



# The School Ethics Act and the Roles of the Board and its Members Readington Board of Education January 2, 2024

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# The School Ethics Act

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N.J.S.A. 18A:12-21, et seq.

It is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the school community and the public.

School officials must avoid conduct which is in violation of the public trust or which creates a justifiable impression among the public that such trust is being violated.

## To Whom Does the Act Apply?

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- Board Members, school administrators, and employees or officers of the NJSBA.
- But: The Code of Ethics set out in the School Ethics Act applies only to Board Members.

## Affirmative Obligation to:

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- Uphold and enforce all laws, rules of the State Board of Education, court orders
- Make decisions for the educational welfare of children
- Confine Board action to “policymaking, planning and appraisal”
- Appoint most qualified personnel after consideration of recommendation of superintendent.
- Support and protect school personnel in proper performance of their duties
- Refer all complaints to the superintendent; act only after absence or failure of administrative solution
- Work as a Board, not as an individual

## Affirmative Obligation to:

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- Not surrender judgment to special interest or partisan political groups
- Not use the schools for personal gain or gain of friends
- Maintain confidentiality
- Not administer schools, but see that schools are well-run
- Not make personal promises or take any private action that could compromise the Board.

## Board Authority-

### Readington BOE Website

Contrary to popular beliefs, the Board of Education (BOE) does not run the Readington Township School District. Our role is to ensure that the District is well run through the creation and updating of policies. These policies serve as a guide to the Superintendent and provide direction, a basis for decision-making, and an imperative for action.

When hearing concerns on issues affecting the District as a whole, our board members function as policy makers. We place these concerns on a meeting agenda for discussion by the entire board or a board committee. The discussions can result in new or revised District policies.

As individuals, board members cannot make decisions for the board, take actions for the board, or speak for the board, unless the board has authorized them to do so. As board members, we are sworn to abide by the NJ School Board Member Code of Ethics, which define the parameters under which we function.

## Board Authority-

### Readington BOE Website

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The BOE functions by committee to review recommendations of the Superintendent on the operation of the district, development of the budget, facilities maintenance, curriculum development, etc. The Readington Township BOE operates with five committees, Education/Technology, Personnel, Communications & Policy, Finance & Facilities, and Green Committee. The committees consist of four board members. The Readington Township BOE generally has one meeting a month. There are instances when the Board may meet twice a month, particularly when preparing the budget. Action is taken at virtually all meetings.

## Board Authority- Readington BOE Website

At times, community members contact individual board members about personal issues or questions. When that happens, board members will rightfully encourage the community member to follow the chain of command—beginning with the classroom teacher and progressing through the hierarchy. Thinking that contacting a BOE member means "going right to the top" complicates rather than alleviates any problem or issue. Going around or over the school staff creates morale problems and puts board members outside their area of responsibility. When the chain of command is used properly by citizens and board members, it improves communication and leaves the Board of Education free to act as final arbiter on issues that have not been resolved at other steps in the chain. To determine who best should handle a matter or question, ask yourself, "Who is closest to the problem?" Most often the answer is a staff member. Bringing your concern to a teacher or principal will quickly get a response. If this is not the case, the next step is to seek out the Superintendent. As a final step in this process, concerns can be brought before the board.



## Board Authority- Readington BOE Website

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Board members are responsible for ensuring that the Readington Township School District provides its children the best education the community can afford. We have a responsibility not only to listen to all citizens, but also to make sure those with a special point of view understand the needs of the school system as a whole. Above all, board members are responsible for and to the students in our schools.

# Board Authority

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## **Bylaw 0120 (Strauss Esmay)**

The Board shall make, amend, and repeal rules not inconsistent with statutes or with the rules of the State Board of Education for its own government and the transaction of its business and for the government and management of the public schools and the public property of the school district and for the employment, regulation of, conduct, and discharge of its employees. The Board shall perform all acts and do all things, consistent with law and the rules of the State Board, necessary for the proper conduct, equipment and maintenance of the public schools of the district.

# Board Authority

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## **ByLaw 0132 – Executive Authority**

The Board of Education shall exercise its executive power in part by the appointment of a Superintendent as Chief School Administrator, who shall enforce the statutes of the State of New Jersey, rules of the State Board of Education, and policies of this Board...

The Superintendent shall have a seat on the Board and shall have the right to speak on all matters at meetings of the Board, but shall have no vote.

# Board Member Authority

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## **ByLaw 0146**

A Board member does not possess individually the authority and powers that reside in the Board of Education. No Board member by virtue of his/her office shall exercise any administrative responsibility with respect to the operation of the school district or as an individual command the services of any school district employee....

Board members visiting a school shall comply with district policy and procedures for school visitors.

# Board Member Authority

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## ByLaw 0146

### Release of Information

Board member access to public, personnel, and pupil records shall be governed by law and by the provisions of Policy Nos. 8310, 8320, and 8330.

Confidential information to which a Board member becomes privy as a result of his/her office shall be used only for the purpose of helping the member discharge his/her responsibilities as Board member. No Board member shall reveal information contained in a confidential record or received during a duly convened private session of the Board except when that information has been released to the public by the Board.

## Preparation of the Meeting Agenda

Generally, the Superintendent and the School Business Administrator/Board Secretary prepare an agenda of items of business to come before the Board at each meeting. The Board President and the Board's Committees may request that items be placed on the agenda.

The agenda will be shared with the Board President for review before it is provided to the other Board Members. The agenda shall be delivered to each Board Member before the meeting and shall include such reports and supplementary materials as are appropriate and available.

## The Board President's Role

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### ByLaw 0171

1. Preside at all meetings of the Board;
2. Require the Board Secretary to call special meetings of the Board;
3. Sign all school district warrants;
4. Certify to all payrolls;
5. Sign bonds, notes, contracts, and other legal instruments requiring the signature of the President;
6. Issue subpoenas to compel attendance of witnesses and production of documents;
7. Appoint all committees of the Board;
8. Serve as committee member ex-officio in accordance with Board Bylaw 0155
9. Assist in the preparation of the Board agenda.

The Vice President shall assume and discharge the duties of the President in the President's absence, disability, or disqualification.

# Communicating With Members of the Public During Meetings

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## ByLaw 0167

All statements, questions, or inquiries shall be directed to the presiding officer and any questions or inquiries directed by a participant to another Board member shall be redirected to the presiding officer who shall determine if such statement, question, or inquiry shall be addressed by the presiding officer on behalf of the Board or by the individual Board member. **The Board is not obligated to respond or engage in dialogue during public speaks.**

The Board President can interrupt, warn or terminate the statement of a member of the public if too lengthy, abusive, obscene or defamatory.



# Board Member Authority

## ByLaw 0146

### Public Expression:

Board members are entitled to express themselves publicly on any matter, including issues involving the Board and the school district. Individual Board members cannot, however, express the position of the Board except as expressly authorized, in accordance with Board Policy No. 9120. A Board member shall not represent his/her personal opinion as the position of the Board and shall include in all formal expressions in which his/her Board affiliation is likely to be recognized, such as letters to government officials or newspapers, speeches to organizations, and the like, a statement that the opinions expressed do not necessarily represent those of the Board.

## THE DISCLAIMER

## Sample Disclaimer Language

THE FOLLOWING STATEMENTS ARE MADE IN MY CAPACITY AS A PRIVATE CITIZEN AND NOT IN MY CAPACITY AS A BOARD MEMBER. THESE STATEMENTS ALSO ARE NOT REPRESENTATIVE OF THE BOARD OR ITS INDIVIDUAL MEMBERS, AND SOLELY REPRESENT MY OWN PERSONAL OPINIONS.



## Internet, Emails, OPRA and OPMA

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### ByLaw 0169

Written letters, internet (chat) discussions, e-mails, and supporting documents regarding the school district's public business written by Board members to other Board members shall not replace deliberations that would prevent the public from witnessing in full detail all phases of the Board's deliberations, policy formulation, and decision-making process in accordance with the intent of the Open Public Meetings Act.

Internet (chat) discussions between Board members regarding the school district's public business shall not include multiple Board members with the potential that a quorum of the Board may be involved, or become involved, in such discussion.

**Emails and Texts Between Board Members are Public Records and Subject to OPRA. Can Violate OPMA.**

## Consider Adopting a ByLaw Regarding Board Member Use Of Social Networks?

### **Sample:**

While this ByLaw respects the right of Board Members to use social networks, Board Members shall recognize they are held to a higher standard than the general public regarding standards of conduct and ethics. A Board Member's use of social networks shall not damage the reputation of the school district, employees, students, or their families. Board Members who use social networks shall ensure their conduct is appropriate for a Board of Education member. Board Members should exercise care in setting appropriate boundaries between their personal and public online behavior, understanding what is private in the digital world often has the possibility of becoming public, even without the knowledge or consent of the Board Member.

Collective Bargaining And Contract  
Approval/Ratification

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ByLaw 0176

But See...

# The Chart(A06-23) (Negotiations/Superintendent)

# Schenck Price

SCHENCK PRICE SMITH & KING, LLP

PERSONNEL'S RELATIONSHIP	CONSIDERED AS A RELATIVE
School Official's Spouse	YES
School Official's Parents	YES
School Official's Children	YES
School Official's Brother / Sister	YES
School Official's Brother or Sister's Spouse	NO
School Official's Aunt / Uncle	YES
School Official's Aunt or Uncle's Spouse	NO
School Official's Nephew/Niece	YES
School Official's Nephew or Niece's Spouse	NO
School Official's Grandparents	YES
School Official's Grandchildren	YES
School Official's Grandchildren's Spouses	NO
School Official's Son-in-law or Daughter-in-law	YES
School Official's Step-Parent	YES
School Official's Step-Child	YES
School Official's Step-Child's Spouse	NO
School Official's Step-Sibling	YES
School Official's Step-Sibling's Spouse	NO
School Official's Half-Sibling	YES
School Official's Half-Sibling's Spouse	NO
School Official's Spouse's Parents	YES
School Official's Spouse's Children	YES
School Official's Spouse's Brother/Sister	YES
School Official's Spouse's Brother or Sister's Spouse	NO
School Official's Spouse's Aunt/Uncle	YES
School Official's Spouse's Aunt or Uncle's Spouse	NO
School Official's Spouse's Nephew/Niece	YES
School Official's Spouse's Nephew or Niece's Spouse	NO
School Official's Spouse's Grandparents	YES
School Official's Spouse's Grandchildren	YES
School Official's Spouse's Grandchildren's Spouses	NO
School Official's Son-In-Law/Daughter-In-Law	YES
School Official's Spouse's Step-Parent	YES
School Official's Spouse's Step-Child	YES
School Official's Spouse's Step-Child's Spouse	NO
School Official's Spouse's Step-Sibling	YES
School Official's Spouse's Step-Sibling's Spouse	NO
School Official's Spouse's Half-Sibling	YES
School Official's Spouse's Half-Sibling's Spouse	NO

## True or False?

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1. A Board Member violated section (e) of the code when during an executive session, a “heated” discussion ensued among Board Members and at some point, during the discussion, Board Member #1 turned to Board Member #2 and asked, “Do you want to get punched tonight?” Board Member #2 asked Board Member #1 if that was a threat, and Board Member #1 repeated, “Do you want to get punched tonight?”

True  
or  
False

Lisa-ann Moyer and Venita Prudenti, Complainants v. Harriet Gaddy, Allamuchy Township Board of Education, Warren County, Respondent; C68-22

## True or False?

2. A Board Member violated Sections (b) and (e) of the Code when, at a Board meeting he asked the public to be mindful of the proper decorum following a resident's use of profanity during public comment. The Board Member also posted on Facebook, "[s]peaking as a private citizen, it felt like we were transported to Appalachia last night and the local dive bar closed early, so the patrons came to the [B]oard meeting. Everyone should have to wash their hair and jeans before they come up screaming and dropping the f-bomb. It was unsightly and nauseating."

True

Or

False

Kathleen Leonard, Complainant v. Kenneth Chiarella, Monroe Township Board of Education, Middlesex County, C53-22



## True or False?

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3. A Board Member violated section (e) of the Code when he replied directly to a parent from his official Board email about the information the parent had sent to the Board Member. Specifically, the parent complained about a teacher's social media posting showing she was in Cancun, Mexico. The same teacher had previously spoken at a Board meeting about how staff returning to in-person instruction was unsafe. The Board Member replied to the parent and stated he was appalled by the teacher's behavior and the parent could expect a proportionate response from the District's administration.

True  
Or  
False

Rebecca Adams-Paul, Complainant v. Daniel Dilks, Tabernacle Board of Education,  
Burlington County, C18-21

## True or False?

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4. A Board Member violated N.J.S.A. 18A:12-24(c) when he entered executive sessions to discuss an OPRA lawsuit against the Board which specifically involved that particular Board Member's email information.

True

Or

False

Laurie Weber, Complainant v. James Morgan, Ridgewood Board of Education,  
Bergen County, Respondent, C68-20

## True or False?

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5. A Board Member who is employed in another school district (District B) as a bus driver is precluded from being involved in all aspects of contract negotiations with the Bus Driver's Association in District A where he is a Board Member even though the Board Member is a non-dues paying member of the Association in District B, and the NJEA is affiliated with both associations.

True  
Or  
False

Advisory Opinion A03-22, School Ethics Commission, 04 February 2022.

## True or False?

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6. A Board Member violated Sections (b), (c) (d) (e) (g) (h) (i) and (j) of the Code when she “advised” the Superintendent that she should remove the renewal of a non-tenured teaching staff member from the agenda because the Superintendent’s recommendation would not be supported by a majority of the Board.

True  
or  
False

Rachael Stockton, Complainant v. Maryann Fiel, Highlands Borough Board of Education, Monmouth County, C66-18

## True or False

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7. It is a violation of the Act for a Board Member to also serve as an executive officer of the PTA or any other PTA executive officer position.

True  
or  
False

A15-18

## True or False?

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8. A Board President violated Section (c) of the Code when, at a Board meeting, she accused a member of the public of standing outside a board meeting while threatening people. Further allegation that the Board President's comments were untrue, humiliating, and may cause concern with his employer.

True

or

False

Michael Marinelli Complainant v. Christine Dye Cedar Grove Board of Education,  
Essex County, C41-21

# Advisory Opinion Update

## Advisory Opinion A11-23 (6/27/2023)

**Issue**– Can Board member whose mother-in-law is employed in the district as an aide and regular substitute in the principal's office participate in matters involving the superintendent, school principal search, selection and interviews, principal and local association contract negotiations and personnel committee discussions that may affect paraprofessionals?

**Finding** – Board member's mother-in-law is a “relative” under the more expansive definition, Board member cannot participate in:

- Discussion and vote related to the Superintendent;
- principal search, selection, interviews, and negotiations;
- collective negotiations with local NJEA union affiliate;
- personnel committee discussions affecting mother-in-law's scheduling or employment;
- staff annual contract appointment voting; and
- budget discussion that may affect paraprofessionals.



# Advisory Opinion A10-23 (6/27/2023)

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**Issue 1-** Can Board member whose child is a student employee in the district's after care program participate in employment decisions and matters related to the superintendent and negotiations?

**Finding** – Board member's child is an immediate family member BUT Board policy and *N.J.A.C. 6A:23A-6.2(b)* exclude student employees from the nepotism policy, allowing board member's child to be hired as a student employee in the school district's after school care program.

# Advisory Opinion A05-23

## (5/23/2023)

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**Issue** – Can Board president (with child instructional aide, child-in-law instructional assistant and coach in District, and child teacher in neighboring school district) and Board vice president (spouse in District) be involved in the **appointment to and service on Board committees**?

**Finding** – The initial facts were incorrect: the Vice President does not have a spouse employed in the District but a different Board Member does. Both the President and the other Board member have either immediate family members (a child and a spouse) and/or relatives (child-in-law) employed in the school district, therefore both conflicts related to the local education association and the Superintendent.

- Board President **cannot choose any committee members** nor be on any committee(s) involving the local education association or matters related to the Superintendent (personnel, negotiations, instructional and the finance committees).
- Board Vice President (who does not have a spouse employed in the district) may choose the committee members of, and serve as the ex-officio member of, those committees for which Board member A, as the Board President, has a conflict.
- The other Board Member cannot sit on any committee that remotely touches upon or directly relates to the spouse's employment including personnel, negotiations, and finance committees.

## Advisory Opinion A08-23 (4/25/2023)

**Issue** – Can a Board member’s company serve as a subcontractor on the upgrade of tennis courts at the district’s middle school where four of the six courts are owned by the Board but the courts are part of a shared services agreement between the Board and the town?

**Finding** –Board member would not violate the School Ethics Act if his company bids on, and is awarded, a contract with the Town to “serve as a subcontractor on the tennis court job.”

- Board member cannot participate in discussions or votes as to review and/or approval of the subcontractors, agreements/contracts, and/or any payments.
- If Board member’s company is selected as a subcontractor, it is preferable, to the fullest extent possible, that someone other than the Board member physically perform the required work on the school district’s premises.

# Advisory Opinion A08-23

## (4/25/2023) (cont'd)

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- If another employee(s) cannot perform required work, Board member must be zealous in remembering that he is not representing the Board, has no authority over District personnel, and is not entitled to receive any unwarranted privilege or advantage.
- If Board member encounters an issue while working on District grounds, Board member, like any business or guest who may be present on District property, may not personally act to resolve an issue or matter, and must follow the chain of command.
- Prior to arrival on District property, Board member should advise the Superintendent so that Superintendent can communicate to relevant staff members who may need to interact with Board member that Board member's presence is as the owner of the company and not as a Board member.

# Advisory Opinion A07-23 (4/25/2023)

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**Issue 1**– Can Board member whose sister-in-law (spouse's sister) works in the District participate in negotiations and matters involving the superintendent?

**Finding** – Sister-in-law is a “relative.”

- Board member is prohibited from being involved in discussions and votes regarding the superintendent, and also prohibited from being involved in negotiations.

# Advisory Opinion A07-23 (4/25/2023)

## (cont'd)

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**Issue 2-** Can Board member B, whose child resides at an out- of-state college during the school year and returns to the family home during college breaks, and who intends to work as a per diem substitute in the district, participate in negotiations and matters involving the superintendent? .

**Finding** – Board member B’s child is an immediate family member but may be hired as a per diem substitute teacher in the District because the Board excluded “per diem substitutes” from scope of its nepotism policy.

- If Board member B’s child is hired and becomes a member of the District’s local association, Board member B would be prohibited from participating in contract negotiations and any and all matters related to the Superintendent of schools, including the Superintendent’s evaluation.

## Advisory Opinion A07-23 (4/25/2023) (cont'd)

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**Issue** – Board member C's spouse works in the school district.

**Finding-** Board member C is conflicted with respect to all issues involving the Superintendent, including the Superintendent's evaluation.

- Board member C cannot have access to the contents/results of the finalized evaluation even after it has been completed by the non-conflicted Board members.
- Board member C has no greater rights than any other member of the public.

# Advisory Opinion A06-23 (4/25/2023)

**Issue**— Can Board member whose sister-in-law (brother's spouse) is secretary to the middle school principal participate in the hiring process for a new superintendent when the middle school principal is a candidate?

**Finding** – Board member's sister-in-law is not a relative or immediate family member but is an "other" under N.J.S.A. 18A:12-24(b). Board member may not use or attempt to use their official position to secure unwarranted privilege, advantage, or employment for the "sister-in-law."

■ Whether a school official's relatives, or the school official's spouse's relatives, marry another person does not expand the breadth of the Board member's "relatives".

■ Because Board member's sister-in-law currently works for, and reports directly to, the middle school principal, Board member's involvement in middle school principal's appointment to superintendent could be perceived as securing an unwarranted privilege, advantage or employment for an "other," and could create a justifiable impression among the public that their trust was being violated. Board member may not "participate in deliberations and actions relative to the hiring of the middle school principal as Superintendent."



# Is a Sister-in-Law a Relative or Not?

The key distinction is the Commission's holdings that “**it is the school official's marriage that determines whether an individual is regarded as a 'relative.'**”

In A06-23, the “sister-in-law” was a person that the Board member's brother married. Thus, this person was not considered a “relative” because the “sister-in-law” was not related to the board member through the Board member's marriage. In other words, the “sister-in-law” was associated with the Board member due to the Board member's brother's marriage to her, and not through his own marriage.

In contrast, the “sister-in-law” in A07-23 was considered a relative because she was related to the Board member through the Board member's own marriage, because she was the sister of the Board member's wife. **You marry the family.**

It is important to remember that “whether the school official's relatives, or the school official's spouse's relatives, marry another person, does not expand the breadth of [the Board member's] relatives.”

# The Chart(A06-23) (Negotiations/Superintendent)

# Schenck Price

SCHENCK PRICE SMITH & KING, LLP

PERSONNEL'S RELATIONSHIP	CONSIDERED AS A RELATIVE
School Official's Spouse	YES
School Official's Parents	YES
School Official's Children	YES
School Official's Brother / Sister	YES
School Official's Brother or Sister's Spouse	NO
School Official's Aunt / Uncle	YES
School Official's Aunt or Uncle's Spouse	NO
School Official's Nephew/Niece	YES
School Official's Nephew or Niece's Spouse	NO
School Official's Grandparents	YES
School Official's Grandchildren	YES
School Official's Grandchildren's Spouses	NO
School Official's Son-in-law or Daughter-in-law	YES
School Official's Step-Parent	YES
School Official's Step-Child	YES
School Official's Step-Child's Spouse	NO
School Official's Step-Sibling	YES
School Official's Step-Sibling's Spouse	NO
School Official's Half-Sibling	YES
School Official's Half-Sibling's Spouse	NO
School Official's Spouse's Parents	YES
School Official's Spouse's Children	YES
School Official's Spouse's Brother/Sister	YES
School Official's Spouse's Brother or Sister's Spouse	NO
School Official's Spouse's Aunt/Uncle	YES
School Official's Spouse's Aunt or Uncle's Spouse	NO
School Official's Spouse's Nephew/Niece	YES
School Official's Spouse's Nephew or Niece's Spouse	NO
School Official's Spouse's Grandparents	YES
School Official's Spouse's Grandchildren	YES
School Official's Spouse's Grandchildren's Spouses	NO
School Official's Son-In-Law/Daughter-In-Law	YES
School Official's Spouse's Step-Parent	YES
School Official's Spouse's Step-Child	YES
School Official's Spouse's Step-Child's Spouse	NO
School Official's Spouse's Step-Sibling	YES
School Official's Spouse's Step-Sibling's Spouse	NO
School Official's Spouse's Half-Sibling	YES
School Official's Spouse's Half-Sibling's Spouse	NO

# Advisory Opinion A03-23

## (1/31/2023)

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**Issue** – Can a newly elected Board member (a retired NYC DOE administrator and special education teacher) become a special education advocate for families in the school district?

**Finding** – Conflict of interest for Board member to serve as a SEPAG advocate in the same District in which they serve as a member of the Board. Public may view role as an advocate to be in substantial conflict with duties and responsibilities as a Board member to use or attempt to use official position to secure unwarranted privileges or advantages for others.

- Would participate in IEP meetings, representing families of students with disabilities who are seeking to initiate an IEP or to request related service, modification, or accommodation to an IEP on behalf of their child.
- Advocating for a District student and family could be in opposition, whether directly or indirectly, to District staff and administration, and in opposition to the Board itself.
- Might reasonably be expected to prejudice independence of judgment in the exercise of official duties as a Board member.

# Advisory Opinion A02-23

## (1/31/2023)

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**Issue** – Can a Board member with a spouse who is a member of the local governing body participate in matters related to a School Resource Officer?

**Finding** – Because the Board member's spouse is a councilman for the Borough, it would be a conflict of interest for the Board member to vote on any matter involving the entity or public body on which the spouse contemporaneously serves as a voting member.

- Akin to school official's vote on a matter involving their spouse's employer. Even if not actual but only a perceived personal or financial involvement (direct or indirect), the Board member's involvement could violate the public confidence.
- Whether the Board member's spouse (councilperson) should also recuse himself/herself from matters involving the Board is a matter outside the scope and jurisdiction of the SEC.

# Advisory Opinion A01-23

## (1/31/2023)

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**Issue** – Can a Board member who has worked for a food service vendor for several years serve as a “lunch lady” in the same district?

**Finding** –It would be a conflict of interest for Board member to continue as a “lunch lady” in the school district.

- Even if limited or passive interaction with District staff, the Board member is still ultimately subject to supervision from senior leadership, including the District Superintendent and building principal(s), and there could be instances, albeit infrequent, when the District Superintendent and/or building principal would need to issue directives to the board member.
- Board member should discuss with employer reassignment to another school district.
- Board member must recuse self from any and all discussions and votes concerning food service vendor employer.

# Advisory Opinion A12-22

## (11/22/2022)

**Issue 1** – Can a Board member vote to refuse to implement the NJSLS for Comprehensive Health and Physical Education or to change the application of the statutory language in *N.J.S.A.* 18A:35-4.7 from “opt-out” to “opt-in” of instruction in health, family education or sex education.

**Finding\*** – While not presently aware of any relevant decisions against individual school officials, SEC declared that the failure of a board of education to comply with the NJSLS for Comprehensive Health and Physical Education could lead to the issuance of a final decision that would support a violation of *N.J.S.A.* 18A:12-24.1(a).

- If a final decision from any court of law or administrative agency of this State were issued showing that an individual school official had acted contrary to the laws, rules, and regulations promulgated by the State Board of Education, they could then be found in violation of the Code of Ethics.
- If the BOE ultimately refused to implement the NJSLS or changed the language from “opt-out” to “opt-in,” the BOE, as a public body, would be violating various education laws and regulations, even if an individual school official could not be found in violation of the Code of Ethics.

\* SEC discussed this matter at five of its Advisory Opinion Committee meetings.

# Advisory Opinion A02-22

## (2/25/2022)

**Issue 1**— Can a Board member post non-confidential information related to the Board and school district on social media when the postings include a disclaimer that statements are from the individual and not the Board?

**Finding** - Because the Board member is providing information relating to the Board and/or the member's official duties and responsibilities, any attempt to disclaim the speech as personal or private would likely be futile. The community knows member's status as a Board member and would likely attribute any information as being from the member in their capacity as a Board member, and/or on behalf of the Board.

- Board members do not abdicate their fundamental rights as citizens after they become members of a board of education but, as public school officials subject to the Ethics Act, must exercise certain precautions to avoid violating, or being accused of violating, the Act.
- When making comments or statements at a time and/or place other than at a public board meeting, Board member must ensure that the views expressed and/or information shared do not appear to be written on behalf of, or with the authorization of the Board.
- SEC has no authority to determine whether anticipated action taken “as a private citizen,” violates the School Ethics Act.

# CASELAW UPDATE

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## James Smith v. Emmanuel Capers

SEC - 3/17/2020, Comm'r 10/20/2020 (SEC Appeal),  
affirmed Appellate Division 9/2/2022

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**Complaint** - Board member attended an all-expense paid conference offered by Woz U, an entity that offers coding programs to school districts and brought Woz U to the attention of the school district as a possible vendor.

**Finding**- Although the hearing judge found no violations, SEC determined that the Board member violated N.J.S.A. 18A:12-24.1(c), N.J.S.A. 18A:12-24.1(e), and N.J.S.A. 18A:12-24.1(f) of the Code of Ethics when he attended an all expenses-paid conference offered by a potential vendor of the school district. Recommended penalty of removal.

- Commissioner found that the SEC's decision was supported by sufficient credible evidence; appellant failed to establish that the decision is arbitrary, capricious or contrary to law. N.J.A.C. 6A:4-1.1(a).
- Commissioner found that removal from the board was an unduly harsh penalty for the proven violations; a six-month suspension was the appropriate penalty in this case.

## Schwartz v. Abedrabbo, Awwad and Clifton BOE et. als

### Appellate Division 10/6/2023

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**Complaint-** Board members violated the Act when they made anti-Israel and allegedly antisemitic remarks during a virtual public board meeting. Majority of board members' remarks made during "Commissioner's Comments" section of the meeting were critical of Israel's treatment of the Palestinians. Board members stated the remarks were their own and not made on behalf of the BOE. Board's counsel asked each at the end of his statement to reiterate that their comments were their "own personal comments, not comments made on behalf of the Board", which they did.

**Finding-** SEC acknowledged that the comments were "highly controversial" and "likely perceived as offensive, and hurtful to members of the District's Jewish Community," but could not find they violated the Act "because the comments did not result in any action that could compromise the Board." District policy allowed board members to express their personal views if they made it expressly clear that those views did not represent official board policy.

- Appellate Division affirmed SEC decision.

Argenziano v. Fable  
Commissioner 8/29/2023

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**Complaint** that Board member conducted a personal investigation into the cost of computer equipment by contacting vendors and other school districts without authorization from the Board.

**Finding** - BOE member violated the Act when she took official action to effectuate policies and plans without consulting those affected by the policies and plans when she contacted vendors and other school districts, both indirectly and through her private employee who did not have a connection to the Board; member identified herself as a member of the Board and indicated that the Board was contemplating switching from MacBooks to Chromebooks, although the Board had not considered a change.

SEC agreed with the ALJ. Censure penalty approved by Commissioner.

## Ellis-Foster v. Giordano

SEC C88-21 6/27/23, Commissioner 8/7/2023

**Complaint** that Board member sent an email from his board email address to members of the State Legislature expressing his personal disagreement with the mask mandates, stating “[i]f parents and school districts can prove, which we can, that masks are dangerous to the health of children then we should be able to fight this, and I expect lawsuits to come because of this reason.”

**Finding-** The email had the potential to compromise the Board as the legislators and public may view his statements as the Board supporting a call to action against the mask mandates.

Ethics Act requires that Board members “recognize that authority rests with the board of education,” and therefore, must “make no personal promises nor take any private action that may compromise the board.”

ALJ, SEC and Commissioner agreed that reprimand was the appropriate consequence.

**Ricupero and Termini v. Stifelman**  
**Commissioner 3/9/2023**

**Complaint** that Board member violated multiple sections of the Act by acting as the chief proponent of a plan to eliminate the Columbus Day holiday from the district calendar.

**Finding-** ALJ found and SEC agreed that Board member did not violate the Act by being the “driving force” behind the change to the school district calendar, the walk-on motion for the resolution to change the school district’s calendar and the failure to include the resolution on the BOE agenda which deprived the community of the opportunity to have advance notice of, to debate, and to discuss the issue.

Board members are required to refer all complaints to the District’s administration and are prohibited from resolving, or attempting to resolve, a complaint at a time other than at a public board meeting, and prior to the failure of an administrative solution. By not referring the concerns to the administration, the Board member undermined the administration’s authority and ability to potentially resolve or address the concerns and this, in turn, imposed an unnecessary strain and hardship on the relationship between the administration and the Board.

Given the public outcry over the Board member’s motion and the Board’s action, it was incumbent upon the Board - not the Board member- to publicly discuss and explain the rationale for the Board’s decision, and not for Board member to explain it to Complainants. Member should have declined the meeting.

SEC and Commissioner agreed that reprimand was the appropriate consequence.

# Thank you

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