

The School Ethics Act:
A Business Administrator's Guide

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Agenda

- Overview of the School Ethics Act
- The “Frequent Flyers”
- Statutory Indemnification
- The Role of Insurance
- Board Secretary’s Duties



Legal Powers of Board Members

- Participate in discussion and votes at duly convened Board meetings
- Consult with Superintendent on Board-related business
- Fulfill other roles delegated by Board

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

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

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

- Ex-employees with ongoing financial ties
- Tort claim notices
- Special education disputes

Scope of the School Ethics Act and Code of Ethics

- **Members of Local School Boards**
- **Trustees of Charter Schools**
- **Certain High-Ranking “Administrators”**

Any “Administrator” Who:

(i) holds a position which requires a certificate that authorizes the holder to serve as school administrator, principal, or school business administrator, or

(ii) holds a position which does not require that the person hold any type of certificate but is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district; or

(iii) holds a position which requires a certificate that authorizes the holder to serve as supervisor and who is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district . . .

Board Secretary Responsibilities

N.J.A.C. 6A:28-4.2

- Provide written notice to NJSBA and Commission within 30 days of Board member joining or leaving, plus Board members' school address, telephone number and email address with updates for changes

Board Secretary Responsibilities

N.J.A.C. 6A:28-3.2

- February 1: compile list of school officials obligated to file disclosures
- April 30: review all disclosure statements for completeness then submit to ESC
- May 10: report non-compliance to ESC

Board Secretary Responsibilities

N.J.A.C. 6A:28-3.2

- Review disclosure statements for conflicts of interest
- Post link on district's website on the same page as contact information for each school official or on a stand-alone webpage for all school officials

Karpiak v. Farruggia

C57-14 (1/26/16)

<https://tinyurl.com/5ddcnb3s>

“The public in the School District decides in the ballot booth the candidates, who will represent them. The seats that duly elected school officials occupy must not be threatened by individuals or outside groups seeking to change the balance of power in their favor through intimidation or coercion. . . .

Karpiak v. Farruggia

C57-14 (1/26/16)

<https://tinyurl.com/5ddcnb3s>

... And the School Ethics Commission must not be used as a tool in partisan battles to accomplish political ends. Such conduct sets a poor example for the children of the District and weakens the public's trust and confidence in the electoral process.”

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

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest

N.J.S.A. 18A:12-24(b)

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others

Hudgins v. Vives-Rivera

C78-21 (11/26/24)

<https://tinyurl.com/4wdceees>

- Board member delivers letter to Board as a favor to employee-friend whose discipline was under consideration, excluding the Superintendent, and advocating for her friend at the meeting violated N.J.S.A. 18A:12-24(b).

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

No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some personal benefit to the school official or member of his immediate family.

N.J.S.A. 18A:12-24(d)

No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties

NJSBA Code of Ethics

N.J.S.A. 18A:12-24.1(c)

I will confine my board action to *policy making, planning, and appraisal*, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

NJSBA Code of Ethics

N.J.S.A. 18A:12-24.1(d)

I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

NJSBA Code of Ethics

N.J.S.A. 18A:12-24.1(e)

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

NJSBA Code of Ethics

N.J.S.A. 18A:12-24.1(f)

I will refuse to surrender my independent judgment to *special interest or partisan political groups* or to use the schools for personal gain or for the gain of friends.

NJSBA Code of Ethics

N.J.S.A. 18A:12-24.1(g)

I will *hold confidential* all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. . . .

NJSBA Code of Ethics

N.J.S.A. 18A:12-24.1(g)

... .In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

NJSBA Code of Ethics

N.J.S.A. 18A:12-24.1(i)

I will *support and protect school personnel* in the proper performance of their duties.

NJSBA Code of Ethics

N.J.S.A. 18A:12-24.1(j)

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.

Major Impact Areas

- Volunteering
- Participation in Hiring/Personnel Decisions
- Participation in Negotiations

“Relatives”

N.J.A.C. 6A:28-1.2

- As of March 2023, expanded definition tracks the “nepotism” regulation in N.J.A.C. 6A:23A
- Conflicts for “relatives” employed in the district or in other districts

Helpful Charts of “Relative” Conflicts

- Advisory Opinion A11-23 (6/27/23)
<https://tinyurl.com/xevbjz2>
- Advisory Opinion A24-17 (9/26/17)
<https://tinyurl.com/3nndrxr3>

FAMILIAL RELATIONSHIP	CONSIDERED A "RELATIVE" FOR PURPOSES OF CONTRACT NEGOTIATIONS WITH THE LOCAL EDUCATION ASSOCIATION AND MATTERS RELATED TO THE EMPLOYMENT OF THE SUPERINTENDENT
School official's spouse/partner	Yes
School official's parents	Yes
School official's children	Yes
School official's brother (sister)	Yes
School official's brother's (sister's) spouse/partner	No
School official's aunt (uncle):	Yes
School official's aunt's (uncle's) spouse/partner	No
School official's nephew (niece)	Yes
School official's nephew's (niece's) spouse/partner	No
School official's grandparents	Yes
School official's grandchildren	Yes
School official's grandchildren's spouses/partners	No
School official's son-in-law (daughter-in-law)	Yes
School official's step-parent	Yes
School official's step-child	Yes
School official's step-child's spouse/partner	No
School official's step-sibling	Yes
School official's step-sibling's spouse/partner	No
School official's half-sibling	Yes
School official's half-sibling's spouse/partner	No
School official's spouse's/partner's parents	Yes
School official's spouse's/partner's children	Yes
School official's spouse's/partner's brother (sister)	Yes
School official's spouse's/partner's brother's (sister's) spouse/partner	No
School official's spouse's/partner's aunt (uncle):	Yes
School official's spouse's/partner's aunt's (uncle's) spouse/partner	No
School official's spouse's/partner's nephew (niece)	Yes
School official's spouse's/partner's nephew's (niece's) spouse/partner	No
School official's spouse's/partner's grandparents	Yes
School official's spouse's/partner's grandchildren	Yes
School official's spouse's/partner's grandchildren's spouses/partners	No
School official's son-in-law (daughter-in-law)	Yes
School official's spouse's/partner's step-parent	Yes
School official's spouse's/partner's step-child	Yes
School official's spouse's/partner's step-child's spouse/partner	No
School official's spouse's/partner's step-sibling	Yes

RELATIONSHIP TO BOARD MEMBER	CURRENT MEMBER OF THE LOCAL UNION	CURRENT MEMBER OF ANY STATEWIDE PUBLIC TEACHERS' UNION	PARTICIPATE IN NEGOTIATIONS Yes or No	VOTE TO RATIFY THE CONTRACT Yes or No	PARTICIPATE IN ISSUES RELATED TO THE SUPER. (Search, Hire, Contract, and Evaluation) Yes or No
SELF		X	No	Yes*	Yes*
SPOUSE	X		No	No	No
SPOUSE		X	No	Yes*	Yes*
DEPENDENT CHILD	X		No	No	No
DEPENDENT CHILD		X	No	Yes*	Yes*
CHILD (NOT DEPENDENT)	X		No	No	No
CHILD (NOT DEPENDENT)		X	Yes*	Yes*	Yes*
RELATIVE	X		No	No	No
RELATIVE		X	Yes*	Yes*	Yes*
* Absent another conflict					

Administrators' Conflicts

N.J.A.C. 6A:23A-6.2(a)(6)

Conflicted administrator “may serve as a technical resource to the negotiating team and may provide technical information necessary to the collective bargaining process when no one else in the school district can provide such information.”

Issuance of “Rice” Notices to Superintendent

- Persi v. Woska (Commissioner 6/17/14)
<https://tinyurl.com/ycctcrmm>
- “[A]uthority lies with the president of a district board of education or a majority of the full membership of a district board of education.”

Volunteers

- Berenato v. Poss, C11-24 (11/26/24)
<https://tinyurl.com/rd9azpr9>
- Involvement with staff/students
- Orders and directions to and from staff

Social Media

- First Amendment rights of Board members and administrators
- The “disclaimer” requirement (or not)
- Burden on respondents to show they were speaking only for themselves

Disclaimers

- “Official” vs. Private Speech
- Explicit disclaimers can’t hurt, *but*
- Not required if overall context shows
Board members speaking for themselves
- No good anyway if overall context still
suggests speaking for the Board

I/M/O Regina Discenza

C75-19 (12/17/24)

<https://tinyurl.com/y6ksx8yt>

- Board member political endorsement video posted on FaceBook identifying herself as Board member, wearing school ID badge, and asking voters to support a particular slate to assist her on the Board
- No disclaimer but wouldn't have mattered

Standard for Violations

- Appearance of impropriety doctrine
- The “reasonable observer” standard
- Avoid coming close to the line

Indemnification

N.J.S.A. 18A:12-20

Whenever a civil , administrative, criminal or quasi-criminal action or other legal proceeding has been or shall be brought against any person for any act or omission 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. . . .

. . . . Indemnification for exemplary or punitive damages shall not be mandated and shall be governed by the standards and procedures set forth in N.J.S. 59:10-4. *Any board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.*

Indemnification

N.J.S.A. 18A:16-6

Whenever any civil or administrative action or other legal proceeding has been or shall be brought against any person holding any office, position or employment under the jurisdiction of any board of education, including any student teacher or person assigned to other professional pre-teaching field experience . . .

. . . for any act or omission arising out of and in the course of the performance of the duties of such office, position, employment or student teaching or other assignment to professional field experience,

. . . . the board 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; provided that . . .

a. no employee shall be entitled to be held harmless or have his defense costs defrayed in a disciplinary proceeding instituted against him by the board or when the employee is appealing an action taken by the board; and

b. indemnification for exemplary or punitive damages shall not be mandated and shall be governed by the standards and procedures set forth in N.J.S. 59:10-4.

Any board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

N.J.S.A. 59:10-4

May indemnify for punitive damages “if, in the opinion of the governing body of the local public entity, the acts committed by the employee upon which the damages are based did not constitute actual fraud, actual malice, willful misconduct or an intentional wrong.”

“The only question to be answered when a school board employee seeks civil indemnification under *N.J.S.A. 18A:16–6* is whether the employee was acting within the scope of his or her employment duties.”

L.A. v. BOE of City of Trenton, 221 N.J. 192 (2015)

BOE of Bor. of Milltown v. Pardo

A-3421-21 (App. Div. 2024)

<https://tinyurl.com/5atumu8h>

- Indemnification under N.J.S.A. 18A:12-20 available to Board members only after they have taken their seat on the Board
- No application to fees incurred in challenging a refusal to seat the member.

Sahli v. Woodbine BOE

193 N.J. 309 (2008)

<https://tinyurl.com/3f6mdd7a>

- Board attorney was independent contractor not an “employee” in that role but
- Was entitled to indemnification while acting as voluntary Secretary Pro Tem

Sahli v. Woodbine BOE

193 N.J. 309 (2008)

<https://tinyurl.com/3f6mdd7a>

- Joint Insurance Fund policy covered “volunteers while acting with the scope of their duties. . . .”
- Board attorney “volunteered” to serve as Secretary Pro Tem so he was covered

Azzaro v. BOE of City of Trenton

477 N.J. Super. 427 (App. Div. 2023)

<https://tinyurl.com/yckx5ymx>

- Reasonably prompt notice required, unlike N.J.S.A. 18A:16-6.1 for criminal proceedings
- Boards entitled to at least some input into the cost of the defense, if not the selection of counsel

Board Discussion of Indemnification

- Parties should not participate in discussion or vote on indemnification
- Indemnified party should recuse from vote on attorney's invoices

Final Tips

- Make inquiry of Board members about relatives, employers and other sources of conflict *before* they are seated
- Alert Board members in advance to agenda items where it's clear they are or may be conflicted

Final Tips

- Monitor discussion and votes by conflicted members
- Adhere to timelines for personal financial disclosure statements
- Consult with Board counsel as necessary

Thanks for Coming!

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