

Important Basics: Open Public Meetings Act and the School Ethics Act for School Business Administrators and —Board Secretary's

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OPEN PUBLIC MEETINGS ACT

Applies to “public bodies” including

- boards of education
- charter school boards of trustees



OPMA - Definitions

- **Meeting**
 - **Gathering attended by or open to all members of a public body**
 - **Intent to act on public business**

- **Meeting is not**
 - **Less than a quorum**
 - **Attended by three or more similar public bodies, e.g. a convention**



OPMA – Definitions cont...

- **Adequate Notice**
 - **48 hour advance notice giving date, time & location**
 - **Agenda “to the extent known”**
 - **Action/Non-Action**
- **Posted, published & filed w/ municipal clerk**



Adequate Notice & Exceptions

- **No public body shall hold a meeting unless adequate notice has been provided to the public**
 - Regular Meeting
 - Special Meeting
 - Emergency Meeting
 - Reorganization Meeting
- **Public Participation Portion Required**



Minutes

- **When a meeting is convened, the chair must announce & enter statement into the minutes of either:**
 - **Adequate notice, stating time, place & manner of notice, or**
 - **Lack of adequate notice including**
 - **Nature of emergency**
 - **Limitation of discussion/action**
 - **Time, place & manner of notice provided**
 - **Foreseeability of need for meeting**

Minutes

- **Each board must keep reasonably comprehensible minutes of all its meetings (Regular & Exec.) showing**
 - **Date/Time/Location**
 - **Members present**
 - **Subjects considered**
 - **Actions taken**
 - **Vote of each member**
 - **Other statutorily mandated information**



Executive Session

- **Exclude public if discussing matters involving...**
 - **Items excluded by statute**
 - **Impairment of receipt of federal funds**
 - **Unwarranted invasion of privacy**
 - **Collective Negotiations**
 - **Purchase of real property with public funds**



Executive Session cont...

- **Exclude public if discussing matters involving...**
 - **Public safety**
 - **Pending or anticipated litigation**
 - **Personnel**
 - *Rice Notices*
 - **Imposition of civil penalties or loss of license or permit**



Executive Session - Resolution

- **Before adjourning to executive session, the Board must announce:**
 - **General nature of executive session matters being discussed**
 - **Time, nature & circumstances under which the discussion can be disclosed to the public**



Violations/Remedies

- **Actions taken in violation of OPMA are “voidable” in Superior Court**
 - **45-day window to file**
 - **Corrective conforming meeting**
 - **Injunction may be ordered**
 - **Knowing violations may result in personal liability**
 - **Immunity from liability**



Questions?



Ethics: Obligations of Business Administrators/Board Secretaries



NJSBA Member Census



NJSBA Member Census

- The NJSBA Member Census is critically important in ensuring that board members fulfill their leadership duties and responsibilities.
- Accurate information allows NJSBA to communicate with board members so that they can:
 - Fulfill their mandated training requirements;
 - Register for NJSBA training programs;
 - Earn professional development credit;
 - Complete the online CSA evaluation process; and
 - Complete the online board self-evaluation process.



NJSBA Member Census

- The NJSBA Member Census can only be completed by the business administrator!
- Ideally, the NJSBA Member Census should be completed **immediately following the organization meeting.**
- From the member portal, you can:
 - (1) Update Board Information;
 - Review basic district information, including the district address, website, and telephone number.
 - (2) Manage Board Members;
 - Edit/remove current board members (name, address, e-mail, and phone number)



NJSBA Member Census

- (3) Manage Board Leadership Positions; and
 - President, Vice President, Delegate, Rep. to the County SBA
- (4) Manage Board Staff.
 - Edit/remove the name of the Superintendent, Asst. Superintendent(s), HR Director, Board Secretary (if other than the BA), etc.
- All four sections of your NJSBA Member Census – Update Board Information; Manage Board Members; Manage Board Leadership Positions; and Manage Board Staff – ***must*** be reviewed for accuracy.



NJSBA Member Census

- Important Reminders:

- Email addresses on the NJSBA Member Census are subject to OPRA; and
- Step-by-step instructions for using the NJSBA Member Census can be found on NJSBA's website.
 - <https://www.njsba.org/about/the-njsba-member-census/>



NJSBA Member Census

- From the member portal, you can also confirm which board members have completed mandated training (and register them for outstanding trainings).
- On the right side of the screen, click on “Mandated Training.”
 - You will then be able to view each member of the board; the start/end date of their term; and the date(s) they completed Gov. 1, Gov. 2, Gov. 3, and/or Gov. 4.
 - You can also print the training transcript for any member of the board.



***New/Amended Ch. 28
Regulations from the
School Ethics Commission
(Commission)***

***Effective on and after
March 6, 2023***



Personal/Relative and Financial Disclosure Statements (Disclosure Statements)



Definitions

“**List of school officials**” means the electronic list prepared by each board secretary, or charter school or renaissance school project designee, and provided to the Commission on the dates prescribed in this chapter. This list is a public record and is subject to the Open Public Records Act, *N.J.S.A. 47:1A-1 et seq. N.J.A.C. 6A:28-1.2.*



Disclosure Statements

- School officials shall file disclosure statements that are “**complete and accurate.**” *N.J.A.C. 6A:28-3.1(a)*.
- Following filing by school officials, the board secretary **shall** initially **review** the responses submitted. *N.J.A.C. 6A:28-3.1(a)(1)*.
- New board members in Type I/Type II school districts **shall** be added by the board secretary to the list of school officials “**once they are sworn in.**” *N.J.A.C. 6A:28-3.1(c) and (d)*.



Disclosure Statements

- New administrators **shall** be added by the board secretary to the list of school officials “**once they have begun employment.**” *N.J.A.C. 6A:28-3.1(f)*.



Disclosure Statements

- New school officials shall have an “affirmative responsibility” to confirm that their board secretary adds their name to the list of school officials, and that their name remains on the list of school officials prospectively. *N.J.A.C. 6A:28-3.1(h)*.
- For returning school officials, board secretaries **shall** create a list of school officials **by February 1**. *N.J.A.C. 6A:28-3.2(a)*.



Disclosure Statements

- The list of school officials **shall** contain: the name, telephone number, and email address of each returning school official, by office and position (e.g., Board Member, Administrator, Board Secretary). *N.J.A.C. 6A:28-3.2(a)*.



Disclosure Statements

- If a new school official is elected or appointed **before** April 1, the board secretary **shall** (1) add the school official to the **February** list; (2) ensure that the school official receives instructions on how to complete their filing; and (3) ensure that the school officials files within thirty (30) days. *N.J.A.C. 6A:28-3.2(b)*.
- If a new school official is elected or appointed **on or after** April 1, the board secretary **shall** (1) add the school official to the **June** list; (2) ensure that the school official receives instructions on how to complete their filing; and (3) ensure that the school officials files within thirty (30) days. *N.J.A.C. 6A:28-3.2(c)*.



Disclosure Statements

- On or before April 30 (for the February list), and on or before November 15 (for the June list), board secretaries “shall review the disclosure statements to ensure that all filings are complete, and all questions have been answered.” *N.J.A.C. 6A:28-3.2(d)*.
- Within ten (10) calendar days of April 30, board secretaries “shall provide to the executive county superintendent a written list” of all officials who have not filed. *N.J.A.C. 6A:28-3.2(e)*.



Disclosure Statements

- Board secretaries “shall review” disclosure statements “to identify conflicts of interest.”
N.J.A.C. 6A:28-3.2(f).
- To the extent the district has a website, there shall be a link to each school official’s “most recently filed disclosure statement as it appears on the Commission’s website.”
N.J.A.C. 6A:28-3.2(f).



Disclosure Statements

Enhanced Penalties.

- Unless good cause is shown, if the Commission issues an Order to Show Cause for a school official's failure to file disclosure statements, a penalty of **censure** will be recommended. *N.J.A.C. 6A:28-3.3(c).*
- Unless good cause is shown, if a school official files their disclosure statements **after** the Commission issues its decision, **but before** the Commissioner issues a final decision, a penalty of suspension (30 days) will be recommended. *N.J.A.C. 6A:28-3.3(d).*
 - The school official must also notify the Commission, in writing, that their disclosure statements have been filed. If notification is not provided, a penalty of suspension (60 days) will be recommended.



Disclosure Statements

Enhanced Penalties.

- Unless good cause is shown, if a school official fails to file their disclosure statements **after** the Commission issues its decision, and has not filed **as of the date** of the Commissioner issues a final decision, a penalty of removal will be recommended. *N.J.A.C. 6A:28-3.3(e)*.



Disclosure Statements

Resolution

- The resolution drafted by the Commission affirming the penalty imposed by the Commissioner “**shall be read by the ... board of education ... at the beginning of its next regularly scheduled public meeting, and memorialized in the minutes.**” Once approved, the minutes shall be forwarded to the Commission. *N.J.A.C. 6A:28-3.3(f)(1)*.
 - If the minutes are not forwarded, the Commission is authorized to seek “any penalty and/or remedy ... against an appropriate school official.” *N.J.A.C. 6A:28-3.3(f)(1)(i)*.
- The resolution must be posted on the district’s website for 30 days. *N.J.A.C. 6A:28-3.3(f)(3)*.



Disclosure Statements

Incomplete Filings

- If a board secretary determines that a filing is incorrect or incomplete, the board secretary **shall** return it to the school official. *N.J.A.C. 6A:28-3.4(a)*.
 - The school official shall have 20 days to correct the filing, and to resubmit it to the board secretary. *N.J.A.C. 6A:28-3.4(a)*.
 - If the school official fails to correct the filing, the Commission will regard the filing as a failure to file.



Disclosure Statements

Resources

- The Commission has a step-by-step PowerPoint outlining the steps for:
 - Populating the list of school officials;
 - Accessing and viewing disclosure statements;
 - Approving disclosure statements;
 - Returning disclosure statements; and
 - Submitting disclosure statements on behalf of a school official

<https://www.nj.gov/education/ethics/fds/index.shtml>



Training



Training

- **Within the first 90 days of a new board member's first term**, the board member or trustee ***shall*** complete training. *N.J.A.C. 6A:28-4.1(a)*.
- Each board secretary ***shall*** provide **written** notice to the NJSBA and **to the Commission** when a new board member is elected or appointed, when a board member resigns or is removed, and when their term expires. All written notifications must be provided ***within 30 days of occurrence***. *N.J.A.C. 6A:28-4.2(a)*.
 - Failure to timely notify may result in the Commission “seeking an appropriate remedy.” *N.J.A.C. 6A:28-4.2(a)*.



Training

- Each board secretary shall provide the NJSBA with the name, telephone number, and email address of each board member.
 - If the information ***changes***, the board secretary “**shall**” provide updated information to the NJSBA ***within 30 days of its occurrence***. *N.J.A.C. 6A:28-4.2(a)(1)*.
- The NJSBA ***shall*** provide written notice to the board secretary when a board member has completed training. *N.J.A.C. 6A:28-4.2(b)*.



Training

- The NJSBA ***shall*** provide the Commission with the names of all board members who have not completed training. *N.J.A.C. 6A:28-4.2(c)*.
 - Following notification, the Commission will issue Orders to Show Cause.



Training

Enhanced Penalties.

- Unless good cause is shown, if the Commission issues an Order to Show Cause for a board member's failure to complete training, a penalty of **censure** will be recommended. *N.J.A.C. 6A:28-4.3(b)*.
- Unless good cause is shown, if a board member completes training **after** the Commission issues its decision, **but before** the Commissioner issues a final decision, a penalty of suspension (30 days) will be recommended. *N.J.A.C. 6A:28-4.3(c)*.
 - The school official must also notify the Commission, in writing, that they completed training. If notification is not provided, a penalty of suspension (60 days) will be recommended.



Training

Enhanced Penalties.

- Unless good cause is shown, if a board member does not complete training **after** the Commission issues its decision, and has not completed training **as of the date** of the Commissioner issues a final decision, a penalty of removal will be recommended. *N.J.A.C. 6A:28-4.3(d).*



Training

Resolution

- The resolution drafted by the Commission affirming the penalty imposed by the Commissioner “**shall be read by the ... board of education ... at the beginning of its next regularly scheduled public meeting, and memorialized in the minutes.**” Once approved, the minutes shall be forwarded to the Commission. *N.J.A.C. 6A:28-4.3(e)*.
 - If the minutes are not forwarded, the Commission is authorized to seek “any penalty and/or remedy ... against an appropriate school official.” *N.J.A.C. 6A:28-4.3(e)(1)(i)*.
- The resolution must be posted on the district’s website for 30 days. *N.J.A.C. 6A:28-4.2(e)(3)*.



Resource Exception

N.J.A.C. 6A:23A-6.2(a) (Nepotism Policy) states that, as a condition of receiving state aid, a district **must** adopt a nepotism policy which states, among other things:

A provision prohibiting a school district administrator or district board of education member whose relative is a member of the bargaining unit from discussing or voting on the proposed collective bargaining agreement with that unit or from participating in any way in negotiations ...; ***however, the administrator may serve as a technical resource to the negotiating team and may provide technical information necessary to the collective bargaining process when no one else in the school district can provide such information;***

And



Resource Exception

A provision prohibiting a school district administrator or district board of education member who has an immediate family member who is a member of the same Statewide union in another school district from participating in any way in negotiations ...; once the tentative memorandum of agreement is established, a school district administrator with an immediate family member who is a member of the same Statewide union in another school district may fully participate in the process, absent other conflicts. Notwithstanding the above, a school district administrator who has an immediate family member who is a member of the same Statewide union in another school district ***may serve as a technical resource to the negotiating team and may provide technical information necessary to the collective bargaining process when no one else in the school district can provide such information.***



Resource Exception

A22-16 (public in September 2016)

Facts: The board is negotiating a new contract with the teachers' association; the superintendent's spouse is employed in a neighboring school district; and is a member of the local union, which is an affiliate of the NJEA. The board seeks to determine the extent to which the superintendent may be involved in negotiations without violating the Act, including serving as a resource person.

SEC: The superintendent may not participate in negotiations because he has an immediate family member - a spouse - who is a member of the NJEA in another district.



Resource Exception

The resource exception exists only for those unique situations during labor negotiations when only the conflicted administrator can provide the technical information necessary to the collective bargaining process.

The superintendent is responsible for operational, budgetary and other sensitive matters within the district, and if access to these matters/issues is necessary for aspects of negotiations, and no one else is able to supply it to the negotiations committee, the committee must seek the information from the superintendent.



Resource Exception

The Commission advises that the superintendent may only participate in the negotiation process for the limited purpose of providing technical information, as long as he restricts his comments and involvement to providing the information requested by the board members, administrators and union representatives fully involved in the negotiations.



Resource Exception

A26-97 (public in November 1997)

Facts: The BA/BS has an employment agreement which states that he will receive a percentage of the settlement offered to the teachers' association. Although not a member of the negotiations committee, the BA/BS has "attended negotiations as a resource for information" and has, among other things, calculated the cost of various proposals. The BA/BS seeks to determine whether continuing to serve as a resource person violates the Act.



Resource Exception

SEC: Because of the language in the BA/BS's employment agreement (and its direct fiscal relationship to the outcome of contract negotiations with the teachers' association), the BA/BS would violate the Act if he directly participated in negotiations.

However, the BA/BS's position requires him to be available to the negotiations committee "as a resource person to provide objective facts concerning the budget, past contractual settlements, and the like." Involvement in this limited capacity does not violate the Act.



Questions



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