School Official Ethics

- Nepotism Regulation N.J.A.C. 6A:23A-6.2
Collective Negotiations Participation
Collective Negotiations Participation

Board Member or School Administrator with a “relative” or “other” who is an employee in the school district

- in the bargaining unit of the contract under negotiations
- supervised by employees in the unit
- not in the unit, but terms of employment linked to unit, or
- board member’s endorsement by the union in election immediately preceding negotiations

CANNOT SERVE ON NEGOTIATIONS TEAM OR PARTICIPATE IN PLANNING OF NEGOTIATIONS
CANNOT VOTE ON THE CONTRACT
Collective Negotiations Participation

"Relative" - individual's spouse, civil union partner ... domestic partner..., or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother or half-sister, of the individual or of the individual’s spouse, civil union partner or domestic partner, whether the relative is related to the individual or the individual’s spouse, civil union partner or domestic partner by blood, marriage or adoption.
Collective Negotiations Participation

School Ethics Commission
Advisory Opinions Emerging Issues

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

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others.
Collective Negotiations Participation


In-District

- A03-13 – Brother-in-law, A22-13 – Father-in-law
- **A10-14 – 1st Cousin, A15-13 - Cohabiting partner**
- A19-13 - Teacher town council member, board members municipal employees
- A19-15 – Niece, Spouse’s Uncle, Son, **1st Cousin**
- A25-15 – Spouse, **Relative**
- A15-16 – **Ex-Spouse**
Collective Negotiations Participation


**In-District**

- A25-15 – Board members with “relative” or “other” employed *in-district*, members of a local union or receive benefit from CBA, are deemed conflicted under the School Ethics Act; all union matters and all aspects of collective negotiations process, including voting on the collective bargaining agreement.

School Administrator Technical Information Exception

- A22-16 – A conflicted school administrator may serve as a technical resource to the negotiating team and provide technical information necessary to the collective bargaining process when no one else in the school district can provide that information; not full participation.
Collective Negotiations Participation

Board Member or School Administrator with themselves, a “relative” or “other”, an employee in another school district

- If the Board Member is employed in another district and is a member of a bargaining unit represented by a similar state-wide union,

**CANNOT** SERVE ON NEGOTIATIONS TEAM
**CANNOT** PARTICIPATE IN ANY ASPECT OF NEGOTIATIONS
**CANNOT** VOTE ON THE CONTRACT - $
Collective Negotiations Participation

Board Member or School Administrator with a “relative” or “other” who is an employee in another school district

- If the Board Member or School Administrator has an immediate family member in the household, who is employed in another school district and is a member of a bargaining unit represented by a similar state-wide union, *per se* conflict

**CANNOT SERVE ON NEGOTIATIONS TEAM**

**CANNOT PARTICIPATE IN ANY ASPECT OF NEGOTIATIONS**

**CANNOT VOTE ON THE CONTRACT** - $
Collective Negotiations Participation

Immediate Family Member

• N.J.A.C. 6A:23A-1.2 - spouse, civil union partner, domestic partner, or dependent child residing in household

• State Conflict of Interest Law – spouse, child, parent, sibling residing in household
Collective Negotiations Participation

Board Member or School Administrator with a “relative” or “other” who is an employee in another school district

- If the Board Member or School Administrator has a “relative” or “other” outside the household, who is employed in another district and is a member of a bargaining unit represented by a similar state-wide union; AND
- If the “relative” or “other” is an NJEA or LEA officer; leadership role in the union or district; same time contract negotiations; building “rep”

**CANNOT SERVE ON NEGOTIATIONS TEAM**  
**CANNOT PARTICIPATE IN ANY ASPECT OF NEGOTIATIONS**  
**CANNOT VOTE ON THE CONTRACT - $**
Collective Negotiations Participation


Out-of-District

- A25-15 – Board members with **out-of-household “relative”** (sister) member of the same statewide union in another school district does not *per se* violate the Act by participating in negotiations or vote on the LEA contract; must also have heightened union involvement.

  *NJEA or LEA officer; negotiations team; leadership role in union or district; same time negotiations; building representative*

Collective Negotiations Participation

Out-of-District

- A13-15 – Board member, _employed in another school district as a supervisor, member of NJPSA affiliate union_. No affiliation with NJEA. Board member may negotiate and vote on in-district NJEA contract when there is absolutely no linkage, in either district, between the respective NJEA affiliates and the NJPSA administrators union, which represents the board member.
Collective Negotiations Participation

NJEA – Out of District Conflicts

• A13-13 - Board member employee in special services school district, Board member NJEA field representative

• A09-14 - NJSFT/AFT similar to NJEA – share common traits and common goals

• A34-14 - Board member 26 year NJEA member, 20 year union president, retired NJEA employee; receives NJEA health benefits

• A26-15 – Board member, retired district employee, President of local NJEA affiliate, conflicted; union activity, negotiations and votes, first term.
Personnel Issues
CSA/Supervisor/Principal
Personnel Issues
CSA/Supervisor/Principal

- Board members may not participate in the hiring of a new CSA, supervisor or principal, if they have a “relative” or “other” who is an employee in the school district who would be directly or indirectly supervised by the new hire.
Personnel Issues
CSA/Supervisor/Principal

• Board members may not participate in any personnel decisions involving a CSA, principal, or supervisor who directly or indirectly supervises the board member’s “relative” or “other” who is employed in the school district.
Personnel Issues
CSA/Supervisor/Principal
In-District

- A03-13 – Brother-in-law
- A15-13 - Cohabitating partner, A10-14 – 1st Cousin
- A22-13 – Father-in-law
- A08-14 – Stepdaughter, Stepdaughter-in-law, nephew
- A19-15 – Niece, Spouse’s Uncle, Son, 1st Cousin
- A25-15 – Spouse, paraprofessional
- A15-16 – Ex-spouse
Personnel Issues
CSA/Supervisor/Principal

• A05-15 – Board members with spouse, board member with brother employed in district; no vote on motion to advertise for CSA, hiring of selection agency, criteria, job description, search committee, evaluation and contract discussions post-hire, no closed session attendance, not privy to closed session minutes until public.
Personnel Issues
CSA/Supervisor/Principal


In-District

- A19-15 – Board members with nieces, spouse’s uncle, full time employees and son, full-time student, part-time summer substitute, as “relatives” are “others”; may not participate in any matter involving the relative’s employment or supervision including employment matters with superintendent and supervising administrators.

Reaffirm A10-14 1st Cousin – Other
Spouse’s cousin’s daughter – no conflict
See A25-14, A30-14, A25-15
Collective Negotiations Participation

Doctrine of Necessity

- A quorum of the board is in conflict
- There is a pressing public need for action
- No alternative forum which can grant relief
- Body is unable to act without the conflicted members taking part

*Allen v. Toms River Regional Board of Education*

Collective Negotiations Participation

School Ethics Commission Resolution on Adopting the Doctrine of Necessity
February 25, 2003

• Board states publicly that it is invoking the doctrine, the reason for doing so and the specific nature of the conflicts of interest.
• Board reads the resolution at a regularly scheduled public meeting, post the notice for 30 days and provide the SEC with a copy.
Collective Negotiations Participation

Doctrine of Necessity

Common Areas of Application

- Voting on collective bargaining agreement
- Participating on negotiations team
- Superintendent search
- Superintendent evaluation

Vineland SEC, Commissioner Decisions
A03-98, A05-14, A11-14, A23-14, A24-14, A08-15
Shared Superintendents

Can a board member be a board member in one school district and an employee in another school district when the districts share a CSA?

- AO6-13 – Board member in constituent school district, part-time coach in limited purpose regional school district; proposed shared CSA
- A11-13 – Board member in constituent school district, which shares CSA with regional school district. Board member seeking employment in regional district. If successful, must relinquish seat on constituent board.
Shared Superintendents

Can a board member be a board member in one school district and an employee in another school district when the districts share a CSA?

Board member employed as principal’s secretary in another school district with which board had a shared services agreement, including the superintendent. Merely taking the office did not violate the Act. Distinguished A11-13. Board member employed prior to becoming a board member. SEC concerned with possible future ethical violations.

Mroczka v. Payone-Wilson 8/23/16
Shared Services

- A10-14 – Board member, whose spouse is the mayor, cannot serve on the board’s shared services committee; sharing of resources and personnel.

- A10-13 – Board member, spouse local police department employees. Shared services agreement with school district. Recusal from any discussion or vote on shared services.
Volunteerism Summary

- **No general ban** on board member volunteering in-district
- **Infrequent, non-executive in-district** volunteer activities non inherently contradictory to board member duties
  - Reading to a class on Dr. Seuss Day
  - Chaperoning child’s class trip
  - Heads Up to CSA and relevant staff
- Volunteer activities in outside organizations generally OK
  
  Self-governing, wholly independent of board member’s role and board of education oversight.
  
  E.g. education foundations, PTAs, student activity booster clubs, local recreation organizations
Volunteerism Summary

• Board member volunteer activities **prohibition**:
  – Subject to the supervision, management and direction of school personnel
  – Regular contact with students, parents and staff
  – Active day-to-day presence
  – Enmeshed in the building
  – E.g. volunteer coaches, volunteer club advisors, volunteer playground aides
Volunteerism Summary

Advisory Opinions

- A32-14 – Volunteer assistant theater advisor
- A10-15 – “Lead volunteer” for school club
- A17-15 – Constructing and maintaining props for musicals/plays; Unloading and uploading marching band equipment
- A24-15 – Trustee on Township Education Foundation
- AO7-00 – PTA President
Interview Committees

- A04-12 – Board member’s participation on interview committee for high level administrative and supervisory positions would not violate the School Ethics Act. One or two board members; administrative staff coordinates; participation – observations and assessments; CSA recommendation.

A15-10 – Exit Interviews

N.J.S.A. 18A:12-24.1 (c) (d) “not to administer…”

Retracted A01-15 from public advisory status
Interview Committees Summary

• A31-15 – SEC does not support board member participation in interview process; personnel committees – CSA role
• A04-12 – BOE Member Limited Participation – Higher level administrative positions
• A15-10 – No Exit Interviews
• N.J.S.A. 18A:12-24.1 (c) and (d) “not to administer the schools”
Business Relationships

Board of education members may not have a business relationship with the board of education which is incompatible with their role as a board member

- A08-13 – Writing skills course; free; vendor recusal
- A20-14 – Signage company contract. Severable?
- A29-14 – Foundation student fundraising event 20%
- A33-15 – Educational resource company
- A42-14 – Supplies
- A18-15 – Bookstore; staff solicitations, discounts
Miscellaneous

- A36-14 – Board member may endorse board candidates provided endorsement is as private citizen and not as board member or board. Electronic or social media. Signage.

- A13-14 – Board member, freelance journalist, reports on town and school events such as games, teams, band, award nights, fund raisers. No reporting on board discussions or issues; no confidential information.
And more…

School Official Ethics
Case Law Update
2015-2016
NEW JERSEY SCHOOL BOARDS ASSOCIATION
WORKSHOP 2016
Atlantic City Convention Center, Atlantic City, New Jersey
Room 417
October 25, 2016

School Official Ethics Case Law Update
September 2015 – September 2016

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I. New Jersey Superior Court, Appellate Division

A. Ethics

1. Appellate Division determined that School Ethics Commission exceeded its authority when it found that a board member who recorded an executive session and shared the tape with her attorney violated section (g) of the Code of Conduct for School Board Members. The SEC failed to find that the private disclosure could have needlessly injured individuals or the schools as required by statute (not code). Appellate Division upheld the SEC’s finding that disclosing executive session material to the board member’s personal attorney was private action that could have compromised the board. Messner v. Gray, Dkt No. A-5418-13, 2016 N.J. Super. Unpub. Lexis 703, (App. Div. March 31, 2016).

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2. Appellate Division determined that as a preemptive cure for disqualification, a board member-elect, could assign a claim against the board to her adult emancipated daughter before being seated as a board member. No evidence that the assignment was for improper purposes or that board member retained an interest in the claim once assigned. *Stargell v. Snyder*, Dkt. No. A-4021-13, 2016 *N.J. Super. Unpub. Lexis* 485, (App. Div. March 7, 2016).

II. Commissioner of Education

A. Ethics

1. Commissioner appeal of the School Ethics Commission’s March 24, 2015 determination that respondent board members violated N.J.S.A. 18A:12-24.1(c) and (e) of the Code of Ethics for School Board Members when they conducted a site visit to assess a candidate for interim Superintendent, without Board authority and without approval of the State Monitor, and by advancing the possibility of his employment. The Commission recommended a penalty of censure for the violation. Having carefully reviewed the Commission’s decision and the record in its entirety, the Commissioner finds that the Commission’s decision is supported by sufficient, credible evidence, and that respondents failed to establish that the decision is arbitrary, capricious or contrary to law. *N.J.A.C. 6A:4-1.1(a).* Additionally, the Commissioner finds that a penalty of censure is appropriate. *Lowell, Smallwood and Simmons v. Board of Education of the City of Asbury Park, Monmouth County* (Comm. 2015:October 16).

2. Commissioner upheld ALJ’s dismissal of ethics charges based on timeliness. Initial petition of appeal in opposition to that board’s application of School Ethics Commission Advisory Opinion A13-13 was defective in that it failed include any allegations against the board and was not timely amended. Successive petition was filed more than a year after the first and accordingly was untimely. *Feinstein and Carter v. Englewood Bd. of Educ.*, (Commr., 2015:Nov. 9).

3. Board member, former employee, assigned payment for unused sick leave to emancipated non-household member day later, January 7, 2014. Board member took office January 7, 2014. Board paid sick leave claim to day later January 20, 2014. Board member had a duty to claim a conflict of interest so long as current conflict of interest exists. One conflict is noted, any duty to cure is mooted. Board member not required to forfeit seat on board. *Chester v. Snyder*, (Comm. 2016:May 6).

B. School Ethics Act – Decisions on Training

1. Charter school trustee failed to complete Governance I training in a timely manner. Numerous notices of the training requirement were provided by the NJSBA, SEC, Executive County Superintendent and the DOE Office of Charter Schools. The SEC recommended to the Commissioner of Education that the trustee be censured for failure to complete the Governance I training program within the required time period for the 2014 training period. Any continued failure in the future to comply with the
statutory requirement to complete training shall result in removal from her position on the board of trustees for a three-year period. Commissioner finds that a penalty of reprimand is appropriate in consequence of respondent’s failure to timely honor an obligation placed upon charter school trustees by law. Similar conduct in the future may result in more severe penalties. Trustee is also admonished for causing the unnecessary expenditure of administrative and adjudicative resources at both State and local levels. Trustee was reprimanded as a school official found to have violated the School Ethics Act. In the Matter of Channell Trader, Camden’s Pride Charter School, Camden County, T01-15, SEC 2016:February 23; Commissioner 2016:April 11; In the Matter of Elizabeth Morrison, Brown Learning Community Charter School, Hudson County, T03-15, SEC 2016:February 23 Commissioner 2016:April 11; In the Matter of In the Matter of Cynthia Williams, Newark Prep Charter School, Essex County, T04-15, SEC 2016:February 23, Commissioner 2016:April 11; In the Matter of Ann Petrocelli, Link Community Charter School, Essex County, T06-15, SEC 2016:February 23, Commissioner 2016:April 11; In the Matter of Robyn Schneider, Ethical Community Charter School, Hudson County, T07-15, SEC 2016:February 23, Commissioner 2016:April 11.

2. Charter school trustee failed to complete Governance I training. Numerous notices of the training requirement were provided by the NJSBA, SEC, Executive County Superintendent and the DOE Office of Charter Schools. The SEC recommended that the trustee be removed from the board as a result of his failure to complete the Governance I training program within the required time period for the 2014 training period, Removal will be effective immediately after the issuance of the Commissioner of Education’s Decision affirming the penalty, for a period of one three-year term or the remaining term of the trustee’s office, whichever is longer. Commissioner concurs with the penalty of removal recommended by the Commission and additionally admonishes respondent for failing to honor an obligation placed upon charter school trustees by law, since such failure has resulted in unnecessary expenditure of administrative and adjudicative resources at both State and local levels. Trustee was removed from office as a school official found to have violated the School Ethics Act, effective immediately. In the Matter of Tom Iacovone, Hope Community Charter School, Camden County, T02-15, SEC 2016:February 23, Commissioner 2016:April 11; In the Matter of Tinia Berger, Newark Prep Charter School, Essex County, T05-15, SEC 2016:February 23, Commissioner 2016:April 11.

III. School Ethics Commission

A. Case Law Determination

1. SEC concurred with the ALJ that the Complainant failed to meet his burden to prove by a preponderance of the credible evidence that the Respondent violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members. The ALJ reasoned that the purpose of Respondent’s arm gestures were too “vague” to determine their meaning and too “speculative” to determine their intent; no violation of the Act was found and the complaint was dismissed. Tessler v. Prezioso, SEC 2015:September 22.
2. SEC determined that board president exceeded his authority and took private action that could compromise the board when he unilaterally issued a RICE notice to the SBA. Penalty of reprimand recommended. *Cheng v. Rodas*, SEC 2015:September 23.

3. SEC finds that the Complainant’s unsupported explanation for failure to appear at OAL hearing and insufficient documentation is insufficient to warrant the re-transmittal of this matter to the OAL for hearing. SEC dismisses the Complaint for failure to prosecute. *Antelis v. Armino*, SEC 2015:November 24

4. Board members were endorsed by and received campaign contributions from the local teachers association. One board member initiated, proposed and voted on a motion to non-renew a teacher, contrary to the superintendent’s recommendation.

   SEC determined that Complainant did not show that the Respondent accepted the political contribution with the understanding that the contribution was given for the purpose of influencing her in the exercise of her official duties. N.J.S.A. 18A:12-24(e) permits the acceptance of a political contribution to a Board candidate as long as there is no quid pro quo for the donation and accepting the donation creates a conflict for that Board member. Once advised by Board Counsel that she was conflicted due to the donation and that she could not serve on the negotiations committee, Respondent willingly accepted assignment to a different committee. SEC observed that the Respondent took no further action to bring her request to fruition and ultimately abstained from the vote to approve the contract.

   As to the teacher non-renewal, SEC determined that Respondent conducted Board business in concert with the other Board members commensurate with her Board member duties. Subject to limitations arising from a conflict, any Board member may vote as she chooses from the moment she takes her oath of office. Moreover, Board members are not under any obligation to accept the Superintendent’s recommended candidate for any position and may vote to select another candidate. Moreover, the Act does not prohibit a Board member from voting contrary to the other members nor does it silence a point of view that differs from the rest of the Board or the Superintendent.

   No violations of the Code of Ethics for Board Members were proven.

   The SEC determined that the Complaint, on its face, failed to allege facts sufficient to maintain a claim that the Respondents violated the Act and hereby dismissed the Complaint for failure to state a claim upon which relief could be granted. *Tobias v. Heinhold & Thomas*, SEC 2015:November 24

5. SEC found no probable cause that a violation of the School Ethics Act occurred and dismissed the complaint. Matter involved a board member who worked for a mortgage company which wrote mortgages for several school district employees, including the interim superintendent, and later voted on matters involving their
employment. Board member was a salaried employee, not a principal, did not receive a commission, did not solicit clients. Mortgage business was not in substantial conflict with his duties as a board member; served the needs of the public. Company did not transact any business with the board. No evidence of any financial or personal involvement. *Scott v. Conti*, SEC 2015:November 24

6. SEC concurs with ALJ determination that complainant failed to prove by a preponderance of the evidence that board member violated the School Ethics Act by allegedly engaging in private action to gather a majority of board members to vote against the renewal of complainant’s contract. Witnesses were credible and persuasive. *Abreu v. Presley*, SEC 2015:December 15

7. SEC found that the complainant failed to meet his burden of proof by relevant, credible evidence that the respondent violated the Code of Ethics for School Board Members. Complainant alleged that the board member violated the Code of Ethics by taking unauthorized photos of the complainant’s minor son as he emerged from a car at the bus stop, and by telling the crossing guard at the bus stop that he was with the board of education conducting a study regarding the transportation program. No photo of the complainant’s child or any other child was taken. Complainant did not demonstrate that the respondent took, displayed or circulated any photos of children related to the bus stop; there was no eyewitness account to corroborate the allegations.

The SEC noted that the voters in the school district decide which candidates will represent them on the school board. The complainant had advised the board president that an ethics complaint would be filed against the board member unless that board member resigned from the board of education. The SEC advised that the seats that duly elected school officials occupy must not be threatened by individuals or outside groups seeking to change the balance of power in their favor through intimidation or coercion. The SEC must not be used as a tool in partisan battles to accomplish political ends. Such conduct sets a poor example for the children of the school district and weakens the public’s trust and confidence in the electoral process. *Karpiak v. Farruggia, Hopatcong Borough Board Of Education, Sussex County, C57-14, SEC 2016:January 26*

8. SEC determined that a board member did not violate the School Ethics Act when she participated in and voted on the tentative 2015-2016 annual school budget which included a line item for the school district’s Career and Technical Services’ automotive technology program. In January 2013, two years earlier, the bumper of the board member’s personal vehicle was repaired by the students in the program. The SEC determined that the complainant failed to demonstrate that the board member garnered any greater benefit for herself than any other resident of the community who chose to use the services of the program, nor did he show that the board member was precluded from availing herself of the services of the program simply because she sat on the board.

The SEC found the complaint to be frivolous and imposed a fine of $500. The SEC found that the complainant’s allegations were false and damaging to the board member’s reputation and to those district personnel whom the complainant intimated were part of a quid pro quo arrangement for free services. By failing to diligently
investigate the factual background, the complainant commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury. The decision emphasized that the SEC tribunal is not a forum where parties seek recourse for political feuds or as a way to thwart the electoral process or redirect its natural path. The SEC cannot allow itself to become an instrument for the community to launch baseless claims against school officials. *Gaitens v. Bathelus, Elizabeth Board of Education, Union County, C29-15, SEC 2016:January 26*

9. SEC determined that a board president did not violate the Code of Ethics for School Board Members by reading a statement at the board meeting regarding the failed vote to renew the superintendent’s contract. The statement to the public explained that five votes were required for renewal, two board members could not vote because of conflicts, and the renewal fell short by one vote as there were only four affirmative votes.

The SEC determined that the board president did nothing to compromise the board or act beyond the scope of her authority. The statement was benign, factual and instructive. The board president did not blame anyone for the vote; she simply stated factually why the contract renewal did not pass and what the future would hold; the statement only contained the facts regarding the vote for superintendent. The statement was made in an open public forum in the presence of the media; anyone who disagreed with her position could have voiced opposition in public that evening in the same venue. The SEC dismissed the complaint in its entirety for failure to state a claim upon which relief could be granted. *Noonan, et al. v. Greenwood, Mount. Ephraim Borough Board Of Education, Camden County, C30-15, SEC 2016:January 26*

10. SEC adopts ALJ initial decision as final decision. Summary judgment granted to respondents; complaint dismissed. Complainant failed to file a responsive pleading to motion to dismiss. *Barquin v. Rodas, SEC: 2016:February 23*

11. SEC determined that a board member did not violate the School Ethics Act when he voted to approve legal fees for Board counsel as to whether the his ability to participate in Board activity was limited due to his sister’s role as an on-call substitute teacher in the District. The Respondent as Board President did exactly what he was authorized to do under the circumstances. He sought legal counsel to clarify his ability to conduct Board business in light of the potential conflict posed by his sister’s position as an on-call substitute teacher in the District. He did not seek counsel on a personal matter or a personal law suit, but rather on an ethical question that would impact the Board as a whole. Board counsel is available to the Board to provide legal advice and research for just such situations. The SEC did not find that the Respondent acted inappropriately. *Capone v. Aiken, Hamilton Township Board of Education, Atlantic County, C28-15, SEC 2016:February 23*

12. SEC determined that the Complainant failed to allege facts sufficient to maintain a claim that the Respondent violated the Code of Ethics for School Board Members and dismissed the Complaint for failure to state a claim upon which relief could be granted. Respondent had advised the Superintendent of schools that the Complainant accosted and threatened her and that the Complainant ultimately pled guilty to disorderly conduct in Municipal Court. The SEC has found that a Board member’s action cannot be both board
action and private action. The underlying assault was a private matter and as such, the Respondent acted as a private citizen when she alerted the Woodstown Superintendent. Board officials do not forfeit their rights as members of the public in personal matters that have nothing to do with the boards on which they sit. Respondent’s actions could not compromise the Gloucester City Board as the private action she took in a personal matter did not call into question any issue, deliberation, or vote taken by the Gloucester City Board. Mealey v. Borger, Gloucester City Board of Education, Camden County, C32-15, SEC 2016:February 23

13. School Ethics Commission granted motion to dismiss where petition failed to include a copy of a final decision from any court of law or administrative agency of this State demonstrating that the respondent 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. Kurdyla v. Weinstock, SEC 2016:April 26

14. Complaint alleged that superintendent used his office to gain unwarranted privileges. School Ethics Commission found that while it appeared that the superintendent may have exceeded his authority in publishing a clarification letter in response to allegedly erroneous statements made by candidates to board office, no evidence was provided to demonstrate that the superintendent received a benefit or privilege from his unilateral actions. Any potential misconduct should be addressed in a different forum. SEC to contract CSA has duty to set the best example of a school official talking to social media or using children to carry removal note home to current member made by board candidate who challenged his authority goes beyond the role of the CSA. Schor v. Tomko, SEC 2016:May 24

15. SEC concurred with ALJ that board members violated certain sections of the Code of Ethics for School Board Members and recommended the penalty of censure. Board members

- Failed to limit their board action to policy making, planning and appraisal, exceeding their authority, failing to consult with other board members to ensure that a proper investigation occurred. Board members pursued an investigation, determined guilt and sought punishment without waiting for the results of a proper investigation.
- Failed to report information received to a constituent to the superintendent for her to investigate rather than concluding prematurely that criminal wrongdoing had occurred.
- Brought their accusations to the prosecutor for investigation after the board as a whole accepted the results of the investigation that nothing untoward had occurred.
- Provided false information and false impressions to the public about the board and its handling of a confidential matter, leading the public to believe that some criminality had occurred and that administration had handled the matter inappropriately.
- Accused a school employee and the superintendent of criminal conduct without evidence and aired their accusations at a public board of education meeting, undermining and compromising school personnel in the proper performance of their duties.
• Attempted to resolve a constituent’s complaint prior to referral to the superintendent and prior to the failure of administration to fashion a solution. *Garrity v. Vander Woude*, SEC 2016:July 26


16. SEC found no probable cause to credit the allegations that the board member violated the School Ethics Act. No evidence that board member undertook any employment or service that could prejudice her independence of judgment in the exercise of her official duties. No demonstrated use of information, not generally available to the public, for financial gain for herself or her family. Any board information discussed after the board meeting was discussed during public session and was not confidential. No matter pending before the board for which the board member had either a personal or business interest. *Coughlin v. Di Folco*, SEC 2016:July 26

17. SEC granted motion to dismiss, determining that board member did not violate the School Ethics Act when he discussed litigation brought by Complainant against the school district at a board meeting public session and publicly named the Complainant. Board member did not indicate that the litigation was related to a student or the minor child. Complaint was dismissed. *Libertucci v. Smith*, SEC 2016:August 23

18. Board member’s employment as a principal’s secretary was not incompatible with service as a board member when the two districts had a shared services agreement, including sharing a superintendent. Merely taking the oath of office did not violate the Act. Such a finding would be tantamount to a determination that she was ineligible to be a board member; a matter over which the SEC has no jurisdiction or authority. No showing that board member took any action in her official capacity which might be expected to impair her objectivity or independence of judgment. SEC distinguished this situation from Advisory Opinion A11-13 in that board member was employed in the school district before becoming a board member; no quid pro quo appearance existed. SEC expressed concern with future possible ethical violations. *Mroczka v. Payone-Wilson*, SEC 2016:August 23

19. SEC determined that board of education member, whose sister was an on-call non-contract substitute teacher in the school district, did not violate N.J.S.A. 18A:12-24(b) of the School Ethics Act when he participated in various aspects of the search for and hiring of the district’s superintendent, including serving as chair of the search committee. There was no individual or administrator charged with the duty of making on-call substitute teacher assignments. SEC found no information that the respondent secured for himself or his sister an "unwarranted" privilege, advantage or employment. The complaint was dismissed.

Complainant had relied upon a previously issued advisory opinion, A41-14, and the SEC decision in *Martinez v. Albolino*. In Advisory Opinion A41-14, the SEC indicated that, pursuant to *Martinez*, conflicted board members “may not participate in any discussion pre-or post-hire, may not be a part of any aspect of the vetting process or any evaluation and contract discussion post-hire of a superintendent.
candidate." In *Martinez v. Albolino*, the SEC determined that a Board member who had an immediate family member or a relative employed in the district may not participate in the search, selection and/or vote for a new superintendent, irrespective of whether there was an in-house candidate being considered for the position because the Commission maintains that the Board member's involvement in the search, discussion and/or vote for a new Superintendent under such circumstances *would constitute a violation of N.J.S.A. 18A:12-24(c)* (emphasis added).

Because the SEC's prior determination in Martinez was limited to a finding of a violation of *N.J.S.A. 18A:12-24(c)*, and complainant here has alleged a violation of *N.J.S.A. 18A:12-24(b)*, the SEC determined that complainant's reliance on Advisory Opinion A4l-14 and Martinez was misplaced.

*Erickson v. Aiken*, SEC 2016:September 28

**B. Advisory Opinions**

1. Commission determined that absent other contributing factors, board members, with relatives, such as a first cousin or first cousin-in-law, employed in school districts represented by the NJEA and local affiliates, are not conflicted when negotiating collectively with the in-district local affiliate. Such familial bonds are too attenuated for the board member to affect collective negotiations in-district. However, the outcome could be different if the relative has executive authority within the local affiliate or the state-wide union. *Advisory Opinion A11-15*, 10/27/15

2. SEC determined that a board member, who is employed as a supervisor in a nearby district and a member of the state-wide and local administrators association, is not conflicted when negotiating with the teacher’s association, so long as no linkage exists between the administrators’ and teachers’ associations. *Advisory Opinion A13-15*, 10/27/15

3. SEC determined that while out-of-district negotiations could have an indirect impact and benefit to a relative employed in another district, a board member has no direct influence on how that district negotiates with its own local bargaining unit. In addition, board member’s ability to create a benefit for an out-of-district family member is further staunched by the enactment of the statewide property tax cap, which limits negotiators on both sides of a contract to how much salary or reimbursement rates may rise. However, evidence of further affiliations would require reconsideration. *Advisory Opinion A16-15*, 10/27/15

4. SEC advised that there is no general prohibition against board members offering to volunteer services within the school district in which they serve. Board member may perform voluntary activities in district so long as they are not in a leadership role over a committee or group nor are subject to the widespread direction from staff, students, other board members or spouses. Intermittent, non-executive volunteer activities are not inherently contradictory to the duties placed on Board members by the Act. *Advisory Opinion A17-15*, 10/27/15

5. SEC advised that the School Ethics Act does not prohibit board member’s ownership of a bookstore patronized by district staff, so long as board member does not solicit business from staff and does not advertise his board member role to same. Should not
seek out business relationship with any school nor participate in any vote on a 

6. SEC advised that board members with children, nieces, spouse’s uncle, full time 
employees and son, full-time student, part-time summer substitute, as “relatives” are 
“others” may not participate in collective negotiations if members of, or receive the 
benefit of the collectively negotiated agreement. SEC reaffirmed Advisory Opinion 
A10-14’s determination that first cousins are deemed “others” under the Act. A 
spouse’s cousin’s daughter, absent additional information, would not constitute a 

7. SEC advised that board president may serve as trustee on Township Foundation for 
Educational Excellence, as per Foundation bylaws. Foundation not directly affiliated 
with the board nor controlled or managed by the board; self-governing entity separate 
from Board and District. Recusal/abstention may be necessary at the board level, 
depending on the matter before the board. *Advisory Opinion A24-15*, 12/15/15

8. In A25-15, the SEC responded to a request regarding several board of education 
members who had relatives who either were full-time employees and members of the 
local NJEA affiliate union in either their own district or another. The SEC advised 
that the board members should review recently issued public advisory opinions A11-
15, A16-15 and A19-15, which addressed these topics. The SEC further advised that 
board members with relatives employed in-district, who are members of an NJEA 
affiliated union, are considered to have a conflict under the School Ethics Act. The 
conflict extends to all matters involving the union and all aspects of the collective 
negotiations process, including voting on the collective bargaining agreement. The 
conflict further extends into the personnel area as to the relative and the relative’s 
supervisors, and other superiors in the chain of command ending with and including 
the superintendent. No participation in personnel matters regarding these individuals 
is permitted, including, but not limited to discussion, evaluation and voting.

Board members who have immediate family members (spouse, child, parent, sibling) 
in their household, who are employees in another school district and members of a 
similar statewide union with which the board is negotiating, are also deemed 
conflicted under the School Ethics Act. The conflict extends to all matters involving 
the union and all aspects of the collective negotiations process, including voting on 
the collective bargaining agreement. School administrators who are conflicted in this 
manner may provide technical information to the board of education when no one 
else in the school district can do so.

Board members who have out-of-household relatives who are union members 
employed by a different board of education, have a different analysis to perform. 
Employment with union membership in another school district is not automatically a 
conflict for out-of-household relatives. If the relative has a heightened union role 
(officer, bargaining team member, union building representative) the board member is 
conflicted, with the conflict extending to all matters involving the union and all 
aspects of the collective negotiations process, including voting on the collective 
bargaining agreement. School administrators who are conflicted in this manner may 
provide technical information to the board of education when no one else in the 
school district can do so.
Board members who are employed in another school district as school administrators and are members of the NJPSA, were referred to previously issued public advisory opinion A13-15. A board member, in this circumstance, may negotiate with the in-district local NJEA affiliate when there is absolutely no linkage, in either district, between the respective NJEA affiliates and the administrators’ union which represents the board member. Board members should consult with their school board attorney as to whether similar statewide union status may create a linkage as NJEA does represent supervisor units in certain school districts and likely has the same goals and objectives for its members as does NJPSA. A25-15, SEC 2016: January 26.

9. In advisory opinion A26-15 the SEC responded to a request regarding a newly-appointed board of education member, a 28-year former employee in the school district who served as union president for 13 years. The SEC determined that the board member’s prior employment in the school district and prior service as union president was not a bar to her service on the board of education. However, it did create a conflict of interest for purposes of collective negotiations participation. The SEC considered it reasonable for members of the public to believe that, as a new board member, having so recently been an employee of the school district and union president, she would be unable at this time to separate her past union involvement from her new role on the board. In order to avoid a violation of the Act and to preserve the public trust, the SEC advised that the new board member must recuse herself from any union matters and must abstain from any union-related votes for the duration of her initial term of office. The SEC did not consider this conflict to be in perpetuity, but only for the new board member’s initial term on the board, as she becomes acclimated to her new role of serving the public. After her first term, there would no longer be the appearance that the board member’s independence of judgment and objectivity with regard to the union would be impaired. A26-15, SEC 2016: January 26.

10. In A31-15, the SEC responded to a request for clarification regarding a perceived conflict between the exit interview prohibition of A15-10 and the limited participation in higher level administrative employee interviews of A04-12; each of which was analyzed under N.J.S.A. 18A:12-24.1 (c) and (d) of the Code of Ethics for School Board Members, but with seemingly different results. The SEC advised that it does not support board members conducting interviews for positions below that of superintendent. However, the SEC’s jurisdiction does not extend to actions of the board of education, only to actions of individual board of education members. Accordingly, each individual board of education may determine if it wants to have an interview committee for high-level administrative positions, pursuant to A04-12. As set forth in A04-12, if a board forms an interview committee, no more than one or two board members may participate, the committee would be coordinated by a member of the administrative staff and the board members’ role would be limited. The board members may not conduct the interview, but may offer observations and assessments, with full knowledge that final recommendations are wholly within the purview of the superintendent. For boards of education choosing to have an interview committee, the committee should function with the approval of the superintendent. It is the superintendent’s authority to recommend hires to the board. An interview committee cannot supersede or usurp that authority. A31-15, SEC 2016: January 26.
11. SEC advised that the analysis for collective negotiations conflicts for in-district and out-of-district relatives applies to school administrators as well as board members. 
Advisory Opinion A40-15, 3/22/16

12. SEC advised that the board member would violate N.J.S.A. 18A:12-24(a), and (d) of the Act and N.J.S.A. 18A:12-24.1(c) and (j) of the Code of Ethics for School Board Members if he were to serve as a member of the board of education while also being assigned by the police department as the D.A.R.E. Program Officer, to conduct daily safety checks of the schools and to handle “any matter involving juveniles.” In rendering its advice, the SEC acknowledged that it was not stating a police officer cannot serve on a board of education, but that the assignments of this board member, which required his extensive daily interaction with the schools, presented the inescapable likelihood for conflicts. His assignment to the schools and with juveniles created the situation where his employment was so entangled with matters touching upon the schools and the school district as to be incompatible with his service on the board. Advisory Opinion A01-16, 3/22/16

13. SEC advised that a board member, who would soon be divorced from his spouse, who was employed in the school district, would continue to have a conflict in his board activities due to the ex-spouse’s employment in the school district. The pending divorce would not remove all possible conflicts under the School Ethics Act. The final divorce agreement and decree, which was pending, would be instructive as to the nature of the continuing conflicts for the board member. Issues such as alimony and child support would inform the extent of the continuing conflict.

While the ex-spouse would no longer be a member of the board member’s “immediate family” as the ex-spouse would no longer be in the board member’s household, the ex-spouse would still be considered an “other” for purposes of analysis under N.J.S.A. 18A:12-24(b).

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

The board member was advised not to engage in any board activity in which the board member’s official position is used to extend any unwarranted privilege or advantage to the ex-spouse. The SEC advised the board member to exercise caution and be reasonable in evaluating his conflict and limit his participation in board activities which may violate N.J.S.A. 18A:24(b) and/or violate the public trust. 
Advisory Opinion A15-16, 6/21/16

14. SEC advised that a superintendent, whose spouse was employed in a neighboring school district and was a member of the local union affiliate of the NJEA, could not fully participate in negotiations, but could provide technical information when no one else in the school district could provide that information. The superintendent could not participate in negotiations, because the spouse, an immediate family member, was a member of the NJEA in another district; a similar statewide union with which the board was negotiating. The union which represented teachers in the superintendent’s school district was an affiliate of the American Federation of Teachers (AFT). See A16-15. The SEC had previously advised, in Advisory Opinion AO9-14, that the
NJEA and AFT were similarly situated unions for the purpose of conflict of interest analysis.

The superintendent could participate in the negotiations process for the limited purpose of providing technical information, restricting his comments and involvement to providing the information requested by the board members and administrators, without violating the School Ethics Act. The SEC advised that the technical exception exists only for those unique situations during labor negotiations when only the conflicted administrator can provide the technical information necessary to the collective bargaining process. The exception does not permit a conflicted administrator to be involved in every facet of the negotiations, but only to serve as a resource in those areas where the administrator possesses expertise, knowledge or access to information that cannot be provided by another person. It does not permit a conflicted administrator to fully participate in negotiations with the local union. The Superintendent was responsible for operational, budgetary and other sensitive matters within the district, and if access to these matters/issues were necessary for aspects of negotiations, and no one else was able to supply it to the negotiations committee, the committee must seek the information from the Superintendent. This is the very purpose of the exception. *Advisory Opinion A22-16* 8/23/16