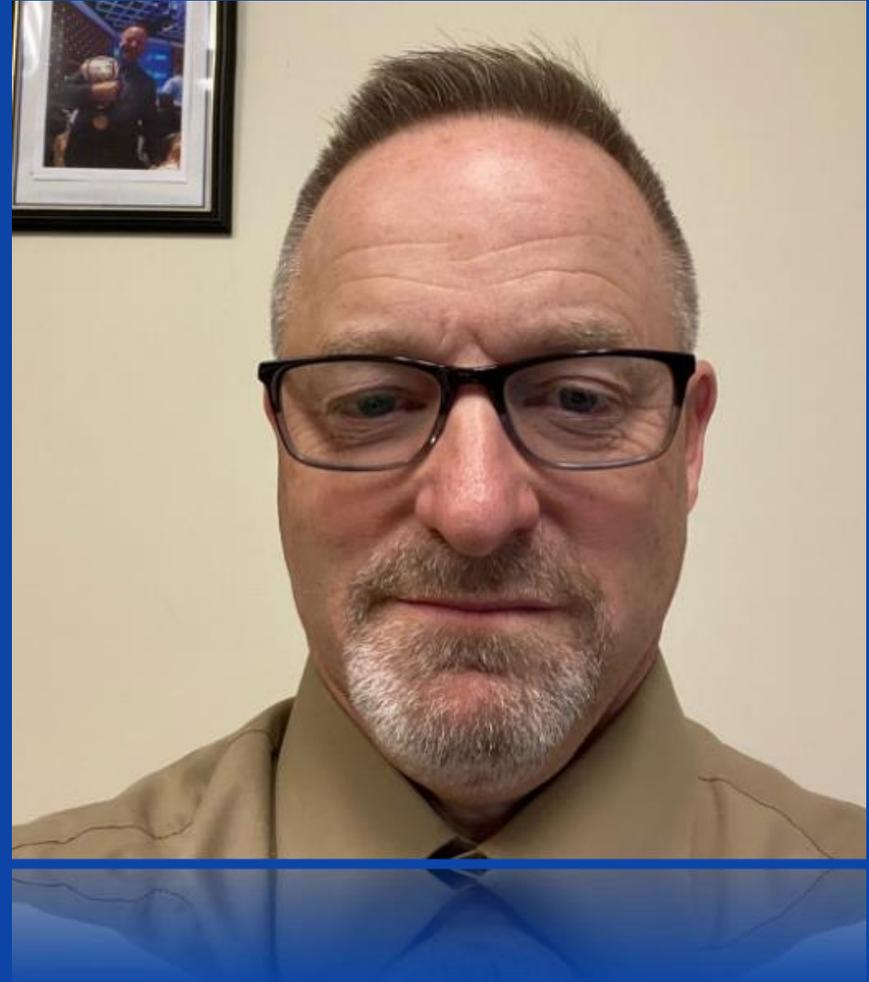
## **DR. CHRISTOPHER RUSSO**

West Windsor – Plainsboro  
Regional School District

Chairperson  
NJSIG Board of Trustees

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## **NJSIG BOARD OF TRUSTEES UPDATE**



# NJSIG BOARD OF TRUSTEES

**Christopher Russo, Ed.D**

Chairperson

*West Windsor-Plainsboro*

*Regional School District*

**Irene Le Febvre**

Vice Chairperson

*Boonton Town BOE*

**Nicholas Bice**

Trustee

*Burlington Township BOE*

**Christopher Carrubba**

Trustee

*Belvidere and Harmony*

*School Districts*

**Jamie P. Moscony**

Trustee

*Cape May Technical School District*

*Cape May County Special Services*

*School District*

**Stephanie Brown, Ed.D**

Trustee

*Milltown Public School District*

**Damaris Gurowsky**

Trustee

*Denville BOE*

**Alix Silva**

Trustee

*Vineland Public Schools*

**Richard J. Casey**

Trustee

*Ocean Gate BOE*



**Jill Deitch, Esq.**

Executive Director

*NJSIG*

# SUB-FUND COMMITTEES & CHAIRS



**Dr. Chris Russo**  
*West Windsor –  
Plainsboro Regional  
School District  
Chair, NJSIG BOT*



**Dr. Anthony N. Dragona**  
*Union City BOE*



**Kelly  
Brazelton**  
*Monmouth County  
Vocational BOE*



**Steven Somick**  
*North Bergen  
School District*



**Keith A. Rosado**  
*Westwood Regional  
School District*

# NJSIG'S BOARD OF TRUSTEES:

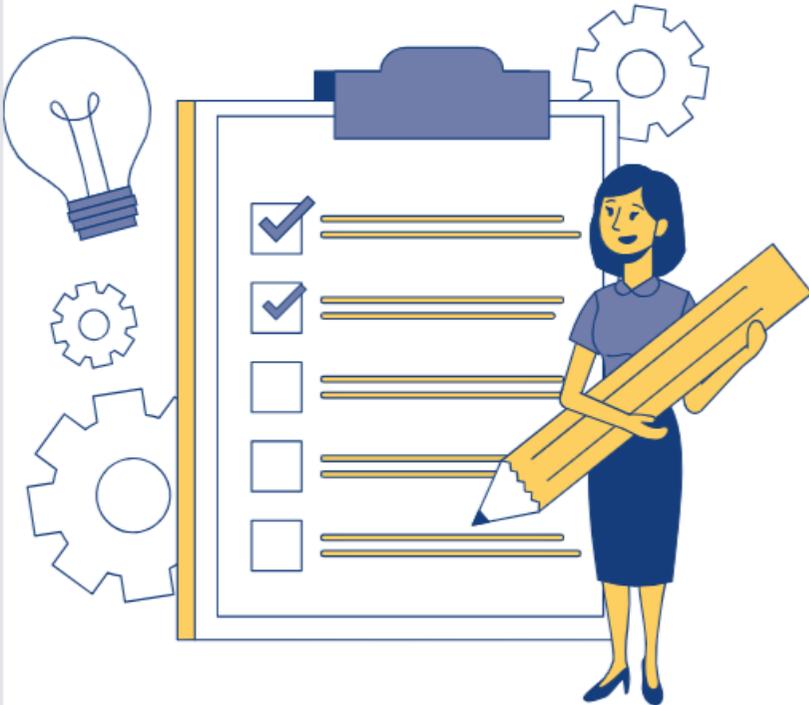
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## **NJSIG is Member Owned & Member Run:**

- 3 Business Administrators
- 3 Superintendents
- 3 School Board Members

## **Board Responsibilities:**

- NJSIG's BOT votes and approves the budget in June prior to the beginning of the next fiscal year.
- Claims above \$500,001 are presented to the board prior to settlement.
- All matters scheduled for trial shall be presented to the Board of Trustees, prior to trial.
- NJSIG's BOT approves NJSIG's eligibility requirements for new and continued membership.



# VALUE ADDED SERVICES



## NJSIG CYBER LIABILITY PROGRAM

Standard Deductible: \$250,000  
Reduced from deductible set by Healthy

In order to qualify for the reduced deductible (referenced below), each of the member's software, services/devices accessed by the perpetrator(s), & employees who unintentionally committed an act, must meet the minimum cyber controls at the time of the incident.

**MINIMUM CYBER CONTROLS:**

- IDENTIFICATION** - More factors to achieve authentication and steps requiring a user to enter something they know, something they have, something they are, and something they know.
- PROTECTION** - Software to protect and scan hard, mobile device, storage, and network devices for anti-virus software that anti-virus software that auto-updates.
- SECURITY AWARENESS** - The use of agency information, standard communications, and to include staff, students, and contractors one year of the incident.

## Training & Services INCLUDED WITH MEMBERSHIP

NJSIG offers a variety of both online and in-person safety trainings. These trainings are included with NJSIG membership. To learn more or to schedule training, email [riskcontrol@njsig.org](mailto:riskcontrol@njsig.org) or call 609-386-6060.

### Vector Solutions Online Training

- 100% school-focused trainings
- Library of over 300 courses
- Reports available on demand

12 Staff Training Courses Available:

- Know Your Hazard
- Personal Protective Equipment
- For Jersey Specific Training Courses Available

## BENEFITS OF MEMBERSHIP

Your coverage is enhanced with these exclusive benefits that are included with your membership.

### Keeping Dollars in NJ Classrooms!

NJSIG offers to gather directly the necessary member contributions to meet claim coverage requirements. Starting in 2013, NJSIG initiated issuing partial refunds to members enrolled in our workers' compensation fund. These surplus contributions offer members a valuable means of mitigating fluctuations in annual rate adjustments.

### APPRAISALS & INSPECTIONS

**PROPERTY VALUATION SERVICES**  
Partnering with CBZ Valuation Group, LLC to provide property appraisals to members with property coverage.

**INSPECTIONS**  
NJSIG partner HSE Loss Control provides comprehensive property and playground inspections for covered members. The OIGAC inspections are urged for New Jersey Department of Education compliance. Property inspections are every five years (playgrounds annually) to respond to schedule an inspection, email [inspection@njsig.org](mailto:inspection@njsig.org).

**EQUIPMENT BREAKDOWN INSPECTIONS**  
NJSIG has partnered with Chubb Equipment Release Risk Engineers (ERRE) for routine "check-ups" required by NJ state law. These "check-ups" and pressure vessel inspections for safe property coverage. To schedule an inspection, email [inspection@njsig.org](mailto:inspection@njsig.org).

## WHO WE ARE

**New Jersey Schools Insurance Group (NJSIG)**, established in 1983, is NJ's largest school board insurance group, serving over 365 BOE members. We are a public entity and member-owned and member-run, overseen by our Board of Trustees. NJSIG does not operate for profit and functions for the sole purpose of providing cost-effective insurance coverage to all of our members.

**OUR COVERAGES**  
All major coverage lines are included in-house by a self-insured claims team:

- Workers' Compensation
- General Liability
- Property
- Cyber Liability
- Automobile Liability
- School Leaders Errors & Omissions
- Automobile Physical Damage
- Equipment Breakdown
- Crime
- Environmental Liability
- Supplemental Indemnity

## New Jersey Schools Insurance Group

Keeping Dollars in New Jersey Classrooms!

### PUTTING MEMBERS FIRST

NJSIG's best-in-class claims handling is backed by in-house support for all major coverage lines. We prioritize effective claims handling for optimal risk transfer. Additionally, personalized assistance is extended to all members through our dedicated member services, loss control, and underwriting teams.

Our coverages are specifically tailored to meet the needs of NJ schools and evolve rapidly when those needs change.

### QUICK FACTS

- Provides discounts off NJ CRIB WC rates.
- Hosts regionalized educational conferences.
- Customized policies to respond to COVID-19 claims, responding when the insurance market wouldn't take on the risk.
- Patented DCB two years in a row to send immediate returns of member contributions.
- Implemented self-insured cyber liability program to fill gaps when the cyber market imposed an exorbitant retention.



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**JILL DEITCH, ESQ.**

Executive Director  
NJSIG

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**NJSIG EXECUTIVE  
UPDATE**

# NJSIG

NEW JERSEY SCHOOLS  
INSURANCE GROUP



## NJSIG UPDATE

- Vacant buildings policy changes
- E&O to be brought in-house
- Appraisals (85%)
- Surplus
- Safety Grant portal is open!
- Underwriting Application Portal is live!

### **NJSIG staff in attendance:**

Assistant General Counsel – Benjamin Zieman, Esq.

Claims Manager - Sherwin Archibald

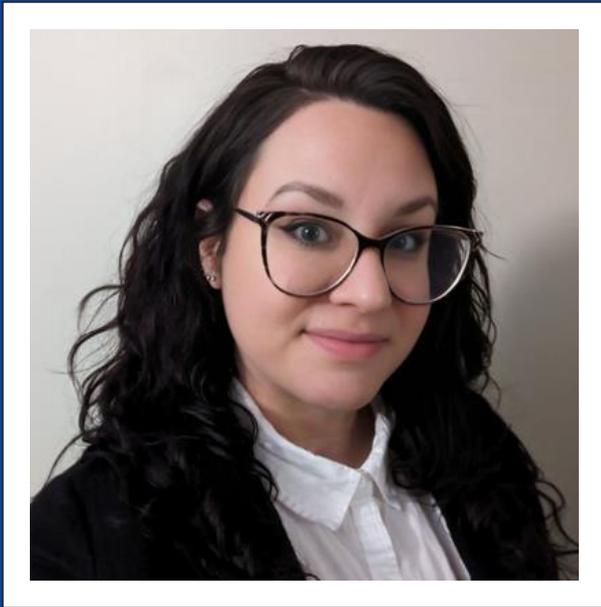
Liability Supervisor - Neil Marek

WC Claims Supervisor - Gabe Foldes

Marketing and Communications Specialist - Jillian Smith

# MEET JOANNA RADOMICKI

NJSIG Member Services & Loss Control Representative



- Hired at NJSIG in 2016
- Spent the last 8 years as a valuable member of NJSIG's Workers' Compensation department as a Senior Claims Representative.

Joanna is the representative for:

- Eric North
- MOCSSIF
- NJEIF

Email: [JRadomicki@njsig.org](mailto:JRadomicki@njsig.org)

Office: 609.386.6060 x3029



# WORKERS' COMPENSATION SYMPOSIUM



**JOHN H. GEANEY,  
ESQ.**



# **Workers' Comp Scenarios and Case Studies**

**Presented to:  
New Jersey Schools Insurance Group**

**By**

**John H. Geaney, Esq.  
jgeaney@capehart.com  
856.914.2063**

**May 9, 2024**

# Case Scenario - Fitness Rooms

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- The high school has a fitness room which students use and faculty are also able to use when they are not teaching
- The school requires all faculty to sign a waiver form attesting that any injuries arising from exercise cannot be claimed as part of workers' compensation

Does this form have any legal relevance in workers' compensation?

# Case Scenario: Recreational Activity

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- Lincoln Board of Ed has an annual volleyball night to raise interest in and funds for the National Honor Society. The Board sponsors the evening, and the Board asks teachers to volunteer for the event. Ilesha Clinton, a high school teacher, sees the notice and volunteers to play for the faculty against a team of students. During the game, she dives for a ball and breaks her arm.
- Compensable?

# Case Scenario: Recreational Activities

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- Rick Grimes is a math teacher who prides himself on still being able to dunk a basketball, even at the age of 42. He often brags, "I am just like Vince Carter," who played into his 40s. On the way to his math class, he often passes by the gym and joins a few students to take some shots. He says he does this mostly to maintain a good teaching relationship with his students. One day he stops into the gym on the way to class, takes a pass from a student who is in the gym, elevates and goes to dunk the basketball, but he lands badly and tears his knee in the process.
- Compensable?

# Case Scenario – Assigned Trips

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- A teacher attends the New Jersey School Board Meeting in Atlantic City. The teacher attends all the classes during the day. After the classes end, the teacher and a group of friends walk over to the tables to do some gambling. Someone at the table wins a big hand, throws up her arms to celebrate, and breaks the nose of the teacher standing next to her

Would this injury be compensable?

# Case Scenario: Drive To Another School

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- An administrator is driving from one school to another school to meet with the principal. On the way to the school, the administrator is involved in a car accident.

***Compensable?***

# Case Scenario: Assigned Trip

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- The business administrator attends a school board association seminar in Atlanta, Georgia and slips and falls in the hotel cafeteria during breakfast before the start of the seminar? The seminar is paid for by the school.

***Compensable?***

## Case Scenario: The Weekend Visitor

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Joe, a teacher, is sitting down on his favorite chair in the den to get ready for the NCAA basketball Sweet 16 games when he suddenly realizes that he left his bracket picks on his desk at the school. He lives close to the school and drives over to retrieve his bracket. The doors to the school are open as an athletic competition is going on. Joe walks down the hall, slips on a wet spot on the floor, and fractures his hip

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# Compensable?

# Case Scenario: The Classroom Prep

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- Angela needs to get her third-grade classroom ready for the start of school. She goes into the school in late August and brings all sorts of interesting materials to put on the walls. One of the items has to be placed at a height, so she moves her chair over to the wall and climbs onto the chair, loses her balance and breaks her arm.

Compensable?

# Case Scenario: The One-Year Period

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- Bob earns \$2,000 per week as a math teacher. Bob is injured breaking up a fight on March 1, 2023 in school. He misses work the next day but he comes back to work on March 3, 2023. His authorized treating doctor treats him conservatively, saying that he may need shoulder surgery down the line. Bob treats for a year, seeing the doctor occasionally and never misses work. Then on March 4, 2024, he has shoulder surgery and is put out of work for three months. He requests his full salary payments under Title 18A for the three months he cannot work

Does the school owe \$2,000 per week for the next three months or does Bob get the max rate in 2023 which is \$1,099 per week?

# Similar Case Scenario

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- Slight change in facts. Bob never loses any time at all after he breaks up the fight in the hallway at school on March 1, 2023. He toughs it out and works in pain all year. He treats with the authorized surgeon, has a few injections and goes to PT. Bob finds by Christmas 2023 that his shoulder is not improving. The authorized doctor then schedules surgery on January 10, 2024. That is Bob's first date of lost time for this work incident. The doctor takes Bob out of work for three months, but Bob develops frozen shoulder syndrome after the first surgery. Bob has to have a second surgery in April 2024 and he ends up missing the whole second semester. He wants his full salary from January 10, 2024 to the end of the school year in June 2024

Does the Board owe the full salary from January to June?

# Case Scenario: When Do Full-Salary Payments End?

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- Erma, a custodian, is treating with an authorized spine surgeon for a lifting injury at work that happened on February 1, 2024. The treating doctor has recommended PT and injections. The doctor says Erma is doing well by May 1, 2024 and can return to work. The doctor adds that Erma is at MMI. Erma disagrees and gets a lawyer. She sees a doctor through her lawyer, who says Erma needs 12 more weeks of PT and cannot work

Can the Board stop full salary payments and if so, when?

# Case Scenario – Summer Temp Benefits

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- Christine is injured on June 1, 2023. She was bumped in the hallway and fell, breaking her hip. The authorized doctor takes her out of work for three months. She earns \$2,000 per week. She had surgery on June 20, 2023 and will be treating all summer. School ends on June 21, 2023. The Board stops paying her full salary since school ended. Christine gets a lawyer and says the board owes her full salary in the summer months. Christine does not teach during the summer months

Who is right? Christine's lawyer or the Board?

# Similar Scenario

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- Christine's lawyer contacts the Board's lawyer and concedes that Christine does not teach during the summer months but she does work at an ice cream store in Manasquan during the summer months. Her family owns the store and she works there 40 hours per week each prior summer. She is unable to do any work this summer because she cannot stand. Her lawyer provides proof that the past two summers, Christine earned \$500 per week at the ice cream store

Does the Board owe Christine any money and if so, how much?

# Case Scenario: Employment Issues

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- Bradley, a teacher, has been out of work since February 1, 2022 for a serious work-related spine injury with multiple surgeries. He doesn't seem to be getting much better, has had numerous injections and PT, and he may need yet another surgery. The board is frustrated because it has to keep covering for Bradley. The board paid full salary for the first year for his lost wages. NJSIG is paying 70% of wages or the max rate in 2022 of \$1,065 per week. Bradley has not reached MMI yet and his doctor will not approve him for work

The Board wants to know if it can fire Bradley given that he has been out of work for over two years

# Case Scenario – Fraud Claim

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- The music teacher, Bill, finishes the latest class with his students on November 3, 2022. After the students leave, Bill said he went up on stage and practiced some of the dance steps he has been teaching the students for the production of "Hamilton." He took a misstep, and he says he fell on his knee and shoulder, and suffered a great deal of pain in both body parts. No one witnessed the fall

# Case Scenario – Fraud Claim Cont.

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- Bill contacts the adjuster and says he wants to see a doctor and he wants to get an MRI of the right knee and right shoulder. The adjuster does a recorded interview. She asks, "Why do you want an MRI so soon?" Bill says because he thinks he tore something. The adjuster asks, "Have you ever had a prior MRI on your right knee or right shoulder?" Bill says absolutely not. Bill sees the authorized surgeon, who orders an MRI of the right knee and right shoulder. Indeed he was right: both MRIs show a tear and the surgeon is planning to operate on both over the next two months

# Case Scenario – Fraud Claim Cont.

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- The adjuster studies the MRI reports closely and notices that there is a reference to "compare to prior MRIs"
- The adjuster contacts the MRI facility and finds out that Bill had an MRI of the right knee and right shoulder on October 15, 2022. These MRIs had nothing to do with work. She gets the prior MRIs and sees that the tears noted in November 2022 are exactly the same as the tears noted on October 15, 2022. The adjuster advises the Board to stop full salary payments to Bill because he has committed fraud

## Case Scenario – Fraud Claim Cont.

Is the adjuster right that Bill has committed fraud?

What can the adjuster do to take action against Bill?

# Case Scenario – Fraud Claim

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- Tina, a custodian, says that she was lifting a chair on February 1, 2020 at work when she felt sudden low back pain radiating down her right leg to her foot. She saw an authorized doctor who scheduled an MRI which confirmed that Tina has a herniated disc in her back at L5-S1. She claims she never had this problem in the past. The doctor discussed possible surgery with her and told her to avoid all physical exertion. She remains out of work for months. Tina tells the doctor that she cannot bend, cannot do housework, cannot do yard work or anything physical. The Supervisor of Custodians contacts the adjuster to advise that word around the school is that Tina is quite fit and going to the gym every day

# Case Scenario – Fraud Claim Cont.

The adjuster schedules surveillance which finds Tina doing work on her car on day one. On day two an investigator follows her to the gym where she is seen weight lifting and doing lap pulls for 30 minutes. Videos were sent by the investigator to the adjuster, who sent these to the treating doctor. In the next session the treating doctor told Tina she is at MMI and she can return to work full duty.

**What can the board do in a  
circumstance like this?**

# Scenario: Medical Marijuana

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- Tom is a custodian at the school for many years. He is always in a good mood and very well liked. One day after classes end, the BA was walking down the hall and noticed a strange smell. No one was around. He followed the scent into a classroom where Tom was enjoying a joint while cleaning the floor. Tom greeted the BA with a warm welcome and offered him a joint. The BA declined. The board has a policy prohibiting use of marijuana or any other substances at work

Can the board fire Tom in this circumstance?

## Scenario: Breaks on Premises



Phillip is eating lunch in the cafeteria during an unpaid break and falls from his chair fracturing his hand. He files a workers' compensation claim



Does it matter that he is on an unpaid break?

# Scenario: Early or Late To Work

---

- Ilesha comes to work 30 minutes early every day to give her time to settle in and get a cup of coffee before starting work. She arrives on school premises on January 25, 2024 a half hour early and slips and falls on the carpet inside the main school building

Does it matter that she is very early and her shift has not started?

# Case Scenario: Second Jobs

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- When a teacher has a part-time job with the Board as a coach and is injured in that job, how is the salary calculated?
- *Stack v. Boonton Board of Education* states that income from multiple jobs for the same Board of Education are added to calculate the wage of the employee for comp purposes.

# Case Scenario: Walking Injury

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- What if a teacher is just walking down the corridor to her next class, when she feels sudden pain in her knee. She does not fall or strike the ground. The doctor diagnoses osteochondritis.

Compensable?

# Case Scenario: Recreational Activities

---

- School requests teachers to participate in an annual student, faculty, parent volleyball game after school hours. The event is advertised by the Board and teacher Joan James dislocates her shoulder during the volleyball game.

- ***Compensable?***

# Case Scenario: Stress

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The Business Administrator conducts an annual review of her support staff and meets with Tony, her assistant. She levels some legitimate criticisms in the review, including Tony's continued tensions with several parents.

# Stress Continued

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Tony becomes extremely upset after the review, refuses to sign the review form, and leaves work immediately. He schedules an appointment with his psychologist and is diagnosed by the psychologist with work-related stress and anxiety. The doctor takes him out of work for a month

Compensable?

# Case Scenario: Stress

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- Tom Turco is a young teacher who is really struggling to get control of his classroom. There is a lot of chaos in the class, and many students are having major family issues that are carrying over to school. Recently, a local gang has infiltrated the area and some of Turco's own students are reputed to be members of the gang. Turco was having a particularly difficult morning in class one day.

# Stress Continued

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- Students were ignoring him and laughing at him as he tried to control the classroom. Turco yelled at one of the leaders of the disruptive students, who then raised his arm, aimed it at Turco and pretended to pull the trigger of a gun. Turco left school that day so rattled he could not return to the classroom. He began psychiatric treatment and filed a stress claim.
- Compensable?

# Thank you.

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# **Evolving Issues in Worker's Compensation Law: Mental Health, Substance Use and Intentional Discrimination**



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## **Evolving Issues in Worker's Compensation Law: Mental Health, Substance Use and Intentional Discrimination**

**May 9, 2024**

**David Nash, Esq.,**

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# Key Topics

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- Addressing Mental Health, Trauma
- Addressing Intentional Discrimination
- Addressing Marijuana Use by Staff
- Lower Bar for Discrimination Claims
- Mental Health as Protected Category
- Implications for District Policies and Protocols Moving Forward

# MENTAL HEALTH AND WORKER'S COMPENSATION CLAIMS

# Compensable Claims

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Employees may be compensated for injuries caused “by any compensable occupational disease arising out of and in the course of [their] employment.” N.J.S.A. 34:15–30.

A “compensable occupational disease” includes “all diseases arising out of and in the course of employment, which are due in a material degree to causes and conditions which are or were characteristic of or peculiar to a particular trade, occupation, process or place of employment.” N.J.S.A. 34:15–31a.

Mental health claims are reviewed to determine if they qualify as a compensable occupational disease

# Landmark Case – Mental Health /WCA

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See Goyden v. State of New Jersey Judiciary, 256 N.J. Super. 438, 607 A.2d 651 (App. Div. 1991), aff'd, 128 N.J. 54, 607 A.2d 622 (1992)

Claimant worked as supervisor of records in office of clerk of superior court

Staffing was down, office faced significant backlog

Claimant received evaluation with both positive and negative comments, but claimant viewed it as negative and perceived that he was in danger of losing position

Evidence established that evaluation of claimant, who worked as supervisor of records in office of clerk of superior court, and events taking place after evaluation resulted from legitimate criticism arising from backlog and that what claimant found stressful was his perception of his conflict with supervisor and management

# Landmark Case – Mental Health /WCA

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Parties agreed that the employee was disabled from depression, but the court determined that both the stress and mental condition itself were caused by Goyden's compulsive personality and childhood trauma, not his workplace experience. Because there were no "peculiar" conditions which would be stressful to those without such a predisposition, the court did not award workers' compensation.

# Goyden Test - Mental Health Claims

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1. The working conditions were objectively stressful;
2. The believable evidence must support a finding that the worker reacted to them as stressful;
3. The objectively stressful working conditions must be "peculiar" to the particular trade, occupation, process or workplace;
4. There must be objective evidence supporting a medical opinion of the resulting psychiatric disability in addition to the "bare statement of the patient"; and
5. The workplace exposure must have been a "material" cause of the disability.

# Case Law Post-Goyden

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Cairns v. City of East Orange, 267 N.J. Super. 395 (App. Div. 1993) – Emotional distress and mental suffering due to layoff notice not covered under WCA, inherent to all employment

Wildstein v. Middlesex County Dept. of Weights and Measures, 2011 WL 2416849, unpished (App. Div. 2011) – Stress caused by legitimate criticism of work performance cannot be basis for claim

Rizzo v. Kean University, 2014 WL 2590281, unpublished opinion (App. Div. 2014) – PTSD, anxiety resulting from closed door meeting with boss was due to prior sexual assault as child when trapped in closet, not covered under WCA

# Case Law Post-Goyden

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K.S. v. Sunny Days Early Childhood Services, 2010 WL 173531, unpublished (App. Div. 2010) – CFO and some HR responsibilities, became stressed and anxious as company was growing rapidly, unable to keep up

- Failed to prove workplace conditions were objectively stressful. Did not present evidence of increase in workload
- Failed to present evidence that others with similar workload would have found it unreasonable
- Expert opinions of employee doctors had insufficient factual basis
- Failed to acknowledge additional supports provided

# Key Takeaways

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Difficult to qualify for worker's comp due to stress, anxiety, depression, etc. under 5-part test

Many causes of stress are inherent to employment

Even expert medical opinion needs to be supported

HOWEVER, employee may be eligible for WC where employee has shared with employer pre-existing mental health needs and employer acts in ways they should know will cause harm

Also, if data demonstrates significantly greater workload in district compared to others, may be able to satisfy “objectively stressful” prong

# WORKER'S COMPENSATION AND INTENTIONAL DISCRIMINATION

# Workers Comp & Intentional Wrongdoing

*Richter v. Oakland BOE, NJ Sup. Crt, Appellate Div., No. A-0102-17T2 (Unpublished)  
June 11, 2019*

**Legal Issue:** Should teacher be able to pursue a discrimination claim after accepting Workers Compensation? Must show intentional wrongdoing in order to pursue discrimination claim.

**Facts:**

Teacher with Type I Diabetes claimed:

- SD would not revise schedule to allow her to eat lunch at an earlier time
- SD was aware of her Diabetic Condition and had made the accommodation in the past
- Due to the delay in eating, despite ingesting glucose tablets during the extended time period until she could eat, the Teacher's blood sugar dropped, she suffered a hypoglycemic event while teaching, and she fainted, hitting her head and face on a lab table and floor, caused serious and permanent injuries. She filed and received Workers Comp benefits. The teacher also filed a disability discrimination claim against the school district.

# Workers Comp and Intentional Wrongdoing (cont'd)

**Ruling:** Lower Court Reversed and Case Remanded to allow teacher to try and prove that district engaged in intentional wrongdoing.

**Analysis:**

No need to present evidence of an adverse employment action – Following precedent, Teacher’s claim “could demonstrate that the failure to accommodate forced the employee to soldier on without a reasonable accommodation.” Id. at 16.

- Here, Teacher “soldiered on” by taking glucose tablets to try to sustain her until she could eat lunch.

It is unclear at this point whether the SD did/did not properly participate in the required Interactive Process.

***Under Workers’ Compensation Law:***

***–Employee is not allowed to pursue common law claims for work-related injuries, except for an intentional wrong***

***–It could be determined that the SD intentionally refused to accommodate a reasonable request, despite knowing of her Diabetic Condition and the potential harm if she suffered a hypoglycemic event***

# Key Takeaways

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- Employee does not waive right to bring discrimination claim by accepting worker's compensation benefits
- No need to prove an adverse employment action in failure to accommodate cases

# LOWER BAR FOR TITLE VII DISCRIMINATION CLAIMS

# EMPLOYEE TRANSFER AND TITLE VII

## Muldrow v. City of St. Louis – 4/17/24

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### OVERVIEW

Sergeant Jatonya Clayborn Muldrow maintained that her employer, the St. Louis Police Department, transferred her from one job to another because she is a woman. From 2008 through 2017, Muldrow worked as a plainclothes officer in the Department's specialized Intelligence Division. In 2017, the new Intelligence Division commander asked to transfer Muldrow out of the unit so he could replace her with a male police officer. Against Muldrow's wishes, the Department approved the request and reassigned Muldrow to a uniformed job elsewhere in the Department.

# Muldrow (cont'd)

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While Muldrow's rank and pay remained the same in the new position, her responsibilities, perks, and schedule did not. After the transfer, Muldrow no longer worked with high-ranking officials on the departmental priorities lodged in the Intelligence Division, instead supervising the day-to-day activities of neighborhood patrol officers. She also lost access to an unmarked take-home vehicle and had a less regular schedule involving weekend shifts.

City argued that since rank and pay not impacted, there was no materially significant harm

# Muldrow (cont'd)

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Supreme Court Held: An employee challenging a job transfer under Title VII must show that the transfer brought about some harm with respect to an identifiable term or condition of employment, **but that harm need not be significant.**

## GROUP DISCUSSION:

- Implications for school district decisions to transfer staff members?
- What protocols should be in place moving forward?

# Key Takeaways

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- No need to prove significant harm as a result of a transfer, only that the transfer was motivated by discriminatory intent
- Critical to document legitimate, non-discriminatory reasons for transfers
- Relying solely on managerial prerogative and transfer and no loss of rank or pay may not be enough

# MENTAL HEALTH AND DISCRIMINATION LAW

# Key Legal Protections

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- Americans with Disabilities Act and Section 504
  - Protects adults and students
  - See [EEOC Guidance on ADA and Mental Health](#)
- NJ Law Against Discrimination
  - Protects adults and students
- Interactive Process Required
- District Anti-Discrimination / Affirmative Action Policies
- NJ Expansion of Sick Leave Law
  - See [Article Reviewing Key Aspects of Law](#)

# Prima Facie Case on Failure to Engage in Interactive Process

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- 1) Employer knew or should have known about disability
- 2) Employee Requested Accommodations or Assistance (through words or actions)
- 3) Employer did not make a good faith effort to assist employee in seeking accommodations
- 4) Employee could have been reasonably accommodated but for the employer's lack of good faith

# Interactive Process Critical

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Taylor v. Phoenixville Sch. Dist., 184 F. 3d 296 (3<sup>rd</sup> Cir. 1999)

No need for “magic words” to put employer on notice

Secretary to principal served for 20 years, glowing evaluations

District tried to terminate due to erratic behavior

Subsequently hospitalized and diagnosed with bipolar disorder

Brought suit under ADA

Court reversed summary judgment for district, held district was on notice and had not engaged in meaningful “interactive process”

- Failed to learn precise nature of disability
- Failed to proactively discuss potential accommodations

# Key Takeaways

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- Need to work in good faith with employee
- May require employer to initiate uncomfortable conversations
- No need for magic words
- Interactive process is not an exact science, be open to reasonable trial and error process

# MARIJUANA LEGALIZATION AND WORKER'S COMPENSATION CLAIMS

# Substance Use and WCA

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Greater potential for injury, if employee under the influence

If injured while under the influence may not be covered under WCA – if being under the influence caused injury

No clearly defined legal standard for being under the influence of cannabis

Cannot discipline for use of cannabis outside workplace

Cannot assume under the influence just because trace amounts of cannabis in system

Medical marijuana may be prescribed for numerous conditions, including anxiety and PTSD

New guidelines while awaiting final rules for Workplace Impairment Recognition Expert

# Latest Guidance on Employee Use of Cannabis

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May have policy allowing for immediate medical exam for staff suspected of being under the influence

If staff suspected of using cannabis, need to engage in two-step testing process

See September 2022 Guidance from Cannabis Regulatory Commission

- A scientifically reliable objective testing method that indicates the presence of cannabinoid metabolites in the employee's bodily fluid alone is insufficient to support an adverse employment action. However, such a test combined with evidence-based documentation of physical signs or other evidence of impairment during an employee's prescribed work hours may be sufficient to support an adverse employment action.

Reasonable Suspicion

- Physical Signs
- Behavioral Signs
- Other Evidence

# Key Takeaways

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- Complex issues involved in determining if person is “under the influence” of marijuana
- Marijuana Use and Mental Health needs often overlap
- While formal mandate for Workplace Impairment Recognition Expert not in place, effectively need someone able to fulfill functions of WIRE

# Conclusion

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## ADDRESSING MICROAGGRESSIONS AND IMPLICIT BIAS

*ORIGINAL AIR DATE: OCTOBER 9, 2023*



David Nash, Esq.

with



GEORGE GUY



**KEITH ROSADO**

NJEIF Chairperson  
Westwood Regional School District



**QUESTIONS &  
ANSWERS**

# THANK YOU!

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**KELLY BRAZELTON**

MOCSSIF Chairperson

Monmouth County Vocational BOE

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**CLOSING  
REMARKS**

