



# New Jersey School Boards Association

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## **BOARD GOVERNANCE - LEGAL ISSUES – 2014**

NJSBA Legal Department

### **I. Meetings: Frequency, calling and canceling**

**A.** N.J.S.A. 18A:10-6. Board must meet at least once every two months during the period in which schools are in session. Meeting must start not later than 8 p.m. but if no quorum, may recess until 9 p.m. If no quorum, may adjourn to day not more than seven days following original date. Public announcements must be in accordance with the Open Public Meetings Act (Sunshine Law). Public notice must include the date, time, location, and purpose(s) of the special meeting.

**B.** The board secretary gives notice of all regular or special meetings to the board members. N.J.S.A. 18A:17-7

**C.** Board secretary has duty to call a special meeting whenever: requested by the president of the board; requested by the chief school administrator when the district board of education fails to meet within two months during the period in which the schools in the district are in session; or whenever the board secretary is presented with a petition signed by a majority of the full membership of the board requesting the special meeting. N.J.A.C. 6A:32-3.2

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.

- D. Law does not address how to cancel a meeting. Presumably, board president has ability to cancel the meeting, or by petition signed by majority of board. Notice requirements of Sunshine Law should be followed; however, if not possible because of emergency such as snow, best efforts should be made to provide notice, and notice of cancellation should be placed on door.
- E. Open Public Meetings Act and Technology—Can the board meet through the use of a telephone conference call or other technology? See, [Open Public Meetings Act and Technology](#) (7-01)
- F. Boards of education, like municipal governing bodies, are required to set aside a portion of every meeting of the board for public comment on any governmental or school district issue that a member of the public feels may be of concern to the residents of the school district. The board may determine the length of the portion. [N.J.S.A. 10:4-12](#).

**II. Organization:** [N.J.S.A. 18A:10-3, 4, 5](#)

- A. For districts with April elections, organization must be held at regular meeting not later than 8 p.m. on any day of the first or second week following the annual school election.
- B. In districts with appointed boards, organization takes place on May 16 or on the following day if that day is Sunday.
- A. For districts with November elections, organization must be held not later than 8 P.M. on any day of the first week in January. The Department of Education has interpreted that to require organization take place between January 1 and January 7.
- B. If no quorum, must take place within three days thereafter.  
Constitutes regular meeting for transaction of business
- C. If the organization meeting cannot take place during this period due to the lack of a quorum or for any other reason, the organization meeting shall be held within three days thereafter .

New members “shall take office” at organization meeting; prior to taking office board member shall be sworn in. In the case of a Type I school district the oath shall be filed with the clerk of the municipality and in all other cases it shall be filed with the secretary of the board of education of the district. [N.J.S.A. 18A:12-2.1](#).

[N.J.S.A. 41:2-1](#) Oath may be taken by state and municipal judges, mayors, surrogates, county clerks, municipal clerks and clerks of board of chosen freeholders, sheriffs, members of 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. 18A:17-11 The board secretary may administer oaths in relation to the school matters of the district in which he is employed.

May be taken out of state by notary of state where taken. N.J.S.A. 41:2-17.  
Recital of notary's designation should be included in certificate of oath with official designation/seal next to signature, is proof.

Ethics opinion: No violation for being sworn in by attorney who is a friend.  
Lester, C17-97, 3/30/97.

**D.**

- E.** Election of vice president, president takes place at organization meeting- N.J.S.A. 18A:15-1. "Shall serve for one year and until their respective successors are elected and shall qualify." If board fails to elect officer at organization, county superintendent appoints.  
See, also N.J.S.A. 18A:13-12 (regional school districts "who shall serve until the organization meeting next succeeding the election of their respective successors as members of the board")

Martello v. Willingboro Bd. of Ed., 1975 S.L.D. 1025

- ☉ Where there are more than two candidates, a plurality of votes suffices.
- ☉ When board fails to elect officer at organization meeting, it loses its authority to elect at a later meeting.

Duties of board president: signs warrants in payment, along with board secretary N.J.S.A. 18A:19-4, N.J.S.A. 18A:49-5; certifies payroll N.J.S.A. 18A:19-9. Other duties as set forth in bylaws, policy, *Roberts Rules* (e.g., may help develop agenda, spokesperson for board, makes sure meetings run efficiently.)

- F.** Removal of vice president, president. N.J.S.A. 18A:15-2

May be removed by majority of board if refuses to perform duty imposed by law.

If office or president or vice president becomes vacant, board must fill vacancy within 30 days; if not, county superintendent shall fill for unexpired term.

The board may appoint a temporary officer to act during the absence, disability or disqualification of the officer.

Succession to office – Board policy, *Roberts Rules* – If no policy, vice president succeeds to office. N.J.S.A. 18A:16-1.1.

**G. What can a lame duck board vote on?**

Nowak v. Manville Bd. of Ed., 1976 S.L.D. 43. Only routine administrative matters (confirmation of purchase orders, filling of known teaching vacancy, approval of use of facilities). Cannot bind future board in matters such as awarding stipends or salary increments for the succeeding school year, fixing salaries of principals, superintendents, board secretary for succeeding school year, making appointments to positions in which no known vacancies exist. (Note: Case involved short lame duck period that existed in April election; query how this ruling may apply during long lame-duck period when school elections take place in November with swearing in not until January.)

**H. Committee members: appointment; removal.**

Not expressly addressed by 18A. Board should follow own bylaws. Bylaws may require board president to appoint.

*Roberts Rules* says that unless the bylaws require committee member to serve until successor is chosen or for a fixed period, then committee members may be removed by board president if president appoints the committees. If committees are formed by vote of the body, the body may remove as motion to rescind or amend.

Providing due process (notice and informal hearing), may insulate decision to remove from challenge.

**G. [FAQ on Board Organization 2013-2014](#)**

**III. Removal of board members by the board.**

- A.** Removal of board members by the board for missing three consecutive meetings. N.J.S.A. 18A:12-3 states that a board member who “*fails to attend three consecutive meetings of the board without good cause may be removed by it.*”

🌐 Includes all meetings (special, regular, emergency)  
Berg v. Blackhorse Pike Regional School District, 1981 S.L.D. (March 3).

- B.** Board member must be given opportunity to present evidence to the board as to whether the board member had good cause for missing the meeting. Shamong Bd. of Ed. v. Chwastek, 1985 S.L.D. ( July 8).

- ⊕ Board of education makes determination of good cause. Board member may appeal that decision to the Commissioner of Education. Won't be overturned unless arbitrary and unreasonable.
- ⊕ Commissioner has noted that the law is not clear regarding whether a board member who has been removed by the board must justify a good cause for all of the meetings missed, or only for one that would break the chain of consecutive meetings. Smith v. Hazlet, 1999 S.L.D. (March 8), withdrawn 1999 S.L.D. (August 18).

### C. Decisions

1. Cohen v. Durr, 2001 S.L.D. (June 22), decision on remand from 2000 S.L.D. (Dec. 28). Board member undergoing divorce found to be *bona fide* resident and qualified as board member under N.J.S.A. 18A:12-2 even though he does not always stay overnight at the marital home. No evidence of intent to change residence.
2. Settle v. Pennsville Bd. of Ed. and Pennsville Education Association, 2001 S.L.D. (April 26). Commissioner is without jurisdiction to determine whether the board could consider a grievance filed by the association seeking the removal or discipline of a board member for her involvement in a dispute over a student's grade because Commissioner has no authority to interpret collective bargaining agreements. Moreover, Commissioner has no jurisdiction to address alleged Open Public Meetings Act violations since alleged violations not ancillary to a school law issue.
3. Bd. of Ed. of the Borough of Berlin v. Lee, 2002 S.L.D. (June 14)

Board member who filed Notice of Tort claim against the school district disqualified from board membership. Board filed Declaratory Judgment action.

### D. See NJSBA policy, File Code 9114

Supports amending law to allow boards to remove board members for failure to attend 2/3 of the meetings annually, without good cause.

## IV. Resignation of Board members

### A. What is required for a board member to effectively resign?

A board member cannot be compelled to serve. Therefore, if a resignation is clearly communicated to and received by a board, it is effective, even without a formal vote by the board and even if the board's ordinary practice is to vote on resignations. Silberstein v. Lakewood Bd. of Ed., 1990 S.L.D. 491.

**B.** Can a board member rescind his resignation?

Yes, but only before the resignation becomes effective. Once it is clearly communicated and received by a board, a vacancy has been created. The board may fill the vacancy as provided for in statute. (see Section V)

**V. Filling board vacancies** N.J.S.A. 18A:12-15

**A.** How are they filled?

In most cases, a vacancy is filled by a majority vote of the remaining members of the board after the vacancy occurs. The board has 65 days to fill the vacancy; if it does not meet deadline, county superintendent will fill vacancy.

Exceptions:

1. Filled by county superintendent if caused by absence of candidates or by removal of member for lack of qualifications.
2. Filled by county superintendent if quorum is lacking because of vacancies
3. Filled by special election if tie in annual election - within 60 days of school election - restricted to those candidates. If tied again, filled by county superintendent.
4. Filled by special election if failure to elect at school election due to improper election procedures - within 60 days of school election, restricted to same candidates. If tied again, filled by county superintendent
5. Filled by Commissioner if failure to elect due to improper campaign practices.

**B.** How long does a board member serve, who is appointed to fill a vacancy?

It depends on when the vacancy occurs:

*On board with April elections:* If vacancy occurred within the 60 days immediately preceding election, to fill a term extending beyond such election, the appointee serves until organization meeting following the second annual election. The remainder of the term is filled at the second annual election.

If vacancy occurred prior to the 60 days immediately preceding election, serves only until organizational meeting following next election. Remainder of term if any, is filled at that next election.

*On board with November elections:* If vacancy occurred after third Monday in July, to fill a term extending beyond the next election, the member so appointed shall serve until the organizational meeting following the second annual election. The remainder of the term is filled at the second annual election.

If the vacancy occurred prior to the third Monday in July, serves only until the organizational meeting following the next election. Remainder of term, if any, is filled at that next election.

**C.** What procedures must a board follow in filling the vacancy?

Procedures are established by board policy. Policy issues to be considered include advertisement, solicitation of resumes, interviews, deliberations, OPMA issues.

**VI. Board voting**

**A.** All actions require a majority vote of the quorum, unless a particular statute requires a greater number of votes.

See, [Voting Requirements for Board Members](#) (10-09)

Some examples:

*Majority of the quorum:* Examples: Vote to ratify a collective bargaining agreement, adopt policy, approve bills.

*Majority of the full membership of the board:* Vote to appoint teachers and administrators, to adopt the budget, and to withhold the increments of a teaching staff member.

**B.** Board may not require supermajority vote unless statute specifically provides; thwarts will of majority to require a greater vote than required by statute. [Matawan Teachers Ass'n v. Bd. of Ed., 223 N.J. Super. 504 \(App. Div. 1988\)](#)

However, there have been rulings in which a supermajority vote has been required even without explicit statutory authority in matters involving Superintendent personnel issues. See, [Negron v. Board of Education of South Plainfield](#), No. A-4406-10T1, 2012 N.J. Super. Unpub. LEXIS 2634, (App. Div. December 3, 2012)(extension of contract); [Caffrey v. Perth Amboy, Commissioner](#), May 8, 2012 ( administrative leave)

- C. In sending- receiving districts, the sending representative may vote only on certain matters. (see, Section VII below.)

The number of board votes required to pass a motion will be based on the number of members eligible to vote on a particular matter, which may or may not include the sending representative (s).

## VII. Sending Representation on Receiving Board

- A. N.J.S.A. 18A:38-8.2
- B. Special legislation N.J.S.A. 18A:38-8.4 (Ocean City/Upper Township)
- C. English v. Boonton Bd. of Ed., 301 F.3d 69 (3<sup>rd</sup> Cir. 2002). United States Court of Appeals for the Third Circuit rules that the statutory representational voting scheme was not unconstitutional as applied to the sending-receiving relationship between the Lincoln Park and Boonton boards. Under the statutory scheme, Lincoln Park was entitled to one representative on the Boonton Board, although it provided 52% of the high school's combined student population and 56 % of the combined resident population of the two towns during the 2001-02 school year.

The Court held that New Jersey has legitimate reasons (e.g., possible severance of the relationship; lesser vested interest in the long-term affairs of the Boonton school district; agenda items affect schools not attended by Lincoln Park's students) for limiting the representation of Lincoln Park in the Boonton Board's decisions

This case reverses a federal district court's earlier determination that the statute, as applied to the Lincoln's representation on the Boonton Board, violates the constitutional principle of "one person, one vote." See, English v. Boonton Bd. of Ed., 135 F.Supp.2d 588 (D.N.J. 2001). See also, English v. Boonton Bd. of Ed., 161 F. Supp. 2d 344 (D.N.J. 2001) wherein the federal district court established a two-tiered voting structure, under which the sending district would have 4 representatives, each with 2.5 votes; on high school issues the sending district would have the majority of votes under a weighted voting scheme. Remedy to remain in effect until New Jersey Legislature amends the statute. Stay granted – Court of Appeals 9/24/01.

- D. Branchburg Bd. of Ed. v. Board of Education of Somerville, No. 98-5557 (AET) (Consol.) (D.N.J. September 7, 2000) New Jersey's formula for sending districts' voting representation on receiving district boards of education is unconstitutional as applied to the sending-receiving relationship between the Somerville and Branchburg Township boards. Court asks that within 60 days Commissioner recommend a constitutionally permissible manner for resolving the problem, until Legislature formulates a legislative solution.



*See, also, Branchburg Bd. of Ed. v. Bd. of Ed. of Somerville, et al.*, Nos. 98-5557 (AET) and 99-822 (AET) (Consol.) (D.N.J. May 22, 2001). The Commissioner failed to recommend a constitutionally permissible manner for resolving the voting representation problem nor could the parties reach a standstill agreement. Court ordered remedial plan be implemented whereby Branchburg would appoint six (6) members to the Somerville Board, each with one vote, giving Branchburg control of 40% of the votes on matters affecting their high school students while enabling Somerville to maintain a majority vote. Somerville's motion to stay the remedial plan was denied because Somerville maintains majority vote and may continue to operate the district. No irreparable harm demonstrated. Appealed to Third Circuit Court of Appeals. The parties were asked to submit briefs on the question of whether the Third Circuit's ruling in English v. Boonton (above) should be followed.

Branchburg Bd. of Ed. v. Bd. of Ed. of Somerville, et al., 312 F.3d 614 (2002). Third Circuit Court of Appeals rules that English does apply regardless of whether or not district can withdraw from sending-receiving relationship. Court determines that the interim relief that was granted was improper as the send-receive statute was a rationally-based constitutional statute.

### **VIII. Voting in sending-receiving districts**

- A. Sending district's representative is permitted to vote on the following items listed in N.J.S.A. 18A:38-8.1
1. Tuition charged to sending district, and bill lists or contracts for purchase, operation or maintenance of facilities, equipment and instructional materials to be used in the education of the pupils of the sending district.
  2. New capital construction to be used by sending district pupils.
  3. Appointment, transfer, or removal of teaching staff members providing services to pupils of the sending district, including teaching staff members who are members of the receiving district's central administrative staff.
  4. Addition or deletion of curricular and extracurricular programs involving pupils of the sending district.
  5. Voting is limited to the statutory items.

The Appellate Division has disapproved of the Commissioner of Education's earlier position that a sending representative may also vote on procedural matters, such as election of board officers and those related to "the orderly conduct of Board operations." See, Evans v. Atlantic City, 404 N.J. Super. 87 (December 10, 2008) 960 A.2d 768 (App. Div. 2008). Sending district

representatives are ineligible to vote on appointment of receiving district's solicitor, because it is not expressly authorized by statute, N.J.S.A. 18A:38-8.1. The Legislature intended to limit the eligibility of sending district's representative to vote to those matters expressly stated in statute. (See particularly Footnote 1)

- B.** Although the sending district's representative may not vote on issues other than those listed above, the representative may:
1. Participate in discussions of all issues, even those on which he/she has no vote (however, it is improbable that the appointee will find need to participate in discussions of issues on which he has no vote).
  2. Receive copies of information distributed to other board members.
- C.** The sending district's representative may not disclose confidential information to the other members of the sending board.
1. He/she may communicate confidential items freely with the sending district's superintendent, who is required to maintain strict confidentiality.
  2. The representative may communicate *non-confidential* information to the other members of the sending board at a board meeting.

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).

## **IX. Appointments**

- A.** General rule: A board may not vote to appoint for a position that will not be vacant during that board's lifetime. Barckett v. Garfield Bd. of Ed., 1990 S.L.D. (August 30) An appointment in anticipation of a vacancy is proper only where the board making the appointment is still in office when the vacancy occurs; otherwise, the present board has no right to interfere with the rights of a successor board to make that decision.
- B.** When can your board appoint a new superintendent?
1. Gonzalez v. Elizabeth Bd. of Ed., 325 N.J. Super. 244 (App. Div. 1999) A school board may not appoint a new superintendent whose term begins only after a successor board is sworn in.

Example: If superintendent has a 3-year contract that expires July 1, 2014, notice of non-renewal must be given according to N.J.S.A. 18A:17-20.1 (i.e., given prior

to the contract's expiration by 30 days for each year in the term of the current contract ). But only the board as constituted at January 2015 organization meeting (for the November 2014 election) or the April 2015 organization meeting (for the April 2015 election) election may fill the vacancy. Appointment is made through a recorded roll call majority vote of the full membership of the board. N.J.S.A. 18A:17-15.

### C. Other Superintendent Appointment issues

1. Dunn v. Elizabeth Bd. of Ed., 96 N.J.A.R.2d (EDU) 279, *aff'd* St. Bd. 96 N.J.A.R.2d (EDU) 285. Superintendent may under N.J.S.A. 18A:27-9 be relieved of his duties for remainder of contract but may not be reassigned. Board may employ "acting" superintendent for remainder of contract period, but new appointment may not be made until after contract expires.
2. West Village Civic Club, Inc. v. Manchester Twp Bd. of Ed, State Board, 1996 S.L.D. (June 7), Graham v. Kearny, 95 N.J.A.R.2d (EDU) 510.
  - ⊕ Parties may agree to *extend* an existing contract but the contract may not run more than a total of five years from its start.
  - ⊕ Parties may agree to *rescind* superintendent's contract prior to its expiration, and enter into new contract of 3-5 years; board must provide clear public notice of its intentions to rescind the old contract.
3. The Executive County Superintendent must review employment contracts for superintendents, assistant superintendents and school business administrators, prior to the board's approval and execution of the contract. N.J.A.C. 6A:23A-3.1.

Also, public notice and a public hearing are required pursuant to N.J.S.A. 18A:11-11 when the board renegotiates, extends, amends, or otherwise alters the terms of an existing contract with a superintendent of schools, deputy superintendent, assistant superintendent, or school business administrator.

Notice and public hearing are not required for new contracts (as opposed to alterations of existing contracts). Accordingly, new contracts that replace expired contracts for existing employees do not require notice and public hearing.

Note that where a superintendent is relieved of his duties pursuant to a "buy-out", the pay may not exceed 3 months' pay for every year remaining on the contract, according to the limitations contained in N.J.S.A. 18A:17-20.2a and N.J.A.C. 6A:23A-3.2

4. "Ricing" the CSA: Persi v. Woska (Dec. 11, 2013)—Appellate court remands issue of whether a board member exceeded the scope of his authority by unilaterally directing the issuance of the Rice notice to the Chief School

Administrator. Earlier ethics ruling did not clearly delineate the respective authority of a board member, board president, and full board in determining how and when a school superintendent's employment is reviewed.

### C. Decisions

1. [Howard v. East Orange Bd. of Ed.](#), 2001 S.L.D. (June 5), aff'd [St. Bd. 2001 S.L.D. \(Nov. 7\)](#), emergent relief denied, 2002 S.L.D. (Feb. 6), aff'd No. A-1699-01T1 and A-2584-01T1 (App. Div. Oct. 11, 2002)  
Failure to renew superintendent's contract before July 1 or give notice of non-renewal pursuant to [N.J.S.A. 18A:17-20.1](#), triggered new contract with same provisions as expired contract including 5% salary increases.
2. [Kohn v. Vineland Bd. of Ed.](#), 2001 S.L.D. (Sept. 14), aff'd in part and rev'd in part, [St. Bd. 2002](#) (Nov. 6)  
Board of Education acted illegally in buying out superintendent's five-year contract for 33.3% of salary, and placing him in another position with a lesser salary, notwithstanding contract clause so authorizing. Board ordered to pay full value of contract less monies superintendent earned from new job he received in another district during same period.

### X. Does the board have the authority to decide whether to renew employees?

- A. [N.J.S.A. 18A:27-4.1](#); [Velasquez v. Brielle Bd. of Ed.](#), St. Bd. 1997 S.L.D. (Aug. 8) [N.J.A.C. 6A:10-8.1](#).
  1. Board of education can only renew an employment contract if the CSA so recommends, and then by recorded roll call majority vote of full board.
  2. However, even if the CSA does not recommend renewal, and the employee is notified by the CSA of nonrenewal, the board is not foreclosed from renewing the contract of such an employee. The board may renew the employment if the employee requests a written statement of reasons and an informal appearance before the board, during which the employee convinces the board to offer reemployment.
  5. On the other hand, even if the CSA recommends reemployment to begin with, the board need not renew, as long as its decision is not arbitrary and unreasonable ("capricious"). See, [Mc Ewan v. Bloomingdale Bd. of Ed.](#), 2002 S.L.D. (March 13) (board did not act arbitrarily in denying renewal of contract notwithstanding a recommendation from the superintendent)

[Nonrenewal & RIF FAQ 2013](#) (5-13)

4. These provisions requiring the superintendent's recommendation apply to renewal of employees *except* for treasurer of school money, election officer, board auditor, board attorney, and board secretary who does not perform SBA functions.

## XI. Access to Personnel Records

A. Public Access: The public has limited access to personnel records.

1. Open Public Records Act, N.J.S.A. 47:1A-1 et seq., P.L. 2001, c. 404. Go to [www.nj.gov/grc](http://www.nj.gov/grc) for more information.
2. Executive Orders 21 (social security numbers) (McGreevey) and 26 (McGreevey) (resumes; addresses and phone numbers forwarded to Privacy Study Commission)

B. Board Member Access:

1. Horner v. Kingsway Regional, 1990 S.L.D. 752.

🌐 Applicants: Board members may access official files of all applicants for employment.

🌐 Employees: Board members may access personnel files of those employees recommended to the board for specific employment action “*to the extent that such files are relevant to the specific action to be taken or deemed pertinent by the CSA in response to the Board's directive to provide information essential for performance of a specific, officially assigned Board duty.*”

2. Beatty v. Chester Bd. of Ed., 1999 S.L.D. (August 31).

Board may not limit access only to those candidates considered by personnel committee. May place reasonable restrictions on times and places for review of material.





3. Ciambrone v. Bloomingdale Bd. of Ed., 2000 S.L.D. (May 7)

Access to personnel materials: Board must ensure that individual board members' access to personnel information is confined to that necessary for the performance of essential board member duties; however, Commissioner has no jurisdiction over teacher's invasion of privacy claim for sanctions against individual board member who accessed her personnel records.



## XII. Indemnification (reimbursement of legal fees and costs)

N.J.S.A. 18A:12-20 Whenever a civil, administrative, criminal or quasi-criminal action or other legal proceeding has been brought against a board member for an act “*arising out of and in the course of the performance of his duties as a member of a board of education*” ... “*the board of education shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom.*” In criminal or quasi-criminal matters, the board of education shall defray the costs if the final disposition of the action is favorable to the board member.


P.L. 2001, Chapter 178, Effective 7/26/01

-  [Castriotta v. Roxbury Twp. Bd. of Education](#), 427 N.J. Super. 592 (App. Div. 2012) The Appellate Division, reversing the Commissioner’s determination, ruled that a board member was entitled to be indemnified for her costs in fighting the board’s action to censure her. The board member’s challenge to the censure was a "legal proceeding" under the indemnification law, N.J.S.A. 18A:12-20, because the board acted in a quasi- judicial capacity, and the process was similar to a due process hearing.
-  [Matthews, Commissioner 2010:April 15](#). Proceedings under the Code of Ethics for School Board Members are administrative proceedings which do not require favorable disposition for the charged party to be eligible for indemnification. However, the particular actions on which the allegations are based must be scrutinized – consistent with prior case law as to time, place and subject matter – in terms of the statutory standard of “arising out of and in the course of the performance of his duties as a member of the board” in order to determine the entitlement to indemnification. A complaint under the Code of Ethics for School Board Members poses unique difficulties, since these complaints frequently involve many diverse allegations rather than claims arising from a single act. Matter remanded to the OAL to determine eligibility for indemnification.
-  [Florham Park Bd. of Ed., v. Utica Mutual Insurance Co.](#), 172 N.J. 300 (2002). In criminal matter, board’s liability to indemnify was not triggered until acquittal; only the insurer whose insurance policy was in effect at time of acquittal was liable.
-  [Grant v. Green Brook Board of Education](#), [2001 S.L.D.](#) (August 13), *aff’d* State Board, [2001 S.L.D.](#) (Dec. 5). Indemnification denied for board member who was sued for slander by private citizen, for making knowingly false statements about the citizen (saying that citizen was a racist, a nazi, and under investigation by the Department of Justice); board

member was not acting in his official capacity when he made the comments; was personal, political activity and the resultant civil suit was, similarly, personal unto him.

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[Quick v. Old Bridge Bd. of Ed.](#), 308 N.J. Super. 338 (App. Div. 1998)  
 Board member who in good faith defended lawsuit brought by board to exclude her from attending certain closed door meetings, was entitled to reimbursement for legal expenses. Was sued by reason of her board membership.
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[Errington v. Mansfield Bd. of Ed.](#), 100 N.J. Super. 130 (App. Div. 1968)  
 Board member was not entitled to reimbursement of legal fees for defending defamation lawsuit brought against him for publishing allegedly defamatory letter; letter was not an act “arising out of” duties of board member.

See also,

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[River v. Elizabeth Bd. of Educ.](#), 2013 N.J. Super. Unpub. LEXIS 116 (App. Div. Jan 18, 2013) certif denied, 213 N.J. 538 (May 13, 2013).  
 Former board president and former acting superintendent ordered to reimburse/indemnify the District \$63,622, where the board had improperly paid that amount from district funds to a law firm to file a defamation suit on behalf of the board and board officials. The trial court determined that the lawsuit primarily involved personal claims filed on behalf of defendants and the lawsuit had not been authorized by the board, which violated the Open Public Meetings Act and constituted a conflict of interest that required restitution. Appellate court affirms Law Division.