

CHAPTER 28

SCHOOL ETHICS COMMISSION

Authority

N.J.S.A. 18A:12-34

Source and Effective Date

R.2004 d.378, effective September 10, 2004.
See: 36 N.J.R. 2285(a), 36 N.J.R. 4453(a).

Chapter Expiration Date

Chapter 28, School Operations, expires on September 10, 2009.

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).

Subchapter 2, Entitlement to Attend School Based on Domicile or Residency in District, was adopted by R.2001 d.464, effective December 17, 2001. 33 N.J.R. 2790(a), 33 N.J.R. 3280(a), 33 N.J.R. 4331(a). Subchapter 2, was recodified to Chapter 22, Student Residency, by R.2004 d.377, effective October 4, 2004. See: 36 N.J.R. 2279(a), 36 N.J.R. 4448(a).

Chapter 28, School Ethics Commission, was readopted by R.2004 d.378 effective September 10, 2004. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

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 and 18A:12-24.1, which prescribe 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.

Amended by R.2004 d.378, effective October 4, 2004.

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

In (b), inserted "and 18A:12-24.1," following "N.J.S.A. 18A:12-24".

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 chapter, 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 assigned by the Director of the Office of Administrative Law to preside over contested cases pursuant to N.J.S.A. 52:14F-1 et seq.

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

"Board of trustees" means the public agent authorized by the State Board of Education to supervise and control a charter school.

"Censure" means, except in the case of a school official who is an officer or employee of the New Jersey School Boards Association, a formal expression of disapproval by the Commissioner which is publicized by the adoption of a formal resolution by the School Ethics Commission and the school official's district board of education or the board of trustees of his charter school at a public meeting when said school official has been found to be in violation of N.J.S.A. 18A:12-21 et seq. In the case of a school official who is an officer or employee of the New Jersey School Boards Association, censure means a formal expression of disapproval by the School Ethics Commission publicized by the adoption of a formal resolution by the Commission at a public meeting.

"Charter school" means a public school established pursuant to N.J.S.A. 18A:36A-1 et seq. and which is operated under a charter granted by the Commissioner, that is independent of the district board of education and that is managed by a board of trustees.

"Charter school designee" means the person at the charter school whom the lead person designates as being responsible for assuring that school officials in the school file timely disclosure forms.

"Code of Ethics" means the standards of conduct set forth in the Code of Ethics for School Board Members established pursuant to P.L. 2001, c.178 (N.J.S.A. 18A:12-24.1).

“Commission” means the School Ethics Commission established pursuant to N.J.S.A. 18A:12-27.

“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 file annually pursuant to N.J.S.A. 18A:12-26.

“Fine” means a sanction imposed pursuant to N.J.S.A. 18A:12-29(e) for the filing of a frivolous complaint in an amount not to exceed \$500.00.

“Frivolous complaint” means a complaint determined by the Commission to be either:

1. Commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
2. One which the complainant knew, or should have known, was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

“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 or who has not served for 10 years or more and has not previously completed a training program prepared and offered by the New Jersey School Boards Association pursuant to N.J.S.A. 18A:12-33.

“OAL” means the Office of Administrative Law established pursuant to N.J.S.A. 52:14F-1 et seq.

“Personal/Relative Disclosure Statement” means the statement that school officials are required to file annually

pursuant to N.J.S.A. 18A:12-25 setting forth whether the school 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.

“Prohibited acts” means the forbidden conduct set forth for school officials at N.J.S.A. 18A:12-24.

“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.

“Removal” means removal from office for the length of a board member or charter school trustee’s term of office or termination of employment.

“Reprimand” means a rebuke by the Commissioner of 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 district board of education or charter school.

“Spouse” means the person to whom the school official is legally married under New Jersey law.

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.
Amended by R.2002 d.397, effective December 16, 2002.
See: 34 N.J.R. 3158(a), 34 N.J.R. 4434(a).

Added “Code of Ethics”, and “Prohibited acts”.
Amended by R.2004 d.378, effective October 4, 2004.
See: 36 N.J.R. 2285(a), 36 N.J.R. 4453(a).

In the introductory paragraph, substituted “chapter” for “subchapter”; added “Board of trustees”, “Charter school”, “Charter school designee”, “Fine”, “Frivolous complaint” and “Removal”; amended “ALJ”, “Censure”, “Commission”, “Financial Disclosure Statement”, “Newly elected or appointed board member”, “OAL”, “Personal/Rela-

ive Disclosure Statement", "Reprimand", "School official" and "Spouse".

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, pursuant to N.J.S.A. 18A:12-31;

4. Process and investigate complaints raised pursuant to N.J.S.A. 18A:12-29 and conduct such hearings as may be necessary to determine whether probable cause exists to credit the allegations raised in any complaint brought before it;

5. Administer the receipt and retention of disclosure statements as required by the Act. Requests for copies of disclosure statements shall be directed to the district board secretary or county superintendent and shall be subject to copying fees pursuant to N.J.S.A. 47:1A-1 et seq.;

6. 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;

7. Be empowered, along with the persons appointed by it, to administer oaths and examine witnesses under oath; and

8. Recommend to the Commissioner the reprimand, censure, suspension or removal of school officials from the district board of education or charter school 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.

Amended by R.2004 d.378, effective October 4, 2004.

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

Rewrote the section.

6A:28-1.4 (Reserved)

Recodified in part to N.J.A.C. 6A:28-2.1 through 6A:28-2.4 by R.2004 d.378, effective October 4, 2004.

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

Section was "By-laws of the School Ethics Commission".

6A:28-1.5 (Reserved)

Recodified in part to N.J.A.C. 6A:28-3.1 through 6A:28-3.4 by R.2004 d.378, effective October 4, 2004.

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

Section was "Filing of disclosure statements and procedures in the event of incomplete filing or failure to file disclosure statements".

6A:28-1.6 (Reserved)

Recodified in part to N.J.A.C. 6A:28-4.1 and 6A:28-4.2 by R.2004 d.378, effective October 4, 2004.

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

Section was "Board member training".

6A:28-1.7 (Reserved)

Recodified in part to N.J.A.C. 6A:28-5.1 and 6A:28-5.2 by R.2004 d.378, effective October 4, 2004.

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

Section was "Advisory opinions".

6A:28-1.8 (Reserved)

Recodified in part to N.J.A.C. 6A:28-6.1 and 6A:28-6.2 by R.2004 d.378, effective October 4, 2004.

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

Section was "Filing and service of a complaint".

6A:28-1.9 (Reserved)

Recodified to N.J.A.C. 6A:28-6.3 by R.2004 d.378, effective October 4, 2004.

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

Section was "Complaint form".

6A:28-1.10 (Reserved)

Recodified to N.J.A.C. 6A:28-6.4 by R.2004 d.378, effective October 4, 2004.

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

Section was "Answer to complaint".

6A:28-1.11 (Reserved)

Recodified to N.J.A.C. 6A:28-6.5 by R.2004 d.378, effective October 4, 2004.

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

Section was "Answer to complaint alleging violation of the Code of Ethics".

6A:28-1.12 (Reserved)

Recodified to N.J.A.C. 6A:28-6.6 by R.2004 d.378, effective October 4, 2004.

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

Section was "Commission review of complaints under the School Ethics Act or the Act and the Code of Ethics".

6A:28-1.13 (Reserved)

Recodified to N.J.A.C. 6A:28-6.8 by R.2004 d.378, effective October 4, 2004.

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

Section was "Commission review of complaints alleging a violation of the Code of Ethics only".

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.

Recodified from N.J.A.C. 6A:28-1.5(b) through 6A:28-1.5(h) and amended by R.2004 d.378, effective October 4, 2004.

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

Rewrote the section.

6A:28-3.3 Procedures in the event of failure to file disclosure statements

(a) Failure to file the requisite disclosure statements as prescribed by N.J.S.A. 18A:12-25 and 26 shall constitute a violation of the School Ethics Act and shall result in the reprimand, censure, suspension or removal of a school official pursuant to the recommendation of the Commission as acted upon by the Commissioner.

(b) 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.

(c) Upon receipt of the response to the Order to Show Cause or upon expiration of the 20-day time period for so filing, the Commission shall proceed to a determination of probable cause. 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.

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.

Recodified from N.J.A.C. 6A:28-1.5(i) through 6A:28-1.5(k) and amended by R.2004 d.378, effective October 4, 2004.

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

Recodified former (i) as (a) and rewrote the paragraph; recodified former (j) as (b); recodified former (k) as (c), inserted "20-day" preceding "time period" and inserted "of probable cause" following "determination" in the first sentence.

6A:28-3.4 Procedures in the event of incomplete filing

(a) 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.

(b) 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.

(c) 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 of probable cause pursuant to the procedures set forth in N.J.A.C. 6A:28-3.3.

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.

Recodified from N.J.A.C. 6A:28-1.5(l) and 6A:28-1.5(m) and amended by R.2004 d.378, effective October 4, 2004.

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

In former (l), recodified the first sentence as (a), the second sentence as (b), and the third sentence as (c), inserted "of probable cause pursuant to the procedures set forth in N.J.A.C. 6A:28-3.3", and deleted the last sentence; deleted former (m).

SUBCHAPTER 4. BOARD MEMBER TRAINING

6A:28-4.1 Training requirement

(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.

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.

Recodified from N.J.A.C. 6A:28-1.6(a) by R.2004 d.378, effective October 4, 2004.

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

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:28-4.2 Procedures for compliance

(a) 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.

(b) 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.

(c) 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.

(d) 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:28-3.3.

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.
Recodified from N.J.A.C. 6A:28-1.6(b) through 6A:28-1.6(e) and amended by R.2004 d.378, effective October 4, 2004.

See: 36 N.J.R. 2285(a), 36 N.J.R. 4453(a).
Recodified former (b) through (d) as (a) through (c); recodified former (e) as (d) and amended the N.J.A.C. reference.

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.

SUBCHAPTER 5. ADVISORY OPINIONS

6A:28-5.1 Entitlement to an advisory opinion

Any school official may request and obtain an advisory opinion from the Commission as to whether any proposed conduct or activity would in its opinion constitute a violation of the provisions of 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).

Inserted a new (c); recodified former (c) through (h) as (d) through (i); and in the new (e), inserted "opinion" following "advisory".
Recodified from N.J.A.C. 6A:28-1.7(a) and amended by R.2004 d.378, effective October 4, 2004.

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

In former (a), deleted designation, inserted "and obtain" preceding "an advisory opinion" and inserted "in its opinion" preceding "constitute a violation".

6A:28-5.2 Procedures for Requesting and Receiving an Opinion

(a) 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.

(b) A school official may seek an advisory opinion from the Commission as to the proposed conduct of another school official, but he or she must show that he or she has copied the school official whose proposed activity or conduct is in question on the request. The school official whose conduct is in question will then have 10 days from the date of the advisory opinion request to respond.

(c) 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) below.

(d) 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.

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

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

(f) 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.

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".
Recodified from N.J.A.C. 6A:28-1.7(b) through 6A:28-1.7(i) and amended by R.2004 d.378, effective October 4, 2004.

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

Recodified former (b) as (a); recodified former (c) as (b) and rewrote the paragraph; recodified former (d) as (c) and deleted "and (f)" preceding "below" in 2; recodified former (e), (f), (g) and (h) as (d), (e), (e)1 and (f) respectively; deleted former (i).

SUBCHAPTER 6. FILING, SERVICE AND REVIEW OF COMPLAINTS

6A:28-6.1 Filing of a complaint

(a) Any person 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. Any member of the Commission may also file a complaint.

1. A Commission member who submits a complaint shall not participate in any subsequent proceedings on that complaint in the capacity of a commission member.

2. A Commission member shall not participate in any proceedings on a complaint against a school official in a district in which he or she serves or by which he or she is employed.

(b) All complaints must be filed within one year of notice of the alleged violation.

1. Paragraph (b) above may be relaxed by the Commission, in its discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

(c) 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:28-6.3.

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

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.

Recodified from N.J.A.C. 6A:28-1.8(a) through 6A:28-1.8(c) and amended by R.2004 d.378, effective October 4, 2004.

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

In former (a), rewrote the introductory paragraph and added 1 and 2; added a new (b), recodified former (b) as (c), amended the N.J.A.C. reference and deleted the last sentence; recodified former (c) as (d).

6A:28-6.2 Service and consideration of complaint

(a) Upon receipt of the complaint, the Commission shall assign a file number to the complaint and serve a copy of the complaint on the school official or officials named.

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 first takes action at a public meeting to determine whether probable cause exists or whether a violation exists, whichever applies.

(b) Pursuant to N.J.S.A. 18A:12-29(e), the Commission may impose a fine not to exceed \$500.00 if it determines prior to the hearing by majority vote that a complaint is frivolous. If a school official fails to pay the fine within 30 days after receipt of the decision imposing the sanction, 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.

Recodified from N.J.A.C. 6A:28-1.8(d) and 6A:28-1.8(e) and amended by R.2004 d.378, effective October 4, 2004.

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

Rewrote the section.

6A:28-6.3 Complaint form

(a) The form used to file a complaint alleging a violation of any provision of the School Ethics Act, N.J.S.A. 18A:12-21 et seq., including the Code of Ethics for school board members, is as follows:

NAME OF COMPLAINANT(S), v. NAME OF RESPONDENT(S) : BEFORE THE SCHOOL ETHICS COMMISSION OF NEW JERSEY SCHOOL ETHICS ACT 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 or 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 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 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 form used to file a complaint alleging a violation of only the Code of Ethics for school board members set forth at N.J.S.A. 18A:12-24.1 is as follows:

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

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:12-24.1.

Set down below in individually numbered paragraphs the specific facts upon which this complaint is based that cause you to believe that a violation of the Code of Ethics under the School Ethics Act has occurred. You must also include the date(s) of the occurrence(s) upon which the complaint is based. Cite, if known to you, the section(s) of the Code of Ethics that you believe to have been violated. Please note that you have the burden to prove factually the allegations set forth herein and must include with your complaint any supporting documentation that you plan to submit.

- 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 or 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 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 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

(c) 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.

(d) A complaint alleging violations of both the Code of Ethics for school board members and a violation of any other provision of the School Ethics Act, shall be filed using the form set forth at (a) above.

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.
Amended by R.2002 d.397, effective December 16, 2002. See: 34 N.J.R. 3158(a), 34 N.J.R. 4434(a).
Rewrote the section.
Recodified from N.J.A.C. 6A:28-1.9 by R.2004 d.378, effective October 4, 2004.
See: 36 N.J.R. 2285(a), 36 N.J.R. 4453(a).

6A:28-6.4 Answer to complaint alleging prohibited acts or prohibited acts and code of ethics violations

(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, and upon showing of good cause, 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".

Amended by R.2002 d.397, effective December 16, 2002.
See: 34 N.J.R. 3158(a), 34 N.J.R. 4434(a).

In (a), inserted "and upon showing of good cause, " in the last sentence.

Recodified from N.J.A.C. 6A:28-1.10 and amended by R.2004 d.378, effective October 4, 2004.

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

6A:28-6.5 Answer to complaint alleging violation of only the Code of Ethics

(a) Upon receipt of the complaint from the Commission alleging violation of the Code of Ethics, 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, and upon showing of good cause, 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 which shall inform the respondent that unless an answer is received within 10 days of receipt of the 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.

(e) Respondent may file a motion to dismiss in lieu of an answer to the complaint, provided that such motion is filed within the time allotted for the filing of an answer. A brief shall accompany the motion. The complainant shall file a responsive brief within 20 days from receipt of the motion.

1. Any papers filed in conjunction with such a motion shall be submitted in original form with two copies.

2. Paragraphs (e) and (e)1 may be relaxed by the Commission, in its discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

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).

New Rule, R.2002 d.397, effective December 16, 2002.

See: 34 N.J.R. 3158(a), 34 N.J.R. 4434(a).

Former N.J.A.C. 6A:28-1.11, Commission review, recodified to N.J.A.C. 6A:28-1.12.

Recodified from N.J.A.C. 6A:28-1.11 and amended by R.2004 d.378, effective October 4, 2004.

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

In (e), rewrote the second sentence of the introductory paragraph and added 2.

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:28-6.6 Commission review of complaints alleging prohibited acts or prohibited acts and violations of the Code of Ethics

(a) Upon receipt of respondent's statement or the expiration of the time for filing such response, the Commission shall determine by majority vote whether probable cause exists to credit the allegations in the complaint, under prohibited acts or prohibited acts and the Code of Ethics.

(b) In order to carry out the Commission's responsibilities under the Act to determine whether probable cause exists, the Commission and persons appointed by it for this purpose 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 Chairperson may set time limits for statements by counsel at the hearing based on the nature of the case.

3. 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 par-

ties may submit questions to the Commission prior to or during the meeting, which the Commission may, in its discretion, ask of the other party.

4. Any documents any party wishes the Commission to consider shall be provided to the Commission and the adversarial party(ies) at least 10 days prior to the hearing.

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

6. 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 the section.

Recodified from N.J.A.C. 6A:28-1.11 and amended by R.2002 d.397, effective December 16, 2002.

See: 34 N.J.R. 3158(a), 34 N.J.R. 4434(a).

In (a), inserted "under the School Ethics Act or the Act and the Code of Ethics" at the end. Former N.J.A.C. 6A:28-1.12, Proceedings after finding of probable cause, recodified to N.J.A.C. 6A:28-1.14. Recodified from N.J.A.C. 6A:28-1.12 and amended by R.2004 d.378, effective October 4, 2004.

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

In (a), inserted "by majority vote" following "the Commission" and substituted "prohibited acts" for "the School Ethics Act" and "the Act"; in (b), substituted "and persons appointed by it for this purpose" for "and/or its staff"; in (d), added a new 2, recodified former 2 through 5 as 3 through 6, and rewrote 4.

6A:28-6.7 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-18.1, 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 the Commission proposes to resolve the case by summary decision and 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.

Recodified from N.J.A.C. 6A:28-1.12 and amended by R.2002 d.397, effective December 16, 2002.

See: 34 N.J.R. 3158(a), 34 N.J.R. 4434(a).

In (a), amended N.J.A.C. reference. Former N.J.A.C. 6A:28-1.14, Sanction, recodified to N.J.A.C. 6A:28-1.16.

Recodified from N.J.A.C. 6A:28-1.14 and amended by R.2004 d.378, effective October 4, 2004.

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

In (a), amended the N.J.A.C. reference; in (b), inserted "the Commission proposes to resolve the case by summary decision and" preceding "he or she has 30 days".

6A:28-6.8 Commission review of complaints alleging a violation of only the Code of Ethics

(a) Upon receipt of respondent's statement or the expiration of the time for filing such response, the Commission shall place the complaint alleging a violation of the Code of Ethics on the agenda of the next regularly scheduled meeting to determine whether the board member has violated the Code of Ethics.

(b) The complainant has the burden to prove factually a violation under the Code of Ethics.

(c) All hearings shall be conducted in accordance with the rules of the OAL, N.J.A.C. 1:1.

(d) The Commission shall render a determination on whether a board member has violated the Code of Ethics within 90 days from its receipt of the complaint barring any exigent circumstances that would result in unfairness to either party.

(e) A finding of no violation by the Commission shall constitute final agency action.

(f) 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.

New Rule, R.2002 d.397, effective December 16, 2002.

See: 34 N.J.R. 3158(a), 34 N.J.R. 4434(a).

Former N.J.A.C. 6A:28-1.13, Written decision, recodified to N.J.A.C. 6A:28-1.15.

Recodified from N.J.A.C. 6A:28-1.13 and amended by R.2004 d.378, effective October 4, 2004.

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

6A:28-6.9 Written decision

(a) Upon completion of the hearing before the OAL or hearing by the Commission, 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-18.3.

(b) In cases not alleging solely a violation of the Code of Ethics, 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, conclusions of law and penalty recommendation in any case where a violation is found.

Recodified from N.J.A.C. 6A:28-1.13 and amended by R.2002 d.397, effective December 16, 2002.

See: 34 N.J.R. 3158(a), 34 N.J.R. 4434(a).

In (a), inserted "or hearing by the Commission" in the first sentence and amended the N.J.A.C. reference in the second sentence; in (b), substituted "In cases not alleging solely a violation of the Code of Ethics, if" for "If".

Recodified from N.J.A.C. 6A:28-1.15 and amended by R.2004 d.378, effective October 4, 2004.

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

In (a), amended the N.J.A.C. reference; in (c), inserted "and penalty recommendation in any case where a violation is found; deleted (d).

6A:28-6.10 Sanction

(a) 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.

(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.

(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 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 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.

(e) Any district board of education or board of trustees that fails to comply with the above reading and posting requirements shall receive an Order to Show Cause from the Commission asking it to set forth the reason for non-compliance.

Recodified from N.J.A.C. 6A:28-1.14 and amended by R.2002 d.397, effective December 16, 2002.

See: 34 N.J.R. 3158(a), 34 N.J.R. 4434(a).

Amended N.J.A.C. and N.J.S.A. references in (a) and (c).

Recodified from N.J.A.C. 6A:28-1.16 and amended by R.2004 d.378, effective October 4, 2004.

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

Added a new (a) and (b); recodified former (a) as (c) and amended the N.J.A.C. reference; recodified former (b) as (d); deleted former (c); added (e).

SUBCHAPTER 7. APPEALS

6A:28-7.1 Procedure for appeal

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 N.J.A.C. 6A:4.

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

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