



# New Jersey School Boards Association

413 West State Street • P.O. Box 909 • Trenton, NJ 08605-0909 • Telephone: 609.695.7600 • Toll-Free: 888.88NJSBA • Fax: 609.695.0413

## AGENDA

### ***ETHICS WORKSHOP***

**Objective:** During this workshop the board/administrative team will review board's responsibilities under NJQSAC, test their knowledge of the code of ethics and discuss ways to serve as an ethical and responsible board member.

- I. NJQSAC and Ethics Responsibilities**
- II. Code of Ethics**
  - a. Ethics Do's and Don'ts**
  - b. Common Areas of Concern**
  - c. Theory Into Practice**
- III. The ethical and responsible board member**
- IV. Wrap-up and Evaluation**

# **Mandatory Training Requirements**

## **FAQ from the NJ Department of Education**

**Q. What type of training must school board members undertake?**

**A.** *N.J.S.A.* 18A:12-33 provides that each newly elected or appointed board member must complete training during his/her first term. The training program is to be provided and offered by the New Jersey School Boards Association (NJSBA), regarding the skills and knowledge necessary to serve as a local board member. The training programs are offered seven times a year and are advertised in "New Jersey School Board Notes," a publication of the NJSBA.

**Q. How is "newly elected or appointed member" defined?**

**A.** *N.J.A.C.* 6A:28-1.2 defines "newly elected or appointed board member" as a board member who: 1) has never served as a member of either an elected or appointed school board; or 2) a board member who has not served for 10 years or more and has not previously completed a training program prepared and offered by the New Jersey School Boards Association.

**Q. What action can the Commission take against board members who fail to attend training as required?**

**A.** The Commission may reprimand, censure, suspend or remove board members who fail to attend training as required by *N.J.S.A.* 18A:12-33.

**Q: What are the training requirements for new board members?**

**A:** Each newly elected or appointed board member or charter school trustee shall, during the first year of his or her service on any board, complete a training program prepared and offered by the New Jersey School Boards Association (NJSBA) which shall include in its content instruction relative to the board member's responsibilities under the Act. Thus, each board member/trustee who is newly elected or appointed must take a training program entitled New Board Member Orientation. (See Training Requirements Chart).

**Q: How is "newly elected or appointed member" defined?**

**A:** *N.J.A.C.* 6A:28-1.2 defines "newly elected or appointed board member" as a board member who: 1) has never served as a member of either an elected or appointed school board; or 2) a board member who has not served for 10 years or more and has not previously completed a training program prepared and offered by the NJSBA..

**Q: When does a board member's first year of service begin?**

**A:** A board member's first year of service begins when that board member is newly appointed or elected for a term of twelve months or more. Thus if a board member is newly appointed to a term that is less than twelve months, that board member's first term of service has not begun and the board member is not required to complete any training.

**Q: Are there training requirements for board members in subsequent years of service?**

**A:** Yes. Each board member shall, in both the second and third years of her or his service on the board, complete a training program to be prepared and offered by the NJSBA on school district governance. Thus, each board member/trustee who is in the second year or third year of service on the board must take a training entitled Governance One: NJQSAC or Governance Two: Finance respectively. (See Training Requirements Chart)

Additionally, within one year after each re-election or re-appointment to the board of education or charter school board of trustees, each board member/trustee shall complete an advanced training program on relevant changes to New Jersey school law to be prepared and offered by the NJSBA. Thus, each board member/trustee who is in the first year of a subsequent term must take a training program entitled Advanced Training: Legal Update. (See Training Requirements Chart).

# **Mandatory Training Requirements**

## **FAQ from the NJ Department of Education**

**Q: How does a board member obtain the training?**

**A:** The training sessions are sponsored by the NJSBA. Board secretaries and charter school designees should call the NJSBA Call Center at (609) 278-5217 to register board members/trustees for training. Board secretaries and charter school designees must also inform the NJSBA when new members/trustees are appointed and they leave the board.

**Q: What action can the Commission take against board members who fail to attend training as required?**

**A:** The Commission may reprimand, censure, suspend or remove board members who fail to attend training as required by *N.J.S.A. 18A:12-33*.

**Q: What type of training does a board member/trustee have to take when s/he is appointed to fill a one-year unexpired term?**

**A:** Since this is the board member's/trustee's first year of service on a board, s/he would have to take the New Board Member Orientation training. (See Training Requirements Chart).

**Q: What type of training does a board member/trustee have to take when, after appointment to fill a "one-year unexpired term," that board member gets elected to a "full three-year term?"**

**A:** Since that board member/trustee would have already taken the New Board Member Orientation training when serving the one-year unexpired term, s/he would then have to take Governance One: NJQSAC in the first year of her/his "full three-year term" and Governance Two: Finance in the second year. (See Training Requirements Chart).

**Q: What type of training does a board member/trustee have to take when s/he was appointed to fill one year of a "two-year unexpired term" and then s/he gets elected to fill the remaining one year of the term?**

**A:** The board member/trustee would have one year from the date of appointment to take the New Board Member Orientation training. In the second year of the "two-year unexpired term," the board member/trustee would have to take Governance One: NJQSAC. If the board member/trustee is then re-elected to a "full three-year term," s/he would take the Advanced Training: Legal Update in the first year upon re-election. (See Training Requirements Chart).

**Q: What type of training does a board member/trustee have to take when s/he was appointed to fill one year of a "three-year unexpired term" and then s/he gets elected to fill the remaining two years of the term?**

**A:** The board member/trustee would have one year from the date of appointment to take the New Board Member Orientation training. Upon election to the remaining two years of the unexpired term, the board member/trustee would take Governance One: NJQSAC in the first year after election and Governance Two: Finance in the second year after election. (See Training Requirements Chart)C.

**Q: What type of training does a board member/trustee need to take when s/he previously served two terms (s/he already took the New Board Member Orientation training), took a few years off, and won a full term?**

**A:** That board member/trustee was re-elected to a full term and is in the first year of a subsequent term. Thus, s/he must take the Advanced Training: Legal Update. (See Training Requirements Chart).

**Q: What type of training does a board member need to take when s/he has been serving on the board for many years, has taken the New Board Member Orientation training years ago and is re-elected to a full three-year term?**

**A:** Since the board member/trustee was re-elected to a full term, s/he is in the first year of a subsequent term and must take the Advanced Training: Legal Update.

## **Mandatory Training Requirements**

### **FAQ from the NJ Department of Education**

**Q: What type of training does a board member need to take when s/he was first elected in April 1997 and is currently in the 3rd and final year of his/her term?**

**A:** The board member would not be required to take any training because s/he is in a final year of his/her fourth term. Should s/he get re-elected for another term, then s/he must take the Advanced Training: Legal Update.

**BOARD MEMBER AND CHARTER SCHOOL TRUSTEE  
TRAINING REQUIREMENTS<sup>1</sup>**

**I. Training requirements for a board member or charter school trustee who starts his or her service on the board with a full three year term:**

**A. Elected or Appointed to a Three-year Term**

Year 1 of term	New Board Member Orientation
Year 2 of term	Governance I: NJQSAC
Year 3 of term	Governance II: School Finance

**B. Re-elected or Re-appointed to a Three-year Term**

Year 1 of re-elected/re-appointed term	Advanced Training: Legal Update
Years 2 and 3 of re-elected/re-appointed term	No training requirement

**II. Training requirements for a board member or charter school trustee who starts his or her service on a board by being appointed to fill an unexpired term of twelve months or more:**

**A. Appointed to Fill a One-Year Unexpired Term and No Election or Re-appointment**

Unexpired term of 12 months or more	New Board Member Orientation
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**B. Appointed to Fill a One-Year Unexpired Term and Elected to a Full Three-Year Term**

Unexpired term of 12 months or more	New Board Member Orientation
Year 1 of term (second year of service)	Governance I: NJQSAC
Year 2 of term (third year of service)	Governance II: School Finance
Year 3 of term	No training requirement

**C. Appointed to Fill a One-Year Unexpired Term and Elected to the Two Years Remaining of the Term**

Unexpired term of 12 months or more	New Board Member Orientation
Year 2 of term (second year of service)	Governance I: NJQSAC
Year 3 of term (third year of service)	Governance II: School Finance

**D. Appointed to Fill a One-Year Unexpired Term and Elected to One Year Remaining on the Term**

Unexpired term of 12 months or more	New Board Member Orientation
Year 3 of term (second year of service)	Governance I: NJQSAC

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<sup>1</sup> Years of service are calculated in accordance with the term of service of the board member/trustee, rather than the calendar year. This term of service generally begins in either March or April.

**III. Training requirements for a board member or charter school trustee who starts his or her service on a board by being appointed to fill an unexpired term of less than twelve months:**

**A. Appointed to Fill a Less than One-Year Unexpired Term and Elected to a Full Three-Year Term**

Unexpired term of less than 12 months	No training requirement
Year 1 of term (first full year of service)	New Board Member Orientation
Year 2 of term (second year of service)	Governance I: NJQSAC
Year 3 of term (third year of service)	Governance II: School Finance

**B. Appointed to Fill a Less than One-Year Unexpired Term and Elected to Two Years Remaining of the Term**

Unexpired term of less than 12 months	No training requirement
Year 2 of term (first full year of service)	New Board Member Orientation
Year 3 of term (second full year of service)	Governance I: NJQSAC

**C. Appointed to Fill a Less than One-Year Unexpired Term and Elected to One Year Remaining of the Term**

Unexpired term of less than 12 months	No training requirement
Year 3 of term (first full year of service)	New Board Member Orientation

**N.J.S.A. 18A:12-33 Training program; requirements.**

a. Each newly elected or appointed board member shall complete during the first year of the member's first term a training program to be prepared and offered by the New Jersey School Boards Association, in consultation with the New Jersey Association of School Administrators, the New Jersey Principals and Supervisors Association, and the Department of Education, regarding the skills and knowledge necessary to serve as a local school board member. The training program shall include information regarding the school district monitoring system established pursuant to P.L.2005, c.235, the New Jersey Quality Single Accountability Continuum, and the five key components of school district effectiveness on which school districts are evaluated under the monitoring system: instruction and program; personnel; fiscal management; operations; and governance.

The board member shall complete a training program on school district governance in each of the subsequent two years of the board member's first term.

b. Within one year after each re-election or re-appointment to the board of education, the board member shall complete an advanced training program to be prepared and offered by the New Jersey School Boards Association. This advanced training program shall include information on relevant changes to New Jersey school law and other information deemed appropriate to enable the board member to serve more effectively.

c. The New Jersey School Boards Association shall examine options for providing training programs to school board members through alternative methods such as on-line or other distance learning media or through regional-based training.

L.1991, c.393, s.13; amended L.2007, c.53, s.17.L.1991,c.393,s.1.

**This information was prepared by the School Ethics Commission in consultation with the New Jersey School Boards Association.**

**NEW JERSEY QUALITY SINGLE ACCOUNTABILITY CONTINUUM  
DISTRICT PERFORMANCE REVIEW (DPR)  
GOVERNANCE**

District: \_\_\_\_\_

County Office: \_\_\_\_\_

Period of Review: \_\_\_\_\_

C. ETHICS COMPLIANCE	SUGGESTED DOCUMENTATION	POINT VALUE	DISTRICT SCORE		COUNTY SCORE		COMMENTS (COUNTY USE ONLY)
			Y E S	N O	Y E S	N O	
<b>The school board and the administration comply with all ethical standards.</b>							
1. Other than for the failure to timely file a properly completed financial disclosure statement which is addressed in indicator B (3), neither the school board or advisory board nor any of its members has been found in violation of the School Ethics Act. (N.J.S.A. 18A:12-21, <i>et seq.</i> )	Findings, if any, of school ethics commission	11					
2. Other than for the failure to timely file a properly completed financial disclosure statement which is addressed in indicator B(3), no school administrator has been found in violation of the School Ethics Act. (N.J.S.A. 18A:12-21, <i>et seq.</i> )	Findings, if any, of school ethics commission						

**NEW JERSEY QUALITY SINGLE ACCOUNTABILITY CONTINUUM  
DISTRICT PERFORMANCE REVIEW (DPR)  
GOVERNANCE**

District: \_\_\_\_\_ County Office: \_\_\_\_\_ Period of Review: \_\_\_\_\_

C. ETHICS COMPLIANCE	SUGGESTED DOCUMENTATION	POINT VALUE	DISTRICT SCORE			COUNTY SCORE			COMMENTS (COUNTY USE ONLY)
			Y E S	N O	S C O R E	Y E S	N O	S C O R E	
3. The school board or advisory board annually discusses the Code of Ethics for School Board Members and school board meeting minutes memorialize that discussion (N.J.S.A.18A:12-24.1).									
4. When a school board or advisory board member is required to, and recuses himself or herself from deliberations and a vote on a particular matter, the minutes of the board meeting reflect that recusal. (N.J.S.A.10:4-6, et seq.)	Correspondence; doctrine of necessity resolution								
5. The school board or advisory board has a nepotism policy in place that complies with N.J.A.C. 6A:23A-6.2 and takes action in accordance with that policy.	Nepotism policy; district personnel roster; contracts with vendors								
6. The school board or advisory board	Board policy and								



**NEW JERSEY QUALITY SINGLE ACCOUNTABILITY CONTINUUM  
DISTRICT PERFORMANCE REVIEW (DPR)  
GOVERNANCE**

District: \_\_\_\_\_

County Office: \_\_\_\_\_

Period of Review: \_\_\_\_\_

C. ETHICS COMPLIANCE	SUGGESTED DOCUMENTATION	POINT VALUE	DISTRICT SCORE			COUNTY SCORE			COMMENTS (COUNTY USE ONLY)
			Y E S	N O	S C O R E	Y E S	N O	S C O R E	
has a policy in place to ensure that the district shall maintain honest and ethical relations with vendors and shall guard against favoritism, improvidence, extravagance and corruption in its contracting processes and practices and takes action in accordance with that policy (N.J.A.C. 6A:23A-6.3).	procedures								
<b>TOTAL POINTS – Section C</b>		<b>11</b>							

## **DO's AND DON'Ts FOR BOARD MEMBERS BASED ON THE CODE OF ETHICS**

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- 1. DO uphold and enforce all laws, state board rules and regulations, court orders and local board policy when making decisions.  
DON'T bend the rules, ask others to bend the rules, or think that you can accomplish anything as an individual that compromises the legal guidelines established by the board.**
- 2. DO make decisions in terms of the educational welfare of all children regardless of their ability, race, creed, sex, or social standing.  
DON'T base your decisions on special interest agendas or on what is best for your own child.**
- 3. DO confine your actions to policymaking, planning and appraisal  
DON'T become involved in the administration, organization or implementation of the policy and the goals. That's the role of the professional educators.**
- 4. DO understand that your responsibility is to work as a board to see that the schools are well run.  
DON'T think that your role is to be involved in the day-to-day running of the schools – that is the administrators' job.**
- 5. DO understand that only the full board has the right to make decisions.  
DON'T make personal promises nor take any private action which may compromise the board.**
- 6. DO make decisions based on district goals and policies.  
DON'T be swayed by special interest or partisan political groups.**
- 7. DO insist that the board keep the community informed on the progress and needs of the district.  
DON'T discuss confidential matters with anyone but the board.**
- 8. DO consider of the recommendation of the chief administrative officer on all matters pertaining to education.  
DON'T undermine a decision of the board**
- 9. DO support and protect school personnel in proper performance of their duties.  
DON'T violate the chain of command or publicly criticize staff members.**
- 10. DO refer all complaints to the superintendent.  
DON'T make any promises to "help" or act on citizen complaints until they reach the board level after failure of an administrative solution.**

# **School Ethics Act**

## **Common Areas of Concern**

The following are definitions for the purposes of the School Ethics Act, unless the context clearly requires a different meaning:

- **"Member of immediate family"** means the spouse or dependent child of a school official residing in the same household;
- **"Relative"** means the spouse, natural or adopted child, parent, or sibling of a school official;
- **"Spouse"** means the person to whom a school official is legally married under New Jersey law.

### **Common Areas of Concern**

- **Financial Involvement** – Recuse (excuse) yourself when your **immediate family's** financial involvement might reasonably be expected to impair your objectivity. **Do not discuss or vote on that involvement.**
- **Personal Involvement** – Recuse yourself when you or members of your **immediate family** have a personal involvement that creates some benefit to you or to an immediate family member.
- **Personnel Appointments**
  - Relatives** – NO participation, recuse yourself
  - Related to School Official by Marriage** (i.e. in-laws)-get advisory opinion
  - Professional Services** (lawyer, accountant, etc.) NO participation, if currently receiving services from that professional; otherwise seek advisory opinion
  - Political Involvement** – If job candidate provided services (i.e., campaign manager or treasurer) to your campaign, must recuse yourself. If job candidate was merely contributor (and contribution was not given in exchange for appointment), you may participate in appointment.

# **AREAS OF CONCERN UNDER THE SCHOOL ETHICS ACT**

## **COLLECTIVE NEGOTIATIONS IN DISTRICT**

<b><u>NO PARTICIPATION</u></b>	<b><u>SEEK ADVISORY OPINION</u></b>
Immediate Family	Son/daughter in-law
Emancipated Child	Sister/Brother in-law
Siblings	Mother/Father in-law
Parents	

### **Immediate Family Member – Same Statewide Union affiliation**

-Once tentative agreement has been signed including all salary guides, then you may participate and vote on the contract

## **COLLECTIVE NEGOTIATIONS – ENDORSEMENTS**

- Board members who have been endorsed by the bargaining unit, in the year in which negotiations are beginning or ongoing, may not participate in negotiations or vote on the contract.
- Board members endorsed in years prior to start of collective bargaining, may be able to participate in negotiations.
- Candidate did not seek endorsement should seek the opinion of board attorney / solicitor.

## **SUPERINTENDENT / SCHOOL ADMINISTRATORS HIRING AND EVALUATION**

The School Ethics Commission has issued several public Advisory Opinions regarding school board members who have relatives as well as immediate family members employed by the district. These Advisory Opinions apply to both the hiring and evaluation of the superintendent. The Opinions also apply to the personnel actions and decisions regarding compensation along the administrative chain of supervision (principals, supervisors, directors).

**When in doubt of if there is a question, please contact board attorney or solicitor for a definitive answer.**

## **AREAS OF CONCERN UNDER THE NEW SCHOOL ACCOUNTABILITY REGULATIONS**

### **EMPLOYEES UNDER A ONE YEAR CONTRACT**

Under the Accountability Regulations (N.J.A.C. 6A:23A-6.2), school employees that are employed under a one year contract on the effective date of the nepotism policy or the date a relative becomes a school board member or chief school administrator are covered by the provisions of **N.J.A.C. 6A:23A-6.2(a)(2), and they are not prohibited from continuing to be employed in the district. In other words, chief school administrators may recommend those employees for rehire in the district.**

However, board members with relatives working under a one year contract must recuse themselves from voting on the renewal of family members.

### **COLLECTIVE NEGOTIATIONS IN DISTRICT**

A board member or administrator who has a "relative" (defined in the new, broader manner) **who is a member of the collective bargaining unit with which the board is negotiating** may not participate in negotiations in any way. This means a board member may not:

- Be a member of the negotiations unit,
- May not participate in closed sessions of the board when discussing the collective bargaining agreement or strategies, and
- Must abstain on any vote taken regarding the collective bargaining agreement

A board member **who is a member of the same statewide union but in another district, or has an "immediate family member" who is a member of the same statewide union in another district, or a member of a different bargaining unit within the same district:**

- Is prohibited from being a member of the negotiation unit and from being present in any closed session of the board when discussing negotiation strategies
- Can participate fully, absent any other conflicts once a tentative memorandum of agreement is reached that includes salary guides and total compensation package. This would allow the board member to vote on the proposed agreement.
- Is also allowed to fully participate in any grievance proceeding filed by the local union when no other conflicts are present.

# **Nepotism Regulation**

## **Common Areas of Concern**

The following are definitions for the purposes of the Accountability Regulations:

- **"Member of immediate family"** , immediate family member is defined as a board member or school administrator's spouse, civil union partner, domestic partner, child, parent or sibling residing in the same household, whether related by blood, marriage or adoption. **The previous definition required a child to be a dependent; the new definition changes this.**
- **"Relative"** " includes an even broader list: spouse, civil union partner, domestic partner, or the parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother or half-sister, of the individual or of the individual's spouse, civil union partner or domestic partner, whether the relative is related to the individual or the individual's spouse, civil union partner or domestic partner, by blood, marriage or adoption. It doesn't specify that they live in the board member's household.

### **NEPOTISM POLICIES**

The Accountability Regulations (N.J.A.C. 6A:23A-6.2), requires that districts implement a nepotism policy that includes the following:

- *A provision prohibiting any relative of a school board member or chief school administrator from being employed in an office or position in that district except that a person employed by the district on the effective date of the policy or the date a relative becomes a school board member or chief school administrator shall not be prohibited from continuing to be employed in the district (N.J.A.C. 6A:23A-6.2(a)(2); and*
- *A provision prohibiting the chief school administrator from recommending to the school board pursuant to N.J.S.A. 18A:27-4.1 any relative of a school board member or chief school administrator (N.J.A.C. 6A:23A-6.2(a)(3).*

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## **Advisory Opinion vs. Complaint**

### **School Ethics Commission**

Under the New Jersey School Ethics Act, any school board member or administrator may request an Advisory Opinion from, or may file a Complaint before, the School Ethics Commission (SEC). In addition, a member of the SEC or the general public may also file a complaint.

#### **Advisory Opinion**

A school official may ask the SEC if his or her *proposed* activity would violate the Ethics Act. Such requests must detail the specific conduct or activity and the exact role to be played by the school board member or administrator.

A board member or administrator may also seek an advisory opinion concerning proposed conduct of another school official. In such cases, he or she must send a copy of the request to the official whose proposed conduct is in question. The school official in question has ten days from the date of the request to respond.

Advisory opinions are not made public, except when the SEC, by a vote of at least six of its members, believes that the opinion has widespread application. When it makes advisory opinions public, the commission deletes the name and district of the official.

Advisory opinion requests involve conduct that *has not yet occurred*. When the SEC receives a request about conduct that has already taken place, it generally dismisses the request.

#### **Complaints**

Complaints address *past*—not proposed—conduct or activity.

Complaints must be filed within one year of notice of the alleged violation of the School Ethics Act, including the school board member codes of conduct and ethics.

The person issuing the complaint must set forth facts that led him to believe that the School Ethics Act was violated, the sections of the Act that the person believes were violated, as well as dates of the alleged violations.

If an SEC member submits a complaint, he may not participate in subsequent proceedings on that same complaint.

For further information, visit the School Ethics Commission Web page or call the commission at 609-984-6941. Information is also available from the NJSBA Legal Department at 1-888-886-5722, extension 5254.

# **Advisory Opinion vs. Complaint**

## **School Ethics Commission**

### **School Ethics Commission Advisory Opinions**

**Q. Who may request advisory opinions from the School Ethics Commission?**

**A.** Only school officials may request and obtain an advisory opinion from the Commission. A school official may request an advisory opinion regarding his or her own prospective conduct.

**Q. Can a school official request an Advisory Opinion regarding the conduct of another school official?**

**A.** Yes. A school official may seek an advisory opinion from the Commission as to the proposed conduct of another school official. However, s/he must show the Commission that s/he has copied the school official whose proposed conduct is the subject of the request. The school official whose conduct is in question will then have 10 days from the date of the advisory opinion to respond.

**Q. On what type of conduct may a school official request advice?**

**A.** Any school official may request an advisory opinion as to whether any proposed conduct or activity of a school official would in the Commission's opinion constitute a violation of the act. The Commission cannot provide advice on conduct that has occurred in the past, nor can the Commission provide advice on the conduct of school employees who are not school officials.

**Q. How does a school official go about obtaining an advisory opinion from the School Ethics Commission?**

**A.** Any school official may request an advisory opinion by writing a letter to the School Ethics Commission at the N.J. Department of Education, P.O. Box 500, Trenton, NJ 08625. The letter should set forth the position of the school official, the nature of the prospective conduct that the school official proposes to undertake and all relevant facts. The Commission will contact the school official making the request, if it needs additional information.

**Q: Could my request be declined?**

**A:** Yes, the Commission may decline to accept an advisory opinion request where its public advisories sufficiently address the questions raised in the request (see, <http://www.nj.gov/education/legal/>) or where the request does not meet the requirements set forth above.

**Q. How long will it take to get an opinion, if my request is accepted?**

**A:** Ordinarily, the Commission considers the request at its next monthly meeting following its receipt of all relevant information and documentation needed to make a determination on the request. However, the Commission's issuance of advisories is dependent upon the scope and complexity of the request, the Commission's receipt of all relevant information, as well as the existence of competing priorities.



# **Advisory Opinion vs. Complaint**

## **School Ethics Commission**

### **School Ethics Commission Filing a Complaint**

**Q: Who can file a complaint with the School Ethics Commission?**

**A:** Any person may file a complaint with the School Ethics Commission when he or she believes that a school official has violated the School Ethics Act. A Board of Education, as an entity may not file a complaint, although individual members of the Board may file.

**Q: How do I file a complaint with the School Ethics Commission?**

**A:** To file a complaint, you must submit complete a complaint form (above), which must be signed under oath and submitted as noted above.

**Q: What must a complaint include?**

**A:** A complaint must include:

- The full name, home address and phone number of each complainant;
- The full name and home address of each respondent;
- A brief statement, in individually numbered paragraphs, setting forth the specific allegation(s) and the facts supporting them which have given rise to the alleged violation(s) of the Act;
- The date(s) of the occurrence(s) of each specific allegation;
- **The section(s) of the Act claimed to be violated for each specific allegation;**
- A statement giving all pertinent facts as to whether any other action has been instituted in the matter which is the subject of the complaint or is pending in any court of law or administrative agency of this State; and
- A notarized signature and certification under oath for each complainant.

**Q: May I allege a general violation of the Act, such as N.J.S.A. 18A:12-22?**

**A:** No. The School Ethics Commission has ruled that N.J.S.A. 18A:12-22, which sets forth the Legislative purpose for enacting the School Ethics Act, is not a basis for a violation.

**Q: Who may I file a complaint against?**

**A:** A complaint may only be filed against a "school official" which includes a board member and certain administrators as defined in the School Ethics Act at N.J.S.A. 18A:12-23.

**Q: May I file a complaint against a teacher with the School Ethics Commission?**

**A:** No. The School Ethics Act only governs the conduct of school officials as defined in the School Ethics Act at N.J.S.A. 18A:12-23.

**Q: What is the time period for filing a complaint?**

**A.** **Complaints must be filed** within 180 days of notice of the events which form the basis of the alleged violation(s). A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known.

**Q. What types of penalties may the School Ethics Commission recommend against a school official?**

**A.** If a violation of the Act is found, the Commission may recommend to the Commissioner the reprimand, censure, suspension, or removal of the school official. The recommendation of any of the foregoing sanctions shall require a vote of the majority of the full membership of the Commission. The Commission may decline to issue a penalty for violations that it finds by a majority vote are de minimis.

# THEORY INTO PRACTICE

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***c. I will confine my board action to policymaking, planning and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.***

***d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.***

## **What do these two tenets of the Code of Ethics mean in terms of:**

- A board member visiting schools to check on the technology upgrades?
- The board's personnel committee directing the superintendent to rotate the principals among district schools?
- The board president dropping by the Superintendent's/CSA's office every day while the CSA is away on vacation just to see that everything is running smoothly?
- The board directing the CSA to develop a process that engages staff, community and parents in a strategic planning initiative?
- The chair of the finance committee insisting on reviewing all long distance phone calls for the district with the BA prior to every board meeting?

Team Created Example:

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## THEORY INTO PRACTICE

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***e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action which may compromise the board.***

***f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.***

### **What do these two tenets of the Code of Ethics mean in terms of:**

- The board president meeting with the guidance counselor to ask why her neighbor's child didn't get into National Honor Society?
- A candidate running for his first term on the board promises in his campaign that he will do everything in his power to have the district start an ice hockey team next year?
- A board member who asks to serve as "advocate" for his brother and sister-in-law when they meet with the child study team to discuss their daughter's IEP?
- An incumbent board member, running for her third term, is endorsed by the teachers' association – after election, can she serve as chair of the negotiations committee?

Team Created Example:

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# THEORY INTO PRACTICE

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***i. I will support and protect school personnel in proper performance of their duties.***

***j. I will refer all complaints to the chief administrative officer and will act on such complaints at public meetings only after failure of an administrative solution.***

## **What do these two tenets of the Code of Ethics mean in terms of:**

- A board member who criticizes the Athletic Director – on the soccer field, to neighbors, at social gatherings?
- The board insists on knowing how a teacher is being remediated and asks for updates on progress on the improvement plan filed in the teacher's personnel file?
- The board's personnel committee setting up a process that enables teaching staff members to bring issues (on curriculum, scheduling, communications) directly to them in order to clear the air and improve morale?
- The board's curriculum committee researches class size and brings a recommendation to the board to use as a basis for their new policy?

Team Created Example:

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## THEORY INTO PRACTICE

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***a. I will uphold and enforce all laws, state board rules and regulations, and court orders pertaining to schools. Desired changes should be brought about only through legal and ethical procedures.***

***h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.***

### **What do these two tenets of the Code of Ethics mean in terms of:**

- A board member, while understanding that he can't actively participate in the discussion, quietly lobbies 2-3 other board members to vote to promote his wife to be the new chair of the math department?
- A board member writes up an evaluation of his children's teachers who he believes are not performing up to speed and gives that to the principal?
- The board creates a policy that directs the CSA to bring to the board at least 2 recommendations for every administrative position to be filled?
- A board member talks to the board attorney and directs him to make certain changes in the CSA's contract?

Team Created Example:

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## THEORY INTO PRACTICE

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***b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools which meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.***

***g. I will hold confidential all matters pertaining to the schools, which, if disclosed, would needlessly injure individuals or the schools. But, in all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its schools.***

### **What do these two tenets of the Code of Ethics mean in terms of:**

- A finance committee recommendation that the high school eliminate all classes with fewer than 8 students (e.g., 3<sup>rd</sup> and 4<sup>th</sup> year Latin, an AP course in European history)?
- The chair of the negotiating committee, without the authorization of the board, talking privately to the union leadership about contract language?
- The board directing the CSA to include the minutes of Child Study Team meetings in their weekly update packets?
- A board member, during Executive Session, texting confidential information, to a member of the public who is waiting outside, so that he/she will be able to ask specific questions of the board during the Public Comments section?

Team Created Example:

✓

# **ACKNOWLEDGEMENT OF RECEIPT**

## **Code of Ethics for School Board Members**

Please sign this acknowledgement of receipt to confirm that you have received a copy of the Code of Ethics for School Board Members contained within this recent amendment to the School Ethics Act, C.178, P.L. 2001.

Each school board member and charter school trustee is responsible to read and become familiar with the Code of Ethics for School Board Members. Questions about the policy should be directed to your Business Administrator/ Board Secretary. If unable to answer the question, the BA/BS may direct you to the School Ethics Commission from whom you may request an advisory opinion.

The Code of Ethics became a part of the School Ethics Act on July 26, 2001 so it is effective immediately. Failure to sign this acknowledgement will not relieve a board member of the responsibility to understand and adhere to the Code of Ethics.

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BOARD MEMBER'S NAME (PLEASE PRINT)

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BOARD MEMBER'S SIGNATURE

DATE

Please sign and return this sheet to the Business Administrator/Board Secretary



# The Code of Ethics

School Ethics Act, 6A:32-3.2  
Annual Training C.178, P.L.2001



Overview

How It Effects Us

**For current Ethics Commission rulings, sample policies  
and additional information check our website:**

**[www.njsba.org](http://www.njsba.org)**



# **CODE OF ETHICS FOR SCHOOL BOARD MEMBER**

*N.J.S.A.: 18A:12-24.1*

A School Board Member shall abide by the following Code of Ethics for School Board Members:

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.*
- b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.*
- c. I will confine my board action to policy making, planning and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.*
- d. I will carry out my responsibility, not to administer the schools, but together with my fellow board members, to see that they are well run.*
- e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.*
- f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.*
- g. I will hold confidential all matters pertaining to the schools, which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its schools.*
- h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.*
- i. I will support and protect school personnel in proper performance of their duties.*
- j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.*

**ETHICS OPINIONS RESTRICT BOARD MEMBER ROLE  
IN PERSONNEL MATTERS ALONG THE CHAIN OF SUPERVISION**

**Rulings Affect Board Members with Relatives Employed in-District**

The School Ethics Commission (SEC) has issued a string of public Advisory Opinions that are instructive to every school board member who have relatives employed by the district. Beginning with A30-05 (March 10, 2006) which involved board members with “immediate family members” (spouse or dependent child residing in the same household) employed in the district, these advisory opinions signal a significant erosion of the role of those board members with regard to employment decisions respecting their Superintendents. In the subsequent opinions, A07-06; A14-06; and A23-06, the SEC was called upon to address a number of factual situations and provided advice to further refine the parameters of the restrictions imposed upon board members whose relatives, as well as immediate family members, work in the same district in which they serve.

**Overview of Advisory Opinions: Board members may not evaluate  
CSA, other Supervisors**

**A-30-05**

In A30-05, the SEC advised that two board members who had spouses employed in the 11-building district, would violate N.J.S.A. 18A:12-24(c) if they were to participate in the evaluations, personnel actions and decisions regarding compensation not only for the principals who supervise their spouses, and in one case for the Director who supervised the principal, but also for the Superintendents.

N.J.S.A. 18A:12-24(c) provides:

*No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family.*

In A30-05, the SEC concluded that each of the board members’ interests in his/her respective spouse’s employment constituted an indirect financial involvement that might reasonably be expected to impair his objectivity of judgment in violation of N.J.S.A. 18A:12-24(c). The SEC advised the board members to recuse themselves and not to participate in any discussions or votes regarding these administrators.

**Rationale** In A30-05, Board member A’s spouse was an instructional associate who was not a member of the union, and whose immediate supervisor was the principal of that school. The principal, in turn, was supervised by the Director of Elementary Education (Director)-- a central office administrator who reported directly to the Superintendent. The SEC noted that since the principal directly supervised the board member’s spouse, it

would be difficult for the board member to be completely objective in acting on any employment issues regarding the principal; the public could reasonably expect that the board member's involvement in employment issues could positively or negatively impact the employment of the board member's spouse. The SEC also noted that the Director supervised the principal and was accountable to the Superintendent, who ultimately made recommendations regarding the employment terms of the board member's spouse to the board. The SEC believed that the public could reasonably perceive that the board member's objectivity and independence of judgment could be impaired as it relates to employment issues regarding the Director. The SEC also advised that the board member would violate N.J.S.A. 18A:12-24(c) if he were to participate in any employment issues regarding the Superintendent, reasoning that the board member would have difficulty being completely objective in acting on employment issues since the Superintendent must provide a recommendation to the board regarding all terms, conditions and benefits of employment of the board member's spouse. (This follows from the fact that the spouse was not part of the union, such that terms and conditions of employment were not established through the collective bargaining agreement.) The SEC concluded that the public could reasonably expect that the board member's objectivity and independence of judgment may be impaired in such a situation.

Board member B's spouse was a member of the district's secretaries' union, working in the nurse's office at the high school and directly supervised by the high school principal. The principal, in turn, was directly supervised by the Superintendent. As with board member A, the SEC found that it would be difficult for board member B to be completely objective in acting on any employment issues regarding the immediate supervisor of the board member's spouse, and therefore the board member could not participate on employment issues relating to the principal. The SEC advised that it would also be a violation for the board member to participate in employment issues with respect to the Superintendent, since as direct supervisor of the principal, there would be an opportunity for the spouse's employment to be affected by the board member's involvement in employment issues related to the Superintendent in terms of the way the administrators treat and evaluate the spouse, even if such impact did not affect the contractually determined salary. The SEC did not mention whether its determination was also influenced by the fact that under N.J.S.A. 18A:27-4.1, any transfer, appointment or removal or renewal of an employee can only be made upon the Superintendent's recommendation.

*Prior rulings* This decision did not mark the first time that the SEC had required that a board member with a spouse working in the district recuse himself from employment matters concerning the Superintendent. In rendering its advice in A30-05, the SEC cited to two earlier authorities: SEC v. Gunning, C15-93 (September 22, 1994) and Advisory Opinion A10-00 (June 27, 2000). However, these occurred in specific limited factual contexts, and A30-05 is more far-reaching.

In Gunning, the SEC determined that a board member was wrong to participate in employment matters involving the Superintendent where the Superintendent was the

direct supervisor of the board member's spouse, who served as the Superintendent's confidential secretary.

And in Advisory Opinion A10-00, the SEC advised that a board member could not participate in employment matters with regard to the Superintendent, principal and vice principal, when the board member's spouse was employed as a teacher in the one-building K-8 school district with 900 students, the Superintendent, principal and vice-principal were all considered supervisors of the spouse, and the SEC noted that the board member's vote could affect the way the administrators treat and evaluate the spouse. The SEC further advised that a board member could participate in the search for the administrators and vote on the appointments, reasoning that it would not be reasonable for the public to expect that a board member, with a spouse who teaches in the district, would select administrators who are most likely to be financially favorable to teaching staff, especially since teachers are employed pursuant to a collective bargaining agreement. However, the SEC noted that this could change if the selection is for someone who already knows the board member's spouse.

In yet a third ruling, Orban v. Roosevear, C12-00, 12/19/2000, which was not mentioned in A30-05, the SEC found no probable cause to believe that a board member, whose spouse served as a district elementary school principal directly under the Superintendent in a multi-building district, violated the School Ethics Act by participating in the search for a new Superintendent. Significantly, the SEC noted that any ethics concerns should be assuaged by the fact that such board member would not be allowed to participate in any subsequent decisions regarding the Superintendent's employment.

#### **A7-06**

In A7-06 (July 31, 2006), the SEC advised that a board member with a spouse who was a teacher's assistant in the district would violate N.J.S.A. 18A:12-24(c) if he were to participate in the hiring and any employment issues regarding the Superintendent, where the assistant superintendent supervised the board member's spouse's supervisor and was a candidate for Superintendent.

The board member requesting the advisory opinion had asked for a clarification of *A10-00* and *A30-05* based on his particular facts. (He had apparently also asked a second question that the SEC declined to answer for lack of service upon the individual whose conduct was involved). The requestor's situation included that: the board member served in a nine-school pre k-12 district with approximately 6,800 students; his wife was a teacher's assistant at the high school where she was directly supervised by the building principal and indirectly supervised by four assistant principals; the building principal was supervised by the assistant Superintendent who, in turn, was supervised by the Superintendent; while the Superintendent and the assistant superintendent operated out of a building different from the high school, they regularly went from building to building; and the current assistant superintendent had had several interviews to become Superintendent.

In tackling the board member's request, the SEC first reviewed several principles that had been addressed in the earlier Advisory Opinions. The SEC initially noted that in A30-05, since it had not been presented with the question of hiring the principal, director of elementary education and the Superintendent, that issue had not been addressed. The SEC also noted that in A30-05, it had applied the principle in A10-00 (that a board member could not participate in employment issues regarding supervisors of that board member's spouse) to multiple building districts. Thus, board members with spouses working in the same district, either large or small, would violate N.J.S.A. 18A:12-24(c) if they voted on employment issues of the administrators supervising their spouse including the supervisors of those administrators.

Establishing first that based on the definition of "member of immediate family" in N.J.S.A. 18A:12-23, the board member's spouse was an immediate family member, the SEC noted that with regard to the board member's participation in employment issues involving the Superintendent, the board member's situation was similar to that in A10-00 and A30-06 with regard to the chain of supervision. Citing language from A30-06 ("the board member would have difficulty being completely objective in acting on employment issues regarding the Superintendent since the Superintendent must provide a recommendation regarding the employment terms of the board member's spouse to the board.") and relying on A10-00 wherein the SEC found that there was an opportunity for the board member's spouse's employment to be affected by the board member's vote on employment issues in terms of the way the administrators treat and evaluate the spouse, the SEC found likewise that the board member in A7-06 would violate N.J.S.A. 18A:12-24(c) were he to participate in any employment issues regarding the Superintendent. The SEC advised that as the board member's spouse was supervised by the principal who was supervised by the assistant superintendent who was supervised by the Superintendent, the public could reasonably expect that his objectivity and independence of judgment could be impaired.

The SEC then found that A10-00 addressed the board member's inquiry about voting on the hiring of the Superintendent. It noted that A10-00 carves out an exception to the general rule that a board member in these circumstances may participate in the search for the administrators and vote on the appointments; namely, the SEC made an exception for administrators who have some familiarity with a board member's spouse. The board member seeking advice in A7-06 had indicated that a candidate for the Superintendent position is the current assistant superintendent who is familiar with the board member's wife insofar as he currently supervises the principal who supervises the board member's wife. Given this familiarity, and the public's reasonable expectation that the board member's objectivity and independence of judgment could be impaired if he were to participate in discussions regarding, or vote on, the hiring of the Superintendent, the SEC advised the board member that he would violate N.J.S.A. 18A:12-24(c) if he were to participate in discussions regarding, or vote on, the hiring of the Superintendent.

#### **A14-06**

In A14-06 (October 19, 2006), the SEC determined that, applying the principles of A30-05, a board member would not violate N.J.S.A. 18A:12-24(c) by participating in discussions and

votes on the employment and compensation of the Superintendent and building principals in the district where his or her spouse served as an on-call substitute teacher.

The board member's spouse, about whom the advisory opinion was sought, was not in any bargaining unit and was subject to annual recommendations by the Superintendent to the board, for all terms, conditions and benefits of employment, and was on a substitute teacher list submitted annually to the board for approval. The procedures for becoming a substitute teacher were as follows: the candidate would fill out various forms, be interviewed by one of the district principals, be recommended for hire and then placed by the Superintendent on the board agenda for approval. The substitutes were picked and called for service by the school secretaries. Teachers or building principals were allowed to state a preference for a particular substitute, and the substitutes were evaluated each time they entered a school/classroom and reported for service by the principal as well as the absentee teacher.

The SEC found the fact that the nature of the substitute teacher's employment on an on-call, as-needed basis, distinguished it from the situation in *A30-05*. Here, not being a permanent employee, the spouse was not subject to increments or pay increases based on collective bargaining. The spouse was evaluated by the absentee teacher and the building principal each time he or she reports for service. There was no direct line of supervision over the substitute teachers. In this situation, the board member's involvement in employment issues would not positively or negatively impact the employment of his or her spouse. The SEC Commission also found that since the board member's spouse was an at-will part-time employee, it would not be reasonable to expect that the board member's objectivity or independence of judgment would be impaired by participating in discussions and votes on the employment and compensation of the Superintendent and building principals.

### **A23-06**

A23-06 is especially significant because it addresses whether restrictions apply to board members whose family members other than "immediate" family members are employed in the district, such as a mother or brother. In light of A23-06, board members may be precluded from participating in employment issues regarding the Superintendent where the board members have a "relative" (as defined by N.J.S.A. 18A:12-23) working in the district. A23-06 also provides the reassurance to board members having "in-laws" employed by the district, that recusal is not necessary since "in-laws" are not included in the definition of "relative." A23-06 is also significant because it reiterates the advice expressed in earlier advisory opinions, that even where the board member may not participate in contract negotiations or the evaluation of the current Superintendent due to the district employment of the board member's relatives, such a board member may fully participate in the hiring process for that Superintendent, provided that the relative had not been directly or indirectly supervised by a candidate working in the district.

In A23-06 (November 15, 2006), the SEC advised four board members (identified as A,B,C, and D) who had various family members and/or relatives working in the district whether or not they would violate N.J.S.A. 18A:12-24(c). The board members sought to participate in the search for a new Superintendent, the interview process for the potential

candidates, contract negotiations, the hiring of the new Superintendent and employment issues related to the new Superintendent. The school district was a K-12 district with nine elementary schools, one middle school and one high school.

*Some board members could participate* The SEC determined neither Board member A nor Board member D would violate the law by their participation in the search for the new Superintendent, the interview process for the potential candidates, contract negotiations, or the hiring of the new Superintendent or employment issues related to the new Superintendent.

Board member A's husband was a substitute custodian who reported to the supervisor of custodians, and was supervised by the business administrator, who in turn reported to the Superintendent. The SEC relied on *A10-00* and reiterated that because board member A's spouse was not a full-time or permanent employee, but only a substitute who serves on an as-needed basis, board member A's involvement in employment issues related to the new Superintendent posed no conflict as they would not positively or negatively impact the employment of board member A's spouse. (However, the SEC cautioned board member about voting on the annual hiring of substitute custodians.)

Board member D's daughter-in-law, who did not reside with the board member, was a teacher at one of the elementary schools. She reported directly to her respective principal, who in turn reported to the director of curriculum, who reported to the Superintendent. Because D's daughter-in-law was not a "relative" as defined by N.J.S.A. 18A:12-23 (which defines "relative" as "the spouse, natural or adopted child, parent, or sibling of a school official") the SEC did not believe it would be reasonable to perceive that the board member's relationship with the daughter-in-law would be predominant over the best interests of the district.

*Some board members' participation would be limited* The SEC found that the participation of Board members B and C would be limited by the employment of certain of their family members.

Board member B had two family members employed by the district-- his mother and his brother. His mother was a full-time aide at one of the elementary schools and his brother held the position of Media Services Coordinator. Board member B's mother reported to the school principal, who reported to the director of curriculum, who reported to the Superintendent. B's brother reported to the Superintendent. Neither relative resided within B's household.

Although neither the mother nor the brother were "immediate family members" the SEC advised that Board member B had a "personal," as opposed to a "financial" involvement, due to the B's relationship with his or her mother and brother, which may be perceived as being predominant to the best interests of the district. The SEC described a number of Commissioner decisions and advisory opinions where conflicts of interest were found with respect to matters beyond a board member's immediate family member:

The Commission first notes, based on the definition of "member of immediate family" in N.J.S.A. 18A:12-23, that board member B's mother and brother are not

immediate family members. However, board member B's mother and brother are relatives as defined in N.J.S.A. 18A:12-23. As the Commission noted in *Advisory Opinion A23-94*, (January 23, 1996), the Commission is not constrained to recognize conflicts of interest only when a matter affects a board member's immediate family member. The Commission has found conflicts of interest under N.J.S.A. 18A:12-24(c) where a board member negotiates a sibling's contract when the sibling is in the local bargaining unit. See *I/M/O James Russo and Thomas Scarano*, C12-97 (January 27, 1998). The Commission also found a conflict of interest under N.J.S.A. 18A:12-24(c) where a board member was present during and participated in two executive session discussions related to the hiring of his brother. See *I/M/O Dino Pettinelli*, C01-04 (July 27, 2004). Furthermore in *Advisory Opinion A16-00*, (December 1, 2000), the Commission advised a board member that he would violate N.J.S.A. 18A:12-24(c) if he were to participate in negotiations or vote on a contract with the local education association when his brother held a position in the maintenance department and is a member of the local education association. In *A16-00*, the Commission found that the benefit set forth in N.J.S.A. 18A:12-24(c) need not be financial; otherwise the "personal involvement" provision would be redundant. The Commission also noted that "it considers an involvement to be personal whenever a school official has a relationship that the public may perceive as being predominant to the best interest of the district. Therefore, a benefit can be something of intrinsic value, but no monetary worth." *Id.* Page 2. In *Pettinelli*, the Commission found that there was a benefit of intrinsic value in the personal satisfaction that a board member receives in ensuring that a sibling obtains employment.

Therefore, Board member B was advised not to participate in any employment issues such as contract negotiations or performance reviews related to the new Superintendent once that Superintendent is appointed, because that participation could have an impact on the mother's or brother's employment in the district. However, B could participate in the search for the new Superintendent, the interview process for the potential candidates and the hiring of the new Superintendent--provided that neither B's mother nor brother had familiarity with a potential candidate because such candidate directly or indirectly supervised them in the district.

Board member C's wife was a teacher's aide at one of the elementary schools. His mother-in-law was a four-hour aide within the district. (Note that early on in the advisory opinion the SEC once refers to the mother-in-law as the board member's "stepmother" but the reader can reasonably infer that this was stated in error). All aides reported to their respective principals, who reported to the director of curriculum, who reported to the Superintendent.

The SEC noted that because a mother-in-law is not a "relative" pursuant to N.J.S.A. 18A:12-23, it would not be reasonable to perceive board member C's relationship with his mother-in-law as being predominant to the best interests of the district. Therefore, board member C would not violate N.J.S.A. 18A:12-24(c) in relation to his mother-in-law.

However, because C's wife worked in the district as well as his mother-in-law, the SEC advised that his participation would be limited in employment issues such as performance reviews or contract negotiations of the newly-hired Superintendent. However, board member



C could participate in the Superintendent search itself, as well as in the interview process for the potential candidates and the hiring of the new Superintendent—that is, unless the board member’s spouse had some familiarity with a potential candidate because such candidate directly or indirectly supervised her in the district.

**Conclusion: implications for board members** Although these advisory opinions do not carry the weight of actual rulings, they provide a clear window into the way the SEC would decide similar cases if complaints against a board members were brought for the SEC’s consideration. In fact, the SEC specifically made these advisory opinions public to inform other board members. A board member’s failure to follow the direction set forth in an advisory opinions may affect the severity of the penalty should the board member later be found to have violated the School Ethics Act.

All board members with relatives employed by the district should be mindful of A30-05. Apparently, the prohibition against participating in employment matters concerning the spouse’s chain of supervisors, as well as the Superintendent, can apply to board members regardless of the level at which the spouse is employed, and regardless of whether the spouse is a member of the union. The opinion reaches further than the SEC’s earlier rulings, which came from narrow factual contexts. That is, in Gunning and Orban the board members’ spouses were directly supervised by the Superintendent. And in A10-00, the board member’s spouse was housed along with the spouse’s supervisors in a one-building district. Neither of these conditions was present in A30-05. In fact, subsequently in A7-06, the SEC described the effect of its opinion in A30-05 to be that “board members with spouses working in the same district, *either large or small* would violate N.J.S.A. 18A:12-24(c) if they voted on the administrators supervising their spouse including the supervisors of those administrators.” (emphasis added)

Prior to A23-06 it was difficult to predict *any* set of facts under which a board member with a spouse employed by the district would be permitted to participate in employment matters concerning the Superintendent. However, A23-06 sets aside an exception for the board member whose spouse is a substitute teacher, serving on an as-needed basis. That type of employment apparently does not pose the same potential for conflict in the SEC’s eyes, and the board member may fully participate in the absence of any other conflict.

Prior to A23-06, the guidance provided through SEC advisory opinions involved only board members with “immediate family members” (as defined in N.J.S.A. 18A:12-23) working in the district. This would include the board member’s spouse, as well as a dependent child living with the board member (although the SEC has not been presented with the dependent child fact scenario). That limited guidance left board members and their counsel to speculate on whether a parent, sibling or other “relative” working in the district would evoke a similar prohibition. Now that the SEC has specifically advised in A23-06 that similar ethical conflicts arise when the employee is a mother or a brother, board members with any relative in a similar position, should construe these advisory opinions as applicable to their situations as well. Presumably, every “relative” ( defined in N.J.S.A. 18A:12-23 as spouse, natural or adopted child, parent, or sibling) working in the district will present the same type of “personal involvement” that creates a benefit to

the board member, *i.e.*, the same prospect for the board member's "intrinsic satisfaction" in seeing a positive employment decision for that relative.

What about a friend, a paramour, a cousin, an in-law? How far does the "intrinsic satisfaction" justification take us? In A23-06, the SEC appears to draw the line at "relatives" as statutorily defined. The SEC advised two board members who had respectively, a mother-in-law and a daughter-in-law employed in the district, that since the in-laws were not "relatives" within the statutory definition, it would not be reasonable to perceive board that the board members' relationships with these individuals would be "predominant to the best interests of the district." While this may only restate the obvious with regard to the mother-in-law (how those mother-in-law jokes abound!), it seems to make a stronger statement with regard to the daughter-in-law and it is reasonable to infer that neither friends nor cousins, aunts or uncles, or other non-statutory relatives would pose the same potential for conflict.

These opinions also clarify that a board member who may not participate in decisions regarding the current Superintendent's employment, may still participate in the discussions and decision with regard to the actual hiring of a new Superintendent-- provided that the board member's relative had not been directly or indirectly supervised by a candidate working in the district. Once the hiring is accomplished, however, the board member's ethical conflict precludes participation in negotiations over the Superintendent's salary and other aspects of the contract, in evaluation, and in any subsequent employment decisions.

Affected board members must remove themselves from discussions and voting on evaluations, raises, contractual issues including compensation, and personnel actions. Not only that, but they must also refrain from lobbying or otherwise encouraging other board members to vote a certain way on these employment issues. Board members affected by these advisory opinions should leave the room during closed session discussions pertaining to the employment of the Superintendent as well as to those in the line of direct supervision of their spouses. These board members should also avoid casual discussions of these topics with their fellow board members, so as not to influence those board members' votes.

The same board members who under ethics law are not permitted to play a role in establishing the district's collective bargaining agreement because they have immediate family members working in the district, now will also be unable to participate in another important board member function--evaluating the Superintendent. Presumably a school board can invoke the doctrine of necessity where the majority of the board has disqualifying interests; however, where use of the doctrine is not authorized, many board members will be excluded from the process. We are left bracing ourselves for the possibility that the opinion will affect both the number of potential board candidates, and the public's determination to vote for candidates who bring with them significant limitations on their ability to contribute to the public office.

June 10, 2008

**FOR PUBLIC RELEASE**

**SUBJECT: Advisory Opinion A06-08**

The School Ethics Commission is in receipt of your request for an advisory opinion submitted on behalf of a school board member. The Commission notes that you have complied with N.J.A.C. 6A:28-5.2(b) by copying the board member who is the subject of the request. The board member did not submit a response to the Commission within the 10-day time limit set forth in N.J.A.C. 6A:28-5.2(b). Therefore, the Commission will provide its advice based on the information included in your advisory opinion request.

You have asked whether it would be a violation of the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., for a board member to participate in your evaluation as the Superintendent of the district. You have stated that the board member was formerly employed by the district as a technology coordinator and his employment was terminated effective February 16, 2007, as a result of a decision made by you in December 2006. You have stated that this person filed an ethics complaint against you, which was dismissed by the School Ethics Commission. You have further stated that, following his separation from employment with the district, this person was elected to the board. As his first act as a board member, he called for a vote of no confidence against you. You state that you believe his participation in your evaluation may violate the School Ethics Act.

At its May 27, 2008 meeting, the Commission, pursuant to its authority in N.J.S.A. 18A:12-28(b), advised that the board member would violate the Act if he were to participate in your evaluation.

Your inquiry turns on application of N.J.S.A. 18A:12-24(b) which provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

The Commission notes that the board member has a history with you, as the Superintendent. His employment with the district was terminated in February 2007 as a result of a decision which was made by you in December 2006. The Legislature made it clear that board members "... must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated." N.J.S.A. 18A:12-22. If the board member were to participate in your evaluation, it could create a justifiable impression that the public trust was being violated since it would be reasonable for the public to perceive that the board member was using his position to secure an advantage over you as a consequence of your history with the board member.

Based on the specific facts presented in this advisory opinion request, the Commission advises that the board member would violate N.J.S.A. 18A:12-24(b) if he were to participate in your evaluation. As such, the board member should abstain from any discussion, activities and votes related to the same.

We trust that this opinion answers your inquiry. Because the Commission believes that this opinion will be of interest to other board members, it is making it public.

Sincerely yours,

Paul C. Garbarini, Chairperson  
School Ethics Commission

# School Ethics Act – Update September 2009

## New Jersey Superior Court Appellate Division

### School Ethics

Appellate Division reverses State Board decision that suspended a board member for one year for threatening a member of the public at a public board meeting. Court says the State Board erred in upholding the SEC's rejection of the ALJ's credibility determinations. Although the SEC was entitled to reject the ALJ's factual determinations, it was required to defer to her credibility determinations that the board member had not in fact threatened a member of the public at the meeting.

In re Atallo, 2009 N.J. Super. Unpub. LEXIS 606 (App. Div. March 20, 2009).

## New Jersey District Court Decisions

### Employees – Discrimination (Send-Receive)

District Court dismissed employee's discrimination claims filed against college and labor union under 29 U.S.C.S. §185(a), the *Labor Management Relations Act*, for lack of subject matter jurisdiction. The Act excluded "political subdivision" from the definition of employer. Because the college was a political subdivision, both the college and labor union fell within the political subdivision exception to jurisdiction. *Watford v. Union County College*, Civil No. 06-5542, 2009 U.S. Dist. Lexis 9661, (D. N.J. Feb. 10, 2009).

## Commissioner of Education

### Board Governance - Ethics

The Commissioner adopts SEC's determination that a board member violated the Ethics Act by administering the schools, by taking private action that could compromise the board, by failing to protect and support the principal and superintendent in the performance of their duties, and by failing to refer all complaints to the chief school administrative officer. These findings were based on the board member's dissemination of correspondence to the other board members that was critical of the administration's handling of a senior prank, his complaints to the police despite the CSA's managing of the prank, his dissemination of employee complaints to the Board before the complaints were investigated or even received by the superintendent. Six-month suspension ordered was ordered, taking into account that his actions disparaged the principal who supervised his spouse, projecting an appearance of bias and impropriety. Yafet, Comm'r. 2009: May 15.

Commissioner dismissed petition alleging board member violated N.J.A.C. 6:3-6.5 or 6.6 where board member took possession of a student file found abandoned in a district building. East Rutherford Borough Bd. of Ed., Commr., 2009: April 15.

On appeal from the School Ethics Commission, the Commissioner affirmed SEC decision finding a violation of the code of ethics where board member attended a meeting on behalf of the board without board consent, urged an employee to leave the district, and refused to cooperate in an affirmative action investigation. Brown v. Matthews, Commr., 2009: April 15.

# School Ethics Act – Update September 2009

## School Ethics Commission

### **Code of Ethics for School Board Members**

Commission determined that former board member violated *N.J.S.A. 18A:12-24.1(c)* by failing to confine his board action to policy-making, planning and appraisal while participating as a members of the district staffing team when he developed detailed staff interviewing documents and directed their implementation without consulting with administration. Former board member censured. Dericks v. Schiavoni, SEC, 2009: April 28.

SEC determined that complainant failed to prove that board member violated *N.J.S.A. 18A:12-24.1(a)* by failing to uphold and enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. Complainant failed to present a “copy of a final decision from any court of law or administrative agency of this State” finding that the respondent failed to enforce all laws, rules, and regulations of the State Board of Education. As to the allegation that the respondents violated the Open Public Meetings Act when they held an emergency meeting on June 8, 2007, the Commission noted that matters arising out of the OPMA are not within the jurisdiction of the Commission which is limited to matters arising out of the School Ethics Act. Myers v. Barksdale, SEC, 2009: April 28.

Commission found that probable cause did not exist to credit allegations that board member violated *N.J.S.A. 18A:12-24.1(b)* by using his board position to secure unwarranted advantages. Board member issued press release immediately prior to the annual school election, however the press release did not speak to the board member’s candidacy for office. LiaBraaten v. Emory, SEC, 2009: April 28.

Commission determined that board did not violate various provision of the Code of Ethics for School Board Members where the board trustees voted to appoint a staff member to a position for which he was not certified. Lovett and Fussell v. Asbury, SEC. 2009: April 28.

Commission found that board member did not violate *N.J.S.A. 18A:12-24.1(e)* by taking private action that could have compromised the board when she failed to reveal a prior professional relationship between the newly appointed interim superintendent and the board attorney. Myers v. Barksdale, SEC, 2009: May 27.

Commission determined that insufficient competence evidence existed to credit allegations that board member violated *N.J.S.A. 18A:12-24.1(g)* by failing to provide accurate information in school matters where he allegedly provided false information to an investigator from the Office of Fiscal Compliance. Myers v. Cox, SEC 2009: May 27.

Commission determined that board president did not violate various provisions of the School Ethics Act when she spoke with a board member’s employer about the board member’s actions pertaining to district property. No evidence was found that such contact had the ability to compromise the board. Le Munyon v. Loughlin, SEC 2009: May 27.

Commission found insufficient cause to credit the allegation that the regional board member violated the School Ethics Act. Regional board member voted on proposed budget for submission to the voters while his wife was employed as a school nurse within the district. Luthman v. Longo, SEC, 2009: June

## School Ethics Act – Update September 2009

SEC found, upon rehearing a matter on remand from the State Board, that the Board member's act of signing a certification recounting what transpired at a Planning Board meeting in order to bolster the board's interest in a school ethics case against a former board member, did not constitute private action; even if it had, there was no evidence it could have compromised the board; no violation of N.J.S.A. 18A:12-24.1(e). I/M/O Chiego, SEC 2009: March 24 (on remand).

SEC dismisses complaint and counterclaim/third party complaints *without prejudice* to the right to re-file where during the pendency of the complaint, the complainant was not reelected and subsequently died; only her personal representative, and not the board or another board member, had standing to maintain the suit. Hakim, SEC 2009: March 24.

SEC dismisses an ethics complaint against incumbent board member, finding that neither her providing an opinion to the press supportive of reduced government, nor sending a letter supportive of regionalization signed "board president" (but couched in the first person, "I") to the Executive County Superintendent (ECS), constituted "board action" and thus did not violate N.J.S.A. 18A:12-24.1(c)(confining "board action" to policy making). Nor did these acts constitute private action that could harm the board under N.J.S.A. 18A:12-24.1(e) as she neither made personal promises nor purported to speak on behalf of either Board, and the letter was timed so as not to influence the ECS in its investigation of Oradell's request to withdraw from the Regional Board. Shinevar and Beslow, SEC 2009: March 24.

The SEC found no probable cause to credit numerous allegations of ethics violations made by a parent against six board members for the middle school's practice of locking bathrooms between each class period; board president duly relied on the administration to address the complainant's concerns, responded to parent's letter only after consulting with the Superintendent and the Board's counsel; it was the administration that responded to the complainant's concerns without interference from the Board members. Wittreich, SEC 2009: March 24.

SEC dismisses complaint brought against four board members by Administrative Systems Support Technician alleging members violated N.J.S.A. 18A:12-24.1(h) and (i) when they voted to transfer her to a secretary position; SEC found no proof that board members failed to appoint the best qualified personnel after considering CSA recommendation; failed to appoint the best qualified person, or to support personnel in proper performance of their duties. Jenkins-Buwa, SEC 2009: March 24

### SEC ADVISORY OPINIONS

SEC advised that two board members, one whose spouse was employed as a district secretary and the other whose spouse was employed as a caller of substitutes in the district, would not violate N.J.S.A. 18A:12-24.1(c) if they were to participate in the discussion and adoption of the board's goals and objectives for the CSA as long as those goals and objectives are broad in scope but may not participate where the goals touch upon the employment of the board members' spouses. A25-08 (1/29/09).

# School Ethics Act – Update May 2009

## Commissioner of Education

### **Board Governance – Ethics**

Commissioner dismissed petition alleging board member violated N.J.A.C. 6:3-6.5 or 6.6 where board member took possession of a student file found abandoned in a district building. East Rutherford Borough Bd. of Ed., Commr., 2009: April 15.

On appeal from the School Ethics Commission, the Commissioner affirmed SEC decision finding a violation of the code of ethics where board member attended a meeting on behalf of the board without board consent, urged an employee to leave the district, and refused to cooperate in an affirmative action investigation. Brown v. Matthews, Commr., 2009: April 15

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## School Ethics Act – Update January 2009

1. Commission determined that no probable cause existed to credit allegations that a board member involved himself in a matter in which he had a personal involvement that could have created a benefit where the board member met with the building principal regarding the discipline imposed on a student for assaulting the board member's son. Gonzalez, SEC, 2008: Dec. 16
2. Commission dismissed complaint alleging violations of multiple provisions of the Code of Ethics for Board Members, where board member sent an e-mail to the superintendent identifying a specific employee by name, questioning the employee's placement, identifying a former by name, and asking whether that employee could be re-hired. Gallon, SEC, 2008: Dec. 16.
3. Commission found no probable cause to credit allegations that board member violated *N.J.S.A. 18A:12-24.1(f)* by using his public office for personal gain when he sought a grade adjustment for his child; *N.J.S.A. 18A:12-24.1(j)* creates an exception for board members acting on behalf of immediate family members. Complainant ordered to pay \$500.00 for filing frivolous complaint. Young, SEC, 2009: Jan. 27.
4. SEC found that board member violated *N.J.S.A. 18A:12-24.1(e)* of the Code of Ethics for School Board Members when he submitted an article, signed as board president, to the editor of a local newspaper without having first received board approval. Numerous other allegations were dismissed. SEC recommended penalty of censure. Dericks, SEC, 2009: February 24.
5. SEC found that board member violated *N.J.S.A. 18A:12-24.1(i)* of the Code of Ethics for School Board Members when he sent a letter to the State Board President, Executive County Superintendent and Board President suggesting that the superintendent allowed his administrative staff to violate board policy. Numerous other allegations were dismissed. SEC recommended the penalty of censure. Hollander, SEC, 2009: February 24.

## School Ethics Act – Update December 2008

1. Commissioner reduced suspension of board member from three months to one month where SEC found that board member violated the *School Ethics Act* when he emailed the district superintendent in an attempt to secure an unwarranted privilege for his wife regarding leave time. Commissioner held that SEC recommended penalty was inconsistent with penalties issued in prior decisions. (*I.M.O. Kanaby, Commr., 2007: Sept. 10*).
2. Commissioner adopted School Ethics Commission recommendation to censure board member who violated the Code of Ethics for School Board Members through actions which included: voicing questions and concerns directly to reporters without first seeking an administrative resolution, and contacting teachers and administrators directly without going through the superintendent. *Delbury, Commr., 2007: Dec. 6, aff'd State Board – 2008: June 18*.
3. Commissioner adopted School Ethics Commission penalty recommendation of public censure where board member unilaterally pressured school secretary to provide résumés of candidates for employment. Board member also obtained key to an administrator's locked office in order to review additional résumés and engaged in an argument that disrupted the working environment. *Polinik, Wayne Twp. Bd. of Ed., Commr., 2008: March 10*.
4. Commissioner censured board member who twice administered the schools, in violation of *N.J.S.A. 18A:12-24.1(d)*, once when she spoke to the facilities coordinator about a proposed employment action concerning her cousin-in-law and a second time when she appeared at a personnel committee meeting to discuss the proposed employment action. *I.M.O. Graves; Commr; 2008: July 10*.
5. Commissioner censured board member who failed to confine his board action to policy making, planning, and appraisal in violation of *N.J.S.A. 18A:12-24.1©* when he presided over two closed session meetings where the board discussed the tenure appointment of a principal who was the immediate supervisor of the board member's wife. *I.M.O Filipek, Saddle Brook Board Of Education; Commr: 2008: July 23*.
6. SEC found no personal involvement that created a benefit to a board member whose board attorney provided personal services to board member while in office and where she voted to appoint attorney as board solicitor. SEC departed from reasoning of previous cases, *I.M.O. Huber SEC 1997:May 27; I.M.O. Davis and Jackson, SEC:2002:Nov. 26, I.M.O. Patterson, SEC 2003: Sept. 23, and Advisory Opinion A03-01* that found a conflict because the board attorney might be inclined to render advice favorable to his client/board member as being unduly dependent on the prospective conduct of the attorney, a party over which the SEC had no authority. *Dressel v. Speizer, SEC 2008: August 26*.

# WHY DO BOARD MEMBERS BREACH CONFIDENTIALITY?

- **Inadvertently** - THEY JUST DON'T UNDERSTAND EITHER THE IMPORTANCE OF THE ISSUE OR THE IMPORTANCE OF CONFIDENTIALITY
- **To make themselves seem important** - THEY HAVE INFORMATION THAT NO ONE ELSE DOES AND THAT MAKES THEM SPECIAL
- **To attempt to solve a district problem** - THEY DO SOMETHING WRONG FOR ALL THE RIGHT REASONS, KNOWING THAT THE PERSON THEY APPROACH IN CONFIDENCE WILL BE ABLE TO HELP WITH THIS ISSUE - JUST THIS ONCE
- **To apply public pressure to the board** - THEY KNOW THAT IF THE BOARD CAN'T SEE THE LIGHT, THEY SHOULD AT LEAST FEEL THE HEAT
- **In response to a severely divided board** - THEY FEEL THAT SCORING POINTS, RIGHTING WRONGS OR FLEXING THEIR MUSCLES DOESN'T MATTER BECAUSE THE WHOLE PLACE IS DISFUNCTIONAL ANYWAY
- **To get an uninvolved (unbiased?) opinion** - THEY FEEL THAT THE REST OF THE BOARD IS TOO CLOSE TO THE ISSUE AND AN OUTSIDER WILL HELP THEM SEE THINGS MORE CLEARLY
- **In response to divided loyalties** - THEY HAVEN'T SEPARATED THEIR ALLEGIANCE TO A PREVIOUS INTEREST GROUP AND FEEL THAT THEY "OWE" THEM SOMETHING FOR PAST EXPERIENCES OR SUPPORT



## School Ethics Commission

### **18A:12-21. Short title**

This act shall be known and may be cited as the "School Ethics Act."

L. 1991, c. 393, s. 1.

### **18A:12-22. Findings, declarations**

The Legislature find and declares:

a. In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

b. To ensure and preserve public confidence, school board members and local school administrators should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards among them.

L. 1991, c. 393, s. 2.

### **18A:12-23. Definitions**

For the purposes of this act, unless the context clearly requires a different meaning:

"Administrator" means any officer, other than a board member, or employee of a local school district who (i) holds a position which requires a certificate that authorizes the holder to serve as school administrator, principal, or school business administrator; or (ii) holds a position which does not require that the person hold any type of certificate but is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district; or (iii) holds a position which requires a certificate that authorizes the holder to serve as supervisor and who is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district;

"Board member" means any person holding membership, whether by election or appointment, on any board of education other than the State Board of Education;

"Business" means any corporation, partnership, firm, enterprise, franchise, association, trust, sole proprietorship, union, political organization, or other legal entity but shall not include a local school district or any other public entity;

"Commission" means the School Ethics Commission established pursuant to section 7 of this act;

"Commissioner" means the Commissioner of Education;

"Interest" means the ownership or control of more than 10% of the profits, assets, or stock of a business but shall not include the control of assets in a labor union;

"Local school district" means any local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes and any jointure commission, county vocational school, county special services district, educational services commission, educational research and demonstration center, environmental education center, and educational

information and resource center;

"Member of immediate family" means the spouse or dependent child of a school official residing in the same household;

"Political organization" means a "political committee" or a "continuing political committee" as those terms are defined in "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c.83 (C.19:44A-1 et seq.);

"Relative" means the spouse, natural or adopted child, parent, or sibling of a school official;

"School official" means a board member, an employee or officer of the New Jersey School Boards Association, but not including any member of the secretarial, clerical or maintenance staff of the association, or an administrator; and

"Spouse" means the person to whom a school official is legally married under New Jersey law.

L.1991,c.393,s.3; amended 1995,c.14,s.1.

**18A:12-24. Conflicts of interest**

a. No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

d. No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

e. No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

g. No school official or business organization in which he has an interest shall represent any

person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district. This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities;

h. No school official shall be deemed in conflict with these provisions if, by reason of his participation in any matter required to be voted upon, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of that business, profession, occupation or group;

i. No elected member shall be prohibited from making an inquiry for information on behalf of a constituent, if no fee, reward or other thing of value is promised to, given to or accepted by the member or a member of his immediate family, whether directly or indirectly, in return therefor;

j. Nothing shall prohibit any school official, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests; and

k. Employees of the New Jersey School Boards Association shall not be precluded from providing assistance, in the normal course of their duties, to boards of education in the negotiation of a collective bargaining agreement regardless of whether a member of their immediate family is a member of, or covered by, a collective bargaining agreement negotiated by a Statewide union with which a board of education is negotiating.

L.1991,c.393,s.4; amended 1995, c.14, s.2; 1999, c.256.

**18A:12-24.1 Code of Ethics for School Board Members.**

A school board member shall abide by the following Code of Ethics for School Board Members:

a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations

of the community for its school.

h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

i. I will support and protect school personnel in proper performance of their duties.

j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

L.2001,c.178,s.5.

**18A:12-25. Disclosure statements of employment, contracts or business with schools**

a. On a form to be prescribed by the commission and to be filed annually with the commission, each school official shall state:

(1) whether any relative of the school official or any other person related to the school official by marriage is employed by the school district with which the school official holds office or employment or, for officers or employees of the New Jersey School Boards Association, any school district, and, if so, the name and position of each such relative;

(2) whether the school official or a relative is a party to a contract with the school district with which the school official holds office or employment or, for officers or employees of the New Jersey School Boards Association, any school district, and, if so, the nature of the contract; and

(3) whether the school official or a relative is employed by, receives compensation from, or has an interest in any business which is a party to a contract with the school district with which the school official holds office or employment or, for officers or employees of the New Jersey School Boards Association, any school district, and, if so, the name of each such business.

b. Each statement shall be signed by the school official filing it, and the school official's signature shall constitute a representation of the accuracy of the contents of the statement.

c. A school official who fails to file a statement or who files a statement containing information which the school official knows to be false shall be subject to reprimand, censure, suspension, or removal pursuant to the procedures established in section 9 of P.L.1991, c.393 (C.18A:12-29). Nothing in this subsection shall be construed to prevent or limit criminal prosecution.

d. All statements filed pursuant to this section shall be retained by the commission as public records.

L.1991,c.393,s.5; amended 1995,c.14,s.3.

**18A:12-26. Financial disclosure statement**

a. Each school official shall annually file a financial disclosure statement with the School Ethics Commission. All financial disclosure statements filed pursuant to this act shall include the following information which shall specify, where applicable, the name and address of each source and the school official's position:

(1) Each source of income, earned or unearned, exceeding \$2,000 received by the school official or a member of his immediate family during the preceding calendar year. Individual client fees, customer receipts or commissions on transactions received through a business organization need not be separately reported as sources of income. If a publicly traded security or interest derived from a financial institution is the source of income, the security or interest derived from a financial institution need not be reported unless the school official or member of his immediate family has an interest in the business organization or financial institution;



(2) Each source of fees and honorariums having an aggregate amount exceeding \$250 from any single source for personal appearances, speeches or writings received by the school official or a member of his immediate family during the preceding calendar year;

(3) Each source of gifts, reimbursements or prepaid expenses having an aggregate value exceeding \$250 from any single source, excluding relatives, received by the school official or a member of his immediate family during the preceding calendar year; and

(4) The name and address of all business organizations in which the school official or a member of his immediate family had an interest during the preceding calendar year.

b. The commission shall prescribe a financial disclosure statement form for filing purposes. Initial financial disclosure statements shall be filed within 90 days following the effective date of this act. Thereafter, statements shall be filed on or before April 30th each year.

c. All financial disclosure statements filed shall be public records.

L.1991,c.393,s.6.

#### **18A:12-27. School Ethics Commission**

a. There is hereby established in the State Department of Education a commission to be known as the "School Ethics Commission." The commission shall consist of nine members, not more than five of whom shall be from the same political party: two shall be board members; two shall be school administrators; and five shall be persons who are not school officials. All members shall be appointed by the Governor and shall serve at the pleasure of the Governor.

b. Members of the commission shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties under this act.

c. No member of the commission shall serve on or campaign for any office of a political organization during membership on the commission.

d. All members shall serve for a term of three years, except that for the members initially appointed, one board member, one administrator, and one public member shall be appointed for a term of three years; one board member and two public members shall be appointed for a term of two years; and one administrator and two public members shall be appointed for a term of one year.

e. Each member shall serve until the member's successor has been appointed and qualified. If a school official appointed to the commission ceases to be a school official, the person's appointment to the commission shall expire on the next succeeding July 1, or when the person's successor has been appointed and qualified, whichever occurs earlier. However, the membership of a school official who has been removed from office for official misconduct shall immediately cease upon such removal.

f. Any vacancy occurring in the membership of the commission shall be filled in the same manner as the original appointment for the unexpired term.

g. The members of the commission shall, by majority vote, select from among themselves one member to serve as chairperson for a term not to exceed one year.

L.1991,c.393,s.7.

**18A:12-28. Staff appointments; duties; powers**

a. The commission may appoint professional employees and clerical staff and may incur expenses which are necessary to carry out the provisions of this act within the limits of funds appropriated or otherwise made available to it for that purpose. All appointments shall be made in accordance with the provisions of Title 11A of the New Jersey Statutes.

b. In order to carry out the provisions of this act, the commission shall have the power to issue advisory opinions, receive complaints filed pursuant to section 9 of this act, receive and retain disclosure statements filed pursuant to sections 5 and 6 of this act, conduct investigations, hold hearings, and compel the attendance of witnesses and the production of documents as it may deem necessary and relevant to such matter under investigation. The members of the commission and persons appointed by it for this purpose are empowered to administer oaths and examine witnesses under oath.

c. A person shall not be excused from testifying or producing evidence on the ground that the testimony or evidence might tend to incriminate the person, but an answer shall not be used or admitted in any proceeding against the person, except in a prosecution for perjury. The foregoing use immunity shall not be granted without prior written approval of the Attorney General. If use immunity is not granted, the person may be excused from testifying or producing evidence on the ground that the testimony or evidence might tend to incriminate the person.

d. The commission shall promptly report to the Attorney General any information which indicates the possible violation of any criminal law.

L.1991,c.393,s.8.

**18A:12-29 Complaint procedures.**

a. Any person, including a member of the commission, may file a complaint alleging a violation of the provisions of this act or the Code of Ethics for School Board Members as set forth in section 5 of P.L.2001, c.178 (C.18A:12-24.1), by submitting it, on a form prescribed by the commission, to the commission. No complaint shall be accepted by the commission unless it has been signed under oath by the complainant. If a member of the commission submits the complaint, the member shall not participate in any subsequent proceedings on that complaint in the capacity of a commission member. If a commission member serves on the school board of, or is employed by, the school district which employs or on whose board the school official named in the complaint serves, the commission member shall not participate in any subsequent proceedings on that complaint.

b. Upon receipt of a complaint, the commission shall serve a copy of the complaint on each school official named therein and shall provide each named school official with the opportunity to submit a written statement under oath. The commission shall thereafter decide by majority vote whether probable cause exists to credit the allegations in the complaint. If the commission decides that probable cause does not exist, it shall dismiss the complaint and shall so notify the complainant and any school official named in the complaint. The dismissal shall constitute final agency action. If the commission determines that probable cause exists, it shall refer the matter to the Office of Administrative Law for a hearing to be conducted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and shall so notify the complainant and each school official named in the complaint.

In making a determination regarding an alleged violation of the Code of Ethics for School Board Members, the burden of proof shall be on the accusing party to establish factually a violation of the code. A decision regarding a complaint alleging violations of the code shall be rendered by the commission within 90 days of the receipt of the complaint by the commission.

c. Upon completion of the hearing, the commission, by majority vote, shall determine whether

the conduct complained of constitutes a violation of this act, or in the case of a board member, this act or the code of ethics, or whether the complaint should be dismissed. If a violation is found, the commission shall, by majority vote, recommend to the commissioner the reprimand, censure, suspension, or removal of the school official found to have violated this act, or in the case of a board member, this act or the code of ethics. The commission shall state in writing its findings of fact and conclusions of law. The commissioner shall then act on the commission's recommendation regarding the sanction.

d. Any appeal of the commission's determination regarding a violation of this act, or in the case of a board member, this act or the code of ethics, and of the commissioner's decision regarding the sanction shall be to the State Board of Education in accordance with Title 18A of the New Jersey Statutes.

e. If prior to the hearing the commission determines, by majority vote, that the complaint is frivolous, the commission may impose on the complainant a fine not to exceed \$500. The standard for determining whether a complaint is frivolous shall be the same as that provided in subsection b. of section 1 of P.L.1988, c.46 (C.2A:15-59.1).

f. Notwithstanding the provisions of subsections c. and d. of this section, the commission shall be authorized to determine and impose the appropriate sanction including reprimand, censure, suspension or removal of any school official found to have violated this act who is an officer or employee of the New Jersey School Boards Association. Any action of the commission regarding a violation of P.L.1991, c.393 (C.18A:12-21 et seq.) or the sanction to be imposed in the event that the school official involved is an officer or employee of the New Jersey School Boards Association shall be considered final agency action and an appeal of that action shall be directly to the Appellate Division of the Superior Court.

L.1991,c.393,s.9; amended 1995, c.14, s.4; 2001, c.178, s.4.

#### **18A:12-30. Imposition of sanctions**

Notwithstanding the provisions of any other law or regulation to the contrary, the sanctions authorized by this act may be imposed on any school official pursuant to the procedures established in section 9 of this act. However, nothing in this act shall be construed to limit the authority of any board of education or any appointing authority to process charges or complaints pursuant to the procedures contained in Titles 18A or 11A of the New Jersey Statutes.

L.1991,c.393,s.10.

#### **18A:12-31. Advisory opinions**

A school official may request and obtain from the commission an advisory opinion as to whether any proposed activity or conduct would in its opinion constitute a violation of the provisions of this act. Advisory opinions of the commission shall not be made public, except when the commission, by a vote of at least six members, directs that the opinion be made public. Public advisory opinions shall not disclose the name of the school official.

L.1991,c.393,s.11.

#### **18A:12-32. Jurisdiction preempted on pending matters**

The commission shall not process any complaint, issue a final ruling or issue any advisory opinion on a matter actually pending in any court of law or administrative agency of this State.

L.1991,c.393,s.12.

#### **18A:12-33. Training program requirement**

Each newly elected or appointed board member shall complete during the first year of the member's first term a training program to be prepared and offered by the New Jersey School

Boards Association regarding the skills and knowledge necessary to serve as a local school board member.

L.1991,c.393,s.13.

**18A:12-34. Rules, regulations**

The State Board of Education may promulgate regulations pursuant to the "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of this act.

L.1991,c.393,s.14.

NJ Department of Education  
PO Box 500  
Trenton, NJ 08625-0500  
(609)292-4469

## Frequently Asked Questions of the School Ethics Commission

### GENERAL

#### **Q. What are the powers of the School Ethics Commission?**

**A.** The Commission has the power to issue advisory opinions, receive complaints, receive and retain disclosure statements, conduct investigations, hold hearings, and compel the attendance of witnesses and the production of documents as it may deem necessary to enforce the *School Ethics Act*.

#### **Q. Is an employee of the New Jersey Department of Education subject to the provisions of the *School Ethics Act*?**

**A.** No. A DOE employee is governed by the Executive Commission on Ethical Standards (ECES). The law that governs state employees, however, has provisions that are very similar to the *School Ethics Act*. ECES's Web site is found at [www.state.nj.us/lps/ethics/](http://www.state.nj.us/lps/ethics/).

#### **Q. Can the School Ethics Commission overturn an action of the board if it finds that board members violated the *School Ethics Act*?**

**A.** No. The Commission can only discipline school officials as provided in the act by recommending a reprimand, censure, suspension or removal of the school official to the Commissioner of Education. The Commission ultimately imposes the penalty. The School Ethics Commission cannot overturn an action of the board. Only the Commissioner of Education can overturn an action of the board.

#### **Who is a School Official under the *School Ethics Act*?**

The term "school official" is defined in *N.J.S.A. 18A:12-23* as a board member, an administrator or a managerial employee or officer of the New Jersey School Boards Association (NJSBA), as well as members of the board of trustees of a charter school. *N.J.S.A. 18A:12-23.1*.

The Act does not apply to teachers or board of education attorneys, unless the attorney is hired as in-house counsel and recommends candidates for employment or the purchase or acquisition of any property or services by the local district. See *Advisory Opinion A15-99* (November 23, 1999). Also, employees of the New Jersey Department of Education are not subject to the *School Ethics Act*, although the law that governs state employees has provisions that are very similar to the *School Ethics Act*. The State Ethics Commission's website is found at <http://nj.gov/ethics/>.

#### **Who is a School Administrator?**

An "administrator" is defined in *N.J.S.A. 18A:12-23* as an officer, other than a board member, or employee of a local school district who: (1) holds a position which requires a certificate that authorizes the holder to serve as a school administrator; (2) holds a position which does not require that the person hold any type of certificate but is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district; or (3) holds a certificate that authorizes the holder to serve as a supervisor.

### SCHOOL ETHICS COMMISSION DISCLOSURE STATEMENT

#### **Q. What may happen if I fail to submit my disclosure forms or do not submit forms in a timely fashion?**

**A.** A school official who fails to file a statement or who files a statement containing information which the school official knows to be false will be subject to reprimand, censure, suspension, or removal.

#### **Q. Who may view the Ethics Disclosure Statement?**

**A.** The Ethics Disclosure Statement is a public record and is accessible to any member of the public.

**Q. Do school officials have to list their attendance at training and conferences on their financial disclosure forms under fees/honorariums, gifts/reimbursements or prepaid expenses?**

**A.** If they were reimbursed for an amount greater than \$250.00, then they have to list their board as a source of the reimbursement or prepaid expense. The Commission found a board member in violation of the act for not disclosing such reimbursements.

**Q. Do school board attorneys have to file financial disclosure forms?**

**A.** Board attorneys who work for private firms are not employees of school districts and, therefore, are not school officials under the act that are required to file. The Commission so advised in *Advisory Opinion A15-99*.

**Q. If a school district has an interim superintendent due to the recent departure of the superintendent, is the interim required to complete the disclosure forms?**

**A.** Yes, he or she should file if he or she is certified as a superintendent, or if he or she has responsibility for hiring and vendor contracts while serving as interim, since he or she would be a school official as defined under the act.

**Q. Do school officials whose income is client-based, such as accountants and attorneys, have to list their clients as sources of income?**

**A.** No. The *School Ethics Act* provides that individual client fees, customer receipts or commissions on transactions received through a business organization need not be separately reported as sources of income. The source of a person's income is the business for which they work.

**Q. Do members of my local board of education have to disclose their business interests, and if so, may I view their disclosures?**

**A.** Yes. The *School Ethics Act* requires that all school officials file disclosure statements of their financial interests, as well as those of their relatives who have positions in the school district. Once filed, the statements are public records.

**Q. What is the deadline for filing the Ethics Disclosure Statement?**

**A.** *N.J.S.A. 18A:12-26* states that each school official must annually file a financial disclosure statement with the Commission by April 30th or, for new school officials, 30 days from appointment. Charter school trustees and administrators must initially file disclosure statements within 30 days of the grant of a charter. Thereafter, any newly appointed trustee must have 30 days from appointment to file. After the school has been established, the filings are required to be filed by April 30 as with the other school officials.

**Q: If the district pays for the conference registration and hotel directly with district purchase orders and no reimbursement of the school official takes place, must that be reported?**

**A:** Yes. The statute requires the reporting of "prepaid expenses." *N.J.S.A. 18A:12-26a*.

**Q. Do school officials have to list their attendance at training and conferences on their financial disclosure forms under fees/honorariums, gifts/reimbursements or prepaid expenses?**

**A.** If they were reimbursed for an amount greater than \$250.00, then they have to list their board as a source of the reimbursement or prepaid expense. The Commission found a board member in violation of the act for not disclosing such reimbursements.

**Q: How long does a school district have to retain a record of the disclosure statements? What about the county office?**

**A:** Copies of the disclosure statements which are maintained in the school district must be retained for three years. The originals, which are maintained in the county office must be retained for six years.

**Q. Who may view the disclosure statements?**

**A.** Once filed, the disclosure statements are public records that are accessible to any member of the public.



# New Jersey School Boards Association

## A Sampling of NJSBA Field Services Programs

**Board Self-Evaluation**

**Board Self-Evaluation Feedback**

**CSA Evaluation**

**Goal Setting**

**Parliamentary Procedure**

**Key Communicators**

**Public Engagement**

**Consolidation & Regionalization**

**Board's Role in Curriculum**

**Board's Role in Finance**

**Board and the Budget**

**Dealing with Difficult People**

**Strategies for Success**

**Board Ethics**

**Effective Meetings**

**Board Governance**

**Governance by Policy**

**NJSAC Governance**

**Consensus Building/"Getting to Yes"**

**Adequate Yearly Progress**

**Team-Building**

**Listening Skills**

**"12 Common Mistakes"**

**Conflict Resolution**

**Transitioning to a New Superintendent**

**Fee Based Services:**

**Superintendent Search**

**Strategic Planning**

**Community Planning**

**Focus Group Facilitation**

**Questions?**

**Call Your Field Service Representative**

# ***ETHICS WORKSHOP EVALUATION***



	Not At All		To Some Extent		Completely	
	1	2	3	4	5	6
The board discussed the Ethics Act and the responsibilities of the Ethics Commission.						
The board reviewed and discussed the Code of Ethics.						
The board clarified confidentiality and legal liability.						
The exercises were helpful and clearly presented.						

**One thing I think we should follow through on as a result of today's discussion is:**



**Comments:**

