

SCHOOL BOARD  
ETHICS REVIEW

January 2024  
Jeffrey R. Caccese, Esq



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

# EVERY BOARD OF EDUCATION IS REQUIRED 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

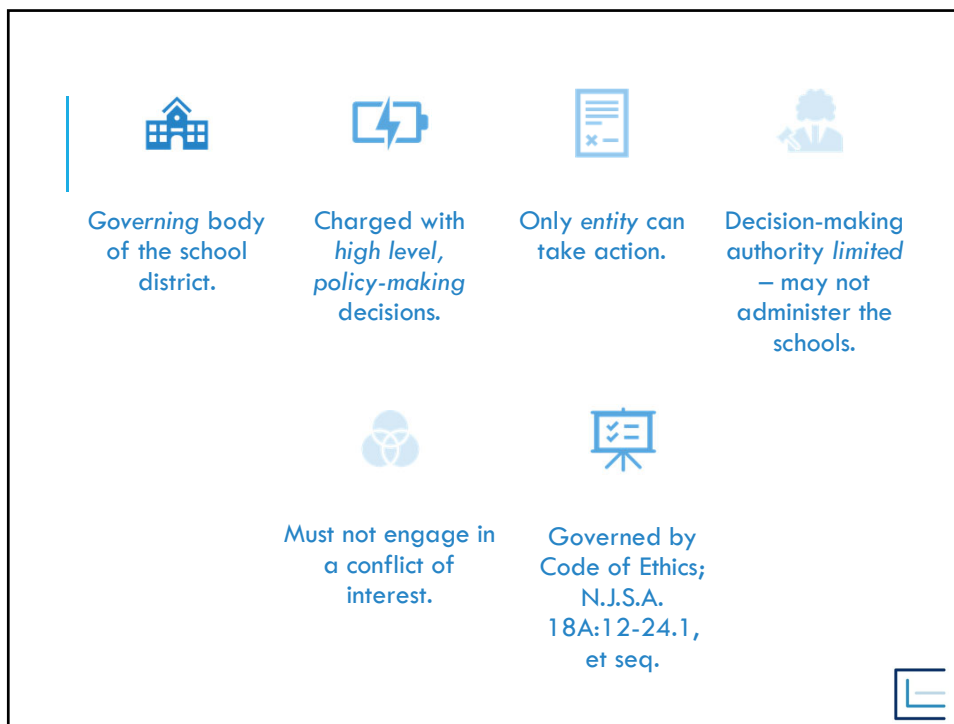
- and -



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

## SENATOR BYRON M. BAER OPEN PUBLIC MEETINGS ACT (OPMA)

“The Legislature finds and declares that the right of the public to be present at all meetings of public bodies, and to witness in full detail all phases of the deliberation, policy formulation, and decision making of public bodies, is vital to the enhancement and proper functioning of the democratic process; that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society, and hereby declares it to be the public policy of this State to insure the right of its citizens to have adequate advance notice of and the right to attend all meetings of public bodies at which any business affecting the public is discussed or acted upon in any way except only in those circumstances where otherwise the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.”



## SCHOOL ETHICS ACT

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

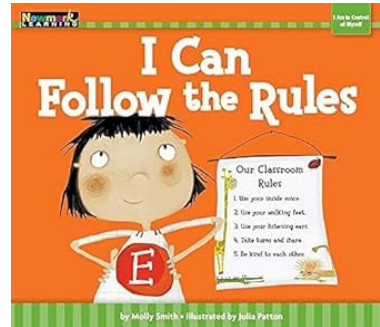
a. In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators **hold the respect and confidence of the people** [and] must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

b. To ensure and preserve public confidence, school board members and local school administrators should have the benefit of **specific standards to guide their conduct** and of some disciplinary mechanism to ensure the uniform maintenance of those standards among them.



*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.*



N.J.S.A. 18A:12-24.1(A) -- "FOLLOW THE RULES"



"FOLLOW THE RULES"

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

C11-04: Board President violated the Code when contacted newly hired employee and told 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.



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

**“THE KIDS COME FIRST”**

*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.*



**“THE KIDS COME FIRST”**

C18-10: Board member violated the Code when released an ethics complaint filed against another board member to the media which contained confidential information regarding the other board member’s child.

A05-15: Conflicted Board members could not participate in any matter related to the search, hiring of selection agency, criteria, job description, or vote to advertise relating to the hire of a new Superintendent as their decision-making abilities may not be focused on the educational welfare of children, but rather, their relationships with Board employees in district.



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

“LOOK AT THE BIG PICTURE”



*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.*



“LOOK AT  
THE BIG  
PICTURE”

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

A10-15: Board member violated the Code by volunteering for a school club, where member had contact with and control of students, personnel, resources, and administration, as well as received orders from district personnel/administration.

Board member failed to confine his actions to policy making, planning, and appraisal.



*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:** Board member gives a direct order to school personnel or becomes 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”



“NO  
MICROMANAGING”

A10-15: Board member violated the Code by attempting to administer the schools by volunteering for a school play and had supervisory authority over students and personnel.

C40-10: Board member violated the Code by instructing Superintendent to allow a student to participate in graduation ceremonies when Superintendent had barred the student from participating in the ceremonies due to safety concerns.



**“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.



*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.*



**N.J.S.A. 18A:12-24.1(E)  
“I CAN’T PROMISE YOU THAT”**





“I CAN’T PROMISE  
YOU THAT”

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.

A44-14: Board member who was employed as an aide in private daycare center must recuse from any involvement related to the contract between the Board and the daycare center so as to ensure no action that might compromise the Board.



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

“NO SPECIAL INTERESTS  
OR PERSONAL GAIN”

*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:** Board member takes 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 uses the schools in order to acquire some benefit (financial or otherwise) for the member a member of their immediate family or a friend.



**“NO SPECIAL  
INTERESTS  
OR  
PERSONAL  
GAIN”**

C36-14: 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.

A29-14: Board member who owned/operated a business could not continue, in connection with educational foundation, to offer a fundraiser charging students and splitting profits between the business and foundation, as could be perceived as using position for personal gain.



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

A13-14: Board member may continue as a freelance journalist; however, must not report on Board issues and must ensure that no information that was discussed solely in executive sessions is disclosed .

C44-07: Board member violated the Code by publicly posting confidential information that the staff member was removed from the school and hospitalized for a medical condition.



N.J.S.A. 18A:12-  
24.1(G)  
“I CAN KEEP A  
SECRET”



*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.*



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.

A02-06: Board member would not violate the code by sending a letter to the editor expressing his opinion about the budget or making a statement to the press, so long as, in the letter or statement, you do not hold yourself out as a board member and the information is accurate and not confidential.





N.J.S.A. 18A:1  
2-24.1(H)

“LISTEN TO YOUR  
SUPERINTENDENT’S  
RECOMMENDATIONS”

---

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

---

**Evidence of  
Violation:**

Board member acts on a  
personnel matter without a  
recommendation of the  
Superintendent.

---



“LISTEN TO YOUR  
SUPERINTENDENT’S  
RECOMMENDATION”

A04-12: Board member may participate in interview committee for candidates for high-level administrative and supervisory positions; however, Board member participation must be limited to offering observations and assessments, and the final recommendations are within the purview of the Superintendent.

However - C35-02: Board members did not violate the Code when they voted not to reappoint an employee to former position with the district despite the contrary recommendation of the principal and superintendent.



## NO LONE WOLVES

C25-16: Lone board member with procedural concerns about a superintendent's contract wanted to file a petition for the Commissioner of Education to determine those issues.

Board attorney told member that they could not do so without the support of a majority of the Board, but member filed anyway.

Ethics charges were brought against the member, and the SEC found that the member violated the Code by instituting a proceeding adverse to the Board and taking personal action that compromised the Board.

*"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."*



N.J.S.A. 18A:12-24.1(I)  
"THANK YOU FOR YOUR  
SUPPORT"

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



**“THANK YOU  
FOR YOUR  
SUPPORT”**

C49-07: Board member violated the Code by sending a letter to the Superintendent (copying the State Board of Education and Executive County Superintendent) accusing the Superintendent of allowing employees to violate Board Policy.

C53-05: Board member violated the Code by sending an email to the Superintendent (that was also sent to BA and all other Board members) asking Superintendent to provide an accounting of her personal leave.

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



**N.J.S.A.  
18A:12-  
24.1(J)  
“USE PROPER  
CHANNELS”**

*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:** Board member acts on or tries to resolve a complaint, or conducts an investigation or inquiry, before referring the complaint to the Superintendent or other than at a public meeting and prior to the failure of an administrative solution.



## “USE PROPER CHANNELS”

C25-05: Board member violated the Code by going to the Principal directly in connection with a parent complaint rather than referring the complaint to the Superintendent.

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



## CONFLICTS OF INTEREST

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;

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;

c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. 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 benefit to the school official or member of his immediate family;

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;

## MORE BOARD MEMBER CONFLICTS

e. No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

g. No school official or business organization in which he has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district. This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities;

## AND THEN SOME BOARD MEMBER “NOT CONFLICTS”

h. No school official shall be deemed in conflict with these provisions if, by reason of his participation in any matter required to be voted upon, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of that business, profession, occupation or group;

i. No elected member shall be prohibited from making an inquiry for information on behalf of a constituent, if no fee, reward or other thing of value is promised to, given to or accepted by the member or a member of his immediate family, whether directly or indirectly, in return therefor;

j. 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; and

k. Employees of the New Jersey School Boards Association shall not be precluded from providing assistance, in the normal course of their duties, to boards of education in the negotiation of a collective bargaining agreement regardless of whether a member of their immediate family is a member of, or covered by, a collective bargaining agreement negotiated by a Statewide union with which a board of education is negotiating.



## RELATIVES IN-DISTRICT

If a BOE member has a **RELATIVE** or **IMMEDIATE FAMILY MEMBER** that is a member of a **LOCAL** bargaining unit he/she cannot:

- Discuss or vote on the proposed agreement
- Participate in any way in negotiations
- Be present in Executive Session when negotiations are discussed



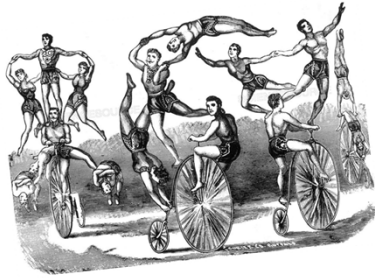
## SUBSTITUTES?

### 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.



## 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



But see [A17-15](#): Board members are not entirely precluded from all volunteerism -- rather, a violation of the Code is fact-specific:

- SEC looks to degree of involvement a Board member had with staff and students, as well as the degree to which the Board member had authority to give and receive directions and orders to staff during the volunteering activity.
- Where a Board member is in a supervisory position and generally oversees staff or students (or vice versa) such an interaction would be inconsistent with and violate Code.



## DOCTRINE OF NECESSITY



Where so many members have ethical conflicts that the Board cannot function, then might be able to invoke the Doctrine of Necessity to allow the Board to function as if there were no conflicts:

1. Board must pass a resolution invoking doctrine, the reasons for it, and the nature of the conflicts.
2. Doctrine allows conflicted members to vote and -- in very limited circumstances -- participate in negotiations.
3. Should first consult with Board attorney.

### ACKNOWLEDGEMENT OF RECEIPT Code of Ethics for School Board Members

Please sign this acknowledgement of receipt to confirm that you have received a copy of the Code of Ethics for School Board Members contained within this recent amendment to the School Ethics Act, C. 118, § 1, L., 2001.

Each school board member and charter school trustee is responsible to read and become familiar with the Code of Ethics for School Board Members. Questions about the policy should be directed to your Business Administrator/Board Secretary. If unable to answer the question, the BABS may direct you to the School Ethics Commission from whom you may request an advisory opinion.

The Code of Ethics became a part of the School Ethics Act on July 26, 2001 so it is effective immediately. Failure to sign this acknowledgement will not relieve a board member of the responsibility to understand and adhere to the Code of Ethics.

BOARD MEMBER'S NAME (PLEASE PRINT) \_\_\_\_\_

BOARD MEMBER'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

Please sign and return this sheet to the Business Administrator/Board Secretary

ETHICS (2001)



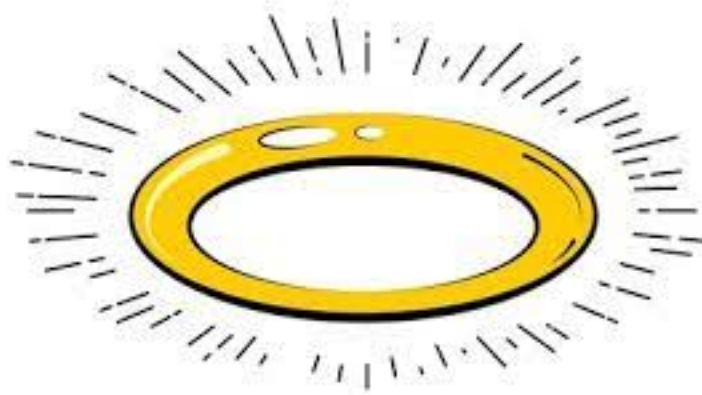
**EACH BOARD MEMBER  
MUST**

READ and  
BECOME FAMILIAR  
with the  
CODE OF ETHICS

and –

SIGN a written  
ACKNOWLEDGEMENT  
that they have  
received a copy of the  
CODE OF ETHICS

NOW THAT YOUR TRAINING IS COMPLETE,  
YOU ALL GET YOUR...



## QUESTIONS

Jeffrey R. Caccese, Esquire

Comegno Law Group

856-234-4114

[jcaccese@comegnolaw.com](mailto:jcaccese@comegnolaw.com)