

# BOARD GOVERNANCE, MEMBER DUTIES, AND THE SCHOOL ETHICS ACT

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Presented to the Readington Township Board of Education by  
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## Topics Covered

The Board, Its Members, and the Administration

Voting

Board-Level Hearings and Decisions

Open Public Meetings Act and Open Public Records Act

Confidentiality

Social Media

The School Ethics Act and Conflicts of Interest

## Role of the Board

- 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.*

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## Role of the Board (cont.)

- The Board functions only when **in session**, and a **quorum** is required to convene a meeting and take action.
- Under State law, the Board must hold a public meeting **at least once every two months** when school is in session, starting by **8:00 p.m.**
  - *If no quorum at time of meeting, members may recess to no later than 9:00 p.m.*
  - *If still no quorum present, members may adjourn no longer than seven days.*

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## 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 operation of the school district or as an individual command the services of any school district employee." Policy No. 0146.*
- 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.

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## The Board and the Administration (cont.)

- The Board–Administration relationship is **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.*
- Per the School Ethics Act and Policy 9130, a Board member confronted with a community complaint should **withhold comment** and instead **refer inquiry to the Superintendent**; the Board may act only at public meeting and after failure of an **administrative solution**.

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## 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.*

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## Role of the Board Member (cont.)

- Members **represent the District** and the interests of the Township's residents and must comport themselves professionally at all times.
- Board members must be equally concerned with **all issues affecting the District**, not only those issues affecting members' respective children.
- To preserve the Board's credibility and ensure that it operates effectively, members should avoid, among other missteps:
  - *airing personal grievances in a public forum—the Board should present as a unified team, with personal conflicts resolved privately;*
  - *relying on rumor or innuendo, especially culled from social media outlets or unsubstantiated anecdotes;*
  - *grandstanding, self-aggrandizing, or diminishing other members, whether in public or private.*

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## Voting

- The Board can take **official action** only when a **quorum** (five members) is present.
- A vote can be conducted by voice, show of hands, or roll call, and **each member's vote is recorded** in the minutes and clear to the public.
- Abstentions are recorded but **do not count as votes**. An abstaining member is deemed to acquiesce to the outcome of the vote.
- **Members must be present to vote**. The Board's bylaws prohibit voting by proxy.

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## Voting (cont.)

- All motions require at least a **majority of the Board members present and voting**.
- Some acts require more than mere majority of present members—for example, the **majority of the full Board** is required to:
  - ***appoint certain officials**, including the Superintendent, Business Administrator, Board Secretary, and others;*
  - ***appoint, transfer, remove, or renew** teaching staff members;*
  - *determine the sufficiency of **tenure charges**; or*
  - *withhold a **salary increment**.*

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## Board-Level Hearings and Decisions

- In addition to overseeing the District, the Board presides over and participates in certain hearings and decisions involving personnel and students.
- Common examples include:
  - *harassment, intimidation and bullying ("HIB") appeals;*
  - *long-term **suspension** hearings;*
  - ***residency** appeals;*
  - ***grievances**;*
  - ***nonrenewal** ("Donaldson") hearings.*

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## HIB Hearings

- State law prohibits acts that are motivated by a distinguishing characteristic, substantially disrupt the operation of the school or the rights of other students, and has a particular impact such as being insulting or demeaning or causing emotional or physical harm.
- When HIB is alleged:
  1. *The Principal or a designated staff member conducts an investigation and submits a **report to the Superintendent**.*
  2. *The Superintendent submits a **report to the Board**, indicating consequences imposed on the offender, services provided, training established, or other action.*
  3. *Offender's or victim's parent may **request a Board hearing**, held in executive session, and the Board may hear testimony and review evidence.*
  4. *At the first meeting after the hearing (or after receiving the Superintendent's report, if no hearing was requested), the Board votes to **affirm, reject, or modify Superintendent's decision**.*
  5. *The Board's decision may be appealed to the Commissioner.*
- The Board's role is supervisory, not investigatory—members should be confident in the expertise of the administration and staff and should trust in their findings.

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## Long-Term Suspension Hearings

- Pursuant to State law, students suspended for **more than 10 consecutive school days** are entitled to certain due-process protections.
- The student must be granted a **formal hearing** either by the **full Board** or by a **Board committee, school administrator, or hearing officer**.
  - *The student is entitled to confront and cross-examine witnesses and present evidence.*
  - *If the hearing was delegated to a committee, administrator, or hearing officer, the **full Board must consider the delegee's report** before taking final action.*
- The Board issues a decision to extend the suspension beyond 10 days, return the student to school, or order other action.
- The Board's decision may be appealed to the Commissioner.

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## Residency Appeals

- Pursuant to State law, the Board must provide a **free public education** to children **residing within the Township**.
- When a student attending a District school is determined ineligible, the **Superintendent may apply to the Board** for the student's removal.
- Parents are entitled to request a **hearing before the Board**.
  - *Parents may submit evidence that child is entitled to a tuition-free education in Readington Township.*
  - *The Board must **review the facts and issue a decision** whether student should be disenrolled.*
  - *If the Board votes to disenroll, student may remain in the District for 21 days and parents may appeal to Commissioner.*

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## Grievances

- Under CNA Article III, the Association may file a grievance concerning the **interpretation, application, or violation of the CNA, policy, or administrative decision.**
- If the grievant is not satisfied with outcome at the first (Principal) or second (Superintendent) steps, he or she may request **review by the Board.**
- The Board must render decision within **45 school days of receiving grievance.**
- Within **10 school days** after the Board's decision, the Association may submit certain grievances to arbitration.

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## Nonrenewal Hearings

- The Board may renew non-tenured employee only with **Superintendent's recommendation** and by **majority vote of full membership.** Any employee not recommended is deemed nonrenewed.
- Pursuant to State law, the nonrenewed employee is entitled to request a statement of reasons from the Superintendent and an "informal appearance" before the Board—"a **Donaldson hearing.**"
  - *The hearing is non-adversarial. It is the staff member's opportunity to **convince the Board that the Superintendent made an incorrect determination** by not renewing the staff member.*
  - *Witnesses need not testify under oath and are not subject to cross-examination.*
  - *If the Board agrees with the staff member, the Board may vote to offer a contract.*
- The employee may appeal the Board's decision to the Commissioner.

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## Open Public Meetings Act

- “The right of the public to be present at all **meetings of public bodies**, and to witness in full detail all phases of the **deliberation, policy formulation, and decision making** of public bodies, is vital to the enhancement and proper functioning of the democratic process.”
- OPMA guarantees the public has a right to be **present at all meetings** of public bodies and to receive **adequate notice** of such meetings.
- As a public body under OPMA, the Board is required to comply.

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## OPMA: What Constitutes a Meeting?

- Any gathering, whether **in-person or remote**, attended by or open to **all of the members** of the Board, where members **intend to discuss or act as a unit** upon public business.
- *Not* any such gathering that is:
  1. *attended by less than an effective majority; or*
  2. *attended by or open to all the members of three or more similar public bodies at a convention or similar gathering.*
- “Public business” means “all matters which relate in any way, directly or indirectly, to the **performance of the public body's functions** or the **conduct of its business.**”

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## OPMA: Email Communication

- *Email communication between a majority of Board members can be considered a meeting under OPMA* if members discuss matters involving performance of the Board's functions or conduct of its business.
- Members discussing Board business must limit communications to **four or fewer members** (OPMA is not triggered by less than a quorum of members).
- If email exchange includes five members of the Board, it may be considered a meeting and become subject to OPMA.

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## OPMA: Email Communication (cont.)

- Single emails generally will not constitute OPMA "meeting"—must be intent **"to discuss or act as a unit."** *Wolosky v. Sparta BOE* (2015).
  - *A member is probably permitted to email a majority of the Board if it is for **informational purposes** and not to stimulate discussion.*
  - *Members should avoid replying-all so as not to prompt a multilateral discussion which could constitute an OPMA meeting.*
- If "informational" email is sent, sender should include **qualifying language**:
  - "Please do not respond."
  - "For informational purposes only."
  - "I would appreciate a full discussion on this matter at tonight's board meeting."

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## Open Public Records Act

- Where OPMA provides public access to meetings, OPRA guarantees access to **government records** made, maintained, kept, or received in the course of official business.
- ***All emails exchanged between Board members relating to Board business are government records***, whether through a District or a personal email account.
- **Text messages** have also been held to be government records when relating to public business.
- Board members urged to use caution when communicating electronically—
  - *Remember that the email communication is subject to disclosure under ORPA unless it meets an exception.*

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## Confidentiality

- Board members are ***expressly prohibited from disclosing any confidential information*** learned in their role as members.
- Expectation exists regardless of the impact of the matter on the member's own children or friends.
  - *Example: A member learns during closed session that a teacher was suspended pending psychiatric evaluation. This information **cannot be disclosed to anyone**, even if that member's child is a student of the teacher.*
  - *Example: The Board is deliberating over reorganizing facilities to place PreK-4 students in one building and 5-8 students 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.*

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## Social Media

- Members must be exceedingly **cautious and discreet** about discussing school issues on Facebook, etc., which often are the source of unfounded rumors and avoidable conflicts.
- When using social media, members should not:
  - *post anything that would **violate District policy**;*
  - ***disrespect others** or make **defamatory statements** about the Board, the District, employees, students, or families;*
  - *disclose **confidential information**;*
  - ***communicate with other Board members** regarding Board business, so as to avoid an OPMA violation;*
  - *respond to postings regarding **Board or District business**—complaints or inquiries should be referred to the Superintendent.*

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## School Ethics Act: Ethical Obligations

- District leadership must “hold the **respect and confidence of the people**,” and Board members 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.”
- The ethical obligations of a Board member are, in sum, to:
  - *uphold and enforce **laws, rules, and regulations**;*
  - *promote **educational welfare** of children, regardless of ability, race, creed, sex, or social standing;*
  - *act in an official capacity only for purposes of **policy making, planning, and appraisal**, and only after consulting with those who will be affected;*
  - *act not to administer the school but to **see that it is well run**;*
  - *recognize that authority rests in the Board, not individual members, and **make no personal promises nor take any private action** that may compromise the Board;*

(continued on next slide)

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## School Ethics Act: Ethical Obligations (cont.)

- maintain **independent judgment**, free of special interests, partisan politics, self-dealing, or personal favors;
- **hold confidential** information that, if disclosed, would needlessly injure individuals or the schools, and **provide accurate information** to District administrators and staff;
- **appoint the best qualified personnel** available, in consultation with Superintendent;
- **support and protect school personnel** in proper performance of their duties; and
- **refer all complaints to the Superintendent**, and act on such complaints at public meetings only if there is no administrative solution.

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## School Ethics Act: Conflicts of Interest

- Certain arrangements and relationships for Board members are expressly forbidden—for example, no member may:
  - be involved in any **business or activity that is in "substantial conflict"** with his or her public duties;
  - use position to secure **unwarranted privileges, advantages, or employment** for self, immediate relatives, or others;
  - act in official capacity where the matter involves an **immediate relative** or a **business organization in which the member has an interest**;
  - **accept employment**, even unpaid, in any capacity that might prejudice the member in exercising official duties;
  - accept any **gift, favor, loan, etc.** with the understanding that it was given to influence discharge of official duties;
  - use **non-public knowledge** for financial gain.

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## School Ethics Act: Board Member Recusal

- **Immediate family member:** Board member's spouse or dependent child residing in the same household.
- **Relative:** Board member's spouse, or the member's or spouse's:
  - *parent, parent-in-law, or stepparent,*
  - *child, child-in-law, or step-child,*
  - *sibling, step-sibling or half-sibling,*
  - *aunt or uncle,*
  - *niece or nephew,*
  - *grandparent, or*
  - *grandchild,**whether by blood, marriage, or adoption.*

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## School Ethics Act: Board Member Recusal (cont.)

Relationship to board member	May the board member . . .		
	participate in negotiations?	vote to ratify the contract?	participate in superintendent issues?
<b>Self</b>			
Current member of similar union	No	Yes*	Yes*
<b>Spouse</b>			
Current member of local union	No	No	No
Current member of similar union	No	Yes*	Yes*
<b>Dependent child</b>			
Current member of local union	No	No	No
Current member of similar union	No	Yes*	Yes*
<b>Nondependent child</b>			
Current member of local union	No	No	No
Current member of similar union	Yes*	Yes*	Yes*
<b>Relative</b>			
Current member of local union	No	No	No
Current member of similar union	Yes*	Yes*	Yes*

\*absent another conflict—see next slide

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## School Ethics Act: Board Member Recusal (cont.)

- Even if no automatic recusal or per se conflict, there may still be **case-by-case conflicts** if Board member or relative is involved in out-of-district union.
- Per Commission Advisory Opinion A16-15 (2015), a conflict is more likely if out-of-district relative:
  1. *is an **officer** in the NJEA or the local education association;*
  2. *is on his/her district's **negotiating team**; or*
  3. *has some other leadership role which may **influence the outcome of negotiations** there.*
- Opinion A16-15 discussed only Board members' relatives, but same factors apply to members themselves who are employed out of district.

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## School Ethics Act: Members' Personal Opinions

- Members **do not surrender private rights**—e.g., First Amendment rights—but must be circumspect when publicly expressing personal opinions.
- Per Commission Advisory Opinion A03-07 (2007), a member writing a **letter to the editor** must:
  1. ***identify him- or herself** as a board member;*
  2. *indicate that the letter is neither **authorized** by the board nor **written on behalf of** the board;*
  3. *include only **accurate, non-confidential** information; and*
  4. *ensure that the private action **does not compromise the board**.*

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## School Ethics Act: Common Pitfalls

- **Taking unilateral action.** A Board member must refer complaints to the Superintendent and not take action themselves.
- **Neglecting stakeholders.** A Board member's role is to "help frame policies and plans *only after the board has consulted with those who will be affected by them.*"
- **Asserting authority over staff members.** A Board member does not have managerial authority over District staff and should leave this duty to administrators.
- **Referring friends for employment.** A Board Member may not use the schools "for personal gain or for the gain of friends." It is the Superintendent's job to identify and recommend the best candidate.
- **Participating directly in District administration.** Issues with Board policies, procedures, or curriculum should be referred to the Superintendent, who is responsible for discussing with the administrative staff and making recommendations to the full Board. Direct contact with staff could exceed "policy making, planning and appraisal."

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# QUESTIONS?

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