



August 3, 2022

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

Before the State Board of Education

Jonathan Pushman, Director, Governmental Relations

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 90 days** of their first term on the board. 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 Adminstrator 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 6 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 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 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, the 90-day training window will meet the Commission's goal of ensuring that all new board members understand the ethical standards that must guide their behavior at the beginning of their first terms in office.

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. The NJSBA recommends that language be included in the regulation to indicate that the posting of penalties is not required until all appeals have been determined.

Comments on other Provisions in the Proposal

- *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? The NJSBA appreciates that when the Commission denies a request for an advisory opinion, that it directs the requestor to the public advisory opinions that may be germane to their inquiry and where they may be found on the Commission's website.

- *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. While NJSBA is aware that the current amendment provides for thirty days, having timely updated contact information for board members supports both the SEC and the NJSBA in carrying out their respective functions.
- *N.J.A.C. 6A:28-5.2(a)1*—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 thanks the Commission for its response on June 1, 2022 when it said that it will hold harmless the school official if there is an existing advisory opinion that is found to be responsive to the requestor's inquiry.
- *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 thanks the Commission for clarifying that, if requested by the board member seeking the advisory opinion, the board attorney is not copied or notified about the request.
- *N.J.A.C. 6A:28-5.2(b)3*— The NJSBA thanks the Commission for clarifying that if a request for an advisory opinion is declined that the requestor is directed to where the opinion addressing their concern may be found. The ability for board members and other school officials to seek information regarding their individual circumstances is an invaluable tool for the regulated community.

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 that helps to preserve public confidence in local boards of education. The NJSBA looks forward to working with the State Board and the School Ethics Commission as this proposal progresses.