

# POLICY

# Revised

## FRANKLIN TOWNSHIP BOARD OF EDUCATION

File Code: 4112.8/  
4212.8

### NEPOTISM

#### Definitions

For the purpose of this policy the following definitions shall apply:

"Nepotism" shall be defined as the showing of favoritism to an employee or candidate for employment based on the existence of a "conflicted relationship" with a board member or chief school administrator.

"Conflicted relationship" includes but is not limited to an immediate family member, a relative, and any other relationship that create a justifiable impression that the public trust may be violated.

"Conflicted board member/administrator" shall mean any board member or administrator with a conflict of interest, regardless of the source of conflict as identified in the definitions below.

"Relative" shall be defined as an individual's spouse, civil union partner, domestic partner, or the parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother or half-sister, of the individual or of the individual's spouse, civil union partner or domestic partner, whether the relative is related to the individual or the individual's spouse, civil union partner or domestic partner, by blood, marriage or adoption.

"Immediate family" shall be defined as board member or school administrator, their spouse, civil union partner, domestic partner, child, parent or sibling residing in the same household, whether related by blood, marriage or adoption.

"Other" when describing relationships between individuals and board members or the chief school administrator includes but is not limited to in-law, cousin, cohabitating partner, and step daughter-in-law and any other personal or professional relationship that creates the justifiable impression that the public trust is being violated.

#### Employment and Supervision of a Relative

The board of education, in order to avoid both the reality and the appearance of conflict of interest in employment, will not initially appoint a relative of a board member or of the chief school administrator to any employment position in this district.

The chief school administrator shall not recommend to the board for initial hire any relative of a board member or of the chief school administrator, unless the person is subject to the exception below. Nor shall any person be considered for employment in any position in which he/she would come under the direct or indirect supervision of any

relative. Where it is not feasible to eliminate such a direct or indirect supervisory relationship, appropriate screens and/or alternate supervision/reporting mechanisms shall be put in place.

No conflicted administrator shall supervise, or exercise authority over personnel matters in which the administrator has a conflict. No board member shall deliberate or vote on a matter involving the member's conflicted relationship. Nor should the board member be present for any confidential discussion of employment matters in which they have a conflict. Neither should the board member receive confidential information pertaining to a matter in which they have a conflict.

#### Exceptions Regarding Employment

Persons who are employees of the board on the date that this policy initially becomes effective or the date a relative becomes a board member or chief school administrator shall not be prohibited from continuing to be employed in the district. This includes employees who must be renewed annually by the board. The chief school administrator may recommend those employees for reemployment, transfer, promotion or removal.

A relative of a school board member or chief school administrator may be initially employed by the district provided that the district has obtained the approval from the executive county superintendent of schools. Such approval shall be granted only upon demonstration by the school district that it conducted a thorough search for candidates and that the proposed candidate is the only qualified and available person for the position. Per diem substitutes and student employees may be excluded from the initial hiring aspects of this nepotism policy.

#### Participation in Employment Related Matters

Conflicted board members may not participate in employment matters concerning the chief school administrator, principal or any administrator or supervisor(s) in the chain of command between the employee and chief school administrator.

Prohibited activities for conflicted board members include hiring of the selection agency, criteria, job description, voting to advertise for applicants, search committee, vote to hire and any evaluation and contract discussion post-hire.

Conflicted board members may not be present in closed session when discussions regarding the administrators take place and should not be privy to executive session materials until such time as the minutes are made available to the general public.

#### Board Member/Chief School Administrator Participation in Negotiations

##### A. In-District Bargaining Units

When a board member or school administrator is in a conflicted relationship which prohibits participation in collective negotiations, that board member or school administrator shall not participate in any way in negotiations. This includes, but is not limited to, setting negotiation parameters, being a member of the negotiating team, receiving negotiations updates, voting on the

proposed agreement and post-contract participation in grievances. Nor shall that board member or school administrator be present with the board in closed session when negotiation strategies are being discussed. A school administrator may provide technical information that is necessary to the collective bargaining process when no one else can provide that information.

Board members or the chief school administrator are similarly precluded from participation in negotiations with any bargaining unit whose members have supervisory authority over a family member or other conflicted connection.

#### B. Out-of-District Similar Statewide Bargaining Units

~~When a board member or school administrator is in a conflicted relationship with an individual who is a member of an out-of-district similar statewide union with which the board is negotiating, that board member or school administrator shall not participate in any way in negotiations. This includes, but is not limited to: being a member of the negotiating team, and receiving confidential negotiations information updates prior to the board's attaining a tentative memorandum of agreement with the bargaining unit, including salary guides and/or the total compensation package.~~

~~Once such tentative memorandum of agreement is established, including salary guides and/or the total package of money to be offered, the board member or school administrator may fully participate in the process, including board member voting, absent other conflicts. Prior to that time, the board member or school administrator shall not be present with the board in closed session when negotiation strategies are being discussed. However, a school administrator may provide technical information that is necessary to the collective bargaining process when no one else in the district can provide that information.~~

*1. When a board member is a member of an out-of-district similar statewide union or when a board member or school administrator is in a conflicted relationship involving an immediate family member who is a member of an out-of-district similar statewide union with which the board is negotiating, that board member or school administrator shall not participate in any way in negotiations. This includes, but is not limited to:*

- a. Developing negotiation parameters;*
- b. Being a member of the negotiating team;*
- c. Receiving confidential negotiations information updates prior;*
- d. Voting on the contract; and*
- e. Grievance participation.*

*A school administrator may, however provide technical information that is necessary to the collective bargaining process when no one else in the district can provide that information.*

*2. When a board member or school administrator is in a conflicted relationship involving a relative who is a member of an out-of-district similar statewide union with which the board is negotiating, there is no conflict unless the relative has a union leadership position in the state-wide union or local union that*

*has the ability to affect negotiations. Union leadership positions in the state-wide union or local union that have the ability to affect negotiations include but are not limited to:*

- a. Officer;*
- b. Grievance chairperson;*
- c. Building representative;*
- d. Negotiation committee member.*

A school official who has a conflicted relationship with any employee of the district or an employee in another out-of-district similar statewide union as of the effective date of this policy shall declare such relationship to the board immediately.

#### Doctrine of Necessity

When a quorum of the board has conflicted interests, the doctrine of necessity may be invoked in order to allow conflicted board members to participate in the negotiation process and vote. The doctrine of necessity may be invoked for the negotiation team or superintendent search committee only when the board of education has fewer non-conflicted board members than are required, pursuant to statute, to take action. The board shall only invoke the doctrine of necessity after consultation with the board attorney. When invoking the doctrine of necessity the board shall state publically that it is invoking the doctrine of necessity with the reasons for doing so and the specific nature of the conflicts of interest. The board shall read the resolution invoking the doctrine of necessity at a regularly scheduled public meeting, post the notice of the resolution for 30 days and provide the School Ethics Commission with a copy of the resolution.

#### Implementation

The connections and relationships that create a conflict of interest for an individual board member's participation in board decisions are subject to changes that result from commissioner rulings or changes in law. Therefore the board shall consult with the board attorney as necessary and appropriate for guidance and clarification related to the implementation of this policy

Date adopted: 11/20/00

Date revised: 1/12/09

Date revised: 12/14/15



## SEC Issues Advisory Opinions on Board Conflicts

Recently, the School Ethics Commission (SEC) made public two advisory opinions which it had approved for public status at its March 22 meeting. Board members and school administrators are encouraged to review these opinions with their board attorney to determine the impact that they may have on their local board operations.

**School Administrators with Relatives Employed in Other Districts** In advisory opinion A40-15, the SEC responded to a joint request from a superintendent and school business administrator who had relatives employed as teachers in other school districts, who were members of their respective local education associations; local affiliates of the NJEA. Neither relative was involved with the local union negotiating team or otherwise involved in union activity. The superintendent's relative was a non-dependent daughter, who did not live with the superintendent. The school business administrator's relative was a sister-in-law. The SEC advised that the analysis in A16-15, an advisory opinion that advises board of education members in a similar situation, applies to school administrators, including the superintendent and the school business administrator.

A16-15 advised that board of education members, (and now school administrators) who had relatives employed by another school district, who were members of a similar statewide union with which the board was negotiating, would not automatically violate the School Ethics Act (SEA) if they were to participate in negotiations and vote on the contract with the local union. The conflict would hinge on whether the relative had a heightened involvement with the local union. A conflict would exist if the relative were an officer of the NJEA or the local education association, were a member of the local negotiations team, or had some other leadership role with the local union such as a grievance chairperson, building representative, or county representative. Absent heightened union involvement or other facts to suggest a conflict, the board member (and now school administrator) could fully participate in the collective negotiations process without violating the SEA.

**Police Officer/Board Member as Local DARE Officer** In opinion A01-16, the SEC responded to a request regarding a newly elected board of education member, who was employed as a police officer in the municipality and was assigned as the Drug Abuse Resistance Education (D.A.R.E.) officer in the school district. The board member/D.A.R.E. officer provided the students with drug resistance education, through a program aligned with the nationwide D.A.R.E. America standards, interacting with students approximately once per week, over a three-month period. In addition to his role in the schools as a D.A.R.E. officer, the new board member also conducted safety checks in the district's schools in his capacity as a law enforcement officer. On a daily basis he would spend "five to ten minutes in each building walking hallways to ensure doors are secure and other safety protocols are followed." During these checks he did not typically interact with students and his contact with staff was limited to discussions with the school principal or his/her designee.

Notably, the board member did not serve as the "School Resource Officer" (SRO); a position which involves an assigned police officer with the responsibility to "actively work to improve the security of the school... and to forge positive relationships between students, staff, parents and law enforcement." The SRO is encouraged to speak and develop relationships with students and staff. The Principal is also able to require the SRO to attend evening and after school events. Previously, in Advisory Opinion A31-05, the SEC advised that the SRO position involved "significant entanglements with the district, its staff, students and parents," and due to that level of entanglement, a board member could not serve as an SRO in the same district in which he served as a board member.

It was acknowledged that the board member had a conflict on the board with regard to matters touching upon the shared services agreement between the school district and the police department, as well as issues arising regarding the D.A.R.E. program and its use in the school district. However, the question was whether the board member's role, despite being narrower than that of SRO, created an absolute conflict such that the board member could not simultaneously serve on the board and be employed by the police department in the capacity of D.A.R.E. officer and/or conduct daily safety checks of the schools.

The SEC determined that the regular, daily interaction of the board member with the schools and its personnel was in substantial conflict with his duties on the board of education. The board member would be in violation of N.J.S.A. 18A:12-24(a) if he were to continue his current role with the police department in such a way as to entangle himself in the affairs of the school district. The conflict was not that the board member was a police officer, but with the assignment of duties, which requires his extensive, day-to-day involvement with school district personnel and facilities. While the board member's involvement was less than that of an SRO, the board member's activities still involved significant entanglements with the district, its staff, students, and parents. The board member's status in the school was similar to that of an employee, which would compromise his judgment as a board member. This regular interaction between district staff, students, and parents meant he could be viewed as a natural liaison between the board, the schools and the police department. His roles as a board member and D.A.R.E./law enforcement officer blur the distinction between the two positions and their respective obligations, which would compromise his judgment on the board.

The SEC advised that the board member would violate N.J.S.A. 18A:12-24(a), and (d) of the Act and N.J.S.A. 18A:12-24.1(c) and (j) of the Code of Ethics for School Board Members if he were to serve as a member of the board of education while also being assigned by the police department as the D.A.R.E. Program Officer, to conduct daily safety checks of the schools and to handle "any matter involving juveniles." In rendering its advice, the SEC acknowledged that it was not stating a police officer cannot serve on a board of education, but that the assignments of this board member, which required his extensive daily interaction with the schools, presented the inescapable likelihood for conflicts. His assignment to the schools and with juveniles created the situation where his employment was so entangled with matters touching upon the schools and the school district as to be incompatible with his service on the board.

---

## Contact Us

### New Jersey School Boards Association

413 West State St.  
Trenton, NJ 08618  
Main: 609-695-7600  
Free: 888-88NJ5BA

## **Quick Links**

### **Mission Statement**

The New Jersey School Boards Association, a federation of boards of education, provides training, advocacy and support to advance public education and promote the achievement of all students through effective governance.

© Copyright 2016 New Jersey School Boards Association. All Rights Reserved. No part of this document may be reproduced in any form or by any means without permission in writing from NJSBA.



# School Ethics Commission Issues Advisory Opinions on Board Member Conflicts

Earlier this month, the School Ethics Commission (SEC) made public three advisory opinions which it had approved for public status at its Jan. 26 meeting. Advisory opinions are made public by the SEC when six of its nine members vote to make them public. Board members and school administrators are encouraged to review these opinions with their school board attorney to determine the impact that they may have on their particular local board operations.

NJSBA has been closely monitoring the many School Ethics Commission advisory opinions that have been released in recent months. “We understand that the School Ethics Commission is working to promote public trust, which we, of course, support,” said Dr. Lawrence S. Feinsood, NJSBA executive director. “While the commission is well-intentioned, many of their opinions have unfairly curtailed the management rights that boards of education must have to effectively represent their communities and perform their oversight functions.”

Details of the latest advisory opinions are below.

## Board Members with Relatives in School Districts

In opinion A25-15, the SEC responded to a request regarding several board of education members who had relatives who either were full-time employees and members of the local NJEA affiliate union in either their own district or another. The relatives included:

- Board member’s spouse, NJEA member employed in another school district
- Board member, New Jersey Principals and Supervisors Association (NJPSA) member employed in another school district
- Board member’s spouse, paraprofessional in-district, NJEA affiliate union member
- Board member’s sister, NJEA member employed in another school district.

The SEC advised that the board members should review recently issued public advisory opinions [A11-15](#) (<http://www.njsba.org/wp-content/uploads/2016/03/A11-15.pdf>), [A16-15](#) (<http://www.njsba.org/wp-content/uploads/2016/03/A16-15.pdf>) and [A19-15](#) (<http://www.njsba.org/wp-content/uploads/2016/03/A19-15.pdf>), which addressed these topics.



The SEC further advised that board members with relatives employed in-district, who are members of an NJEA affiliated union, are considered to have a conflict under the School Ethics Act. The conflict extends to all matters involving the union and all aspects of the collective negotiations process, including voting on the collective bargaining agreement. The conflict further extends into the personnel area as to the relative and the relative's supervisors, and other superiors in the chain of command ending with and including the superintendent. No participation in personnel matters regarding these individuals is permitted, including, but not limited to discussion, evaluation and voting.

Board members who have immediate family members (spouse, child, parent, sibling) in their household, who are employees in another school district and members of a similar statewide union with which the board is negotiating, are also deemed conflicted under the School Ethics Act. The conflict extends to all matters involving the union and all aspects of the collective negotiations process, including voting on the collective bargaining agreement. School administrators who are conflicted in this manner may provide technical information to the board of education when no one else in the school district can do so.

Board members who have out-of-household relatives who are union members employed by a different board of education, have a different analysis to perform. Employment with union membership in another school district is not automatically a conflict for out-of-household relatives. The conflict analysis turns on the relatives' involvement with the union in their district of employment. If the relative has a heightened union role (officer, bargaining team member, union building representative) the board member is conflicted, with the conflict extending to all matters involving the union and all aspects of the collective negotiations process, including voting on the collective bargaining agreement. School administrators who are conflicted in this manner may provide technical information to the board of education when no one else in the school district can do so.

For board members who are employed in another school district as school administrators and are members of the NJPSA, the SEC referred them to previously issued public advisory opinion [A13-15](http://www.njsba.org/wp-content/uploads/2016/03/A31-15.pdf) (<http://www.njsba.org/wp-content/uploads/2016/03/A31-15.pdf>). A board member, in this circumstance, may negotiate with the in-district local NJEA affiliate when there is absolutely no linkage, in either district, between the respective NJEA affiliates and the administrators' union which represents the board member. Board members should consult with their school board attorney as to whether similar statewide union status may create a linkage as NJEA does represent supervisor units in certain school districts and likely has the same goals and objectives for its members as does NJPSA.

## **Former District Employee and Union President**

The SEC responded to a request regarding a newly-appointed board of education member, a 28-year former employee in the school district who served as union president for 13 years. In advisory opinion [A26-15](http://www.njsba.org/wp-content/uploads/2016/03/A26-15.pdf) (<http://www.njsba.org/wp-content/uploads/2016/03/A26-15.pdf>), the question was what, if any, involvement the new board member could have with respect to issues and matters involving the union, including possible collective negotiations and votes on contracts between the board and the union, without violating the School Ethics Act.

The SEC determined that the board member's prior employment in the school district and prior service as union president was not a bar to her service on the board of education. However, it did create a conflict of interest for purposes of collective negotiations participation. The SEC considered it reasonable for members of the public to believe that, as a new board member, having so recently been an employee of the school district and union president, she would be unable at this time to separate her past union involvement from her new role on the board. In order to avoid a violation of the Act and to preserve the public trust, the SEC advised that the new board member must recuse herself from any union

matters and must abstain from any union-related votes for the duration of her initial term of office. The SEC did not consider this conflict to be in perpetuity, but only for the new board member's initial term on the board, as she becomes acclimated to her new role of serving the public. After her first term, there would no longer be the appearance that the board member's independence of judgment and objectivity with regard to the union would be impaired.

Should she serve a second term, the new board member, while not possessing a presumption of conflict, must continue to be cognizant of her responsibility to protect the public trust and her obligation to serve the interests of the public and board.

## Participation in District Staff Interviews

In [A31-15 \(http://www.njsba.org/wp-content/uploads/2016/03/A31-15.pdf\)](http://www.njsba.org/wp-content/uploads/2016/03/A31-15.pdf), the SEC responded to a request for clarification regarding a perceived conflict between the exit interview prohibition of [A15-10 \(http://www.njsba.org/wp-content/uploads/2016/03/A15-10public.pdf\)](http://www.njsba.org/wp-content/uploads/2016/03/A15-10public.pdf) and the limited participation in higher level administrative employee interviews of [A04-12 \(http://www.njsba.org/wp-content/uploads/2016/03/A04-12.pdf\)](http://www.njsba.org/wp-content/uploads/2016/03/A04-12.pdf); each of which was analyzed under N.J.S.A. 18A:12-24.1 (c) and (d) of the Code of Ethics for School Board Members, but with seemingly different results.

In issuing this advisory opinion, the SEC advised that it does not support board members conducting interviews for positions below that of superintendent. However, the SEC's jurisdiction does not extend to actions of the board of education, only to actions of individual board of education members. Accordingly, each individual board of education may determine if it wants to have an interview committee for high-level administrative positions, pursuant to A04-12. As set forth in A04-12, if a board forms an interview committee, no more than one or two board members may participate, the committee would be coordinated by a member of the administrative staff and the board members' role would be limited. The board members may not conduct the interview, but may offer observations and assessments, with full knowledge that final recommendations are wholly within the purview of the superintendent. For boards of education choosing to have an interview committee, the committee should function with the approval of the superintendent. It is the superintendent's authority to recommend hires to the board. An interview committee cannot supersede or usurp that authority.

The SEC noted that N.J.S.A. 18A:12-24.1(n) establishes that it is a board member's role to vote to appoint the best-qualified personnel available after consideration of the recommendation of the superintendent. The role of interviewing is an administrative function not generally within the authority of the board or its members. Accordingly, the SEC does not advocate for board member involvement in any interview process, prior to candidates first being recommended for hire by the superintendent, except for the limited purpose outlined in A04-12.

## Contact Us

### New Jersey School Boards Association

413 West State St.

Trenton, NJ 08618

Main: 609-695-7600

Free: 888-88NJSBA

## Quick Links

## **Mission Statement**

The New Jersey School Boards Association, a federation of boards of education, provides training, advocacy and support to advance public education and promote the achievement of all students through effective governance.

© Copyright 2016 New Jersey School Boards Association. All Rights Reserved. No part of this document may be reproduced in any form or by any means without permission in writing from NJSBA.