

Ethics for School Officials



Presented by:
NJSBA Field Services Representatives



Disclaimer

The content discussed in this presentation is for informational purposes only and not for the purpose of providing legal advice. The application and impact of laws can vary widely based on the specific facts involved. No action should be taken in reliance on information discussed in this presentation, and the NJSBA disclaims all liability for actions or not taken based on such content to the fullest extent permitted by law.

You should contact your board/school attorney to obtain advice with respect to any issue or problem.

❖ *Important to note: Final regulations under Chapter 28 could be different than what is in the proposed language, and we are not yet sure what the effective date for the 90-day training requirement for NBMO training will be.*



Ethics/Accountability

“Public service is about serving all the people, including the ones who are not like you.”

Constance Wu

Ethics/ Accountability



As a school official, you have the honor of serving the interests of the public.

In carrying out that duty, how do we hold ourselves accountable:

- to the public that we serve?
- differently than a volunteer?
- to a standard of ethical conduct that sets the minimum expectations?

School Ethics Act

N.J.S.A. 18A 12-21 (1991)

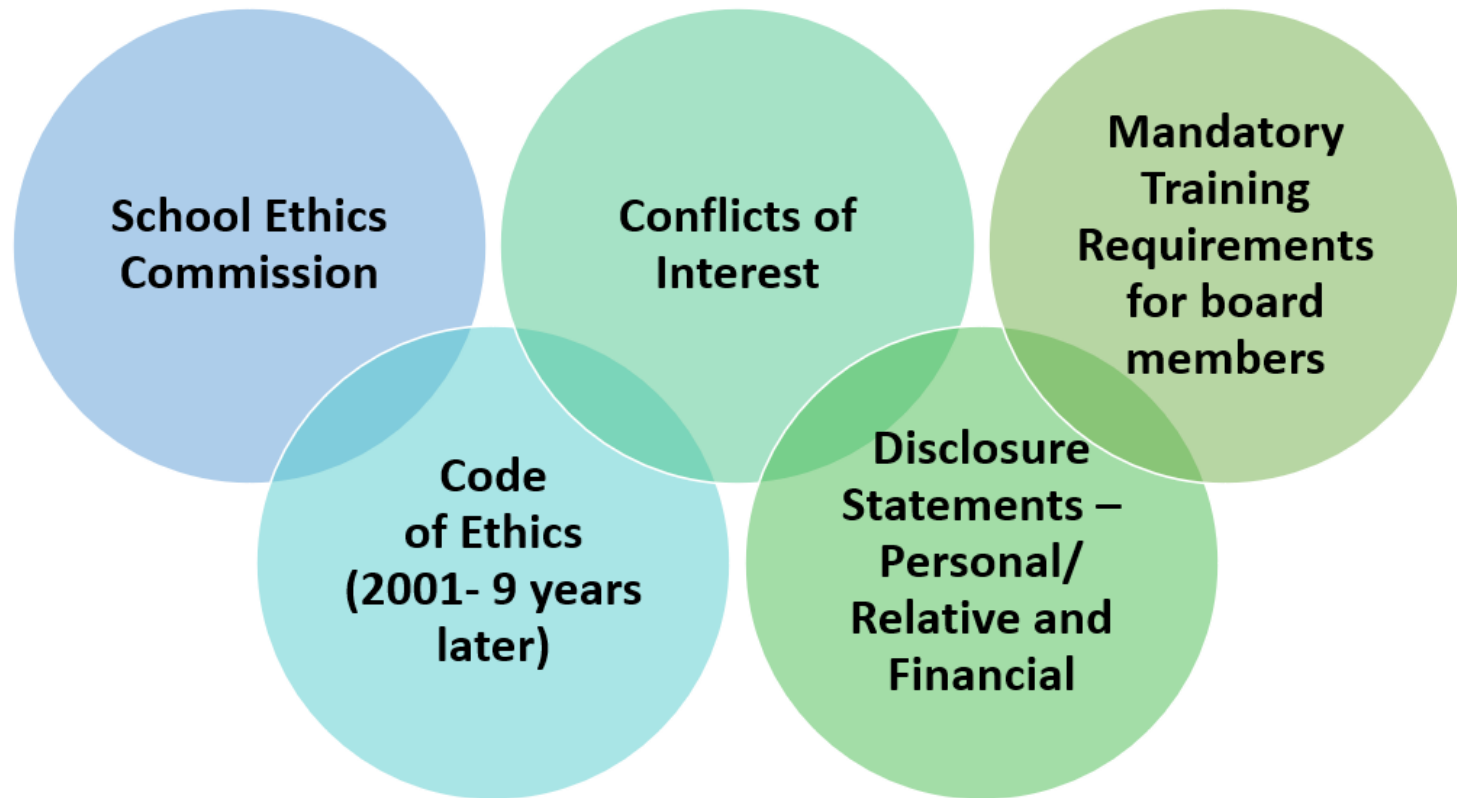
It is essential that the conduct of members of local boards of education and local administrators hold the **respect** and **confidence** of the people.



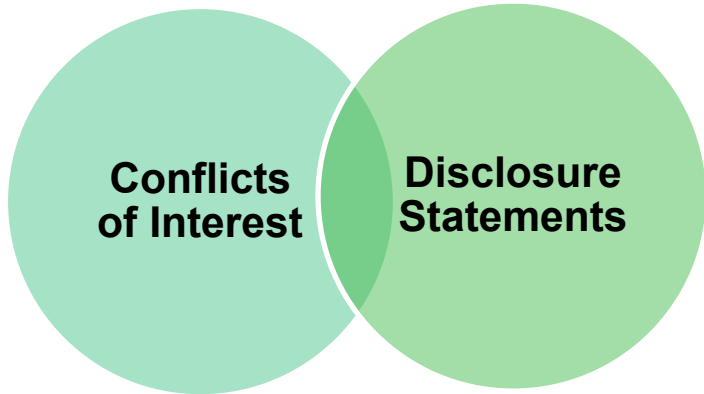
These board members and administrators must **avoid conduct** which is in **violation of their public trust** or which creates a **justifiable impression** among the public that such trust is being violated.

School Ethics Act

The School Ethics Act Established:

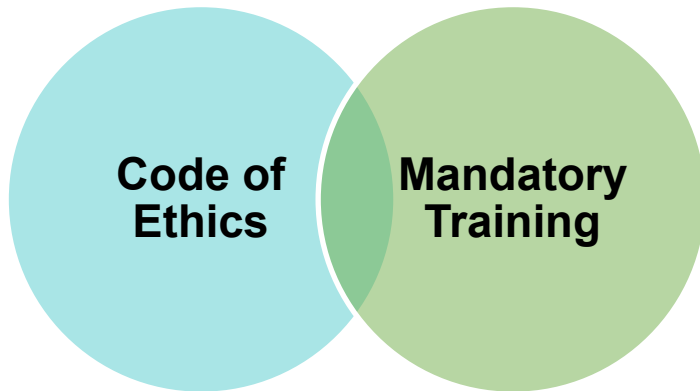


Who is Accountable?



Provisions Apply to all School Officials:

- Board members/charter school trustees
- NJSBA staff/officers
- Administrators
 - Holds certificate to serve as School Administrator, Principal, or Business Administrator
 - Holds a position that is responsible for making recommendations regarding hiring or the purchase/acquisition of property and services. (Either no certification or supervisor certification)

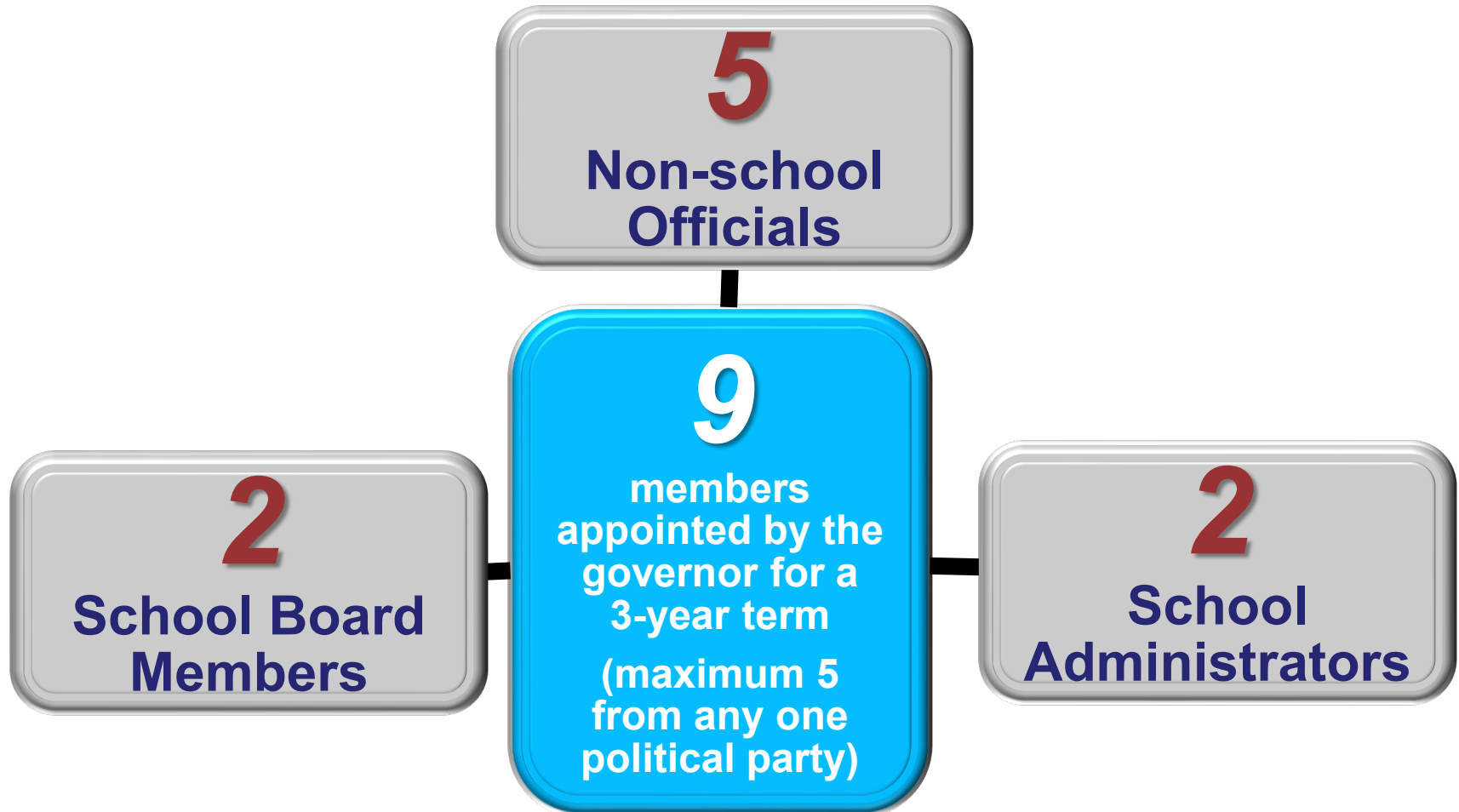


Provisions Apply to:

- Board members/charter school trustees only.

Who Enforces the Act?

The School Ethics Commission is the body charged with enforcing the act.
N.J.S.A. 18A:12-27 (a)



SEC Jurisdiction

Advisory Opinions N.J.S.A. 18A:12-31

Only a **school official** may request an **advisory opinion** to determine if **any proposed activity or conduct by** a school official in same district would constitute a violation of the Act.

**Can be made public.
Needs 6 Votes SEC.**

Ethics Complaints

Acts upon complaints filed by **anyone** alleging a **violation of the School Ethics Act or Code of Ethics** took place.

**Per SEC,
In any given year, the
yearly average:**

- **85 Ethics complaints filed**
- **35 Advisory Opinions requested**

Filing Considerations

SEC Considerations

In considering many of the filings that are dismissed, the SEC:

- Shall review the facts in the light most favorable to the Complainant. The question before the SEC is whether the Complainant has pled sufficient facts, which if true, could support a finding that the named respondent was in violation.
- Reminds all members of the public that the Commission is not a medium through which vendettas, quarrels, grudges, and sour grapes are to be filed. Complaints designed solely to “settle the score” unnecessarily delay the processing of other complaints which concern behavior and conduct that may actually violate the Act.



What Training is Mandatory?

N.J.S.A. 18A:12-33

By end of: Year 1	Governance 1 (New Board Member Orientation) <ul style="list-style-type: none">• Basic knowledge/skills, NJQSAC, HIB, CSA Evaluation, OPMA, Code of Ethics	NJSBA provides this training through multiple options: <ul style="list-style-type: none">• In-person• Live-virtual• Self-paced online	Chapter 28 Regulations - Proposed change for new Board members only – training completed by first 90 days
Year 2	Governance 2 <ul style="list-style-type: none">• Finance/Labor		
Year 3	Governance 3 <ul style="list-style-type: none">• Student Achievement		
Year following reelection or reappointment	Governance 4 <ul style="list-style-type: none">• Legal Updates		



Disclosure Statements

Personal/Relative and Financial Disclosure Statements

New
School
Officials

Must file disclosure statements within 30 days of start of employment or service



Returning
School
Officials

April 30 deadline to file disclosure statements

What are the Penalties?

Violation of the Act

SEC may recommend to the Commissioner:

Reprimand

Censure

Suspension

Removal

Updated proposed definitions (Chapter 28 regulations)

Rebuke by Commissioner that conduct violated standards but does not result in a formal resolution.

Formal disapproval by Commissioner publicized by adoption of resolution.

Barred from engaging in any activity/matter for a designated period of time.

Immediate termination from Board membership or employment (if administrator).

- SEC makes recommendation to Commissioner for final agency decision.
- Appeals are heard by the Appellate Division.

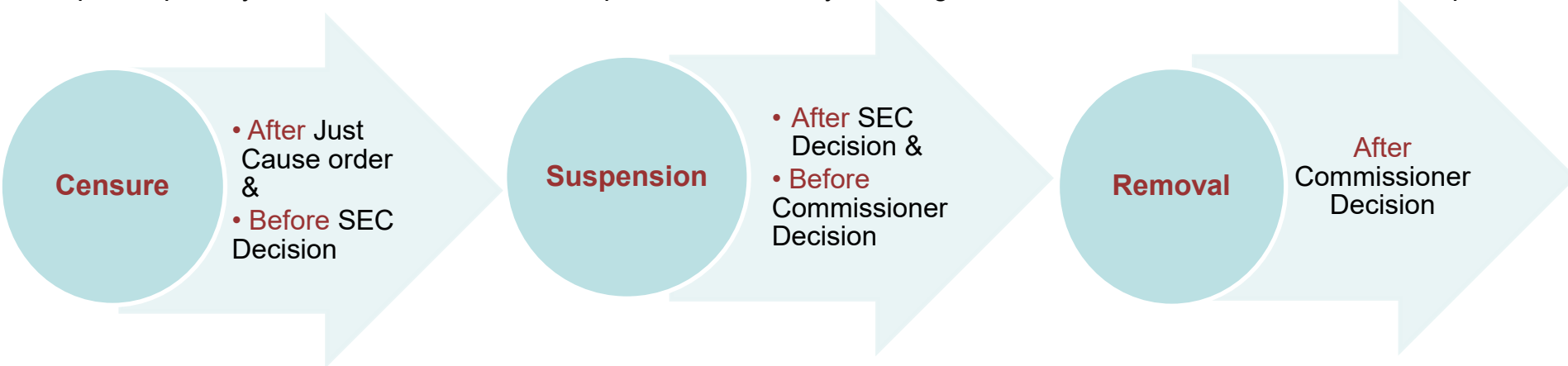
What is the Penalty Process?

Noncompliance - Training/Disclosure Statements Proposed Chapter 28 Regulations

If a member does not complete their Mandatory Training or Disclosure Statement by the required date, the SEC proposed a path that ties the penalty to the out-of-compliance completion date so it is clear up front what penalty may be expected.

The SEC will first send the out-of-compliance member an Order to Show Just Cause as an opportunity for the school official to respond why they should not be found in violation of the Act.

Proposed penalty based on when out-of-compliance Mandatory Training or Disclosure Statement has been completed:



(Unless Just Cause is shown)

Code of Ethics for School Board Members Only

N.J.S.A. 18A:12-24.1, N.J.A.C. 6A:28-6.4(a)(1)

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.

Standards

Factual evidence shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures.

Code of Ethics (continued)

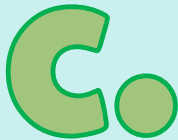
b.

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.

Standards

A decision was willfully made contrary to the educational welfare of children, or deliberate action was taken to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.

Code of Ethics (continued)



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.

Standards

Board action was taken to effectuate policies and plans without consulting those affected by such policies and plans, or action was taken that was unrelated to the respondent's duty to:

- i. Develop the general rules and principles that guide the management of the school district or charter school;
- ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or
- iii. Ascertain the value or liability of a policy.

Code of Ethics (continued)

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.

Standards

A direct order was given to school personnel or there was direct involvement in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.

Code of Ethics (continued)

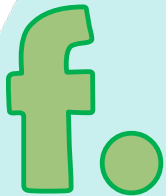
e.

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.

Standards

Personal promises were made, or action taken beyond the scope of his or her duties such that, by its nature, had the potential to compromise the Board.

Code of Ethics (continued)



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.

Standards

Action was taken on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or the schools were used in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend.

Code of Ethics (continued)

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.

Standards

Took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Inaccuracy of information and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances must be substantiated.

Code of Ethics (continued)

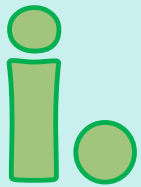
h.

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

Standards

A personnel matter was acted upon without a recommendation of the chief administrative officer.

Code of Ethics (continued)

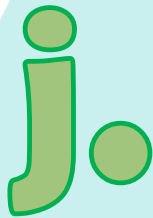


I will support and protect school personnel in proper performance of their duties.

Standards

Deliberate action was taken which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

Code of Ethics (continued)



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.

Standards

Acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint: i. Prior to referral to the chief administrative officer; or ii. At a time or place other than a public meeting and prior to the failure of an administrative solution.

2022 Commissioner/SEC Decisions

2022 Commissioner/ SEC Decisions

Related to the Code of Ethics

(C29-21) During a superintendent search, a Board member was asked at a PTA meeting: if the Board's first choice declined the offer, would the Board consider the Acting Superintendent. Board member said it is unlikely since Asst. Supt. was not invited back for a 2nd interview. Also told PTA that it might be difficult for the Acting Superintendent to hold staff members feet to the fire.

Board member agreed that confidential information was provided to the public that had the potential to compromise the superintendent search. Violation of (g) and (e).

*Board member also agreed that made public evaluative statements of the Acting Superintendent's performance. Violation of (i). Voluntary agreement to violations/settlement. **Penalty of Reprimand. Awaiting final commissioner decision***

(C67-20) Board member emailed coach and superintendent, demanding a full explanation why some football players knelt during the National Anthem. The superintendent clarified it is a player's right and not a conduct violation. The Board member continued to press - "If you think for one minute I am going to let this disrespectful stunt go, you are wrong. As an elected official, you are disrespecting me and forgetting who is your boss." *The demanded action and responses to inquiries signed as a board member is a violation of (d). Through demands, attempted to conduct an investigation before any administrative action was taken – violation of (j). **Penalty: Censure. Final commissioner decision***

2022 Commissioner/SEC Decisions

2022 Commissioner/SEC Decisions

Related to the Code of Ethics

(C18-21) A teacher in the district publicly commented about health and safety Covid-related concerns in returning to full time in-person instruction 5-days/wk. A board member forwarded to the superintendent screenshots received of this teacher in Cancun, indicating the health concerns were disingenuous and anticipated the Superintendent “would be having discussion with the administrative team on this matter and then collectively determine how to address this from there.” A parent sent an email to the superintendent and full board with these same screenshots. This board member then responded to the parent expressing his views on the matter and noting that he expected the administration to provide an “appropriate response” to the parent.

- *Violated N.J.S.A. 18A:12-24.1(e). The member’s response to the parent “potentially compromised the Board by expressing, in writing, his opinion (in his capacity as a board member) on a matter that was still pending administrative investigation and action and characterized the conduct in way to suggest it was inappropriate.*
- *Violated N.J.S.A. 18A:12-24.1 (j). The member, by responding to the parent email, acted on the complaint at a time/place other than a public board meeting and prior to the failure of an administrative solution (complaint was actively pending with the administration and a final determination had not yet been rendered).*
- **Penalty: Reprimand. Awaiting commissioner decision.**

What is a Conflict of Interest?

N.J.S.A. 18A12-24

Recuse yourself if there is a benefit to you (school official) or your immediate family due to:

- a. Business interest or professional activity in conflict.
- b. Use of position to secure unwarranted privileges, advantages or employment. Extends to “others” so may go beyond definition of immediate family.
- c. Financial involvement that may impair objectivity
- d. Service or employment that may prejudice independent judgement
- e. Gift, favor, etc. offered with intent to influence
- f. Financial gain

Other Considerations:

- g. Shall not represent any person/party other than Board/district in matter before the Board.
- h. Not a conflict if not accruing a greater gain than any others.
- i,j,k (See N.J.S.A. 18A:12-24)



Relationship Definitions

Immediate Family Member

Current
Definitions
N.J.S.A.
18A:12-23

Spouse or dependent
child residing in the
same household

Chapter 28
Regulations
- Proposed
Definitions

Spouse, **civil union partner, domestic partner**, or dependent
child residing in the
same household

Dependent Child

Any child claimed as a
dependent on federal
and state tax returns

Any child claimed as
a dependent on
federal **or** state tax
returns

Relative

Spouse, natural or
adopted child, parent,
or sibling

Spouse, **civil union/domestic partner**
or parent, child, sibling,
aunt, uncle, niece,
nephew, grandparent,
grandchild, son/
daughter-in-law,
stepparent, stepchild,
stepbrother/sister half-
brother/sister of the
individual or the
individual's spouse,
civil union/domestic
partner, by blood,
marriage, or adoption.
(Nepotism law)

Relationships that may cause a conflict

Hiring/Personnel

May not hire a relative of a board member or chief school administrator.

(May be exceptions)

If the relative already works in the district:

An administrator may not exercise direct or indirect authority over a relative of the administrator.

A board member may not take part in employment matters concerning the CSA or supervisors in the chain of command between the relative and the CSA.

A board member may not take part in the search, selection, or vote to hire a new CSA, and post-hire evaluations and contract discussions.

NO

**- Discussion
- Vote
taking part in:**

Collective Bargaining

A24-17

Relationship to Board Member	Current Member of a Statewide Public Teachers' Union	Participate in Negotiations Yes or No	Vote to Ratify the Contract Yes or No
<ul style="list-style-type: none"> Spouse Dependent Child Child (not dependent) Relative 	Works in the District	No	No
<ul style="list-style-type: none"> Self Spouse Dependent Child 	Works Out-of-District	No	Yes* **
<ul style="list-style-type: none"> Child (not dependent) Relative 	Works Out-of-District	Yes*	Yes*

* Absent another conflict

** After Memorandum of Agreement, salary guides, total compensation package attained.



Collective Bargaining

Other possible conflicts:

Not in the unit, but terms of employment linked to unit.

Supervised by employees in the unit

Immediate family member/relative has heightened union involvement.

A10-18: Endorsement of a candidate by a local or statewide union does not create a per se future conflict unless a financial contribution is given and is intended to influence the member.

2022 Commissioner/SEC Decisions

2022 Commissioner/SEC Decisions

Related to Conflicts of Interest

(C28-20) Two board members voted on a settlement agreement that resolved litigation filed against them in their personal capacities. The members argued that they were reimbursed for their legal fees so received no greater benefit than any other board member and followed legal advice. The SEC contended that regardless of direct financial liability, a reasonable member of the public could justifiably believe their objectivity was impaired. Reliance on legal advice is not a defense but factored into the penalty imposed. *Violation of 18A:12-24 (c). Penalty: Reprimand. (Commissioner final decision)*

(C71-20) A member failed to recuse herself from an Executive Session discussion of a legal matter (OPRA lawsuit) to which she had a conflict of interest in the matter (was asked to provide iPad and cellphone screenshots). It was publicly stated that the settlement of the suit would be discussed in Executive Session so the decision of the member to attend the Executive Session, regardless what was actually discussed (just date of hearing, and possible reimbursement of attorney fees) violated 18A:12-24(c). Recusal from any and all discussion and Board action is resolute when a school official has a conflict of interest in a matter. When a school official has a conflict of interest of which the public is aware, and that school official goes behind closed doors where the item is being discussed, the situation creates a justifiable impression among the public that their trust is being violated. *Penalty: Censure. (Commissioner final decision)*

2022 Commissioner/SEC Decisions

2022 Commissioner/SEC Decisions

Related to Conflicts of Interest

(C60-19) A board member's daughter works as a per-diem substitute in the district, permitted by an exemption in the district's nepotism policy. The board member approved a significant financial payment/bonus for the superintendent who is ultimately responsible for everyone who works in the district, including the subs. *Violation of N.J.S.A. 18A:12-24(b). A reasonable person could conclude that voting to approve the superintendent's merit goals could be seen to have a pecuniary interest for her child. Penalty: Reprimand. Awaiting commissioner decision*

(C68-20) A candidate for the Board filed an OPRA lawsuit against the Board, regarding email settings. The Board VP was not named in the suit but was asked to produce certification attesting to the way Board emails were accessed on all non-Board devices or email accounts. The candidate was seeking reimbursement for attorney fees. The Board VP challenged the discussion of this litigation in Executive Session and made public statements about the litigation as the taxpayers have a right to know how its funds are spent. This member also participated in Executive Session discussion of this matter.

Violation of N.J.S.A. 18A:12-24(b). A member of the public hearing the Board member's comments could reasonably believe that he intended his statements to influence the election in favor of the other candidates.

Violation of N.J.S.A. 18A:12-24(c). Should have recused himself from Executive Session discussions. Because the lawsuit involved the member's email and devices, a member of the public could justifiably believe his objectivity was impaired.

Violation of N.J.S.A. 18A:12-24.1(g) Inaccurately commented on the litigation in public.

Penalty: Censure - member is no longer on the Board. Commissioner final decision



Public Advisory Opinions

(2022 opinion and 2021 opinions released in 2022)

Public Advisory Opinions A03-22, A219-21

Board member is full-time bus driver in another district. Does not pay dues to the local NJEA-affiliated local education association but the employment terms are governed by the bargaining agreement. [Can they participate in negotiations as a Board member if the district's association is also affiliated with the NJEA?](#)

No. Since both districts local education associations are affiliated with the NJEA, the Board member is precluded from being involved in all aspects of negotiations until the total compensation package has been determined. Absent other conflicts, may vote on the final contract. (A03-22)

Board vote on superintendent merit goals failed. 2 members could not participate because their spouses work in the district. Superintendent resigned. [If the Board revotes on these merit goals, can these 2 members participate since the former superintendent is no longer an employee?](#)

No. The same conflict of any and all matters related to the superintendent continue to apply to the former superintendent despite the fact he no longer works for the district. (A19-21)



Public Advisory Opinions

(2021 opinions released in 2022)

Public Advisory Opinions A16-21, A20-21

Board member's ex-spouse works in district and is member of local education association (LEA). Have custody and child/ spousal support agreements. Ex-spouse not considered relative or immediate family member based on SEC definitions. **Is the Board member conflicted from matters regarding the superintendent, LEA, and other administrators in the chain of command?**

Yes. It could reasonably be perceived that an indirect personal or financial involvement exists that may impact objectivity and may yield unwarranted privileges/advantages to ex-spouse. Ex-spouse is "other" in SEC definitions. Absent other conflicts, can vote on final contract with LEA. (A16-21)

Board member's aunt-in-law (spouse of spouse's uncle) and another board member's distant cousin work in district. **Can these board members participate in labor negotiations with the LEA and matters related to the superintendent?**

These relationships are not an automatic conflict, but the Board members must be sure not to extend unwarranted privileges, advantages, or employment to "others." **Absent other conflicts, these members can participate.** A20-21



Public Advisory Opinions

(2021 opinions released in 2022)

Public Advisory Opinions A13-21, A12-21, A04-21, A03-21

In 4 separate opinions, Board members either work or volunteer in organizations that interface with school districts:

- Work as public-facing community liaison to forge links between employer and community/schools
- Sales and marketing representative for platform that collects, tracks and manages student health information for school nurses.
- Local chapter head for national non-profit for healthy school hours.
- Started non-profit to help families in crisis with basic needs.

Organizations not under control of, overseen by, or otherwise managed by board/district not *per se* conflict. In general:

- Recuse from all Board discussions and votes of employer and of competing entities that offer same services.
- Cannot represent employer in district or rely on board membership when soliciting other groups.
- Should not provide any information re: non-profit or employer to the Board, district employees or families.
- Would violate the act if directly solicit financial contributions, donations, or supplies from District families, provide services to district families or collaborate with PTO. (A13-21, A12-21, A04-21, A03-21)



Volunteering in School

A07-00, A32-14, A10-15, A17-15, A15-18

Serving on the Board does not prevent volunteerism in the schools, but consideration needs to be given to:

Degree of involvement

with staff and students
(Frequency/Level of Interaction)

Degree of authority

to give and receive directions/ orders to
staff and students

What is the degree of:

- Giving directions or orders to staff or students
- Taking orders from staff

Will I be in the building often?
("enmeshed in the building")

Will I be handling the school district's money?

Will I be the lead/regular volunteer or coach for a school district club, activity or sport?

- Advise superintendent you will be performing this work.
- Refrain from any related Board discussion or vote.
- Always be cognizant of the obligations of the Act.

Interview Committees

Board member involvement in interviews for positions other than that of Superintendent is not encouraged. A31-15.

A04-12. Should the CSA decide to include other stakeholders in the interview process for high-level positions, it would not be a violation of the Act provided:

No more than 1 or 2 board members are included

It is coordinated by an administrator

Board participation is limited to observations/assessments

Final recommendations are wholly within the purview of the superintendent.

Social Media

Social Media

A school official does not violate the Act merely because of engaging in Social Media activity. School officials do not abdicate their first amendment rights but must be mindful of the perception by others. (C-64-21)

SEC considers “*whether a reasonable member of the public could perceive that the school official is speaking in his/her official capacity or pursuant to his/her official duties.*” (C-56-22)



Social Media



Social Media

It is now more critical than ever to underscore and emphasize that when Board members want to speak as private citizens, they must include an appropriate disclaimer that makes the capacity in which they are speaking clear and unambiguous. (C61-21)

Suggested disclaimer:

“THE FOLLOWING STATEMENTS ARE MADE IN MY CAPACITY AS A PRIVATE CITIZEN, AND NOT IN MY CAPACITY AS A BOARD MEMBER. THESE STATEMENTS ARE ALSO NOT REPRESENTATIVE OF THE BOARD OR ITS INDIVIDUAL MEMBERS, AND SOLELY REPRESENT MY OWN PERSONAL OPINIONS.”

Social Media

Social Media



Reminder:

- Even if an appropriate disclaimer is used, the substance of a post/statement can render the disclaimer meaningless. **Content matters!**
- While the SEC may/may not be able to sanction derogatory speech, the voting members of the public have the power to choose who they feel is most fit to serve.

Points to Consider...

NJSBA recommends boards develop a list of board members and administrators who have a conflict and review it regularly.



Consult with your Board attorney on ethics issues and to identify conflicted members/administrators.

Continue to check *School Board Notes* to keep abreast of newly released advisories.



Ethics Reminder

In Closing

The Commission wishes to make clear that all Board members should always be treated, and should always treat other members of the Board, with decency, respect, and kindness. Board members have a critically important job and are most effective when they work collaboratively with one another to improve the quality and the delivery of instruction to students. Although it is wholly unrealistic to expect individual Board members to agree on every issue that the Board may encounter, disagreement can still be done with civility, and with an appreciation and respect for the thoughts and opinions of others. Failure in this regard can have a long-lasting and detrimental impact on the students, the community, parents, and staff. (C01-20)



Links for Examples Used

School Ethics Commission & Commissioner Sites:

Cases

C56-19 and 57-19 <https://www.nj.gov/education/legal/commissioner/2022/aug/201-22SEC.pdf>

C28-20 <https://www.nj.gov/education/legal/commissioner/2022/may/105-22SEC.pdf>

C71-20 <https://www.nj.gov/education/legal/commissioner/2022/apr/79-22SEC.pdf>

C68-20 <https://www.nj.gov/education/legal/commissioner/2022/apr/78-22SEC.pdf>

C67-20 <https://www.nj.gov/education/legal/commissioner/2022/apr/77-22SEC.pdf>

C60-19 <https://www.nj.gov/education/legal/ethics/2022/docs/C60-19%20PC%20-%207-29-2022.pdf>

C29-21 https://www.nj.gov/education/legal/ethics/2022/docs/C29-21%20-%20JP_et.pdf

C18-21 <https://www.nj.gov/education/legal/ethics/2022/docs/C18-21%20CE%20-%207-29-2022.pdf>

Advisory Opinions

Link to all Advisory Opinions: <https://www.nj.gov/education/legal/ethics/advisory/>

Opinions related to Volunteerism: A32-14, A10-15, A17-15, A07-00, A15-18

Opinions Related to Interviews: A15-10, A04-12, A31-15

2021/22 Opinions: A03-21, A04-21, A12-21, A13-21, A16-21, A19-21, A20-21, A03-22

Union Endorsement: A10-18

