

**STATE BOARD OF EDUCATION  
ADMINISTRATIVE CODE  
COMMENT/RESPONSE FORM**

This comment and response form contains comments from the February 3, 2016, State Board meeting when the draft regulations were considered at First Discussion Level.

**Topic:** School Ethics Commission

**Meeting Date:** March 2, 2016

**Code Citation:** N.J.A.C. 6A:28

**Level:** Proposal Level

**Division:** Legal and External  
Affairs

**Completed by:** Deputy Chief Legal and  
External Affairs Officer

**Summary of Comments and Agency Responses:**

The following is a summary of the comments received from State Board members and the Department's responses. Each commenter is identified at the end of the comment by a letter that corresponds to the following list:

A. Mark W. Biedron  
President, State Board of Education

1. **COMMENT:** The commenter asked when the Department plans to present substantive amendments to N.J.A.C. 6A:28, School Ethics Commission, considering the current rulemaking is a reoption without amendment and the Department acknowledged it currently is reviewing possible amendments.

**RESPONSE:** The Department expects to initiate substantive amendments to the chapter within the next year, possibly as soon as late fall.



**State of New Jersey**  
DEPARTMENT OF EDUCATION  
PO Box 500  
TRENTON, NJ 08625-0500

**Proposal**  
**March 2, 2016**

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

DAVID C. HESPE  
*Commissioner*

TO: Members, State Board of Education

FROM: David C. Hespe  
Commissioner

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

REASON  
FOR ACTION: Readoption without amendment

AUTHORITY: N.J.S.A. 18A:1-1, 18A:4-15, and 18A:12-21 et seq.

### **Summary**

The Department of Education (Department) proposes to readopt without amendment N.J.A.C. 6A:28, School Ethics Commission. The rules effectuate the School Ethics Act (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 district board of education members and school administrators. Pursuant to N.J.S.A. 52:14B-5.1b, N.J.A.C. 6A:28 expires on April 21, 2016.

The Act prescribes the ethical standards by which school officials are to be guided in the conduct of their offices and positions. It also created the School Ethics Commission specifically to enforce the ethical standards through a procedure for reviewing complaints of ethical violations, investigating the complaints, and ultimately rendering recommendations to the Commissioner as to the imposition of sanctions when violations are demonstrated.

The School Ethics Commission rules were adopted on August 2, 1993, at N.J.A.C. 6:3-9. The rules were readopted effective September 10, 1999, and recodification as N.J.A.C. 6:3-8. On April 3, 2000, the School Ethics Commission rules were recodified as N.J.A.C. 6A:28-1. In September 2004, the rules were recodified from a subchapter -- N.J.A.C. 6A:28-1 -- to a separate chapter at N.J.A.C. 6A:28. The rules were amended again effective August 20, 2007, to set forth standards for the School Ethics Commission's enforcement of the Code of Ethics for School Board Members, to establish a process for the issuance of subpoenas, and to clarify the complaint and advisory opinion process. N.J.A.C. 6A:28 was readopted effective April 21, 2009, with amendments and new rules.

The Department is in the process of reviewing all possible amendments to the chapter. As such, the Department's current proposal to readopt without amendments will continue the chap-

ter past the current expiration date. The Department expects to present another rulemaking within the next year.

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

This subchapter includes the scope, purpose, definitions, functions, authority, and jurisdiction of the School Ethics Commission pursuant to the Act.

#### **N.J.A.C. 6A:28-1.1 Scope and purpose**

This section sets forth the rules' purpose, which is to effectuate the legislative intent of the Act to "ensure and preserve public confidence" in the integrity of elected and appointed school board members and school administrators.

#### **N.J.A.C. 6A:28-1.2 Definitions**

This section defines the words and terms utilized in the chapter.

#### **N.J.A.C. 6A:28-1.3 Functions and authority of the School Ethics Commission**

This section sets forth the School Ethics Commission's duties and powers, which include the following: prescribing a Financial Disclosure Statement and a Personal/Relative Disclosure Statement; appointing professional and clerical staff and incurring expenses as necessary to carry out the Act's provisions; issuing advisory opinions; processing and investigating complaints raised; conducting hearings, as necessary; issuing Orders to Show Cause; compelling the attendance of witnesses and the production of documents as deemed necessary and relevant to carrying out the School Ethics Commission's duties under the Act; and recommending to the Commissioner the reprimand, censure, suspension, or removal of school officials found to have violated the Act.

#### **N.J.A.C. 6A:28-1.4 Jurisdiction of the School Ethics Commission**

This section sets forth the School Ethics Commission's jurisdiction and limits it to matters arising under the Act. The rules prohibit the School Ethics Commission from receiving, hearing, or considering any pleading, motion paper, or document of any kind relating to any matter that does not arise under the Act. The rules also prohibit a School Ethics Commission member from participating in any proceeding on a complaint against a school official in a school district in which he or she serves or is employed or in which the Commission member or a member of his or her immediate family has a personal or financial involvement.

#### **N.J.A.C. 6A:28-1.5 Abeyance**

This section references the statutory requirement at N.J.S.A. 18A:12-32 that prohibits the School Ethics Commission from processing any complaint or issuing a final ruling or advisory opinion if the complaint's or advisory opinion's subject matter is pending in any court of law or administrative agency of the State. The section also requires the School Ethics Commission to place such matters in abeyance and notify the parties accordingly.

#### **N.J.A.C. 6A:28-1.6 Order to Show Cause**

This section sets forth the procedures for the issuance of, and response to, the School Ethics Commission's Orders to Show Cause. The section allows the School Ethics Commission to issue an Order to Show Cause if the School Ethics Commission becomes aware, in the course of implementing and enforcing the Act, of facts that appear to indicate a school official has violated the Act or the chapter. The section also provides a school official 20 days to submit a written response to an Order to Show Cause as to why he or she should not be found in violation of the Act or the chapter. The section further allows the School Ethics Commission to a determination of a violation on a summary basis upon receipt of the response or upon expiration of the 20-day filing time period.

#### **N.J.A.C. 6A:28-1.7 Proof of service**

This section establishes the acceptable forms of proof of service of a document upon a respondent or a complainant.

#### **N.J.A.C. 6A:28-1.8 Relaxation of rules**

This section establishes the chapter's rules are general rules of practice to govern, expedite, and effectuate the School Ethics Commission's implementation and enforcement of the Act. This section also provides the Commission with the authority to relax or dispense with any of the chapter's rules in any case where strict adherence to the rules would be deemed inappropriate or unnecessary or may result in injustice.

### **Subchapter 2. By-Laws of the School Ethics Commission**

This subchapter sets forth the School Ethics Commission's by-laws.

#### **N.J.A.C. 6A:28-2.1 Members**

This section requires the School Ethics Commission to consist of nine members appointed for three-year terms in the configuration and manner prescribed by the Act.

#### **N.J.A.C. 6A:28-2.2 Chairperson**

This section establishes the process for the School Ethics Commission, by majority vote, to elect one member to serve as chairperson for a term not to exceed one year. The section also establishes there is no limit to the number of terms a chairperson can serve. The section further outlines the process for replacing the chairperson for an unexpired term or for selecting a temporary chairperson and prescribes the chairperson's powers and duties.

#### **N.J.A.C. 6A:28-2.3 Meetings**

This section requires the School Ethics Commission to hold regular monthly meetings in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. The section also requires the meetings to be governed by Robert's Rules of Order Newly Revised and establishes requirements for special meetings, quorum, and removal of a member for missing three consecutive meetings

#### **N.J.A.C. 6A:28-2.4 Committees**

This section requires the School Ethics Commission to act as a committee of the whole. The section also requires the School Ethics Commission chairperson to select a nominating committee of three persons to select a nominee for chairperson to present to the committee as a whole for approval at its May meeting. The section also allows special committees to be appointed by the chairperson to consider and make recommendations to the School Ethics Commission on any matter.

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

This subchapter establishes the process for the implementation and enforcement of the requirement at N.J.A.C. 18A:12-25 and 26 to file disclosure statements.

#### **N.J.A.C. 6A:28-3.1 Procedures for filing of disclosure statements**

This section sets forth the procedures for the filing of school officials' disclosure statements. The section requires returning school officials to file both a Financial and a Personal/Relative Disclosure statements annually by April 30 with their local board secretaries or charter school designees, who file the original statements with the executive county superintendent. The section also requires newly hired school officials or newly appointed or elected district board of education members to file disclosure statements within 30 days of taking office or their appointment.

#### **N.J.A.C. 6A:28-3.2 Duties of district boards of education and charter schools**

This section sets forth the responsibilities of district boards of education and charter schools to ensure all school officials file financial and personal/relative disclosure statements. The section requires each district board of education secretary or charter school designee to file with the executive county superintendent annually by February 1 a list of names of school officials who are responsible for filing the disclosure statements and requires the same submission throughout the year for newly appointed or elected district board of education or charter school board of trustee members or newly appointed administrators or supervisors. The section also requires each district board of education secretary or charter school designee to accept the disclosure statements, maintain copies, and submit the originals to the executive county superintendent.

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

This section sets forth that failure to timely file disclosure statements by a school official is a violation of the Act and may result in the reprimand, censure, suspension, or removal of a school official pursuant to the School Ethics Commission's recommendation as acted upon by the Commissioner. The section also allows the School Ethics Commission to issue an Order to Show Cause if a school official fails to timely file the disclosure statements.

#### **N.J.A.C. 6A:28-3.4 Procedures in the event of incomplete filing**

This section sets forth the procedures for dealing with an incomplete filing and requires the executive county superintendent to return the incomplete filing to the district board of education secretary or charter school designee. The section also provides the school official who submitted the incomplete filing 20 days to correct the filing. The section also allows the School Ethics Commission to issue an Order to Show Cause at the expiration of the 20 days or upon further receipt of disclosure statements that fail to provide all of the required information.

## **Subchapter 4. Board Member Training**

This subchapter sets forth the training requirements for district board of education and charter school board of trustees members and compliance procedures.

### **N.J.A.C. 6A:28-4.1 Training requirement**

This section sets forth how the School Ethics Commission enforces the district board of education member and charter school trustee training requirements at N.J.S.A. 18A:28-33. The section requires each newly elected or appointed member or trustee to complete during the first year of service a training program prepared and offered by the N.J. School Boards Association (NJSBA). The section also requires the training to include instruction relative to the member's or trustee's responsibilities under the Act. The section also requires each member or trustee to complete in both the second and third years of service a training on school district governance prepared and offered by the NJSBA. Lastly, the section requires members and trustees to complete within one year of each reelection or reappointment an advanced training program on relevant changes to New Jersey school law to be prepared and offered by the NJSBA.

### **N.J.A.C. 6A:28-4.2 Procedures for compliance**

This section sets forth the procedures for compliance with the training requirements. The section requires each district board of education secretary or charter school designee to notify in writing the NJSBA when a new member or trustee is elected or appointed or when a member or trustee is reelected, reappointed, or removed or resigns. The section also requires NJSBA to notify in writing the district board of education secretary or charter school designee when a member or trustee attended a training program that satisfies the training requirements. The section also requires NJSBA to provide, by March 31 annually, the School Ethics Commission with a list of members and trustees who have not fulfilled the training requirements. Lastly, the section states that members and trustees who fail to comply with the training requirements will be considered in violation of N.J.S.A. 18A:12-33 and allows the School Ethics Commission to proceed with the Order to Show Cause procedures at N.J.A.C. 6A:28-1.6.

## **Subchapter 5. Advisory Opinions**

This subchapter sets forth the procedures related to advisory opinions concerning proposed a conduct or activity, which the School Ethics Commission issues upon a school official's request. The subchapter allows school officials to seek the School Ethics Commission's advice as to whether a proposed conduct would constitute a violation of the Act.

### **N.J.A.C. 6A:28-5.1 Entitlement to an advisory opinion**

This section allows any school official to request and obtain from the School Ethics Commission an advisory opinion as to whether a proposed conduct or activity of a school official would constitute, in the School Ethics Commission's opinion, a violation of the Act.

### **N.J.A.C. 6A:28-5.2 Procedures for requesting and receiving an opinion**

This section sets forth the procedures for requesting and receiving an advisory opinion. The section requires requests to clearly set forth in detail the specific conduct or activity the school official seeks to undertake and the exact role he or she will play in that activity or con-

duct. The section also allows a school official to seek an advisory opinion as to the proposed conduct of another school official, but the requesting school official must provide proof of service to show that the school official whose proposed activity or conduct is in question has been copied on the request. The section provides the school official whose conduct is in question with 10 days from the date of the advisory opinion request to respond. The section also sets forth the requirements for the School Ethics Commission's handling and declining of advisory opinions and states the School Ethics Commission's advisory opinions will not be made public unless six members vote to do so.

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

This subchapter sets forth the process for the filing and amendment of complaints.

### **N.J.A.C. 6A:28-6.1 Who may file a complaint**

This section allows any person, including a School Ethics Commission member, to file a complaint alleging a violation of the Act. The section also prohibits a School Ethics Commission member who files a complaint from participating in any subsequent proceedings on the complaint in the capacity of a School Ethics Commission member.

### **N.J.A.C. 6A:28-6.2 Process for the filing of a complaint**

This section sets forth the process for filing a complaint.

### **N.J.A.C. 6A:28-6.3 Contents of a complaint**

This section sets forth the required contents of a complaint, including the required information and format.

### **N.J.A.C. 6A:28-6.4 Complainant's burden of proof for complaints alleging a violation of the code of ethics for school board members**

This section sets forth standards a complainant must meet to sustain the burden of proof for allegations of a violation of the Code of Ethics for School Board Members. The section outlines the type of proof required for a complainant to prove a violation of each subsection of the Code of Ethics for School Board Members.

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

This section requires a complaint to be filed within 180 days of notice of the events that form the basis of the alleged violation(s). The section also states a complainant will be deemed notified of the events that form the alleged violation's basis when he or she knew of the events or when they were made public so a person using reasonable diligence would know or should have known.

### **N.J.A.C. 6A:28-6.6 Complaint processing, consolidating and confidentiality**

This section sets forth the process for serving and consolidating complaints and for holding complaints confidential. The section allows a complaint to be consolidated upon a determination by the School Ethics Commission and allows it to designate one lead complainant as the representative of all complaints for purposes of initial correspondence, receipt of service for an-

swer(s) and/or motions, and all other communications. The section also requires any complaint filed jointly by three or more complainants to designate one lead complainant as a representative of the group. The section further requires the School Ethics Commission to serve a copy of the complaint on the named respondent(s) if the complaint is not held in abeyance. The section also requires the School Ethics Commission to hold all information confidential regarding any pending matter until the School Ethics Commission first takes action at a public meeting to determine probable cause or violation, or until the matter is settled, withdrawn, or dismissed.

### **N.J.A.C. 6A:28-6.7 Amendment of a complaint**

This section establishes the process for amending a complaint. The section allows the School Ethics Commission to order the amendment of any complaint to comply with the requirements of N.J.A.C. 6A:28-6.3. The section also allows a complainant to amend a complaint to cure technical defects or clarify or amplify allegations made in the original complaint. If an answer or other responsive pleading has been filed, the section allows a complaint to be amended only with the consent of each respondent or by leave of the School Ethics Commission upon written application.

## **Subchapter 7. Filing of Answers**

This subchapter sets forth the process for filing an answer, an answer's required contents, and the filing timeline.

### **N.J.A.C. 6A:28-7.1 Process for filing an answer**

This section sets forth the process for filing an answer. The section requires a respondent to file an original and two copies of an answer with the School Ethics Commission and to serve a copy of the answer on the complainant(s). The section also requires proof of service to be submitted.

### **N.J.A.C. 6A:28-7.2 Contents of an answer**

This section sets forth the required contents of an answer. The section requires a respondent, upon receipt of the complaint from the School Ethics Commission, to file a written statement under oath to constitute the answer to the complaint. The section requires the answer to fully and completely advise the parties and the School Ethics Commission as to the nature of the respondent's defenses for each allegation and to admit or deny each allegation in the complaint. If an answer alleges a complaint is frivolous, the section provides the complainant with 20 days from the answer's receipt to respond to the allegation. The section also prohibits an allegation that a complaint is frivolous from being raised in any subsequent filings.

### **N.J.A.C. 6A:28-7.3 Time for filing an answer**

This section sets forth the timeline for an answer's filing. The section requires the respondent, upon receipt of the complaint from the School Ethics Commission, to file an answer within 20 days. If a respondent fails to file an answer within the 20-day period, the section requires the School Ethics Commission to issue a notice informing the respondent that each allegation in the complaint will be deemed admitted and the matter may be decided on a summary basis unless an answer is received within 10 days of the notice's receipt.

### **N.J.A.C. 6A:28-7.4 Extension of the time for filing an answer**



This section sets forth the process for obtaining an extension of time for filing an answer. The section allows the School Ethics Commission to grant a 20-day extension of time for filing an answer if the respondent's application was received prior to the expiration of the 20-day time period for filing an answer and if a copy of the application was served upon all complainants. For complaints alleging solely a violation of the Code of Ethics for School Board Members, the section requires the respondent to demonstrate that a good-faith effort was made to obtain the complainant's consent prior to application to the School Ethics Commission. The section also allows requests for extensions that are opposed by one or more parties to be granted upon a finding of good cause shown.

### **Subchapter 8. Motion to Dismiss**

This subchapter establishes the process for a respondent's filing of a motion to dismiss a complaint, the response to the motion, and the School Ethics Commission's review of the motion.

#### **N.J.A.C. 6A:28-8.1 Process for filing a motion to dismiss**

This section allows for the filing of a motion to dismiss by a respondent in lieu of an answer for any complaint before the School Ethics Commission and sets forth the process to do so. The section prohibits the School Ethics Commission from accepting a counterclaim to a motion to dismiss but allows a respondent may file a complaint.

#### **N.J.A.C. 6A:28-8.2 Process for responding to a motion to dismiss**

This section sets forth the process for responding to a motion to dismiss. The section requires the complainant to file an original and two copies of a responsive brief within 20 days from receipt of a motion to dismiss in lieu of an answer. The section also requires the complainant to serve a copy of the response on the respondent and submit proof of service. If a motion to dismiss alleges a complaint is frivolous, the section requires the complainant to respond to the allegation within the responsive brief.

#### **N.J.A.C. 6A:28-8.3 Commission review of a motion to dismiss**

This section establishes a standard for the School Ethics Commission's review of motions to dismiss. The section requires the School Ethics Commission to review the complaint's facts in the light most favorable to the complainant and to determine whether the allegation(s), if true, could establish a violation of the Act. The section also requires the School Ethics Commission to review, on a summary basis, motions to dismiss and responses unless the parties are notified otherwise.

### **Subchapter 9. Subpoenas**

This subchapter establishes the process for the issuance of subpoenas.

#### **N.J.A.C. 6A:28-9.1 Subpoenas to compel the attendance of witnesses and production of documents; issuance, contents and service**

This section establishes the process for the issuance, contents, and service of subpoenas to compel the attendance of witnesses and the production of documents. The section allows the

School Ethics Commission, or its designated agent, to issue subpoenas to compel a person's attendance to testify or to produce books, papers, documents, or other objects as deemed necessary and relevant to any matter under investigation. The section allows subpoenas to be issued by pro se parties or attorneys-at-law in accordance with the applicable rules of the Office of Administrative Law.

### **Subchapter 10. Review of Complaints**

This subchapter establishes the procedures for the School Ethics Commission's review of complaints.

#### **N.J.A.C. 6A:28-10.1 Duties of complainant(s) and respondent(s) relative to N.J.A.C. 6A:28-1.5**

This section sets forth the responsibilities of the parties and the School Ethics Commission when complaints should be or have been held in abeyance. The section requires the complainant(s) and the respondent(s) to immediately notify in writing the School Ethics Commission when the following occurs: an action is filed at any time during the pendency of a complaint before the School Ethics Commission, with any court of law or administrative agency of the State concerning the matter that is the subject of the complaint; the complainant(s) or the respondent(s) become aware the matter that is the subject of the complaint is pending in any court of law or administrative agency of the State; or the matter pending in any court of law or administrative agency of the State is resolved. The section also allows the School Ethics Commission to proceed with processing the complaint upon resolution of the matter pending in any court of law or administrative agency of the State.

#### **N.J.A.C. 6A:28-10.2 Administrative dismissals**

This section sets forth when a complaint can be administratively dismissed by the School Commission. The section allows the School Ethics Commission to administratively dismiss complaints or specific allegations in complaints for reasons including, but not limited to: lack of jurisdiction; the complaint is not timely filed; the complaint was withdrawn; the complaint's sole allegation is that a person other than a district board of education member or charter school trustee has violated the Code of Ethics for School Board Members; the complaint fails to meet minimal content requirements; the complainant fails to amend the complaint as requested by the School Ethics Commission within the allowed timeframe; or the complaint, on its face, fails to state a claim under the Act.

#### **N.J.A.C. 6A:28-10.3 Evidence rules**

This section states all relevant evidence is admissible during the course of investigatory proceedings before the School Ethics Commission.

#### **N.J.A.C. 6A:28-10.4 Frivolous filings**

This section sets forth the process for the School Ethics Commission's determination of whether a complaint is frivolous. Upon receipt of the complainant's response that a complaint was frivolous, or the expiration of the time for filing a response, the section requires the School Ethics Commission to determine by majority vote whether a complaint is frivolous. If the School Ethics Commission finds a complaint is frivolous, the section requires the complaint be dismissed. The section also allows the School Ethics Commission to impose a fine up to

\$500.00. The section also allows the School Ethics Commission to issue an Order to Show Cause if a complainant who is a school official fails to pay the fine within 30 days of receiving the decision imposing the sanction.

#### **N.J.A.C. 6A:28-10.5 Settlement**

This section allows for the settlement of a complaint alleging solely a violation of the Code of Ethics for School Board Members if parties notify the School Ethics Commission of settlement at any time prior to the finding of a violation.

#### **N.J.A.C. 6A:28-10.6 Withdrawal**

This section allows complaints alleging solely a violation of the Code of Ethics for School Board Members to be withdraw at any time prior to the finding of a violation by notifying the School Ethics Commission and the respondent in writing. For complaints alleging prohibited acts and prior to a finding of probable cause, the section allows a complainant to submit a written request to the School Ethics Commission to withdraw the complaint. The section requires the request to fully explain the withdrawal's circumstances and to state why the withdrawal would be in the public's interest.

#### **N.J.A.C. 6A:28-10.7 Processing of complaints alleging solely prohibited acts**

This section establishes the procedure for processing complaints alleging solely prohibited acts related to conflicts of interest. After the filing of an answer and completion of a conference allowed by the section, the section requires the School Ethics Commission to decide by majority vote whether probable cause exists by determining if there is a reasonable ground of suspicion supported by facts and circumstances strong enough, in themselves, to warrant a reasonable person to believe the Act has been violated. The section also requires the probable cause determination to be preceded by a conference and filing of an answer. Upon a probable cause finding, the section states the complainant no longer can be a party to the complaint. The section also establishes protocols for the School Ethics Commission to provide written notice to the parties setting forth probable cause findings and for transmission of matters to OAL.

#### **N.J.A.C. 6A:28-10.8 Processing of complaints alleging solely a violation of the code of ethics for school board members**

This section establishes the procedure for processing of complaints alleging solely a violation of the Code of Ethics for School Board Members. The section allows the School Ethics Commission, by a majority vote, to do the following: grant or deny a motion to dismiss in whole or in part; retain a complaint for a hearing by the School Ethics Commission; transmit a complaint for a hearing by the OAL; find a violation of the Act; or dismiss a complaint. The section places the burden on the complainant to prove factually a violation under the Code of Ethics for School Board Members. The section also establishes procedures for when the School Ethics Commission retains a complaint for a hearing. The section requires the allegation(s) in a complaint to be deemed admitted if a matter is transmitted to OAL, the respondent fails to appear, and the matter is returned to the School Ethics Commission for disposition. The section also allows the School Ethics Commission to proceed to a determination of a violation on a summary basis in such cases.

#### **N.J.A.C. 6A:28-10.9 Processing of complaints alleging both prohibited acts and a violation of the code of ethics for school board members**

This section establishes the procedure for processing of complaints alleging both prohibited acts and violations of the Code of Ethics for School Board Members, otherwise referred to as "combination complaints." The section allows the School Ethics Commission to convene a conference to determine probable cause to credit allegations of prohibited acts. The section also allows the School Ethics Commission to retain a matter for a hearing or to transmit it to OAL for a hearing if the School Ethics Commission, by majority vote, finds no probable cause to credit any allegation of prohibited acts.

#### **N.J.A.C. 6A:28-10.10 Adjournment of hearings**

This section establishes a process for the adjournment of hearings. The section requires an application for a hearing adjournment when the matter has been retained by the School Ethics Commission to be made according to OAL's requirements. The section also requires application for a hearing adjournment when the matter has been transmitted to OAL to be addressed to the Administrative Law Judge according to OAL's requirements.

#### **N.J.A.C. 6A:28-10.11 School Ethics Commission determinations on complaints**

This section sets forth the process for the School Ethics Commission's determinations on complaints. The section requires the School Ethics Commission to determine, by majority vote, whether the conduct in a complaint constitutes a violation of the Act or whether the complaint should be dismissed after a hearing has been completed before OAL or the School Ethics Commission, or after a summary review. The section also requires the School Ethics Commission's decision to be in writing and to set forth the findings of fact, conclusions of law, and penalty recommendation in any case where a violation is found. The section lastly requires a determination to dismiss a complaint to constitute final agency action.

#### **N.J.A.C. 6A:28-10.12 Sanction**

This section sets forth the process for the School Ethics Commission's recommendation to the Commissioner of a sanction. The section allows the School Ethics Commission to recommend to the Commissioner, by a majority vote of the full membership, the reprimand, censure, suspension, or removal of a school official if a violation of the Act is found. The section also allows the School Ethics Commission to decline to issue a penalty for violations it finds by a majority vote are de minimis. The section allows any party to file written exceptions regarding the recommended penalty within 13 days from the date the School Ethics Commission's decision is forwarded to the Commissioner. The section also requires the Commissioner to act upon the School Ethics Commission's sanction recommendation. If the Commissioner imposes The section also requires the School Ethics Commission to adopt a resolution at its next meeting following the imposition of a penalty of censure, suspension, or removal and requires the resolution to be read aloud at the next regularly scheduled public meeting of the district board of education or charter school board of trustees.

### **Subchapter 11. Appeals**

This subchapter sets forth the process for appeal of School Ethics Commission decisions.

#### **N.J.A.C. 6A:28-11.1 Procedure for appeal**

This section sets forth the process for appeal of School Ethics Commission decisions. The section requires any appeal of a School Ethics Commission determination regarding a violation of the Act to be made to the Commissioner in accordance with N.J.A.C. 6A:4, Appeals. The section further requires any complaint dismissed pursuant to the chapter to be deemed a final agency decision appealable directly to the Appellate Division of the Superior Court.

As the Department has provided a 60-day comment period in this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The rules at N.J.A.C. 6A:28, School Ethics Commission, ensure the public trust is not violated as mandated by the Legislature when it enacted the School Ethics Act. The rules affect approximately 17,500 district board of education members and charter school trustees and administrators of school districts and charter schools. The rules proposed for readoption without amendment clearly delineate the School Ethics Commission's authority to issue Orders to Show Cause with respect to the conduct of school officials.

The rules proposed for readoption without amendment offer the public guidance with respect to the School Ethics Commission's jurisdiction, along with the process for filing complaints and appearing before the School Ethics Commission. The School Ethics Commission reviews approximately 50 to 60 complaints each year, many of which are filed by *pro se* complainants and issues 40 to 60 advisory opinions annually. The rules proposed for readoption without amendment provide for appearance and representation, the presentation of evidence, and a clear description of what a complaint must include, as well as standards for the withdrawal or settlement of a complaint.

The rules proposed for readoption without amendment require all newly elected district board of education members and charter school trustees to complete a training program in the first year of service and requires all returning members of trustees to complete a training program on school district governance in their second and third years of service. District board of education members and charter school trustees also are required, within one year after each reelection or reappointment, to complete an advanced training program that includes information on relevant changes to New Jersey school law and other information deemed appropriate to enable board members to serve effectively. The rules proposed for readoption without amendment also ensure the public's trust by requiring district board of education members, charter school trustees, and school officials to submit annual disclosure statements regarding their financial and personal/relative interests.

### **Economic Impact**

There is no clear and quantifiable economic impact of the readoption of the rules associated with the training requirement for district board of education members and charter school trustees, as required by N.J.S.A. 18A:12-33, with the exception of annual membership dues school districts and charter schools already pay to the N.J. School Boards Association (NJSBA). Specifically, the statute requires district board of education members and charter school trustees to complete a training program on school district governance in their first, second, and third years of service. Additionally, within one year after each reelection or reappointment, the member or trustee is required to complete an advanced training program, which must include information on relevant changes to New Jersey school law and other information deemed appropriate

to enable to member or trustee to serve effectively. NJSBA, which is required to provide the training, approximates that each cohort includes 800 members or trustees for a total of 2,800 individuals for all four training programs.

The NJSBA is offering three training options for the training requirement of members or trustees: 1) an in-person program at the NJSBA annual workshop in October at no cost; 2) regional in-person programs offered three times per year in each region of the State at no cost; and 3) a web-based, pre-taped program that can be accessed online at no cost. Although there is no identifiable additional fee for the training services, the cost of providing this training is covered by the NJSBA membership dues paid by each school district or charter school.

Less quantifiable, however, is the economic impact of the rules that require a complainant to file an original and two copies of a complaint for the School Ethics Commission's use, together with a copy of the complaint for each respondent named. The same have been established for persons who file petitions of appeal before the Commissioner. The costs are wholly dependent on the size of the complaint, the number of attachments, and the number of respondents named.

The rules proposed for readoption without amendment also produce unquantifiable cost savings for both complainants and respondents. First, the rules maintain a process for administrative dismissals of complaints that do not comply with statute or Administrative Code. Second, the rules streamline the School Ethics Commission's process for determining probable cause by permitting preliminary decisions to be made without the need for a hearing and, consequently, the attendance of complainants, respondents, and legal counsel at School Ethics Commission meetings.

Finally, the rules proposed for readoption without amendment permit a respondent to file a motion to dismiss the complaint in lieu of an answer. Permitting motions to dismiss prior to reaching the merits of the complaint results in the dismissal of more complaints at an earlier stage of review, thus saving time and cost for respondents to defend against allegations that would not have resulted in a finding of a violation of the School Ethics Act.

### **Jobs Impact**

The Department does not anticipate a creation or loss of jobs as a result of the rules proposed for readoption without amendment.

### **Agriculture Industry Impact**

The rules proposed for readoption without amendment will have no impact on the agriculture industry in New Jersey.

### **Federal Standards Statement**

There are no Federal requirements or standards that have an impact on the rules proposed for re-adoption without amendment. N.J.A.C. 6A:28 is based on a State statute; therefore, a Federal standards analysis is not necessary.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is required because the rules proposed for reoption without amendments impose reporting, recordkeeping, or other compliance requirements on charter schools, which could be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for reoption without amendment impose upon charter schools in New Jersey certain reporting, recordkeeping and other compliance requirements. As N.J.S.A. 18A:12-23.1 applies the School Ethics Act's provisions to charter school board of trustees, the rules proposed for reoption without amendment cannot be relaxed for charter schools. As of December 2015, 89 charter schools operate in New Jersey. The rules proposed for reoption without amendment require each charter school designee to maintain the annual list of school officials as identified by the School Ethics Act and the chapter. Identified officials are required to file annual personal relative/financial disclosure statements. The list of officials is promulgated by the charter school designee in January/February of each year for returning school officials, and new officials are added to that list during the course of the year they are hired by the charter school or appointed and sworn in to the board of trustees. There School Ethics Commission does not charge for the submission or maintenance of the list or the submission of disclosure statements.

The School Ethics Act and the rules also require every charter school board of trustee member to undergo training provided by the NJSBA each year of a trustee's first term of office and the first year of each subsequent term. There is no cost applied by the NJSBA for this training as it is covered by annual membership dues. The training is available to all members online and takes approximately 90 minutes to complete, which minimizes the economic impact of any trustee from having to take time off from work or from engaging in other business.

### **Housing Affordability Impact Analysis**

The rules proposed for reoption without amendment will have no impact on the cost of housing as they concern proceedings before the School Ethics Commission.

### **Smart Growth Development Impact Analysis**

The rules proposed for reoption without amendment will have no impact on the cost of housing, the number of housing units, or new construction within Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan. The rules proposed for reoption concern proceedings before the School Ethics Commission.

**Full text** of the rules proposed for reoption follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

# **N.J.A.C. 6A:28, SCHOOL ETHICS COMMISSION**

## **TABLE OF CONTENTS**

### **SUBCHAPTER 1. GENERAL PROVISIONS**

6A:28-1.1 Scope and purpose

6A:28-1.2 Definitions

6A:28-1.3 Functions and authority of the School Ethics Commission

6A:28-1.4 Jurisdiction of the School Ethics Commission

6A:28-1.5 Abeyance

6A:28-1.6 Order to Show Cause

6A:28-1.7 Proof of service

6A:28-1.8 Relaxation of rules

### **SUBCHAPTER 2. BY-LAWS OF THE SCHOOL ETHICS COMMISSION**

6A:28-2.1 Members

6A:28-2.2 Chairperson

6A:28-2.3 Meetings

6A:28-2.4 Committees

### **SUBCHAPTER 3. FILING OF DISCLOSURE STATEMENTS**

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

6A:28-3.2 Duties of district boards of education and charter schools

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

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

### **SUBCHAPTER 4. BOARD MEMBER TRAINING**

6A:28-4.1 Training requirement

6A:28-4.2 Procedures for compliance

### **SUBCHAPTER 5. ADVISORY OPINIONS**

6A:28-5.1 Entitlement to an advisory opinion

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



## **SUBCHAPTER 6. FILING AND AMENDMENT OF COMPLAINTS; BURDEN OF PROOF**

6A:28-6.1 Who may file a complaint

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

6A:28-6.3 Contents of a complaint

6A:28-6.4 Complainant's burden of proof for complaints alleging a violation of the code of ethics  
for school board members

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

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

6A:28-6.7 Amendment of a complaint

## **SUBCHAPTER 7. FILING OF ANSWERS**

6A:28-7.1 Process for filing an answer

6A:28-7.2 Contents of an answer

6A:28-7.3 Time for filing an answer

6A:28-7.4 Extension of the time for filing an answer

## **SUBCHAPTER 8. MOTION TO DISMISS**

6A:28-8.1 Process for filing a motion to dismiss

6A:28-8.2 Process for responding to a motion to dismiss

6A:28-8.3 Commission review of a motion to dismiss

## **SUBCHAPTER 9. SUBPOENAS**

6A:28-9.1 Subpoenas to compel the attendance of witnesses, production of documents; issuance,  
contents and service

## **SUBCHAPTER 10. REVIEW OF COMPLAINTS**

6A:28-10.1 Duties of complainant(s) and respondent(s) relative to N.J.A.C. 6A:28-1.5

6A:28-10.2 Administrative dismissals

6A:28-10.3 Evidence rules

6A:28-10.4 Frivolous filings

6A:28-10.5 Settlement

6A:28-10.6 Withdrawal

6A:28-10.7 Processing of complaints alleging solely prohibited acts

6A:28-10.8 Processing of complaints alleging solely a violation of the code of ethics for school board members

6A:28-10.9 Processing of complaints alleging both prohibited acts and a violation of the code of ethics for school board members

6A:28-10.10 Adjournment of hearings

6A:28-10.11 School Ethics Commission determinations on complaints

6A:28-10.12 Sanction

## **SUBCHAPTER 11. APPEALS**

6A:28-11.1 Procedure for appeal

## **CHAPTER 28. SCHOOL ETHICS COMMISSION**

### **SUBCHAPTER 1. GENERAL PROVISIONS**

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

- (a) The rules set forth in this subchapter 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 school board members and school administrators.
- (b) To achieve this goal, the Legislature has adopted N.J.S.A. 18A:12-24 and 18A:12-24.1, which prescribe ethical standards by which school officials are to be guided in the conduct of their offices and positions and created a School Ethics Commission specifically for the purpose of enforcing those ethical standards through a procedure for reviewing complaints of ethical violations, investigating those complaints and ultimately rendering recommendations to the Commissioner as to the imposition of sanctions when violations are demonstrated.

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

The following words and terms, when used in this chapter, shall have the following meanings 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, other than a board member, or employee of a local school district or charter school who:

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

"ALJ" means an administrative law judge assigned by the Director of the Office of Administrative Law to preside over contested cases pursuant to N.J.S.A. 52:14F-1 et seq.

"Benefit" as used in the Act means advantage, profit, privilege or gain.

"Board member" means any person holding membership, whether by election or appointment, on any board of education other than the State Board of Education.

"Board of trustees" means the public agent authorized by the State Board of Education to supervise and control a charter school.

"Censure" means, except in the case of a school official who is an officer or employee of the New Jersey School Boards Association, a formal expression of disapproval by the Commissioner which is publicized by the adoption of a formal resolution by the School Ethics Commission and

the school official's district board of education or the board of trustees of his charter school at a public meeting when said school official has been found to be in violation of N.J.S.A. 18A:12-21 et seq. In the case of a school official who is an officer or employee of the New Jersey School Boards Association, censure means a formal expression of disapproval by the School Ethics Commission publicized by the adoption of a formal resolution by the Commission at a public meeting.

"Charter school" means a public school established pursuant to N.J.S.A. 18A:36A-1 et seq. and which is operated under a charter granted by the Commissioner, that is independent of the district board of education and that is managed by a board of trustees.

"Charter school designee" means the person at the charter school whom the lead person designates as being responsible for assuring that school officials in the school file timely disclosure statements.

"Code of Ethics" means the standards of conduct set forth in the Code of Ethics for School Board Members 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 his or her designee.

"Complainant" means the person bringing a complaint of alleged violation of N.J.S.A. 18A:12-21 et seq. 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; provided, however, that calculations do not include the day of the action from which they are computed but do include the last day of the period being computed unless such day falls on a Saturday, Sunday or holiday, in which case the last day shall be deemed the next business day immediately following.

"Dependent child" means any child claimed as a dependent on the school official's Federal and State tax returns.

"Financial Disclosure Statement" means the statement of personal finances which school officials are required to file annually pursuant to N.J.S.A. 18A:12-26.

"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 either:

1. Commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
2. One which 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" for purposes of these rules shall be as defined by the Internal Revenue Service except as otherwise provided in N.J.S.A. 18A:12-26a(1).

"Local School District" for purposes of these rules means any local or regional school district established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes and shall include jointure commissions, county vocational schools, county special services districts, educational service commissions, educational research and demonstration centers, environmental education centers, and educational information and resource centers.

"Member of the immediate family" means immediate family member as defined in the Act.

"Newly elected or appointed board member" means any board member who has never served as a member of either an elected or appointed school board or who has not served for 10 years or more and 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 whose name is designated on record as a complainant or respondent or the School Ethics Commission.

"Person" means a human being, and does not include boards of education, labor organizations or school districts.

"Personal/Relative Disclosure Statement" means the statement that school officials are required to file annually pursuant to N.J.S.A. 18A:12-25.

"Prohibited acts" means the forbidden conduct set forth for school officials at N.J.S.A. 18A:12-24.

"Relative" means a relative as defined in the Act.

"Removal" means removal from office for the length of a board member or charter school trustee's term of office or termination of employment.

"Reprimand" means a rebuke by the Commissioner of a school official for having been found to have breached the standards of conduct prescribed by N.J.S.A. 18A:12-21 et seq.

"Respondent" means the school official against whom a complaint is made pursuant to N.J.S.A. 18A:12-21 et seq.

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

"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 couple as established in N.J.S.A. 37:1-33.

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

- (a) Pursuant to the provisions of N.J.S.A. 18A:12-21 et seq., the School Ethics Commission shall:



1. Prescribe a Financial Disclosure Statement and a Personal/Relative Disclosure Statement in accordance with N.J.S.A. 18A:12-26 and 25 respectively, to be filed by all school officials as defined herein on or before April 30 of each year or at such other times as these rules may require;
2. Appoint such professional and clerical staff and incur such expenses as may be necessary to carry out the provisions of N.J.S.A. 18A:12-21 et seq. within the limits of funds appropriated or otherwise made available to it. 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 such 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 such witnesses and the production of such documents as it may deem necessary and relevant to carrying out its duties under the Act;
7. Be empowered, along with the persons appointed by it, to administer oaths and examine witnesses under oath; and
8. Recommend to the Commissioner the reprimand, censure, suspension or removal of school officials from the district board of education or charter school found to have violated the School Ethics Act.

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

- (a) The School Ethics Commission shall have jurisdiction over matters arising under the Act. The School Ethics Commission shall not receive, hear or consider any pleadings, motion papers or documents of any kind relating to any matter that does not arise under the Act.
- (b) A School Ethics Commission member shall not participate in any proceedings on a complaint against a school official in a district in which he or she serves or by which he or she is employed and in any proceedings on a complaint in which the Commission member or a member of his or her immediate family has a personal or financial involvement.

**6A:28-1.5 Abeyance**

Pursuant to N.J.S.A. 18A:12-32, the School Ethics Commission shall not process any complaint nor issue a final ruling or advisory opinion where the subject matter of such complaint or advisory opinion is pending in any court of law or administrative agency of this State. The School Ethics Commission shall place such 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 School Ethics Commission becomes aware of facts that appear to indicate that a school official has violated the Act or this chapter, it 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 accord the school official an opportunity to respond. A statement of the factual details and investigative 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 the following circumstances, although it is not to be deemed limited thereto:

1. Failure of a school official to file disclosure statements as required at N.J.S.A. 18A:12-25 and 26; or
  2. Failure of a school board member or charter school trustee to fulfill the training requirements of N.J.S.A. 18A:12-33.
- (b) Where an Order to Show Cause is issued, the school official shall have 20 days to submit a response in writing under oath 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 so filing, the School Ethics Commission may proceed to a determination of a violation on a summary basis.
1. Where the Commission deems necessary because material facts are in dispute, it may conduct an investigation or a hearing.

**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 in the presence of a notary public or other person authorized to administer an oath or affirmation, 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); or
  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.

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

The rules in this chapter shall be considered general rules of practice to govern, expedite and effectuate the School Ethics Commission's implementation and enforcement of the Act. Where such rules do not reflect a specific statutory requirement or an underlying rule of the OAL, they may be relaxed or dispensed with by the School Ethics Commission, in its discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

## **SUBCHAPTER 2. BY-LAWS OF THE SCHOOL ETHICS COMMISSION**

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

- (a) The School Ethics Commission shall consist of nine members appointed for three-year terms in the configuration and manner prescribed by N.J.S.A. 18A:12-21 et seq.

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

- (a) In accord with the provisions of N.J.S.A. 18A:12-21 et seq., the Commission, by majority vote, shall elect 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 his or her term, the remaining Commission members shall, by majority vote, elect 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, by majority vote of the quorum present, shall select 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 such time, place and on such dates as established by the Commission and notice of such regular meetings shall be made in accordance with N.J.S.A. 10:4-6 et seq., the Open Public Meetings Act.
- (c) Special meetings may be called by the Commission chairperson at any time or at the request of any three members. Three day's notice of any special meeting shall be given to each member. Public notice of such special meetings shall be made pursuant to N.J.S.A. 10:4-8.
- (d) A quorum shall consist of a majority of the number of voting members of the Commission.

- (e) If a member of the Commission misses three consecutive public monthly meetings without good cause, the Commission shall, by majority vote, determine whether to recommend to the Governor the removal of the member.

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

- (a) The Commission shall act as a committee of the whole.
- (b) The Commission chairperson shall select a nominating committee of three persons whose function it shall be to select a nominee for chairperson to present to the committee as a whole for approval at its May meeting.
- (c) Special committees may be appointed by the chairperson to consider and make recommendations to the Commission on any matter.

### **SUBCHAPTER 3. FILING OF DISCLOSURE STATEMENTS**

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

- (a) Annually, on or before April 30th of each year or as otherwise provided in these rules, all school officials shall file, on forms provided by the Commission through the executive county superintendent, both a Financial Disclosure Statement and a Personal/Relative Disclosure Statement with their local board secretaries or charter school designees who shall file the original disclosure statements with the office of the executive county superintendent.
- (b) All disclosure statements filed in accordance with N.J.S.A. 18A:12-21 et seq. and these rules shall be public records. Requests for copies of disclosure statements shall be di-

rected to the district board secretary or executive county superintendent and shall be subject to copying fees pursuant to N.J.S.A. 47:1A-1 et seq.

- (c) Board members in Type II school districts elected to their positions in the annual April school election or appointed to fill vacancies shall file the requisite disclosure statements within 30 days of taking office.
- (d) Board members in Type I school districts who are initially appointed to take office on May 16 or June 1 as the case may be, shall file the required disclosure statements within 30 days of taking office. Board members in Type I districts appointed to fill vacancies shall likewise file within 30 days of taking office.
- (e) Members of the board of trustees of a charter school shall initially file the required disclosure statements within 30 days after the granting of the charter. Thereafter, any newly appointed trustee shall have 30 days from appointment to file.
- (f) Administrators, as defined in this chapter, appointed to fill vacancies after the April 30 filing date, shall file the required disclosure statements within 30 days of their appointment.

### **6A:28-3.2 Duties of district boards of education and charter schools**

- (a) In order to comply with the filing requirement, each local district board secretary or charter school designee shall annually, on or before February 1, file with the executive county superintendent a written list of names of those school officials, by office and position, whose responsibilities would require the filing of the Financial and Personal/Relative Disclosure Statements pursuant to the criteria contained in N.J.S.A. 18A:12-21 et seq. and these rules. Offices and positions vacant or to become vacant by virtue of expiration of terms or personnel leaving the district are to be listed.

- (b) The board secretary in Type II school districts shall, upon election of new board members or appointments to fill vacancies, file with the executive county superintendent a written list of the names of the newly elected members and the executive county superintendent shall provide the forms necessary for compliance.
- (c) The board secretary in Type I school districts shall file with the executive county superintendent a written list of the names of the newly appointed board members and the executive county superintendent shall provide the required forms.
- (d) The lead person of a charter school must appoint someone to be responsible for the dissemination and collection of disclosure statements. The charter school designee shall file with the executive county superintendent a written list of the names of the newly appointed trustees.
- (e) The board secretary or charter school designee shall file with the executive county superintendent a written list of any newly appointed administrators or supervisors subject to the requirement to file disclosure statements under the School Ethics Act.
- (f) Upon receipt of the disclosure statements from a school official, the board secretary or the charter school designee shall date stamp the original disclosure statements, provide a copy of the date-stamped disclosure statements to the school official, maintain a copy of the date-stamped disclosure statements at the district board of education or the charter school, and file the original date-stamped disclosure statements with the office of the executive county superintendent.
- (g) On or before April 30, or July 1 for newly elected or appointed school officials, the board secretary of each district board of education or charter school designee shall, before transmitting the completed disclosure statements to the executive county superintendent, review each disclosure statement.
  - 1. The board secretary or charter school designee shall provide a certification that both required statements have been filed and that all questions have been an-



swered or indicated as not being applicable, except that school officials shall list the name and address of each source of income in the financial disclosure statement.

- (h) Annually, within 10 calendar days of April 30, the board secretary or charter school designee shall provide to the executive county superintendent a written list of the names, home addresses and positions of all persons on the February 1 list of school officials compiled in accordance with (a) above and all newly elected or appointed persons who have failed to file as required by N.J.S.A. 18A:12-21 et seq.

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

- (a) Failure to timely file the requisite disclosure statements as prescribed by N.J.S.A. 18A:12-25 and 26 shall constitute a violation of the School Ethics Act and may result in the reprimand, censure, suspension or removal of a school official pursuant to the recommendation of the Commission as acted upon by the Commissioner.
- (b) In the event of the failure of a school official to timely 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.

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

- (a) When an executive county superintendent determines that a portion of a school official's disclosure statements, which are timely filed pursuant to N.J.A.C. 6A:28-3.1, is incomplete, he or she shall return the disclosure statements to the board secretary or charter school designee who shall then return the disclosure statements to the school official. The school official shall have 20-days from receipt of the returned filing to complete the dis-

closure statements and file with the board secretary or charter school designee, who shall then file the completed disclosure statements with the executive county superintendent.

- (b) At the expiration of such time period or upon further receipt of disclosure statements which fail to provide such information as required by the Act, the Commission may issue an Order to Show Cause pursuant to the provisions of N.J.A.C. 6A:28-1.6.

#### **SUBCHAPTER 4. BOARD MEMBER TRAINING**

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

- (a) Each newly elected or appointed board member or charter school trustee shall, during the first year of his or her service on any board, complete a training program prepared and offered by the New Jersey School Boards Association which shall include in its content instruction relative to the board member's responsibilities under the Act.
- (b) Each board member and charter school trustee shall, in both the second and third years of his or her service on any board, complete a training program to be prepared and offered by the New Jersey School Boards Association on school district governance.
- (c) Within one year after each re-election or re-appointment to the board of education or charter school board of trustees, each board member or charter school trustee shall complete an advanced training program on relevant changes to New Jersey school law to be prepared and offered by the New Jersey School Boards Association.

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

- (a) Each board secretary or charter school designee shall notify in writing the New Jersey School Boards Association when a new board member or trustee is elected or appointed

to the board, when a board member or charter school trustee is reelected or reappointed to the board and when a board member or charter school trustee resigns or is removed from the board.

1. The board secretary or charter school designee shall provide the names and address of such board members or charter school trustees.
- (b) The New Jersey School Boards Association shall notify the board secretary or charter school designee in writing, when a board member or charter school trustee has attended a training program that satisfies the training requirements.
- (c) By March 31 of each year, the New Jersey School Boards Association shall present to the School Ethics Commission a list of those board members and charter school trustees who have not fulfilled the training requirements.
- (d) Board members and charter school trustees failing to comply with the training requirements shall be considered in violation of N.J.S.A. 18A:12-33. The Commission may proceed thereafter in conformance with the procedures set forth in N.J.A.C. 6A:28-1.6.

## **SUBCHAPTER 5. ADVISORY OPINIONS**

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

Any school official may request and obtain an advisory opinion from the Commission as to whether any proposed conduct or activity of a school official would in its opinion constitute a violation of the provisions of the School Ethics Act.

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

- (a) Requests for advisory opinions must clearly set forth in detail the specific conduct or activity the school official seeks to undertake and the exact role he or she will play in that activity or conduct.
- (b) A school official may seek an advisory opinion from the Commission as to the proposed conduct of another school official, but he or she must provide proof of service pursuant to N.J.A.C. 6A:28-1.7 to show that he or she has copied the school official whose proposed activity or conduct is in question on the request. The school official whose conduct is in question will then have 10 days from the date 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 with regard to 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. No information regarding any request for an advisory opinion shall 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 or where the request does not meet the requirements of subsections (a) and (b) above.
- (d) The Commission or its staff may require additional information from the person seeking an advisory opinion or require the person's appearance before it or its staff.
- (e) Advisory opinions issued by the Commission shall not be made public unless six members shall vote to direct the opinion be made public.

1. Advisory opinions made public by the Commission shall delete the name and district of the school official requesting the advisory.

## **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 in any subsequent proceedings on that complaint in the capacity of a Commission member.

#### **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 shall file an original and two copies of such complaint, together with a copy for each respondent named in the complaint. The complainant shall use the format set forth at N.J.A.C. 6A:28-6.3.
- (b) A complainant shall promptly provide written notice to the Commission of any change of address, and shall promptly provide written notification to the Commission as needed in accordance with N.J.A.C. 6A:28-10.1.

#### **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 and phone number of each complainant;
  - 2. The full name and home address of each respondent;
  - 3. A brief statement, in individually numbered paragraphs, setting forth the specific allegation(s) and the facts supporting them which have given rise to the alleged violation(s) of the Act;
  - 4. The date(s) of the occurrence(s) of each specific allegation;
  - 5. The section(s) of the Act claimed to be violated for each specific allegation;
  - 6. A statement giving all pertinent facts as to whether any other action has been instituted in the matter which is the subject of the complaint or is pending in any court of law or administrative agency of this State; and
  - 7. A notarized signature and certification under oath for each complainant.
- (c) A complaint alleging solely a violation of the code of ethics for school board members shall name only school board members as respondents and shall set forth in the complaint 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 and phone number of complainant), request the School Ethics Commission to consider a complaint against the above-named Respond-

ent(s) whose home address is (home address 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:

1. Statement of facts:

Date of occurrence:

I assert this to be a violation of:

2. Statement of facts:

Date of occurrence:

I assert this to be a violation of:

3. Statement of facts:

Date of occurrence:

I assert this to be a violation of:

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 he or she be subject to such penalty as provided by the Act.

Date:

Signature of Complainant

or his or her Attorney

CERTIFICATION UNDER OATH

(Name of Complainant), of full age, being duly sworn upon his or her oath according to law deposes and says:

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 alleges that the complaint is frivolous, I shall have 20 days from receipt of the answer to respond to the allegation.
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 Complainant

CERTIFICATION UNDER OATH

Sworn and subscribed to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**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 board 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 or charter school;
  - ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; 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 or charter school.
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 his or her duties such that, by its nature, had the potential to compromise the board.
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 in order to acquire some benefit for the respondent(s), a member of his or her 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 board policies, procedures or practices. Factual evidence that the respondent violated the inaccurate information provision of 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 that 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 which 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 which form the basis of the alleged violation(s). A complainant shall be deemed to be notified of events which form the basis of the alleged violation(s) when he or she knew of such events or when such 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. For complaints where the matter, which is the subject of the complaint, is pending in any court of law or administrative agency of this State, the complaint shall be filed within 180 days of notice of the events which form the basis of the alleged violation(s).

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

- (a) Upon receipt of a complaint, the Commission shall assign a file number to the complaint.
- (b) Whenever the Commission deems appropriate, it may consolidate complaints. 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 saving in time, expense, duplication and inconsistency which 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 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 complaint does not so designate a lead complainant, one shall be assigned by the Commission.
- (e) For a complaint that is not held 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.
- (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 it first takes action at a public meeting to determine probable cause, or violation, or until the matter is settled, withdrawn or dismissed, provided that:

1. Information which 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:28-9.1;
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 superintendents.

#### **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, clarify or amplify allegations made in the original complaint and such 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 an answer or other responsive pleading 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) through (c) above shall be submitted in original format with two copies, together with a copy for each respondent.

## **SUBCHAPTER 7. FILING OF ANSWERS**

### **6A:28-7.1 Process for filing an answer**

- (a) To file an answer with the Commission, a respondent shall file an original and two copies of such answer with the Commission and shall serve a copy of the answer on the complainant. Proof of service shall also be submitted pursuant to N.J.A.C. 6A:28-1.7.
- (b) A respondent shall promptly provide written notice to the Commission of any change of address, and shall promptly provide written notification to the Commission as needed in accordance with N.J.A.C. 6A:28-10.1.

### **6A:28-7.2 Contents of an answer**

- (a) Upon receipt of the complaint from the Commission, the respondent shall file a written statement under oath, which shall constitute the answer to the complaint. The answer shall fully and completely advise the parties and the Commission as to the nature of the respondent's defenses for each allegation, and shall admit or deny each allegation set forth in the complaint. The respondent shall respond directly to each allegation set forth in the complaint. Denials shall fairly meet the substance of the allegations denied. A respondent who intends in good faith to deny only part or a qualification of an allegation shall specify so much of it as true and material and deny only the remainder.
- (b) Where an answer 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 answer to respond to the allegation.
  - 1. 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) An answer must be signed under oath by the respondent.
- (d) The Commission shall not accept a counterclaim. A respondent may file a complaint pursuant to N.J.A.C. 6A:28-6.

**6A:28-7.3 Time for filing an answer**

- (a) Upon receipt of the complaint from the Commission, the respondent shall have 20 days from receipt of the complaint within which to file an answer.
- (b) Where a respondent fails to file an answer to the complaint within the 20-day period, the Commission shall issue a notice informing the respondent that unless an answer 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 an answer**

- (a) Upon written application by the respondent, the Commission may extend the time for the filing of an answer, provided that the application was received by the Commission prior to the expiration of the time for filing an answer as provided for in N.J.A.C. 6A:28-7.3 and provided that a copy of the application was served upon all complainants in accordance with N.J.A.C. 6A:28-1.7.
  - 1. For complaints alleging solely a violation of the code of ethics for school board members, the respondent shall demonstrate that a good faith effort was made to obtain the consent of the complainant prior to application to the Commission and the application shall so state.
- (b) Requests for extensions which are opposed by one or more of the parties may be granted upon a finding of good cause shown.

## **SUBCHAPTER 8. MOTION TO DISMISS**

### **6A:28-8.1 Process for filing a motion to dismiss**

- (a) A respondent may file a motion to dismiss in lieu of an answer for any complaint before the Commission.
  - 1. The Commission shall not accept a counterclaim. A respondent may file a complaint pursuant to N.J.A.C. 6A:28-6.
- (b) To file a motion to dismiss in lieu of an answer to a complaint, the respondent shall file with the Commission an original and two copies of such motion, which shall be accompanied by a brief. The respondent shall serve a copy of the motion on the complainant and submit proof of service pursuant to N.J.A.C. 6A:28-1.7.
- (c) The motion to dismiss in lieu of an answer shall be filed within the time allotted for the filing of an answer pursuant to N.J.A.C. 6A:28-7.3. Upon written application by the respondent, the Commission or its designee may extend the time for the filing of the motion pursuant to the process established in N.J.A.C. 6A:28-7.4.
- (d) A respondent may also make an oral motion to dismiss upon the conclusion of the complainant's case during a hearing held before the Commission pursuant to N.J.A.C. 6A:28-10.8.

### **6A:28-8.2 Process for responding to a motion to dismiss**

- (a) Within 20 days from receipt of the motion to dismiss in lieu of an answer, the complainant shall file an original and two copies of a responsive brief. The complainant shall serve



a copy of the response on the respondent and submit proof of service pursuant to N.J.A.C. 6A:28-1.7.

1. Where a motion to dismiss alleges that a complaint is frivolous pursuant to N.J.S.A. 18A:12-29(e), the complainant shall respond to that allegation within the responsive brief.
- (b) Upon written application by the complainant, the Commission may extend the time for the filing of a response to the motion to dismiss in lieu of an answer pursuant to the process established in N.J.A.C. 6A:28-7.4.

### **6A:28-8.3 Commission review of a motion to dismiss**

In determining whether to grant a motion to dismiss, the Commission shall review the facts in the light most favorable to the complainant and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, motions to dismiss and any responses thereto shall be reviewed by the Commission on a summary basis.

## **SUBCHAPTER 9. SUBPOENAS**

### **6A:28-9.1 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 under investigation.
- (b) Subpoenas may be issued by pro se parties or attorneys-at-law in accordance with applicable rules of the OAL.

## **SUBCHAPTER 10. REVIEW OF COMPLAINTS**

### **6A:28-10.1 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 matter, which is 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 these rules.

### **6A:28-10.2 Administrative dismissals**

- (a) The Commission may, in its discretion, 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:28-10.5 or 10.6(a);

4. The sole allegation in the complaint is that a person other than a board member has violated the code of ethics for school board members;
5. The complaint fails to meet minimal requirements as 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:28-10.3 Evidence rules**

During the course of investigatory proceedings before the Commission, all relevant evidence is admissible.

### **6A:28-10.4 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(b) or 8.2(a) 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.

#### **6A:28-10.5 Settlement**

- (a) For complaints alleging solely a violation of the code of ethics for school board members, the parties may notify the Commission of settlement at any time prior to the finding of a violation.
  1. Where settlement occurs prior to the filing of an answer, the complainant shall officially withdraw the complaint in writing.

#### **6A:28-10.6 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 and prior to a finding of probable cause, the complainant may submit a written request to the Commission to withdraw the complaint. Such 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:28-10.7 Processing of complaints alleging solely prohibited acts**

- (a) Prior to making a probable cause determination, the Commission may, at its discretion, convene a conference. The conference may be held by staff designated by the Commission or at a Commission meeting. The conference is not an adjudication of the merits of the complaint. Where such a conference is convened:
1. The Commission shall provide the complainant(s) and the respondent(s) with written notice of the conference. The written notice shall identify the individuals requested to attend the conference.
  2. Any pre-conference documentary submissions shall be provided to the Commission at least 10 calendar days prior to the conference.
  3. Any post-conference documentary submissions shall be provided to the Commission within 14 calendar days of the conference or as otherwise agreed to by the Commission.
- (b) After the filing of an answer and the completion of any conference that the Commission may convene pursuant to (a) above, the Commission shall decide by majority vote whether probable cause exists by determining whether there is a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that the Act has been violated.
1. Upon a finding of probable cause, the complainant shall no longer be a party to the complaint. Where the Commission transmits a complaint to the OAL pursuant to (c)2 below, the attorney for the Commission shall prosecute those allegations in the complaint which the Commission found probable cause to credit.
- (c) Where the Commission finds probable cause to credit any allegations in a complaint, it shall issue a written notice to the parties setting forth those findings as follows:
1. Where the respondent admits the material facts alleged in the complaint or such facts are deemed admitted pursuant to N.J.A.C. 6A:28-7.3(b), the written notice shall be forwarded to the respondent who shall be accorded 20 days to submit a

statement setting forth the reasons he or she should not be found in violation of the Act. Such statement shall be limited to those allegations in 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 violation on a summary basis.

2. Where the material facts in the complaint are not admitted by the respondent or where the Commission otherwise determines necessary, the written notice shall indicate that the matter is being transmitted to the OAL in accordance with N.J.S.A. 18A:12-29(a) for a hearing to be conducted pursuant to the Uniform Administrative Procedure Rules at N.J.A.C. 1:1. Such hearing shall be limited to those allegations in which the Commission has found probable cause.
  - i. Where a matter is transmitted to the OAL and the respondent fails to appear before the OAL and the matter is returned to the Commission for disposition, the allegation(s) which the Commission found probable cause to credit shall be deemed admitted and the Commission may proceed to a determination of a violation on a summary basis.
- (d) Where the Commission finds no probable cause to proceed with the complaint, it shall issue a written notice to the parties and the complaint shall be dismissed.
- (e) Findings of probable cause pursuant to (c) above shall not constitute final agency action.

**6A:28-10.8 Processing of complaints alleging solely a violation of the code of ethics for school board members**

- (a) Processing of complaints alleging solely a violation of the code of ethics for school board members shall be in accordance with N.J.S.A. 18A:12-29(b). A decision rendered pursu-

ant to N.J.S.A. 18A:12-29(b), means a majority vote of the Commission during a public session of its meeting to:

1. Grant or deny a motion to dismiss in whole or in part;
  2. Retain a complaint for a hearing by the Commission;
  3. Transmit a complaint for a hearing by the OAL;
  4. Find a violation of the Act; or
  5. Dismiss a complaint.
- (b) The complainant has the burden to prove factually a violation under the code of ethics for school board members as provided for at N.J.A.C. 6A:28-6.4.
- (c) When the Commission retains a complaint for a hearing, such hearing shall be conducted in accordance with the rules of the OAL, N.J.A.C. 1:1.
1. Any pre-hearing documentary submissions shall be provided to the Commission and the adversarial party(ies) at least 10 calendar days prior to the hearing.
  2. Any post-hearing documentary submissions shall be provided to the Commission and the adversarial party(ies) within 14 calendar days of the hearing or as otherwise agreed to by the Commission and the parties.
  3. The Commission will entertain motions to dismiss from the respondent upon the conclusion of the complainant's case as set forth at N.J.A.C. 6A:28-8.1(d).
- (d) Where a matter is transmitted to the OAL and the respondent fails to appear before the OAL and the matter is returned to the Commission for disposition, the allegation(s) in the complaint shall be deemed admitted and the Commission may proceed to a determination of a violation on a summary basis.

**6A:28-10.9 Processing of complaints alleging both prohibited acts and a violation of the code of ethics for school board members**

- (a) The Commission may convene a conference in accordance with N.J.A.C. 6A:28-10.7(a) for the purposes of determining probable cause to credit the allegations of prohibited acts.
- (b) When the Commission, by majority vote, finds no probable cause to credit any of the allegations of prohibited acts, it may retain the matter for a hearing in accordance with N.J.A.C. 6A:28-10.8(d) or transmit the matter to the OAL for a hearing.
- (c) When the Commission, by majority vote, finds probable cause to credit any allegations of prohibited acts, it shall proceed in accordance with N.J.A.C. 6A:28-10.7(b) through (e).

#### **6A:28-10.10 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:28-10.8 shall be made to the Commission in accordance with the requirements of the OAL, as set forth in 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 in N.J.A.C. 1:1.

#### **6A:28-10.11 School Ethics Commission determinations on complaints**

- (a) Upon completion of a hearing before the OAL, a hearing before the Commission pursuant to N.J.A.C. 6A:28-10.8 or the Commission's summary review of a complaint, 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, conclusions of law and penalty recommendation, pursuant to N.J.A.C. 6A:28-10.12, in any case where a violation is found.



1. In rendering its determination on complaints heard before the OAL, 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. 1:6C-18.4.
- (b) A determination to dismiss a complaint shall constitute final agency action.

#### **6A:28-10.12 Sanction**

- (a) If a violation of the Act is found, the Commission may recommend to the Commissioner the reprimand, censure, suspension, or removal of the school official. 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.
- (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 in N.J.A.C. 1:6C-18.4.
- (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 at the next regularly scheduled public meeting of the district board of education or charter school board of trustees following its adoption by the Commission and posted for a period of not less than 30 days in such places as the board posts its public notices.

## **SUBCHAPTER 11. APPEALS**

### **6A:28-11.1 Procedure for appeal**

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