



# New Jersey Department of Education



## Chapter 28 Readoption with Amendments and New Rules

Office of Legal Affairs and School Ethics

Division of Legal and External Services

March 2, 2022





# Purpose of N.J.A.C. 6A:28

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- The rules effectuate the School Ethics Act, N.J.S.A. 18A:12-21 et seq., which seeks to ensure and preserve public confidence in the integrity of elected and appointed school officials.
- The Act prescribes the ethical standards by which school officials are to be guided in the conduct of their offices and positions.
- The Act also created the School Ethics Commission, which is charged with enforcing the Act through a procedure for reviewing complaints and ultimately rendering recommendations to the Commissioner of Education as to the imposition of sanctions when violations are substantiated.



# Key Areas in Chapter 28

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1. Filing of financial and personal/relative disclosure statements;
2. Board member and charter school or renaissance school project trustee training;
3. Issuance of advisory opinions;
4. Filing of complaints; and
5. Review of complaints by the Commission.



# General Overview: Proposed Amendments and New Rules



1. Seek to ensure consistency with current practice.
2. Provide clear direction to school officials on the ramifications of failing to comply with statutory mandates for filing disclosure statements and completing training.
3. Will streamline the processing of complaints, and will improve the time period within which complaints are adjudicated and resolved.

# Current Practice: Filing of Responsive Pleading



## “Prohibited Acts” Cases

- Complaint filed and served.
- Motion to Dismiss (MTD) or Answer filed and served (Respondent can also allege the matter is frivolous).
- If a **MTD is filed**, the Complainant can file a reply.
- After the Complainant has filed a reply:
  - The matter is docketed for review by the SEC (standard: assuming the facts as alleged are proven true, could there be a violation of the Act).
  - If the SEC finds that there **could** be a violation, the Respondent is directed to file an Answer (proceed as below).
  - If the SEC finds that there **could not** be a violation, the matter is dismissed.
- If/when an **Answer is filed**:
  - The matter is docketed for Probable Cause (PC) Review.
  - If the SEC finds PC, the matter is transmitted to the Office of Administrative Law (OAL), and the attorney for the SEC prosecutes the claims on behalf of the SEC.
  - If the SEC does not find PC, the matter is dismissed.

## “Code” Cases

- Complaint filed and served.
- MTD or Answer filed and served (Respondent can also allege the matter is frivolous).
- If a **MTD is filed**, the Complainant can file a reply.
- After the Complainant has filed a reply:
  - The matter is docketed for review by the SEC (standard: assuming the facts as alleged are proven true, could there be a violation of the Act).
  - If the SEC finds that there could be a violation, the Respondent is directed to file an Answer (proceed as below).
  - If the SEC finds that there could not be a violation, the matter is dismissed.
- If/when an **Answer is filed**, the matter is docketed for Pre-Decision Review, and the SEC **solely decides** whether to retain the matter for a hearing, or to transmit it to the OAL.
- If the SEC transmits the matter to the OAL, the Complainant must prosecute the allegations in the Complaint.

## “Combination” Cases

- Complaint filed and served.
- MTD or Answer filed and served (Respondent can also allege the matter is frivolous).
- If a **MTD is filed**, the Complainant can file a reply.
- After the Complainant has filed a reply:
  - The matter is docketed for review by the SEC (standard: assuming the facts as alleged are proven true, could there be a violation of the Act).
  - If the SEC finds that there could be a violation, the Respondent is directed to file an Answer (proceed as below).
  - If the SEC finds that there could not be a violation, the matter is dismissed.
- If/when an **Answer is filed**:
  - The matter is docketed for PC Review, and the SEC first reviews the Prohibited Acts violations.
  - If the SEC finds PC for the Prohibited Acts violations...
  - It then reviews the Code allegations for PC.
  - The matter is then transmitted to the OAL, and the attorney for the SEC prosecutes all claims for which PC was found.
  - If the SEC does not find PC for the Prohibited Acts violations, the remaining Code allegations are transmitted to the OAL, and the Complainant must prosecute the remaining allegations.



# Proposed SEC Procedures for Processing Complaints



## All Cases (Prohibited Acts, Code, and Combination)

- Complaint filed and served.
- Respondent must file a **Written Statement**
- Respondent must provide defenses and a response to the charges, and can request dismissal if a sufficient basis is provided.
- Complainant can only file a reply to the Written Statement if the Respondent alleges that the Complaint is frivolous.
- Matter is docketed for PC Review (for all claims).
  - PC 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.
  - Matters involving Prohibited Acts and/or Combination allegations can be retained by the SEC with the consent of the parties or transmitted to the OAL. If transmitted to the OAL, the claims are prosecuted by the DAG as long as there is PC for at least one Prohibited Act.
  - Matters involving Code allegations can be retained by the SEC (no consent required) or transmitted to the OAL. If transmitted to the OAL, Complainant must prosecute the allegations in the Complaint.





# Thank You!



New Jersey Department of Education: [nj.gov/education](https://nj.gov/education)

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