

Frequently Asked Questions about Filing and Answering a Complaint before the School Ethics Commission

Q: Who can file a complaint with the School Ethics Commission?

A: Any *person* may file a complaint with the School Ethics Commission when he or she believes that a school official has violated the School Ethics Act. A Board of Education, as an entity may not file a complaint, although individual members of the Board may file.

Q: How do I file a complaint with the School Ethics Commission?

A: To file a complaint, you must submit complete a complaint form (above), which must be signed under oath and submitted as noted above.

Q: What must a complaint include?

A: A complaint must include:

- The full name, home address and phone number of each complainant;
- The full name and home address of each respondent;
- 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;
- The date(s) of the occurrence(s) of each specific allegation;
- **The section(s) of the Act claimed to be violated for each specific allegation;**
- 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
- A notarized signature and certification under oath for each complainant.

Q: May I allege a general violation of the Act, such as *N.J.S.A. 18A:12-22*?

A: No. The School Ethics Commission has ruled that *N.J.S.A. 18A:12-22*, which sets forth the Legislative purpose for enacting the School Ethics Act, is not a basis for a violation.

Q: Who may I file a complaint against?

A: A complaint may only be filed against a “school official” which includes a board member and certain administrators as defined in the School Ethics Act at *N.J.S.A. 18A:12-23*.

Q: May I file a complaint against a teacher with the School Ethics Commission?

A: No. The School Ethics Act only governs the conduct of school officials as defined in the School Ethics Act at *N.J.S.A. 18A:12-23*.

Q: What is the time period for filing a complaint?

A. **Complaints must 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.

Q: Are complaints filed with the School Ethics Commission kept confidential?

A: 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; (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; and (5) Information regarding the status of a pending complaint may be provided to the executive county superintendents.

Q. Can this confidentiality requirement be enforced against the parties?

A. No. Although the Commission requests that the parties maintain the confidentiality of a complaint, it cannot require parties to do so.

Q: Does a complainant have the burden of proof as a complainant?

A: If filing a complaint alleging a violation of the Code of Ethics for School Board Members, *N.J.S.A.* 18A:12-24.1, the complainant has the burden of proof and therefore must set forth in the complaint specific provisions of the Code of Ethics for School Board Members that are alleged to have been violated. The State Board of Education has adopted standards for complaints alleging a violation of the Code of Ethics for School Board Members set forth at *N.J.A.C.* 6A:28-6.4.

Q. May I file a complaint alleging that a school administrator has violated the Code of Ethics for School Board Members?

A. No. The Code of Ethics for School Board Members applies only to school board members and charter school trustees and not administrators, even though superintendents are *ex officio* members of the board.

Q. Can a complaint be dismissed for failure to abide by the rules for filing?

A. Yes. The Commission may, in its discretion, administratively dismiss complaints or specific allegations in complaints for reasons including, but not limited to, the following: lack of jurisdiction; the complaint is not timely filed; 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; the complaint fails to meet minimal requirements as set forth at *N.J.A.C.* 6A:28-6.3; 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 the complaint, on its face, fails to state a claim under the School Ethics Act.

Q. If a complaint is filed against me, how do I answer?

A. **The Commission will serve a copy of the complaint upon the respondent, if the complainant has not already done so; the respondent shall have 20 days to file** an original and two copies of an answer with the Commission, as well as to serve a copy of the answer on the complainant. The answer must be a written statement under oath which fully and completely advises 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.

Q. May a respondent file a counterclaim against the complainant?

A. The regulations do not permit the filing of a counterclaim, although a respondent may file a complaint pursuant to *N.J.A.C. 6A:28-6*.

Q. Can the respondent assert that a complaint is frivolous?

A: Yes: A respondent may, in his/her answer, assert that a complaint is frivolous, although an allegation that a complaint is frivolous may not be raised in any subsequent filings. 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. Upon receipt of the complainant's response to an allegation that the complaint was frivolous, 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. 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. Pursuant to *N.J.S.A. 18A:12-29(e)*, the Commission may impose a fine not to exceed \$500.00.

Q. May a respondent file a motion to dismiss the complaint?

A. Yes. A respondent may file a motion to dismiss in lieu of an answer for any complaint before the Commission. 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. 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*.

Q. What will happen after a motion to dismiss is filed?

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. 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. The Commission shall consider the motion and the response, if any, prior to considering the merits of the complaint. Unless the parties are otherwise notified, motions to dismiss and any responses thereto shall be reviewed by the Commission on a summary basis (i.e., based on the papers submitted and without a hearing).

Q. What would be the standard of review for the Commission's review of a motion to dismiss?

A. 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 support a finding of violation of the Act. If the motion is granted in full, the complaint shall be dismissed.

Q. What if the parties reach a settlement after a complaint is filed?

A. Where a complaint alleges 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. Where settlement occurs prior to the filing of an answer, the complainant shall officially withdraw the complaint in writing.

Q. Can a complaint be withdrawn once it is filed?

A. If a complaint alleges 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. 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.

Q. How are complaints actually processed by the Commission?

A. Complaints are processed differently by the Commission, depending upon the allegations in the complaint, as set forth below:

- **Complaints solely alleging prohibited acts as set forth at *N.J.S.A. 18A:12-24*.** Review of this complaint is governed by *N.J.A.C. 6A:28-10.7*. After receipt of the response, the Commission may, at its discretion, convene a conference to obtain additional information. The Commission will determine whether probable cause exists to credit any allegation(s) of prohibited acts. Where the Commission finds that probable cause exists to credit any allegations of prohibited acts, the Commission will prosecute the complaint. The matter will be transmitted to the Office of Administrative Law (OAL) for a hearing if the material facts are not admitted, or deemed admitted. However, where the material facts are admitted or deemed admitted, the respondent shall have 20 days to submit a statement setting forth the reasons s/he should not be found in violation of the Act and the Commission may make a determination of violation on a summary basis or “on the papers” without a hearing.
- **Complaints solely alleging violations of the Code of Ethics for School Board Members as set forth at *N.J.S.A. 18A:12-24.1(a) through (j)*.** Review of this complaint is governed by *N.J.A.C. 6A:28-10.8*. The complaint must name only school board members or charter school trustees as respondents. The complainant(s) shall carry the burden to factually prove a violation and prosecute the complaint either before the Commission or at the OAL.
- **Complaints alleging both prohibited acts and violations of the Code of Ethics for School Board Members.** Review of this complaint is governed by *N.J.A.C. 6A:28-10.9*. After receipt of the response, the Commission, in its discretion, may convene a conference to obtain additional information. At a meeting, the Commission will determine whether probable cause exists to credit any allegation(s) of prohibited acts.
 - Where the Commission finds that probable cause exists to credit any of the allegations of prohibited acts, the Commission will prosecute the

complaint. The matter will be transmitted to the OAL for hearing if the material facts are not admitted, or deemed admitted. However, where the material facts are admitted or deemed admitted, the respondent shall have 20 days to submit a statement setting forth the reasons s/he should not be found in violation of the Act and the Commission may make a determination of violation on a summary basis without a hearing.

- Where the Commission finds no probable cause to credit any of the allegations of prohibited acts, the complainant(s) carry the burden to factually prove the violation(s) arising under the Code of Ethics for School Board Members either before the Commission or at the OAL.

Q. What types of penalties may the School Ethics Commission recommend against a school official?

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.

Q: Can the School Ethics Commission overturn an action of the board if it finds that board members violated the School Ethics Act?

A. No. The Commission can only recommend that a school official be disciplined as provided in the Act. The Commission cannot overturn an action of the board. Only the Commissioner of Education can overturn an action of the board.

Q. Can a decision of the School Ethics Commission be appealed?

A. Yes – an 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*. However, if a complaint is dismissed, such dismissal shall be deemed a final agency decision appealable directly to the Appellate Division of the Superior Court.