



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

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ETHICS FOR SCHOOL OFFICIALS THE SCHOOL ETHICS ACT AND CONFLICT OF INTEREST

NJSBA Legal & Policy Services Department

I. Conflicts of Interest of School Board Members

N.J.S.A. 18A:12-2

No member of any board of education shall be interested directly or indirectly in any contract with or claim against the board, nor, in the case of local and regional school districts, shall he hold office as mayor or as a member of the governing body of a municipality, nor, in the case of county special services school districts and county vocational school districts, shall he hold office as a member of the governing body of a county.

Nothing 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.

A. Contract with the Board

1. Board member must abstain from discussion/voting or cure conflict, i.e. void contract, quit employment or resign from board.
 - a. Brick Twp. Bd. of Ed. v. Mueller, 95 N.J.A.R.2d (EDU) 222 – Owner and operator of township’s only newspaper in which school board published notices disqualified from holding position on the board.
 - b. Andrews v. Union Twp. Bd. of Ed., 95 N.J.A.R.2d (EDU) 350, St. Bd. rev’g and remanding 94 N.J.A.R.2d (EDU) 395 – Employment with contracted bus company not automatic disqualifying interest, weigh facts. Never participated in discussions/decisions.
 - c. Oehlke v. Hoffman Bd. of Ed., 93 N.J.A.R.2d (EDU) 792, aff’d St. Bd. 93 N.J.A.R.2d (EDU) 797 – President of board, who was employed by bus company, must give up bus driver employment or forfeit seat on board. Participated in board transportation discussions. Higher profile.
 - d. Thomas v. Edwards, 93 N.J.A.R.2d (EDU) 369, aff’d in part, rev’d in part St. Bd., 1993 S.L.D. Nov. 3 – Contract with board to lease part of school building for operation of day care center is disqualifying interest.
 - e. Pauze v. Young, 1990 S.L.D. 895 – Owner of insurance company which provided coverage for bus companies which had contracts with board disqualified from serving on board – participated in board actions.
 - f. Salerno v. Old Bridge, 6 N.J.A.R. 405 (1984), April 23 – Potential conflict of interest averted when board members with spouses employed in the school district abstained from voting on collective bargaining agreement. Abstention was overly cautious as contracts affected all employees in the unit and did not bestow any special economic advantage on any individual. But see School Ethics Act – Negotiations.
 - g. Visotcky v. City Council of Garfield, 113 N.J. Super. (App. Div. 1971); N.J.S.A. 18A:6-8.4 – Teacher cannot be board member in district where he/she employed.
 - h. Toms River v. Luthman, 2008 S.L.D. (March 3); Petition for emergent relief is granted to prevent former employee from running as a candidate in school election where candidate could not cure N.J.S.A. 18A:12-2 conflict prior to being sworn in if elected. Candidate expressed unwillingness to abandon contractual rights to payment from the Board of accumulated sick leave.

B. Claims Against the Board

1. Pending lawsuit does not necessarily disqualify
 - a. Bd. of Ed. of Chester v. Riley and Beatty, 1998 S.L.D. April 27 – Involvement in challenge to referendum election is not “substantial and material” conflict so as to disqualify from board membership. Transmittal to SEC as to School Ethics Act violation. See SEC complaint dismissal 6/23/98. Aff’d as to indemnification, St. Bd. 1998 S.L.D. August 5.
 - b. Walsh v. Bd. of Ed. of Twp. of Middletown, 1999 S.L.D. February 16. Board member who seeks indemnification either through N.J.S.A. 18A:12-20 or discretionary board action is not disqualified from board membership.
 - c. In the Matter of Special Election, Lacey Twp., 97 N.J.A.R.2d (EDU) 90, aff’d w/mod. St. Bd., 97 N.J.A.R.2d (EDU) 313 – No disqualifying conflict when board candidate files petition against the board.
 - d. Brick Twp. Bd. of Ed. v. Mercer, 96 N.J.A.R.2d (EDU) 6 – Board member not directly interested in son’s medical claims against school board. Board member and spouse signed releases, son now emancipated.
 - e. Ulbadini v. Cancel, 93 N.J.A.R.2d (EDU) 457 – No substantial and material conflict of interest between school board membership and police employment. Juvenile officer assigned as security officer at high school. See School Ethics Act, Personnel, A31-05. Member to abstain if conflict arises from investigation involving student.
 - f. Bd. of Ed. of Twp. of Jackson v. Acevedo, 92 N.J.A.R.2d (EDU) 63 – Suit against board by husband, wife and son for injuries sustained by son while he was a pupil in district disqualified husband from board membership. Suit settled – matter moot. Board member remained on board.
 - g. Syvertsen v. Scotch Plains, 1990 S.L.D. 939, aff’d St. Bd. 1990 S.L.D. 944, aff’d 251 N.J. Super. 566 (App. Div. 1991) – Suit challenging board actions with respect to superintendent’s contract – Board member excluded from closed session discussion of litigation strategy.
 - h. Bd. of Ed. of Barrington v. Heins, 1986 S.L.D. 1009 – Suit against superintendent, board members alleging defamation by superintendent and seeking retraction of board’s censure resolution.
 - i. Brown v. Bd. of Ed. of Newark, 1984 S.L.D. 671 – Sunshine Law suit against board - no personal gain.

2. Interest must be “substantial and material” to be a conflict; see Sea Isle City “direct and personal”
 - a. [Sea Isle City Bd. of Ed. v. Kennedy](#), 196 N.J. 1 (2008). Not all controversies that arise between a local school district and a board member/parent concerning the special education program for the member’s child requires board member removal from office. Removal was necessary here because of the concrete pecuniary aspects of the dispute. See - 393 N.J. Super. 93 (App. Div. 2007), Certification granted by New Jersey Supreme Court, September 7, 2007. Appellate Division affirmed State Board of Education removal of board member who had filed a complaint against the board alleging a violation of a consent order regarding his disabled child. See also [Bd. of Ed. of Sea Isle City v. Kennedy](#), State Board, 2006: January 4, aff’g Commr., 2005:June 30. State Board affirms Commissioner declaratory judgment ruling. Board member, parent of a special education child, who had pending due process claims against the board, had a disqualifying conflict of interest under N.J.S.A. 18A:12-2. “Has an interest of the most **direct and personal nature** in a claim against the board and his dual interest as a board member and a father preclude his continued board membership.” See also School Ethics Commission Advisory Opinion A30-04 - December 2004 - Board member would not violate the School Ethics Act by appealing a Section 504 determination regarding her child and pursuing tuition and legal fees. N.J.S.A. 18A:12-24(j) provides an exception. Board member would violate the Act if she were to participate in discussions and vote on matters involving the Section 504 determination.
 - b. [Bd. of Ed. of Twp. of Cedar Grove v. Tully](#), Commr: 2007:Apr. 30 - Board member removed from board after filing notice of tort claim against board in contravention of N.J.S.A. 18A:12-2. The notice stated that the board member suffered serious and permanent injuries as a result of the Board of Education's failure to properly maintain the seating area around the high school football field.
 - c. [Bd. of Ed. of Borough of Palmyra v. Marinnie](#), 2005 S.L.D. June 8 – Board member whose adult son who lived with him filed a Notice of Tort Claim against the school district disqualified from board membership. Under the particular factual circumstances, the board member had, at the very least, an indirect interest in his adult son’s tort claim against the district.
 - d. [Bd. of Ed. of Borough of Berlin v. Lee](#), 2002 S.L.D. June 14 - Board member who had filed Notice of Tort Claim against the school district disqualified from board membership.
 - e. [In the Matter of Richard Tullo](#), 1999 S.L.D. April 26 - Board member, former employee, had pending workers’ compensation claim against the

district. Disqualifying conflict of interest – accrues to personal benefit, not public interest.

- f. Lawrence Williams, Pres. Bd. of Ed. Boro of Pt. Pleasant v. Steven Ciliberto, 96 N.J.A.R.2d (EDU) 990 – Claim by board against board member for tuition for board member’s granddaughter. Board member removed.
 - g. Taliaferro v. Hawthorne Bd. of Ed., 94 N.J.A.R.2d (EDU) 197 – Board member’s indirect interest in wife’s lawsuit against board disqualified him from board membership. Notice of Tort Claim.
 - h. Bd. of Ed. of Twp. of Holmdel v. O’Connell, 1990 S.L.D. 674 – Notice of claim filed against board incompatible with board membership. Substantial claim for compensatory and punitive damages for alleged intentional assault of minor son while at BOE sponsored football camp.
 - i. Woodstown-Pilesgrove Regional Bd. of Ed. v. Ketas, 1979 S.L.D. 353, rev’d St. Bd. 1980 S.L.D. 1563, aff’d per curiam App. Div. 1980 S.L.D. 1507 – Former board secretary now board member – suit against board for compensatory/punitive damages.
3. Board Candidacy v. Board Membership

Conflicts of interest apply to membership, not candidacy. If conflict may be cured before taking seat, may be sworn in as board member.

- a. Houser, Commissioner, 2007: July 30 - Board member’s spouse’s Workers’ Compensation claim against the school district was an inconsistent interest precluding board membership under N.J.S.A. 18A:12-2. Spouse’s claim existed when the board member assumed office. Commissioner reaffirmed that the provisions of N.J.S.A. 18A:12-2 do not apply to board candidates whose conflict is capable of being cured prior to seating if the candidate is elected. (See Thomas v. Edwards State Board, November 3, 1993) Board and respondent were deemed equally culpable for failing to recognize and resolve the disqualifying conflict prior to respondent’s assumption of office. Commissioner deemed both the Board’s challenge and respondent’s cure to have occurred *nunc pro tunc*, so that respondent’s Board membership could be now validated by an immediate re-administration of his oath of office. Respondent board member was entitled to indemnification of costs, subject to the provisions of N.J.S.A. 18A:12-20 as to accuracy and reasonableness.
- b. Margadonna, 2003 S.L.D. June 2 – Victorious school board candidate who cured any conflicts prior to commencement of her term of office would not be disqualified from board membership. But see, Margadonna, 2003

S.L.D. April 25, decision on motion. Newly elected board member ordered to decide whether to drop her employment claim against the district or not be seated as a board member at reorganization. ALJ suggests but Commissioner does not adopt that N.J.S.A. 18A:12-2 applies to candidacy as well as membership.

- c. Bd. of Ed. of City of Asbury Park v. Solomon, 1995 S.L.D. March 7 – N.J.S.A. 18A:12-2 conflict of interest applies to membership, not candidacy. Candidate may divest herself of interest prior to commencement of term of office. See, in accord
 - Bd. of Ed. of City of Long Branch v. Cooper, 1995 S.L.D. March 8.
 - Madigan v. Bd. of Ed. of Ramapo-Indian Hills Regional School District, 1995 S.L.D. March 8.
 - Battiloro v. Westfield Bd. of Ed., 95 N.J.A.R.2d (EDU) 445.
 - Keratt v. Bd. of Ed. of Carteret, 1995 S.L.D. March 15.
- d. Thomas v. Edwards, 93 N.J.A.R.2d (EDU) 369, aff'd in part, rev'd in part, St. Bd. 1993 S.L.D. Nov. 3 – Disqualification for conflict of interest is on membership, not candidacy.
- e. Rodecker v. Gonzalez, 93 N.J.A.R.2d (EDU) 367 – School board member and municipal counsel position were inherently in conflict; municipal counsel precluded from seeking election to the board.
- f. Bd. of Ed. of Twp. of Howell v. Suchcicki, 93 N.J.A.R.2d (EDU) 157 – Board of education employee who was also union official was not qualified to seek election to school board.

II. Board Policy

- A. NJSBA Code of Ethics – A Policy Statement; See Code of Ethics for School Board Members – N.J.S.A. 18A:12-24.1
 - 1. Bd. of Ed. of Barrington v. Heins, 1986 S.L.D. 1009 – Board member censured by board for violating NJSBA Code of Ethics.
 - 2. In the Matter of the Tenure Hearing of Harry I. Buch, 1977 S.L.D. 95; In the Matter of the Tenure Hearing of Frank J. Napoli, 1988 S.L.D. 221, aff'd St. Bd. 1988 S.L.D. 284 – Board member violations of NJSBA Code of Ethics considered in evaluating tenure charges against district employees.

B. Anti-Nepotism Policies

1. Scola v. Ringwood Bd. of Ed., 1978 S.L.D. 413; Smiencki v. Hanover Twp. Bd. of Ed., 1975 S.L.D. 478 – Board policies discouraging employment of relatives – valid exercise of board’s authority.
 2. Whateley v. Leonia Bd. of Ed., 141 N.J. Super. 476 (Ch. Div. 1976) – Board’s anti-nepotism policy prohibiting employment of a second member of immediate family did not violate Law Against Discrimination.
 3. Wowkun v. Closter Bd. of Ed., App. Div. Dkt. No. A-5427-04T1, decided July 14, 2006 – Appellate Division refuses to enjoin enforcement of board of education anti-nepotism policy barring employment of immediate family members; a term broadly defined in board policy. Reemployment of current non-tenured teacher would be prohibited after marriage to tenured teacher.
 4. 2007 Abbott Regulations – Required nepotism policy with broader definition of “relative,” greater restrictions.
 5. New Jersey Quality Single Accountability Continuum (NJQSAC)
 - a. Governance Component - Ethics Compliance Indicators # 1,2 – No board members or school administrators have been found in violation of the School Ethics Act.
 - b. Governance Component - Ethics Compliance Indicator #5
The school board or advisory board has a nepotism policy in place and takes action in accordance with that policy.
 - c. Governance Component - Standard Board Practices Indicators, School Board/Administration Collaboration Indicators, Communications Indicators – all contain references to provisions of the School Ethics Act.
 6. Accountability Regulations – N.J.A.C. 6A:23A-6.2 – Nepotism
 - a. Definition of “relative”.
 - b. Prohibitions/limitations on hiring/promotion
 - c. Supervision/Negotiations
- C. N.J.A.C. 6A:32-3.2 – Requirements for the Code of Ethics for School Board Members and Charter School Board of Directors Members –
1. Each district board of education and charter school board of trustees shall:

- (a) Discuss the School Ethics Act and the Code of Ethics for School Board Members, pursuant to N.J.S.A. 18A:12-21 et seq., at a regularly scheduled public meeting annually;
 - (b) Adopt policies and procedures regarding the training of district board of education and charter school board of directors members in understanding the Code of Ethics; and
 - (c) Provide documentation pursuant to (b) below that each member of the district board of education or board of trustees has received and reviewed the Code of Ethics.
2. Each member of the district board of education or charter school board of directors shall sign an acknowledgement of receipt of the Code of Ethics for School Board Members contained within N.J.S.A. 18A:12-21 et seq. This acknowledgement of receipt requires each district board of education member and charter schools board of trustees member to read and become familiar with the Code of Ethics.
 3. NJQSAC – Governance Component – Ethics Compliance Indicator #3

III. School Ethics Act, N.J.S.A. 18A:12-21, et seq., effective 4/15/92.

A. Key Terms, N.J.S.A. 18A:12-23; N.J.A.C. 6A:28-1.2

1. School officials: board members, school administrators, NJSBA professional employees or officers, charter school trustees
2. Interest: 10% ownership or control in business
3. Member of immediate family: spouse or dependent child residing in the same household
4. Relative: spouse, natural or adopted child, parent or sibling
5. Related to school official by marriage: mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law.

B. School Ethics Commission

1. Composition - N.J.S.A. 18A:12-27
 - a. Nine-member board appointed by the governor.
 - b. Consists of two board members, two school administrators, and five members who are not school officials. No more than five from same political party.
 - c. Members serve for 3-year terms, serve at pleasure of governor.
2. Authority of Commission - N.J.S.A. 18A:12-28

- a. Issue advisory opinions
 - b. Receive complaints
 - c. Receive and retain disclosure statements
 - d. Conduct investigations and hold hearings
3. Procedures before the Commission - N.J.S.A. 18A:12-29
Commission review, probable cause, written decision, sanctions
- a. Advisory Opinions - N.J.A.C. 6A:28-5.1 et. seq.
 - b. Filing Service and Review of Complaint – N.J.A.C. 6A:28-6.1 et. seq.
 - c. Appeals – N.J.A.C. 6A:28-8.1 et. seq.
4. Frivolous Complaints – may impose \$500 fine
- a. In the Matter of Melindo Persi, Docket No. C29-96 – March 25, 1997.
 - b. Doty v. Friedberger, et al., Docket No. C22-03 – August 26, 2003.
 - c. Doty v. Giarratano, et al., Docket No. C25-03 – September 23, 2003.
 - d. Atallo v. Johnson, Docket No. C34-03 – February 24, 2004.
 - e. Guinta v. O’Dowd, Docket No. C45-05 – March 28, 2006.
 - f. Guinta v. Trubin, Docket No. C46-05 - March 28, 2006.
- C. Requirements for School Officials
1. Board Member Training by NJSBA - N.J.S.A. 18A:12-33,
N.J.A.C. 6A:28-4.1 et. seq.
- a. Newly elected or appointed board member - first year, first term
 - b. P.L. 2007 c. 53, aka A-5. Heightened training requirements
 - (1) First year, first term must include NJQSAC training
 - (2) Years two and three of board member’s first term – school district governance training.
 - (3) First year, reelected or reappointed term – advanced training – relevant changes in NJ School Law and other appropriate information.
 - c. Training Cases - Penalties
 - (1) Failure to go to training
 - (a) removal
 - (b) suspension for two to three months or until training completed, removal if failure to attend
 - (c) continued board service with removal if failure to attend October training – non-operating district

(d) continued board service with removal if failure to attend October training – unable to attend weekend training for religious reasons.

(2) Late training - suspension from next regularly scheduled board meeting; reprimand for delay – wasted administrative and adjudicative time

2. File Annual Disclosure Statements

a. Annual Personal/Relative Disclosure Statement
N.J.S.A. 18A:12-25, N.J.A.C. 6A:28-3.1

b. Annual Financial Disclosure Statement –
N.J.S.A. 18A:12-26, N.J.A.C. 6A:28-3.1

c. Filing Deadlines – April 30 of each year or 30 days after taking office

d. Procedures

(1) Duties of Board of Education – N.J.A.C. 6A:28-3.2

(2) Procedures in the event of failure to file – N.J.A.C. 6A:28-3.3

(3) Procedures in the event of incomplete filing – N.J.A.C. 6A:28-3.4

e. Penalties

(1) Failure to file – removal

(2) Failure to file or filing of “scantily completed” form – 30 day suspension, removal if completed form not filed within 30 days.

(3) Late filing

(4) School administrators - suspension without pay 1-3 days

(5) Board member - suspension - one month

(6) Board member – reprimand - admonished for delay – wasted administrative and adjudicative time

D. Decisions of the School Ethics Commission
School Official Code of Conduct N.J.S.A. 18A:12-24

1. Negotiations – General Parameters

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

b. In-district

(1) Relatives (spouse, child, parent, sibling) in bargaining unit – **may not participate in negotiations** A16-00

(2) Spouse, dependant child, emancipated child, son-in-law, daughter-in-law, brother, fiancé, sister in bargaining unit - **may not participate in negotiations**

- (3) Sister-in-law – relatives in other units - **may participate in negotiations**
 - (4) Other bargaining units – same statewide union – no linkages, same as out-of-district same statewide union affiliation conflict.
- c. Out-of-district
- (1) Same statewide union affiliation - immediate family members only - **may vote on contract absent other conflicts, may see and discuss contract. Tentative agreement line of demarcation, may not participate before.** See, A02-00, A14-00.
 - (2) Same statewide union affiliation - emancipated children, son-in-law, sister - **may fully participate in negotiations**- caveat - must consider other conflict possibilities See A19-05, July 2005. See A14-02, Brother-in-law.
- d. Negotiations process
- (1) Advisory Opinion A16-96 – beginning to end and beyond
 - (2) Advisory Opinion A22-98 - grievance proceedings
- e. Doctrine of Necessity - School Administrators, Board Members. See School Ethics Commission Resolution on adopting the Doctrine of Necessity. <http://www.nj.gov/education/ethics/don>
- f. Appointment of Negotiations Team – A01-01 Board president with spouse receiving benefit of contract may appoint. A16-01 Non-conflicted members on team.
- g. Appointment of Negotiations Attorney. Board president did not violate the School Ethics Act when he appointed the board attorney as the “lone” negotiations committee for the board. Board passed resolution appointing the negotiator. C38-03, 2/24/04 Cherepski, Amistad, Avita, et al./Carteret
- h. Board President with spouse in district OK to sign retainer agreement with negotiations law firm, collective bargaining agreement and payroll certification for negotiator. A19-03 – August 2003. Did not vote on appointment of law firm.
- i. Local Education Association Endorsement – Advisory Opinion A13-02, November 2002; C34-02, 1/28/03 – Friedenberger, et al./Rockaway Twp; C40-02, 1/28/03 - Friedenberger, et al./Rockaway Twp.

- j. Board member, receiving family health benefits through spouse who was district employee, did not violate the Act. – A28-04 –September 2004
 - k. Retired members of NJEA can serve on negotiations team. A33-04 – August 2004
 - l. Recent Negotiations Decisions/Opinions 2005-2008
 - (1) A19-05 – July 2005 - Board member, whose sister is a teacher in another school district and is a member of the same statewide union with which the board negotiates, would not violate N.J.S.A. 18A:12-24(c) by participating in negotiations with the local education association.
 - (2) A34-07 – February 2008 – Clarifies prior [AOA14-00](#). The SEC had previously advised that board members who are conflicted from negotiating, but not conflicted from voting, may fully participate on any outstanding issues where the Memorandum of Agreement includes salary guides and total compensation. SEC clarified by indicating that if the Memorandum of Agreement does not include salary guides and/or compensation, such board members should not discuss or vote on outstanding issues.
2. Personnel Issues
- a. General Parameters
 - (1) May not vote on individual with whom you or member of immediate family have a direct or indirect financial involvement that might reasonably be expected to impair your objectivity or independence of judgment.
 - (2) May not vote on individual with whom you or member of your immediate family have a personal involvement that is or creates some benefit to the school official or a member of his immediate family.
 - (3) In district employment - spouse, son, daughter, brother, son-in-law, sister-in-law, business partner, person for whom served as campaign manager/treasurer, attorney who did personal work for board member, auditor whose employee served as campaign treasurer – may not participate in discussions or vote. See Davis, Jackson/Camden, 2003 S.L.D. February 27, attorney; Pettinelli/Alpha, 2004 S.L.D. September 8, brother/teacher.
 - (4) Out-of-district union affiliation only - no prohibition on direct votes – teachers/administrators. See A09-96, A53-95.

- (5) No violation of Code of Ethics when board members voted against CSA recommendation for teacher reappointment. C35-02, 2/25/03 Central Regional; principal reappointment C25-03, 9/23/03, Giarratano, Smith and Salny/Rockaway; administrative secretary C39-04, 2/7/05 Calvo/Union City. See series of School Ethics Commission complaint dismissals, Atlantic City cases December 2006.
- (6) Doctrine of Necessity properly invoked to hire city councilman as long-term substitute teacher. C26-03, 11/25/03, Herzog, Small, Gallagher, et al./Atlantic City. See SEC Resolution on Invoking the Doctrine of Necessity.
- (7) Participation in superintendent/supervisor selection, evaluation, employment decisions. See A10-00, Rosevear; A30-05, March 2006; A07-06, July 2006, A14-06 SEC 2006: Oct. 19, A23-06, SEC 2006: Nov. 16, A06-08, SEC 2008:June 10.

b. Recent Personnel Decisions/Opinions 2006-2008

- (1) C02-06, 7/25/06, Palumbo/Black Horse Pike Regional - Board member did not violate the Act when he attended an executive session meeting where his brother's hiring as cafeteria manager was allegedly discussed. No evidence was presented that brother's employment was discussed in executive session or that board member exerted influence over the hiring. The board member did not vote on his brother's hiring.
- (2) A31-05 - February 10, 2006 – Board member, employed as a police officer in the school district city, would violate the N.J.S.A. 18A:12-24(a) and (d) if she were to be appointed by her employer as the district's School Resource Officer and maintain her seat on the board. In addition, she could violate N.J.S.A. 18A:12-24.1(c) and (j) due to her extensive contacts with students and staff.
- (3) A30-05 - March 10, 2006 – Board members whose spouses were instructional associate and secretary would violate N.J.S.A. 18A:12-24(c) of the School Ethics Act if they were to participate in evaluations, personnel actions and compensation for the principals who supervise the spouses, the Director of Elementary Education (instructional associate spouse only) and the superintendent of schools. SEC advised board members to recuse themselves and not to participate in any discussions regarding the above matters. See A10-00, Roosevear.
- (4) A07-06 – July 31, 2006 Board member with spouse, teacher's assistant in the district, directly supervised by the principal, supervised by the assistant superintendent and superintendent, and indirectly supervised by four assistant principals, 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 supervises the board member's spouse's supervisor, is *familiar* with the spouse and is a candidate for superintendent.
- (5) [A14-06 SEC 2006: Oct. 19](#) Board member would not violate [N.J.S.A. 18A:12-24\(c\)](#), if he or she were to participate in discussions and votes on the employment and compensation of the superintendent and building principals since his or her spouse serves as needed as an on-call substitute teacher.
 - (6) [A23-06, SEC 2006: Nov. 16](#) SEC advised four board members who have various family members and/or relatives working in the district whether or not they would violate [N.J.S.A. 18A:12-24\(c\)](#) by participating 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. See also [Advisory Opinion A30-05](#) and [Advisory Opinion A07-06 A30-07, SEC 2008:Jan. 11](#) SEC advised that a board member whose spouse was employed as a security guard could not participate in the search for or hiring of a district superintendent if the current director of education became a candidate for superintendent. Director had indirect supervision over spouse.
 - (7) A06-08 – SEC 2008:June 10 SEC advised that a board member would violate [N.J.S.A. 18A:12-24\(b\)](#) if he were to participate in the evaluation of the Superintendent where, prior to his becoming a board member, his employment with the district was terminated as a result of a decision made by the Superintendent. But see [Schwenger and Knorr](#), SEC 2000:Jan. 31.
 - (8) SEC dismissed allegations that board member administered the schools; failed to refer matters for an administrative resolution, or failed to support and protect school personnel in the proper performance of their duties where he merely questioned an administrator, albeit, in a demanding tone. [Jackson, SEC, 2008: April 1.](#)
 - (9) SEC dismissed a complaint alleging various violations of the Code of Conduct for School Board Members where board president allegedly violated the Open Public Meetings Act, by conducting “secret meetings” to discuss public matters and the School Ethics Act by voting to approve the appointment of the board member's employer as the designated depository for school funds. [Mitchell](#), SEC, 2008:April 1.
 - (10) Board member recused herself from closed session regarding employment interview of live-in fiancé. No violation of the Act found. Should leave the room for all aspects of interview and deliberations in future. [Harris](#), SEC 2008:May 27.

- (12) School officials who are not board members are not subject to N.J.S.A. 18A:12-24.1. Gass, SEC 2008:May 27.
- (13) 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.
- (14) SEC found no violation of the School Ethics Act, where board president conducted e-mail conversation with board members based upon the board's concern with the superintendent's attendance. SEC lacked jurisdiction to determine whether a *Rice* notice should have been issued to the superintendent. Monillas v. Gabauer, SEC, 2008: July 22.
- (15) SEC found no personal involvement that created a benefit to a board member where 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.

3. Political Involvement

a. General Parameters

- (1) Acceptance of political contributions without intent to influence permitted. N.J.S.A. 18A:12-24 (e); C06-98, C08-98, 9/22/98 – Malik, Vasil/Toms River
- (2) Soliciting political contributions – from vendor's employee violated the Act – Ferraro/Keansburg, 2002 S.L.D. Sept. 23; Gallagher/Keansburg, 2002 S.L.D. Nov.6; Keelen/Keansburg, 2003 S.L.D. Sept. 22
- (3) Greater political involvement can violate the Act – campaign manager/treasurer principal candidate, Famularo/Asbury Park, 1998 S.L.D. March 16; auditor's employee served as campaign treasurer, Longo, Sedaghi/Toms River, 1999 S.L.D. March 4, aff'd St. Bd. 1999 S.L.D. July 9; appropriating school district mailing labels containing student information in order to mail mayoral campaign literature, Russo/Hoboken, 2002 S.L.D. April 18; surrendering independence of judgment to local education association which had endorsed candidacy; private

food service vendor Kroschwitz II and Sturgeon/Hamilton, 2003 S.L.D. December 19.

4. Code of Ethics for School Board Members – N.J.S.A. 18A:12-24.1
Violations Found 2006-2008
 - a. Commissioner ordered reprimand of board member who made an ethnically derogatory comment about a student created project that was a fulfillment of the core content curriculum standards. Reprimand ordered as board member left the board before the resolution of the matter before the School Ethics Commission. Jackson, Commr. 2006: Jan. 24.
 - b. Commissioner reprimanded ESC board member who voted to award contract to county technical institute where she was employed as superintendent. Lobosco, Commr. 2006: Jan. 10.
 - c. Commissioner ordered censure of board member who administered the schools by instructing staff regarding their job duties and who failed to refer a parent complaint to the chief school administrator. Lahn, Commr. 2006: Jan. 23.
 - d. Two month suspension upheld for board member who violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members when she took private action in confronting a member of the public in a verbal and physical manner regarding his comments during the public comment session at a board meeting. Talty and Kight, Commr. 2005:March 1. Affirmed State Board 2006: November 1
 - e. Board member violated the School Ethics Act by taking private action that could compromise the board, signed an inaccurate certification that was submitted to the School Ethics Commission. SEC recommended penalty of censure, Commissioner agreed. Chiego, Commr. 06:June 16, reversed and remanded, State Board 2007: August 1
 - f. Board members violated the School Ethics Act when they met with officers of the teachers association without knowledge of the board or superintendent; failed to confine board action to policymaking, planning and appraisal; failed to carry out their responsibility not to administer the schools and to work with their fellow board members to see that the schools are well run. SEC recommends one-month suspension for one board member, censure for the other. Commissioner agrees. Gartland and Picardo, Commr. 2006:June 12.
 - g. Board member sent an email to the superintendent, criticizing the superintendent's handling of a matter involving the board member's spouse and asking for an accounting of the superintendent's personal

leave, copying the entire board of education. The email was sent to the superintendent just hours before a scheduled disciplinary hearing. The SEC accepted the conclusions of the Administrative Law Judge and found that the board member violated N.J.S.A. 18A:12-24 (b) and (c) of the Code of Conduct and N.J.S.A. 18A:12-24.1 (c) and (i) of the Code of Ethics for School Board Members. The SEC recommended a three month suspension for the board member. Commissioner found recommended penalty to be inconsistent with prior penalties and found that one-month penalty was the appropriate sanction. [Kanaby, Commr. 2007:Sept. 10, State Board affirmed SEC determination.](#)

- h. Board member threatened a member of the public with profanity at as board meeting, a private action that could compromise the board, violating N.J.S.A. 18A:12-24.1 (e). Any time a board member reacts in a threatening manner toward a member of the public attending a board meeting, it has the potential to compromise the board. The threat was also one of the most egregious violations of the public trust that a board member could commit. State Board rejected Commissioner penalty of three months suspension and imposed SEC recommend one year suspension. [Atallo, State Board 2008:March 19, Stay of penalty denied: State Board 2008:April 16. See Commissioner 2007:Oct. 25.](#)
- i. 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.](#)
- j. 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.](#)
- k. 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(c) 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.](#)
- l. School Ethics Commission determined that board member violated School Ethics Act when she confronted the superintendent after a board

meeting and had to be restrained by other board members. The instigation of the confrontation was significantly beyond the scope of a board member's duties. SEC recommended censure where board member was no longer on the board at the time of decision.

Commissioner adopted penalty recommendation. [Grimsley, Commr., 2008: Feb. 19.](#)

5. Miscellaneous Issues – Recent Decisions/ Opinions 2006-2008

a. Advisory Opinions

- (1) A30-04 - December 2004 - Board member would not violate the Act by appealing a Section 504 determination regarding her child and pursuing tuition and legal fees. Board member would violate the Act if she were to participate in discussions and vote on matters involving the Section 504 determination. [N.J.S.A. 18A:12-24 \(j\)](#) provides exception.
- (2) A02-06 – March 10, 2006 Board member would not violate [N.J.S.A. 18A:12-24.1\(e\)](#) or (g) if he were to send a letter to the editor expressing his opinion about the budget as long as he does not hold himself out as a board member, to indicate that the opinion is his and not that of the board, and the information therein is accurate and not confidential.
- (3) SEC clarified advice given in [A02-06](#) and advised that a board member would not violate [N.J.S.A. 18A:12-24.1\(e\)](#) or (g) by sending a letter to the editor expressing his opinion about the budget as long as, in the letter, he identifies himself as a board member and indicates that the letter is not authorized by nor written on behalf of the board, and he provides accurate, non-confidential information, and he ensures that his private action does not compromise the board. [SEC Advisory Opinion A03-07, 2007: Apr. 2.](#)

b. Complaint Dismissals

- (1) Complaint dismissed alleging violation of [N.J.S.A. 18A:12-24.1\(g\)](#) when board member mentioned possible job opening to potential candidate and suggested resume be sent to district. No disclosure of confidential information found. Request for sanctions denied. [Corby, SEC 2006: Nov. 28](#)
- (2) Complaint dismissed alleging violation of [N.J.S.A. 18A:12-24.1\(e\)](#) where board member sent letter to the local newspaper. Board member did not set forth any inaccurate information in her letter nor did she purport to be speaking for the board in her letter, substantially following the dictates of *Advisory Opinion A02-06*. [Mueller, SEC 2006: Nov. 28.](#)
- (3) Board member did not violate the Code of Ethics for School Board Members when, as chair of the negotiations committee,

- he called other board members seeking their input into negotiations. SEC has no jurisdiction over possible OPMA violations. [Pethick](#), SEC: 2007: March 27.
- (4) Board member did not violate the Code of Ethics for School Board Members when a press release was issued misrepresenting the district budget. Although information provided by the respondent did not rise to the level of being inaccurate, the Commission cautions that when a board member provides such specific information in a letter to the editor, he or she may be challenged about the information when it does not comport with the understanding of other board members. Further, the listing of a board member's name and status as a board member on a candidate's flier and website as an endorsement of the candidate does not rise to the level of a violation of the School Ethics Act. Request for sanctions denied. [McCurdy](#), SEC 2007: April 24.
- (5) Board member's letter to the editor, critical of the administration, did not rise to the level of administering the schools and was not a complaint; it was merely his personal opinion which was shared with the public. [Delbury](#), SEC 2007: June 26
- (6) School Ethics Commission dismissed a complaint alleging that a board member surrendered her independent judgment to special interest or partisan political groups where she left a board meeting, allegedly at the request of the city council president. No evidence that this action, if in fact true, was connected to any special interest or partisan political groups. [Currie, SEC, 2008: April 1.](#)
- (7) Board member did not violate the School Ethics Act when she wrote a letter to the editor and appeared at a PTO meeting. [Kolupanowich](#), SEC 2008: June 24.
- (8) Board member who wrote letter to the editor which included references to complainant did not violate the School Ethics Act. While comments were "unfortunate" they did not compromise the board. [Gearity](#), SEC 2008: June 24.
- (9) SEC determined that board member who wrote a letter to two local newspapers alleging that a rival candidate for board office mishandled campaign funds did not violate the Act or Code of Conduct. SEC specifically held that [A03-07](#) clarification applies only to letters to the editor written by board members about matters that have been before for the board for consideration. [Rukenstein v. Karp, SEC, 2008: July 22.](#)
- (10) SEC found no probable cause to credit allegations that board member, who was also a candidate for board office, used his official position to secure unwarranted privileges or advantages in violation of *N.J.S.A. 18A:12-24(b)* where board

member/candidate used the district's automated call system to remind voters to vote on election day. [Discenza, v. Quist, SEC 2008 : August 26.](#)

- (11) SEC granted respondent's motion to dismiss a complaint alleging various violations of the [School Ethics Act](#). The SEC determined that allegations relating to allegedly false statements made at a public meeting and alleged policy violations were not within its jurisdiction. No evidence of a final decision from a court or administrative agency finding that respondent failed to enforce all laws, rules, and regulations of the State Board of Education, and/or court orders pertaining to schools. [Demetrakis v. Kellar-Jackson, SEC 2008: August. 26.](#)
- (12) SEC determined that board member's Open Public Records Act request did not violate the [Code of Ethics for Board Members](#), did not compromise the board, and did not violate board member's duty to confine his actions to policy making, planning, and appraisal. [Noll v. Mott, SEC, 2008: Sept. 23.](#)

c. Violation Found

- (1) SEC found that board member had a personal conflict of interest where he voted to approve payment to the charter school that employed him as a principal. SEC recommended that the Commissioner issue a reprimand against the board member. Commissioner agreed. [I.M.O. Stewart, Atlantic City Bd. of Ed., Comm'r, 2008: October 9.](#)

E. Superior Court Interpretations of the School Ethics Act

1. [DeSimone, et al. v. The New Jersey School Ethics Commission](#) – App. Div. unpub. op. Dkt. No. A-6647-93T2, Feb. 29, 1996. Advisory Opinions are not final agency decisions and are not applicable.
2. [Friends Retirement Concepts v. Somerville Bd. of Ed.](#), 356 N.J. Super. 203 (Law Div. 2002) Board members violated the School Ethics Act by voting on field and lighting proposal. Resolution declared invalid. One member was also recreation commissioner, the other's spouse was president of local baseball league that would likely use the field.
3. [Magnolo v. Washington Twp. Bd. of Ed.](#), App. Div. unpub. op. Dkt. No. A-2549-03T5, April 20, 2005 – Conflict of interest deemed moot as board voted a second time without board member's participation.