

## 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).  
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.