

# BOARD GOVERNANCE AND THE SCHOOL ETHICS ACT

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Presented to the Members of  
Montgomery Township Board of Education by:

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# Board Governance and the School Ethics Act: Topics Covered

The Board, Its Members, and the Administration

Participation in the Hiring Process and Voting

Board-Level Hearings and Decisions

Open Public Meetings Act and Open Public Records Act

Confidentiality

Social Media

The School Ethics Act and Conflicts of Interest

# Role of the Board

- The general powers and duties of the West Essex Regional Board of Education are defined in **Title 18A** of the New Jersey statutes.
- Pursuant to N.J.S.A. 18A:11-1, General Mandatory Powers and Duties, the Board is required to, among other things:
  1. *enforce the rules of the New Jersey State Board of Education;*
  2. *make, amend and repeal rules for the government and management of the public schools and for the employment, regulation of conduct, and discharge of its employees consistent with Title 18A and the rules of the State Board; and*
  3. *perform all acts and do all things, consistent with law and the rules of the State Board, necessary for the **lawful and proper conduct, equipment and maintenance** of the Montgomery Township School District.*

# 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.
- Pursuant to State law, the Board must hold a public meeting **at least once every two months** when District schools are in session, and all meetings must be called to commence **not later than 8:00 p.m.**
  - *If a quorum is not present at the time the meeting is scheduled to begin, the members present may recess to no later than 9:00 p.m. that day.*
  - *If still no quorum is present, the members may adjourn until no later than seven days after the original meeting date.*

# The Board and the Administration

- The Board's direct responsibilities are to **make policy, develop plans, and evaluate outcomes**. The Board does 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). The School Ethics Commission has explained that “administering the schools” means that a board member has become directly involved in activities or functions that are the responsibility of school personnel.*
  - *“No Board member by virtue of his/her office shall **exercise any administrative responsibility** with respect to the operation of the school district or as an individual command the services of any school district employee.” Bylaw No. 0146.*
  - *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.*
- The Board **delegates** certain responsibilities to administrative officials.
  - *The **Superintendent of Schools** is responsible to **administer** the District. She must keep the Board informed of happenings in the District and make recommendations to the Board regarding daily operations, including hiring of staff.*
  - *The **Business Administrator** is responsible for **business and maintenance**. He must prepare the annual budget, establish and maintain fiscal plans, and serve as the District's general accountant and official purchasing agent.*

# The Board and the Administration

- The Board's relationship with the administration must always be **cooperative**, not adversarial or antagonistic.
  - *Members should share concerns with the administration in advance of public meetings so that administrators can gather information and respond effectively.*
  - *Members should be alert to which school matters are appropriate for public discussion and which should be reserved for private consultation with administrators.*
- Per the School Ethics Act and Policy No. 9130, a Board member confronted with a community complaint or grievance should **withhold comment, commitment, or opinion** and instead **refer the inquiry to the Superintendent**; the Board may act on complaints “at public meetings only after the failure of an **administrative solution.**”

# Role of the Board Member

- The Board is a **unit**, not a collection of individuals.
  - Members are expected to share ideas and opinions, but the Board elects a **single course of action** by majority vote. No vote is worth more than any other.
  - In open meetings, to preserve decorum and ensure the Board expresses a single, consistent position, **the President alone speaks on the Board's behalf** unless he requests another member's contribution.
- Members should keep distance between their professional lives, personal lives, and Board responsibilities. Professional expertise and personal experience are instructive but do not necessarily dictate Board action.
  - *Example: A member with a background in finance may have insights as to the District's financial affairs but should not insist on a particular course of action or monopolize the group's discussion.*
  - *Example: A member may have opinions as the parent of a District student, but these opinions cannot compromise the member's duties to the Board and the District as a whole.*

# Role of the Board Member

- Board members should be mindful that they **represent the Montgomery Township School District** and the interests of the District's school children and residents. Members must comport themselves professionally at all times.
- The Board and its members must be equally concerned with **all issues affecting the District**, not only those issues affecting their respective children.
- To preserve the Board's credibility and ensure that it operates effectively, members should avoid, among other missteps:
  - *airing personal grievances in the public forum—the Board should present as a unified team, with conflicts resolved privately;*
  - *relying on rumor or innuendo, especially culled from social media outlets, unsubstantiated anecdotes, or similar unreliable sources;*
  - *grandstanding, self-aggrandizing, or diminishing other members, whether in public or private.*



# Board Involvement with Hiring

- 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 staff member for arbitrary or capricious reasons.
- The Board should generally limit its involvement in hiring to hiring a Superintendent of Schools and then only considering the Superintendent's recommendations for all other positions.
- Board members may have to recuse themselves from voting on hiring for certain positions where they have a family member employed in the District who will be supervised by the prospective hire.

# Board Involvement with Hiring

- The School Ethics Commission does not support board members conducting interviews for positions below that of the Superintendent.
  
- However, the School Ethics Commission has authorized the creation of hiring committees that include board members where:
  - *No more than two board members participate;*
  - *The committee is coordinated by a member of the administrative staff;*
  - *Board members do not conduct the interview and limit their involvement to offering observations and assessments;*
  - *Board members play no role in selecting candidates; and*
  - *The ultimate hiring recommendation remains with the Superintendent.*

# *Young v. Snyder*

SEC Docket No. C39-14 (2014)

# *McMullin v. Meloni*

SEC Docket No. C49-14 (2014)

- In two cases, Pennsauken board members accused fellow board members of violating Sections (c) and (d) of the Code of Ethics for School Board Members by participating in interviews of candidates for...
  - Assistant Principal positions in both middle and high schools.
  - Principal of elementary schools in District.
- Commission granted motions to dismiss in both, finding no possible violation of Sections (c) and (d).
  - The Board maintained a Selection Committee, of which the responding board members were a part. The allegations were insufficient to establish any wrongdoing, and there was no evidence to establish that the responding board member had acted improperly.
    - The fact that the responding board members voted against Superintendent's recommendations was not considered sufficient to establish a violation.
- Commission did express warnings about the Selection Committee:
  - Its having four of nine members is just short of a quorum, creating an imminent OPMA issue.
  - If the members are too active, there is high potential to disrupt the interview process and to usurp the Superintendent's role as the leader in interviews.

# Voting

- The Board may take **official action** only when a **quorum** (five members) is present.
- A vote can be conducted by voice, show of hands, or roll call, and **each member's vote is recorded** in the minutes.
- Abstentions are recorded but **do not count as votes**. An abstaining member is deemed to acquiesce to the outcome of the vote.
- **Members must be present to vote**. The Board bylaws prohibit voting by proxy.
- Voting via remote means (e.g. phone or videoconference) is discouraged, but not prohibited. Best practices dictate...
  - Appearing and voting remotely only when absolutely necessary;
  - Providing advance notice where a Board member will participate remotely;
  - Ensuring that the public can hear (and see, if possible) the remote member; and
  - Ensuring that the remote member has access to all materials considered during the meeting.

# Voting

- All motions require at least a majority of Board members present and voting.
- Some acts require more than a mere majority of present members—for example, a **majority of the *full Board*** is required to:
  - ***appoint certain officials, including Superintendent, Business Administrator, Board Secretary, Administrative Principal, etc.;***
  - ***appoint, transfer, remove, or renew teaching staff members;***
  - ***determine the sufficiency of charges that would warrant a tenured employee's dismissal or salary reduction;***
  - ***select textbooks; or***
  - ***withhold a salary increment.***

# Board-Level Hearings and Decisions

- As a member of the Board, you will be called to participate in a variety of Board-level hearings and decisions.
- Examples of common Board-level hearings and decisions include:
  - *harassment, intimidation and bullying (“HIB”) appeals (students);*
  - *long-term **suspension** hearings (students);*
  - ***residency** appeals (students);*
  - ***grievances** (personnel);*
  - ***nonrenewal** (“Donaldson”) hearings (personnel).*

# HIB Hearings

- State law prohibits any act that is motivated by the student's distinguishing characteristic, substantially disrupts the operation of the school, and physically or emotionally harms the student.
- When HIB is alleged:
  1. *The Principal or a designated staff member conducts an investigation and submits a **report to the Superintendent.***
  2. *The Superintendent submits a **report to the Board**, indicating consequences imposed on the offender, services provided, training established, or other action taken or recommended.*
  3. *The offender's or victim's parents may **request a hearing before the Board.** The hearing is held in executive session and the Board may hear testimony and review evidence.*
  4. *At the first meeting after the hearing (or after receiving the Superintendent's report, if no hearing was requested), the Board decides to **affirm, reject, or modify the Superintendent's decision.***
  5. *The Board's decision may be appealed to the Commissioner of Education.*
- The Board's role is supervisory, not investigatory—members should be confident in the expertise of the administration and staff and should trust in their findings.

# Long-Term Suspension Hearings

- Pursuant to State law, students suspended for **more than ten consecutive school days** are entitled to certain due-process protections.
- The student must be granted a **formal hearing** either by the **full Board** or by a **Board committee, school administrator, or hearing officer**.
  - *The student is entitled to confront and cross-examine witnesses and present evidence in his or her own defense.*
  - *If the hearing was delegated to a committee, administrator, or hearing officer, **the full Board must consider the delegee's report before taking final action.***
- The Board issues a decision to extend the suspension beyond ten days, return the student to school, or order other action.
- The Board's decision may be appealed to the Commissioner.



# Residency Appeals

- Pursuant to State law and Policy 5111, the Board must provide a **free public education *only*** to children **residing within the District**.
- When a student attending school in the District is determined to be ineligible, the **Superintendent may apply to the Board** for the student's removal.
- The student's parents are entitled to request a **hearing before the Board** to determine eligibility.
  - *The parents may submit evidence that their child is entitled to a tuition-free education in the District.*
  - *The Board must **review the facts and issue a decision** whether the student should be disenrolled.*
  - *If the Board votes to disenroll, the student may remain in the District for twenty-one days, during which time the parents may appeal to the Commissioner of Education.*

# Grievances

- All of the CNAs the Board is a party to with an employee union contain a provision which permits the union to file a grievance concerning the **interpretation, application, or violation of the CNA.**
- If the union is not satisfied with the disposition of the grievance at earlier steps, it may request **review by the Board.**
- Once a grievance is submitted to the Board in writing, the Board must render a **written decision** within the timeframes of the grievance procedure.
- If the union disagrees with the Board's decision, it may **file with PERC to request the appointment of an arbitrator.**

# Nonrenewal Hearings

- The Board shall renew employment contracts of non-tenured personnel only upon the **recommendation of the Superintendent** and by **majority vote of the full membership**. Any employee not recommended by the Superintendent is deemed nonrenewed.
- Pursuant to State law, a nonrenewed employee is entitled to request a statement of reasons from the Superintendent and an “informal appearance” before the Board, known as a *Donaldson hearing*.
  - *A Donaldson hearing is non-adversarial. It is the staff member’s opportunity to **convince the Board that the Superintendent made an incorrect determination by not offering reemployment.***
  - *Witnesses need not testify under oath and are not subject to cross-examination.*
- The employee may appeal the Board’s decision to the Commissioner of Education.

# Open Public Meetings Act

- In the Open Public Meetings Act, (“**OPMA**”), the State Legislature declared that “[t]he right of the public to be present at all **meetings of public bodies**, and to witness in full detail all phases of the **deliberation, policy formulation, and decision making** of public bodies, is vital to the enhancement and proper functioning of the democratic process.”
- OPMA guarantees the public has a right to be **present at all meetings** of public bodies and to receive **adequate notice** of such meetings.
- As a public body under OPMA, the Board is required to comply with the provisions of this law.

# OPMA: What Constitutes a Meeting?

- A meeting is any gathering, whether **corporeal** or by means of **communication equipment**, attended by or open to **all of the members** of a public body, where the members present **intend to discuss or act as a unit** upon the body's public business.
  
- A meeting is *not* any such gathering that is:
  1. attended by **less than an effective majority** of the members of a public body; or
  
  2. attended by or open to all the members of **three or more similar public bodies** at a convention or similar gathering.
  
- “Public business” means “all matters which relate in any way, directly or indirectly, to the **performance of the public body's functions or the conduct of its business.**”

# OPMA: Email Communication

- In accordance with New Jersey case law, *email communication between a majority of Board members can be considered a meeting under OPMA* if the individuals actively engage in discussions relating to matters involving the performance of the Board's functions or the conduct of its business.
- Board members discussing Board business must limit their communications to **four or fewer members**. (As noted, a gathering is not an OPMA meeting if attended by less than a majority of the members.)
- If an email exchange includes five members of the Board, it may be considered a meeting and become subject to OPMA.

# OPMA: Email Communication

- A single email generally will not constitute an OPMA “meeting.” There must be an intent “**to discuss or act as a unit.**” *Wolosky v. Sparta Board of Education*, SSX-L-656-14 (Law. Div. Jan. 21, 2015).
  - *A Board member is probably permitted to send an email to a majority of the Board if for **informational purposes** and not to stimulate discussion.*
  - *Board members should avoid “replying-all” so as not to prompt a multilateral discussion which could constitute a meeting under OPMA.*
- If an “informational” email is sent, the sender is recommended to include **qualifying language**—for example:
  - *“Please do not respond.”*
  - *“For informational purposes only.”*
  - *“I would appreciate a full discussion on this matter at tonight’s board meeting.”*

# Open Public Records Act

- As a public agency, the Board must comply with the Open Public Records Act (“**OPRA**”). Where OPMA provides public access to meetings, OPRA guarantees access to “**government records**” made, maintained, kept, or received in the course of official business.
- *All emails exchanged between Board members relating to Board business are government records*, regardless of whether exchanged via the District’s server or through a personal email account.
- **Text messages** have also been held to be government records when relating to public business.
- Board members are urged to use caution when communicating electronically. *If you do not want the public to see a communication, it should not be put in writing.* A phone call is more prudent than an email or text message.



# *Monillas v. Gabauer*

SEC Docket No. C09-08 (2008)

- Facts: Superintendent alleged that board president violated every section of the Code of Ethics by engaging in email correspondence about the Superintendent's employment. Three messages were at issue.
  1. from the board president to other board members regarding a conversation about the superintendent between the board president and vice president;
  2. from the board vice president to the rest of the board endorsing the first message; and
  3. from another board member to the rest of the board, appearing concerned about the dealings between the president and vice president.
- Decision: Commission granted motion to dismiss on all counts, finding insufficient facts alleged to plausibly grant on any grounds.
  - Section (c): Consultation among board members about employment matters is properly within "planning and appraisal" duties.
  - Section (d): There was no undertaking of administrative responsibilities or day-to-day management. Consultation among board members about employment matters is a proper function of the board.

# Confidentiality

- Board members are ***expressly prohibited from disclosing any confidential information*** learned in their role as members.
- This expectation exists regardless of the impact of the matter on the member's own children or friends.
  - Example: A member learns during closed session that the administration has suspended the a teacher pending the results of a psychiatric evaluation. This information **cannot be disclosed to anyone**, even if that member's child is a student in the teacher's class.
  - Example: The Board's finance and curriculum committees are considering whether to change the course of studies at both high schools, including which high schools shall offer the various career and technical education and dual enrollment programs. A member **cannot disclose this information** even if he or she has a friend who is deciding whether to buy a house based on the makeup of the two high schools.

# Free Speech

- The 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 Act 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 do elect 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.

# Slander, Libel, and Defamation

- The School Ethics Act is not the only New Jersey law that applies to the speech of school board members.
- As public figures in the community, school board members must use caution when posting comments regarding other individuals.
- Posting inaccurate or inflammatory statements could result in a civil lawsuit for defamation of character, or a lawsuit alleging deprivation of a liberty interest in reputation.

# *Marino v. Westfield BOE*

- In this recent case, a middle school teacher and former school basketball coach filed a defamation suit claiming that a member of the Westfield Board of Education published defamatory comments about him on Facebook and Twitter. The teacher contended that these false allegations resulted in his wrongful termination from his coaching position.
- The teacher alleged that one of the board members had posted that the teacher had called a teenage girl “worthless,” and wrote that he had been “doing it for years.” The Board member allegedly went on to say that “there is so much more and hopefully those that aren’t on the board that know will come forward...”
- In response to the complaint, the Board member filed a motion to dismiss. The motion was granted because the teacher failed to plead facts sufficient to establish “actual malice.”

# *Marino v. Westfield BOE*

- In New Jersey, an action for defamation requires the plaintiff to establish: (1) the assertion of a false and defamatory statement concerning another; (2) the unprivileged publication of that statement to a third party; and (3) fault amounting to at least negligence by the publisher.
- However, while normally a “showing of negligence” is adequate to satisfy the third prong of the defamation test, when a matter of public concern is involved or the statement concerns public figures, the standard is heightened to one of **actual malice**. Actual malice requires a showing that the defendant made the statement “knowing that it was false or with a reckless disregard for the truth.”
- Here, the court granted the motion to dismiss because the facts pled in the complaint were insufficient to establish actual malice.

# 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 of Education, the school district, employees, students, or their families;
- Not disclose any confidential information about the school district or confidential information obtained as a result of being a Board member, about any individual(s) 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, as well as posting or referencing any confidential information regarding the Board of Education or the school district obtained through their Board membership, unless authorized by law;

# Guidelines for Board Members' Social Media (continued)

- Refrain from having communications through social networks 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 inquiry posted to the Board member or posted on any social network regarding Board of Education or school district business and shall refer any such questions or inquiries to the Superintendent of Schools to address, as appropriate; or
- Not post any information on social network determined by the New Jersey School Ethics Commission to be a violation of the New Jersey Ethics Act.



# School Ethics Act: Ethical Obligations

- The School Ethics Act, N.J.S.A. 18A:12-21 to -34, recognizes that it is “essential that the conduct of members of local boards of education and local school administrators hold the **respect and confidence of the people.**” Board members 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 ethical obligations of a Board member are, in sum, to:
  - *uphold and enforce all applicable laws, rules, and regulations;*
  - *promote the **educational welfare** of children, regardless of ability, race, creed, sex, or social standing;*
  - *act in an official capacity only for purposes of **policy making, planning, and appraisal**, and only after consulting with those who will be affected;*
  - *act not to administer the school but to **see that it is well run**;*
  - *recognize that authority rests in the Board, not its individual members, and **make no personal promises nor take any private action** that may compromise the Board;*

# School Ethics Act: Ethical Obligations

- *maintain independent judgment, free of special interests, partisan politics, self-dealing, or personal favors;*
- *hold confidential information that, if disclosed, would needlessly injure individuals or the schools, and provide accurate information to District administrators and staff;*
- *appoint the best qualified personnel available, in consultation with the Superintendent of Schools;*
- *support and protect school personnel in proper performance of their duties; and*
- *refer all complaints to the Superintendent of Schools, and act on such complaints at public meetings only if there is no administrative solution.*

## Advisory Opinion: A15-10 (Hiring Practices)

- Board Member requested opinion regarding authority to conduct exit interviews of staff members, in the interest of determining causes of staff turnover.
- SEC advised against board members engaging in exit interviews of resigning staff members, determining that it would be a violation of Sections (c) and (d) of the Ethics Code.
  - *(c): Participation would be board action not within defined policy making, planning, and appraisal duties.*
  - *(d): Participation would be engaging in administrative function best left to school personnel.*

## Advisory Opinion: A04-12 (Hiring Practices)

- Board Member requested opinion regarding authority to participate on interview committees for administrative and supervisory positions (e.g. Assistant Superintendent, Business Administrator).
- SEC advised that participation would be permissible, provided it is strictly limited to offering observations to the Superintendent, knowing that the final call rests with the Superintendent.
  - *Anything more would run afoul of both Sections (c) and (d) for usurping the Superintendent's authority.*

## Advisory Opinion: A31-15 (Hiring Practices)

- Board Member requested opinion to clarify the appropriate level of involvement for board members in interview processes.
- SEC affirmed its previous positions in Opinions A15-10 and A04-12, and advised that Board may have personnel committee, but its role should be strictly limited to functioning in advisory role to the Superintendent.
  - *Interviewing candidates for any position other than Superintendent is not within a board member's authority under Sections (c) and (d).*

# Board Member as Volunteer

## Advisory Opinion A15-18

### Facts

- A very active member of the school district's parent community was elected to the board.
- The board member also was an **active supporter of the local education association** during contract negotiations, and participated in several activities to demonstrate support for the association.
- The association, however, **had not formally endorsed** the board member for election.
- Besides this, the board member continued to hold the position of **PTA president**, was a **homeroom parent**, coordinated all other homeroom parents, coordinated a family movie night in the district, and **coordinated field day**.
- The request for an advisory opinion sought guidance whether the board member could continue to serve in these positions and whether the board member could be involved in negotiations.

## Advisory Opinion A15-18 (cont.)

### Opinion

- The SEC explained that serving on a board of education **does not generally preclude a parent from volunteering in activities that support the district's students.**
- Whether a volunteer position violates the School Ethics Act turns on the **degree of involvement** the board member has with staff and students and the degree to which the board member has **authority to give and receive directions or orders to/from staff** during the activities.
- The SEC found that these types of volunteer positions were acceptable, finding them to be **passive** and not subject to a widespread level of direction from staff, students, or other board members.
- The SEC also noted that there would be **no conflict** preventing the board member from being part of negotiations.

# Advisory Opinion A15-18 (cont.)

## Opinion

- Finally, the SEC cautioned that board members who are volunteering in the schools **should advise the Superintendent of Schools and relevant staff** the board member is performing volunteer work and, when doing so, **is there in the capacity as a volunteer and parent, not as a board member.**
- This notification will avoid any confusion, and the board member must always be cognizant of the responsibilities under the School Ethics Act during volunteer work (such as maintaining confidentiality or investigating complaints without reporting them to the Superintendent).

## Takeaway

- **Board members** can serve in high-level PTA positions and **volunteer** in district activities as long as those **roles are passive with little involvement** with staff and students.
- Legitimate political activity such as advocating for teachers prior to election, without more (e.g., formal endorsement from the union, accepting campaign contributions), and then serving on the District's negotiations committee, does not violate the School Ethics Act.



# Advisory Opinion: A04-13 (Accessing Records)

- Board Member requested opinion regarding permission to conduct research for Ph.D. program using school officials and staff as subjects, specifically to:
  - *Personally survey Board of Education and Superintendent;*
  - *Personally interview three Board members;*
  - *Anonymously survey all District teachers; and*
  - *Personally conduct focus groups with select District teachers.*
- SEC advised that this would be impermissible under Sections (c) and (d), among others.
  - *Would constitute acting outside the scope of Board duties and directing activity of staff members.*

# Board Member Interaction with Employees

*IMO William Lahn*

SEC Docket No. C25-05 (2005)

- Facts: Complaint against board member stemming from three distinct instances of misconduct:
  - *(1) Lahn entered the district's guidance office and demanded copies of SAT score reports. When the secretary resisted his request, claiming that she was not allowed to disclose such information, he was persistent and did not leave until she produced the report. The secretary felt uncomfortable and only produced the report because she was intimidated by Lahn as a board member.*
  - *(2) Lahn directed school staff to supervise a boys' locker room during a basketball game, then entered the locker room himself to inspect the state of the lockers.*
  - *(3) Lahn brought a parent's complaint about a scheduling conflict her son was facing between extracurricular activities directly to the building principal instead of the superintendent.*
  
- Decision: found violations stemming from all three allegations.
  - *(1) Found to be a violation of Section (d), as his conduct had a direct impact on a school employee.*
  - *(2) Found to be a violation of Section (d), as he gave direct instructions to a school employee regarding job duties.*
  - *(3) Found to be a violation of Section (j), as board members are only to refer complaints to chief administrators.*
  - *Commission imposed censure, and was affirmed by Commissioner.*

## Board Member Directly Addressing Employee

*IMO Doris Graves*

SEC Docket No. C47-05 (2008)

- Facts: Superintendent brought complaint against board member, alleging that board member improperly confronted district's facilities coordinator to question personnel decision regarding the demotion of her cousin-by-marriage.
- Decision: ALJ found violations of Sections (c) and (d).
  - *While this was a chance, informal encounter, it was improper for the board member to directly address the facilities coordinator—her concerns should have been lodged with the superintendent.*
  - *The board member further improperly involved herself in the matter by attending a personnel committee meeting to discuss the demotion, despite not being a member of the committee.*
  - *Commission and Commissioner affirmed and imposed censure.*

Board Members Going Beyond Authority  
IMO Polnik, Bd. of Ed. of Tp. of Wayne  
SEC Docket Nol 32-1/08 (March 10, 2008)

Facts

- Board member arrives at board offices unannounced and asks to review available resumes for position.
- Secretary provided the resumes that were available.
- Board member asks to see remaining resumes and when told they are in a locked office, Board member located custodian to open locked office to get the additional resumes.

Decision

- SEC determined Board member violated Act and administered the schools by attempting to locate office key and questioning secretary for additional resumes.
- Board member was censured.

## Board Members' Unannounced Visit

IMO Censure of Delbury, Bd. of Ed. of Sussex Wantage Reg'l. Sch. Dist.

SEC Docket No. C64-06 (October 30, 2007).

aff'd. Comm. #472-07 (December 6, 2007),

aff'd. St. Bd. #1-08 (June 18, 2008)

aff'd. App. Div. (unpub. August 10, 2009)

### Facts

- Board member goes into middle school unannounced and takes pictures of open windows in classrooms and Maxipads in board office bathroom.
- Board member then speaks to reporters about his concerns regarding these items and gives his pictures to reporters.

### Decision

- Board member did not violate N.J.S.A. 18A:24.1(c) because there was no board action.
- Board member did not violate N.J.S.A. 18A:24.1(d) since he was not administering the schools.
- Board member did not violate N.J.S.A. 18A:24.1(f) since he did not reveal confidential or inaccurate information.
- However board member did violate N.J.S.A. 18A:12-24.1(j) when he acted on a complaint prior to failure of an administrative solution at a public meeting.
- Board member was censured.

# IMO Gartland and Picardo

SEC Docket No. C44-05 (2006)

- Facts: Two board members attended a dinner with representatives of teacher's union. Neither advised the rest of the board or their superintendent of their plans to attend the dinner.
  - *Both claimed that it was a benign meeting—they paid for their own meals, didn't do anything with the intention of undermining the superintendent, and stated that they just wanted to improve relations between the union and board.*
- Decision: both members found to have violated Sections (c) and (d) of the Code of Ethics.
  - *Section (c): Benign or not, the meeting threatened the Superintendent's authority in dealing with the union. That, in and of itself, goes beyond the confines of "policy making, planning, and appraisal."*
  - *Section (d): Meeting with the union absent any authorization from a majority of the board or from the Superintendent is on its face a usurpation of the Superintendent's exclusive administrative authority.*
  - *Gartland was suspended for one month. Picardo was censured.*

# School Ethics Act: Public Complaints

- N.J.S.A. 18A:12-24.1 requires Board members to “refer all complaints to the chief administrative officer” and only permits Board members to act on complaints at public meetings “after failure of an administrative solution.”
- If a member of the public confronts you with concerns or complaints, you must tell them that you will refer their concern to the Superintendent. You cannot unilaterally act on the concern.
- If you receive a concern or complaint via email, you should respond that you are forwarding the concern to the Superintendent for him/her to review and respond.
- During Board meetings, responses to concerns raised by members of the public are made by the Board President. Under Policy No. 0167, all statements, questions, or inquiries are to be directed to the Board President, and the Board President shall determine if the statement, question, or inquiry shall be addressed by the Board President on behalf of the Board or by another Board member or administrator. There is no legal obligation to respond to a concern raised by the public and, if it is a new concern, it may be best to respond by saying that the Superintendent will review the matter and report back to the Board.

# School Ethics Act: Conflicts of Interest

- The Act expressly forbids certain arrangements and relationships for Board members. No member may, for example:
  - *be involved in any **business or activity that is in “substantial conflict” with his or her public duties;***
  - *use his or her position to secure **unwarranted privileges, advantages, or employment** for him- or herself, immediate relatives, or others;*
  - *act in an official capacity where the matter involves an **immediate relative** or a **business organization in which the member has an interest;***
  - ***accept employment** in any capacity that might prejudice the member in exercising his or her official duties, even if the work is unpaid;*
  - *accept any **gift, favor, loan, etc.** with the understanding that it was given to influence him or her in the discharge of official duties;*
  - *use **non-public knowledge** for financial gain.*



# 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

Relationship to board member	May the board member . . .		
	participate in negotiations?	vote to ratify the contract?	participate in superintendent issues?
<b>Self</b> Current member of similar union	No	Yes*	Yes*
<b>Spouse</b> Current member of local union Current member of similar union	No No	No Yes*	No Yes*
<b>Dependent child</b> Current member of local union Current member of similar union	No No	No Yes*	No Yes*
<b>Nondependent child</b> Current member of local union Current member of similar union	No Yes*	No Yes*	No Yes*
<b>Relative</b> Current member of local union Current member of similar union	No Yes*	No Yes*	No Yes*
*absent another conflict			

# 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: Members' Personal Opinions

- Board members **do not surrender their private rights**—e.g., First Amendment rights—but must be circumspect when publicly expressing personal opinions.
- Per Commission Advisory Opinion A03-07 (Apr. 2, 2007), a member writing a **letter to the editor** must:
  1. **identify him or herself** as a board member;
  2. indicate that the letter is neither **authorized** by the board nor **written on behalf of** the board;
  3. include only **accurate, non-confidential** information; and
  4. ensure that the private action **does not compromise the board**.

# *Dericks, et al. v. Schiavoni, et al.*

SEC Docket Nos. C41-07, C46-07, C47-07 (2009)

- Facts: Numerous allegations of violations of Code against board president stemming from his submission of letter to editor and statements regarding retention of supplemental counsel.
  - *Schiavoni's letter challenged reporting by the newspaper; he argued that the board was not hiring additional counsel, but rather that they were dividing work between their existing counsel and a new firm.*
- Decision: Commission found violation of Section (e) of the Code of Ethics, but not of Sections (c) and (d).
  - *No finding that these mere statements about the board's decision-making process could violate Schiavoni's policy-making and non-administration responsibilities and obligations.*
  - *There was a failure to consult with the entire board before submitting the letter for publication, as the letter addressed board business and was intended to speak for the board as a whole.*

# School Ethics Act: Common Pitfalls

- Board members should be alert to common ethical pitfalls:
  - ***Taking unilateral action.*** Members must refer complaints to the Superintendent and should not take action themselves.
  - ***Neglecting stakeholders.*** The member's role is to "help frame policies and plans only after the board has consulted with those who will be affected by them."
  - ***Asserting authority over staff members.*** A member does not have managerial authority over District staff and should leave this duty to the administrators.
  - ***Referring friends for employment.*** The Act expressly prohibits members from using the schools "for personal gain or for the gain of friends." It is the Superintendent's job to recommend the person he or she believes to be the best candidate for a position.
  - ***Participating directly in District administration.*** If you have issues with Board policies, procedures, or curriculum, refer them to the Superintendent for action. The Superintendent is responsible for discussing with the administrative staff and making recommendations to the full Board. Direct contact with staff could exceed the member's limited responsibilities of "policy making, planning and appraisal."

# Questions?

