

SCHOOL ETHICS ACT REVIEW

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COMEGNO

LAW GROUP, P.C.

THIS PRESENTATION
DOES NOT REPLACE
INDIVIDUAL ETHICS
TRAINING REQUIRED
FOR ALL NEWLY
ELECTED OR
APPOINTED BOARD
MEMBERS.

(Don't Blame Me)



NJ SCHOOL ETHICS ACT

N.J.S.A. 18A:12-21

In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators *HOLD THE RESPECT AND CONFIDENCE OF THE PEOPLE*

[...] board members and administrators must 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.



**N.J.A.C.
6A:32-3.2
REQUIRES
EVERY
BOARD OF
EDUCATION
TO:**



DISCUSS the SCHOOL ETHICS ACT and the CODE OF ETHICS FOR SCHOOL BOARD MEMBERS at a regularly scheduled public meeting each year



ADOPT POLICIES AND PROCEDURES for training board members in understanding the CODE OF ETHICS

- and -



DOCUMENT that each board member has received and reviewed the CODE OF ETHICS

THE ROLE OF A SCHOOL BOARD MEMBER

Governing body
of the school
district.

Charged with high
level, policy-
making decisions.

Only entity can
enter into contracts
or other binding
agreements.

Decision-making
authority limited –
cannot administer
the schools.

May not act in
many situations
without CSA
recommendation.

Governed by
Code of Ethics;
N.J.S.A. 18A:12-
24.1, et seq.



**CODE OF
ETHICS
N.J.S.A.
18A:12-
24.1(A)
“UPHOLD ALL
LAWS”**

1. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools.
Desired changes shall be brought about only through legal and ethical procedures.

Evidence of Violation:

- A. Copy of a final decision from any court of law or administrative agency of this State demonstrating that the Board member failed to enforce all laws, rules and regulations of the State Board of Education; or
- B. Court orders pertaining to schools; or that the board member brought about changes through illegal or unethical procedures.



**CODE OF
ETHICS
N.J.S.A.
18A:12-
24.1(A)
“UPHOLD ALL
LAWS”**

C58-14: Board member violated the Code when he attempted to issue a Board employee a Rice notice without following the proper legal procedure of seeking Board authority or consulting with the Board.

C11-04: President of the Board violated the Code when he took it upon himself to contact someone hired by the Board to tell them that their appointment was void because he had directed the Superintendent to remove the individual's name from the agenda but the Superintendent failed to do so. Board member was ultimately removed.



CODE OF ETHICS N.J.S.A. 18A:12-24.1(B)

“EDUCATIONAL WELFARE”



2. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

Evidence of violation:

- A. That Board member willfully made a decision contrary to the educational welfare of children; or
- B. That the Board member took deliberate action to obstruct programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing



**CODE OF
ETHICS N.J.S.A.
18A:12-24.1(B)
“EDUCATIONAL
WELFARE”**

C60-19: Board member whose adult and financially independent child worked in the District as a per diem substitute teacher violated the Act when they participated in the Superintendent’s evaluation and voted to approve payment of merit goals.

C40-20: Board Vice President did not violate the act by making a statement during a public meeting “lambasting” a number of District parents by name and an advocacy group that were critical against past actions of the Board even though the meeting was virtual and was beamed into homes where children could see it.



**CODE OF
ETHICS
N.J.S.A.
18A:12-
24.1(C)
“LIMITED TO
POLICY
MAKING”**

3. 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.

Evidence of Violation:

- A. That the Board member took board action to effectuate policies and plans without consulting those affected by such policies and plans; or
- B. Took action that was unrelated to the member’s duty to:
 - i. Develop the general rules and principles that guide the management of the school district or charter school;
 - ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or
 - iii. Ascertain the value or liability of a policy.



CODE OF
ETHICS
N.J.S.A.
18A:12-
24.1(C)
“LIMITED TO
POLICY
MAKING”

C16-14: Board members conducted a site visit to assess a candidate for Assistant Superintendent without Board authority

C14-20: BOE member who raised concerns with Complainant and to administration over her conduct at HS baseball games, did NOT violate the Code by asking to be on the Policy Committee and then working to revise the Board's Policy dealing with removing persons at school events for disruptive conduct.



CODE OF
ETHICS
N.J.S.A.
18A:12-
24.1(C)
“LIMITED TO
POLICY
MAKING”

C44-05 – Board President and Vice President violated multiple provisions of the Act when they accepted an invitation and met privately with the Local Teachers’ Association to discuss concerns that the Association had. Meeting was held without the knowledge of the other Board members and without the knowledge of the Superintendent or the Superintendent being present. Found to violate subsections (c) and (d) of the Act. President was suspended for one month and Vice President was censured.



CODE OF ETHICS
N.J.S.A. 18A:12-
24.1(D)
“NO
MICROMANAGING”

4. 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.

Evidence of Violation:

- A. That the Board member gave a direct order to school personnel; or
- B. The Board member became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.



CODE OF ETHICS
N.J.S.A. 18A:12-
24.1(D)
“NO
MICROMANAGING”

C40-10: Board member violated the code by instructing the Superintendent to allow a graduating senior to participate in graduation ceremonies when the Superintendent had barred the student from participating in the ceremonies due to safety concerns. The police had reported that there were threats that the student was the target of a shooting and the board member was aware of the report.



CODE OF ETHICS
N.J.S.A. 18A:12-
24.1(D)
“NO
MICROMANAGING”

C64-06: Board member violated the code when he unilaterally visited the school and took pictures of open windows in the middle school and items in the Board office bathroom, which he then spoke to reporters about.

A15-10: Board member would violate the act by participating in an exit interview or merely observing the exit interview, as it would breach the board member’s obligation to refrain from becoming directly involved in activities that are the responsibility of school personnel and would equate to micromanaging school personnel.



CODE OF ETHICS
N.J.S.A. 18A:12-
24.1(E)
“NO PERSONAL
PROMISES/PRIVATE
ACTION”

5. 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.

Evidence of Violation:

- A. That the Board member made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the Board.



CODE OF ETHICS
N.J.S.A. 18A:12-
24.1(E)
“NO PERSONAL
PROMISES/PRIVATE
ACTION”

C16-14: Board members violated the Code when they made personal promises to a candidate for Assistant Superintendent by advancing the possibility of his employment with the District and promising to resolve a contract issue for the district, which had the potential to compromise the Board.

C63-19: Board Members did not violate the Act by negotiating and sending a proposed CSA contract to the ECS prior to full BOE review and discussion.

Although the actions ostracized a minority of the Board, such acts did not exceed the scope of and duties of a Board member.



**CODE OF
ETHICS
N.J.S.A.
18A:12-
24.1(F)
“NO
PERSONAL
GAIN”**

6. 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.

Evidence of Violation:

- A. That the Board member took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or
- B. That the Board member used the schools in order to acquire some benefit (financial or otherwise) for the member a member of his or her immediate family or a friend.



CODE OF ETHICS
N.J.S.A. 18A:12-
24.1(F)
“NO PERSONAL
GAIN”

C34-18: BOE member violated the Act when during a traffic stop she identified herself as a Board member, stated that she hates cops because “they hurt black people,” called the request for her license and registration a “F***ing insult”, “threatened to make a call “right now” to the Council President, and after told that the ticket could not be voided stated: “Then I’ll call the Council President and your skinhead cop chief too.” Township Administrator sent a memo to the BOE President expressing concerns over these actions. SEC found that her near immediate self-identifying as a board member was attempt to leverage BOE position.

A36-14: Board members may endorse candidates up for election to the Board if the endorsement is made as a private citizen and not as a Board member or on behalf of the Board.



**CODE OF
ETHICS
N.J.S.A.
18A:12-
24.1(F)
“NO
PERSONAL
GAIN”**

A24-14: Conflicted Board members may not participate in the Board’s search for a new Superintendent as confidential matters pertaining to search criteria, etc. might be disclosed by the Board member.

A06-08: Board member, who was previously employed and was terminated by the Superintendent, filed ethics charges against the Superintendent and upon being elected, called for a vote of no confidence in the Superintendent, would violate the Act by participating in the evaluation or any discussions, activities and votes related to the employment of the Superintendent.



**CODE OF ETHICS
N.J.S.A. 18A:12-
24.1(G)
“MAINTAIN
CONFIDENTIALITY”**

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

Evidence of Violation:

- A. That the Board member took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders, or information that was otherwise confidential by way of board policies, procedures or practices. or
- B. Evidence that substantiates the inaccuracy of the information provided and evidence that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.



CODE OF ETHICS
N.J.S.A. 18A:12-
24.1(G)
“MAINTAIN
CONFIDENTIALITY

C17-18: Board member was censured for responding to and having a social media message re-posted over an alleged student discipline incident of a HS student. Message identified the student’s school, grade level, gender and specific details about the incident and length of suspension imposed.

C09-19: Board member was reprimanded for inadvertently copying a community member on an email that was intended to go to all BOE members and the CSA wherein discussions that were held in Executive Session over a staff member/parent’s complaint over a security issue were revealed.



CODE OF ETHICS
N.J.S.A. 18A:12-
24.1(G)
“MAINTAIN
CONFIDENTIALITY

C29-21: Board member violated multiple provision of the Act when at a PTA meeting they discussed the Board’s Superintendent Search and candidates for position, indicated that it was unlikely that the Acting Superintendent would be considered for the position, and then publicly stated at Board meeting that it was important that the new Superintendent hold everyone accountable, and that it might have been difficult for the Acting Superintendent to do that if they had been selected. Violated (g), (e) and (i).



CODE OF ETHICS
N.J.S.A. 18A:12-
24.1(H)
“CONSIDER CSA’S
RECOMMENDATION”

8. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

Evidence of Violation

- A. That the Board member acted on a personnel matter without a recommendation of the chief administrative officer.



**CODE OF ETHICS
N.J.S.A. 18A:12-
24.1(H)
“CONSIDER CSA’S
RECOMMENDATION”**

C35-02: Board members did not violate the Code when they voted not to reappoint an employee despite the contrary recommendation of the principal and superintendent. The Act does not require the board to accept all recommendations of the CSA; the BOE must, however, consider all recommendations and dismiss those that are arbitrary or capricious.

A31-15: Held that selecting candidates for District positions and making recommendations is the role of the Superintendent. Prior to the recommendations, Board members have no role in selecting candidates for positions other than that of the Superintendent.



**CODE OF
ETHICS
N.J.S.A.
18A:12-
24.1(I)
“SUPPORT
DISTRICT
PERSONNEL”**

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

Evidence of violation:

- A. That the Board member took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.



CODE OF
ETHICS
N.J.S.A.
18A:12-
24.1(I)
“SUPPORT
DISTRICT
PERSONNEL”

C01-18: Board member violated the Code when during a private conversation during a board meeting, he asked if the CSA position opened, would that person (a current employee) be interested. Not only was there no position to fill, as there was a CSA, but the other individual was the Superintendent's subordinate. By inquiring if interested in the boss's job, the Board member undermined the CSA, thwarted the chain of command, and compromised the CSA in the proper performance of his/her duties.

C53-05: Board member violated the Code when he sent an email to the Superintendent (that was also sent to BA and all other Board members) that was threatening and intimidating in that it asked for the Superintendent to provide an accounting of her personal leave.



CODE OF
ETHICS
N.J.S.A.
18A:12-
24.1(I)
“SUPPORT
DISTRICT
PERSONNEL”

C25-11: President of the Board member violated the Code by posting comments the following comments on his Facebook page and a link to a picture of the Superintendent: “Now if we could only do something about our local terrorists that destroy dreams and burn futures.”

CASE POINT C84-17: Board members and Superintendent **DID NOT** violate the Code when the Superintendent decided to allow the parent of a special education student to observe a classroom without consulting with the classroom teachers, and the Board did not violate the Code by denying the grievance that was filed by the Association in connection with that visit.



CODE OF
ETHICS
N.J.S.A.
18A:12-
24.1(J)
“PROCEED
THROUGH
PROPER
CHANNELS”

10. 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

Evidence of Violation:

- A. That the Board member acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint:
 - i. Prior to referral to the chief administrative officer; or
 - ii. At a time or place other than a public meeting and prior to the failure of an administrative solution.



**CODE OF
ETHICS
N.J.S.A.
18A:12-
24.1(J)
“PROCEED
THROUGH
PROPER
CHANNELS”**

C18-21: Board members violated the Code by sending a response email to a community member that was critical of a staff member’s comments at a public Board meeting and posting on their private social media account – calling the posts flippant, hypocritical, inflammatory, and a source of embarrassment to the District – and promised the community member an administrative response even though the Administration was still investigating and had not yet responded to the staff member.

C24-07: Board member violated the Code by not providing Superintendent with letters because he did not like the Superintendent’s management of issues raised in the letters. Instead, Board member went to other administrators to address the issues.

**Administration of schools by the
Administration.**





CONFLICTS – DEFINITIONS

ETHICS ACT V. NEPOTISM REGULATIONS

Ethics = “Member of immediate family” / “Relative” / “Others”	Nepotism = “Relative”
<p>Immediate Family (N.J.S.A. §18A:12-23)</p> <ul style="list-style-type: none">● Spouse or Partner● Dependent Child residing in same household <p>Relative (N.J.S.A. §18A:12-23)</p> <p>Spouse or Partner</p> <ul style="list-style-type: none">● Child (natural or adopted)● Sibling● Parent <p>“Others” – A11-15: An individual who meets the definition of “relative” under nepotism regs will be considered and “other” under the Ethics Act</p>	<ul style="list-style-type: none">● Spouse, civil union or domestic partner● Parent or Step-Parent● Child or Step-Child● Sibling, Half-Sibling or Step-Sibling● Aunt or Uncle● Niece or Nephew● Grandparent● Grandchild● In-laws● Of you OR your spouse/partner by blood, marriage or adoption

BREAKDOWN OF PARTICIPATION

Absent another conflict, a Board member who is currently (or who has an immediate family member that is currently) a member of any statewide public teachers' union, but in another school district, cannot participate in any aspect of negotiations until the MOA, including salary guides and the total compensation package, has been attained. Once that is done the Member can vote on the Successor CNA.

A Board member with an immediate family member who is employed in the District, cannot participate in any aspect of negotiations, including the vote on the Successor CNA.



BREAKDOWN OF PARTICIPATION

A Board member with a relative who is employed in the District, cannot participate in any aspect of negotiations, including the vote on the Successor CNA following attainment of the MOA.

Absent another conflict, a Board member with a relative who is currently a member of any statewide public teachers' union, but works in another school district, may be able to participate in all aspects of negotiations, including the vote on the collection negotiations agreement following attainment of the memorandum of agreement.



BREAKDOWN OF PARTICIPATION

	In-District	Out of District
Immediate Family Member	Conflict	Conflict
Relative	Conflict	Maybe*
“Other”	Maybe*	Maybe*

***Must consider the following (See A11-15; A16-15):**

Is the out-of-district relative/other an officer in the NJEA or local education association?

Is the out-of-district relative/other on the negotiating team for that district?

Does the out-of-district relative/other have some other leadership role which may influence the outcome of negotiations in the other district?



STAFFING COMPANIES?

Advisory Opinion A24-17

Advised that the employment of a Board member's sister by a substitute staffing company that had a contract with the Board for substitutes would NOT conflict the Board member from negotiations or from participating in all issues concerning the District's Superintendent, Building Principal or Budget.



SUBSTITUTES?

Advisory Opinion A30-14

Advised that where a Board member's spouse is employed as a substitute teacher in-district, the Board member may not participate in any personnel matters of those in chain of command over Board member's spouse.



NON- TRADITIONAL EDUCATION UNION MEMBERSHIP

Advisory Opinion A32-17

Membership in a non-traditional teachers' union (i.e., not NJEA or American Federation of Teachers) will not preclude or conflict a board member from participating in negotiations unless:

- There is a financial relationship or nexus between the local association(s) and the non-traditional teachers' union of which the board member or board member's immediate family member, relative or other is a member.



DOCTRINE OF NECESSITY

Where so many board members have ethical conflicts that the board cannot function, then a board may use the Doctrine of Necessity which will allow the board to function as if no member had a conflict.

Board must pass a resolution invoking doctrine, reasons for it, and the nature of the conflicts.

Doctrine allows voting and, in limited circumstances, participation in negotiations.

Board should consult with attorney before using Doctrine of Necessity.



DOCTRINE OF NECESSITY

Advisory Opinion A28-17 -- Invoking the Doctrine to form a Committee

- SEC does not require at least three members to be on a Board Committee.
- Permissible to have only two members on a Committee.
- But cannot have only one member on a Committee
 - If there is only one non-conflicted member, then the Board can invoke the Doctrine of Necessity in order to form a Committee.



Advisory Opinion A31-15 (Jan. 2016)

Each Board of Education may decide if it wants a Personnel Committee.

SEC *does not* support Board members conducting interviews for positions below Superintendent.

If a board forms a personnel committee, *no more than 1 or 2* board members may participate.

Participating members have a limited role.



INTERVIEW PROCESS



Advisory Opinion A31-15 (Jan. 2016)

Board members may not conduct the interview but may offer observations and assessments.

Final recommendations are “wholly within the purview of the Superintendent.”

Selecting candidates and making recommendations is solely the role of the Superintendent. (NJSA 18A:27-4.1)

Before a recommendation is made for hiring, board members have no role except when selecting a Superintendent.

INTERVIEW PROCESS



VOLUNTEERING



Advisory Opinions A32-14; A10-15; A17-15 and A-24-15

SEC concerned with “degree of involvement” with staff and students that a Board member could have with students

SEC also concerned with extent to which volunteering Board member has authority to give and receive directions to/from staff during the volunteering activity.

- No supervision of staff and students.

Should advise Superintendent and relative staff that you will be volunteering and when doing so you are in your capacity as a volunteer/parent – NOT as a BOE member.



VOLUNTEERING



The SEC does not view intermittent, non-executive volunteer activities to be an issue. Rather, the main concern is that a Board member should not be in a consistent supervisory position nor generally oversee staff or students when volunteering.

Volunteer activities that ok are:

- helping to construct and maintain props for the musicals / play;
- loading and unloading band equipment for the marching band;
- serving as a "Team Parent" (including arranging and organizing spirit days, Senior Celebrations and/or End of Year Banquets);
- Homeroom or Classroom Parent,
- Homeroom Parent Coordinator for a specific School,
- Coordinator of a Movie Night Event,
- Coordinator of Field Day Events and
- PTA / PTO Executive Officer (including President).



BUS DRIVER

Advisory Opinion A18-17 & A06-19

- Board member who is employee of a busing company that contracts with the District to provide transportation to students can transport District students on a daily basis to and from school, even though bus driver has supervisory role over students, enforces school rules, and interacts with staff and students on a daily basis.
- Difference between private employment and volunteering
 - Getting Paid – Contact OK
 - Not Getting Paid – Contact Not OK



NO LONE WOLVES

C25-16

Lone board member with procedural concerns about a superintendent contract. The board member wanted to file a petition with the commissioner for determination on those issues. Board attorney told board member he could not do so without the support of the majority of the board. Board member filed anyway. After board member filed, ethics charges were brought against the board member.

SEC found that the board member instituted a proceeding adverse to the district, and took personal action that compromised the board. The ALJ recommended a reprimand but the SEC modified the penalty to censure.

“If a lone Board member is unable to convince his or her fellow Board members of his or her position, then the Board member’s recourse is to address the issue in public, or to vote against a resolution or action that he may disagree with. The recourse, is not, for Board members to take matters in their own hands and to file a public proceeding against other members of the Board.”

BEWARE OF SOCIAL MEDIA



CAREFUL CAREFUL CAREFUL

C17-18: Board member was censured for responding to and having a social media message re-posted over an alleged student discipline incident of a student. Message identified the student's school, grade level, gender and specific details about the incident and length of suspension imposed.



CAREFUL CAREFUL CAREFUL

C-19-15 and C-20-15- SEC found two (2) BOE members violated Act when they posted on Facebook that a substitute teacher (who was also running for election to the Board) was unemployed and engaged in misconduct as a substitute teacher notwithstanding the fact that the statements were not true and actually applied to another teacher. The Commission found that the Board members violated N.J.S.A. 18A:12-24.1(i) and (g) and issued a reprimand.



CAREFUL CAREFUL CAREFUL

C56-19 and C57-19- SEC Found BOE member violated the Act when he posted offensive posts on his personal Facebook page that were anti-Muslim. Although it was found that the posts were on his personal Facebook page, were not made in the capacity of a Board member; and the content of the posts were personal opinions, the BOE member violated the Act as it was “private action that may compromise the Board” and “undermined the public trust.” Member was only censured because he had not run for reelection, therefore, removal was not an option.



QUESTIONS????

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