



Sciarrillo ADR

Alternative Dispute Resolution

**BERGEN COUNTY ASSOCIATION OF
SCHOOL BUSINESS OFFICIALS**

**Ethics and the Board Member
Role Presentation**

April 20, 2023

ARBITRATOR

MEDIATOR

FACT FINDER

ANTHONY P. SCIARRILLO, ESQ.

**SCIARRILLO ADR
16 Sutton Place
Cranford, NJ 07016**

aps@sciarrilloadr.com
www.sciarrilloadr.com

TABLE OF CONTENTS

| | | |
|-------------|--|-----------|
| I. | The Main Responsibilities of a Board Member | 3 |
| II. | The School Ethics Act..... | 5 |
| III. | Board Governance..... | 7 |
| IV. | Use of Social Media by Board Members..... | 11 |
| V. | Board Member Involvement in Personnel Decisions | 14 |
| VI. | Do's and Don'ts of Board Member Behavior | 18 |
| | Ethics | 21 |

I. Main Responsibilities of a Board Member

- The Board of Education is generally responsible for the following:
 1. adopting policies under which the school district operates;
 2. overseeing the budget;
 3. approving the district's curriculum;
 4. hiring and evaluating the superintendent;
 5. representing the public interest during contract negotiations; and
 6. serving as a communications link between the community and the school system.

- Board members have no authority except that which results from participation in decisions of the Board during an official meeting.

- Actions, promises, or commitments made by individual Board members are without legal basis and have no binding commitment upon the District.

- Board members are elected to represent the entire district in all matters pertaining to education, not any one segment.

Time Associated with Service

Surveys generally indicate that approximately 63% of Board members spend 11 to 50 hours a month on Board duties. Your role as a Board member is an important one. You are overseeing one of the largest operations in your community. By accepting this responsibility, you agree to attend regular and special Board meetings, to review the Board packet in advance of meetings, and to keep yourself informed about the issues on which you will make decisions.

Relationship Between the Board and the Superintendent

The function of the School Board is not to run the schools, but to see that they are run effectively. The Board establishes school district policy and goals and communicates these goals to the superintendent. The superintendent is accountable to the Board, and all other staff members are accountable to the superintendent. Teamwork between the Board and the superintendent is essential. Board members should look to the superintendent for leadership and guidance on education procedures.

Relationship Between Board Members and Teachers

The Board is responsible for adopting the policies, rules, and regulations that define the responsibilities of teachers (as well as other school employees), and for approving all employment contracts. Observation and evaluation of teachers is the job of the superintendent and those supervisors to whom he or she delegates the responsibility. The Board's role is to set standards, or expectations, in the form of policies that detail the criteria the superintendent should use in recommending and evaluating staff members.

Board members should treat teachers and other staff members with respect, and must always observe the chain of command, recognizing the appropriate channel for board/staff communications is through the superintendent. Board members should also keep in mind that the Board can appoint, transfer or remove employees only upon the recommendation of the superintendent.

Decisions on Spending District Funds

The school budget is the district's financial plan, and reflects all program needs. The Board's budgeting responsibilities include discussing these needs and setting the parameters for budget development. The superintendent then works with other staff members to draft a budget that meets board goals and student needs, complies with state regulations, and stays within the district's financial resources. The board adopts the budget after a public hearing. After the budget is finalized, the superintendent is responsible for administering it. The Board provides financial oversight by signing off on the bill list to approve expenditures throughout the year.

Board Member's Role in Deciding What is Taught and Which Textbooks Are Used

The Board is required by State law to approve courses of study, including all textbooks and materials. The Board should ask its administrators to demonstrate how these curriculum materials will help students achieve the state's core curriculum content standards. The Board establishes what will be taught, when and where it will be taught, to whom it will be taught, and with what materials. Administrators and teachers manage and carry out the instructional tasks. Since the decision making authority is vested in the board and not in the individual members, a board member will only be successful in achieving his/her goals only he/she you can convince a majority of the members of the board that his/her proposals have merit. As a board member, you have an obligation to express your views and then to accept and support the board's final decisions.

Serving on a Board - Responsibilities

As a member of the Board you will be expected to fulfill certain responsibilities, including:

1. Establishing goals for the public schools based on student educational needs, parent and community aspirations, state and federal standards and district financial resources.
2. Developing a philosophy of education that will become the basis for sound decisions that affect the governance of your community's schools.
3. Developing policies to guide the administration in managing the schools; developing bylaws to direct the board in carrying out its governance responsibilities.
4. Developing a community understanding of education issues and school polices through the maintenance of effective communications systems.
5. Providing adequate financing for the district's present and future needs.
6. Ensuring quality education by producing adequate facilities and equipment.
7. Establishing conditions that enable the administration to recruit and effectively evaluate professional staff.
8. Engaging in board self evaluation and in-service training programs for the purpose of providing well informed leadership and sound decision making.
9. Establishing a process for the board to negotiate in good faith with its employees, while representing community education goals and financial interests.
10. Abide by the oath of office for school board members.

Always Remember

1. You should understand that your responsibility is not to administer the schools, but to work with the board to see that the schools are well run.
2. Understand that education today is extremely complex.
3. Listen to opposing views and be able to defend the Board's philosophy and goals.
4. Be willing to invest the many hours necessary to meet your responsibilities.
5. Serve out of a sincere desire to benefit the community rather than for personal glory or to carry out personal objectives.
6. Bear in mind that, as a state official, you have a responsibility to all the children in the state, not only those in the local district.

II. The School Ethics Act

The School Ethics Act sets for the ethical standards that all school officials must follow. The Act is designed to ensure that school boards and administrators maintain public confidence and public trust. The School Ethics Commission investigates and resolves complaints. The Act applies to all Board members and school administrators. Pursuant to the Act "school official" means a Board member or administrator.

The Act (N.J.S.A. 18A:12-24) prohibits a Board member or Administrator from the following:

1. 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;
2. 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;
3. 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;
4. 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;
5. 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;
6. 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;
7. 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;

8. 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;
9. 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;
10. 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; and

Board Member Code of Ethics, N.J.S.A. 18A:24-12.1

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

- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.
- I will support and protect school personnel in proper performance of their duties.
- 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.

III. Board Governance

A. Quorum

In order for a Board of Education to conduct business there must be a quorum of its members present. In the absence of specific statutory direction otherwise, a majority of a public body constitutes a quorum. A member who is disqualified from voting may not be counted in determining the presence of a legal quorum, regardless of the reason for the disqualification.

Special Meetings

The Board secretary has the duty to call a special meeting whenever same is requested by the Board President or he/she is presented with a petition signed by a majority of the Board.

B. Removal

Removal of Board President or Vice President

N.J.S.A. 18A:15-2 provides as follows:

A president or vice president of a board of education who shall refuse to perform a duty imposed upon him by this law may be removed by a majority vote of all of the members of the board, and in case the office of president or vice president shall become vacant the board shall, within 30 days thereafter fill the vacancy for the unexpired term. If the board shall fail to fill the vacancy within such time, the county superintendent shall fill the vacancy for the unexpired term.

Removal and Appointment of Committee Members

- The removal and appointment of Board committee members is not specifically addressed by 18A.
- Boards should follow their own bylaws when appointment and removing committee members.
- The bylaws may require the Board president to make such appointments

Robert's Rules Note

Unless the Board bylaws require a committee member to serve until a successor is chose OR for a fixed period of time, then a committee member may be removed by the Board president if the president appointed members to the committee. If the committee was formed by a vote of the body, the body may remove a committee member through a motion to rescind or amend.

Note: N.J.S.A. 18A:15-2 states that providing due process (notice and an informal hearing) may insulate the decision to remove a board member from a committee from challenge.

Removal for Failure to Attend Meetings

N.J.S.A. 18A:12-3 provides that any member who fails to attend three consecutive meetings of the board, without good cause, may be removed by it.

- Berg v. Blackhorse Pike Regional School District, 1981 SLD (March 3), this includes all board meetings (special, regular, and emergency)
- Shamong Board of Education v. Chwastek, 1985 SLD (July 8), Board member must be given an opportunity to present evidence to the Board to show that he had good cause for missing the meetings. (Board determines good cause. Decision may be appealed to Commissioner of Education and shall be overturned if arbitrary and unreasonable ("capricious")).

C. Board Resignations

A Board member is able to resign from the Board by clearly communicating the resignation message to the Board and the Board receiving it. A formal Board vote is not required. Silberstein v. Lakewood BOE, 1990 SLD 491.

- A Board member may rescind his resignation but only before the resignation becomes effective. Once clearly communicated to the Board and received by it, a vacancy is created.

D. Voting

General Rule: All actions require a majority vote of the quorum unless a specific statute requires a greater number of votes.

For example:

Majority of the Quorum: Vote to ratify Collective Bargaining Agreement; Adopt a policy; Approve bills

Majority of the Full BOE: Vote to appoint teachers and administrators; Adopt the budget; and Withhold increments of teaching staff members

Note: Board may not require a supermajority vote unless a statute specifically requires same. (See, Matawan Teachers Assn v. Board of Education, 223 N.J. Super 504 (App Div. 1988) (requiring a supermajority when same is not required by statute twarts the will of a majority).

- The vote of each Board member must be shown
- Straw polls in closed session are permissible, IMO Cole, 194 N.J. Super 237 (App.Div. 1984) (No violation for conducting straw poll in closed session to obtain consensus).
- Secret ballots violate the Sunshine Law.

E. Appointments

- A Board may not vote for a position that will not be vacant during the Board's lifetime. Barckett v. Garfield, 1990 SLD (August 30).
- An appointment in anticipation of a vacancy is proper only where the Board making the appointment is still in office when the vacancy occurs; otherwise the present Board has no right to interfere with the rights of a successor Board to make that decision.

F. Does the Board have the authority to decide whether to renew employees?

- N.J.S.A. 18A:27-4.1; Velasquez v. Brielle Bd. of Ed., State Board 1997 SLD (August 8): Board of Education can only renew an employment contract if the CSA so recommends, and then by recorded roll call majority vote of the Board.
- If the CSA does not recommend renewal and the employee is notified by the CSA of nonrenewal, the Board is not foreclosed from renewing the contract of that employee. The Board may renew the employment if the employee requests a written statement of reasons and an informal appearance before the Board, during which the employee convinces the Board to offer reemployment.
- Even if the CSA recommends reemployment to begin with, the Board need not renew, as long as its decision is not arbitrary and unreasonable ("capricious"). See, McEwan v. Bloomingdale Board of Education, 2002 SLD (March 13) (Board did not act arbitrarily in denying renewal of contract notwithstanding a recommendation from the superintendent).

- The provisions requiring the superintendent’s recommendation apply to the renewal of employees, except for:
 1. Treasurer of School Money
 2. Election Officer
 3. Board Auditor
 4. Board Attorney
 5. Board Secretary (who does not perform SBA functions)

- Horner v. Kingsway Regional, 1990 SLD 752
 - Applicants: Board members may access official files of all applicants for employment.
 - Employees: Board members may access personnel files of those employees recommended to the Board for specific employment action “to the extent that such files are relevant to the specific action to be taken or deemed pertinent by the CSA in response to the Board’s directive to provide information essential for performance of a specific, officially assigned board duty.” Ciambrone v. Bloomington Board of Education, 2000 SLD (May 7).

G. Role of the Board President and Board Members

a. The General Responsibilities of all Board Members Include:

1. adopting policies under which the school district operates;
2. overseeing the budget;
3. approving the district’s curriculum;
4. hiring and evaluating the superintendent;
5. representing the public interest during contract negotiations; and
6. serving as a communications link between the community and the school system.
 - i. Board members have no authority except that which results from participation in decisions of the Board during an official meeting.
 - ii. Actions, promises, or commitments made by individual Board members are without legal basis and have no binding commitment upon the District.
 - iii. Board members are elected to represent the entire district in all matters pertaining to education, not any one segment.

b. General Role of the Board President includes:

1. creating Board of Education committees
2. acting as the spokesperson for the Board of Education
3. Overseeing and running the Board of Education
4. Informally making decisions for the Board subject to Board approval, review and ratification.

c. Role of the Board President During Board Meetings:

1. to run/facilitate the Board meeting
2. to keep Board member discussions/comments on track and on point with the meeting agenda. Discussions should not occur between board members or between board members and the public during Board meetings. Rather, the President should facilitate all discussions and questions, everything runs through the President.
3. to listen to opinions and concerns of the public and determine if a comment is warranted by the President or a specific member of the Board at that time or if the Board should reserve on comments regarding same.

- d. Role of Board Members During a Board Meeting:
1. to voice opinions and concerns on agenda items
 2. to be informed and knowledgeable of all information provided to them prior to the Board meeting as well as District protocol for meetings
 3. to take direction from the Board president
 4. to make an informed vote on all matters addressed during the meeting
 5. to listen to questions and/or concerns of the public and await Board President direction on same.

e. Closed / Executive Session:

1. In general, all board meetings must be open to the public at all times.
2. However, a board may enter into executive or closed session and exclude the public from a portion of the meeting during which it discusses the following:
 - i. Any matter which is rendered confidential by an express provision of federal law, state law, or rule of court;
 - ii. Any matter in which the release of information would impair a right to receive federal funds;
 - iii. Any matter which constitutes an unwarranted invasion of individual privacy;
 - iv. Any collective negotiations agreement, or the terms and conditions proposed to be included in any collective negotiations agreement;
 - v. Any matter involving the purchase or lease of real property with public funds where it could adversely affect the public interest if disclosed;
 - vi. Any matter involving the investment of public funds where it could adversely affect the public interest if disclosed;
 - vii. Any tactics and techniques used to protect the safety of property and the public if the disclosure could impair such protection;
 - viii. Any investigations of violations or possible violations of the law;
 - ix. Any pending or anticipated litigation or contract negotiation in which the board is, or may become, a party;
 - x. Any matters protected by the attorney-client privilege;
 - xi. Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion or disciplining of any prospective or current employee or board member, unless the individual employees or appointees, whose rights could be adversely affected request, in writing, that such matter(s) be discussed at a public meeting.

H. *Setting the Board of Education Meeting Agenda*

- a. District Specific: in some districts, typically smaller districts, the Superintendent sets the Agenda without input from other sources. In other districts the Business Administrator would assume this role, again taking little or no direction from other sources. In larger districts it is more common to see the interactive roles of the Superintendent, Business Administrator, Board President, and in some cases, Board Vice President as being involved in setting the agenda.

This is not a matter of the “right way” v. the “wrong way” to do things, but rather the practice and culture of the district.

- b. The agenda should include the “guts” of the meeting in terms of what will be discussed. Also, prior to each meeting the party or parties establishing the agenda for that week’s meeting should consider potential “hot button issues” that may be brought up by members of the community or other sources and make a determination as to how same should be handled. For example, a district may anticipate certain issues and place them on the agenda from the beginning. Others may simply address them as they come or hear them at a meeting and reserve discussion until the next meeting.

IV. Use of Social Media by Board Members

A. “Privacy” is a fallacy.

Social media, whether it be Instagram, Twitter, Facebook, YouTube, Snapchat, Kik, Whatsapp, or any other social media platform out there, is never really 100% private.

Not only is social media never really 100% private, but once you put something into social media, that piece of information is out there FOREVER (leaves a permanent “digital footprint”.)

1. Inappropriate comment
2. Political comments
3. Inappropriate picture
4. Picture that appears appropriate, but contains something in the background missed at first blush

Many people probably think that they are safe if:

1. they have all their Facebook privacy settings set really high; or
2. they keep very close track of who their followers are on Instagram or Twitter; or
3. They’re confident that they know who they are sending the post or information to.

No matter what measures are presently being taken, that information is out there and may not be as private as you think it is.

B. Challenges of the “anonymous” author on social media

Individuals often post on websites (blogs, comment sections, etc.) under as an “anonymous” user, believing it will protect them from negative consequences resulting from their post or comment.

However, anonymous posts may not always stay anonymous.

1. **Immunomedics, Inc. v. Jean Doe, et al (App. Div, 2001)**. held that an anonymous identity should be known when there was proof that the postings were generated by an employee.
2. Employee posted confidential and proprietary information to a message board as an anonymous user. Employee violated an agreement with his employer to maintain confidentiality. "Individuals choosing to harm another or violate an agreement through speech on the Internet cannot hope to shield their identity and avoid punishment through invocation of the First Amendment."
3. Posting information about students, school operations, etc. could warrant the exposure of an employee operating under an anonymous identity" as such could bring harm to the student(s), District, etc.

C. Types of social media:

There are 2 types of Social Media.

1. **Professional-** work-related social media activity (District Facebook page, teacher Twitter accounts documents the activities of the class). Employees should not use personal e-mail addresses in connection with professional social media pages.
2. **Personal-** social media unrelated to employment. Should not utilize school e-mail or District property to access

Guidelines for **Professional** Social Media Accounts:

1. Should be designed to address reasonable instructional, educational, and/or extra-curricular program matters;
2. Department supervisors and/or administrators should be given administrative access to professional social media accounts established by employees;
3. Employees should obtain permission from his/her supervisor prior to setting up a professional social media page;
4. Professional social media sites should include language that clearly identify the site as professional social media sites associated with the District;
5. Employees should not permit students to operate the social media sites without prior express permission from the administration;
6. Employees operating professional social media sites do not have an expectation of privacy
7. Should not contain any personal information of the teacher/administrator

Guidelines for **Personal** Social Media Accounts

1. Employees should not "friend," "follow," or "connect" or in any way communicate with students currently enrolled in the District on any personal social media platforms (exceptions: when student is a relative, or in emergency situations when social media contact is the most efficient mode of communication.);

2. Employees are encouraged to use the privacy settings available on all social media sites;
3. Keep profile pictures “clean”, no alcohol, drug use, nudity, etc. Profile pictures are often visible to all platform users, not just “friends” or “followers”;
4. Refrain from associating the District with your personal profile (example: list employment as “High school teacher” rather than “Teacher at RBR High School”);
5. Do not “geo-tag” pictures or status updates to District property (Instagram, Facebook, etc.). This can lead students and parents to your private social media accounts;
6. Do not “tag” any other District employees on your personal social media. If colleagues wish to share something you have posted on their personal social media pages, allow them to do so themselves.
7. Do not mention the District or your school in social media posts. Even with privacy settings activated, these posts can appear on search engines;
8. Do not post any photographs of students on private social media
9. Do not post to social media during work hours

D. Examples of social media activity affecting employment:

1. Union County: Teacher who posted negative comments about homosexuality on her personal Facebook page has teaching license suspended for three years (2018)
2. Gloucester County- Middle School teacher who posted comments to Facebook under an anonymous name regarding a recent rumor of gun violence at his school was charged by police for creating a “false alarm” (2018)
3. Middlesex County- Tenured teacher resigned following tenure charges based on sexual comments about students made on personal Facebook page. Teacher was unaware that students could see his postings. (2016)
4. Passaic County: Teacher fired for calling her students “future criminals” on her personal Facebook page. (2011)

V. Board Member Involvement in Personnel Decisions

I. The School Ethics Act

1. This Act is set forth at N.J.S.A. 18A:12-21 et seq. Pursuant to the Act, school officials must avoid conduct which is in violation of the public trust or which creates a justifiable impression that the public trust is being violated. N.J.S.A. 18A:12-22(a).
 1. “school officials” includes members of boards of education
2. Contains “Code of Ethics” for Board members, addressing proper conduct for board members: *(most relevant portions are italicized and underlined)*
 - 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.
 - 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.

II. **Board Member Involvement in Personnel Decisions**

1. Board member involvement in personnel decisions most often runs afoul of the Board Member Code of Ethics, parts c and d:

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.

- i. Board involvement in personnel decisions (hiring or firing) is often considered outside the confines of the permitted “board action”
- ii. Personnel decisions are often related to the administration of the schools, which is outside the responsibility of a board member

2. **Interviews for Hiring**

- i. Board members should not interview candidates for positions in the District below that of Superintendent.

1. School Ethics Commission Decisions

a. Advisory Opinion A13-15

- i. Selecting candidates for district positions and making recommendations for hire is the Superintendent’s role.

- ii. Until recommendations are made, board members have no role in selecting candidates for any positions other than that of Superintendent
- iii. Interviewing is an administrative function outside the authority of the board and its members
 - 1. It follows that the Board is without the authority to override a superintendent's decision not to recommend a candidate for hire
- iv. Boards of education and individual Board members must always understand that it is the Superintendent's authority to recommend hires to the board.

ii. Exception to rule that board members cannot interview candidates

1. Personnel Committees

a. Advisory Opinion A04-12

i. Personnel Committees- Committees organized for the purpose of interviewing potential employees

ii. Requirements for personnel committee

1. No more than 2 board members on the committee

2. Committee must be organized and run by a member of the administrative staff

3. Board members are strictly limited to offering observations and assessments, with full understanding that the final recommendations for hire are wholly within purview of Superintendent

b. No committee can usurp or supersede the authority of the superintendent to recommend hires

i. Full deference to superintendent decision

2. Once Superintendent recommends candidate(s) for hire, board members may interview said candidate(s)

3. Exit Interviews

- i. Board members may not participate in any exit interviews
 - Advisory Opinion A15-10
 - Board member involvement of any kind in an exit interview would violate the Code of Ethics
 - Participating or merely observing in an exit interview directly involves member in activities or functions that are the responsibility of school personnel and day-to-day administration of the school
 - Violation of Code of Ethics- board members must not engage in administration of schools

Overall message: Board members should not be involved in personnel decisions. Such involvement violates the Code of Ethics as iterated by the School Ethics Act and intrudes on the authority of the administration. Only after a superintendent has made a recommendation for hire should board members become involved in the process. Additionally, board members should have no involvement in any form of exit.

VI. DO'S AND DON'TS OF BOARD MEMBER BEHAVIOR

(An unexhaustive list of examples)

DO's:

1. Recuse yourself from matters which may cause a conflict due to a family member's involvement.
2. Invoke the Doctrine of Necessity in those circumstances where a majority of Board members must abstain from voting.
3. Publicly announce when the Doctrine of Necessity has been invoked and include in the minutes of the meeting where the vote is taken and the doctrine invoked, a statement noting the nature of the conflicts of interest.
4. Wait to be a former board member before assisting a charter school in providing educational expertise.
5. Avoid participating in NJEA grievance proceedings where the outcome of the grievance could increase your or an immediate family member's salary and benefits.
6. Board members may simultaneously serve on the Parent Teachers' Association in the same district.
7. If also a member of the PTA, separate your membership on the board from your membership in the PTA. You can participate in both but cannot appear before the board representing a PTA position.
8. Abstain from any discussion or vote on any matter that will have an impact on the PTA.
9. Separate board member responsibilities from parent responsibilities. If you have a child in the school district, you are required to wear two distinct hats: one as board member, one as parent.
10. Follow the same "chain of command" as all other parents are required to do when it comes to problems associated with your child.
11. Follow the same procedure as a "regular parent" when addressing the board of education regarding problems associated with your child.
12. Set up a private conference between the superintendent and you as a "concerned parent" when seeking relief from the superintendent regarding problems associated with your child.

13. Leave the administration of the school district to the district employees.
14. Err on the side of caution and abstain or obtain an Advisory Opinion when in doubt as to whether involvement in a matter would cause an ethical violation.

DO' NTs

1. Employ as a district employee someone who appoints the members of the school board, as the board members' objectivity of judgment might be prejudiced.
2. Recommend a family member for employment in the district, as it could be perceived as using your official position to secure unwarranted employment for an immediate family member in violation of N.J.S.A. 18A:12-24(b).
3. Advertise or solicit clients in the schools of your district, knowingly accept as clients prospective employees of the district, or knowingly vote on issues involving particular employees of the district who are clients.
4. Serve in a position which may require you to evaluate the performance of an immediate family member.
5. Serve as a trustee of a charter school in the district in which you are a Board member because the public may reasonably expect that the board member's opinion may be influenced by her desire for success of the charter school.
6. Vote on the appointment of a candidate for services to the district where the candidate for appointment has been engaged by you personally.
7. Participate in collective bargaining negotiations or vote on a collective bargaining agreement when a member of the board member's immediate family (spouse or dependent child living with him) is an employee covered by that agreement.
8. Participate on the negotiations team if the board member or his immediate family is a member of the same statewide general union with which the team is negotiating.

prohibition does not extend to board or immediate family members who are retired members of the union in question
prohibition does not extend to union membership outside of New Jersey or membership in unlike unions

9. Vote on a collective bargaining agreement if the board member or immediate family member is a member of the same statewide union which has negotiated a contract with the board.

10. Engage in e-mail communications with other Board members, as this might create a virtual meeting or discussion without the proper notice and access required under law.
email communications between board members could be construed as violating the Sunshine Law
email correspondence is considered a public record under the Open Public Records Act
avoid student-identifying information in emails
some boards of education pass policies that prohibit the use of emails to discuss *any* confidential board of education matter
all the above e-mail considerations apply to Facebook as well

11. Address the superintendent at a board meeting regarding problems associated with your children.

12. Discuss other special interest group topics at board meetings unless the discussion is on the Board Agenda for a particular/specific reason.

13. Become "too involved" in the day-to-day running of the school as this is not the role of the board of education or its members.

14. Use confidential information obtained through membership on the board to benefit yourself or others.



Sciarrillo ADR

Alternative Dispute Resolution

BERGEN COUNTY ASSOCIATION OF SCHOOL BUSINESS OFFICIALS

April 20, 2023

School Ethics Act

Ensure the conduct of school officials holds the respect and confidence of the people.
Avoid conduct which violates public trust or creates impression of a violation of public trust.

School Official

Board Member or Administrator of School District

Code of Ethics

Set of guidelines/regulations designed to ensure adherence to the School Ethics Act

| <u>1. COMMITMENT</u> | <u>2. CONFIDENTIALITY</u> | <u>3. CONFLICTS</u> | <u>4. CLAIMS</u> | <u>5. CHAIN OF COMMAND</u> |
|---|--|---|---|--|
| Code of Ethics | Personnel Matters | Not to Administer Schools | Not Receive Money or Benefits from the Board | Not to Administer Schools |
| Best Interests of Students & Taxpayers | Student Matters | Not to Forfeit Your Independent Judgment | Not Bring or Cause Litigation to be Brought against The Board | Not in the Best Interests of Students & Taxpayers |
| Follow the Chain of Command | Board Meetings | Not Act Contrary to Board Policy | Not to Cause Action Against the Board that Would Bring Gains to Family or Friends | Personal Matters |
| Constitution of the United States and the State of NJ | Do not Share Information from Private Session | Recuse Yourself from Matters Involving Family Members | | Act on Complaints Only After Administrative Failure |
| Board Policy | Committee Meetings | Not Act to Foster Special Interests | | Student Matters |
| Statute, Code Case Law | Information About the Schools or District that Would Injure Others | Not Act to Cause Conflicts to Arise | | Refer Inquiries to Superintendent, Appropriate Administrator, or Teacher |
| US Government New Jersey Government | | Not Act Contrary to Board Action | | |

| 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 ¹ | Yes* | Yes* |
| SPOUSE | X | | No | No | No |
| SPOUSE DEPENDENT CHILD | X | | No ¹ | Yes* | Yes* |
| DEPENDENT CHILD | | | No | No | No |
| DEPENDENT CHILD (NOT DEPENDENT) | X | | No ¹ | Yes* | Yes* |
| CHILD (NOT DEPENDENT) | X | | No | No | No |
| CHILD (NOT DEPENDENT) | | X | Yes* ¹ | Yes* | Yes* |
| RELATIVE | X | | No | No | No |
| RELATIVE | | X | Yes* ¹ | Yes* | Yes* |
| * Absent another conflict | | | | | |
| ¹ Can participate in negotiations of local administrators union if no linkage in contracts | | | | | |

Per N.J.A.C. 6A:23A-1.2, "relative" is defined as an individual's spouse, civil union partner pursuant to N.J.S.A. 37:1-33, domestic partner as defined in N.J.S.A. 26:8A-3, or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister of the individual or of the individual's spouse, civil union partner, or domestic partner, whether the relative is related to the individual, or the individual's spouse, civil union partner, or domestic partner by blood, marriage or adoption. The School Ethics Commission added "cousin" to the above list in Advisory Opinion A35-17.