



2026 POST ELECTION INFORMATION FOR NEW BOARD MEMBERS AND CHARTER SCHOOL TRUSTEES

FREQUENTLY ASKED QUESTIONS

DISCLAIMERS: *Nothing contained in this document should be construed as formal legal advice. This document is provided for informational purposes only. Please consult with your board attorney for formal legal advice.*

© 2026 New Jersey School Boards Association
413 West State Street, Trenton, New Jersey 08618

All rights reserved. No part of this document may be reproduced in any form or by any means without permission in writing from NJSBA.

INDEX

- I. TERMS OF NEW BOARD MEMBERS AND CHARTER SCHOOL TRUSTEES
- II. CRIMINAL HISTORY BACKGROUND CHECKS
- III. THE SCHOOL ETHICS ACT
 - A. DISCLOSURE STATEMENTS
 - B. TRAINING
 - C. VOLUNTEER WORK
 - D. EMPLOYMENT OF BOARD MEMBER OR CHARTER SCHOOL TRUSTEE
- IV. INELIGIBILITY TO SERVE
- V. OTHER ISSUES

I. TERMS OF NEW BOARD MEMBERS AND CHARTER SCHOOL TRUSTEES

1. When do the terms of new board members and charter school trustees begin and end?

The terms of board members and charter school trustees vary, and depend on the type of school district for which they serve; whether they are elected or appointed; and, if elected, the month of the election.

Type of School District	Appointed or Elected	Term Begins	Term Ends
Type I Districts (other than in cities of the first class) <u>N.J.S.A. 18A:12-8</u>	Appointed	May 16	May 15
Type I Districts (in cities of the first class) <u>N.J.S.A. 18A:12-8</u>	Appointed	July 1	June 30
Type II Districts (April election) <u>N.J.S.A. 18A:10-3</u>	Elected	May 1	April 30
Type II Districts (November election) <u>N.J.S.A. 18A:10-3</u>	Elected	January 1	December 31
Special Services School Districts <u>N.J.S.A. 18A:46-35</u>	Appointed	July 1	June 30
County Vocational School Districts <u>N.J.S.A. 18A:54-16</u>	Appointed	November 1	October 31
Charter School <u>N.J.S.A. 18A:36A-11</u>	Appointed	Determined by the Charter School's Charter and Bylaws	Determined by the Charter School's Charter and Bylaws

[RETURN TO INDEX](#)

II. CRIMINAL HISTORY BACKGROUND CHECKS

2. Do newly elected board members need to submit to a criminal history background check?

Yes. Within 30 days of election or appointment to a board of education or charter school board of trustees, an individual “shall” undergo a criminal history background investigation for the purpose of ensuring that the member is not disqualified from membership due to a conviction of a crime or offense listed in [N.J.S.A. 18A:12-1](#); [N.J.S.A. 18A:36A-11.1](#).

Newly elected board members and charter school trustees who do not undergo a criminal history background investigation within the 30-day period could be declared ineligible to serve in office until it is completed. In addition, if the completed criminal history review reveals conviction(s) for any of the offenses listed in [N.J.S.A. 18A:12-1.2](#), the individual will be *immediately* disqualified from office. [N.J.S.A. 18A:12-1](#); [N.J.S.A. 18A:36A-11.1](#).

Newly elected board members and charter school trustees who have questions about the criminal history background requirement can contact the [New Jersey Department of Education, Office of Student Protection](#).

3. When does the 30-day timeframe for submission to a criminal history background investigation begin?

According to the [New Jersey Department of Education](#), the 30-day timeframe “will commence upon certification of the votes or confirmation of the appointment.”

4. What if the results from a newly elected board member’s or charter school trustee’s criminal history background check are not complete at the time of the organization meeting?

If the results from the criminal history background investigation are unknown at the time of the reorganization meeting, the newly elected board member or charter school trustee *may* be able to submit an affidavit certifying that they have not been charged with or convicted of any of the disqualifying offenses enumerated in [N.J.S.A. 18A:12-1](#) as long as their fingerprints have been submitted, and they can produce a receipt/payment confirmation for the submission; however, merely having an appointment is insufficient.

Whether a board of education or charter school board of trustees will swear in a new board member or charter school trustee before it receives the results of the criminal history background check, but after

the new board member or charter school trustee has provided a receipt and/payment confirmation along with an affidavit, should be decided in consultation with the board attorney. *See also [New Board Members Must Complete Criminal Background Checks](#).*

[RETURN TO INDEX](#)

III. THE SCHOOL ETHICS ACT

5. What is the “School Ethics Act” and when do its provisions apply to newly elected board members?

In order to ensure that members of local boards of education and local school administrators hold the respect and confidence of the people, and that they avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated, the School Ethics Act was established. See [P.L. 1991, c. 393](#) (effective April 15, 1992). The School Ethics Act outlines specific standards to guide the conduct of members of local boards of education and local school administrators.

While the provisions of [N.J.S.A. 18A:12-24\(a\) through \(k\)](#) (“Conflicts of Interest”/“Prohibited Acts”) apply to board members, charter school trustees, and administrators, the provisions of [N.J.S.A. 18A:12-24.1\(a\) through \(j\)](#) (“the Code of Ethics for School Board Members”) *only* apply to board members and charter school trustees.

The provisions of the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* can be found [here](#), and only apply to board members and charter school trustees **once they are sworn-in**. See [C23-24](#) (adopted October 22, 2024).

6. What is the definition of “immediate family member” and “relative”?

The School Ethics Commission’s regulations define the “immediate family member” of a board member as their spouse, partner in a civil union as defined at [N.J.S.A. 37:1-28 *et seq.*](#), domestic partner as defined at [N.J.S.A. 26:8A-3](#), or dependent child, residing in the same household. [N.J.A.C. 6A:23A-1.2](#); [N.J.A.C. 6A:28-1.2](#).

The School Ethics Commission’s regulations further define the “relative” of a board member as their “spouse, civil union partner as defined at [N.J.S.A. 37:1-28 *et seq.*](#), domestic partner as defined at [N.J.S.A. 26:8A-3](#), or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister of the individual or of the individual’s spouse, civil union partner, or domestic partner, whether the relative is related to the individual or the individual’s spouse, civil union partner, or domestic partner by blood, marriage, or adoption.” [N.J.A.C. 6A:23A-1.2](#); [N.J.A.C. 6A:28-1.2](#).

Although the definitions of “immediate family member” and “relative” in the School Ethics Act ([N.J.S.A. 18A:12-23](#)) are different than those in its implementing regulations ([N.J.A.C. 6A:28-1.2](#)), the School Ethics

Commission has applied the broader definitions from the Department of Education's nepotism regulations ([N.J.A.C. 6A:23A-1.2](#)) to its conflict analysis. See [Advisory Opinion A24-17](#).

7. If a board member has immediate family members or relatives employed in the district, are there any restrictions on their board activities?

Yes. If a board member has an immediate family member and/or a relative employed in the district, then the board member cannot: (1) participate in any aspect of contract negotiations involving their immediate family member and/or relative's bargaining unit, including the vote on the collective negotiations agreement following attainment of the memorandum of the agreement, and/or (2) participate in any and all issues related to the superintendent, including the search, contract approval, and evaluation of the superintendent's performance. Additional limitations will apply to a board member's involvement in specific matters related to the immediate family member and/or relative, and to any supervisor(s) in their immediate family member and/or relative's chain of command. See [Advisory Opinion A24-17](#); [Advisory Opinion A05-23](#); [Advisory Opinion A06-23](#); [Advisory Opinion A07-23](#); [Advisory Opinion A10-23](#); [Advisory Opinion A11-23](#); [Advisory Opinion A09-24](#); [Advisory Opinion A13-24](#); [C115-22](#) (adopted August 19, 2025).

For a complete list of those familial relationships considered "relatives" for purposes of contract negotiations with the local education association and matters related to the superintendent, see [Advisory Opinion A06-23](#).

Newly elected board members who have questions about the School Ethics Act can contact the [New Jersey Department of Education, School Ethics Commission](#).

8. If a board member is a member of any statewide public teachers' union, or has an immediate family member or relative who is a member of any statewide public teachers' union but in another district, are there any restrictions on their board activities?

It depends. If a board member is a member of any statewide public teachers' union or has an immediate family member who is a member of any statewide public teachers' union but in another district, they cannot participate in any aspect of negotiations until the memorandum of agreement, including salary guides and the total compensation package, has been attained. After the memorandum of agreement, including salary guides and the total compensation package, has been attained, they can, absent another conflict, vote on the collective negotiations agreement. As for participating in any and all matters related to the superintendent, absent another conflict, there is no per se prohibition against participation.

[Advisory Opinion A24-16](#); [Advisory Opinion A24-17](#); [Advisory Opinion A32-17](#); [Advisory Opinion A03-22](#); [Advisory Opinion A04-25](#).

If a board member has a relative who is a member of any statewide public teachers' union but in another district, they *can, absent another conflict*, participate in all aspects of negotiations and in all matters

related to the superintendent. [Advisory Opinion A24-17](#). For example, if the relative in the other district was in a leadership position in that district's union affiliate or was a member of the negotiations team for that union affiliate, the School Ethics Commission advised that, "it would be more reasonable for a member of the public to believe it possible for the [b]oard member to discuss negotiation strategies with the relative or to provide other information which may lead to a benefit for the relative" and, therefore, "there would be a violation of [N.J.S.A. 18A:12-24\(b\)](#) and the public trust would be breached." [Advisory Opinion A16-15](#).

9. Are there any limitations on what a board member can say while seated at the dais and/or on social media?

After an individual is sworn-in as a board member or as a charter school trustee, they become school officials. As school officials, and unlike any other member of the public, they then become bound by the provisions of the School Ethics Act. Although school officials do **not** abdicate their First Amendment rights, there are potential ramifications if their speech is viewed or is perceived as being offered in an official capacity or pursuant to their official duties, as opposed to being offered in their personal capacity, and the speech violates a specific provision of the School Ethics Act. Given their unique status as school officials, board members and charter school trustees must constantly exercise vigilance when expressing their opinions or perspectives on any matter, and must always make clear the capacity in which they are offering a statement. Although a disclaimer can help to clarify the capacity in which a school official is speaking, neither its presence nor its absence is dispositive, as the substance of the speech will always be at the forefront of the analysis.

10. What if a member of the community approaches a board member or charter school member about a matter involving the district or the charter school?

Subsection (j) of the Code of Ethics for School Board Members says, "I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution." [N.J.S.A. 18A:12-24.1\(j\)](#). Based on this language, after being approached by a member of the community about a matter involving the district, it is most advisable for a board member or charter school trustee to listen carefully to the concerns expressed; thank the member of the community for their input; make clear that they (the board member or charter school trustee) do not have the authority to resolve or address the issue; indicate that they are referring the matter or the question to the chief school administrator or charter school lead for whatever action they may deem appropriate; and then to advise the chief school administrator or charter school lead, in writing if possible, of the concerns relayed.

A. DISCLOSURE STATEMENTS

11. After being sworn-in, are there any forms that newly elected board members or charter school trustees need to complete?

Within 30 days of being sworn in, newly elected board members and charter school trustees must complete and submit their Personal/Relative and Financial Disclosure Statements (Disclosure Statements). Every school official has an “affirmative responsibility to confirm” with their board secretary or charter school designee that their name has been added to the list of school officials required to annually file Disclosure Statements. [N.J.A.C. 6A:28-3.1\(h\)](#).

Disclosure Statements are completed electronically, and are then posted on the School Ethics Commission’s [website](#) as public records. Board secretaries and charter school designees are also required to post a link on the district or charter school’s website to each school official’s most recently filed Disclosure Statements. [N.J.A.C. 6A:28-3.2\(f\)](#).

After the first year of a board member or charter school trustee’s term of office, Disclosure Statements must be filed annually **by April 30**. [N.J.S.A. 18A:12-26](#).

Newly elected board members and charter school trustees should also confirm with their board secretary or charter school designee whether any other district-specific forms or paperwork need to be completed.

12. What if a newly elected board member or charter school trustee does not complete their Disclosure Statements within 30 days of being sworn in?

Failure to timely complete and file Disclosure Statements shall constitute a violation of the School Ethics Act, and may result in the censure, suspension, or removal of a school official. The severity of the penalty imposed will depend on whether the filing is completed before or after the School Ethics Commission issues an Order to Show Cause, and before or after the Commissioner of Education issues a final decision. [N.J.A.C. 6A:28-3.3](#).

Failure to timely complete and file Disclosure Statements can also negatively impact the district’s governance score as part of the Quality Single Accountability Curriculum (QSAC) review conducted by the New Jersey Department of Education.

B. TRAINING

13. Do newly elected board members and charter school trustees need to complete training?

Yes! ***Within the first 90 days of a new board member's and charter school trustee's first term***, they must complete a training program prepared and offered by the NJSBA (Governance I). [N.J.A.C. 6A:28-4.1](#).

Board members and charter school trustees are also required to complete training prepared by the NJSBA in the second and third years of their first terms – Governance II and Governance III respectively – and in the first year of each term for which they are reelected or reappointed (Governance IV). Unlike with Governance I, which must be completed within the first 90 days of a new board member's or charter school trustee's first term, board members and charter school trustees have until the end of the calendar year to complete Governance II, Governance III, and Governance IV.

NJSBA offers board members and charter school trustees the ability to complete [mandated training](#) in several different modalities: in-person, online, or even self-paced.

14. What if a newly elected board member or charter school trustee does not complete their training as required by statute?

As with the failure to timely file Disclosure Statements, newly elected board members and charter school trustees who fail to timely complete training will be found in violation of the School Ethics Act, and will receive a penalty, up to and including removal. The severity of the penalty imposed will, once again, depend on whether the training is completed before or after the School Ethics Commission issues an Order to Show Cause, and before or after the Commissioner of Education issues a final decision. [N.J.A.C. 6A:28-4.3](#).

C. VOLUNTEER WORK

15. Can a board member volunteer in the district?

It depends. The School Ethics Commission has advised that it “does not consider there to be a general prohibition on [b]oard members volunteering in activities within the [d]istrict they oversee.” [C11-24](#) (adopted November 26, 2024). However, the degree of involvement a board member has with staff and students, and the degree to which the board member gave and received directions and orders from staff during the volunteer activity will principally determine whether certain volunteer activity is permissible or prohibited.

By way of example, the School Ethics Commission advised that a board member who served as a club leader in [Advisory Opinion A10-15](#), and the board member who assisted with rehearsals for the fall play,

the spring musical, and served as an advisor for a school festival in [Advisory Opinion A32-14](#) would violate the School Ethics Act. Conversely, the School Ethics Commission determined that a board member who built sets for school plays and handled equipment for the marching band, and had limited interaction with staff and students in that capacity, would not violate the School Ethics Act. See [Advisory Opinion A17-15](#). See also [C78-20](#) (adopted August 30, 2021); [Advisory Opinion A15-18](#); [Advisory Opinion A03-21](#); [Advisory Opinion A04-21](#); [Advisory Opinion A17-21](#); [Advisory Opinion A03-23](#); [Advisory Opinion A01-24](#); [Advisory Opinion A03-24](#); [Advisory Opinion A04-24](#); [Advisory Opinion A07-24](#); [Advisory Opinion A21-25](#).

In essence, the greater the board member's involvement with staff and students, and the more the board member gives or receives direction and orders from staff, the more likely it will be prohibited. On the other hand, the more passive the activity (e.g., reading to the class or serving as a chaperone on a class trip), the more likely it will be permitted.

If, after reviewing the foregoing advisory opinions, newly elected board members and charter school trustees still have questions about whether their desired volunteer work/activity may violate the School Ethics Act, they can [submit a request for advisory opinion](#) to the School Ethics Commission.

D. EMPLOYMENT OF BOARD MEMBER OR CHARTER SCHOOL TRUSTEE

16. What if a board member or charter school trustee works for a company that does business in/for the district or charter school?

The School Ethics Commission has issued multiple advisory opinions and decisions finding that school officials who, in connection with their employment (even if with/for a non-profit organization), conduct business *in the district* where they hold office violate the School Ethics Act. In these circumstances, board members and charter school trustees must work with their employer to ensure they are not assigned to conduct business in the district where they serve. In addition, if a matter(s) involving their employer is presented to the board for review and consideration, the board member or charter school trustee must recuse from any and all discussions and votes on that matter(s). [Advisory Opinion A01-21](#); [Advisory Opinion A03-21](#); [Advisory Opinion A04-21](#); [Advisory Opinion A01-23](#); [Advisory Opinion A08-23](#); [Advisory Opinion A07-24](#); [Advisory Opinion A15-25](#); [C26-13](#) (adopted June 25, 2014); [C75-18](#) (adopted [June 27, 2023](#), and adopted [August 19, 2025](#), on remand); and [C03-21](#) (adopted June 17, 2024).

Also of note, if a board member or charter school trustee is employed by a business or entity that has a contract with the board of education or the charter school board of trustees, this information would need to be disclosed on their Disclosure Statements.

[RETURN TO INDEX](#)

IV. INELIGIBILITY TO SERVE

17. Following election, are there any reasons why a board member could later be deemed ineligible or unqualified to serve?

Yes. If a board member falsely affirms or declares that they are not disqualified as a voter pursuant to [N.J.S.A. 19:4-1](#) (but actually are), and/or falsely affirms or declares that they are not disqualified from membership on the board due to conviction of a crime or offense set forth in [N.J.S.A. 18A:12-1](#) (but actually are), they are *immediately* disqualified from office. In addition, the board member can also be found guilty of a crime of the fourth degree. [N.J.S.A. 18A:12-2.2](#).

Pursuant to [N.J.S.A. 18A:12-3](#), if a board member of a local or regional board ceases to be a bona fide resident of the district, or of any constituent district of a consolidated or regional district which they represent, or becomes the mayor or a member of the governing body of a municipality, their membership on the board shall *immediately cease*. Similarly, if a board member of a county special service school district or a member of a county vocational school district ceases to be a bona fide resident of the district, or holds office as a member of the governing body of a county, their membership on the board shall *immediately cease*. [N.J.S.A. 18A:12-3](#).

If, following election, a board member is subsequently disqualified as a voter pursuant to [N.J.S.A. 19:4-1](#) or subsequently convicted of a crime or offense enumerated in [N.J.S.A. 18A:12-1](#), their membership on the board shall *immediately cease*.

If a board member is found to have violated a provision of the School Ethics Act, and the School Ethics Commission recommends removal, their membership on the board shall *cease* upon adoption of a decision from the Commissioner of Education affirming the penalty.

If a board member fails to attend three consecutive board meetings without good cause, they *may* be removed from the board, but *only if* action is initiated to remove the member. [N.J.S.A. 18A:12-3](#). Removal of a board member for failure to attend three consecutive board meetings is *not* automatic. Before a board member can be removed, they must be afforded a hearing at which they can explain why they were unable to attend the board's meetings. *See, e.g., Johnson v. Bd. of Ed. of the Twp. of Piscataway (OAL Dkt. No. EDU-06947-20) (August 20, 2020); Esteves v. Bd. of Ed. of the Town of Keary (April 14, 2016); Van Nutt v. Board of Ed. of the Township of Rochelle Park (October 18, 1966).*

Finally, a charter school's charter or bylaws may also delineate specific qualifications to serve and, if violated, could render a trustee ineligible or unqualified to serve.

[RETURN TO INDEX](#)

V. OTHER ISSUES

18. What topics are board members permitted, by law, to discuss in private (executive session) while at a public board meeting?

Pursuant to the [Open Public Meetings Act, N.J.S.A. 10:4-6 to -21](#) (OPMA), a public body, such as a board of education, may exclude the public from the meeting for discussions related to:

- Matters deemed confidential pursuant to federal or state law;
- Matters that would impair the right to receive federal funds;
- Matters that would constitute an unwarranted invasion of individual privacy;
- Collective bargaining agreements/negotiations;
- The purchase, lease, or acquisition of real property with public funds;
- Tactics and techniques used in protecting the safety and property of the public;
- Pending or anticipated litigation, or matters covered by the attorney-client privilege;
- Personnel matters; and
- Public hearings that may result in the imposition of a specific civil penalty.

See [N.J.S.A. 10:4-12](#).

Additionally, as a reminder, for any information that is not yet public, board members and charter school trustees have an ethical obligation to keep the information confidential. See [N.J.S.A. 18A:12-24.1\(g\)](#).

19. Can the board hire the immediate family member or relative of a currently seated board member?

Once a board member is elected, the board's nepotism policy prohibits the board from hiring the immediate family member or relative of a board member. If the board does this, it risks losing State aid and losing points as part of its QSAC review. Nonetheless, if the employment of a board member's immediate family member or relative preceded the election or appointment of the board member, then the immediate family member or relative can continue to be employed in the district, and can be promoted. [N.J.A.C. 6A:23A-22.10](#).

In extremely exceptional situations, a district may employ the immediate family member or relative of a board member or chief school administrator, but only with approval from the Executive County Superintendent. The Executive County Superintendent will only approve such a hiring if the district demonstrates that it conducted a thorough search for candidates, and that the relative is the only qualified and available person for the position. [N.J.A.C. 6A:23A-22.10](#).

20. While on the board, can a board member be appointed to a paid position in the district?

No. Pursuant to [N.J.S.A. 18A:12-1.1](#), “No member of a board ... shall, during the term for which he is elected or appointed, be eligible for appointment to any *paid* office or position required to be filled by the board *unless he shall resign or cease to be a member at least 6 months prior to his appointment*, except in cases where the office or position is by law required or permitted to be filled by a member of the board.”

21. If a board member has a child/student in the district, can they meet with district staff and members of the administration to discuss their child’s education?

Yes! However, board members must always be careful not to invoke, refer to, or otherwise rely upon their status as a school official while in the meeting. Instead, board members should reiterate to anyone who may ask that they are attending the meeting(s) in their capacity as a parent. *See also* [Advisory Opinion A12-25; C29-25](#) (adopted December 16, 2025) (“Board members are allowed to consult with teachers and staff on behalf of their own child regarding their child’s education”).

22. What if a board member has a child/student in the district who is a special education student, and they need to meet with the child study team in a potential adversarial setting?

[N.J.S.A. 18A:12-24\(i\)](#) provides that, “Nothing shall prohibit any school official, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests.” Therefore, there does not appear to be a prohibition against a board member, *in their capacity as a parent*, attending a meeting with their child’s child study team to advocate zealously for their child. *See also* [Advisory Opinion A12-25](#).

23. Would all actions initiated by a board member against the board result in automatic disqualification?

Not necessarily, and the answer will depend, among other things, on the nature of the claim and the requested relief. Relevant here, [N.J.S.A. 18A:12-2](#) prohibits a board member from being “interested directly or indirectly in any contract with or claim against the board.”

In *Bd. of Ed. of the City of Sea Isle v. Kennedy*, 196 N.J. 1 (2008), the New Jersey Supreme Court attempted to harmonize [N.J.S.A. 18A:12-2](#) with [N.J.S.A. 18A:12-24\(i\)](#), a provision of the School Ethics Act which specifically permits school officials and their immediate family members to represent themselves in negotiations and/or proceedings concerning their own interests. In rendering its decision, the New Jersey Supreme Court held that, “ ... a board member should not be removed from office merely because he or she has advanced any claim ‘in a proceeding’ against a district involving *that individual or an immediate family member’s interests*.” Instead, disqualifying conflicts of interest “should be identified either by type of claim, i.e., *specific monetary claims* by the member or a family member as in a *tort claim*, or by type of

proceeding." Typically, tort claims and/or claims for monetary damages filed on behalf of a board member will fall within the ambit of inconsistent interests prohibited by [N.J.S.A. 18A:12-2](#), and will result in disqualification. For example, in *Saxton v. Luthman*, the Commissioner of Education found that a board candidate who had a contractual right to payment of unused sick leave reimbursement from the district had a direct interest in a contract with the board in violation of [N.J.S.A. 18A:12-2](#), and was disqualified from board membership and board candidacy. *See also I/M/O Tullo* (the Commissioner of Education deemed a board member disqualified from service due to the pendency of his workers' compensation claims against the board).

However, when the tort claim and/or claim for monetary damages is filed by, or on behalf of, a board member's immediate family member or relative, the board member's indirect (and potentially disqualifying) interest in the claim depends on various circumstances. *See Bd. of Ed. of the City of Newark v. Haynes*, Agency Dkt. No. 385-12/24 (January 21, 2025). Therefore, "... the line between acceptable and prohibited activities by board members ... [should] be resolved *through the prism of a fact-specific inquiry*" (emphasis added).

In the context of special education matters, the New Jersey Supreme Court acknowledged that "disagreements between the parent of a disabled child and a ... board often require multiple meetings with child study teams," and those disagreements "are not the type of conflict that ordinarily should run afoul of [N.J.S.A. 18A:12-2](#)." Therefore, the mere attendance and/or participation of a board member/parent of a special education student in child study team meetings does not constitute a disqualifying interest.

The New Jersey Supreme Court further stated, "we will not presume that every due process request to resolve specific issues regarding a child's classification or [Individualized Education Program] should result in the automatic disqualification of a board member" Instead, the Commissioner of Education "should examine the nature of the dispute and establish a more careful and fact-specific explanation of when a conflict over a child's educational program becomes so substantial that removal from office is required." In this regard, "when a due process claim includes a request for specific monetary relief, we believe that a line has been crossed and a substantial conflict between a board member and the board can be found to exist." Based on the New Jersey Supreme Court's ruling, it appears that a due process petition can be filed by a board member/parent of a special education student against the board and not result in the board member's automatic disqualification from office *as long as* it does not include a request for specific monetary relief.

Notwithstanding the above, a recent New Jersey Superior Court, Appellate Division decision, *Bd. of Ed. of the Borough of Kinnelon v. D'Amico*, found that, unlike a notice of tort claim, a board member's filing of a "10-day letter" with the board is *not* a *per se* disqualifying conflict of interest because it does not request specific monetary relief, but rather preserves the right to *prospectively* seek reimbursement.

What is a 10-day letter? If the parent of a special education student believes that the public schools are not providing their child with a free appropriate public education, they can unilaterally place their child in a nonpublic (private) school. However, if the parent wants to be reimbursed for this unilateral placement, they must, at least ten days prior to removing their child/student from the public school, give written

notice to the district of their concerns or intent to enroll their child in a nonpublic (private) school (the “10-day letter”). *See N.J.A.C. 6A:14-2.10.*

Nonetheless, the New Jersey Superior Court, Appellate Division acknowledged that if “a timely due process request for tuition reimbursement” was later filed, “a line would be crossed requiring disqualification from the [b]oard.”

24. While on the board, can a board member run for a different elected office?

Possibly. N.J.S.A. 19:3-5.2 unequivocally states that, “... a person elected to public office ... shall not hold simultaneously any other elective public office.” In addition, Fischer v. Attorney Gen. of N.J. made clear that, “School board members *may not be elected* to two school boards, *nor sit* simultaneously on two boards absent statutory authority.”

However, in Bd. of Ed. of the Town. Of Barneqat v. Houser, the Commissioner of Education held that an individual could run as a *candidate* for the board *even though* they had a contract or claim against the board of education that would, per N.J.S.A. 18A:12-2, constitute an inconsistent interest. The Commissioner of Education reasoned that, “a victorious school board candidate who cured any conflicts prior to the commencement of his or her term of office would not be disqualified from board membership by operation of” of N.J.S.A. 18A:12-2. In other words, as long as the conflict *could* be cured prior to the start of office, and the individual has affirmatively indicated that they would cure it, then they could be a candidate. *See also Toms River Regional School District v. Luthman, Jr.* (affirmed by the Commissioner of Education March 14, 2008).

Applying the reasoning from Bd. of Ed. of the Town. Of Barneqat v. Houser and Toms River Regional School District v. Luthman, Jr., if a currently seated elected board member represented that they would resign from their current seat if successful on election day (to another elected office), then they could be a candidate for a different elected office while already a currently seated elected board member. In addition, and as further detailed below, when an individual files a nominating petition, they certify that, if elected, they will accept the office, and the failure to abide by that certification could be construed as false swearing or false affirmation (a criminal offense).

RETURN TO INDEX