



STATE OF NEW JERSEY DEPARTMENT OF EDUCATION

Frequently Asked Questions About Filing and Responding to a Complaint Filed with the School Ethics Commission (on or after March 6, 2023)

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

A: Any *person* may file a complaint with the Commission alleging that a school official has violated the School Ethics Act (Act). However, an organization, including a board of education, cannot file a complaint.

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

A: A complaint can be filed either by mail, or by email. If filed by mail, the complainant(s) must include an original hardcopy with related exhibits, along with one copy of such complaint and related exhibits, and an additional copy of the complaint and related exhibits for each named respondent(s). If filed by email, the complainant(s) must still file a hardcopy of the complaint and related exhibits for each named respondent(s). Please note that the complainant(s) does *not* send the complaint to the respondent(s). Instead, the Commission will serve the respondent(s) after the Commission determines that the complaint is compliant with its statutory and regulatory requirements.

For reference, a sample complaint form can be found on the [Commission's website](#).

Q: What must a complaint include?

A: A complaint must:

- ✓ Include a person as the complainant(s), and cannot be submitted on behalf of an organization or entity. *N.J.A.C. 6A:28-6.1(a)*.
- ✓ If filed with the Commission by mail, include an original hardcopy with related exhibits, along with one copy of such complaint and related exhibits, and an additional copy of the complaint and related exhibits for each named respondent(s). *N.J.A.C. 6A:28-6.2(a)(1)*.

- ✓ If filed with the Commission by email, include a copy of the complaint and related exhibits for each named respondent(s). *N.J.A.C. 6A:28-6.2(a)(2)*.
- ✓ Include the full name, home address, phone number, and email address for each complainant(s). *N.J.A.C. 6A:28-6.3(b)(1)*.
- ✓ Include the full name, home address, phone number, and email address for each respondent(s). The complainant(s) may use the respondent(s)'s official email address. *N.J.A.C. 6A:28-6.3(b)(2)*.
- ✓ Indicate whether the phone number and/or email address for the respondent(s) is unknown. *N.J.A.C. 6A:28-6.3(b)(2)*.
- ✓ Include individually numbered paragraphs setting forth each alleged violation of the Act, with each paragraph to include, without limitation:
 - 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; and
 - The specific facts or arguments that support the contention that the Act was violated.

N.J.A.C. 6A:28-6.3(b)(3).

- ✓ Include a signature and certification by each complainant(s). *N.J.A.C. 6A:28-6.3(b)(4)*.
- ✓ Include evidence in support of the allegations. *N.J.A.C. 6A:28-6.3(b)(5)*.
- ✓ Include a statement 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. *N.J.A.C. 6A:28-6.3(d)*.
- ✓ Be filed within **180** days of notice of the events which form the basis of the alleged violation(s). The complainant(s) shall be deemed to be notified of events which form the basis of the alleged violation(s) when the complainant(s) knew of such events or when such events were made public so that one using reasonable diligence would know or should have known.

Please note that complaints filed on or after March 6, 2023, do **not** need to be notarized. However, a certification must be signed by the complainant(s).

Q: May I allege a violation of *N.J.S.A. 18A:12-22*?

A: No. *N.J.S.A. 18A:12-22* is the provision of the Act which sets forth the Legislature's findings and declarations, and does not contain standards that are enforceable by the Commission; therefore, it should *not* be cited as an ethics violation.

Q: Who may I file a complaint against?

A: A complaint may only be filed against a "school official." A school official includes any board member, a member of a board of trustees, an administrator, or an employee or officer of the New Jersey School Boards Association, but not including any member of the secretarial, clerical or maintenance staff.

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

A: No. The Act only governs the conduct of school officials, and a teacher is not regarded as a school official within the meaning of the Act.

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

A. A complaint must be filed within **180** days of notice of the events which form the basis of the alleged violation(s). The complainant(s) shall be deemed to be notified of events which form the basis of the alleged violation(s) when the complainant(s) 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 Commission confidential?

A: Subject to the exceptions set forth at *N.J.A.C. 6A:28-6.6(g)*, the Commission shall hold all information confidential regarding any pending matter until the Commission finds that a school official has violated the Act, or until such time that a matter is settled, withdrawn or dismissed. However, (1) information which indicates the possible violation of a criminal law shall be provided to the Attorney General; (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; (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 as appropriate.

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

A. No. Although the Commission is required to maintain the confidentiality of a matter subject to certain exceptions, it does not have the statutory or regulatory authority to require the parties to do so.

Q. May I file a complaint alleging a violation of the Code of Ethics for School Board Members against an administrator?

A. No. The Code of Ethics for School Board Members only applies to board members, and to members of a board of trustees.

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 Act.

Q. What do I do if a complaint is filed against me?

A. When the Commission serves the respondent(s) with a complaint that was filed on or after March 6, 2023, the respondent(s) shall have twenty (20) days from receipt to file a written statement. Pursuant to *N.J.A.C. 6A:28-7.2*, a written statement shall:

1. Fully and completely advise the parties and the Commission as to the nature of the respondent's defenses for each allegation, including any grounds upon which dismissal should be granted.
2. Admit or deny each allegation set forth in the complaint with specificity. Denials shall fairly meet the substance of the allegations being denied. A respondent who intends in good faith to deny only part of an allegation shall specify which parts are true, and deny only the remainder.
3. Be signed by the respondent(s), and the respondent(s) shall certify as to the accuracy of the written statement.

In the written statement, the respondent(s) may allege that a complaint is frivolous pursuant to the standard set forth in *N.J.S.A. 18A:12-29(e)*. If the respondent(s) asserts that a

complaint is frivolous, the complainant(s) shall then have twenty (20) days from receipt of the frivolous allegation to file a response to the frivolous allegation **only**. *N.J.A.C. 6A:28-7.2(b)*.

The respondent(s) shall serve a copy of the written statement on the complainant(s) in the same manner that the Commission was served, and shall submit proof of service conforming to the requirements set forth in *N.J.A.C. 6A:28-1.7*.

Q. May a respondent(s) file a counterclaim against the complainant(s)?

A. No. The regulations do not permit the filing of a counterclaim. However, a respondent(s) may file a separate complaint against the complainant(s) alleging a violation of the Act.

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

A: Yes. In their written statement, the respondent(s) may allege that a complaint is frivolous. However, after the written statement has been filed, an allegation of frivolous filing cannot be raised in subsequent filings. If the respondent(s) alleges that a complaint is frivolous, the complainant(s) shall have twenty (20) days to file a response to the frivolous allegation **only**. Thereafter, 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. In addition, and pursuant to *N.J.S.A. 18A:12-29(e)*, the Commission may impose a fine not to exceed \$500.00.

Q. Can the Commission find that a complaint is frivolous even if the respondent(s) does not assert such an allegation?

A: Yes. Pursuant to *N.J.A.C. 6A:28-9.4(c)*, the Commission reserves the right, at any time during the pendency of a matter, to issue an Order to Show Cause in accordance with the procedures at *N.J.A.C. 6A:28-1.6*, directing the complainant(s) to show cause as to why a complaint should not be deemed frivolous.

In addition, failure of the complainant(s) to timely pursue the complainant's case, including failure to amend a complaint and failure to attend a hearing, may be viewed as indicia of a frivolous complaint.

Q. Can the respondent(s) file a motion to dismiss the complaint?

A. No. If a complaint is filed on or after March 6, 2023, the respondent(s) may only file a written statement. If a complaint was filed prior to March 6, 2023, the respondent(s) may file a motion to dismiss in lieu of answer, or an answer to complaint.

Q. What happens after a written statement is filed?

A. After the respondent(s) files a written statement, and the complainant(s) files a response to an allegation of frivolous filing (if asserted by the respondent(s)), the Commission shall decide, by majority vote, whether *probable cause* exists for the allegations in the complaint. *Probable cause* shall be found when the facts and circumstances presented in the complaint and written statement would lead a reasonable person to believe that the School Ethics Act has been violated.

If the Commission does not find probable cause, it shall issue a written notice to the parties, and the complaint shall be dismissed.

If the Commission finds probable cause, the matter will be further processed.

Q. What happens after the Commission finds probable cause?

A: If the Commission finds probable cause for the allegations in the complaint, the matter can:

1. Be retained by the Commission for a hearing.
 - a. The Commission will need to secure the parties' written consent in only those matters where it finds probable cause to credit a violation of *N.J.S.A. 18A:12-24* (Prohibited acts).
 - b. The Commission will *not* need to secure the parties' written consent in matters where it finds probable cause to credit a violation of *N.J.S.A. 18A:12-24.1* (Code of Ethics for School Board Members).
2. Be decided on a summary basis *if* the material facts are not in dispute; or
3. Be transmitted to the Office of Administrative Law (OAL) *if* the material facts are in dispute and not admitted.
 - a. If a matter is transmitted to the OAL, and the Commission found probable cause to credit at least one violation of *N.J.S.A. 18A:12-24* (Prohibited acts), the complainant(s) shall no longer be a party, and the attorney for the Commission shall litigate the allegations in the complaint for which the Commission found probable cause to credit.
 - b. If a matter is transmitted to the OAL, and the Commission did not find probable cause to credit at least one violation of *N.J.S.A. 18A:12-24* (Prohibited acts), but did find probable cause to credit violations of *N.J.S.A. 18A:12-24.1* only (Code of Ethics for School Board Members), the complainant(s), or an attorney of the complainant's choosing, shall litigate

the allegations in the complaint for which the Commission found probable cause to credit, in accordance with the standards set forth in *N.J.A.C. 6A:28-6.4*.

Q. What types of penalties may the Commission recommend against a school official for a violation(s) of the Act?

A. If a violation is found, the Commission may recommend a penalty to the Commissioner of Education which may include reprimand, censure, suspension, or removal of a board member, a member of a board of trustees, or an administrator.

In addition, if a school official was on notice that an activity would violate the Act, or in instances where a school official was previously sanctioned pursuant to this chapter, the Commission may recommend an enhanced penalty.

Q. Can a decision of the Commission be appealed?

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