

New Jersey School Boards Association

Ethics for School Officials

Presented by: NJSBA Field Services Representatives



School Ethics Act

N.J.S.A. 18A:12-23.1 (effective April 1992)

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.



School Ethics Act (effective April 1992)

N.J.S.A. 18A:12-23.1

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.

Provisions of this act also apply to charter school trustees and administrators.



NJQSAC – Governance Indicator

Governance Indicator 13:

District board of education members and school administrators annually file a timely and properly completed financial and personal/relative disclosure statement. The district board of education annually discusses the School Ethics Act and no district board of education member or administrator has been found in violation of the School Ethics Act. (N.J.S.A. 18A:12-22 and 26)

Points: 8

Indicator 13 Purpose

To ensure transparency and ethical conduct of board of education members.

Indicator 13 Documentation for Verification

This indicator is monitored remotely.

- Annual online completion of required disclosure statements for board of education members and school administrators.
- Annual discussion of the School Ethics Act, as demonstrated in the board of education minutes.
- List of any board of education member or administrator in the district who has been in violation of the School Ethics Act from the School Ethics Commission.



The School Ethics Act Established:

School Ethics Commission

Conflicts of Interest

Mandatory Training Requirements for board members

of Ethics (2001- 9 years later) Disclosure Statements – Personal/ Relative and Financial



Mandated Training To Be Provided by NJSBA N.J.S.A. 18A:12-33

Governance I New Board Member – Year 1 - First Term

> Skills and knowledge necessary to serve.

NJQSAC and its five areas of effectiveness

Harassment, intimidation and bullying in schools

Chief School Administrator evaluation processwithin 6 months of taking office (N.J.A.C. 6A:10-8.1(j) Governance II & III Years 2 & 3 of First Term

> Governance II – School finance, labor relations

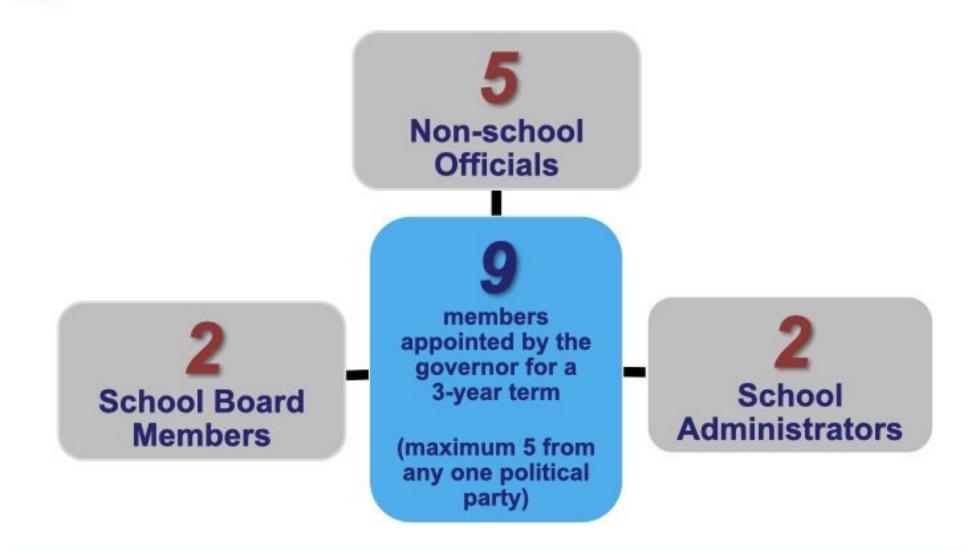
> Governance III – Student Achievement

Governance IV -Within 1 Year After Each Re-election

Advanced training to include updates on relevant school law and other appropriate information.



School Ethics Commission (SEC)





SEC Jurisdiction

Advisory Opinions

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

 Only a <u>school official</u> may request an advisory opinion to determine if any proposed activity or conduct by a school official in same district would constitute a violation of the Act.

Can be made public. Needs 6 votes from SEC.

Ethics Complaints

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



Penalties Recommended by SEC

Violation of the Act

SEC may recommend to the Commissioner:

Reprimand

Censure

Suspension

Removal

Rebuke by Commissioner Formal disapproval by Commissioner publicized by adoption of resolution

Length
recommended
by SEC and
decided by
commissioner;
formal
resolution

Removal from office for remaining length of term

SEC makes recommendation to Commissioner for final agency decision.

Appeals are heard by the Appellate Division.



Cases Considered by the SEC in 2021

Advisory Opinions

20 opinions requested

10 were recently made public, reviewed in following pages.

Mandatory Training Violations (30 cases)

Removal - 7 members

Suspension – 5 members for 30 days each

Reprimand – 18 members

Disclosure Statements

3 Removals

3 Censures

1 Reprimand

School Ethics Violations (29)

21 dismissed

2 Settlements

6 cases recommended to Commissioner*

^{*} Discussed later in this presentation.



Advisory Opinion A21-20

Board member asked if they would be precluded from voting on the collective negotiations agreement as well as from participating in negotiations and the search for, evaluation of, and contract negotiations with the superintendent. Specifically, the board member sought clarification as to whether:

- The board member's sister-in-law (spouse of their spouse's brother), a teacher in the district and served on the local union's negotiations committee, was a "relative" under the SEA.
- Whether the fact that the board member's spouse co-owned a business with their brother (married to the district employee) was indirect financial involvement so as to create a conflict.
- The SEC opined the sister-in-law was not a "relative" but was an "other". Absent another conflict, member could participate in collective negotiations, vote on negotiations agreement and participate in matters related to the CSA as long as the member did not "extend an unwarranted privilege, advantage, or employment" to themselves, immediate family, or others (including the sister-in-law).
- The spouse's business relationship with their brother did not create a conflict, though the board member would need to recuse themselves if matters related to the spouse's business came before the board.



Advisory Opinion A01-21

- Board member owns/operates accounting firm that was started after being elected to the Board.
- A least one district employee is a client of the firm with the potential to provide accounting services to other employees and/or families.
- Board member and the company financially benefit from the professional services provided.
- SEC advised that the Board member's continued provision of accounting services in the District creates a justifiable impression that the public trust is being violated, or that the business is in substantial conflict with the proper discharge of the Board member's duties.
- Reasonable for public to perceive, even if not actually occurring, that Board member is using position to obtain a financial benefit.
- Board member must also recuse from any matter involving the district employees for whom the business is or has provided services.



Advisory Opinion A03-21

A board member was in the process of creating a nonprofit entity that provides families in immediate need with meals, gift cards, or supplies, or directly pays household bills. At the time of the request, the nonprofit did not have 501(c)(3) status, and contributions were made by providing the board member with gift cards and sending the member money through online payment systems. The board member asked the SEC if there were limitations related to assisting families in the district and collaborating with the district's parent-teacher organization.

- SEC determined that because the nonprofit was not under the control of, and not overseen or managed by, the board, the board member was not prohibited in being involved in the nonprofit per se.
- However, the board member would violate the SEA if the board member or the nonprofit "directly solicited financial contributions, donations, or supplies from District families; provided services to District families; and/or collaborated with the District PTO" while the member was on the board.



Advisory Opinion A04-21

Prior to joining the board, member addressed the board as a parent in regard to concerns about school schedules, student health, and delayed start times. The member became involved in a related national nonprofit that does some lobbying on issues, first joining as a member and then becoming a volunteer chapter leader for the nonprofit in the member's town. The local chapter had a Facebook page, private group and a listing on the national nonprofit's page. The member also joined another organization, which addressed similar issues, as a parent volunteer to advocate for "healthy school hours" in New Jersey.

- SEC advised because the nonprofit was not overseen or managed by the board or district, SEA did not prevent member's involvement in the organization. Member was not generally prohibited from serving in a leadership role.
- Member should recuse themselves from any matter before the board that involves the nonprofit.
- Member may not provide information about the nonprofit to the board, district employees, or district families.



Advisory Opinion A12-21

Board member had interviewed for a sales and marketing representative position for a company that provides "an educational healthcare solution for school nurses to collect, track and manage student health information." The member wanted to know if they would violate the SEA by accepting the position.

- The SEC stated the potential employment would not be a per se conflict.
- Member would need to recuse themselves from discussions and votes regarding: (1)
 the company; (2) any product or service that the company may potentially provide to the
 district; and (3) "competing vendors or entities that offer the same (or similar) products
 or services".
- If the board were to "procure a product or services through/from the Company," member could not serve as the company's rep in the district.
- The member also could not use board membership in marketing the company/ products /services to other school districts.



Advisory Opinion A13-21

Member was being considered for a new job with his current employer as a "public-facing community liaison" with duties including, "forg[ing] strong links between the employer and local schools, businesses, and nongovernmental organizations." Member sought guidance as to whether the job would create a conflict and whether it was sufficient to avoid possible conflicts by recusing themselves from board and internal employer conversations about financial contributions to public schools.

- The commission determined the job responsibilities would not be a per se conflict.
- SEC advised if member accepted the new position, the member must recuse themselves from discussions and votes regarding: (1) the employer and/or any financial assistance or services that the employer could potentially provide to the district, and (2) "competing entities" offering the same or similar services and financial assistance as the employer.
- The member could not represent the employer in the district.
- If member represents the employer in other districts, they could not use their board membership to promote
 that assistance or those services.
- Member "should not be involved in any discussions or decisions, which could possibly relate to, or otherwise involve, the provision of financial assistance and/or services to the District."



Advisory Opinion A16-21

Board member whose ex-spouse is a teacher in the district and a member of the local union. The member and the ex-spouse share custody of their children and the member pays the ex-spouse reduced child and spousal support. Member sought guidance as to whether they had a conflict preventing involvement in matters related to the superintendent, the union and personnel issues related to administrators in the ex-spouse's supervisory chain of command.

- SEC determined that the ex-spouse is deemed to be an "other" under N.J.S.A. 18A:12-24(b)
- Member would violate SEA if they participated in matters related to the CSA and the ex-spouse's supervisory chain of command, as they would "have (whether actual or perceived) an 'indirect personal or financial involvement that might reasonably be expected to impair [their] objectivity" due to their ongoing child and spousal support contributions.
- On similar grounds, participating in matters related to the local union, such as the local union's contract negotiations, would violate the act, though the board member could vote on the memorandum of agreement (absent another conflict).



Advisory Opinion A19-21

A board voted to accept the resignation of the CSA effective shortly thereafter and, at the same meeting, voted down a resolution approving the superintendent's "successful completion of three quantitative merit goals." Two board members' spouses were employed in the district and as a result, they were recused from discussion and voting regarding the superintendent's merit goals. Another board member asked the SEC if the two conflicted board members still had a conflict that would prevent them from voting on the merit goals resolution after the superintendent left the district.

- The SEC first noted that the activity the board member was asking about already occurred because the vote on completion of the merit goals took place at a meeting prior to the effective date of the superintendent's resignation.
- Setting that aside, the commissioner reiterated that the two board members were conflicted on "any and all matters related to the [s]uperintendent" due to their spouses' employment in the district. Moreover, these conflicts would apply while the superintendent was employed by the district as well as after their employment, and to the current superintendent who was subsequently employed by the district.



Advisory Opinion A20-21

The SEC considered whether two board members' familial relationships to district employees would prevent them from participating in (1) negotiations with the local union and (2) employment decisions and matters related to the superintendent. Board member A's "aunt-in-law," who is married to the board member's spouse's uncle, is a teacher in the district. Board member B's "distant cousin" is also employed as a teacher. The requestor of the opinion noted that the fiscal accountability regulation at N.J.A.C. 6A:23A-1.2 has a more expansive definition of "relative" than under the act.

- The SEC decided that Board member A's "aunt-in-law" and board member B's "distant cousin" fall into the category of "others" under N.J.S.A. 18A:12-24(b), discussed above. The SEC noted that it did not have the authority to make a final determination about whether the aunt-in-law fell under the definition of a "relative" under the regulation, but because this relationship was not specifically included in the regulation, the SEC did not view the aunt-in-law as a "relative" under either the act or the regulation.
- Therefore, board members A and B could participate in negotiations and matters related to the superintendent as well as vote on the memorandum of agreement as long as no "unwarranted privilege" was extended to the aunt-in-law and distant cousin, respectively.



Advisory Opinion A03-22

Board member requesting the opinion informed the SEC that they are employed in another district (District B) as a bus driver, and the local education association represents employees in his position in District B. The member is "not a member of the 'collective bargaining unit by choice," and is not a dues-paying member of the union. The board on which the member serves (District A) was about to begin contract negotiations with its local education association, and the member wanted to know if they were conflicted from participating in negotiations.

- The local education associations in the two districts are affiliates of the same statewide union (the New Jersey Education Association). The SEC opined that Advisory Opinion A24-17, which it issued in September 2017, addresses the question raised in the request.
- It noted that even though the board member was not a dues-paying union member in District B, District B's local education association still negotiates on behalf of anyone included in the same position as the board member. Thus, in keeping with A24-17, because the two associations are affiliates of the same statewide union, the member is prevented from participating in negotiations with the local education association in District A, though they may vote on the memorandum of agreement absent another conflict.



Code of Ethics for School Board Members

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

a.

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



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

A decision was willfully made contrary to the educational welfare of children, or deliberate action was taken 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.



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

Board action was taken to effectuate policies and plans without consulting those affected by such policies and plans, or action was taken that was unrelated to the respondent'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.



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

A direct order was given to school personnel or there was direct involvement in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.



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

Personal promises were made or action taken beyond the scope of his or her duties such that, by its nature, had the potential to compromise the Board.



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

Action was taken 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 the schools were used in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend.



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.

g.

Standards

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. Inaccuracy of information and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances must be substantiated.





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

Standards

A personnel matter was acted upon without a recommendation of the chief administrative officer.



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

Standards

Deliberate action was taken which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.



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

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.



2021 SEC/Commissioner Decisions

A board member distributed paper flyers urging voters to vote for a particular political party, indicating that complainant was leader of a "radical" group who was going to take over town government; board member used title as a board member and had no disclaimer.

Violation of N.J.S.A 18A: 12-24.1 (e) make no personal promises or take any private action that may comprise the board; (f) surrender one's individual judgement to a special interest or partisan political groups; (g) 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 schools. **Penalty: Censure**



2021 SEC/Commissioner Decisions

A board member at a public meeting threatened a coach's job and had done so in the previous year as well.

Violation N.J.S.A. 18A: 12-24.1 (i) failure to support school personnel in the proper performance of their duties **Penalty: Suspension for 3 months**

A board member voted to approve the superintendent's merit goals. The member's daughter was a tenured teacher in the district at the time the member participated in the vote.

Violation of N.J.S.A. 18A: 12-24 (b) Use of position to secure an unwarranted privilege, advantage or employment for themselves, immediate family members or "other." **Penalty: Reprimand**

A board member voted to approve the use of district facilities to an organization from which he derived income.

Violation of N.J.S.A 18A: 12-24 (c) direct or indirect financial involvement that might reasonably be expected to impair objectivity or independence. **Penalty: Reprimand**



2021 SEC Commission Decisions

A board member wrote an op-ed endorsing a candidate for the board of education and included a disclaimer. The op-ed included multiple references to his position on the board of education and a discussion and comments on board matters.

Violation of N.J.S.A 18A: 12-24(b) Use of position to secure an unwarranted privilege, advantage or employment for themselves, immediate family members or "other." Penalty: Reprimand

A board member on his personal Facebook page made anti-Muslim, racist, incendiary and offensive comments.

Violation of N.J.S.A 18A: 12-24.1 (e) make no personal promises or take private action that may comprise the board. Penalty: Censure



Social Media

SEC Recommended Disclaimer

"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."

 SEC noted that even if an appropriate disclaimer is used, the substance of a post/statement can, nevertheless, render the disclaimer meaningless.... It is the substance of the writing, and not the disclaimer itself, that will dictate whether the school official has rendered a disclaimer meaningless.



Social Media

Saini v. Tufano

https://www.nj.govieducation/legal/ethics/2525/docs/C48-29.pdf

SEC states "Respondent is still a publicly elected school official who is charged with serving, among other things, the educational needs of a diverse, dynamic, and multifaceted student population. Public words, which derogate from the mission of a board of education serve no purpose, create unnecessary hostility and animosity within a community, and ultimately have the greatest detrimental impact on the very people that Respondent is tasked to serve – the students. Although the Commission acknowledges the sanctity of the First Amendment, words that deliberately cause divisiveness should have no place in the educational setting.



Social Media – In Summary

- It doesn't matter in what medium the opinion is expressed—rules are the same.
- Use SEC-required disclaimer
- Ensure speech meets requirements of School Ethics Act and/or Code of Ethics.
- Even if speech technically meets the requirements of the ethics laws, you should ask yourself whether it would deliberately cause divisiveness or derogate from the mission of the board of education.



Ethical?

There is a Board resolution to approve the hiring of the auditing firm that you work for.

Can you participate in the vote?



Conflicts of Interest- N.J.S.A.18A: 12-24

Recuse yourself if there is a benefit to you as a school official or your immediate family, due to a:

Business interest

Use of position to secure unwarranted privileges, advantages, or employment. (Extends to "others" which can include Nepotism policy definition of relative.)

Financial involvement

Gift, favor, etc. offered with the intent to influence

Personal involvement that creates a benefit

Discussi on - Vote

Service or employment that may prejudice independent judgment

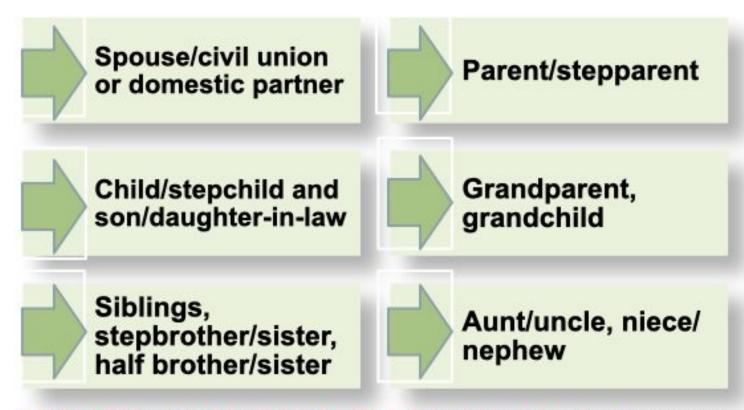
SEC definition of Immediate Family (18A:12-23): spouse or dependent child residing in same household.



Who Qualifies as a Relative?

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

Accountability Regulation Definition*



^{*} Whether related to school official or spouse/partner by blood, marriage or adoption.



Ethical?

The district has an opening for a LDTC. It would be a perfect job for your nephew who lives two towns away.



Can the district hire your nephew?

The Board is meeting to discuss the superintendent's performance evaluation. Your daughter is a substitute in the district.



Can you participate in the discussion?



Hiring/Personnel

May not hire a relative of a board member or chief school administrator.

(May be exceptions)

If the relative already works in the district:

NO taking part in:

An administrator may not exercise direct or indirect authority over a relative of the administrator. A board member may not take part in employment matters concerning the CSA or supervisors in the chain of command between the relative and the 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.



Ethical?

The Board is voting to approve the Memorandum of Agreement with the local education association. You are a teacher in another district.

Can you participate in the vote?



Collective Bargaining

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
 Spouse Dependent Child Child (not dependent) Relative 	Works in the District	No	No
SelfSpouseDependent Child	Works Out-of- District	No	Yes*
Child (not dependent)Relative	Works Out-of- District	Yes*	Yes*

^{*} Absent another conflict

^{**} 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.



Doctrine of Necessity

A19-17



The Doctrine of Necessity is only to be invoked when the Board is required to vote on a matter requiring the majority vote of the full membership.



Formation of a committee, even if only 1 member is eligible, does not warrant the Doctrine of Necessity because selection of committee members is not a matter required to be voted upon.



Two non-conflicted members may obtain the assistance of CSA, B/A or consultant to help with negotiations



Volunteerism

Members are not "banned" from volunteering in their district's schools, but there are important considerations to make.

- Generally, board members may volunteer for activities that support their children, including holding an executive position with the PTA / PTO / HSA.
- HOWEVER, BOE members should refrain from certain activities, based on the degree of involvement with students and/or staff, and the degree to which the school board member has authority to give or receive directions to/from students and/or staff.
- Board members who volunteer in the schools should advise the superintendent of their planned in-school volunteer activity in advance.
- When in the school for meetings about your own child, make it clear you are there for that purpose alone. Conduct that business then leave.



Before You Volunteer In School...

Become familiar with NJ School Ethics Advisory Opinions on volunteerism, e.g., A15-18; A17-15: A24-15; A32-14.

https://www.nj.gov/education/legal/ethics/index.shtml

And ask yourself these questions:

- 1. Will I be giving directions or orders to staff or students? No
- 2. Will I need to take orders from staff? No
- 3. Will I be in the school often? No
- Will it seem to visitors that I work in the school? (i.e., "enmeshed in the building") No
- 5. Will I be handling the school district's money at all? No
- Will I be the lead or regular volunteer for a school district club, or a coach for a school district activity or sport? No
- Does the organization for which I am performing the school-based volunteer work (e.g., Girl Scouts, PTO, Rec Commission) have its own bylaws and bank accounts? Yes

If your answers are different from any of the answers above, your planned volunteerism is likely at odds with the role of school board member. Talk to your superintendent and request input from the school district's attorney.



Interview Committees

A04-12 One or two board members; administrative staff coordinates participation – observations and assessments; CSA recommendation.

A31-15 Board member involvement in interviews for positions other than that of Superintendent is not encouraged.

 Exceptions in narrow circumstances subject to approval of the superintendent and the guidelines in A04-12.

A15-10 – Exit Interviews – No!



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 advisories.





In Closing...

"School officials must always be cognizant of their responsibility to protect the public trust, to honor their obligation to serve the interest of the public and Board, and to periodically re-evaluate the existence of potential conflicts." (A10-18)



Links for Examples Used

School Ethics Commission Site:

Case examples in Ethics presentation:

https://www.nj.gov/education/legal/commissioner/2021/164-21SEC.pdf
https://www.nj.gov/education/legal/commissioner/2021/208-21SEC.pdf
https://www.nj.gov/education/legal/commissioner/2021/303-21SEC.pdf
https://www.nj.gov/education/legal/commissioner/2021/304-21SEC.pdf
https://www.nj.gov/education/legal/ethics/2021/docs/C56-19%20and%20C57-19.pdf
https://www.nj.gov/education/legal/ethics/2021/docs/C18-20%20and%20C22-20.pdf

Saini v. Tufano Social Media case example https://www.nj.gov/education/legal/ethics/2020/docs/C48-20.pdf

Advisory Opinions

Link to all Advisory Opinions: https://www.nj.gov/education/legal/ethics/advisory/

Opinions related to Volunteerism: A32-14, A10-15, A17-15, A24-15, A15-18

Opinions Related to Interviews: A15-10, A04-12, A31-15

2020 Example in Presentation: A13-20

Doctrine of Necessity: A19-17 Union Endorsement: A10-18



THANK YOU!

for all you do for you students!

Stay Safe + Healthy

