

# N.J.A.C. 6A:28, School Ethics Commission

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## **Chapter 28. School Ethics Commission**

### **Subchapter 1. General Provisions**

#### **6A:28-1.1 Scope and purpose**

- (a) The rules set forth in this chapter have been adopted for the purpose of effectuating the legislative intent of N.J.S.A. 18A:12-21 et seq., the School Ethics Act (P.L. 1991, c. 393), which seeks to “...ensure and preserve public confidence...” in the integrity of elected and appointed members of a district board of education, members of a board of trustees of a charter school or renaissance school project, and school administrators.
- (b) To achieve this goal, the Legislature adopted N.J.S.A. 18A:12-24 and 18A:12-24.1, which prescribe ethical standards by which members of a district board of education, members of a board of trustees of a charter school or renaissance school project, and school administrators are to be guided in the conduct of their offices and positions. The School Ethics Act also created the School Ethics Commission specifically for the purpose of enforcing the ethical standards through a procedure for reviewing complaints of ethical violations, investigating those complaints, and ultimately rendering recommendations to the Commissioner of Education as to the imposition of sanctions when violations are established.

#### **6A:28-1.2 Definitions**

The following words and terms shall have the following meanings when used in this chapter, unless the context clearly indicates otherwise.

“Act” means N.J.S.A. 18A:12-21 et seq., the School Ethics Act (P.L. 1991, c. 393).

“Administrator” means any officer or employee of a school district, charter school, or renaissance school project, but not a member of a district board of education or member of a board of trustees of a charter school or renaissance school project, who:

1. Holds a position that requires a certificate that authorizes the holder to serve as a school administrator, principal, or school business administrator; or
2. Holds a position that does not require the person hold any type of certificate but who is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the school district; or
3. Holds a position that requires a certificate that authorizes the holder to serve as a supervisor and who is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the school district.

“ALJ” means an administrative law judge assigned to preside over contested cases pursuant to N.J.S.A. 52:14F-1 et seq.

“Benefit” as used in the Act, means direct or indirect advantage, profit, privilege, or gain, whether financial, personal, or otherwise.

“Board member” means any person holding membership, whether by election or appointment, upon being sworn in, on any district board of education.

“Board of trustees” means the public agent authorized to supervise and control a charter school or renaissance school project.

“Board secretary” means the school district employee responsible for fulfilling a district board of education’s statutory and regulatory obligations to the School Ethics Commission.

“Censure” means a formal expression of disapproval by the Commissioner of Education for a violation(s) of the Act, which is publicized by the adoption of a formal resolution by the School Ethics Commission, and which is provided to the district board of education or the board of trustees to read and adopt at its next regularly scheduled public meeting. In the case of an officer or employee of the New Jersey School Boards Association, censure means a formal expression of disapproval publicized by the adoption of a formal resolution by the School Ethics Commission at a public meeting.

“Charter school” means a public school established pursuant to N.J.S.A. 18A:36A-1 et seq., that is operated under a charter granted by the Commissioner of Education, that is independent of the district board of education, and that is managed by a board of trustees. Pursuant to N.J.S.A. 18A:12-23.1, the provisions of the Act shall apply to an administrator and a member of a board of trustees of a charter school established pursuant to N.J.S.A. 18A:36A-1 et seq.

“Charter school or renaissance school project designee” means the charter school [or renaissance school project employee responsible for fulfilling the statutory and regulatory obligations of the board of trustees to the School Ethics Commission.

“Code of Ethics for School Board Members” means the standards of conduct established pursuant to P.L. 2001, c.178 (N.J.S.A. 18A:12-24.1).

“Commission” means the School Ethics Commission established pursuant to N.J.S.A. 18A:12-27.

“Commissioner” means the Commissioner of Education or the Commissioner’s designee.

“Complainant” means the person bringing a complaint of an alleged violation of the Act or the person established as a lead complainant pursuant to N.J.A.C. 6A:28-6.6.

“Day” means a business day when the period specified is less than seven days, and a calendar day when the period specified is seven days or more. Calculations do not include the day from which days are computed, but include the last day of the period. If the last day falls on a Saturday, Sunday, or State holiday, the last day shall be deemed the next business day.

“Dependent child” means any child claimed as a dependent on the board member’s, member of a board of trustees’, or administrator’s Federal or State tax returns.

“Disclosure statements” means the Financial and the Personal/Relative Disclosure Statements that board members, members of a board of trustees, and administrators are required to file annually pursuant to N.J.S.A. 18A:12-25 and 18A:12-26.

“District board of education” means the board of education of a local or regional school district, county special services school district, or county vocational school district; the board of directors of an educational services commission or jointure commission; and the board of education of a school district under State intervention.

“Financial Disclosure Statement” means the statement of personal finances that board members, members of a board of trustees, and administrators are required to file annually pursuant to N.J.S.A. 18A:12-26, and that are based upon the previous year’s finances.

“Fine” means a sanction imposed pursuant to N.J.S.A. 18A:12-29(e), for the filing of a frivolous complaint in an amount not to exceed \$500.00.

“Frivolous complaint” means a complaint determined by the Commission to be:

1.     Commenced, used, or continued in bad faith, solely for the purpose of harassment, delay, or malicious injury; or

2. One that the complainant knew, or should have known, was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.

“Income” means income as defined by the Internal Revenue Service except as otherwise provided at N.J.S.A. 18A:12-26.a(1).

“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.

“Member of immediate family” means the spouse, civil union partner, or domestic partner of a school official, or a dependent child residing in the same household as the school official.

“Newly elected or appointed board member” means any board member who has never served as a member of either an elected or appointed district board of education in New Jersey or who has not previously completed a training program prepared and offered by the New Jersey School Boards Association pursuant to N.J.S.A. 18A:12-33.

“OAL” means the Office of Administrative Law established pursuant to N.J.S.A. 52:14F-1 et seq.

“Party” means a person who is designated on record as a complainant or respondent or the Commission.

“Penalty” or “sanction” means the form of discipline the Commission recommends to the Commissioner. Penalties include reprimand, censure, suspension, or removal of a board member, a member of a board of trustees, or an administrator.

“Person” means a human being, and does not include district boards of education, boards of trustees, labor organizations, or school districts.

“Personal/Relative Disclosure Statement” means the statement that board members, members of a board of trustees, and administrators are required to file annually pursuant to N.J.S.A. 18A:12-25.

“Prohibited acts” means the forbidden conduct set forth for board members, members of a board of trustees, and administrators at N.J.S.A. 18A:12-24.

“Recuse” means to formally disqualify and remove oneself from participating in a matter, including, without limitation, discussions and/or votes, because of a conflict of interest.

“Relative” means an individual's spouse, civil union partner pursuant to N.J.S.A. 37:1-33, domestic partner as defined at 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 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.

“Remedy” means the actions that the Commission may take for violations of the Act or this chapter and include, without limitation, the issuance of an Order to Show Cause, referral to another New Jersey Department of Education office for appropriate action, the issuance of a complaint, the filing of a cause of action, or the recommendation of an appropriate penalty to the Commissioner.

“Removal” means a form of penalty imposed for a violation(s) of the Act that results, following adoption by the Commissioner, in the immediate termination of a board member's or a member

of a board of trustees' membership. For administrators, removal means a form of penalty that results, following adoption by the Commissioner, in termination of employment.

"Renaissance school project" means a school or group of schools established pursuant to N.J.S.A. 18A:36C-1 et seq., operated under a Commissioner-approved contract with a school district, independent of the district board of education, and managed by a board of trustees. Pursuant to N.J.A.C. 6A:31-7.2, the members of a renaissance school project board of trustees, as well as the administrators of a renaissance school project, are considered school officials who are required to abide by the Act and its implementing rules.

"Reprimand" means a form of penalty that declares the conduct of a board member, a member of a board of trustees, or an administrator violated the standards of conduct prescribed by the Act but does not result in the publication or the adoption of a formal resolution by the Commission.

"Respondent" means the board member, the member of a board of trustees, or the administrator against whom a complaint is made pursuant to the Act.

"School district" means any local or regional school district, charter school, or renaissance school project established pursuant to N.J.S.A. 18A:8-1 et seq., 18A:13-1 et seq., 18A:36A-1 et seq., and 18A:36C-1 et seq., and includes, but is not limited to, jointure commissions, county vocational school districts, county special services districts, educational service commissions, educational research and demonstration centers, environmental education centers, and educational information and resource centers.

“School official” means a board member, a member of the board of trustees, an administrator, or an employee or officer of the New Jersey School Boards Association, but not including any member of the secretarial, clerical or maintenance staff.

“Spouse” means the person to whom the school official is legally married under New Jersey law, and also includes a partner in a civil union as established at N.J.S.A. 37:1-33 or a domestic partner as established at N.J.S.A. 26:8A-1 et seq.

“Suspension” means a form of penalty imposed for a violation(s) of the Act that results in a school official being barred from engaging in any activity and/or matter related to the school official’s position for a designated period of time.

“Trustee” means any person holding membership, upon being sworn in, on any board of trustees of a school district, charter school, or renaissance school project. For the purposes of this chapter, “trustee” includes members of any other board established to be the public agent authorized by the State Board of Education to supervise and control a school district through its administrative personnel.

### **6A:28-1.3 Functions and authority of the Commission**

(a) Pursuant to the provisions of the Act, the Commission shall:

1. Prescribe disclosure statements in accordance with N.J.S.A. 18A:12-25 and 18A:12-26, to be filed by all school officials on or before April 30 of each year, or at such other times as this chapter may require;
2. Appoint professional and clerical staff and incur expenses as may be necessary to carry out the provisions of the Act within the limits of funds appropriated or

otherwise made available to the Commission. All appointments shall be made in accordance with the provisions of Title 11A of the New Jersey Statutes;

3. Issue advisory opinions, pursuant to N.J.S.A. 18A:12-31;
4. Process and investigate complaints raised pursuant to N.J.S.A. 18A:12-29 and conduct hearings as may be necessary;
5. Administer the receipt and retention of disclosure statements as required by the Act;
6. Have the authority to issue Orders to Show Cause, and compel the attendance of witnesses and the production of documents as the Commission deems necessary and relevant to carrying out its duties pursuant to the Act;
7. Have the authority to issue and enforce an Order to Show Cause for failure to file required disclosure statements, and failure to complete required ethics training;
8. Be empowered, along with the persons appointed by the Commission, to administer oaths and examine witnesses under oath;
9. Have the authority, by resolution adopted by the Commission, to designate an authorized individual, on behalf of the Commission, to do the following:
  - i. Issue an Order to Show Cause for the failure of a school official to file disclosure statements as required at N.J.S.A. 18A:12-25 and 18A:12-26;
  - ii. Issue an Order to Show Cause for the failure of a board member or trustee to fulfill the training requirements at N.J.S.A. 18A:12-33, in accordance with N.J.A.C. 6A:28-1.6(a)1 and 2;
  - iii. Issue an Order to Show Cause for a violation(s) of the Act that, in the discretion of the Commission, requires immediate review and adjudication;
  - iv. Deny a request for an advisory opinion, in accordance with N.J.A.C. 6A:28-5.2(c)3;

- v. Consolidate complaints, designate lead complainants, and/or share information about a complaint as permitted at N.J.A.C. 6A:28-6.6;
  - vi. Direct that a complaint be amended in order to comply with requirements set forth at N.J.A.C. 6A:28-6.3 and deny permission for an amendment where an Answer has already been filed;
  - vii. Issue a subpoena on behalf of the Commission to compel the attendance of a person to testify or to produce documents, as deemed necessary to a matter pending before the Commission, in accordance with N.J.A.C. 6A:28-8.1(a);
  - viii. Grant or deny requests for extensions to file submissions, as set forth at N.J.A.C. 6A:28-7.4 and 9.7;
  - ix. Administratively dismiss a complaint, in accordance with N.J.A.C. 6A:28-9.2;
  - x. Adjourn a hearing, in accordance with N.J.A.C. 6A:28-9.9;
  - xi. Perform other managerial or administrative functions not specified in the resolution; and
  - xii. Provide the Commission with a summary of the actions taken pursuant to this section on a monthly basis; and
10. Recommend to the Commissioner the reprimand, censure, suspension or removal of a school official found to have violated the Act.

#### **6A:28-1.4 Jurisdiction of the Commission**

- (a) The Commission shall have jurisdiction over matters arising under the Act. The Commission shall not receive, hear, or consider any pleadings, motion papers or documents of any kind relating to any matter that does not arise pursuant to the Act.

- (b) A Commission member shall not participate in any proceedings on a complaint against a school official in a school district, a charter school, or a renaissance school project in which the Commission member serves or by which the Commission member is employed. A Commission member also shall not participate in any proceedings on a complaint in which the Commission member or a member of immediate family has a personal or financial involvement.

#### **6A:28-1.5 Abeyance**

Pursuant to N.J.S.A. 18A:12-32, the Commission shall not process any complaint nor issue a final ruling or advisory opinion where the subject matter of the complaint or advisory opinion is pending in any court of law or administrative agency of this State. The Commission shall place the matters in abeyance and notify the parties accordingly.

#### **6A:28-1.6 Order to Show Cause**

- (a) If, in the course of implementing and enforcing the Act, the Commission becomes aware of facts that appear to indicate that a school official has violated the Act or this chapter, the Commission may issue an Order to Show Cause as to why the school official should not be found in violation of the Act or this chapter, and provide the school official an opportunity to respond. A statement of the factual details and findings, if applicable, supporting the charge shall accompany the order. This procedure shall not preclude the filing of a complaint. An Order to Show Cause shall be appropriate in, but not limited to, the following circumstances:
1. Failure of a school official to file disclosure statements as required at N.J.S.A. 18A:12-25 and 26;

2. Failure of a board member or a trustee to fulfill the training requirements at N.J.S.A. 18A:12-33; or
  3. When the Commission, on its own initiative, has determined that a complaint is frivolous.
- (b) Where an Order to Show Cause is issued, the school official shall have 20 days to submit a response in writing under oath as to why the school official should not be found in violation of the Act or this chapter.
- (c) Upon receipt of the response to the Order to Show Cause or upon expiration of the 20-day time period for filing, the Commission may proceed to a determination of a violation on a summary basis.
1. The Commission may conduct an investigation and/or hearing when the Commission deems it necessary because material facts are in dispute, and review on a summary basis is not appropriate.

#### **6A:28-1.7 Proof of service**

- (a) Proof of service shall be in the form of one of the following:
1. An acknowledgement of service signed by the attorney or the attorney's designee for each party or signed and acknowledged by the party or agent thereof, indicating the address at which each party was served;
  2. An affidavit of the person making service, sworn or affirmed to be true, indicating the address at which each party was served;
  3. A certification indicating the address at which each party was served and meeting the requirements of New Jersey Court Rules at R. 1:4-4(b);

4. A copy of the receipt for certified mailing or delivery by messenger. The return receipt card (“green card”) is not required for proof of service of certified mailing; or
  5. A copy of the email address at which a party was served, along with a copy of the “delivered” and/or “read” receipt.
- (b) The Commission shall serve the complaint on the respondent(s) after the Commission determines that the contents of the complaint comply with the format set forth at N.J.A.C. 6A:28-6.3.
- (c) After service of the complaint by the Commission, all filings shall be served by the filing party on their adversary in the same manner as the Commission was served, and proof of service shall be provided to the Commission.

#### **6A:28-1.8 Relaxation of rules**

- (a) The rules in this chapter shall be considered general rules of practice to govern, expedite, and effectuate the Commission’s implementation and enforcement of the Act. Rules that do not reflect a specific statutory requirement or an underlying rule of the OAL may be relaxed or dispensed with by the Commission, in its discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.
- (b) The Commission maintains the authority to provide, in extraordinary circumstances, relief to school officials who are unable to comply with the requirements of this chapter. Extraordinary circumstances include, without limitation, when a school official is engaged in military service or is gravely ill. The issuance of extraordinary relief does not relieve the school official from compliance once the period of relief expires.

#### **Subchapter 2. By-laws of The Commission**

##### **6A:28-2.1 Members**

The Commission shall consist of nine members appointed for three-year terms in the configuration and manner prescribed by the Act.

#### **6A:28-2.2 Chairperson**

- (a) In accordance with the provisions of the Act, the Commission shall elect, by majority vote, one member to serve as chairperson for a term not to exceed one year. There is no limit to the number of terms a chairperson may serve.
- (b) Should the chairperson resign or otherwise be unable to complete the term, the remaining Commission members shall elect, by majority vote, a chairperson from among their membership to serve the remainder of the unexpired term.
- (c) Should the chairperson be unable to attend any regular or special meeting of the Commission, the Commission shall select, by majority vote of the quorum present, a temporary chairperson to preside over the meeting.
- (d) The chairperson shall preside over the meetings of the Commission and shall perform all duties incidental to that office. The chairperson shall be ex officio a member of all committees, except the nominating committee.
- (e) The chairperson shall serve a one-year term that shall commence on July 1 of each year.
- (f) The chairperson shall appoint the members of all committees.

#### **6A:28-2.3 Meetings**

- (a) Parliamentary procedures in meetings of the Commission shall be governed by Robert's Rules of Order Newly Revised (10th Edition), which is incorporated herein by reference as amended and supplemented and a copy of which can be obtained from Perseus

Publishing, Markets Department at the Perseus Books Group, 11 Cambridge Center, Cambridge, MA 02142.

- (b) Regular monthly meetings shall be held at the time and the place and on the dates established by the Commission. Public notice of the regular meetings shall be made in accordance with the Senator Byron M. Baer Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 et seq.
- (c) Special meetings may be called by the Commission chairperson at any time or at the request of any three members. When possible, three days' notice of any special meeting shall be given to each member. Public notice of special meetings shall be made in accordance with the OPMA.
- (d) A quorum shall consist of a majority of the authorized membership of the Commission reduced by any vacancy(ies).
- (e) If a member of the Commission misses three consecutive public monthly meetings without good cause, the Commission shall determine, by majority vote, whether to recommend the removal of the member to the Governor.
- (f) At the discretion of the chairperson, members may attend regular monthly meetings or special meetings by telephone, or by a live video or audio platform that can also be accessed by the public.

#### **6A:28-2.4 Committees**

- (a) The Commission shall act as a committee of the whole.
- (b) The chairperson shall select, at the Commission's May meeting, a nominating committee of three persons whose function it shall be to select a nominee for chairperson. The nominating committee shall present its nominee to the Commission at its June meeting for approval.

- (c) The chairperson may appoint special committees to consider and make recommendations to the Commission on any matter, and will designate a special committee chairperson for each special committee.
- (d) Special committee meetings will be held on the dates, and at the times, as determined by the special committee chairperson.

### **Subchapter 3. Filing of Disclosure Statements**

#### **6A:28-3.1 Procedures for filing of disclosure statements**

- (a) On or before April 30 of each year, or as otherwise provided in this chapter, all returning school officials who filed disclosure statements in the same school district, charter school, or renaissance school project, in the previous year, shall electronically file disclosure statements that are complete and accurate.
  1. School officials shall complete their disclosure statements based upon financial information from the preceding calendar year.
  2. Responses on the disclosure statements shall initially be reviewed by the board secretaries, or the charter school or renaissance school project designees, and then will be approved by the executive county superintendent or the Commission's staff.
- (b) All disclosure statements filed in accordance with the Act and this chapter shall be public records, and will be available on the Commission's website.
- (c) New board members in Type I school districts appointed to take office, or appointed to fill vacancies, shall electronically file the disclosure statements within 30 days of being sworn in. The board secretaries shall add the names of these school officials to the list of school officials once they are sworn in.

- (d) New board members in Type II school districts elected to their positions in a school election, or appointed to fill vacancies, shall electronically file the required disclosure statements within 30 days of being sworn in. The board secretaries shall add the names of these school officials to the list of school officials once they are sworn in.
- (e) Pursuant to N.J.S.A. 18A:12-23.1, 18A:36A-1 et seq., and 18A:36C-1 et seq., trustees shall electronically file the required disclosure statements within 30 days after the granting of the charter or establishment of the renaissance school project. Thereafter, any newly appointed trustee shall electronically file disclosure statements within 30 days of being sworn in. The charter school or renaissance school project designees shall add the names of the new trustees to the list of school officials once they have been sworn in.
- (f) New administrators appointed to fill vacancies after the April 30 filing date shall electronically file the required disclosure statements within 30 days of the first date of their employment. The board secretaries and the charter school and renaissance school project designees shall add the names of the new administrators to the list of school officials once they have begun employment.
- (g) New officers and employees of the New Jersey School Boards Association who must comply with N.J.S.A. 18A:12-25 and 18A:12-26, shall electronically file their disclosure statements within 30 days of the first date of their employment. The New Jersey School Boards Association shall designate a current employee of its organization to ensure and fulfill the organization's statutory and regulatory obligations to the Commission.
- (h) Each school official shall have an affirmative responsibility to confirm with the board secretary, or the charter school or renaissance school project designee, that the school official's name has been added to the list of school officials within the time period set

forth in this section, and that the school official's name continues to appear on the list of school officials for as long as the individual remains a school official.

**6A:28-3.2 Duties of district boards of education and charter school or renaissance school project boards of trustees**

- (a) To comply with the filing requirement for returning school officials, each board secretary, and charter or renaissance school project designee, shall create a list of school officials, on or before February 1 of each year. The list of school officials shall include the name, telephone number, and email address of each returning school official, by office and position, who is required to file disclosure statements.
- (b) If a new school official is elected or appointed before April 1, the board secretary, or the charter school or renaissance school project designee, shall do the following:
  1. Add the new school official to the February list of school officials;
  2. Ensure that the school official receives instructions on how to complete the disclosure statements; and
  3. Ensure that the school official files the disclosure statements within 30 days of being sworn in.
- (c) If a new school official is elected or appointed on or after April 1, the board secretary, or the charter school or renaissance school project designee, shall do the following:
  1. Add the new school official to the June list of school officials;
  2. Ensure that the school official receives instructions on how to complete the disclosure statements; and
  3. Ensure that the school official files the disclosure statements within 30 days of being sworn in.

- (d) On or before April 30 for school officials who are on the February list of school officials, and on or before November 15 for school officials who are on the June list of school officials, the board secretary, or the charter school or renaissance school project designee, shall review the disclosure statements to ensure that all filings are complete, and all questions have been answered. Once the board secretary, or the charter school or renaissance school project designee, completes this review, the disclosure statements will be submitted to the executive county superintendent for final review and approval.
- (e) Annually, within 10 calendar days of April 30, the board secretary or the charter school or renaissance school project designee shall provide to the executive county superintendent a written list of school officials who failed to file disclosure statements.
- (f) The board secretary, or the charter school or renaissance school project designee, shall review the disclosure statements to identify conflicts of interest. To the extent a website is maintained, the board secretary, or the charter school or renaissance school project designee, shall post a link on the school district's, charter school's, or renaissance school project's website to each school official's most recently filed disclosure statement as it appears on the Commission's website. The link shall be posted on the same webpage as the contact information for each school official or on a stand-alone webpage for all school officials.

#### **6A:28-3.3 Procedures in the event of failure to file disclosure statements**

- (a) Failure to timely complete and file disclosure statements shall constitute a violation of the Act, and may result in the reprimand, censure, suspension, or removal of a school official.
- (b) If a school official fails to timely complete and file the disclosure statements, the Commission may issue an Order to Show Cause pursuant to the provisions of N.J.A.C. 6A:28-1.6.
- (c) Unless good cause is shown or the school official previously has been the subject of an

Order to Show Cause, the Commission shall recommend that a school official who completes the disclosure statements after the issuance of an Order to Show Cause, but before the Commission issues its decision, receives a censure.

- (d) Unless good cause is shown or the school official previously has been the subject of an Order to Show Cause, the Commission shall recommend that a school official who completes and files the disclosure statements after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days. The Commission will recommend this penalty only if the school official notifies the Commission, in writing, that the school official successfully completed and filed the disclosure statements before the Commissioner issues a final decision. If the school official does not provide such notification, the Commission will recommend a suspension for 60 days.
- (e) Unless good cause is shown, the Commission shall recommend that a school official who fails to complete and file the disclosure statements after the Commission issues its decision, and has not filed the disclosure statements as of the date the Commissioner issues a final decision, be removed from the school official's position.
- (f) After the Commissioner imposes a penalty, the Commission shall adopt a resolution affirming the penalty. The resolution shall be read by the district board of education or the board of trustees at the beginning of its next regularly scheduled public meeting, and memorialized in the minutes of the meeting.
  - 1. Once the minutes are approved, the district board of education or the board of trustees shall forward a copy of the minutes to the Commission.
    - i. If the minutes are not forwarded to the Commission by the district board of education or the board of trustees, the Commission shall have the

authority to seek any penalty and/or remedy authorized by this chapter against an appropriate school official.

2. The district board of education or the board of trustees shall also post the resolution for a period of no less than 30 days in such places where public notices are posted.
3. The resolution shall also be published on the school district's, the charter school's, or the renaissance school project's website, if available, for a period of no less than 30 days.

#### **6A:28-3.4 Procedures in the event of incomplete filing**

- (a) If a board secretary, or a charter school or renaissance school project designee, determines that a school official's disclosure statements are incorrect or incomplete, the board secretary, or charter school or renaissance school project designee, shall return the disclosure statements to the school official. The school official shall have 20 days from receipt of the returned filing to correct and/or complete the disclosure statements and resubmit them to the board secretary, or the charter school or renaissance school project designee. The board secretary, or the charter school or renaissance school project designee, then shall file the corrected or completed disclosure statements with the executive county superintendent.
- (b) If the executive county superintendent determines that a school official's disclosure statements are incorrect and/or incomplete, the executive county superintendent shall return the disclosure statements to the board secretary, or the charter school or renaissance school project designee, who then shall return the disclosure statements to the school official. The school official shall have 20 days from receipt of the returned filing to correct and/or complete the disclosure statements and resubmit them to the board secretary, or the charter

school or renaissance school project designee, who then shall file the corrected and/or completed disclosure statements with the executive county superintendent.

- (c) If a school official fails to resubmit corrected and/or completed disclosure statements after 20 days, the Commission may issue an Order to Show Cause pursuant to the provisions of N.J.A.C. 6A:28-1.6.
- (d) If a response is not received within the 20-day period, or if the school official fails to properly file, the Commission may regard the school official's incomplete filing as a failure to file, and the Commission shall proceed in accordance with N.J.A.C. 6A:28-3.3.

#### **Subchapter 4. Board Member and Charter School or Renaissance School Project Trustee Training**

##### **6A:28-4.1 Training requirement**

- (a) Within the first 90 days of a new board member's or a new trustee's first term, the board member or trustee shall complete a training program prepared and offered by the New Jersey School Boards Association. The training shall include instruction relative to the board member's or trustee's responsibilities pursuant to the Act.
- (b) Each board member and trustee shall complete, in both the second and third years of the member's or trustee's first term, a training program to be prepared and offered by the New Jersey School Boards Association. The training program shall include information on school district governance.
- (c) Within one year after each reelection or reappointment to the district board of education or the board of trustees, each board member or trustee shall complete an advanced training program to be prepared and offered by the New Jersey School Boards Association. The training shall include information on relevant changes to New Jersey

school law and other information deemed appropriate to enable the board member or the trustee to serve most effectively.

#### **6A:28-4.2 Procedures for compliance**

- (a) Each board secretary, and charter school or renaissance school project designee, shall provide written notice to the New Jersey School Boards Association and the Commission when a new board member or trustee is elected or appointed, when a board member or a trustee is reelected or reappointed, when a board member or a trustee resigns or is removed, and when the term of a board member or a trustee expires. All written notifications must be provided to the New Jersey School Boards Association and the Commission within 30 days of occurrence. Failure to do so may result in the Commission seeking an appropriate remedy.
  - 1. The board secretary, or the charter school or renaissance school project designee, shall provide the New Jersey School Boards Association with the name, school address, telephone number, and email address of each board member or trustee. Should this information change, the board secretary, or the charter school or renaissance school project designee, shall provide updated information to the New Jersey School Boards Association within 30 days of its occurrence.
- (b) The New Jersey School Boards Association shall provide written notice to the board secretary, or the charter school or renaissance school project designee, when a board member or a trustee has attended a training program that satisfies the training requirements.
- (c) By January 1 of the second calendar year for board members elected in November, April 1 of the first calendar year for board members elected in April, and July 1 for charter school and renaissance school project trustees, the New Jersey School Boards Association shall

provide the Commission with the names of the board members and the trustees who have not fulfilled the training requirements as required by the Act and this chapter.

- (d) Board members and trustees who fail to comply with the training requirements shall be considered in violation of N.J.S.A. 18A:12-33, and the Commission shall proceed in conformance with the procedures set forth at N.J.A.C. 6A:28-1.6.

#### **6A:28-4.3 Penalties for non-compliance**

- (a) If a board member or a trustee fails to complete training as required by this chapter, the Commission shall issue an Order to Show Cause pursuant to the provisions at N.J.A.C. 6A:28-1.6.
- (b) Unless good cause is shown or the school official previously has been the subject of an Order to Show Cause, the Commission shall recommend that a board member or a trustee who completes training after the issuance of an Order to Show Cause, but before the Commission issues its decision, receives a censure.
- (c) Unless good cause is shown or the school official previously has been the subject of an Order to Show Cause, the Commission shall recommend that a board member or a trustee who completes training after the Commission issues its decision, but before the Commissioner issues a final decision, receives a suspension for 30 days. The Commission will recommend this penalty only if the board member or the trustee provides to the New Jersey School Boards Association and the Commission written notice that the board member or the trustee successfully completed training, and provides the written notice before the Commissioner issues a final decision. If the board member or the trustee does not provide such written notification, the Commission will recommend a suspension for 60 days.
- (d) Unless good cause is shown, the Commission shall recommend that a board member or a trustee

who fails to complete training after the Commission issues its decision, and after the Commissioner issues a final decision, be removed from the board member's or trustee's position.

- (e) If the Commissioner imposes a penalty for non-compliance with this subchapter, the Commission shall adopt a resolution affirming the penalty. The resolution shall be read by the district board of education or the board of trustees at the beginning of its next regularly scheduled public meeting, and shall be memorialized in the minutes of the meeting.
1. Once the minutes are approved, the district board of education or the board of trustees shall forward a copy of the minutes to the Commission.
    - i. If the minutes are not forwarded to the Commission by the district board of education or the board of trustees, the Commission shall have the authority to seek any penalty and/or remedy authorized by this chapter against an appropriate school official.
  2. The district board of education or the board of trustees shall also post the resolution for a period of no less than 30 days in such places where public notices are posted.
  3. The resolution shall also be published on the school district's, or the charter school's or renaissance school project's website, if available, for a period of no less than 30 days.

## **Subchapter 5. Advisory Opinions**

### **6A:28-5.1 Entitlement to an advisory opinion**

Any school official, or an attorney on the school official's behalf, may request and obtain an advisory opinion from the Commission as to whether any proposed conduct or activity of a school official within the same school district, charter school, or renaissance school project as that in which the school official serves, would constitute a violation of the Act in the

Commission's opinion. If an attorney files a request on behalf of a school official, the request shall provide the name of the school official who is the subject of the request, as well as the school official's school district, charter school, or renaissance school project.

### **6A:28-5.2 Procedures for requesting and receiving an opinion**

- (a) Requests for advisory opinions shall clearly set forth in detail the anticipated future conduct or activity the school official seeks to undertake and the exact role the school official anticipates having in that activity or conduct, as well as the anticipated date(s) the prospective activity is to occur or begin.
  - 1. The request shall include a statement that the school official has reviewed the public advisory opinions available on the Commission's website, and the concern raised in the request has not already been addressed by the Commission in an existing advisory opinion.
  - 2. Upon receipt of a request for an advisory opinion, the Commission may copy the attorney who represents the district board of education or the board of trustees on the Commission's response to the request.
- (b) A school official may seek an advisory opinion from the Commission as to the proposed conduct of another school official, but the requesting school official shall provide proof of service pursuant to N.J.A.C. 6A:28-1.7 to show that the school official whose proposed activity or conduct is in question has been copied on the request. The school official whose conduct is in question will then have 10 days from receipt of the advisory opinion request to respond.
- (c) Upon receipt of a request for an advisory opinion, the Commission shall assign a file number to the request.

1. During the course of any staff work and/or Commission deliberation regarding the request for an advisory opinion, the request shall be identified for purposes of public access only by file number and not by the name(s) of school official(s) involved.
  2. Information regarding any request for an advisory opinion shall not be made public by the Commission unless the information is incorporated into the advisory opinion and made public in accordance with (e) below.
  3. The Commission may decline to accept an advisory opinion request where public advisories sufficiently address the questions raised in the advisory opinion request, where the request does not meet the requirements of this subchapter, or where the Commission has determined there is insufficient time to consider and respond to the request before the proposed activity occurs.
- (d) The Commission or its staff may require additional information from the school official or attorney seeking an advisory opinion or require the school official's appearance before the Commission or its staff.
- (e) Advisory opinions issued by the Commission shall not be made public unless six members vote to direct the opinion to be made public.
1. Advisory opinions made public by the Commission shall delete the name and school district of the school official requesting the advisory opinion, as well as any other information that would identify the district board of education, the board of trustees, or the school official.

## **Subchapter 6. Filing and Amendment of Complaints; Burden of Proof**

### **6A:28-6.1 Who may file a complaint**

- (a) Any person may file a complaint with the Commission alleging a violation of the Act.
- (b) Any member of the Commission may file a complaint.
  - 1. A Commission member who files a complaint shall not participate as a Commission member in any subsequent proceedings related to that complaint.

### **6A:28-6.2 Process for the filing of a complaint**

- (a) To file a complaint with the Commission alleging a violation of the Act, a complainant may either:
  - 1. File an original hardcopy complaint with related exhibits, along with one copy of such complaint and related exhibits, and an additional copy of the complaint and related exhibits for each respondent named in the complaint; or
  - 2. File an electronic complaint with related exhibits with the Commission ([school.ethics@doe.nj.gov](mailto:school.ethics@doe.nj.gov)). If a complainant chooses to file a complaint with related exhibits electronically, the complainant must still mail a copy of the complaint with related exhibits to the Commission for each respondent named in the complaint.
- (b) Regardless of the method of filing, the contents of the complaint shall comply with the format set forth at N.J.A.C. 6A:28-6.3.
- (c) A complainant shall promptly provide written notice to the Commission of any change of address or contact information, and shall promptly provide written notification to the Commission as needed in accordance with N.J.A.C. 6A:28-9.1.

### **6A:28-6.3 Contents of a complaint**

- (a) A complaint shall be entitled “Before the School Ethics Commission” and shall set forth in the caption the names of the complainant(s) and the respondent(s).

- (b) The complaint shall include the following:
1. The full name, home address, phone number, and email address of each complainant;
  2. The full name, home address, phone number (if known), and email address (if known) of each respondent;
  3. Individually numbered paragraphs setting forth each alleged violation of the Act, with each paragraph to include, without limitation, the following:
    - i. The date(s) of the occurrence(s) of each specific allegation;
    - ii. The section(s) of the Act claimed to be violated for each specific allegation; and
    - iii. The specific facts or arguments that support the contention that the Act was violated;
  4. A signature and certification by each complainant; and
  5. Evidence in support of the allegations, including, but not limited to: meeting minutes, meeting agendas, certifications, and affidavits. Where possible, the specific parts of the evidence that support the alleged violation(s) must be highlighted or otherwise identified. The complainant(s) shall include an index of the highlighted material, identifying the page number or location within the document(s) where the highlighted information is located.
- (c) A complaint alleging solely a violation of the Code of Ethics for School Board Members shall name only board members or trustees as respondents and shall set forth a factual basis for the allegations in accordance with N.J.A.C. 6A:28-6.4.
- (d) A complaint should be submitted in substantially the following format:

NAME OF COMPLAINANT(S),	:	BEFORE THE SCHOOL
----------------------------	---	-------------------

v. : ETHICS COMMISSION  
OF NEW JERSEY

NAME OF RESPONDENT(S) : SCHOOL ETHICS ACT  
\_\_\_\_\_  
: COMPLAINT FORM

I, (Name of Complainant), residing at (home address, phone number, and email address of complainant), request the School Ethics Commission to consider a complaint against the above-named Respondent(s) whose home address(es) is/are (home address of respondent(s)), whose phone number(s) is/are (phone number(s) of respondent(s)), and whose email address(es) is/are (email address(es) of respondent(s)), in accordance with the authority of the School Ethics Commission to entertain such complaints under N.J.S.A. 18A:12-21 et seq.

The facts upon which this complaint is based are as follows:

#### RELEVANT BACKGROUND INFORMATION

##### 1. Statement of specific facts in support of the allegation:

Date of occurrence: \_\_\_\_\_.

I assert this to be a violation of: \_\_\_\_\_, for the following reason(s):  
\_\_\_\_\_.

(If applicable)

I assert this to be a violation of: \_\_\_\_\_, for the following reason(s):  
\_\_\_\_\_.

##### 2. Statement of specific facts in support of the allegation:

Date of occurrence: \_\_\_\_\_.

I assert this to be a violation of: \_\_\_\_\_, for the following reason(s):  
\_\_\_\_\_.

(If applicable)

I assert this to be a violation of: \_\_\_\_\_, for the following reason(s):  
\_\_\_\_\_.

3. Statement of specific facts in support of the allegation:

Date of occurrence: \_\_\_\_\_.

I assert this to be a violation of: \_\_\_\_\_, for the following reason(s):  
\_\_\_\_\_.

(If applicable)

I assert this to be a violation of: \_\_\_\_\_, for the following reason(s):  
\_\_\_\_\_.

WHEREFORE, I, as Complainant, request that the School Ethics Commission find and determine that the above-named Respondent(s) has violated the School Ethics Act and that Respondent(s) be subject to such penalty as provided by the Act.

Date: \_\_\_\_\_

Signature of the Complainant  
or the Complainant's Attorney

#### CERTIFICATION

(Name of Complainant), of full age, hereby certifies that the following statements are true:

1. I am the complainant in this matter.
2. I have read the complaint and aver that the facts contained therein are true to the best of my knowledge and belief and I am aware that the statute that created the School Ethics Commission authorizes the School Ethics Commission to impose penalties for filing a frivolous complaint. N.J.S.A. 18A:12-29(e). I am aware that if the respondent replies to the complaint with an allegation that the complaint is frivolous, I shall have 20 days from receipt of the written statement to respond to the allegation that the complaint is frivolous.

3. The subject matter of this complaint is not pending in any court of law or administrative agency of this State. I will advise the School Ethics Commission if I subsequently become aware that it is pending elsewhere.

Date: \_\_\_\_\_

Signature of the Complainant

**6A:28-6.4 Complainant's burden of proof for complaints alleging a violation of the Code of Ethics for School Board Members**

- (a) For complaints alleging a violation of the Code of Ethics for School Board Members, the complainant has the burden to factually establish a violation in accordance with the standards set forth below:
1. Factual evidence of a violation of N.J.S.A. 18A:12-24.1.a shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to enforce all laws, rules, and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures.
  2. Factual evidence of a violation of N.J.S.A. 18A:12-24.1.b shall include evidence that the respondent(s) willfully made a decision contrary to the educational welfare of children, or evidence that the respondent(s) took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed, or social standing.
  3. Factual evidence of a violation of N.J.S.A. 18A:12-24.1.c shall include evidence that the respondent(s) took official action to effectuate policies and plans without

consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty to:

- i. Develop the general rules and principles that guide the management of the school district, the charter school, or the renaissance school project;
  - ii. Formulate the programs and methods to effectuate the goals of the school district, the charter school, or the renaissance school project; or
  - iii. Ascertain the value or liability of a policy.
4. Factual evidence of a violation of N.J.S.A. 18A:12-24.1.d shall include, but not be limited to, evidence that the respondent(s) gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district, the charter school, or the renaissance school project.
  5. Factual evidence of a violation of N.J.S.A. 18A:12-24.1.e shall include evidence that the respondent made personal promises or took action beyond the scope of the respondent's duties such that, by its nature, had the potential to compromise the district board of education or the board of trustees.
  6. Factual evidence of a violation of N.J.S.A. 18A:12-24.1.f shall include evidence that the respondent(s) took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that the respondent(s) used the schools to acquire some benefit for the respondent(s), a member of the respondent's immediate family or a friend.

7. Factual evidence of a violation of the confidentiality provision of N.J.S.A. 18A:12-24.1.g shall include evidence that the respondent(s) took action to make public, reveal, or disclose information that was not public under any laws, regulations, or court orders of this State, or information that was otherwise confidential in accordance with policies, procedures, or practices. Factual evidence that the respondent(s) violated the inaccurate information provision at N.J.S.A. 18A:12-24.1.g shall include evidence that substantiates the inaccuracy of the information provided by the respondent(s) and evidence that establishes the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.
8. Factual evidence of a violation of N.J.S.A. 18A:12-24.1.h shall include evidence that the respondent(s) acted on a personnel matter without a recommendation of the chief administrative officer.
9. Factual evidence of a violation of N.J.S.A. 18A:12-24.1.i shall include evidence that the respondent(s) took deliberate action that resulted in undermining, opposing, compromising, or harming school personnel in the proper performance of their duties.
10. Factual evidence of a violation of N.J.S.A. 18A:12-24.1.j shall include evidence that the respondent(s) acted on or attempted to resolve a complaint, or conducted an investigation or inquiry related to a complaint:
  - i. Prior to referral to the chief administrative officer; or
  - ii. At a time or place other than a public meeting and prior to the failure of an administrative solution.

#### **6A:28-6.5 Time period for the filing of a complaint**

- (a) Complaints shall be filed within 180 days of notice of the events that form the basis of the alleged violation(s). A complainant shall be deemed to be notified of events that form the basis of the alleged violation(s) when the complainant knew of the events, or when the events were made public so that one using reasonable diligence would know or should have known.
1. For complaints alleging a violation of N.J.S.A. 18A:12-24.1.a, the complaint shall be filed within 180 days of the issuance of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to enforce all laws, rules, and regulations of the State Board of Education and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures.
  2. If the subject of the complaint is pending in any court of law or administrative agency of this State, the complaint shall still be filed within 180 days of notice of the events that form the basis of the alleged violation(s). In this situation, the Commission will place the matter in abeyance as appropriate.

#### **6A:28-6.6 Complaint processing, consolidating, and confidentiality**

- (a) The Commission shall assign a file number upon receipt of a complaint.
- (b) The Commission may consolidate a complaint with a related matter when appropriate. In determining whether to consolidate complaints, the Commission shall consider:
  1. The identity of the parties in each of the matters;
  2. The nature of all the questions of fact and law respectively involved;
    - i. To the extent that common questions of fact and law are involved, the savings in time, expense, duplication, and inconsistency that will be

- realized from considering the matters together and whether such issues can be thoroughly, competently, and fully reviewed together;
- ii. To the extent that dissimilar questions of fact or law are present, the danger of confusion, delay, or undue prejudice to any party;
3. The advisability generally of disposing of all aspects of the controversy in a single proceeding; and
4. Other matters appropriate to a prompt and fair resolutions of the issues.
- (c) Where the Commission consolidates complaints, it may designate one lead complainant as the representative of all complaints for purposes of initial correspondence, receipt of service for answer(s) and/or motions, and all other communications.
- (d) For any complaint filed jointly by three or more complainants, the complainants shall designate, in a letter signed by all complainants, one lead complainant as a representative of the group for purposes of initial correspondence, receipt of service for answer(s) and/or motions, and all other communications. Where such a complaint does not designate a lead complainant, one shall be assigned by the Commission.
- (e) Unless a matter is in abeyance pursuant to N.J.A.C. 6A:28-1.5, the Commission shall serve a copy of the complaint on the respondent(s) named in the complaint. Service of process may be effectuated by the Commission by any of the methods permitted at N.J.A.C. 6A:28-1.7.
- (f) During the course of any staff work and/or Commission deliberation with regard to the complaint, the complaint shall be identified only by file number for purposes of public access and not by the name(s) of the complainant(s) and the respondent(s) involved.

- (g) The Commission shall hold all information confidential regarding any pending matter until the Commission finds that a school official has violated the Act, or until the matter is settled, withdrawn or dismissed, provided that:
1. Information that indicates the possible violation of any criminal law shall be provided to the Attorney General in compliance with N.J.S.A. 18A:12-28.d;
  2. Information about complaints may be shared as necessary for the Commission to meet its statutory obligation to place matters in abeyance pursuant to N.J.S.A. 18A:12-32 and N.J.A.C. 6A:28-1.5;
  3. The full caption of a complaint may be included in a subpoena issued pursuant to N.J.A.C. 6A:28-8.1;
  4. Information about complaints may be shared as necessary where complaints are consolidated pursuant to (b) and (c) above; and
  5. Information regarding the status of a pending complaint may be provided to the executive county superintendent.

#### **6A:28-6.7 Amendment of a complaint**

- (a) The Commission may order the amendment of any complaint in order to comply with the requirements set forth at N.J.A.C. 6A:28-6.3.
- (b) A complainant may amend a complaint to cure technical defects or to clarify or amplify allegations made in the original complaint. Amendments will relate back to the date the complaint was first received by the Commission for the purposes of determining timeliness pursuant to N.J.A.C. 6A:28-6.5.

- (c) Once a written statement is filed, an amendment to a complaint may be made by the complainant only with the consent of each respondent or by leave of the Commission upon written application.
- (d) Any amendment made by the complainant pursuant to (a), (b), and (c) above shall be submitted in the same manner as the original complaint with one copy, together with a copy for each respondent.
- (e) Failure to file an amended complaint within the time given may result in administrative dismissal of the complaint.

## **Subchapter 7. Filing of Written Statements**

### **6A:28-7.1 Process for filing a written statement**

- (a) To file a written statement with the Commission, a respondent shall either:
  1. File an original hardcopy and one copy of the written statement with the Commission; or
  2. File the written statement electronically with the Commission ([school.ethics@doe.nj.gov](mailto:school.ethics@doe.nj.gov)).
- (b) A respondent shall also serve a copy of the written statement on each complainant(s) in the same manner as the Commission was served. Proof of service on each complainant shall also be submitted to the Commission pursuant to N.J.A.C. 6A:28-1.7.
- (c) A respondent shall promptly provide written notice to the Commission of any change of address or contact information, and shall promptly provide written notification to the Commission as needed in accordance with N.J.A.C. 6A:28-9.1.

### **6A:28-7.2 Contents of a written statement**

- (a) Upon receipt of the complaint from the Commission, the respondent shall file a written statement. The written statement shall fully and completely advise the parties and the Commission as to the nature of the respondent's defenses for each allegation, including any grounds upon which dismissal should be granted. The written statement shall admit or deny each allegation set forth in the complaint with specificity. Denials shall fairly meet the substance of the allegations being denied. A respondent who intends in good faith to deny only part of an allegation shall specify which parts are true, and deny only the remainder. Evidentiary support must be provided, when possible, pursuant to the standards at N.J.A.C. 6A:28-9.3.
- (b) When a written statement alleges that a complaint is frivolous pursuant to N.J.S.A. 18A:12-29.e, the complainant shall have 20 days from receipt of the written statement to respond to the allegation.
  1. If the respondent alleges that a complaint is frivolous, the respondent must submit proof of service of the written statement on the complainant in accordance with N.J.A.C. 6A:28-1.7.
  2. An allegation that a complaint is frivolous pursuant to N.J.S.A. 18A:12-29.e shall not be raised in any subsequent filings.
- (c) A written statement shall be signed by the respondent(s), and the respondent(s) shall certify as to the accuracy of the written statement.
- (d) The Commission shall not accept a counterclaim, but a respondent may file a separate complaint pursuant to N.J.A.C. 6A:28-6.

#### **6A:28-7.3 Time for filing a written statement**

- (a) Upon receipt of the complaint from the Commission, the respondent shall have 20 days from receipt of the complaint to file a written statement.
- (b) Where a respondent fails to file a written statement within the 20-day period, the Commission shall issue a notice informing the respondent that unless a written statement is received within 10 days of receipt of the notice, each allegation in the complaint shall be deemed admitted and the Commission may decide the matter on a summary basis.

#### **6A:28-7.4 Extension of the time for filing a written statement**

- (a) Upon written application by the respondent, the Commission may grant an extension of time for the filing of a written statement, provided that the application was received by the Commission prior to the expiration of the time for filing a written statement as provided for at N.J.A.C. 6A:28-7.3, and provided that the respondent notifies the Commission of whether the respondent's adversary consented to the extension request.
- (b) Requests for extensions that are opposed may be granted at the discretion of the Commission, upon a finding of good cause shown.

### **Subchapter 8. Subpoenas**

#### **6A:28-8.1 Subpoenas to compel the attendance of witnesses, production of documents; issuance, contents, and service**

- (a) Subpoenas may be issued by the Commission, or its designated agent, to compel the attendance of a person to testify or to produce books, papers, documents, or other objects as it may deem necessary and relevant to any matter.

- (b) Subpoenas may be issued by pro se parties or attorneys-at-law in accordance with the applicable rules of the OAL.

### **Subchapter 9. Review of Complaints**

#### **6A:28-9.1 Duties of complainant(s) and respondent(s) relative to N.J.A.C. 6A:28-1.5**

- (a) The complainant(s) and the respondent(s) shall immediately notify the Commission in writing when:
1. An action is filed, at any time during the pendency of a complaint before the Commission, with any court of law or administrative agency of this State concerning the subject of the complaint;
  2. The complainant(s) or the respondent(s) become aware that the matter, which is the subject of the complaint, is pending in any court of law or administrative agency of this State; or
  3. The matter pending in any court of law or administrative agency of this State is resolved.
- (b) Upon resolution of the matter pending in any court of law or administrative agency of this State, the Commission shall proceed to process the complaint according to this chapter.

#### **6A:28-9.2 Administrative dismissals**

- (a) The Commission may administratively dismiss complaints or specific allegations in complaints for reasons including, but not limited to, the following:
1. Lack of jurisdiction pursuant to N.J.A.C. 6A:28-1.4;
  2. The complaint is not timely filed pursuant to N.J.A.C. 6A:28-6.5;
  3. The complaint was withdrawn pursuant to N.J.A.C. 6A:28-9.5 or 9.6;

4. The sole allegation in the complaint is that a person other than a board member or a trustee has violated the Code of Ethics for School Board Members;
5. The complaint fails to meet the requirements set forth at N.J.A.C. 6A:28-6.3;
6. The complainant(s) fail(s) to amend the complaint as requested by the Commission pursuant to N.J.A.C. 6A:28-6.7(a) within the timeframe accorded by the Commission; or
7. The complaint, on its face, fails to state a claim under the Act.

#### **6A:28-9.3 Evidence rules**

- (a) During the course of proceedings before the Commission, all relevant evidence is admissible. If an evidentiary hearing is scheduled before the Commission, the evidentiary rules of the OAL as set forth at N.J.A.C. 1:1-1 shall apply. Evidence may include, but is not limited to, meeting minutes, meeting agenda, certifications, affidavits, and any other relevant evidence.
  1. Where possible, the specific parts of evidence that support the claim of the alleged violation(s) must be highlighted or otherwise identified. Parties shall include an index of the highlighted material, identifying the page number or location within the document(s) where the highlighted information is located.
  2. Parties shall prepare 10 copies to present to the Commission.
  3. Parties shall provide their adversary with copies of the evidence within 10 days of the hearing, unless otherwise agreed by the Commission and the parties.
  4. Failure to provide the materials listed at (a)1, 2, and 3 above may result in the Commission barring the admission of the proposed evidence.

#### **6A:28-9.4 Frivolous filings**

- (a) Upon receipt of the complainant's response to an allegation that the complaint was frivolous pursuant to N.J.A.C. 6A:28-7.2, or the expiration of the time for filing such a response, the Commission shall make a determination by majority vote as to whether a complaint is frivolous.
  - 1. Where the Commission finds that a complaint is frivolous, such a finding shall constitute sole grounds for dismissal. Such dismissal shall constitute final agency action.
- (b) Pursuant to N.J.S.A. 18A:12-29.e, the Commission may impose a fine not to exceed \$500.00.
  - 1. If a complainant(s) who is a school official fails to pay the fine within 30 days after receipt of the decision imposing the sanction, the Commission may take action pursuant to N.J.A.C. 6A:28-1.6 or as otherwise set forth in this chapter.
- (c) The Commission reserves the right, at any time during the pendency of a matter, to issue an Order to Show Cause in accordance with the procedures at N.J.A.C. 6A:28-1.6, directing a complainant to show cause as to why a complaint should not be deemed frivolous. In the Order to Show Cause, the Commission shall detail the basis for a finding that the complaint is frivolous.
- (d) Failure of the complainant to timely pursue the complainant's case, including failure to amend a complaint and failure to attend a hearing, may be viewed as indicia of a frivolous complaint.

#### **6A:28-9.5 Settlement**

The parties may provide the Commission with written notification of settlement at any time prior to the finding of a violation.

#### **6A:28-9.6 Withdrawal**

- (a) For complaints alleging solely a violation of the Code of Ethics for School Board Members, a complainant may withdraw a complaint at any time prior to the finding of a violation by notifying the Commission and the respondent(s), in writing.
- (b) For complaints alleging prohibited acts, the complainant may submit a written request to the Commission to withdraw the complaint prior to a finding of probable cause by the Commission. The request shall fully explain the circumstances for the withdrawal and state why the withdrawal would be in the public's interest. The complainant shall serve a copy upon the respondent(s) and submit a proof of service pursuant to N.J.A.C. 6A:28-1.7.

#### **6A:28-9.7 Probable cause determinations**

- (a) After the filing of a written statement, the Commission shall decide, by majority vote, whether probable cause exists for the allegations in the complaint. Probable cause shall be found when the facts and circumstances presented in the complaint and written statement would lead a reasonable person to believe that the Act has been violated.
- (b) If the Commission does not find probable cause, it shall issue a written notice to the parties, and the complaint shall be dismissed. Dismissal in this circumstance shall constitute final agency action.
- (c) If the Commission finds probable cause, it shall issue a written notice to the parties, and the matter shall be processed in accordance with N.J.A.C. 6A:28-9.8. Findings of probable cause shall not constitute final agency action.
- (d) A decision rendered pursuant to N.J.S.A. 18A:12-29.b means a majority vote of the Commission regarding probable cause.

#### **6A:28-9.8 Processing of complaints after a finding of probable cause**

- (a) If the Commission finds probable cause for the allegations in a complaint, it shall provide the parties with written notice of its findings. The written notice from the Commission shall also indicate:
1. How the matter will be processed, including whether the Commission will:
    - i. Subject to receiving the parties' written consent, retain the matter for a hearing. However, the Commission shall not be required to secure the parties' written consent in those matters involving only alleged violations of the Code of Ethics for School Board Members;
    - ii. If the material facts are not in dispute, determine a violation(s) on a summary basis; or
    - iii. If the material facts are in dispute and not admitted, transmit the matter to the OAL for a hearing.
  2. If a matter is transmitted to the OAL, and the Commission found probable cause to credit at least one violation of N.J.S.A. 18A:12-24, the complainant shall no longer be a party. The attorney for the Commission shall litigate the allegations in the complaint for which the Commission found probable cause to credit.
  3. If a matter is transmitted to the OAL, and the Commission did not find probable cause to credit at least one violation of N.J.S.A. 18A:12-24, but did find probable cause to credit violations of N.J.S.A. 18A:12-24.1 only, the complainant, or an attorney of the complainant's choosing, shall litigate the allegations in the complaint for which the Commission found probable cause to credit. The complainant shall also be advised that the allegations must be proven in accordance with N.J.A.C. 6A:28-6.4.

- (b) When the Commission retains a complaint for a hearing, the hearing shall be conducted in accordance with the rules of the OAL, N.J.A.C. 1:1.
1. Parties shall supply their adversary(ies) and the Commission with any pre-hearing documentary submissions at least 10 calendar days prior to the hearing, or as otherwise agreed to by the Commission and the parties.
  2. Parties shall supply their adversary(ies) and the Commission with any post-hearing documentary submissions within 14 calendar days of the hearing, or as otherwise agreed to by the Commission and the parties.
  3. Parties shall supply their adversary(ies) and the Commission with sufficient copies of exhibits that are marked for identification to be entered into evidence.
  4. The Commission will entertain a motion to dismiss from the respondent upon the conclusion of the complainant's case.
- (c) When the Commission determines to review a complaint on a summary basis, the respondent shall have 20 days to submit a statement setting forth the reason(s) the respondent should not be found in violation of the Act. The statement shall be limited to the allegation(s) for which the Commission has found probable cause. After expiration of the time for submission of the respondent's statement, the Commission may make a determination of a violation on a summary basis.
- (d) When a matter is transmitted to the OAL for a hearing in accordance with N.J.S.A. 18A:12-29.a, the hearing shall be conducted pursuant to the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The hearing shall be limited to the allegation(s) in the complaint for which the Commission found probable cause.

1. When the OAL returns a matter to the Commission for disposition following a respondent's failure to appear, the respondent may provide to the Commission, within 13 days of receiving notice that the matter has been returned to the Commission, a written explanation regarding the failure to appear. If the Commission does not receive a written explanation, or determines that the written explanation is unsatisfactory, the allegation(s) in the complaint shall be deemed admitted and the Commission may proceed to a determination of a violation(s) on a summary basis.

#### **6A:28-9.9 Adjournment of hearings**

Application for the adjournment of a hearing where the matter has been retained by the Commission pursuant to N.J.A.C. 6A:28-9.8 shall be made to the Commission in accordance with the requirements of the OAL, as set forth at N.J.A.C. 1:1. Application for the adjournment of a hearing where the matter has been transmitted to the OAL shall be addressed to the ALJ in accordance with the requirements of the OAL, as set forth at N.J.A.C. 1:1.

#### **6A:28-9.10 School Ethics Commission determinations on complaints**

- (a) Upon return of a matter from the OAL to the Commission, a hearing before the Commission pursuant to N.J.A.C. 6A:28-9.8, or the Commission's summary review of a complaint pursuant to this chapter, the Commission shall determine by majority vote whether the conduct complained of constitutes a violation of the Act or whether the complaint should be dismissed. The Commission's decision shall be in writing and it shall set forth its findings of fact and conclusions of law. In any case where a violation is found, the Commission's decision shall also include a recommended penalty as authorized at N.J.S.A. 18A:12-29.c.

1. The Commission shall be governed by the procedures and time constraints of the Administrative Procedure Act and the rules of the OAL set forth at N.J.A.C. 1:1-1, when rendering its determination on complaints returned from the OAL.
- (b) A determination to dismiss a complaint shall constitute final agency action, and shall be appealable directly to the Appellate Division of the Superior Court.

#### **6A:28-9.11 Sanction**

- (a) The Commission may recommend to the Commissioner the reprimand, censure, suspension, or removal of the school official if a violation of the Act is found. The recommendation of any of the foregoing sanctions shall require a vote of the majority of the full membership of the Commission. The Commission may decline to issue a penalty for violations that it finds by a majority vote are de minimis.
1. If a school official was on notice that an activity would violate the Act, or in instances where a school official was previously sanctioned pursuant to this chapter, the Commission may recommend an enhanced penalty.
- (b) Within 13 days from the date the Commission's decision is forwarded to the Commissioner, any party may file written exceptions regarding the recommended penalty to the Commissioner. For the purposes of this section, the forwarding date shall be the mailing date to the parties.
- (c) The Commissioner shall act upon the Commission's recommendation regarding the sanction pursuant to N.J.S.A. 18A:12-29.c. Such review shall proceed in accordance with N.J.A.C. 6A:4 and the requirements of the OAL as set forth at N.J.A.C. 1:1-1.
- (d) If the Commissioner imposes a penalty of censure, suspension, or removal, the Commission shall adopt a resolution at its next meeting following the imposition of the

sanction by the Commissioner, and shall direct that the resolution be read aloud at the beginning of the next regularly scheduled public meeting of the district board of education or the board of trustees.

1. The district board of education or the board of trustees shall also post the resolution for a period of no less than 30 days in such places where public notices are posted.
  2. The resolution shall also be published online on the school district's, the charter school's, or the renaissance school project's website, if available, for a period of no less than 30 days.
  3. The reading of the resolution shall be memorialized in the district board of education's or the board of trustees' minutes of the meeting and, once the minutes are approved, a copy shall be forwarded to the Commission.
- (e) If a board member or a trustee resigns following the finding of a violation of the Act, thereby limiting the penalty that the Commission can recommend, the Commission's decision shall still state the penalty it would have recommended if not for the resignation.

## **Subchapter 10. Appeals**

### **6A:28-10.1 Procedure for appeal**

- (a) Any appeal of the Commission's determination regarding a violation of the Act or the Commission's recommended penalty shall be made to the Commissioner in accordance with N.J.A.C. 6A:4, Appeals.
- (b) Any complaint that is dismissed in its entirety pursuant to this chapter shall be deemed a final agency decision appealable directly to the Appellate Division of the Superior Court.