

School Ethics, Board Governance, and the Role of a Board Member

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Presented to
Paramus Board of Education by
Stephen R. Fogarty, Esq.

Fogarty & Hara, Esqs., 21-00 Route 208 South, Fair Lawn, New Jersey 07410
201-791-3340 | sfogarty@fogartyandhara.com



The Role of the Board Member

Role of the Board

- The Board's general powers and duties are defined in **Title 18A** of the New Jersey statutes.
- According to N.J.S.A. 18A:11-1, "General Mandatory Powers and Duties," the Board is required to, among other things:
 - **enforce the rules** of the New Jersey State Board of Education;
 - **make, amend, and repeal rules** for government and management of the schools and their employees; and
 - perform all acts and do all things, consistent with law and the rules of the State Board, necessary for **lawful and proper conduct, equipment and maintenance** of the District.

Role of the Board

- This requires the Board to do things like:
 - *Approve curriculum that meets the New Jersey Student Learning Standards;*
 - *Adopt a budget that provides for a thorough and efficient education;*
 - *Hire the necessary certified personnel to educate the District's students; and*
 - *Develop policies for the management of the school district.*
- None of these are actions that the Board takes alone—it acts based upon the recommendation of the Superintendent of Schools.

Role of the Board

- The Board functions only when it is **in session**, and a “**quorum**” of the Board is required to convene a meeting and take action.
- Meetings must comply with the requirements of the Open Public Meetings Act.
- Committee meetings (less than a quorum).
- Emails and text messages.

The Board and the Administration

- The Board's direct responsibilities are to make policies, develop plans, and evaluate outcomes, not manage day-to-day operations.
 - *Members are responsible “not to administer the schools” but to “see that they are well run.” N.J.S.A. 18A:12-24.1(d).*
 - *“No Board member by virtue of his/her office shall exercise any administrative responsibility with respect to the schools or as an individual command the services of any school employee.” **Board Policy No. 9010.***
 - *Board members do not have “all access” to District schools and, in many respects, have no more authority than any other parent or community member.*
 - ***Board Policy No. 9010** explains that Board members visiting the schools for any reason must observe district regulations for all school visitors.*

- The Board delegates certain responsibilities to administrative officials.
 - **Superintendent:** Administer the District, keep the Board informed of happenings, make operational recommendations.
 - **Business Administrator:** Oversee business and maintenance, prepare the budget, establish and maintain fiscal plans, serve as general accountant and official purchasing agent.

The Board and the Administration

- The Board–Administration relationship is intended to be cooperative, not adversarial.
 - *Members should share concerns with administration in advance of meetings—assures an effective public response.*
 - *Members should be mindful of which matters are appropriate for public discussion versus reserved for private consultation.*
- As required by the Code of Ethics for School Board Members and **Board Policy No. 1312**, a Board member confronted with a community complaint should withhold comment and instead refer the issue to the Superintendent; the Board may act only at public meeting and after failure of an administrative solution.

The Board and the Administration

- The Code of Ethics specifically requires Board members to support all District staff, including the administration: “I will support and protect school personnel in proper performance of their duties.”
- A violation of this command occurs when there is evidence that a Board member took deliberate action which resulted in undermining, opposing, compromising, or harming school personnel in the proper performance of their duties.
- This does not mean that a Board member cannot disagree with a recommendation made by the Superintendent, but it generally requires that Board members support the Superintendent.
- Criticizing the Superintendent, however, could lead to a violation of the Code of Ethics where it undermines or compromises the Superintendent's ability to do his or her job.




The Role of the Board Member

Role of the Board Member

- The Board is a unit, not a collection of individuals.
 - *Members are expected to share opinions, but the Board elects a **single course of action** by majority vote.*
 - *In open meetings, to preserve decorum and ensure the Board expresses a single, consistent position, the **President alone speaks on the Board's behalf**, but may request another member's contribution.*
- The powers of the Board and the authority of a Board member are not coextensive.
- As Board Policy No. 9010 explains: “No Board member by virtue of his/her office shall exercise any administrative responsibility with respect to the schools or as an individual command the services of any school district employee.”
- Board members on their own have no supervisory authority.

Role of the Board Member

- Board members have an obligation to preserve the confidentiality of information learned in their role as members of the Board.
- This expectation exists regardless of the impact the matter has on the Board member's own children or friends.



Limits on the Role of a Board Member: The Code of Ethics

Code of Ethics

- One of the main limits on the role of Board members is the Code of Ethics for School Board Members.
- Enacted in 2001 (N.J.S.A. 18A:12-24.1), it sets clear standards that all Board of Education members must follow.
- If there is a violation, any member of the public can file a complaint with the School Ethics Commission.
- The School Ethics Commission has the power to recommend that the Commissioner of Education reprimand, censure, suspend, or remove a Board member who violated the Code.
- **Board Policy No. 9271** identifies both the prohibited acts and the Code of Ethics included in the School Ethics Act. The distinction between these provisions is significant, in that when a complaint contains allegations of prohibited acts and the SEC finds probable cause that a violation has occurred, the prosecution is through a *Deputy Attorney General*, whereas a complaint alleging violations of *only* the Code of Ethics is prosecuted by the *complainant*.
- When allegations arising under the School Ethics Act are based on private action, outside the performance of one's duties as a Board member, the Board member is not entitled to indemnification for the fees and costs of their defense.

Code of Ethics: Limits on Board Members' Administrative Powers

- What types of administrative action violates the Code of Ethics?
 - *Section (d): giving a direct order to school personnel or becoming directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district. N.J.A.C. 6A:28-6.4(a)(4).*
 - *Section (i): taking deliberate action which resulted in undermining, opposing, compromising, or harming school personnel in the proper performance of their duties. N.J.A.C. 6A:28-6.4(a)(9).*
 - *Section (j): acting on or attempting to resolve a complaint or conducting an investigation or inquiry related to a complaint prior to referral to the Superintendent or outside of a public meeting prior to the failure of an administrative solution. N.J.A.C. 6A:28-6.4(a)(10).*

Code of Ethics in Practice

- The limits imposed by the Code of Ethics are clearly seen in the limited involvement Board members have in personnel decisions.
- The Board member's role in hiring is to vote to appoint the best qualified personnel available after consideration of the recommendation of the Superintendent.
- The Board cannot withhold its approval for the hiring of a candidate recommended by the Superintendent for arbitrary or capricious reasons.
- The Board should generally, as a best practice, limit its involvement in hiring to hiring the Superintendent of Schools and then only considering the Superintendent's recommendations for all other positions to avoid interference with the Superintendent's power to recommend candidates to the Board.

Code of Ethics in Practice

■ Important Advisory Opinions

- **Advisory Opinion A15-10:** The School Ethics Commission advised against **board members** engaging in exit interviews staff members to determine causes of staff turnover, explaining that it would violate sections the Code, specifically Section (c) (participation would be board action outside of policy making, planning, and appraisal duties), and Section (d) (participation would be engaging in administrative functions left to school personnel).
- **Advisory Opinion A31-15:** Board members' involvement in interviewing personnel: The Commission explained that one or two board members **may** sit on an interview committee when established by the superintendent **but must be strictly limited to functioning in an advisory role** to the superintendent.
 - The board members **may not conduct the interview**; they only offer observations and assessments while knowing that the final recommendation is the superintendent's decision. The board cannot usurp the superintendent's authority to recommend hires.
 - The Commission noted its position that it **does not support board members conducting interviews for positions below that of the superintendent of schools**. It explained that "interviewing is generally an administrative function not within the authority of the Board or its members."

Code of Ethics in Practice

■ Advisory Opinions on Volunteering:

- **Advisory Opinion A32-14: Cannot** volunteer for school theatrical productions by assisting with casting, rehearsals, and lighting, as it would violate sections (c) and (d) of the Code of Ethics (**role would require the board member to give direct orders to school personnel and students**, engaging in responsibilities that were the exclusive domain of school personnel.)
- **Advisory Opinion A10-15: Cannot** volunteer to be the leader of a school club that meets on school grounds. **Being in a position of oversight and authority over students is beyond the scope of policy making, planning, and appraisal** (the role required too much contact with students, parents and administrators), and would violate the sections (c) and (d) of the Code of Ethics. Having a constant presence in the school would **blur the line** between the role of a board member and as a volunteer in the building by taking on day-to-day administration tasks.
- **Advisory Opinion A17-15:** Volunteering by merely constructing sets for the school musicals/plays was fine, due to **limited interaction with students and staff**. Similarly, the board member could assist the marching band by building props, repairing equipment, and loading/unloading equipment on and off the field during games and competitions, since the board member would not be the lead volunteer.
- **Advisory Opinion A24-15:** No issues serving as trustee of a local educational foundation, so long as the Board member recused himself from any Educational Foundation business before the Board.

Code of Ethics in Practice

■ Notable Decisions

- *In re Polinik, SEC Dkt. No. C45-06*: Board member violated the school ethics act when she went to the Board office without prior notice to the administration to review resumes for a candidate for an open position, tried to get someone to give her access to a locked office. This goes beyond policy making, planning, and appraisal.
- *Cheng v. Rodas, SEC Dkt. No. C58-14*: Board member violated the Code by issuing a *Rice* notice to the business administrator without the Superintendent—violates Section (e) because the Board member implied he was acting on behalf of the Board.
- *Garrity v. Vander Woude, SEC Dkt. No. C50-12*. Board members violated the act when they suspected the Director of Special Services of “double-dipping” and conducted their own investigation, instead of referring it to the Superintendent—violated Sections (c) and (d).

**Free Speech and the
School Ethics Act
(N.J.S.A. 18A:12-21 et seq.)**

Free Speech and the School Ethics Act

- The School Ethics Commission has explained that “[B]oard members do not surrender the rights that they have as citizens such as freedom of speech when they become members of a school Board. However, in exercising those rights, Board members must comply with the School Ethics Act.”
- This balance must be kept in mind whenever a Board member expresses his/her opinion publicly; whether through a letter to the editor of the local newspaper, a social media post, an email, or any other public statement or comment.
- There are two provisions of the Code that often come into play when reviewing Board member speech: Subsection (e) and subsection (g). Subsection (e) requires Board members to recognize that authority rests with the Board, and avoid making any personal promises or taking any private action that could compromise the Board. Subsection (g) requires Board members to maintain the confidentiality of information that would needlessly injure individuals or the schools if disclosed. When Board members decide to disclose non-confidential information, Subsection (g) places on them an affirmative obligation to ensure the information is accurate.
- **This means that even if information is accurate and, technically speaking, not confidential, it should not be included in a public statement, such as a letter to the editor or a social media post, if it has the potential to compromise the board.**

Creating Appearance of Board-Endorsed Candidates Called for Censure

- A Board member wrote an Op-Ed endorsing four candidates for the upcoming Board election and openly advocating for the complainant's non-election, using a disclaimer that stated, "The author is writing this endorsement on his own personal behalf. His opinions are his own." The Board member also admitted that he did not seek approval from the Board before writing the Op-Ed.
- The ALJ found that the Board member's disclaimer was insufficient to convey that he was expressing his personal opinion, and that the statements were made outside the scope of his duties as a Board member. The ALJ concluded that the Op-Ed had the potential to compromise the Board in violation of N.J.S.A. 18A:12-24.1(e) and gave an unwarranted advantage to the candidates who the Board member endorsed by virtue of the appearance that they were receiving a Board endorsement in violation of N.J.S.A. 18A:12-24(b). The ALJ did not find a violation of N.J.S.A. 18A:12-24.1(f) (regarding independent judgment). The ALJ recommend the penalty of a reprimand.
- The SEC adopted the ALJ's findings of fact and legal conclusions, but recommended the penalty of a censure, due to the deliberate and purposeful nature of the conduct that could have led the public to believe he was speaking on behalf of the Board.

In re Treston and Randolph Twp. Bd. of Educ., SEC Dkt. No. C71-18 (Apr. 27, 2021)

Guidelines for Board Members' Social Media

When using social networks, Board members are advised to:

- Not post anything that would violate any of the District's policies for Board members;
- Uphold the District's value of respect for any individual(s) and avoid making defamatory statements about the Board, the District, employees, students, or their families;
- Not disclose any confidential information about the district or any confidential information obtained as a result of being a Board member, about any individual or organization, including students and/or their families;
- Not use or refer to their Board of Education title or position when soliciting for a business organization that he or she or any immediate family member has an interest in, or post or reference any confidential information regarding the or the district obtained through their membership, unless authorized by law;

Guidelines for Board Members' Social Media (continued)

- Refrain from having communications through social network platforms with other Board members regarding any Board of Education business to avoid any potential violation of the New Jersey Open Public Meetings Act;
- Not respond to any postings regarding Board of Education or school district business or respond to any question or concern posted to the Board member or posted on any social network regarding Board of Education or school district business shall refer any such questions or concerns to the Superintendent, as appropriate; or
- Not post any information on social media determined by the School Ethics Commission to be a violation of the School Ethics Act.



Conflicts of Interest and Recusal

School Ethics Act: Board Member Recusal

- **“Immediate family member”**: the Board member’s spouse or dependent child residing in the same household.
- **“Relative”**: the Board member’s spouse, or the Board member’s or *spouse’s*:
 - parent, parent-in-law, or stepparent,
 - child, child-in-law, or step-child,
 - sibling, step-sibling or half-sibling,
 - aunt or uncle,
 - niece or nephew,
 - grandparent, or
 - grandchild,

whether by blood, marriage, or adoption.

School Ethics Act: Board Member Recusal

- Even if there is no automatic recusal or per se conflict, there may still be **case-by-case conflicts** if a Board member or his/her relative is involved in an out-of-district union.
- Per Commission *Advisory Opinion A16-15* (Oct. 28, 2015), a conflict is more likely to exist if the out-of-district relative:
 1. is an **officer** in the NJEA or the local education association;
 2. is on his/her district's **negotiating team**; or
 3. has some other leadership role in the union or the district which may **influence the outcome of negotiations** there.
- *Opinion A16-15* discussed only Board members' relatives, but the same factors apply to Board members themselves who are employed out of district.

School Ethics Act: Board Member Recusal

Relationship to Board member	May the Board member . . .		
	participate in negotiations?	vote to ratify the contract?	participate in Superintendent issues?
Self Current member of similar union	No	Yes*	Yes*
Spouse Current member of local union Current member of similar union	No No	No Yes*	No Yes*
Dependent child Current member of local union Current member of similar union	No No	No Yes*	No Yes*
Nondependent child Current member of local union Current member of similar union	No Yes*	No Yes*	No Yes*
Relative Current member of local union Current member of similar union	No Yes*	No Yes*	No Yes*
*absent another conflict			



Questions?