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Public Testimony on Proposed Amendments N.J.A.C. 6A:28 School Ethics Commission

Before the State Board of Education

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The New Jersey School Boards Association, a federation of all of New Jersey's local boards of education, thanks the State Board of Education for this opportunity to testify on the proposed amendments to *N.J.A.C. 6A:28*. The NJSBA has several beliefs about school ethics. These include:

- The NJSBA believes that the School Ethics Commission should be authorized to reprimand, censure or remove a board member for any violation of NJSBA's Code of Ethics for School Board Members. The rights of the accused board member should be balanced with the board's need for an orderly and efficient operation and shall include an expedited hearing process before the School Ethics Commission to ensure a decision within 60 days of receipt of notice of violation; indemnification for the accused board member for civil, administrative, criminal or quasi-criminal or other legal action for any act or omission arising out of and in the course of the performance of the accused board member's duties as a member of the board of education. The burden of proof should be placed on the accusing party, whether an individual or the board of education, to factually establish a violation of NJSBA's Code of Ethics.
- The NJSBA believes the statutory language of *N.J.S.A. 18A:12-31* should be revised so that all ethics advisory opinions should be made public, unless the school official whose proposed conduct is the subject of the advisory opinion seeks to keep it private.

The NJSBA offers the following comments and suggestions concerning the proposed amendments to *N.J.A.C. 6A:28*.

Training of New Board Members

- *N.J.A.C. 6A:28-4.1*—This proposal requires all new board members **to complete training within the first 60 days** of their first term on the board. Under the current regulations, board members have one year to complete their first-year training. This proposed amendment would give new board members just 2 months to complete training for which they were previously given 12 months. The NJSBA recommends that this proposal be amended to read: “Within the first [60] **90** days of a new board member's or

a new trustee's first term, the board member or trustee shall complete a training program....”

- NJSBA's statutory training for new board members is designed to give the member access to all of the information that they need to be effective in their first year. With ethics as its cornerstone, the comprehensive training also provides information on: the Open Public Meetings Act, School Climate and Culture with a focus on the Anti-Bullying Law, the role of the Chief School Administrator and evaluation, Board Policy, Student Achievement, and Labor Relations. The training consists of 6 core hours of instruction which can be delivered in a variety of modalities. For instance, the NJSBA offers an immersive 3 day program twice yearly that provides live in-person large group lectures with supplemental small groups that reinforce the concepts learned in the lectures. These weekends also feature optional evening clinics for supplemental learning and networking. The NJSBA also offers in-person one day experiences consisting of the 6 core hours only. For those who wish to learn online, NJSBA offers a self-directed online experience that consists of the six core hours. There is also a live interactive online option where the members learn in small cohorts over a series of weeks through live online lectures and clinics. All of these trainings are distributed throughout the board members' first year, giving the board members multiple opportunities for training. All NJSBA training is based on the fundamental belief that well-trained board members--and the effective boards on which they sit--have a positive impact on student achievement. See *“The Lighthouse Inquiry: School Board/Superintendent Team Behaviors in School Districts with Extreme Differences in Student Achievement,” Iowa Association of School Boards. A Paper Presented at the American Educational Research Association, April 10-14, 2001.* The 90 days that the NJSBA is proposing will permit the NJSBA to continue to offer a diverse variety of training experiences for new board members that accommodate all learning styles while meeting the scheduling challenges inherent in this all-volunteer group of public officials. Additionally, notwithstanding the newly-proposed language in *N.J.A.C. 6A:28-4.2* requiring board secretaries to report contact information for new board members within 30 days of election or appointment, it has been NJSBA's past experience that accurate board member data is sometimes not reported until 30 days after the swearing-in of an individual, due to election irregularities or verification of the newly-elected/appointed individual's statutory qualifications. Because of the need to have accurate data for tracking the progress of board member training and reporting to the Commission, the NJSBA believes that a 90-day training window will accommodate any delay in the reporting of board member contact information while giving the individual member adequate time to complete the training using the modality of their choice. A 90-day training window will still meet the Commission's goal of ensuring that all new board members understand the ethical standards that must guide their behavior at the inception of their first terms.
- The NJSBA is also concerned about the impact that different swearing-in dates may have on the end date of the proposed training window for different board

members. See [Clarification of First Week or First Two Weeks of the Calendar Month for Board of Education Reorganization Meetings \(nj.gov\)](#).

Conflict of Interest List

- *N.J.A.C. 6A:28-3.2(f)*— The board secretary, or the charter school or renaissance school project designee, shall review the disclosure statements to identify conflicts of interest, and shall maintain a list of the conflicts of interest set forth in the disclosure statements. This list shall contain the name of the school official, the name and position of the individual or the entity that forms the basis for the conflict of interest, and the issues from which the school official must recuse because of the conflict of interest. This list shall also be published on the school district’s, charter school’s, or renaissance school project’s website. NJSBA is concerned about the required posting of this list to the district website. As NJSBA understands this proposed requirement, this list is for exclusive use by the board secretary to identify potential ethical conflicts when voting or discussing an item during a board meeting. This list represents a summary of what is in a board member’s ethics disclosure form. Rather than post this summary, the requirement should be to provide a link on the district website to the ethics disclosure forms that are already housed (and accessible) on the Commission website.

Posting of punishments imposed by the School Ethics Commission and the Commissioner

- *N.J.A.C. 6A:28-9.11(d)2*— Under the current regulations, when a board member is found to have violated the School Ethics Act and a penalty of censure, suspension or removal is imposed by the Commissioner of Education, a resolution is passed by the Commission. That resolution must then be read aloud at the beginning of the next board of education meeting and posted for 30 days in the places where the board posts such notices. The newly proposed regulation will also require the posting of the resolution on the district website for 30 days. The NJSBA is opposed to this requirement because of due process concerns. It is not uncommon for a board member to appeal a School Ethics Commission or Commissioner of Education ruling. The posting of this information to the district website may give the impression to the public that it is a final ruling and the public would have no knowledge of any subsequent appeals.

Comments on other Provisions in the Proposal

- *N.J.A.C. 6A:28-1.1(b)*—The term “school administrator” is undefined. NJSBA recommends that this term be defined.
- *N.J.A.C. 6A:28-1.2*—The term “board member” adds “upon being sworn in and taking office.” The NJSBA recommends that the phrase “and taking office” be deleted. This phrase does not seem to add anything to the definition of board member. A person becomes a board member upon their taking of the oath of office. NJSBA is unaware of a requirement to “take office” in order to be a board member and be subject to the requirements of the School Ethics Act.

- *N.J.A.C. 6A:28-1.2*—The term “board secretary” needs clarification. *N.J.S.A. 18A:17-5* through *18A:17-13* already defines what a board secretary is. For clarification, the definition should say “Board secretary means the school district employee **who acts as secretary of the board under N.J.S.A. 18A:17-5 or another** employee responsible for fulfilling a district board of education’s statutory and regulatory obligations to the School Ethics Commission.”
- *N.J.A.C. 6A:28-1.2*—The term “dependent child” removes the term “school official” from this definition. However, school official is a defined term in *N.J.A.C. 6A:28-1.2* and is also already statutorily defined in *N.J.S.A. 18A:12-23*.
- *N.J.A.C. 6A:28-1.2*—The term “suspension” should be amended to read “Suspension” means a form of penalty **recommended by the Commission and imposed by the Commissioner of Education** for a violation(s) that results in a school official being barred from engaging in any activity and/or matter related to the school official’s position for a designated period of time. This suggested amendment brings greater clarity to this term.
- *N.J.A.C. 6A:28-1.2*—The term “board member” should be revised to read “Any person holding membership, whether by election or appointment upon being sworn in [**and taking office**] on any district board of education.” NJSBA is unaware of any requirement in law that requires a board member to “take office” in order to trigger the requirements of the School Ethics Act.
- *N.J.A.C. 6A:28-1.2*— The NJSBA notes that the term “Relative” is now expanded to include the same definition of relative that can be found under *N.J.A.C. 6A:23A-6.2*.
- *N.J.A.C. 6A:28-1.3(a)9iv*—The NJSBA notes that the Commission has the authority to deny a request for an advisory opinion. In general, how many requests for an advisory opinion does the Commission receive in any year? Of those, how many requests are denied? When a request is denied, does the Commission attempt to provide information to the requestor of the advisory opinion that may be germane to the requestor’s inquiry?
- *N.J.A.C. 6A:28-1.8(b)*— Does the relief mentioned in this section apply to the substantive requirements in *N.J.S.A. 18A:12-24* and *12-24.1* or only to the procedural requirements of the School Ethics Act?
- *N.J.A.C. 6A:28-2.3(f)*— How much advance notice will be required by the chairperson in order to attend remotely? Can the public access Commission meetings remotely at any time or only when a member of the Commission seeks to participate remotely?
- *N.J.A.C. 6A:28-3.1(a)(2)*—This provision requires that disclosure statements be reviewed by board secretaries. Are board secretaries reviewing to ensure that the form is completed or are they reviewing for accuracy? Or is this the review that is mentioned in *N.J.A.C. 6A:28-3.2(f)*?

- *N.J.A.C. 6A:28-3.1(c)(d)(e)*— These sections use the phrase “once they are sworn in and have taken office.” NJSBA seeks a definition for “take office” as this phrase appears to be a new requirement for board membership that is not currently in statute.
- *N.J.A.C. 6A:28-3.1(g)*—This section requires the NJSBA to designate a current employee to fulfill its obligations to the Commission. Should the NJSBA also identify for the Commission who that employee is in order to facilitate communication between the NJSBA and the Commission?
- *N.J.A.C. 6A:28-3.2(b)(3)*—This section requires the board secretary to ensure that the school official files their disclosure statements within 30 days. What liability, if any, is there for a board secretary who is unable to get the school official to comply with this requirement?
- *N.J.A.C. 6A:28-3.4(a)*—This section appears to place an obligation on the board secretary to ensure that the disclosure statements are correct and complete. What steps should the board secretary take in order to ensure this?
- *N.J.A.C. 6A:28-4.1(a)*—This section should clarify that new board members include those who are filling vacancies in unexpired terms on the board.
- *N.J.A.C. 6A:28-4.1(c)*—The NJSBA thanks the Commission for clarifying that the advanced training for reelected or reappointed board members can include other relevant information, in addition to school law.
- *N.J.A.C. 6A:28-4.2(a)1*—This section should have additional language added that says: **“Should this information change during the term of a board member or trustee, the board secretary shall provide the Commission and the New Jersey School Boards Association with that updated information within 10 days.”** Very often the e-mail addresses of board members will be updated to reflect official district e-mail addresses after swearing-in of the member. This amendment will reflect the need to keep updated contact information and reflect the best practice of board members using board e-mail addresses for board communications.
- *N.J.A.C. 6A:28-4.2(c)*—This section currently says: “(c) By [March 31] **January 1** of [each] **the second calendar year for board members elected in November, April 1 of the first calendar year for board members elected in April, and July 1 for charter school and renaissance school project trustees,** the New Jersey School Boards Association shall [present to] **provide** the [School Ethics] Commission [a list] **with the names** of [those] **the** board members and [charter school] **the** trustees who have not fulfilled the training requirements **as required by the Act and this chapter.**” As written, section 4.1 requires training to be completed within 60 days of taking office. Board members elected in November and sworn into office in January must complete the training by the end of February. But section 4.2 requires NJSBA to report that non-compliance to the SEC by

January 1 of the 2nd year of office, leaving the failure to attend unreported between March and the subsequent January (for those November board members). So if the training schedule is shortened, the reporting period should match that shortened training schedule.

- As for board members elected in April, their terms don't actually start until the first or second week following the April election, so setting an April 1 deadline is about two weeks short of the allotted time to attend training.
 - Because the County Special Services School districts organize during the first two weeks of July, those board members would be required to complete their training by the second week of September (approximately). Similarly, the vocational-technical schools that are required to organize November 1, they would be required to complete their training by the end of December. Because the regulation does not list a reporting date for either district, the NJSBA recommends that there be language added to read: **“At the conclusion of each year in office in which training is required, NJSBA shall provide to the SEC a list of all board members that have failed to comply with their respective training obligations as specified in this chapter.”**
- *N.J.A.C. 6A:28-5.2(a)*— The NJSBA believes the statutory language of N.J.S.A. 18A:12-31 should be revised so that all ethics advisory opinions should be made public, unless the school official whose proposed conduct is the subject of the advisory opinion seeks to keep it private. The NJSBA recommends that this provision be amended to read: “Requests for advisory opinions shall clearly set forth in detail the anticipated future conduct or activity the school official seeks to undertake and the exact role the school official [**will play**] **anticipates having** in that activity or conduct, as well as the **anticipated** date(s) the prospective activity is to occur or begin.” These amendments help to clarify that the school official can only provide the Commission with the information that they have at the time that the request is made. For example, if a board member is getting a new job and wishes to know if any of their new responsibilities would conflict with their duties under the School Ethics Act, they may not know exactly when they will start their new job or precisely all of their new job responsibilities at the time that the request is made.
 - *N.J.A.C. 6A:28-5.2(a)1*— The NJSBA recommends that if this provision remains in the proposal that this provision be amended as follows: “The request shall include a statement that the school official has reviewed the public advisory opinions available on the Commission’s website and the concern(s) raised in the request has not already been addressed by the Commission in an existing **public** advisory opinion.” This makes it clear that the responsibility extends only to the public advisory opinions available on the website. The NJSBA also recommends that the website address on which the public advisory opinions can be found be listed in the regulations.
 - The NJSBA is deeply concerned about the chilling effect of this provision on school officials’ willingness to seek advisory opinions. First, the current Commission advisory opinion website should be made more easily searchable not only by topic but also by the text of the opinions. This way the requestor can say with a greater level of certainty that their concern has not been previously addressed. The NJSBA would welcome the opportunity to assist the Commission in making its body of advisory opinions more accessible and user-friendly to

school officials. Second, even if the request has been addressed previously, that should not necessarily preclude the issuance of an advisory opinion. For instance, in *Advisory Opinion A24-17*, the Commission had addressed the question presented previously. However, the Commission still addressed the concern saying: “The nature of your inquiry makes it clear that there is confusion regarding the limitations of a Board member’s activity with regard to contract negotiations and the employment of the superintendent when he/she has an immediate family member or relative who is employed in the District. Therefore, the Commission will take this opportunity to provide clarity on these and related issues.” In so doing, the Commission produced one of its clearest and most comprehensive opinions that endures as a touchstone of school ethics for all school officials. Public advisory opinions serve to educate all school officials to give them a greater understanding of the School Ethics Act, even where the topic may have been addressed previously. The ability to seek advisory opinions is a unique and invaluable tool for all school officials allowing them to seek the advice of the Commission concerning their future conduct. An advisory opinion educates the school official while reducing the potential number of complaints filed with the Commission. The NJSBA urges the Commission to preserve this tool by removing *N.J.A.C. 6A:28-5.2(a)1* from this proposal.

- *N.J.A.C. 6A:28-5.2(a)2*—This provision would permit the Commission to copy the board attorney who represents the district board of education. This provision is problematic at best. The NJSBA is concerned that this provision would have a chilling effect on school officials who are seeking the advice of the Commission from actually doing so. Under *N.J.S.A. 18A:12-31*, there is a presumption of confidentiality between the requestor of an advisory opinion and the Commission. The statute says: “Advisory opinions of the commission shall not be made public, except when the commission, by a vote of at least six members, directs that the opinion be made public. Public advisory opinions shall not disclose the name of the school official.” Therefore, releasing a redacted copy of the response to the request could inadvertently identify the board member who is the subject of the request to the board attorney because the board is made up of a very small cohort of members. To the best of NJSBA’s knowledge and belief, there is no attorney-client confidentiality between individual board members and the board attorney. The board attorney represents the board as a corporate entity, not the individual members. When the attorney reviews what is sent to them by the Commission, it will need to be invoiced which may then lead to the identification of the requesting board member to the rest of the board, defeating the confidentiality inherent in *N.J.S.A. 18A:12-31* and mentioned in *N.J.A.C. 6A:28-5.1(b)2*. If there is a possibility that the requesting board member may be identified to the other board members, they may not seek the advisory opinion at all. Additionally, the NJSBA is concerned that this interaction between the board attorney and the Commission may lead to a violation of *N.J.A.C. 6A:23A-5.2* requiring the prudent use of legal services by boards of education, specifically “the tracking of the use of those services.” The NJSBA urges the Commission to consider these negative consequences of *N.J.A.C. 6A:28-5.2(a)2*.

- *N.J.A.C. 6A:28-5.2(b)3*— For all of the reasons set forth in its commentary to *N.J.A.C. 6A:28-5.2(a)* above, the NJSBA recommends that the Commission should not decline to accept a request merely because the request was sufficiently answered in prior opinions as the question may need to be clarified or revisited for the benefit of all school officials.
 - Approximately how many requests for advisory opinions are received by the Commission in a given year? How many of those requests are denied? How many private v. public advisories are issued in a given year?
 - When a request is denied, is the requestor at least given a listing of the advisory opinions that apply to their situation?

Conclusion

The NJSBA thanks the State Board of Education for this opportunity to testify about these important regulations. School Ethics is an indispensable component of board membership. The NJSBA looks forward to working with the State Board and the School Ethics Commission as this proposal progresses.