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Leaders in the Business of Education

NJASBO 61st Annual Conference



Know Your Ethical Obligations and Avoid Costly Complaints

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The School Ethics Act

- Creation of the Ethics Act
- Purpose of the Ethics Act
- Standards Set Forth of the Ethics Act

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The School Ethics Act

- School Ethics Commission Composition
- Governor Appointed
- Three Year Term

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The School Ethics Commission's Jurisdiction

- Review the Complaint
- Issue an Advisory Opinion
- Enforce Disclosures
- Enforce Training

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Claim's View: Who are the Complainants

- Board Member or Former Board Member **(87%)**
- Members of the Public **(12%)**
- Organization on Behalf of the Public **(1%)**

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Claim's View: Complaint Categories

- Abuse of power, micromanaging
- Improper non-renewal of Contract
- Conspiring
- Nepotism

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Claim's View: Complaint Categories

Most Frequent Allegations Made By <u>Members of the Public</u>:

- Disparaging remarks against other students

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Claim's View: Complaint Categories

Most Frequent Allegations Made By <u>Organizations on Behalf of the Public:</u>

- Public Perception/Failure of the Board to Act

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Claim's View:

- Consequences
- Cost to Defend

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Conflicts of Interest

- Benefit has been defined as a business interest securing an unwarranted privilege, financial involvement, a gift, a favor offered with the intent to influence.

- **Gray Area:** Personal involvement that creates a benefit OR service or employment that may prejudice independent judgment.

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Examples of “Conflict of Interest”

1. Board members voting on the settlement of a lawsuit where board members have been named as defendants in their board capacity which settlement is funded by the board’s insurance carrier.

2. Board member voting on resolution to approve the board attorney wherein that firm has provided personal legal services to board member OR immediate family member. Fajardo v. Rodriguez, SEC 2016: Nov. 22

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Examples of " No Conflict of Interest"

1. Board member who is a student in the District, absent another conflict, is not conflicted simply because he is a student. Like any other board member he is subject to conflict where a discussion or vote would create a personal or direct benefit, unwarranted privilege, etc.. See A06-18; A36-17.

2. Board member who is an employee of a private company which contracts with the Board (a bus driver) is not presumed to be disqualified to be a board member. She must abstain from discussions and votes regarding transportation and the students she transports. See A06-19

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Nepotism

- **N.J.A.C. 6A:23A-6.2 – General Proposition**: Districts may not hire, nor may a superintendent or chief school administrator recommend, a relative of a board member or chief school administrator to a position.

- **Corollary:** A district administrator shall not exercise direct or indirect authority over a relative of the administrator.

(EXCEPTIONS APPLY)

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Definition: Relative Under Nepotism

- The definition of relative under Nepotism regulation is more expansive than that under the conflict of interest section of the School Ethics Act/Code.

- A relative is defined as a spouse or civil union or domestic partner; parent or step-parent; child or step-child; son or daughter-in-law; siblings, including step-brother or step-sister or half-brother or half-sister; and uncles, nieces, nephews; grandparents and grandchildren. Essentially anyone who is related to you or your spouse or partners by blood, marriage or adoption.

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Resolving Potential Ethics Issues

Survey:

1. Who navigates potential ethics conflicts to avoid ethics violations (and when)?
2. How do Business Administrators avoid potential Board Member ethics issues?

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Example: Collective Bargaining Negotiations

1. If you have a relative or a family member or other family relationship with someone employed at the District in the subject bargaining unit that is up for negotiation, as a board member or a school administrator, you cannot participate in those negotiations. You also cannot vote on the bargaining agreement or discuss the bargaining agreement.

Exception: Board member's wife's cousin is not considered a relative. Wife's cousin is however considered an "other" so conflict could arise if participation causes unwarranted benefit for wife's cousin. See A07-18

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Example: Collective Bargaining Negotiations

2. If a board member or school administrator has an immediate family member who is part of a same or similar state wide union as that which is being negotiated, they may not participate in any way in negotiations, but the board member can vote on the agreement once it is placed before the Board's agenda for approval and the school administrator may provide technical assistance during the negotiations. (Advisory opinion A16-15)

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Personnel Issues Affecting School Board Ethics

1. If a board member has a relative (using the expansive nepotism definition) in the District, he or she may not participate in any employment matters that involve that employee's supervisor(s), including the Chief School Administrator; that includes taking part in any searches, selection or voting on a new superintendent, administrator or supervisor.

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Personnel Issues Affecting School Board Ethics

2. A school board member may violate the School Ethics Code with regard to administering the schools if they participate in the interview process of personnel unless such is done under the guidelines set forth by the Superintendent.

Example: A school board member may participate in a principal interview with the committee but the School Ethics Commission cautions that the member should act as an observer rather than being the one or even part of the committee who actually conducts the interview of a prospective candidate.

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Personnel Issues Affecting School Board Ethics

3. A school board member on his own may not issue a Rice notice to an administrator absent the Superintendent's recommendation. Persi v. Woska, No. A-3767-14T2 (App. Div. March 10, 2017); Cheng v. Rodas, 2017 Commissioner Dec. January 20, 2017 (relying on attorney advice is not a defense)

Gray Area: A school board member vs. school board president issuing Rice notice to superintendent. Issue involves the school board president's duties versus that of the school board member who is not the President.

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Volunteerism

Many become board members because of past volunteerism. However there are some prohibitions now that you are on the Board:

Volunteer positions, where as a volunteer you can assert some sort of supervisory role over any district personnel.

For Example: Head of School Club, major role in running school play where staff involvement is part and parcel to the activity.

Gray Area: Leading a PTO committee fund raiser for the benefit of a students; class parent, PTO president. See A15-18.

Note: Board member should notify Superintendent and relevant staff when she is acting in the volunteer capacity but be careful that even when acting in such a capacity she still must act within the bounds of the School Ethics Act.

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Hypotheticals

1. Is it a conflict of interest for a board member to vote to approve a settlement agreement for a lawsuit where the board member is a named defendant in his official capacity?

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Hypotheticals

2. Does a board member violate the Ethics Code by making derogatory remarks at a board meeting or on social media urging proper decorum at meetings in response to the use of profanity by a member of the public during public comment at a board meeting?

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Hypotheticals

3. Does a board member violate the Ethics Code by making comments in support of a specific student group after students from that group spoke during public comment regarding district curriculum and book lists that were on the board's agenda for approval?

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Hypotheticals

4. Does a school official violate the Ethics Act when issuing a school community email blast that includes a link to a community organization's webpage which webpage includes endorsements for board member candidates?

Note: Intent to violate the Act is not required.

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Hypotheticals

5. Can a board member participate in negotiations of a local educational association contract when the member's "aunt-in-law" is employed by the school district as a teacher?

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Questions?

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