

supporting them which have given rise to the alleged violation(s) of the Act;

4. The date(s) of the occurrence(s) of each specific allegation;

5. The section(s) of the Act claimed to be violated for each specific allegation;

6. A statement giving all pertinent facts as to whether any other action has been instituted in the matter which is the subject of the complaint or is pending in any court of law or administrative agency of this State; and

7. A notarized signature and certification under oath for each complainant.

(c) A complaint alleging solely a violation of the code of ethics for school board members shall name only school board members as respondents and shall set forth in the complaint a factual basis for the allegations in accordance with N.J.A.C. 6A:28-6.4.

(d) A complaint should be submitted in substantially the following format:

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

I, (Name of Complainant), residing at (home address and phone number of complainant), request the School Ethics Commission to consider a complaint against the above-named Respondent(s) whose home address is (home address of respondent(s)), 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:

1. Statement of facts:

Date of occurrence:

I assert this to be a violation of:

2. Statement of facts:

Date of occurrence:

I assert this to be a violation of:

3. Statement of facts:

Date of occurrence:

I assert this to be a violation of:

WHEREFORE, I, as Complainant, request that the School Ethics Commission find and determine that the above-named Respondent(s) has violated the School Ethics Act and that he or she be subject to such penalty as provided by the Act.

Date: _____
Signature of Complainant or his or her Attorney

CERTIFICATION UNDER OATH

(Name of Complainant), of full age, being duly sworn upon his or 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 School Ethics Commission to impose penalties for filing a frivolous complaint. N.J.S.A. 18A:12-29(e). I am aware that if the respondent alleges that the complaint is frivolous, I shall have 20 days from receipt of the answer to respond to the allegation.

3. The subject matter of this complaint 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 _____, _____.

6A:28-6.4 Complainant's burden of proof for complaints alleging a violation of the code of ethics for school board members

(a) For complaints alleging a violation of the code of ethics for school board members, the complainant has the burden to factually establish a violation in accordance with the standards set forth below:

1. Factual evidence of a violation of N.J.S.A. 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures.

2. Factual evidence of a violation of N.J.S.A. 18A:12-24.1(b) shall include evidence that the respondent(s) willfully made a decision contrary to the educational welfare of children, or evidence that the respondent(s) took deliberate action to obstruct the programs and policies

designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing.

3. Factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that the respondent(s) took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty to:

- i. Develop the general rules and principles that guide the management of the school district or charter school;
- ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or
- iii. Ascertain the value or liability of a policy.

4. Factual evidence of a violation of N.J.S.A. 18A:12-24.1(d) shall include, but not be limited to, evidence that the respondent(s) gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school.

5. Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board.

6. Factual evidence of a violation of N.J.S.A. 18A:12-24.1(f) shall include evidence that the respondent(s) took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that the respondent(s) used the schools in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend.

7. Factual evidence of a violation of the confidentiality provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that the respondent(s) took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that the respondent violated the inaccurate information provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by the respondent(s) and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

8. Factual evidence of a violation of N.J.S.A. 18A:12-24.1(h) shall include evidence that the respondent(s) acted on a personnel matter without a recommendation of the chief administrative officer.

9. Factual evidence of a violation of N.J.S.A. 18A:12-24.1(i) shall include evidence that the respondent(s) took deliberate action which resulted in undermining, opposing, compromising or harming school personnel in the proper performance of their duties.

10. Factual evidence of a violation of N.J.S.A. 18A:12-24.1(j) shall include evidence that the respondent(s) acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint:

- i. Prior to referral to the chief administrative officer; or
- ii. At a time or place other than a public meeting and prior to the failure of an administrative solution.

6A:28-6.5 Time period for the filing of a complaint

(a) Complaints shall be filed within 180 days of notice of the events which form the basis of the alleged violation(s). A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known.

1. For complaints alleging a violation of N.J.S.A. 18A:12-24.1(a), the complaint shall be filed within 180 days of the issuance of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures.

2. For complaints where the matter, which is the subject of the complaint, is pending in any court of law or administrative agency of this State, the complaint shall be filed within 180 days of notice of the events which form the basis of the alleged violation(s).

6A:28-6.6 Complaint processing, consolidating and confidentiality

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

(b) Whenever the Commission deems appropriate, it may consolidate complaints. In determining whether to consolidate complaints, the Commission shall consider:

1. The identity of the parties in each of the matters;
2. The nature of all the questions of fact and law respectively involved;
 - i. To the extent that common questions of fact and law are involved, the saving in time, expense, duplication and inconsistency which will be realized from considering the matters together and whether such issues

acts, it may retain the matter for a hearing in accordance with N.J.A.C. 6A:28-10.8(d) or transmit the matter to the OAL for a hearing.

(c) When the Commission, by majority vote, finds probable cause to credit any allegations of prohibited acts, it shall proceed in accordance with N.J.A.C. 6A:28-10.7(b) through (e).

6A:28-10.10 Adjournment of hearings

Application for the adjournment of a hearing where the matter has been retained by the Commission pursuant to N.J.A.C. 6A:28-10.8 shall be made to the Commission in accordance with the requirements of the OAL, as set forth in N.J.A.C. 1:1. Application for the adjournment of a hearing where the matter has been transmitted to the OAL shall be addressed to the ALJ in accordance with the requirements of the OAL, as set forth in N.J.A.C. 1:1.

6A:28-10.11 School Ethics Commission determinations on complaints

(a) Upon completion of a hearing before the OAL, a hearing before the Commission pursuant to N.J.A.C. 6A:28-10.8 or the Commission's summary review of a complaint, 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. The Commission's decision shall be in writing and it shall set forth its findings of fact, conclusions of law and penalty recommendation, pursuant to N.J.A.C. 6A:28-10.12, in any case where a violation is found.

1. In rendering its determination on complaints heard before the OAL, 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-18.4.

(b) A determination to dismiss a complaint shall constitute final agency action.

6A:28-10.12 Sanction

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

sion. The Commission may decline to issue a penalty for violations that it finds by a majority vote are de minimis.

(b) Within 13 days from the date the Commission's decision is forwarded to the Commissioner, any party may file written exceptions regarding the recommended penalty to the Commissioner. For the purposes of this section, the forwarding date shall be the mailing date to the parties.

(c) 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 N.J.A.C. 6A:4 and the requirements of the OAL as set forth in N.J.A.C. 1:6C-18.4.

(d) 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 regularly scheduled 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.

SUBCHAPTER 11. APPEALS

6A:28-11.1 Procedure for appeal

(a) Any appeal of the Commission's determination regarding a violation of the Act shall be to the Commissioner in accordance with N.J.A.C. 6A:4, Appeals.

(b) Any complaint that is dismissed pursuant to this chapter shall be deemed a final agency decision appealable directly to the Appellate Division of the Superior Court.

New Rule, R.2004 d.378, effective October 4, 2004.

See: 36 N.J.R. 2285(a), 36 N.J.R. 4453(a).

Recodified from N.J.A.C. 6A:28-7.1 and amended by R.2007 d.247, effective August 20, 2007.

See: 39 N.J.R. 821(a), 39 N.J.R. 3513(a).

Inserted " Appeals" at the end.

Recodified from N.J.A.C. 6A:28-8.1 and amended by R.2009 d.163, effective May 18, 2009.

See: 41 N.J.R. 26(a), 41 N.J.R. 699(a), 41 N.J.R. 2095(a).

Inserted designation (a); in (a), deleted "or the Commissioner's decision regarding the sanction" following "Act" and substituted "Commissioner" for "State Board of Education"; and added (b).