

# Board Member Ethics Presentation

James Rolle, Jr., Esq.

General Counsel

# The New Jersey School Ethics Act

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

The Legislature find and declares:

- a. In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.
- b. To ensure and preserve public confidence, school board members and local school administrators should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards among them.

*N.J.S.A. 18A:12-22*

# Definitions

N.J.S.A. 18A:12-23

Who the Act applies to:

- "**Administrator**" means any officer, other than a board member, or employee of a local school district who (i) holds a position which requires a certificate that authorizes the holder to serve as school administrator, principal, or school business administrator; or (ii) 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 (iii) 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;
- "**Board member**" means any person holding membership, whether by election or appointment, on any board of education other than the State Board of Education;
- "**School official**" means a **board member**, 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**

# Definitions

*N.J.S.A. 18A:12-23*

Familial relationships subject to the Act:

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

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

**"Spouse"** means the person to whom a school official is legally married under New Jersey law.

# Conflict of Interest

*N.J.S.A. 18A:12-24(a)-(k)*

The following conflict of interest provisions apply to "school officials" (which includes board members and administrators).

- a. No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;
- b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

# Conflict of Interest

*N.J.S.A. 18A:12-24(a)-(k)*

- c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;
  
- d. No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

# Conflict of Interest

N.J.S.A. 18A:12-24(a)-(k)

- e. No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;
- f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

# Conflict of Interest

*N.J.S.A. 18A:12-24(a)-(k)*

- g. No school official or business organization in which he has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district. This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities;
- h. No school official shall be deemed in conflict with these provisions if, by reason of his participation in any matter required to be voted upon, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of that business, profession, occupation or group;



# Conflict of Interest

*N.J.S.A. 18A:12-24(a)-(k)*

- i. No elected member shall be prohibited from making an inquiry for information on behalf of a constituent, if no fee, reward or other thing of value is promised to, given to or accepted by the member or a member of his immediate family, whether directly or indirectly, in return therefor;
  
- j. Nothing shall prohibit any school official, or members of his immediate family, from representing himself, or themselves, in negotiations or proceedings concerning his, or their, own interests;

# Conflict of Interest

## In-District Relationships

For school officials with a relative or others working in District:

- Prohibited from participating in all aspects of the search, selection, and vote for new superintendent. This includes voting to advertise for the superintendent position, selection of a search firm, search criteria, job description, evaluation and contract discussion.
- Prohibition extends to all employment matters (including evaluation) related to superintendent and all supervisors in the chain of command between the employee and superintendent.

# Conflict of Interest

## In-District Relationships

For school officials with a relative or others working in District:

- Prohibited from participating on negotiations team and cannot vote on the contract. This applies when the employee is in the bargaining unit under negotiation, supervised by the bargaining unit under negotiation, or not in a bargaining unit but the terms and conditions are linked to a bargaining unit.

# Conflict of Interest

## Advisory Opinion A24-17

RELATIONSHIP TO BOARD MEMBER	CURRENT MEMBER OF THE LOCAL UNION	CURRENT MEMBER OF ANY STATEWIDE PUBLIC TEACHERS' UNION	PARTICIPATE IN NEGOTIATIONS Yes or No	VOTE TO RATIFY THE CONTRACT Yes or No	PARTICIPATE IN ISSUES RELATED TO THE SUPER. (Search, Hire, Contract, and Evaluation) Yes or No
SELF		X	No	Yes*	Yes*
SPOUSE	X		No	No	No
SPOUSE		X	No	Yes*	Yes*
DEPENDENT CHILD	X		No	No	No
DEPENDENT CHILD		X	No	Yes*	Yes*
CHILD (NOT DEPENDENT)	X		No	No	No
CHILD (NOT DEPENDENT)		X	Yes*	Yes*	Yes*
RELATIVE	X		No	No	No
RELATIVE		X	Yes*	Yes*	Yes*
* Absent another conflict					

# Conflict of Interest

## Advisory Opinion A06-18

### Board Member A:

- A newly elected board member in the November election
- An 18-year-old senior at the District's high school of which he serves as a board member
- Has two siblings in District
- Mother is a school nurse in District, and a member of the local bargaining unit
- Father is the varsity golf coach in District, not a member of the local bargaining unit but coaching stipend is governed by union agreement

# Conflict of Interest

## Advisory Opinion A06-18 *cont.*

School Ethics Commission determined:

In short, there is no basis to presume that Board Member A's status as a Board member is somehow diminished, or limited, because he is a student. Therefore, and absent any other conflicts, the Commission is confirming that Board Member A may fully participate and vote on the District budget for the 2018-2019 fiscal year and may discuss and vote on policy formation, payment of bills, hiring of professionals to serve the District, and approval of various contracts.

Board Member A may participate in employment discussions and/or decisions regarding his *current* high school teachers, any teacher he had throughout his high school career, and/or all high school teaching staff, including, but not limited to: discussion and voting on their hiring, renewal/non-renewal of contracts, tenure charges, withholding of increments, transfers, approval of leaves of absence, tuition reimbursements, etc.; participate in the same matters mentioned with respect to the teachers his siblings currently have and/or all teachers who are employed in the schools in the District where his siblings attend; have access to student records; participate in the discussions and votes involving Harassment, Intimidation and Bullying (HIB) matters; and participate in discussions and votes regarding special education settlement agreements.

# Conflict of Interest

Advisory Opinion A06-18 *cont.*

***BUT...***

Board Member A *is* prohibited from participating in the evaluations, personnel actions and/or decisions regarding individuals who are in direct reporting relationship to Board Member A's parents, up to and including the Superintendent. Furthermore, he is limited in matters involving discussing, voting and serving on the negotiations committee with the LEA or any other bargaining unit within the District in which there is evidence of linkage to the LEA collective negotiations agreement and participating in executive session regarding the collective negotiations agreement with the LEA or any other bargaining unit within the District in which there is evidence of linkage to the LEA collective negotiations agreement based on his mother's employment as a nurse and his father's position as a golf coach in the District.

# Code of Ethics for School Board Members

*N.J.S.A. 18A:12-24.1(a)-(j)*

A school board member shall abide by the following Code of Ethics for School Board Members:

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.
- b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.
- c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.
- d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.
- e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.



# Code of Ethics for School Board Members

*N.J.S.A. 18A:12-24.1 cont.*

- f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.
- g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.
- h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.
- i. I will support and protect school personnel in proper performance of their duties.
- j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

# Code of Ethics for School Board Members

## Advisory Opinion A15-18

Board Member A:

- Very active in community prior to being elected.
- Holds several positions in PTA, including President
- An active/vocal supporter of local bargaining unit during last two contentious rounds of negotiations before election

Can the Board member...

Maintain her position(s) on the PTA?

Participate in negotiations with local bargaining unit given her previous support?

# Code of Ethics for School Board Members

## Advisory Opinion A15-18 *cont.*

The School Ethics Commission determined:

- Serving on the Board does not preclude a Board member from also serving as a parent to his/her child. Therefore, and *generally* speaking, Board members are able to volunteer for activities that support their children within the District without violating the Act.
- Ethics decisions on volunteering within the District generally turned on the *degree of involvement* a Board member had with staff and students, as well as the degree to which the Board member had *authority* to give and receive directions and orders to staff during the involved volunteer activity. In previously issued public advisory opinions, the Commission advised that where the Board member was in a supervisory position and generally oversaw staff or students, such interaction would be inconsistent with the Act.
- Board member's PTA roles don't issue widespread direction to/from staff, students, or other Board members. Therefore, the Commission finds that serving in the roles are not problematic.
- Board member was not precluded from participating in negotiations simply because of support for unions, or their support of her candidacy. There is no actual conflict for the member.

# Practical Tips

- Make decisions for the educational welfare of all children. Don't base your decisions on what is best for your own child only or based on the agenda of others.
- Confine your actions to policymaking, planning and appraisal.
- Stay away from the administration, organization or implementation of the policies.
- Your job as a board member is to see that schools are well run, not to run the schools.
- Only the full board has the right to make decisions. One board member alone cannot make decisions or take actions.
- The board should keep the community informed on the progress and needs of the district, BUT confidential matters need to stay confidential and cannot be discussed with anyone but the board.

Questions????