



## FREQUENTLY ASKED QUESTIONS

### CONCERNING BOARD OF EDUCATION ORGANIZATION 2011

No information contained in this document should be construed as legal advice. This document is for informational purposes only. Please consult your board attorney for legal advice.

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**1. When does the 2011 board of education organization take place?**

The organization meeting is an annual event for every board of education. The date for organization differs depending on the type of board that is organizing.

Type I: On May 16 or on the following day if May 16 is a Sunday. This year, organization is Monday, May 16, 2011. [N.J.S.A. 18A:10-3\(a\)](#). If the annual organization meeting cannot take place on this date for lack of a quorum, or any other reason, the rescheduled organization meeting must be properly advertised and held within 3 days of the original organization meeting date, no later than May 19, 2011.

Type II: On any day during the first or second week following the school election. For 2011, organization must take place between Monday, May 2, 2011 and Saturday, May 14. (Note that the [DOE's Election Calendar](#) indicates the last day is Friday, May 13, 2011.) [N.J.S.A. 18A:10-3\(b\)](#). Since the election results are not certified until the Monday afternoon following the election (May 2), boards should wait until the election results are certified to hold organization. [N.J.S.A. 19:19-1](#). If the organization meeting cannot take place on the scheduled date for lack of a quorum, or any other reason, the organization meeting must be properly advertised and held within three days of the original organization meeting date.

NJSBA received an inquiry this year regarding the propriety of initially scheduling the organization meeting on May 17, 2011, when it was determined that a quorum could not be obtained on any date during the two week period. NJSBA is unaware of any definitive case law on point.

Regional: Regional districts qualify as Type II districts ( [N.J.S.A. 18A: 19-3](#)) so the organization meeting can be held on any day of the first or second week following the annual school election, between Monday, May 2, 2011 and Saturday, May 14. (Note that the DOE's Election Calendar indicates the last day is Friday, May 13, 2011.) [N.J.S.A. 18A:10-3\(b\)](#). Since the election results are not certified until the Monday afternoon following the election (May 2), boards should wait until the election results are certified to hold organization. [N.J.S.A. 19:19-1](#). If any regional board fails to organize within that time period, the executive county superintendent(s) shall appoint a president and vice-president from among the members of the board who will serve until the organization meeting following the next annual election. [N.J.S.A. 18A:13-12](#).

Vo-Tech: On November 1 of each year, or on the following day if November 1 is a Sunday. [N.J.S.A. 18A:54-18](#). In 2011, November 1 falls on a Tuesday, so organization takes place on November 1. If the organization meeting cannot take place on this date for lack of a quorum, or any other reason, the organization meeting must be properly advertised and held within three days of that date; by November 4, 2011.

Educational Services Commission: During the first week of June. [N.J.S.A. 18A:6-54](#). For 2011 that time would be from Sunday, June 5 through Saturday, June 11.

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County Special Services District: During the first two weeks of July, excluding Sundays. [N.J.S.A. 18A:46-37](#). For 2011, that time would be from July 4 through July 16, not including July 10.

Charter Schools: There is no statutory requirement for charter schools to organize at any particular time. Charter Board of Trustees members should check their charters and policies for organization requirements, if any.

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## **2. Must this meeting be advertised?**

Yes. The secretary of the board of education must give notice that this is the first regular meeting of the board of education. This meeting shall constitute a regular meeting for the purpose of transacting business. [N.J.S.A. 18A:10-4](#), [N.J.S.A. 18A:10-5](#).

Because of the above requirement, the outgoing board has the responsibility to schedule the organization meeting. This can be done either through the annual meeting notice or a special meeting notice, if needed. [N.J.S.A. 10:4-9](#), [N.J.S.A. 10:4-8\(d\)](#), [N.J.S.A. 10:4-18](#).

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## **3. What time must the organization meeting take place?**

The organization meeting must commence no later than 8:00 p.m. but if there is not a quorum present at the time the meeting is called, the meeting may be recessed until 9:00 p.m. If a quorum is not present by 9:00 p.m., the members present may adjourn the meeting to reconvene no later than 8:00 p.m. of another day, but not later than 3 days after the originally scheduled meeting. NJSBA recommends that a rescheduled meeting be re-advertised in accordance with the [Open Public Meetings Act](#), [N.J.S.A. 10:4-8](#), [4-9](#); [N.J.S.A. 18A:10-3](#); [N.J.S.A. 18A:10-6](#).

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## **4. What actions may the outgoing board take between the election and organization?**

A board of education is a non-continuous body whose life lasts only from organization to organization. A board may bind a successor board only when authorized by statute, such as where the Legislature specifically permits boards to enter into multi-year public contracts, collective bargaining agreements and superintendent contracts that span the lives of several boards.

After the voters have elected a new board, the permitted activities of the outgoing, "lame duck" board, are limited. However, occasionally there are matters that the outgoing board must address during this lame duck period between the school election and the organization of the succeeding board. Routine actions, such as the approval of purchase orders for goods and services or the approval of the use of facilities, are examples of matters that may properly be handled by the outgoing board. Other more significant matters, including the approval of individual contracts, the awarding of salary increases or increments for the next succeeding school year, may be inappropriate. See, [Nowak v. Bd. of Educ. of Manville](#), 1976 [S.L.D.](#) 43. Boards are urged to

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consult with their board attorney to make sure that the outgoing board's actions do not improperly usurp the authority of the successor board.

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## **5. Who may give the oath of office for board members?**

Oaths may be given by State and municipal judges, mayors, surrogates, county clerks, municipal clerks and clerks of the boards of chosen freeholders, sheriffs, members of the boards of chosen freeholders, clerks of all courts, notaries public, commissioners of deeds, members of the State Legislature, attorneys of New Jersey and certified court reporters. [N.J.S.A. 41:2-1](#). Board secretaries may also administer the oath as it relates directly to matters involving the district in which they are employed. [N.J.S.A. 18A:17-11](#).

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## **6. What is required for the oath of office?**

There are three elements of the [oath of office](#). Newly elected member must swear or affirm that they:

- a. Will support the Constitution of the United States and the Constitution of the State of New Jersey, and will bear true faith and allegiance to the same and to the Governments established in the United States and in this State, under the authority of the people. [N.J.S.A. 41:1-1](#).\*
- b. Will faithfully, impartially, and justly perform all the duties of the office of board member according to the best of their ability. [N.J.S.A. 41:1-3](#).\*
- c. Possess the qualifications of membership prescribed by law, including a specific declaration that they are not disqualified as a voter, and that they will faithfully discharge the duties of the office. [N.J.S.A. 18A:12-2.1](#).

\*Please note that these statutes also require the person to say, "So help me God." However, for persons who have conscientious scruples with such language, the language may be omitted and the board members need only solemnly, sincerely, and truly declare and affirm the remaining parts of the oath. [N.J.S.A. 41:1-6](#).

In a Type I district, a written, notarized copy of the oath is filed with the clerk of the municipality. In all other districts, a written, notarized copy of the oath is filed with the secretary of the board of education. [N.J.S.A. 18A:12-2.1; N.J.S.A. 41:1-1, 41:1-3, 41:1-6](#).

Proposed legislation on the Governor's desk, A-444, would establish a criminal background check requirement for all board of education members and charter school board of trustee members. A-444, when signed by the Governor, would require that the oath of office include "a specific declaration that he is not disqualified due to conviction of a crime or offense listed in [N.J.S.A. 18A:12-1](#)." The crimes or offenses so listed are similar to those disqualifying crimes or offenses for employees.

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**7. Must the oath of office be taken in public?**

It depends. The swearing-in of new board members is generally considered part of the organization meeting, and must be held in public as required by the [Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.](#) A newly elected board member may have the oath administered in private after the date of the organization meeting as long as a majority of the board is not present and the newly elected board member has the oath administered by an authorized person. See, [N.J.S.A. 18A:17-11 and N.J.S.A. 41:2-17.](#)

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**8. Must a newly elected board member be sworn in at the formal organization meeting?**

No. There is no statute or regulation requiring the presence of a newly elected board member at organization in order for the member to be sworn in. If the organization meeting is missed, a newly elected board member can be sworn in at the next meeting or by a duly authorized person in the interim.

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**9. Can a newly elected board member be sworn in prior to organization?**

No. An individual board member's authority flows from the board's authority as a collective body. The outgoing board has authority for the district until the new board is sworn into office. Only the newly organized board has the authority to swear in its members. Thus, it is technically impossible for a newly elected board member to take office prior to organization.

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**10. What happens if a newly elected board member cannot attend the organization meeting?**

The [oath of office](#) may be given by persons authorized to give oaths where the person is presently located. The oath should be accompanied by a certificate with the official designation of the person administering the oath. The oath should also be accompanied by whatever certifications are required by the jurisdiction where the oath is administered. [N.J.S.A. 41:2-17.](#)

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**11. Can new board members have access to confidential materials prior to being sworn in?**

Generally not. Since a newly elected person is not yet a member of the board of education until taking the oath, the successful candidate's access to information should be limited to publicly available information, until after the candidate is sworn into office. [N.J.S.A. 10:4-12\(a\).](#) If the outgoing board believes it necessary to share closed session information with newly elected board members, it is recommended that the consent of the persons that are the subject of the closed session information be obtained. Boards are urged to consult with their board attorney on this issue.

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## **12. Who runs the organization meeting?**

Typically, the business administrator or board secretary opens and runs the meeting as a temporary chairperson until such time as a president or vice-president is elected. The board may designate a temporary chairperson from among its members if it finds that more desirable. However, there is no specific statutory or regulatory guidance on this issue. If your board has adopted Robert's Rules of Order, it may provide helpful information on this issue. Boards of education are urged to review their policy manuals concerning the specific practices in their districts.

NJSBA's Legal and Policy Services Department maintains a clearinghouse of sample policies. Click [here](#) to ask an NJSBA Policy Consultant for sample policies on the conduct of school board organization meetings.

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## **13. Must a board of education elect a president and vice-president at the organization meeting?**

Yes. A board must elect one of its members as a president and another as vice-president at the organization meeting. The president and vice-president shall serve for one year and until their respective successors are elected. [N.J.S.A. 18A:15-1](#).

Some boards of education have policies that establish criteria for serving as president or vice president; for example, a one-year service requirement, or a requirement that officers serve on a rotating basis. Neither statute nor code addresses the validity of these criteria, and board counsel should be consulted prior to implementation of these or other conditions.

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## **14. Does it matter which officer is elected first?**

No. A board should follow whatever procedures it has in policy for the election of officers. If a board is deadlocked on a president, it may move to the election of the vice-president and return later to the election of the president, or vice-versa. Boards should review their organization policies/practices prior to the organization meeting.

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## **15. Does a member have to be at organization in order to be elected to an office?**

No. There is no statutory or regulatory requirement that a member be present at the organization meeting in order to be elected president or vice-president.

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**16. What happens if the board of education cannot decide on a president or vice-president?**

Under [N.J.S.A. 18A:15-1](#), the executive county superintendent will appoint a president and/or vice-president from among the members of the board if the board fails to hold the organization meeting or elect a president or vice president at the meeting.

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**17. What process is used if the executive county superintendent needs to appoint an officer?**

The executive county superintendent has discretion to use an appropriate process. Typically, the executive county superintendent will consult the local board and choose from among those members that want to be officers. Contact your executive county superintendent for details.

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**18. What voting procedures should the board use for election of officers?**

The education statutes are silent on the voting process that must be used to elect the president and the vice-president. [N.J.S.A. 10:4-14](#) requires that the public be able to ascertain how each board member voted and the minutes of the meeting must reflect such votes. When taking a vote, two popular methods have emerged. In the first method, the board secretary will ask the individual board members to indicate through a raising of a hands or some other direct method their votes in favor of, or opposition to, a candidate. The second method requires each member to record his/her vote on a piece of paper with his/her signature and then give it to the board secretary who will read names of each board member and how that board member voted, into the record.

Boards should have a policy in place addressing what occurs if there are multiple individual candidates for president or vice-president. Each individual officer candidate may be voted on one at a time, in which case the majority vote controls. The board may wish to vote on all candidates for a particular office at the same time. In this latter instance, a plurality vote may be used to elect officers. A plurality occurs when a particular candidate may gather the greatest number of votes, but fails to obtain a majority. Consult your board policies and board attorney for details.

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**19. Can a secret ballot be employed in the election of officers?**

No. [N.J.S.A. 10:4-14](#) requires that the public be able to ascertain how each board member voted and the minutes of the meeting must reflect their votes. Votes for president and vice-president must be taken in public. Board members may use signed paper ballots, and may opt to do so in order to avoid members' influencing each others' votes. Generally, if paper ballots are used, the

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board secretary will read aloud the board member's name and how the member voted. Boards are urged to consult their policies and their board attorneys on this practice.

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## **20. What kind of vote is required for the election of officers?**

It depends. The statutes concerning the election of the president and the vice-president are silent as to the vote needed to elect officers, so that the general common law rule applies to require only a majority vote of those present and voting. Case law also permits officers to be elected through a plurality vote, where more than two candidates are seeking one seat. A plurality occurs when a particular candidate may gather the greatest number of votes, but fails to obtain a majority. See, [Martello v. Bd. of Ed. of Willingboro](#) 1975 S.L.D. 1025, dismissed St. Bd. 76: April 7. In [Martello](#), the Commissioner determined that a candidate who received the most votes, but fewer than a majority, was entitled to be seated where three candidates ran for the office of vice-president. Be sure to have your voting procedures in place prior to the election of the president and vice-president, as board policy will control. See, [N.J.S.A. 18A:15-1](#). Boards of education are urged to consult with their board attorney on these issues.

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## **21. May the board adjourn the meeting and elect officers at a later date?**

[N.J.S.A. 18A:15-1](#) requires that the election of officers be completed at organization. An adjournment or recess of the organization meeting to a different date is problematic because reconvening the organization meeting may be viewed as holding an additional separate meeting and thereby failing to comply with the requirement that the officers be elected at organization. Boards are urged to consult their attorneys if an adjournment or recess needs to be taken. If a board fails to elect its officers at the organization meeting, the executive county superintendent would then appoint the officers.

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## **22. What happens if the election for officers results in a tie vote?**

Generally, the vote needs to pass by a majority of those present. Therefore, a tie vote is treated as a failure to elect. If the board cannot break the tie and make a decision at the organization meeting, the executive county superintendent would then appoint the officers.

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## **23. Can officers be discussed in closed session with only the formal vote taken in public?**

There is conflicting case law concerning whether board members may assert the personnel exception to the [Open Public Meetings Act](#) in order to discuss the individual merits of candidates for president/vice-president in closed session. In [MacKenzie v. Princeton Reg. Bd. of Ed.](#), No. L-35698-76 (Law Div., Sept. 23, 1977), the court ruled that discussions regarding qualifications

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of a current board member for the office of president or vice-president were an evaluation of a current public officer and could be discussed in closed session under the personnel exception. However, in [Manahan v. Montville Twp. Bd. of Ed.](#), No. 153936 (Law Div., October 18, 1979), the court ruled that a private discussion of nominees for president and vice-president violated the Act.

Given the contradictory results in [MacKenzie](#) and [Manahan](#), boards are urged to consult with their board attorneys before holding a closed session discussion of the qualification of officers. In any case, it is clear that the election of such officers must take place in open session.

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#### **24. What other business occurs at the organization meeting?**

Along with the swearing in of new members and the appointment of officers, there are several duties that, while not specifically required to take place at this meeting, a board generally carries out at organization. Some of these duties may include:

- Adopting its policy manual;
- Determining the official newspapers in which future meeting announcements will appear, if not already part of the policy manual;
- Appointing various personnel including an auditor, attorney, and school physician. For these appointments of professionals, be aware that they must submit to the board at least 10 days prior to the board taking action, a disclosure form indicating the political contributions that they have made during the twelve month period preceding their appointment, unless the contract is awarded pursuant to a “fair and open” process (which includes formal bidding). Other resources on the political disclosure issue can be [found here](#).

Recent accountability regulations, [N.J.A.C. 6A:23A-5.2](#), require that professional services contracts be issued in a deliberative and efficient manner that ensures the school district receive the highest quality services at a fair and competitive price, or through a shared service arrangement. Professional services contracts that meet these criteria would include, but not be limited to, issuance of contracts through an RFP based on cost and other specified factors or other comparable process. See [N.J.S.A. 19:44A-20.26 \(P.L. 2005, c. 271\)](#). The Department of Community Affairs, Division of Local Government Services, has also provided [guidance](#) that states that contracts awarded under a “fair and open” process meet the criteria of the accountability regulations. (See Local Finance Notice [2010-03](#), Section J, (1/15/2010)). Also, accountability regulations prohibit a board from voting on or awarding a contract of \$17,500 or greater to any business entity which, during the preceding one-year period, made a reportable campaign contribution to a board member. [N.J.A.C. 6A:23A-6.3](#). A board violating the regulation stands to lose points in the QSAC monitoring process and potentially lose state aid.

- Appointing the board’s NJSBA delegate from among its members;
- Appointing members to various committees of the board (if not a board of the whole)

Also, a portion of the organization meeting must be set aside for public comment. Recent amendments to the [Open Public Meetings Act](#), [P.L. 2008, c. 14](#), require boards of education to

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set aside a portion of every public meeting for public comment on any school district issue that a member of the public feels may be of concern to the residents of the school district. The board of education may determine the duration of the public comment portion, and the point during the meeting at which the public comment portion will take place.

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## **25. How is membership on the committees determined?**

Generally, there are two ways that committee membership is determined. First, many boards, pursuant to policy, authorize the president of the board to choose the membership of the committees, including the chair people. Second, a board may have some sort of nomination or voting process for committee membership. Boards should consult their policies and their board attorney for specific details.

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## **26. If the election results have been challenged, is the apparent winner seated?**

Yes. Certified election results are valid unless overturned. The actions of the board during the challenge period will still be valid regardless of the final determination that is made on the challenge or recount. For instance, in [Egan v. Brady](#), 1970 S.L.D. 153, the Commissioner of Education upheld the actions of the board as valid, even though a board member lost his seat as a result of an election recount. Boards are urged to consult with their board attorney for advice should this situation arise.

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## **27. Can a board refuse to seat a newly elected board member?**

No. The board must seat duly elected board members. Refusing to swear in a newly elected member of the board would act as an impermissible removal of that board member. See [Brown v. Newark Bd. of Ed.](#), 1984 S.L.D. 671, *aff'd* St. Bd. 1984 S.L.D. 684 and [Wall Twp. Bd. of Ed. v. Margadonna](#), Commr., 2003: June 2.

Typically, board members can only be removed by the Commissioner of Education if they have a contract with, or claim against, the board of education; or by the School Ethics Commission for a violation of the School Ethics Act. See, [N.J.S.A. 18A:12-2](#) and [N.J.S.A. 18A:12-24 et seq.](#) The only time a board may remove one of its own members is when the member has missed three consecutive meetings without good cause. The board member to be removed must be given the opportunity to have a board hearing prior to removal. [N.J.S.A. 18A:12-3.](#)

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**28. In a sending-receiving relationship, when should the sending board organize?**

If possible, the sending board should organize first, so that the sending representative can be chosen prior to the organization of the receiving board. In this way, it is very clear who the sending representative will be. [N.J.S.A. 18A:38-8.2](#) requires that the sending representative be chosen at a meeting that is closest in time to the organizational meeting of the receiving board. If the sending board organizes after the receiving board, it is uncertain which sending representative, if any, would have standing to participate at the incoming receiving board's organization. No reported case law exists concerning this particular issue. Boards are urged to consult with their board attorneys.

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**29. Can the sending representative vote for the receiving board officers?**

Probably not, in light of the New Jersey Superior Court Appellate Division's ruling in [Evans v. Atlantic City Bd. of Ed.](#), 404 N.J. Super. 87 (App. Div. 2008). In that matter, the court ruled that a board member did not have the authority to vote on the choice of a board solicitor, because that item was not one of the four itemized voting areas listed in [N.J.S.A. 18A:38-8.1](#). The court emphasized that the sending representative is a member of the receiving board with limited voting rights enumerated in [N.J.S.A. 18A:38-8.1](#). The court stated that receiving districts possess no discretion to broaden the voting rights listed in that statute, even though they may have done so in the past.

The [Evans](#) ruling can be read to suggest that customary practices permitted by the Commissioner of Education in the past, are no longer authorized. For example, the Commissioner of Education had determined that a sending representative could vote on matters of procedure such as the election of officers and other matters related to board operations. See, [Lincoln Park Bd. of Ed. v. Boonton Bd. of Ed.](#), 1997 S.L.D. (May 30); [Little Ferry Bd. of Ed. v. Ridgefield Park Bd. of Ed.](#), 1997 S.L.D. (July 24); [Green Twp. Bd. of Ed. v. Newton Bd. of Ed.](#), 1997 S.L.D. (August 5); [Bloomingdale Bd. of Ed. v. Butler Bd. of Ed.](#), 2004 S.L.D. (June 17). But in [Evans](#), the Appellate Division in a footnote stated with respect to these cases, "We reject Ventnor's argument that this alleged custom has relevance to our interpretation of the statute in this case. The scope of the statute cannot be expanded through a receiving district's past or present lax attitude toward the legislative mandate. We are not guided by past unauthorized practices but by the Legislature's literal mandate."

Board are advised to obtain the advice of their board attorney with regard to the application of these rulings to their district voting practices.

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**30. Can boards be sanctioned for failing to organize?**

Yes. According to [NJQSAC Governance DPR D\(5\)](#), the board must be able to demonstrate compliance with all of the requirements for the annual organization meeting. [N.J.S.A. 18A:10-3, et seq.](#); [N.J.S.A. 18A:15-1, et seq.](#) A failure to demonstrate compliance may result in a loss of accreditation points under NJQSAC.

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