

CHAPTER 28

SCHOOL OPERATIONS

Authority

N.J.S.A. 18A:4-10, 18A:4-15, 18A:6-10, 18A:6-50, 18A:7A-1, 18A:7A-1.1, 18A:10-6, 18A:12-21 et seq., 18A:13-14, 18A:16-1, 18A:17-14 to 14.3, 18A:27-15, 18A:17-17, 18A:17-20, 18A:17-32, 18A:22-14, 18A:22-19, 18A:22-22, 18A:24-11, 18A:28-9 to 28-13, 18A:29-6 to 29-16, 18A:40-12.1 and 18A:49-1 to 49-8.

Source and Effective Date

R.1999 d.342, effective September 10, 1999.
See: 31 N.J.R. 1662(a), 31 N.J.R. 2917(a).

Executive Order No. 66(1978) Chapter Expiration Date

Chapter 28, School Operations, expires on September 10, 2004.

Chapter Historical Note

Chapter 28, School Operations, was originally codified in Chapter 3 of Title 6 as Subchapter 9, School Ethics Commission. Subchapter 9 was adopted as R.1993 d.394, effective August 2, 1993. See: 25 N.J.R. 1924(a), 25 N.J.R. 3511(a).

Subchapter 9, School Ethics Commission, was readopted by R.1999 d.342, effective September 10, 1999, and Subchapter 9 was recodified as Subchapter 8, School Ethics Commission, by R.1999 d.342, effective October 8, 1999. See: 31 N.J.R. 1662(a), 31 N.J.R. 2917(a).

Subchapter 8, School Ethics Commission, was recodified as N.J.A.C. 6A:28 by R.2000 d.139, effective April 3, 2000. See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).

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SUBCHAPTER 1. SCHOOL ETHICS COMMISSION

6A:28-1.1 Scope and purpose

(a) The rules set forth in this subchapter have been adopted for the purpose of effectuating the legislative intent of N.J.S.A. 18A:12-21 et seq., the School Ethics Act (P.L. 1991, c.393), which seeks to "... ensure and preserve public confidence ..." in the integrity of elected and appointed school board members and school administrators.

(b) To achieve this goal the Legislature has adopted N.J.S.A. 18A:12-24 which prescribes a code of ethics by which school officials are to be guided in the conduct of their offices and positions and created a School Ethics Commission specifically for the purpose of enforcing those ethical standards through a procedure for reviewing complaints of ethical violations, investigating those complaints and ultimately rendering recommendations to the Commissioner as to the imposition of sanctions when violations are demonstrated.

Case Notes

School board member whose wife was employed as secretary by board was censured for participating in closed-door session of board concerning salary negotiations with bargaining unit representing district employees. In the Matter of Robert A. Wilgus, 96 N.J.A.R.2d (EDU) 1041.

School board member was reprimanded on conflict of interest grounds for submitting his wife's name for consideration as candidate for part-time position and for later voting to hire her for that position. In the Matter of Frank Montagna, 96 N.J.A.R.2d (EDU) 1038.

School board member whose wife was employed by district as teacher was reprimanded on conflict of interest grounds for participating in discussion and negotiation of collective bargaining agreement. In the Matter of Edward Vanderbeek, 96 N.J.A.R.2d (EDU) 1035.

Removal of school board member on conflict of interest grounds was justified where board member was involved in suit against board concerning his granddaughter's attendance of district schools while allegedly not domiciled in district. Point Pleasant Board of Education v. Ciliberto, 96 N.J.A.R.2d (EDU) 990.

School board's denial of employment to applicant based on nepotism policy was warranted even though applicant was related to prospective supervisor by marriage only. Carroll v. Board of Education of the City of Trenton, 96 N.J.A.R.2d (EDU) 901.

Reprimand was appropriate penalty for new school board member who violated School Ethics Act. In the Matter of Harrison, 96 N.J.A.R.2d (EDU) 553.

School district administrators and board members do not violate school ethics law by failing to report incident where school board member attended underage drinking party. The School Ethics Commission v. McIvor, 96 N.J.A.R.2d (EDU) 143.

School board member not disqualified if not directly or indirectly interested in son's medical claims against board. Brick Township Board of Education v. Mercer, 96 N.J.A.R.2d (EDU) 5.

Member of school board who was owner of school district's only newspaper publishing official school notices was in conflict of interest subject to removal. *Brick Board of Education v. Mueller*, 95 N.J.A.R.2d (EDU) 222.

Employment for company under contract with board of education; board membership. *Andrews v. Union Township Board of Education*, 94 N.J.A.R.2d (EDU) 315.

Employment as bus driver for transportation company under contract with Board was conflict of interest. *Andrews v. Union Township Board of Education*, 94 N.J.A.R.2d (EDU) 315.

Indirect interest in litigation disqualified newly elected member. *Hawthorne Borough Board of Education v. Taliaferro*, 94 N.J.A.R.2d (EDU) 197.

Lessee of space from Board of Education disqualified from seeking election to Board. *Thomas v. Edwards*, 93 N.J.A.R.2d (EDU) 369.

Municipal counsel precluded from seeking election to Board of Education. *Rodecker v. Gonzalez*, 93 N.J.A.R.2d (EDU) 367.

6A:28-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Administrator" means any officer, other than a board member, or employee of a local school district or charter school who:

1. Holds a position which requires a certificate that authorizes the holder to serve as school administrator, principal, or school business administrator; or
2. Holds a position which does not require that the person hold any type of certificate but is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district; or
3. Holds a position which requires a certificate that authorizes the holder to serve as supervisor and who is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district.

"ALJ" means an administrative law judge from the Office of Administrative Law.

"Board member" means any person holding membership, whether by election or appointment, on any board of education other than the State Board of Education.

"Censure" means a formal public resolution read into the record of the School Ethics Commission and the school official's local board of education to rebuke a school official who has been determined by the Commission to have been in violation of N.J.S.A. 18A:12-21 et seq.

"Commission" means the School Ethics Commission and its staff as created pursuant to N.J.S.A. 18A:12-21 et seq.

"Commissioner" means the Commissioner of Education or his or her designee.

"Complainant" means the person bringing a complaint of alleged violation of N.J.S.A. 18A:12-21 et seq.

"Dependent child" means any child claimed as a dependent on the school official's Federal and State tax returns.

"Financial Disclosure Statement" means the statement of personal finances which school officials are required to annually file pursuant to N.J.S.A. 18A:12-21 et seq.

"Income" for purposes of these rules shall be as defined by the Internal Revenue Service except as otherwise provided in N.J.S.A. 18A:12-26a(1).

"Local School District" for purposes of these rules means any local or regional school district established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes and shall include jointure commissions, county vocational schools, county special services districts, educational service commissions, educational research and demonstration centers, environmental education centers, and educational information and resource centers.

"Member of the immediate family" means the spouse or dependent child of a school official residing in the same household.

"Newly elected or appointed board member" means any board member who has never served as a member of either an elected or appointed school board.

"OAL" means the Office of Administrative Law.

"Personal/Relative Disclosure Statement" means the statement required by N.J.S.A. 18A:12-21 et seq. of a school official setting forth whether said official has a relative or any other person related to the school official by marriage, employed by the district in which he or she serves; whether said official or a relative is a party to a contract with the school district in which the school official holds office or position; or whether the school official or a relative is employed by, receives compensation from, or has an interest in, any business which is a party to a contract with the school district in which the school official holds an office or position.

"Related to the school official by marriage" as used in the statute shall be limited to mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law and sister-in-law.

"Relative" means the spouse, natural or adopted child, parent or sibling of a school official.

"Reprimand" means a letter from the Commission rebuking a school official for having been found to have breached the standards of conduct prescribed by N.J.S.A. 18A:12-21 et seq.

"Respondent" means the school official against whom a complaint is made pursuant to N.J.S.A. 18A:12-21 et seq.

“School official” means a board member, a member of the board of trustees of a charter school, an employee or officer of the New Jersey School Boards Association, but not including any member of the secretarial, clerical or maintenance staff of the Association, or an administrator of a local school board or charter school.

“Spouse” means the person to whom the school official is legally married.

Amended by R.2000 d.139, effective April 3, 2000.

See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).

In "Administrator", inserted a reference to charter schools in the introductory paragraph; rewrote "Censure", "Reprimand" and "School official"; inserted "Dependent child"; in "Member of the immediate family", deleted a former second sentence; in "Related to the school official by marriage", inserted a reference to sons-in-law and daughters-in-law; in "Relative", substituted a reference to school officials for a reference to school districts; in "Respondent", substituted a reference to school officials for a reference to board members and administrators; and in "Spouse", deleted "under New Jersey law" at the end.

Case Notes

Conflict of interest; board member's spouse employed as teacher and belonged to teachers' association. *Hahn v. North Brunswick Township Board of Education*, 92 N.J.A.R.2d (EDU) 428.

6A:28-1.3 Functions and authority of the School Ethics Commission

(a) Pursuant to the provisions of N.J.S.A. 18A:12-21 et seq., the School Ethics Commission shall:

1. Prescribe a Financial Disclosure Statement and a Personal/Relative Disclosure Statement in accordance with N.J.S.A. 18A:12-26 and 25 respectively, to be filed by all school officials as defined herein on or before April 30 of each year or at such other times as these rules may require;
2. Appoint such professional and clerical staff and incur such expenses as may be necessary to carry out the provisions of N.J.S.A. 18A:12-21 et seq. within the limits of funds appropriated or otherwise made available to it. All appointments shall be made in accordance with the provisions of Title 11A of the New Jersey Statutes;
3. Issue advisory opinions, receive and investigate complaints raised pursuant to section 9 of the School Ethics Act (N.J.S.A. 18A:12-29) and conduct such hearing as may be necessary to determine whether probable cause exists to credit the allegation raised in any complaint brought before it;
4. Administer the receipt and retention of disclosure statements as required by the Act. Requests for copies of disclosure statements shall be directed to the local board secretary or county superintendent and shall be subject to copying fees pursuant to N.J.S.A. 47:1A-1 et seq.;
5. Have the authority to compel the attendance of such witnesses and the production of such documents as it may deem necessary and relevant to carrying out its duties under the Act;
6. Be empowered, along with the persons appointed by it, to administer oaths and examine witnesses under oath; and
7. Recommend to the Commissioner the reprimand, censure, suspension or removal of school officials found to have violated the School Ethics Act.

Amended by R.2000 d.139, effective April 3, 2000.

See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).

Rewrote (a)4.

6A:28-1.4 By-laws of the School Ethics Commission

(a) The School Ethics Commission shall consist of nine members appointed for three year terms in the configuration and manner prescribed by N.J.S.A. 18A:12-21 et seq.

1. In accord with the provisions of N.J.S.A. 18A:12-21 et seq., the Commission, by majority vote, shall elect one member to serve as chairperson for a term not to exceed one year.
2. Should the chairperson resign or otherwise be unable to complete his or her term, the remaining Commission members shall, by majority vote, elect a chairperson from among their membership to serve the remainder of the unexpired term.
3. Should the chairperson be unable to attend any regular or special meeting of the Commission, the Commission, by majority vote of the quorum present, shall select a temporary chairperson to preside over the meeting.
4. The chairperson shall preside over the meetings of the Commission and shall perform all duties incidental to that office.
5. The chairperson shall serve a one-year term that shall commence on July 1 of each year.

(b) Regular monthly meetings shall be held at such time, place and on such dates as established by the Commission and notice of such regular meetings shall be made in accordance with N.J.S.A. 10:4-6 et seq., the Open Public Meetings Act.

1. Special meetings may be called by the Commission chairperson at any time or at the request of any three members. Three day's notice of any special meeting shall be given to each member. Public notice of such special meetings shall be made pursuant to N.J.S.A. 10:4-8.
2. A quorum shall consist of a majority of the number of voting members of the Commission.

(c) The Commission shall act as a committee of the whole.

1. The Commission chairperson shall select a nominating committee of three persons whose function it shall be to select a nominee for chairperson to present to the committee as a whole for approval at its May meeting.
2. Special committees may be appointed by the chairperson to consider and make recommendations to the Commission on any matter.

Amended by R.2000 d.139, effective April 3, 2000.

See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).

Rewrote the section.

6A:28-1.5 Filing of disclosure statements and procedures in the event of incomplete filing or failure to file disclosure statements

(a) Annually, on or before April 30th of each year or as otherwise provided in these rules, all school officials shall file, on forms provided by the Commission through the county superintendent, both a Financial Disclosure Statement and a Personal/Relative Disclosure Statement with the office of the county superintendent. An additional copy of the aforesaid statements shall be prepared by the school official and maintained on file at the local school district or charter school in order to facilitate public access to the documents. All disclosure statements filed in accordance with N.J.S.A. 18A:12-21 et seq. and these rules shall be public records.

(b) In order to comply with the requirement in (a) above, each local district board secretary and charter school designee shall annually, on or before February 1, cause to be developed and transmitted to the county superintendent a list of names of those school officials, by office and position, whose responsibilities would require the filing of the Financial and Personal/Relative Disclosure Statements pursuant to the criteria contained in N.J.S.A. 18A:12-21 et seq. and these rules. Offices and positions vacant or to become vacant by virtue of expiration of terms or personnel leaving the district are to be listed.

(c) Board members in Type II school districts elected to their positions in the annual April school election shall file the requisite disclosure statements within 30 days of taking office. The board secretary shall, upon election of new board members, inform the county superintendent of the names of the newly elected members and the county superintendent shall provide the forms necessary for compliance.

(d) Board members in Type II districts who are appointed to fill vacancies shall file the requisite disclosure forms within 30 days of taking office. The board secretary shall upon such appointment, inform the county superintendent of the appointment. The county superintendent shall provide the member with the required disclosure statements.

(e) Board members in Type I school districts who are initially appointed to take office on May 16 or June 1 as the case may be, shall file the required disclosure statements within 30 days of taking office. Board members in Type I districts appointed to fill vacancies shall likewise file within 30 days of taking office. The board secretary shall inform the county superintendent of the appointment of new board members and the county superintendent shall provide the required forms.

(f) Members of the board of trustees of a charter school shall initially file the required disclosure statements within 30 days after the granting of the charter. Thereafter, any newly appointed trustee shall have 30 days from appointment to file. The charter school designee shall inform the county superintendent of the appointment of new trustees and the county superintendent shall provide the required forms.

(g) Administrators as defined in this subchapter, appointed to fill vacancies after the April 30 filing date, shall file the required disclosure forms within 30 days of their appointment. The board secretary or charter school designee shall inform the county superintendent of the appointment of any new administrators or supervisors subject to the requirement to file disclosure statements under the School Ethics Act.

(h) On or before April 30, or July 1 for newly elected or appointed school officials, the board secretary of each local school district and charter school designee shall, before transmitting the completed disclosure forms to the county superintendent, check that he or she has reviewed each disclosure form to assure that both required forms have been filed; and that all questions have been answered or indicated as not being applicable. Further, the board secretary or charter school designee shall provide to the county superintendent the names of all persons on the February 1 list of school officials compiled in accordance with (b) above and all newly elected or appointed persons who have failed to file as required by N.J.S.A. 18A:12-21 et seq.

(i) Failure to file the requisite disclosure statements as prescribed by N.J.S.A. 18A:12-21 et seq. shall constitute a violation of the School Ethics Act and shall result in the reprimand, censure, suspension or removal of a school official upon recommendation of the Commission and affirmation of the Commissioner.

(j) Prior to any action taken by the Commission for failure to file the requisite disclosure statements, the Commission shall direct that the school official show cause in writing under oath within 20 days why the penalty of reprimand, censure, suspension or removal should not be imposed. The Order to Show Cause shall be considered the equivalent of the complaint required by N.J.S.A. 18A:12-29.

(k) Upon receipt of the response to the Order to Show Cause or upon expiration of the time period for so filing the Commission shall proceed to a determination. The school official shall be advised of his or her right to appear before the Commission, be represented by counsel and present witnesses on his or her behalf prior to the Commission's making its probable cause determination.

(l) If the Commission determines that a filing is incomplete, it shall first return the filing to the school official for completion within 20 days of receipt of the returned filing. At the expiration of such time period or upon further receipt of a filing which fails to provide such information as required by statute, the Commission shall issue an order directing the school official in writing under oath to show cause within 20 days why the Commission should not impose such sanctions as permitted pursuant to N.J.S.A. 18A:12-29. If no response is received within the 20-day period, or if the response is returned indicating the school official's refusal to properly file, the Commission may conclude that the school official's incomplete filing is in effect a failure to file and the Commission shall proceed to a determination. The school official shall be advised of his or her right to appear before the Commission, be represented by counsel and present witnesses on his or her behalf.

(m) If the school official responds to the Order to Show Cause by asserting either that the filing is complete or that other appropriate factors create a material factual dispute, the matter shall be considered as a contested case under N.J.S.A. 18A:12-29(b) and may be transmitted to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 6A:28-1.11 and 1.12.

Amended by R.1999 d.342, effective October 4, 1999.
See: 31 N.J.R. 1662(a), 31 N.J.R. 2917(a).

In (l), updated references.
Amended by R.2000 d.139, effective April 3, 2000.
See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).
Rewrote the section.

6A:28-1.6 Board member training

(a) Each newly elected or appointed board member or charter school trustee shall, during the first year of his or her first term on any board, complete a training program prepared and offered by the New Jersey School Boards Association which shall include in its content instruction relative to the board member's responsibilities under the School Ethics Act.

(b) Each board secretary and charter school designee shall notify the New Jersey School Boards Association when a new board member or trustee is elected or appointed to the board.

(c) The New Jersey School Boards Association shall notify the board secretary and charter school designee in writing, when a newly elected or appointed board member or charter school trustee has attended a training program that satisfies the training mandate.

(d) By March 31 of each year the New Jersey School Boards Association shall present to the School Ethics Commission a list of those board members and charter school trustees who have not fulfilled the training mandate for the previous filing period.

(e) Board members and charter school trustees failing to comply with the training mandate shall be considered in violation of N.J.S.A. 18A:12-33. The Commission shall proceed thereafter in conformance with the procedures set forth in N.J.A.C. 6A:28-1.5(i).

Amended by R.1999 d.342, effective October 4, 1999.
See: 31 N.J.R. 1662(a), 31 N.J.R. 2917(a).

In (a), deleted "full" preceding "term".
Amended by R.2000 d.139, effective April 3, 2000.
See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).
Rewrote the section.

Case Notes

Employee of company providing school bus services was required to cure the conflict of interest. *Oehlke v. Tewksbury Township School Board of Education*, 93 N.J.A.R.2d (EDU) 792.

6A:28-1.7 Advisory opinions

(a) Any school official may request an advisory opinion from the Commission as to whether any proposed conduct or activity would constitute a violation of the provisions of the School Ethics Act.

(b) Requests for advisory opinions must clearly set forth in detail the specific conduct or activity the school official seeks to undertake and the exact role he or she will play in that activity or conduct.

(c) A superintendent, board secretary, board president or board attorney may seek an advisory opinion from the Commission on behalf of his or her board with the written consent of the school official whose proposed activity or conduct is in question.

(d) Upon receipt of a request for an advisory opinion, the Commission shall assign a file number to the request.

1. During the course of any staff work and/or Commission deliberation with regard to the request for an advisory opinion, the request shall be identified for purposes of public access only by file number and not by the name(s) of school official(s) involved.

2. No information regarding any request for an advisory opinion shall be made public unless the information is incorporated into the advisory opinion and made public in accordance with (e) and (f) below.

(e) The Commission or its staff may require additional information from the person seeking an advisory opinion or require the person's appearance before it or its staff.

(f) Advisory opinions issued by the Commission shall not be made public unless six members shall vote to direct the opinion be made public.

(g) Advisory opinions made public by the Commission shall delete the name and district of the school official requesting the advisory.

(h) The Commission shall render a response to the request for an advisory opinion at its next monthly meeting following its receipt of all relevant information and documentation needed to make a determination on the request.

(i) Notwithstanding the foregoing, the Commission may respond to a request for an advisory opinion by referring the issue raised to the Office of the Attorney General.

Amended by R.2000 d.139, effective April 3, 2000.

See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).

Inserted a new (c); recodified former (c) through (h) as (d) through (i); and in the new (e), inserted "opinion" following "advisory".

6A:28-1.8 Filing and service of a complaint

(a) Anyone may file a complaint with the School Ethics Commission alleging a violation of the School Ethics Act, N.J.S.A. 18A:12-21 et seq., within one year of the alleged violation.

(b) To file a complaint with the School Ethics Commission alleging a violation of the School Ethics Act, N.J.S.A. 18A:12-21 et seq., a complainant must file an original and two copies of such complaint using the form set forth in N.J.A.C. 6A:28-1.9. Any member of the Commission may also file a complaint.

(c) No complaint shall be accepted by the Commission unless it is signed under oath by the complainant.

(d) Upon receipt of the complaint the Commission shall serve a copy of the complaint on the school official or officials named.

(e) Upon receipt of a complaint the Commission shall assign a file number to the complaint.

1. During the course of any staff work and/or Commission deliberation with regard to the complaint, the complaint shall be identified only by file number for purposes of public access and not by the name(s) of the school official(s) involved.

2. No information regarding any complaint shall be made public until the Commission takes action in accordance with N.J.A.C. 6A:28-1.11.

3. Pursuant to N.J.S.A. 18A:12-29(e), the Commission may impose a fine not to exceed \$500.00 for the filing of a frivolous complaint. If a school official fails to pay the fine, the Commission shall recommend to the Commissioner the reprimand, censure, suspension or removal of the official.

Amended by R.1999 d.342, effective October 4, 1999.

See: 31 N.J.R. 1662(a), 31 N.J.R. 2917(a).

In (a) and (d)2, updated references.

Amended by R.2000 d.139, effective April 3, 2000.

See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).

Rewrote the section.

6A:28-1.9 Complaint form

(a) The form used to file a complaint is as follows:

NAME OF	:	
COMPLAINANT(S),	:	BEFORE THE SCHOOL
v.	:	ETHICS COMMISSION
	:	OF NEW JERSEY
NAME OF RESPONDENT(S)	:	
	:	COMPLAINT FORM

I, (Name of Complainant), residing at (Address and Phone Number of Complainant), request the School Ethics Commission to consider a complaint against the above-named Respondent whose address is (address of respondent), in accordance with the authority of the School Ethics Commission to entertain such complaints under N.J.S.A. 18A:12-21 et seq.

The facts upon which this complaint is based are as follows: (Set down below in individually numbered paragraphs the specific facts that cause you to believe that a violation of the School Ethics Act has occurred. Cite, if known to you, the section(s) of the Act that you believe to have been violated.)

1. _____
2. _____
3. _____
4. _____

WHEREFORE, I, as Complainant, request that the School Ethics Commission find and determine that the above-named Respondent has violated the School Ethics Act and that he/she be subject to such penalty as the Commission and the Commissioner of Education deem appropriate.

Date _____

Signature of Complainant
or his or her Attorney

CERTIFICATION UNDER OATH

(Name of Complainant), of full age, being duly sworn upon his/her oath according to law deposes and says:

1. I am the complainant in this matter.
2. I have read the complaint and aver that the facts contained therein are true to the best of my knowledge and belief and I am aware that the statute that created the School Ethics Commission authorizes the Commission to impose penalties for filing a frivolous complaint. N.J.S.A. 18A:12-29e.
3. This matter is not pending in any court of law or administrative agency of this State. I will advise the School Ethics Commission if I subsequently become aware that it is pending elsewhere.

Date _____

Signature of Complainant

Sworn and subscribed to before me this ____ day of _____, ____.

Signature of Notary

(b) The Commission will not process any complaint nor issue a final ruling or advisory opinion on any matter pending in any court of law or administrative agency of this State.

Amended by R.2000 d.139, effective April 3, 2000.
See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).
Rewrote the section.

6A:28-1.10 Answer to complaint

(a) Upon receipt of the complaint from the Commission, the respondent shall have 20 days within which to file an original and two copies of a written statement under oath with the Commission responding to the allegations in the complaint. Upon written application by the respondent, the Commission or its designee may extend the time for filing such statement.

(b) The respondent's statement shall respond directly to each allegation set forth in the complaint.

(c) The respondent shall not generally deny the allegations but shall set forth substantive reasons why he or she believes the allegations are false or unfounded.

(d) Failure to respond to the complaint within the 20 day period from receipt of the complaint shall result in a notice to the respondent directing a response within 10 days of receipt.

(e) Further failure to respond shall result in a second notice which shall inform the respondent that unless an answer is received within 10 days of receipt of the second notice, each allegation in the complaint shall be deemed admitted and the Commission shall make a determination as to whether probable cause exists or the complaint should be dismissed.

Amended by R.2000 d.139, effective April 3, 2000.
See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).

In (a), inserted "responding to the allegations in the complaint" at the end of the first sentence; and in (c), inserted "he or she believes" following "why".

6A:28-1.11 Commission review

(a) Upon receipt of respondent's statement or the expiration of the time for filing such response, the Commission shall determine whether probable cause exists to credit the allegation in the complaint.

(b) In order to carry out the Commission's responsibilities under the Act to determine whether probable cause exists, the Commission and/or its staff shall conduct investigations, hold hearings, compel the attendance of witnesses and the production of documents and examine such witnesses under oath.

(c) Prior to the Commission's determination of probable cause the respondent will be notified of his or her right to address the Commission, be represented by counsel and present witnesses on his/her behalf.

(d) The proceedings before the Commission shall be as follows:

1. Each party or his or her counsel shall have the opportunity to make an opening statement to the Commission, beginning with the complainant, and present any witnesses that he or she has brought. The complainant shall have the right of rebuttal and be allowed to present the last closing statement.

2. The Commission may then ask questions of the parties and any witnesses. The parties may not question one another or each other's witnesses; however, the parties may submit questions to the Commission prior to or during the meeting, which the Commission may, in its discretion, ask of the other party.

3. Any documents any party wishes the Commission to consider shall be provided at least 10 days prior to the hearing; provided, however, that if the documents are not provided prior to the hearing, but are brought to the hearing, then the party submitting them must bring an original and 11 copies.

4. Any post-hearing submissions shall be provided within 14 calendar days of the hearing.

5. During the course of the investigatory proceedings before the Commission, all relevant evidence is admissible.

(e) Should the Commission find that probable cause does not exist, the Commission shall dismiss the complaint and so notify the complainant and the school official named in the complaint. Dismissal by the Commission upon a finding of no probable cause shall constitute final agency action.

Amended by R.2000 d.139, effective April 3, 2000.
See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).
Rewrote (d) and (e).

Case Notes

Contested case against member of school board with respect to ethics violations required an adjudicatory hearing before a penalty could be imposed. *Scannella v. Scudillo*, 95 N.J.A.R.2d (EDU) 190.

6A:28-1.12 Proceedings after finding of probable cause

(a) Should the Commission determine that probable cause does exist, and that material facts are in dispute, it shall refer the matter to the Office of Administrative Law for a hearing to be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and in accordance with the requirements of the OAL, as set forth in N.J.A.C. 1:6C and shall so notify the complainant and the school official(s) named in the complaint.

(b) Should the Commission determine that probable cause exists, and material facts are not in dispute, it shall notify the school official named in the complaint that he or she has 30 days from the date of the notice to submit a written statement setting forth the reasons he or she should not be found in violation of the Act based on the facts as set forth in the probable cause determination. If the school official disputes those facts, he or she should set forth the

facts with which he or she disagrees and why they are material to the case.

Amended by R.2000 d.139, effective April 3, 2000.
See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).
Rewrote the section.

6A:28-1.13 Written decision

(a) Upon completion of the hearing before the OAL, the Commission shall determine by majority vote whether the conduct complained of constitutes a violation of the Act or whether the complaint should be dismissed. In rendering its decision the Commission shall be governed by the procedures and time constraints of the Administrative Procedure Act and the rules of the OAL set forth at N.J.A.C. 1:6C.

(b) If the case is not transmitted to the OAL, the record will close upon the filing of written submissions and the Commission shall have 45 days from the closing of the record to render its decision.

(c) The Commission's decision shall be in writing and it shall set forth its findings of fact and conclusions of law.

(d) If a violation is found, the Commission shall recommend to the Commissioner the reprimand, censure, suspension, or removal of the school official. The imposition of any of the foregoing sanctions shall require a vote of the majority of the full membership of the Commission.

Amended by R.2000 d.139, effective April 3, 2000.
See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).
Rewrote the section.

6A:28-1.14 Sanction

(a) The Commissioner shall act upon the Commission's recommendation regarding the sanction pursuant to N.J.S.A. 18A:12-29(c). Such review shall proceed in accordance with the requirements of the OAL as set forth in N.J.A.C. 1:6C.

(b) If the Commissioner imposes a penalty of censure, suspension or removal, the Commission shall adopt a Resolution at its next meeting following the imposition of the sanction by the Commissioner and shall direct that the Resolution be read at the next public meeting of the district board of education or charter school board of trustees following its adoption by the Commission and posted for a period of not less than 30 days in such places as the board posts its public notices.

(c) Any appeal of the Commission's determination regarding a violation of the Act or the Commissioner's decision regarding the sanction shall be to the State Board of Education in accordance with Title 18A of the New Jersey Statutes and the procedures set forth in N.J.A.C. 6:2.

Amended by R.2000 d.139, effective April 3, 2000.
See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).
Rewrote the section.

SUBCHAPTER 2. ENTITLEMENT TO ATTEND SCHOOL BASED ON DOMICILE OR RESIDENCY IN DISTRICT

Authority

N.J.S.A. 18A:4-15 and 18A:38-1.

Source and Effective Date

R.2001 d.464, effective December 17, 2001.
See: 33 N.J.R. 2790(a), 33 N.J.R. 3280(a), 33 N.J.R. 4331(a).

6A:28-2.1 Purpose and scope

The rules in this subchapter have been adopted to implement the provisions of N.J.S.A. 18A:38-1(a) through (e). Other than by reference to the applicable statutes and rules, the subchapter does not address attendance at school by nonresidents, children of military parents, or persons qualifying under N.J.S.A. 18A:38-1(f), which provides for attendance by homeless students and is implemented through N.J.A.C. 6:5, Provisions for the Education of Homeless Children and Youth.

6A:28-2.2 Definitions

As used in this subchapter, "Affidavit student" means a student attending, or seeking to attend, school in a district pursuant to N.J.S.A. 18A:38-1(b), and "Commissioner" means the Commissioner of Education or his or her designee.

6A:28-2.3 Local district policies

(a) Each district board of education shall adopt written policies incorporating the requirements of this subchapter and shall make copies available to parents and the public.

(b) A district board shall construe the provisions of this subchapter liberally so as to effectuate the right of students to a free public education.

6A:28-2.4 Eligibility to attend school

(a) A district board of education shall admit to its schools, free of charge, the following persons over five and under 20 years of age:

1. Any student domiciled within the district;

i. A student is domiciled in the district when he or she is living with a parent or legal guardian whose permanent home is located within the district. A home is permanent when the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere.