

BOARD GOVERNANCE AND THE ROLE OF A BOARD MEMBER

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Presented to the Paramus Board of Education by
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Role of the Board

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- The Board's general powers and duties are defined in **Title 18A** of the New Jersey statutes.
- According to N.J.S.A. 18A:11-1, "General Mandatory Powers and Duties," the Board is required to, among other things:
 - **enforce the rules** of the New Jersey State Board of Education;
 - **make, amend, and repeal rules** for government and management of the schools and their employees; and
 - perform all acts and do all things, consistent with law and the rules of the State Board, necessary for **lawful and proper conduct, equipment and maintenance** of the District.

Role of the Board

- This requires the Board to do things like:
 - *Approve curriculum that meets the New Jersey Student Learning Standards;*
 - *Adopt a budget that provides for a thorough and efficient education;*
 - *Hire the necessary certified personnel to educate the District's students; and*
 - *Develop policies for the management of the school district.*
- None of these are actions that the Board takes alone—it acts based upon the recommendation of the Superintendent of Schools.

Role of the Board

- The Board is also required to hold hearings and make decisions on a number of issues:
 - *Harassment, intimidation, and bullying appeals (students);*
 - *Long-term suspension hearings (students);*
 - *Residency appeals (students);*
 - *Grievances under a collective negotiations agreement (personnel);*
 - *Terminations for cause (personnel);*
 - *Increment withholdings (personnel); and*
 - *Nonrenewals (personnel).*

Role of the Board

- The Board functions only when it is **in session**, and a “**quorum**” of the Board is required to convene a meeting and take action.
- Meetings must comply with the requirements of the Open Public Meetings Act.
- Committee meetings (less than a quorum).
- Emails and text messages.

The Board and the Administration

- The Board's direct responsibilities are to make policy, develop plans, and evaluate outcomes, not manage day-to-day operations.
 - *Members are responsible "not to administer the schools" but to "see that they are well run." N.J.S.A. 18A:12-24.1(d).*
 - *"No board member, by virtue of his/her office, shall exercise any administrative responsibility with respect to the schools or as an individual command the services of any school employee." Board Policy No. 9010.*
 - *Board members do not have "all access" to District schools and, in many respects, have no more authority than any other parent or community member.*
 - *Board Policy No. 9010 explains that Board members visiting a school must comply with district policy and procedures for school visitors like any other visitor.*
- The Board delegates certain responsibilities to administrative officials.
 - **Superintendent:** Administer the District, keep the Board informed of happenings, make operational recommendations.
 - **Business Administrator:** Oversee business and maintenance, prepare the budget, establish and maintain fiscal plans, serve as general accountant and official purchasing agent.

The Board and the Administration

- The Board–Administration relationship is intended to be cooperative, not adversarial.
 - *Members should share concerns with administration in advance of meetings—assures an effective public response.*
 - *Members should be mindful of which matters are appropriate for public discussion versus reserved for private consultation.*
- As required by the Code of Ethics for School Board Members and Board Policy No. 1312, a Board member confronted with a community complaint should withhold comment and instead refer the issue to the Superintendent; the Board may act only at public meeting and after failure of an administrative solution.

The Board and the Administration

- The Code of Ethics specifically requires Board members to support all District staff, including the administration: “I will support and protect school personnel in proper performance of their duties.”
- A violation of this command occurs when there is evidence that a Board member took deliberate action which resulted in undermining, opposing, compromising, or harming school personnel in the proper performance of their duties.
- This does not mean that a Board member cannot disagree with a recommendation made by the Superintendent, but it generally requires that Board members support the Superintendent.
- Criticizing the Superintendent, however, could lead to a violation of the Code of Ethics where it undermines or compromises the Superintendent's ability to do his or her job.

Division of Responsibility Between the Board and Superintendent

- It is the primary duty of the Board to establish policies and the primary duty of the Superintendent to implement and administer those policies.*
- The Superintendent is the primary professional advisor to the Board, and policies should not be adopted or revised without consulting the Superintendent.*
- The Superintendent is responsible for the development, supervision, and operation of the school program and facilities and will be given latitude to implement and administer policies in accordance with the standards that the Board sets in policy.*



Role of the Board Member

Role of the Board Member

- The Board is a unit, not a collection of individuals.
 - *Members are expected to share opinions, but the Board elects a **single course of action** by majority vote.*
 - *In open meetings, to preserve decorum and ensure the Board expresses a single, consistent position, the **President alone speaks on the Board's behalf**, but may request another member's contribution.*


- Members' professional expertise and personal experience are instructive but **do not necessarily dictate Board action**.
 - *Example: Member with a finance background may have insights about District's financial affairs but should not insist on particular course of action or monopolize group discussion.*
 - *Example: Member may have opinions as the parent of a District student, but these opinions cannot compromise the member's duties to the Board and District as a whole.*

Role of the Board Member

- The powers of the Board and the authority of a Board member are not coextensive.
- As Board Policy No. 9010 explains: “No board member, by virtue of his/her office, shall exercise any administrative responsibility with respect to the schools or as an individual command the services of any school district employee.”
- Board members on their own have no supervisory authority.

Role of the Board Member

- Board members have an obligation to preserve the confidentiality of information learned in their role as members of the Board.
- Board Policy No. 9010 explains that confidential information shall be used only for the purpose of helping the Board member discharge his or her official responsibilities.
- This expectation exists regardless of the impact the matter has on the Board member's own children or friends.
 - *Example: A member learns during closed session that the administration has suspended the District's seventh-grade math teacher pending the results of a psychiatric evaluation. This information **cannot be disclosed to anyone**, even if that member's child is a student in the teacher's class.*
 - *Example: The Board is deliberating over whether to reorganize its facilities such that all Pre K–4 students will attend school in one building and all 5–8 students will attend in another. A member **cannot disclose this information** even if he or she has a friend who is deciding whether to buy a house based on the makeup of the local schools.*



Limits on the Role of a Board Member: The Code of Ethics

Code of Ethics

- One of the main limits on the role of Board members is the Code of Ethics for School Board Members.
- Enacted in 2001 (N.J.S.A. 18A:12-24.1), it sets clear standards that all board of education members must follow.
- If there is a violation, any member of the public can file a complaint with the School Ethics Commission.
- The School Ethics Commission has the power to recommend that the Commissioner of Education reprimand, censure, suspend, or remove a board member who violated the Code.

Code of Ethics

- (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

- (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: Limits on Board Members' Administrative Powers

- The limited role of a Board member is seen in a number of sections of the Code of Ethics for School Board Members:
 - *“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.” N.J.S.A. 18A:12-24.1(c).*
 - *“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.” N.J.S.A. 18A:12-24.1(d).*
 - *“I will support and protect school personnel in proper performance of their duties.” N.J.S.A. 18A:12-24.1(i).*
 - *“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.” N.J.S.A. 18A:12-24.1(j).*

Code of Ethics: Limits on Board Members' Administrative Powers

- What types of administrative action violates the Code of Ethics?
 - *Section (d): giving a direct order to school personnel or becoming directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district. N.J.A.C. 6A:28-6.4(a)(4).*
 - *Section (i): taking deliberate action which resulted in undermining, opposing, compromising, or harming school personnel in the proper performance of their duties. N.J.A.C. 6A:28-6.4(a)(9).*
 - *Section (j): acting on or attempting to resolve a complaint or conducting an investigation or inquiry related to a complaint prior to referral to the Superintendent or outside of a public meeting prior to the failure of an administrative solution. N.J.A.C. 6A:28-6.4(a)(10).*

Code of Ethics in Practice

- The limits imposed by the Code of Ethics are clearly seen in the limited involvement Board members have in personnel decisions.
- The Board member's role in hiring is to vote to appoint the best qualified personnel available after consideration of the recommendation of the Superintendent.
- The Board cannot withhold its approval for the hiring of a candidate recommended by the Superintendent for arbitrary or capricious reasons.
- The Board should generally, as a best practice, limit its involvement in hiring to hiring the Superintendent of Schools and then only considering the Superintendent's recommendations for all other positions to avoid interference with the Superintendent's power to recommend candidates to the Board.

Code of Ethics in Practice

- Advisory Opinion A15-10

- *A board member requested an opinion regarding authority to conduct exit interviews of staff members to determine causes of staff turnover.*
- *The School Ethics Commission advised against board members engaging in exit interviews, explaining that it would violate sections (c) and (d) of the Code:*
 - Section (c): participation would be board action outside of policy making, planning, and appraisal duties.
 - Section (d): participation would be engaging in administrative functions left to school personnel.

Code of Ethics in Practice

- Advisory Opinion A31-15

- *A board member requested an opinion regarding the appropriate level of involvement for board members in the interview process.*
- *The Commission explained that one or two board members may sit on an interview committee when established by the superintendent but must be strictly limited to functioning in an advisory role to the superintendent.*
- *The board members may not conduct the interview; they only offer observations and assessments while knowing that the final recommendation is the superintendent's decision.*
- *The board cannot usurp the superintendent's authority to recommend hires.*
- *The Commission noted its position that it does not support board members conducting interviews for positions below that of the superintendent of schools. It explained that "interviewing is generally an administrative function not within the authority of the Board or its members."*

Code of Ethics in Practice – Impermissible Personnel Actions

In re Polinik, SEC Dkt. No. C45-06 (2008)

■ Facts:

- *A board member, accompanied by another board member, went to the board office without prior notice to the administration to review the resumes of candidates for an open position.*
- *The superintendent and director of human resources were not there, but a secretary in the personnel office gave them some resumes to review.*
- *The board member asked where the remaining resumes were and, after being informed they were in a locked office, the board member found a custodian with a key.*
- *An assistant superintendent intervened before the board member entered the locked office, so the additional resumes were not reviewed.*

Code of Ethics in Practice – Impermissible Personnel Actions

In re Polinik, SEC Dkt. No. C45-06 (2008)

■ Decision:

- *Because the respondent entered the board office in her capacity as a board member, she had to limit her action to policy making, planning, and appraisal.*
- *The Commission held that she violated the Code of Ethics because she went beyond the mere appraisal of resumes, something she could do, by taking steps to locate and obtain the resumes that were not available.*
- *She, however, did not administer the schools.*
- *While she asked questions to the secretary and custodian, she did not instruct them regarding their job duties or usurp anyone's role.*

Code of Ethics in Practice – Impermissible Personnel Actions

Cheng v. Rodas, SEC Dkt. No. C58-14 (2015)

- The complaint alleged that a board president violated the Code by personally issuing a *Rice* notice to the business administrator without prior notification to the board or the recommendation of the superintendent.
- The *Rice* notice resulted in the business administrator's resignation.
- The Commission held this action violated N.J.S.A. 18A:12-24.1(e) because it was action beyond the scope of his authority that might have compromised the board because the *Rice* notice implied that he was acting on behalf of the board when no one authorized its issuance.
- A board president or the majority of the full board can only issue a *Rice* notice to the superintendent.

Code of Ethics in Practice – Impermissible Personnel Actions

Garrity v. Vander Woude, SEC Dkt. No. C50-12 (2016)

■ Facts:

- *Two board members alleged that the director of special services was “double-dipping” by working in another school district and conducted their own investigation which concluded that she engaged in criminal fraud.*
- *They brought their conclusion to the superintendent, demanded the superintendent issue a Rice notice, and aired the accusations two days later in closed session.*
- *The board authorized the board attorney to investigate, and he concluded she worked in both districts, there was no overlap in the work, and it had been disclosed.*
- *The board president and superintendent accused the two board members of violating the Code through their actions.*

Code of Ethics in Practice – Impermissible Personnel Actions

Garrity v. Vander Woude, SEC Dkt. No. C50-12 (2016)

■ Decision:

- *By conducting the “investigation” and making a determination of guilt, seeking a suspension, and demanding a Rice notice on their own, the Board members took action well beyond policy making, planning, and appraisal in violation of N.J.S.A. 18A:12-24.1(c).*
- *The demands they made to the superintendent violated N.J.S.A. 18A:12-24.1(d) because they improperly directed the superintendent to take action.*
- *The Board members should have presented what they knew to the superintendent and allowed the superintendent to investigate the matter instead of making demands and depriving the superintendent of the opportunity to reach an independent determination.*
- *Board members must submit all complaints to the superintendent and can only act on complaints at public meetings after failure of an administrative solution.*

Code of Ethics in Practice – Volunteering

- Volunteering in the schools also presents another tricky situation under the Code of Ethics.
- Advisory Opinion A32-14
 - *A board member requested an opinion regarding permission to volunteer for school theatrical productions by assisting with casting, rehearsals, and lighting.*
 - *The Commission explained that this would violate sections (c) and (d) of the Code of Ethics.*
 - *Explaining that this type of volunteering is inconsistent with board membership, the Commission explained that directly engaging in a school-sponsored function is outside of the limited scope of a board member's role.*
 - *The role would have required the board member to give direct orders to school personnel and students, engaging in responsibilities that were the exclusive domain of school personnel.*

Code of Ethics in Practice – Volunteering

■ Advisory Opinion A10-15

- *A board member requested an opinion regarding whether volunteering as the leader of a school club which met on school grounds violated the Code.*
- *The Commission explained that this would violate sections (c) and (d) of the Code of Ethics.*
- *Being in a position of oversight and authority over students is beyond the scope of policy making, planning, and appraisal because the role required too much contact with students, parents and administrators.*
- *The role, with its constant presence in the school, blurred the line between the role of a board member and as a volunteer in the building by taking on day-to-day administration tasks.*

**Free Speech and the
School Ethics Act
(N.J.S.A. 18A:12-21 et seq.)**

Free Speech and the School Ethics Act

- The School Ethics Commission has explained that “[B]oard members do not surrender the rights that they have as citizens such as freedom of speech when they become members of a school board. However, in exercising those rights, board members must comply with the School Ethics Act.”
- This balance must be kept in mind whenever a board member expresses his/her opinion publicly; whether through a letter to the editor of the local newspaper, a social media post, an email, or any other public statement or comment.
- There are two provisions of the Code that often come into play when reviewing board member speech: Subsection (e) and subsection (g). Subsection (e) requires board members to recognize that authority rests with the board, and avoid making any personal promises or taking any private action that could compromise the board. Subsection (g) requires board members to maintain the confidentiality of information that would needlessly injure individuals or the schools if disclosed. When board members elect to disclose non-confidential information, Subsection (g) places on them an affirmative obligation to ensure the information is accurate.
- **This means that even if information is accurate and, technically speaking, not confidential, it should not be included in a public statement, such as a letter to the editor or a social media post, if it has the potential to compromise the board.**

Letters to the Editor

Advisory Opinions A02-06 and A03-07

- In these companion advisory opinions, the Commission considered a board member's right to send a letter to the editor of a local newspaper expressing her opinions on topics of public interest (specifically, the school budget).
- The Commission concluded that such letters are generally permissible, provided the statements therein are consistent with the Code. Therefore, the Commission analyzed how best to reconcile a citizen's basic free speech rights with a board member's responsibility to comply with the Code.
- Ultimately, the Commission concluded that such letters would comply with the Code as long as the board member: (1) provides accurate information that is not confidential; (2) does not take private action that would compromise the board; and (3) does not "hold her or himself out as a board member."
- **To avoid holding oneself out as a board member, the board member must: (a) identify himself as a board member in the letter; (b) indicate that he is writing the letter in his role as a private citizen; and (c) state that the letter is neither authorized by nor written on behalf of the board.**

Letters to the Editor (continued)

- To date, the Commission has not issued any advisory opinions regarding social media postings, or a board member's right to comment on topics of public interest via social media.
- It is, however, recommended that board members follow the Commission's letter-to-editor guidance when choosing to express opinions regarding topics of public interest on social media, particularly in publicly accessible forums.
- When considering whether to incorporate into a social media posting the letter-to-editor guidelines, board members are encouraged to use their best judgment based upon the social media platform used and the topic being discussed.
- For example, board members should always issue a qualifying statement when posting about topics relevant to their school district, regardless of the social media platform used. Even if a comment is posted to a private Facebook page accessible only to certain individuals, there is nothing to prevent one of those individuals from sharing the post with others. With respect to matters of public significance, such as politics or religion, board members are encouraged to issue a qualifying statement when posting in public forums.

Bey v. Brown, Camden Bd. of Educ., C25-11 (December 20, 2011)

FACTS

In Bey, the board president filed a complaint after respondent, a fellow board member, posted certain statements on Facebook and in a local newspaper.

FACEBOOK #1 (Count 1)

- *“The school board President doesn’t let students speak; the board votes for programs that are not effective; six months is not long enough to write a plan. PARENTS AND STUDENTS – BE SCARED.”*

FACEBOOK #2 (Count 2)

- *“Now if we could only do something about our local terrorists that destroy dreams and burn futures.” (Under this statement was a link to the Camden City Public Schools’ website and a picture of the superintendent).*

NEWSPAPER (Count 3)

- *“There is no improvement in high school graduation in many years, nor are there any initiatives to address that issue...What happened in Newark is exactly what needs to happen in Camden...The difference between some of the school board members and school administrators and me is that they believe that poor, minority students can’t do any better than this.”*

Bey, (continued)

HOLDING

Notably, the board president only alleged violations of Subsection (g) (requirement to post accurate information) and Subsection (i) (support and protect school personal), and did not allege a violation of Subsection (e) (private action which may compromise the board). Therefore, the Commission did not examine whether the statements had the ability to compromise the board.

The Commission dismissed Count 1 (first Facebook post) and Count 3 (newspaper article) because there was no factual evidence that the board member posted inaccurate or confidential information - his statements were his own opinions. It is unknown whether the Commission would have found a violation of Subsection (e).

The Commission found there was a violation of Subsection (i) with regard to Count 2. “Comparing the superintendent to a terrorist, on a social media outlet which allowed for access by many people, was an intentionally confrontational act. In this connection, the Commission acknowledges...that members of the community assume that board members have insight that others do not have. Thus, when a sitting board member makes such a judgmental proclamation, it is likely to be credited far more than a statement offered by an ordinary citizen.”



Social Media Guidelines for Board Members

Guidelines for Board Members' Social Media

When using social networks, Board members are advised to:

- Not post anything that would violate any of the District's policies for Board members;
- Uphold the District's value of respect for any individual(s) and avoid making defamatory statements about the Board of Education, the school district, employees, students, or their families;
- Not disclose any confidential information about the school district or confidential information obtained as a result of being a Board member, about any individual(s) or organization, including students and/or their families;
- Not use or refer to their Board of Education title or position when soliciting for a business organization that he or she or any immediate family member has an interest in, as well as posting or referencing any confidential information regarding the Board of Education or the school district obtained through their Board membership, unless authorized by law;

Guidelines for Board Members' Social Media (continued)

- Refrain from having communications through social networks with other Board members regarding any Board of Education business to avoid any potential violation of the New Jersey Open Public Meetings Act;
- Not respond to any postings regarding Board of Education or school district business or respond to any question or inquiry posted to the Board member or posted on any social network regarding Board of Education or school district business and shall refer any such questions or inquiries to the Superintendent of Schools to address, as appropriate; or
- Not post any information on social network determined by the New Jersey School Ethics Commission to be a violation of the New Jersey Ethics Act.



QUESTIONS?