

Annual Review of Ethics Issues for Board Members



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School Ethics Act

The School Ethics Act, **N.J.S.A. 18A:12-21 et seq.** sets forth a “Code of Ethics”, which applies to Board of Education members.

The Code of Ethics sets forth specific prohibitions. The governing statute, **N.J.S.A. 18A:12-24.1(a-j)** provides guidance to board members on their role while serving on the Board of Education.



Penalties for Violating the Act

Upon the completion of a hearing, the Commission, by vote, can recommend to the Commissioner the following penalties:

1. Reprimand;
2. Censure;
3. Suspension; or
4. Removal from the board



18A Prohibition on Inconsistent Interests

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 or she hold office as **mayor** or as a **member** of the governing body of a municipality, nor, in the case of county special services school districts and county vocational school districts, shall he or she hold office as a member of the governing body of a county.



School Ethics Act

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.S.A. 18A:12-22(a)**.

The Code of Ethics for Board members, under **N.J.S.A. 18A:12-24.1(a-j)**, provides ten affirmative statements or oaths that a board of education member must affirm as a requirement to be seated on the Board.



School Ethics Act – Oaths & Affirmations

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

Case:

Holstein v. Raftopoulos-Johnson, C14-15, C08-16 (2/25/20), Comm’r. Appeal (6/22/21).

The Commissioner held that a Board member violated this section when she voted in favor of a resolution to send district students to the former receiving district, despite the fact that the Commissioner had severed the send-receive relationship. The Commissioner noted that the vote violated two Department of Education directives that required parents to bear their own expenses for attendance in the former receiving district, as well as guidance from the Executive County Superintendent directing parents to pay for attendance at the former receiving district.



School Ethics Act – Oaths & Affirmations

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

Case:

D’Amico v. Wilbeck, Bayonne Bd. of Educ., Hudson County, C22-19 (8/30/19)

A board member did not violate section (b) of the Code where the board member made remarks that a public commenter was “delusional” and had a “mental condition.”



School Ethics Act – Oaths & Affirmations

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.

Case:

Advisory Opinion A01-16 (2/21/16)

The SEC found that a D.A.R.E. Program Officer, who was assigned to conduct daily safety checks of the schools, and to handle “any matter involving juveniles” and was a board member and would be acting beyond the scope of his authority, in violation of N.J.S.A. 18A:12-24.1(c), if he were to maintain both positions.



School Ethics Act – Oaths & Affirmations

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.

Case:

IMO Delbury, Sussex Wantage Regional Bd. of Educ., Sussex County, C64-06 (10/30/07)

A board member was found to have violated section (d) of the Code for bypassing the superintendent and demanding information directly from a district supervisor. The board member was censured.



School Ethics Act – Oaths & Affirmations

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.

Case:

Cheng v. Rodas, West New York Bd. of Educ., Hudson County, C58-14 (9/23/15)

The Commissioner determined that a Board member took action beyond the scope of his authority when he unilaterally issued a Rice notice to the B.A. without notice to the Board or the Superintendent's recommendation. Board member alleged that he sought advice from Board Counsel on the matter, but the Commissioner concluded board members "are responsible for their own actions."



School Ethics Act – Oaths & Affirmations

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.

Case:

Gryskiewicz v. Sproviero, Elmwood Park Bd. of Educ., Bergen County, C15-10 (8/31/10)

The Commission determined the Board member did not violate N.J.S.A. 18A:12-24.1(e) or (f) by writing an article in support of candidates for the Board of Education. It was alleged the Board member used her position to write an article in the newspaper to sway the vote in the incumbent Board members' favor. The Commission found (e) of the Code was not violated because the article was written as a private citizen and not as a member of the Board. It further found that (f) was not violated because there were no facts alleged in the complaint showing that respondent surrendered her independent judgment as a board member to special interest or partisan political groups or used the schools for personal gain or for the gain of friends when she supported these candidates.



School Ethics Act – Oaths & Affirmations

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. 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.

Case:

Anthony M. Fleres v Yu Taylor Zhong, West Windsor-Plainsboro Bd. of Educ., Mercer County, C17-18 (5/13/19)

Board Member violated 18A:12-24.1(g) when he intentionally informed members of his immediate family of an incident involving a student which resulted in discipline. The information was subsequently shared with “countless others”.



School Ethics Act – Oaths & Affirmations

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

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

Case:

I/M/O Varela and Puccio, Perth Amboy Bd. of Educ, Middlesex County, C17-12, C18-12, C21-12 (Consolidated), Comm’r Decision (6/18/19)

Board member was alleged to have tabled appointment of the Superintendent’s recommended candidate for a position “in favor of another candidate.” SEC concluded there “is no inherent problem with a board member questioning a hiring recommendation made by the administrative officer,” and it is “certainly within a board member’s rights and responsibility to request additional information before voting on such a recommendation.” Must not be done for nefarious reasons.



School Ethics Act – Oaths & Affirmations

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

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

Case:

Fabrizio, et al. v. Antoine, Roselle Borough Bd. of Educ., Union County, C26-18 (5/3/19)

A board member criticized the board president on his personal Facebook page, calling the president irrational, unstable, unhinged, and “the devil.” The Commission found that the Member did not violate this subsection because the president was not an employee of the district, but rather, a member of the board (the employing body). The Commission noted that the president might have legal recourse in another venue.



School Ethics Act – Oaths & Affirmations

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.

Case:

Junker v. Quelch, Barnegat Bd. of Educ., Ocean County, C67-20 (2/25/22), aff'd Comm'r (4/14/22)

Board member sent a series of emails to the superintendent, football coach, board president and board counsel expressing his displeasure and directing that certain actions be taken by administration and coaches regarding football players kneeling during the national anthem. Complaint was brought by the president of the LEA.

The ALJ found, and the SEC agreed that respondent violated N.J.S.A. 18A:12-24.1(d) and N.J.S.A. 18A:12-24.1(j) and recommended censure.

The SEC agreed with ALJ that in demanding statements from coaches/faculty, board member attempted to conduct an investigation before any administrative action was taken, thereby improperly administering the schools. (Affirmed by the Commissioner 4/14/2022)

Conflicts of Interest



Relationship to Board Member	Current Member of Local Union	Current Member of Any Statewide Union	Participate In Negotiations Yes or No	Vote to Ratify Contract Yes or No	Participate in Issues Related to the Sup. 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 other conflict			(A-24-17)		



Prohibited Acts/Conflicts of Interest

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.

Case:

Advisory Opinion A08-13 (6/25/13)

A Board member who owned a private business providing a writing skills course to the District's high school students would violate this subsection if the board member continued to provide services to the community, even if the services were provided pro bono.



Prohibited Acts/Conflicts of Interest (Continued)

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.

Case:

Weber v. Morgan, Ridgewood Bd. of Educ., Bergen County, C68-20 (2/25/22) aff'd Comm'r (4/14/22)

Board member made public comments about a candidate's lawsuit against the board related to a denied OPRA request seeking a board member's official email information. Alleged that board member was using personal email to perform board business. Board member also attended executive session meetings regarding the litigation.

The Commission agreed with ALJ that board member's comments regarding the candidate and lawsuit against the board damaged candidate's reputation and gave an unfair advantage to other candidates, in violation of N.J.S.A. 18A:12-24(b). The public could reasonably believe that the board member intended to influence the election in favor of other candidates, thus securing unwarranted privileges for another.



Prohibited Acts/Conflicts of Interest (Continued)

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

Case:

IMO Sheila Brogan, Ridgewood Bd. of Educ., Bergen County, C71-20 (2/25/22) aff'd Comm'r (4/14/22)

Board member attended closed session where litigation to which she was a party was discussed.

Prior to closed session it was announced that settlement would be discussed. Regardless of whether it was *actually* discussed, the public was under belief that a settlement, in which the board member had a personal interest/involvement, would be discussed.

Finding that the board member violated N.J.S.A. 18A:12-24(c), the Commission noted that recusal from any and all board discussions, including closed session, when a board member has a conflict of interest, is an absolute.



Prohibited Acts/Conflicts of Interest (Continued)

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.

Case:

Advisory Opinion A01-16 (2/23/16)

Commission determined that a police officer assigned as a Drug Abuse Resistance Education officer in the District would violate N.J.S.A. 18A:12-24(a) and (d) and N.J.S.A. 18A:12-24.1(c) and (j) if he or she were also a member of the board. Not all police officers are barred from serving as board members. However, because this officer's assignments **required extensive daily interaction** with the schools, district personnel, staff, students and parents, this officer's role presented an inescapable likelihood for conflicts.



Prohibited Acts/Conflicts of Interest (Continued)

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

Case:

IMO Rubino, Matawan-Aberdeen Regional Sch. Dist. Bd. of Educ., Monmouth County, C16-08 (9/29/10)

Board member violated N.J.S.A. 18A:12-24(e) by sending emails soliciting campaign contributions to three district employees, at their district email addresses. The Commission upheld a six-month suspension, despite the board member's claim that the emails were sent in error.



Prohibited Acts/Conflicts of Interest (Continued)

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



Prohibited Acts/Conflicts of Interest (Continued)

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

Case:

Advisory Opinion A07-00 (5/23/22)

A board member may serve as president of the local PTA, but must make sure that she/he does not represent the PTA before the Board on any matter.



Prohibited Acts/Conflicts of Interest (Continued)

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

Case:

Advisory Opinion 01-98 (2/27/98)

Board members whose children attended the district high school may discuss and vote on a proposal to give greater weight to more academically challenging courses under N.J.S.A. 18A:12-24(h), but may not vote on whether to make such proposal retroactive when retroactivity would give their children a greater benefit.



Prohibited Acts/Conflicts of Interest (Continued)

N.J.S.A. 18A:12-24(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 therefore.

Case:

IMO Kanaby, Hillsborough Bd. of Educ., Somerset County, C53-05 (7/24/07)

Commission found that board member violated the School Ethics Act, N.J.S.A. 18A:12-24(b) and (c), and the Code of Ethics for School Board Members, N.J.S.A. 18A:12-24.1(c) and (i), by sending an email to the Superintendent that was critical of the Superintendent's handling of a matter involving the board member's wife, a teacher in the district, in an attempt to secure an unwarranted privilege for his wife with respect to the disposition of two days of leave time.



Prohibited Acts/Conflicts of Interest (Continued)

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

Case:

Bd. of Educ. of Sea Isle City v. Kennedy, 196 N.J. 1 (2008).

A board member is not disqualified from office by filing a due process request. In this case, the Board member was removed from office because the due process request included a request for specific monetary relief (a demand for payment to the board member's spouse for services she provided to their son).



Prohibited Acts/Conflicts of Interest (Continued)

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

Case:

Glass et al. v. Fowlkes, Schomburg Charter School Bd. of Trustees, Hudson County, C37-04 (9/30/04)

This subsection is an exception to the conduct *prohibited* by the Act, therefore the Commission found that there could be no violation.



QUESTIONS?