

Ethics for School Officials



Presented by:
NJSBA Field Services



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The content discussed in this presentation is for informational purposes only and not for the purpose of providing legal advice. The application and impact of laws can vary widely based on the specific facts involved. No action should be taken in reliance on information discussed in this presentation, and the NJSBA disclaims all liability for actions or not taken based on such content to the fullest extent permitted by law.

You should contact your board/school attorney to obtain advice with respect to any issue or problem.



Ethics/Accountability

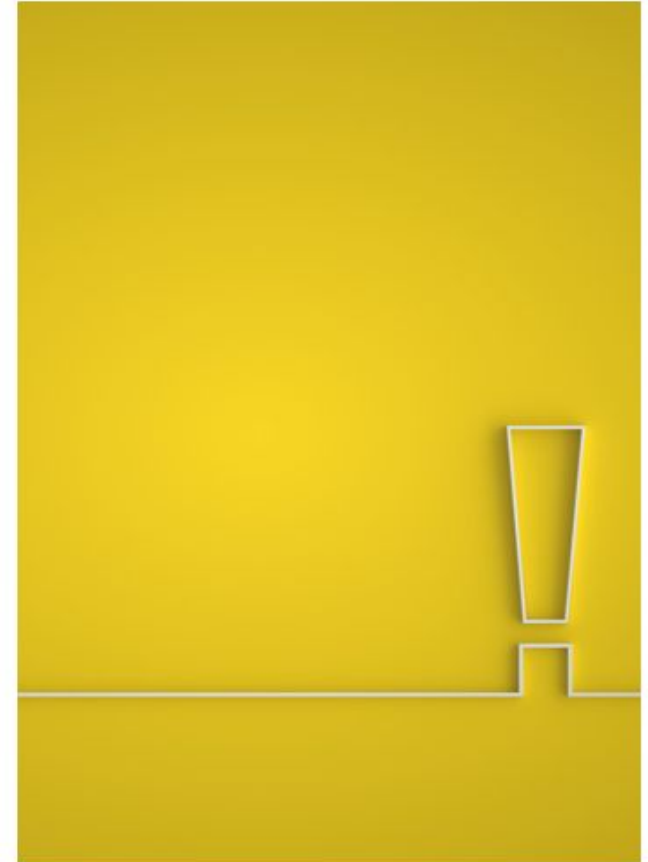
“Public service is a core value that can improve the lives and the world around you.”

- Author unknown

As a school official, you have the honor of serving the public, but with that comes responsibility.

How will we hold ourselves accountable, recognizing that the School Ethics Act is “a set of minimum ethical standards by which all school officials must abide”?

C108-22



School Ethics Act

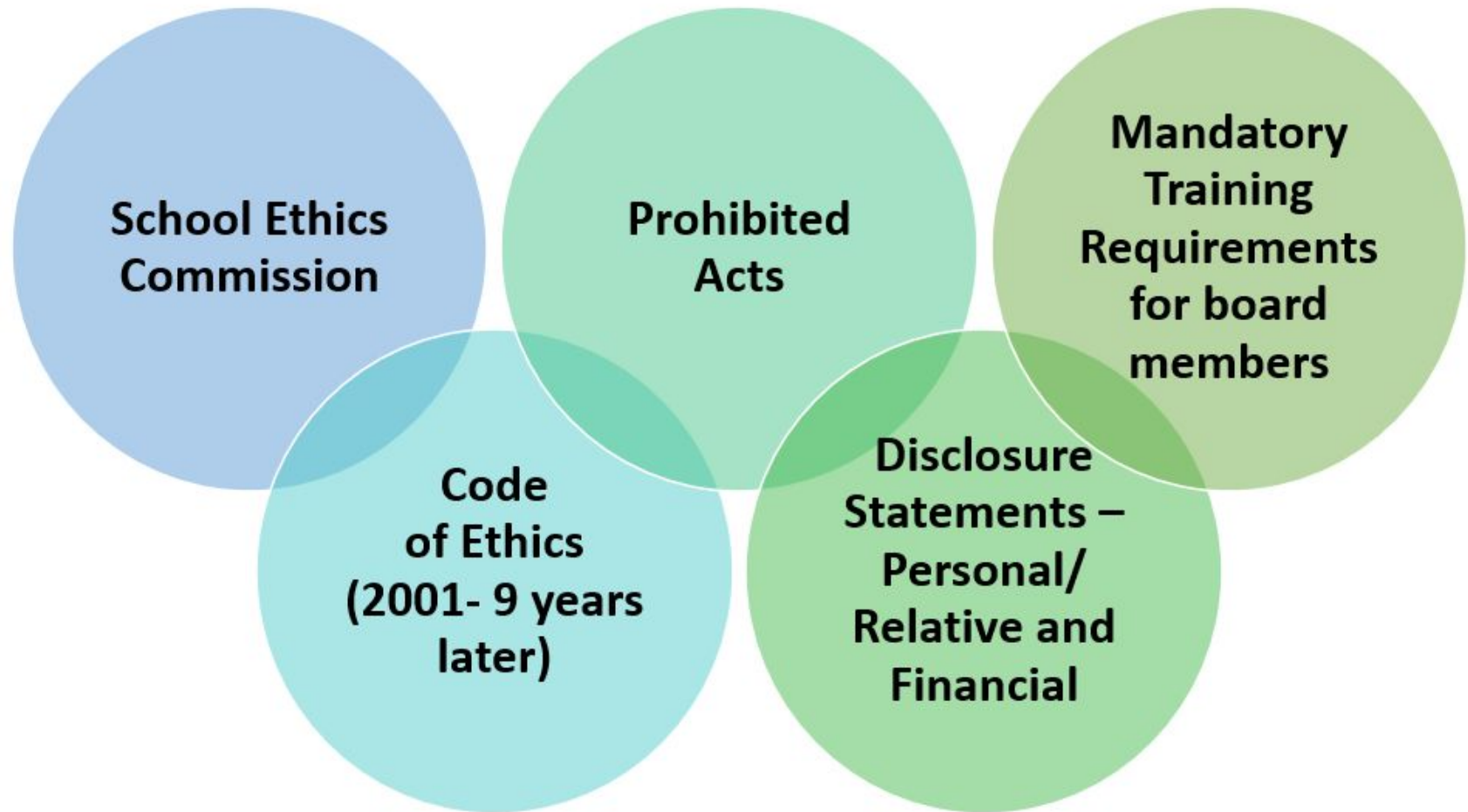
N.J.S.A. 18A:12-21 et seq. (P.L. 1991, c. 393)

It is essential that the conduct of members of local boards of education and local administrators hold the **respect** and **confidence** of the people.

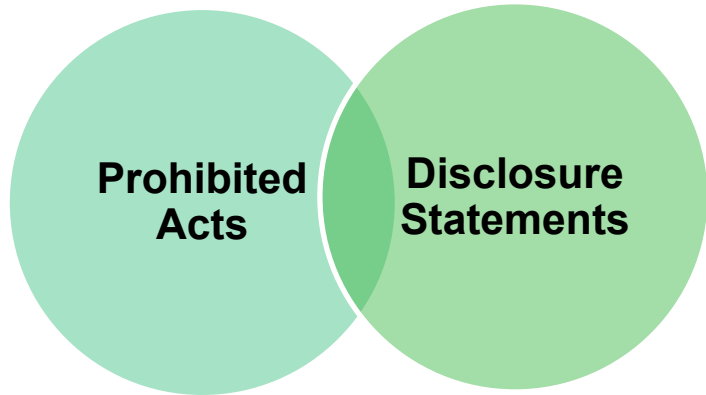


These board members and administrators must **avoid conduct** which is in **violation of their public trust** or which creates a **justifiable impression** among the public that such trust is being violated.

The School Ethics Act Established:

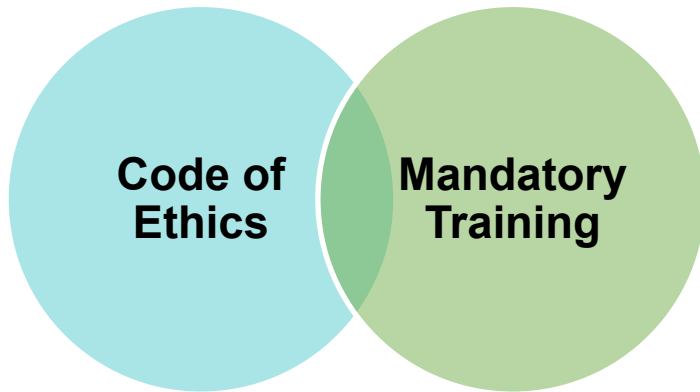


Who is Accountable?



Provisions Apply to all School Officials:

- Board members/charter school trustees
- Some NJSBA staff/officers
- Administrators
 - Holds certificate to serve as School Administrator, Principal, or Business Administrator
 - Holds a position that is responsible for making recommendations regarding hiring or the purchase/acquisition of property and services. (Either no certification or supervisor certification)

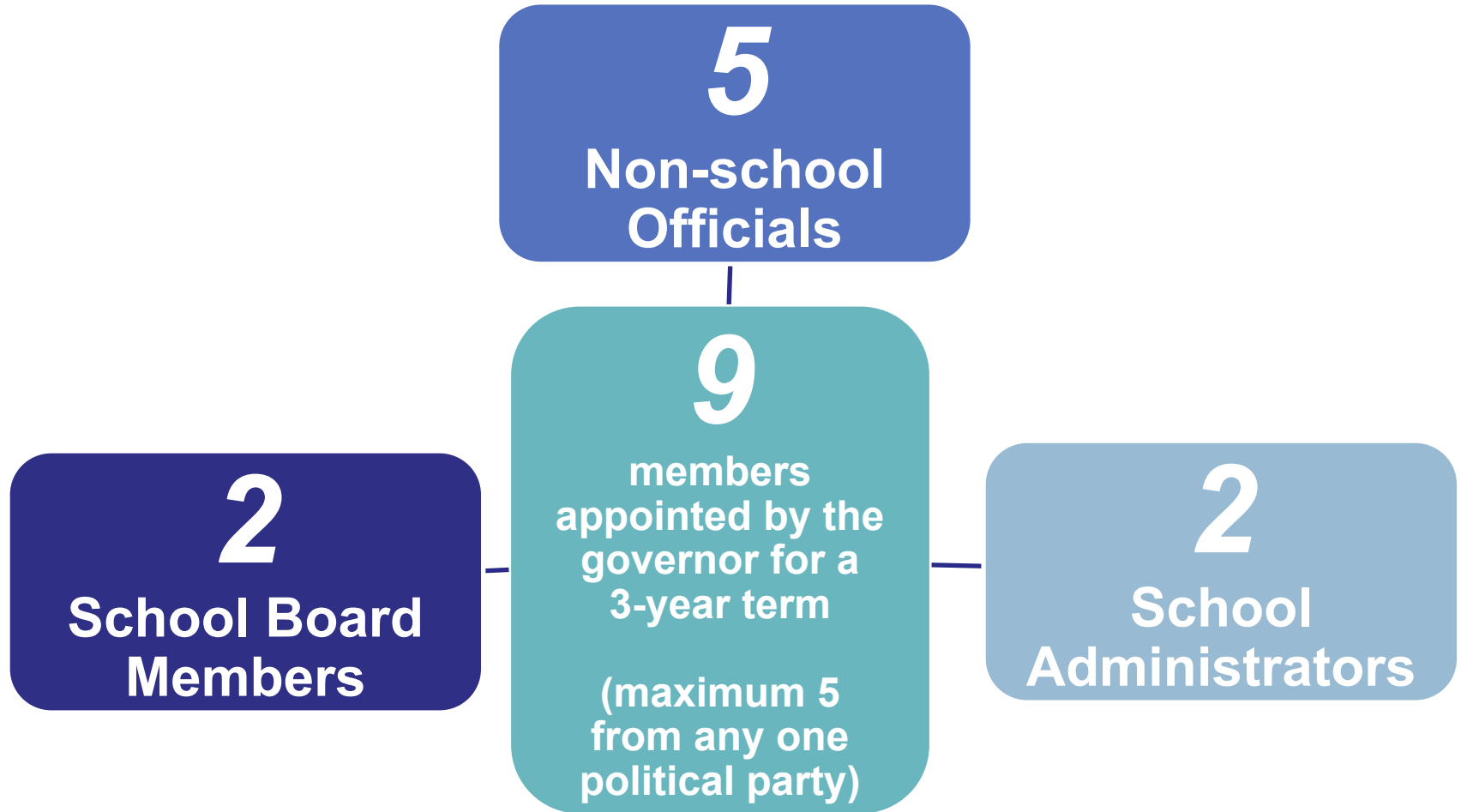


Provisions Apply to:

- Board members/charter school trustees only.

Who Enforces the Act?

The School Ethics Commission is the body charged with enforcing the Act.
N.J.S.A. 18A:12-27 (a)



SEC Jurisdiction

Advisory Opinions N.J.S.A. 18A:12-31

Only a **school official** may request an **advisory opinion** to determine if **their or another's proposed activity or conduct** would constitute a violation of the Act.

**Can be made public.
Needs 6 Votes SEC.**

Ethics Complaints

Acts upon complaints filed by **anyone** alleging a **violation of the School Ethics Act** took place.

On average as previously reported by the SEC, considered annually are:

- **85 Ethics complaints filed**
- **35 Advisory Opinions requested**

What Training is Mandatory?

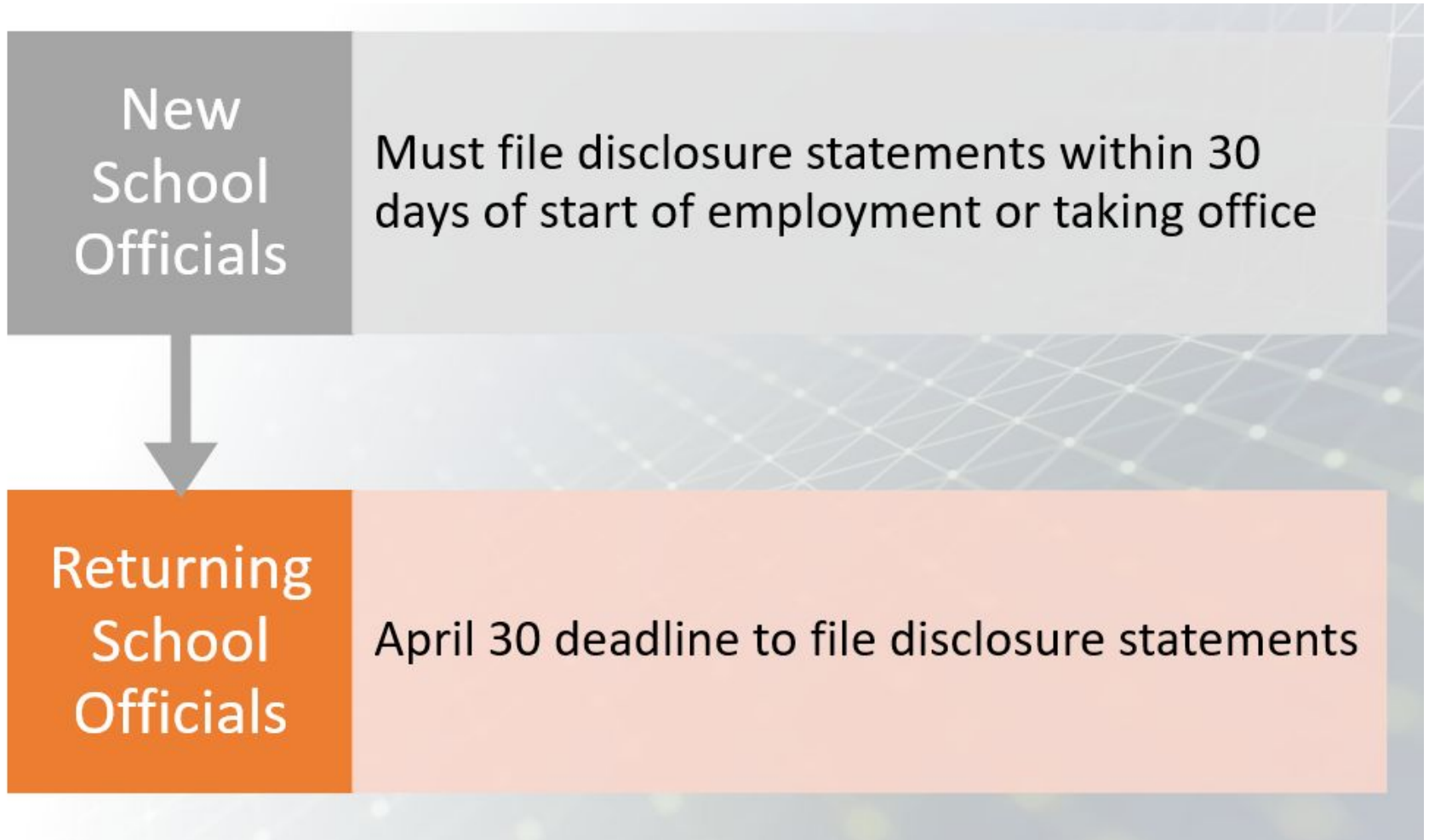
N.J.S.A. 18A:12-33

By 1 st 90 days	Governance 1 (New Board Member Orientation) <ul style="list-style-type: none">• Basic knowledge/skills, NJQSAC, HIB, CSA Evaluation, OPMA, Code of Ethics	NJSBA provides this training through multiple options: <ul style="list-style-type: none">• In-person• Live-virtual• Self-paced online
By end of Year 2	Governance 2 <ul style="list-style-type: none">• Finance/Labor	
By end of Year 3	Governance 3 <ul style="list-style-type: none">• Student Achievement	
By end of Year following every Reelection or Reappointment	Governance 4 <ul style="list-style-type: none">• Legal Updates	



Disclosure Statements

Personal/Relative and Financial Disclosure Statements



Penalties

If violation is found, SEC makes recommendation to Commissioner.



REPRIMAND

Rebuke by Commissioner that conduct violated standards but does not result in a formal resolution.



CENSURE

Formal disapproval by Commissioner publicized by adoption of resolution.



SUSPENSION

Barred from engaging any activity/matter for a designated period of time.



REMOVAL

Immediate termination from Board membership or employment (if administrator).

Code of Ethics for School Board Members Only

N.J.S.A. 18A:12-24.1, N.J.A.C. 6A:28-6.4(a)

a.

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.

Standards

Factual evidence shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures.



Code of Ethics (continued)

b.

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.

Standards

Factual evidence of a violation shall include evidence that the respondent(s) willfully made a decision contrary to the educational welfare of children, or evidence that the respondent(s) took deliberate action to obstruct the 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 (continued)

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.

Standards

Factual evidence of a violation shall include evidence that the respondent(s) took official action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty to: i. Develop the general rules and principles that guide the management of the school district, the charter school, or the renaissance school project; ii. Formulate the programs and methods to effectuate the goals of the school district, the charter school, or the renaissance school project; or iii. Ascertain the value or liability of a policy.

Code of Ethics (continued)

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.

Standards

Factual evidence of a violation shall include, but not be limited to, evidence that the respondent(s) gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district, charter school, or the renaissance school project.

Code of Ethics (continued)

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.

Standards

Factual evidence of a violation shall include evidence that the respondent made personal promises or took action beyond the scope the respondent's duties such that, by its nature, had the potential to compromise the district board of education or the board of trustees.

Code of Ethics (continued)

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.

Standards

Factual evidence of a violation shall include evidence that the respondent(s) 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 evidence that the respondent(s) used the schools to acquire some benefit for the respondent(s), a member of the respondent's immediate family or a friend.

Code of Ethics (continued)

g.

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.

Standards

Factual evidence of a violation of the confidentiality provision shall include evidence that the respondent(s) took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that the respondent(s) violated the inaccurate information provision shall include evidence that substantiates the inaccuracy of the information provided by the respondent(s) and evidence that establishes the inaccuracy was other than a reasonable mistake or personal opinion or was not attribute to developing circumstances.

Code of Ethics (continued)

h.

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

Standards

Factual evidence shall include evidence that the respondent(s) acted on a personnel matter without a recommendation of the chief administrative officer.

Code of Ethics (continued)

i.

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

Standards

Factual evidence of a violation shall include evidence that the respondent(s) took deliberate action that resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

Code of Ethics (continued)

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.

Standards

Factual evidence of a violation shall include evidence that the respondent(s) 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.

Cases Related to the Code of Ethics

Note that every case includes a violation of (e) - “nor take any private action that may compromise the Board.”

- **C98-21.** Member copied and pasted info from a Board email and sent the non-public contents to township officials. Revealing Board’s inner communication had the potential to compromise the Board. Info considered confidential as Board had not yet voted on contents. **Recommended Reprimand.** N.J.S.A. 18A:12-24.1(e), (g).
- **C59-20.** Member sent email from district account to a known political entity misrepresenting the intent of a rally at the district. Content suggested political motivations and only invited one side. Using Board email can give impression statements were made on behalf of Board. **Reprimand.** N.J.S.A. 18A:12-24.1(e)(f).
- **C20-20.** On own, member contacted vendors & districts for prices to go from MacBooks to Chromebooks. Can express disagreement at Board meeting, but inappropriate to conduct private investigation. Effectuated plans without consulting with those who will be impacted and placed Board at risk. **Censure.** N.J.S.A. 18A:12-24.1 (c), (e).
- **C88-21.** Used Board email to express personal views on mask mandates and encouraged action. Sent to State Legislature and members of the public. **Reprimand.** N.J.S.A. 18A:12-24.1(e).



Cases Related to the Code of Ethics (continued)

- **C86-21.** 2 incidents. (1) Member, at request of LEA president, sent an email to the Board & an administrative assistant accusing the superintendent of changing graduation date due to a personal conflict. **Private action violated N.J.S.A. 18A:12-24.1(e).** (2) Same member, as secretary of a local organization, was told by principal that chorus would not be performing in an annual event so texted chorus teacher to question why. Request for explanation from subordinate was administering schools, gave appearance that Board disagreed with administration, put chorus teacher in uncomfortable situation, and was tantamount to an investigation prior to referral to the superintendent. **Violated N.J.S.A. 18A:12-24.1 (d), (e), (i), (j). Censure for both incidents.**
- **C25-21.** Member met with members of public to “justify her actions” for a walk-on motion of a highly divisive Board action to change a holiday name. This independent action undermined the Board’s decision-making process as it is up to the Board to publicly discuss/explain the rationale for its decisions. It also undermined the administration’s authority and imposes an unnecessary strain on the Administration/Board relationship. **Reprimand. N.J.S.A. 18A:12-24.1(e).**
- **C04-20.** Day after board president lost election, directed Board counsel to conduct research on another board member who campaigned against him. Took private action and used position to secure privilege for himself. **Recommended Censure. N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e), (f).**

Prohibited Acts (N.J.S.A. 18A12-24)

Below is an except. For full content see:

<https://www.nj.gov/education/ethics/coi.shtml>

	Recuse yourself if there is a benefit to you (school official) or your immediate family due to:
a.	Business interest or professional activity in conflict.
b.	Use of position to secure unwarranted privileges, advantages or employment. Extends to “others” so may go beyond definition of immediate family.
c.	Financial involvement that may impair objectivity.
d.	Service or employment that may prejudice independent judgement.
e.	Gift, favor, etc. offered with intent to influence.
f.	Financial gain.
	Other Considerations:
g.	Shall not represent any person/party other than Board/district in matter before the Board.
h.	Not a conflict if not accruing a greater gain than any others.
i,j,k	(See N.J.S.A. 18A:12-24)



Conflict and Recusal



When a conflicted board member votes, there is a distinction between recusal and abstention. If a board member has a legal conflict of interest on a matter, they should ***RECUSE from the discussion and the vote*** – not abstain.

Abstaining from a matter is not sufficient to memorialize the fact that a board member has a legal conflict and not eligible/able to vote. Instead, they must vocalize that they are recused.

When a board member needs to recuse due to a legal conflict of interest, board counsel should advise on how the recusal impacts both quorum and the recording of votes.

Relationship Definitions

N.J.A.C. 6A:23-1.2

- **Immediate Family Member:** spouse, civil union/domestic partner, or dependent child residing in the same household.
- **Relative:** Spouse, civil union/domestic partner or parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son/daughter-in-law, stepparent, stepchild, stepbrother/sister, half-brother/sister of the individual or the individual's spouse or partner by blood, marriage, or adoption. (Nepotism law).

Although term “relative” does not appear in Prohibited Acts or Code of Ethics, a relative can create a conflict.

Anyone not listed may be considered an “other” if a conflict exists.



Excerpt of Listing of Relatives/Conflicts

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	<i>No</i>
School official’s aunt (uncle):	Yes
School official’s aunt’s (uncle’s) spouse/partner	<i>No</i>
School official’s nephew (niece)	Yes
School official’s nephew’s (niece’s) spouse/partner	<i>No</i>
School official’s grandparents	Yes
School official’s grandchildren	Yes
School official’s grandchildren’s spouses/partners	<i>No</i>
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	<i>No</i>
School official’s step-sibling	Yes
School official’s step-sibling’s spouse/partner	<i>No</i>
School official’s half-sibling	Yes
School official’s half-sibling’s spouse/partner	<i>No</i>
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

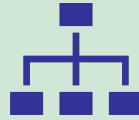
SEC Advisory Opinion A11-23 <https://www.nj.gov/education/legal/ethics/advisory/cat5/A11-23%20-%20PUBLIC.pdf>



Hiring/ Personnel

May not hire
the relative of
a board
member or
chief school
administrator.
(Limited exceptions.)

If the relative already works in the district:



An administrator may not exercise direct or indirect authority over their relative.



A board member may not take part in employment matters concerning CSA or supervisors in chain of command between the relative and CSA.



A board member may not take part in the search, selection or vote to hire a new CSA, and post-hire evaluations and contract discussions.

Collective Bargaining

A24-17

Relationship to Board Member	Current Member of a Statewide Public Teachers' Union	Participate in Negotiations Yes or No	Vote to Ratify the Contract Yes or No
<ul style="list-style-type: none"> Spouse Dependent Child Child (not dependent) Relative 	Works in the District	No	No
<ul style="list-style-type: none"> Self Spouse Dependent Child 	Works Out-of-District	No	Yes* **
<ul style="list-style-type: none"> Child (not dependent) Relative 	Works Out-of-District	Yes*	Yes*

* Absent another conflict –Heightened union involvement, linkage

** After Memorandum of Agreement, salary guides, total compensation package attained.



Collective Bargaining

Other possible conflicts:

Not in the unit, but
terms of employment
linked to unit.

Supervised by
employees in the unit

Immediate family
member/relative has
heightened union
involvement.

A10-18: Endorsement of a candidate by a local or statewide union does not create a per se future conflict unless a financial contribution is given and is intended to influence the member.

Advisory Opinions or Cases Related to Prohibited Acts

	Situation	Advice/Outcome
A10-2 3	Board member's child works in district's after-care. Supervisor is teacher who reports to principal. Conflict?	Recuse from any and all matters related to CSA, supervisors in chain of command, and union.
A02-3 3	Spouse is councilman in Borough. Can vote on SRO officer?	Actual/perceived personal or financial involvement that could violate public confidence. Recuse from any and all matters related to the Borough.
C80-2 2	Wife works in district. Mistakenly voted to renew CSA's contract in block of 48 items. Abstained from another item in block.	Potential for conflict – actual or perceived. Reprimand. N.J.S.A. 18A:12-24(c).
A01-2 3	Can a Board member continue to work for a food service vendor as a “lunch lady” in the district?	Recommends reassignment. Recuse from any/all discussion & votes including competing vendors/entities with same/similar products/service.
A08-2 3	The town is entering into a contract with a firm to upgrade tennis courts shared with school district on school grounds. Can Board member's firm be subcontractor?	Yes, but only have same rights as any other member of public. Try for someone else to physically perform work. No authority over staff. Advise superintendent.
C81-2 0	Board member/Borough CFO voted to approve shared service agreement with Borough for lawn/snow/fuel/transportation.	Has a direct or indirect financial involvement that might reasonably be expected to impair objectivity or independence of judgment.” Recommended Reprimand. N.J.S.A. 18A:12-24(c).



Impact on Committee Assignments when Relative Works In-District

A05-23:

Board president - child is instructional assistant in district.

Cannot choose any committee members nor be on any committee(s) involving the local education association or matters related to Superintendent. May not choose the chair, members, and/or serve on any committee that remotely touches upon or directly relates to family members' employment including, but not limited to the personnel, negotiations, instructional, and finance committees.



Board member B's spouse is 10-month employee in technology department.

Cannot be involved in any and all matters (including service on a committee(s)) that remotely touch upon or directly relate to the spouse's employment including, without limitation, the personnel, negotiations, and/or finance committees.

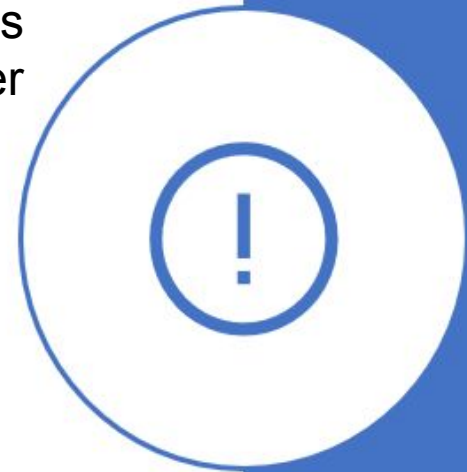
Impact on Executive Session - Relative

C87-21 – Member attended Executive Session discussion on candidates to fill vacant Board seat. Husband applied.

C09-20 – Board president attended multiple discussions on matter involving an immediate family member. Other Board members unaware of identity. In both cases Counsel was consulted first.

SEC – Censure. N.J.S.A. 18A:12-24(b), (c), and 24.1(e).

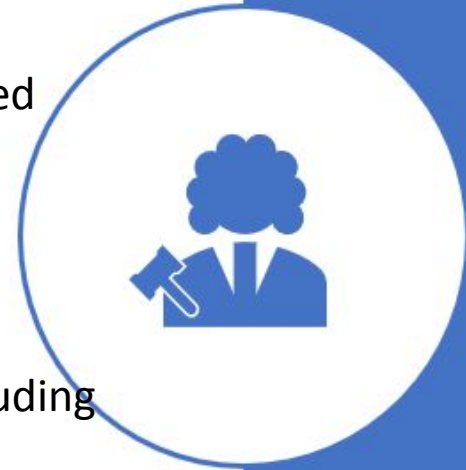
- When a member with a conflict goes behind closed doors it creates a justifiable impression to the public that their trust is being violated.
- Provides an unwarranted privilege or advantage not available to the public.
- Member's presence could “chill” or intimidate/sway the comments and opinions of others.
- Members are responsible for their own actions with a duty to act “prudently and cautiously.”



Potential “Advice of Counsel” Defense for Penalties

Prerequisite factors to an “**advice of counsel**” defense:

- 1) that the approval or advice was received prior to the action being taken;
- 2) that the individual who offered the advice or approval relied upon possessed authority or responsibility with regard to ethical issues;
- 3) that the individual seeking advice or approval made a full disclosure of all pertinent facts and circumstances; and
- 4) that the individual complied with the advice received, including any restrictions it might contain.



If all four factors of the “advice of counsel” defense can be met, a board member may be able to avoid a penalty for violating the School Ethics Act, **but** a violation of the School Ethics Act can still be found. The “advice of counsel” defense is extremely fact-sensitive, and in order for it to apply, all factors must be satisfied.

Volunteering in School

A07-00, A32-14, A10-15, A17-15, A15-18

Serving on the Board does not prevent volunteerism in the schools, but consideration needs to be given to:

Degree of involvement

with staff and students
(Frequency/Level of Interaction)

Degree of authority

to give and receive directions/ orders to
staff and students

What is the degree of:

- Giving directions or orders to staff or students
- Taking orders from staff

Will I be in the building often?
("enmeshed in the building")

Will I be handling the school district's money?

Will I be the lead/regular volunteer or coach for a school district club, activity or sport?

- Advise superintendent you will be performing this work.
- Refrain from any related Board discussion or vote.
- Always be cognizant of the obligations of the Act.



Voting

Board members are entrusted to review recommendations from the Superintendent, and then to vote in a way that they feel best serves the needs of the District and its students. (C118-22). However, the Board must always consider its statutory obligations.

For appointment, transfer, or removal of certificated and non-certificated staff, a member can vote any way that is not arbitrary or capricious. (N.J.S.A. 18A:27-4.1.)

In Advisory Opinion A12-22 it was asked if a Board member will violate the School Ethics Act if they vote affirmatively to refuse to implement the NJ Student Learning Standards (NJSLS) for Comprehensive Health and Physical Education.

SEC Response:

If it was shown that a school official acted contrary to the laws, rules, and regulations promulgated by the State Board of Education, they could be in violation of N.J.S.A.

18A12-24.1(a).



Social Media

As a general matter, a school official does not violate the Act merely because they engage in social media activity. Instead, the Commission's analysis is guided by whether a reasonable member of the public could perceive that the school official is speaking in his or her official capacity or pursuant to his or her official duties.

Depends in large part on the content of the speech. If the speech in question has no correlation or relationship to the business of the Board and/or its operations and, therefore, could not possibly be regarded as a statement or position on behalf of the Board (as a body), a school official will not violate the Act. Conversely, if the speech in question does relate to the business of the Board and/or its operations, it is then reasonable to perceive the speech as being offered in an official capacity and pursuant to his or her official duties.

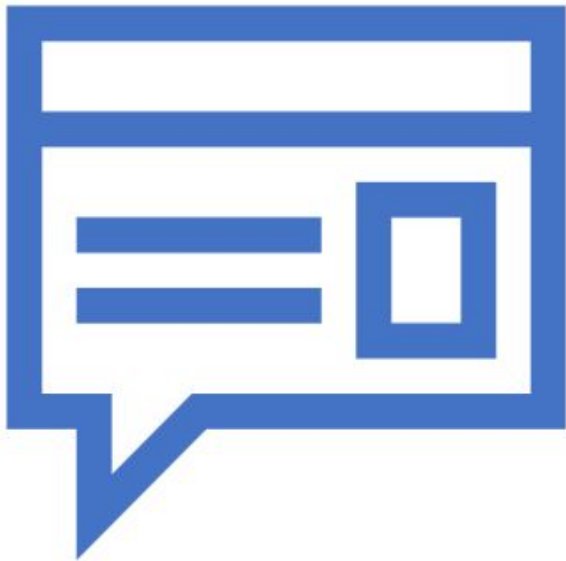


C106-22, C103-22,
C03-23, C13-23,
C20-22

Social Media

Suggested disclaimer provided by the SEC as shown in Bold & Italics:

“The following statements are made in my capacity as a private citizen, and not in my capacity as a board member. These statements are also not representative of the Board or its individual members, and solely represent my own personal opinions.”



Disclaimer Q & A

If I use a disclaimer, does that automatically protect me from being in violation of the Act?

- No, but it does help clarify the capacity in which you are speaking.

What could cause me to be in violation with a disclaimer?

- Based on the content, if a reasonable member of the public could perceive you are speaking in official capacity or pursuant to official duties, that could make the disclaimer inadequate and of no force or effect.

If I don't use a disclaimer does that mean I am automatically in violation of the Act?

- No, regardless if a disclaimer was used or not, capacity speaking from, content, & perception matter.

Must I use the exact disclaimer wording from the SEC?

- The failure to parrot the exact language recommended will not mean that did not use an appropriate disclaimer.



Social Media

A02-22

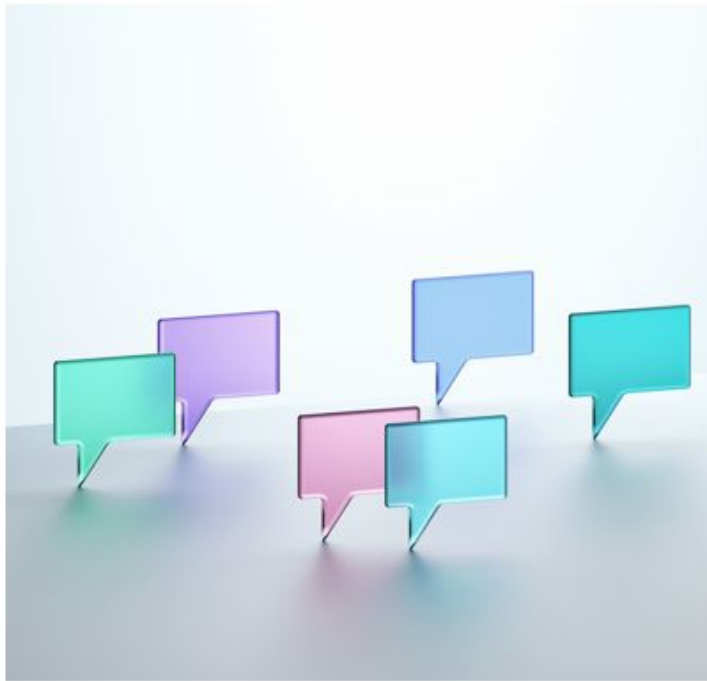
A Board member asked if “as a private citizen” would it violate the Act if they answered operational questions about the district on a Facebook page – Q&A Between Parents and BOE.

SEC’s response

- Board members do not abdicate their rights to freedom of speech. However, board members are also public officials and must exercise precautions to avoid violating the Act.
- It must be clear that comments made at a time and/or place other than at a board meeting do not appear to be written on behalf of, or with authorization of the Board.
- The community is aware of your status as a Board member and would likely attribute any statement from you as being in that capacity and/or on behalf of the Board, so it would be futile to disclaim your speech. If you only ever provide links to publicly available information, it is possible that would not immunize you from being the subject of an ethics complaint.



Social Media – General Guidance



Account that identifies you as a board member:

- Once elected, it is no longer appropriate to use one's campaign page to post on social media. It can only cause confusion as to the capacity in which one is speaking, and this will invariably lead to the filing of ethics complaints. Transparency in communication cannot be overstated. C106-22
- Any Social Media account that inherently indicates your position as a Board member could not be used. A36-14

“Like” or Share a Post from Personal Account

- The mere “liking” or sharing of a social media post from a personal social media account would not cause a reasonable member of the public to perceive you are as speaking in your official capacity, or pursuant to your official duties as a member of the Board. C123-22

Use of Divisive Language

- Board members should refrain from inappropriate communications that have no place in the educational setting. C19-22
- Public ultimately decides who in their community is best suited to serve their students. C102-22

Points to Consider...



NJSBA recommends boards develop a list of board members and administrators who have a conflict and review it regularly.



Consult with your Board attorney on ethics issues and to identify conflicted members/administrators.

Continue to check *School Board Notes* to keep abreast of newly released Advisory opinions and decisions from the Commission.



Ethics Reminder

In Closing:

Board members may not deliberately disregard and ignore the ethical standards that they are required, by law, to uphold and enforce. When Board members do so, it not only threatens the integrity of the Board, it also unnecessarily compromises District personnel and subverts the very purpose for which Board members are elected – namely, to serve the needs of the school district and its students.

C45-22



Resources

School Ethics Act	https://www.nj.gov/education/ethics/act.shtml
School Ethics Commission Decisions	https://www.nj.gov/education/legal/ethics/
FAQ – Request Advisory Opinion	https://www.nj.gov/education/ethics/advisory.shtml
School Ethics Commission	https://www.nj.gov/education/ethics/

