

Proposed Readoption of N.J.A.C. 6A:28 School Ethics Commission

The following is the accessible version of the adoption of N.J.A.C. 6A:28. The readoption document includes three sections — [comments and responses](#), [summary](#), and [rules proposed for readoption and proposed amendments](#).

**State Board of Education|
Administrative Code
Comment/Response Form**

This comment and response form contains comments from the June 1, 2022, meeting of the State Board of Education when the rulemaking was considered at Proposal Level.

Topic: School Ethics Commission

Meeting Date: February 1, 2023

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

Level: Adoption

Division: Legal and External Services

Completed by: Office of School Ethics

Summary of Comments and Agency Responses:

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

- A. Kathy Goldenberg, President, State Board of Education
- B. Andrew Mulvihill, Vice President, State Board of Education
- C. Mary Beth Berry, Member, State Board of Education
- 1. Jonathan Pushman, Director of Governmental Relations, New Jersey School Boards Association
- 2. J. Scott MacKay
- 3. Brian Repici, Superintendent, Black Horse Pike Regional School District
- 4. Michael Gottesman, founder, New Jersey Coalition for Protection of Public Education
- 5. Gerald T. Reiner Jr.
- 6. Barbara J. Bohi, Esq., Johnston Law Firm LLC; counsel to the New Jersey Public Charter Schools Association

7. Michael A. Vrancik, Legislative Advocate, New Jersey Association of School Business Officials
8. Aileen M. O’Driscoll, Esq., Managing Attorney, Office of Legal Services, New Jersey Education Association

1. Comment

The commenter stated that she was under the impression that once a school official was sworn in, then that individual was “taking office.” Therefore, the commenter questioned why “taking office” was being removed from the definition of “school official” at N.J.A.C. 6A:28-1.2. **(A)**

Response

“Taking office” was removed from the definition of “school official” because an individual becomes a school official after being sworn in; as such, taking office is not required for an individual to become a school official.

2. Comment

The commenter asked whether the New Jersey School Boards Association (NJSBA) asked member school districts if, in practice, they provide on their websites links to the Personal/Relative and Financial Disclosure Statements of their school officials. **(A)**

Response

The Department does not know whether NJSBA makes this inquiry of its member district boards of education.

3. Comment

The commenter asked whether training would be available so that new board members would be able to fulfill all of their training requirements within 90 days. **(A)**

Response

The NJSBA will offer a variety of training opportunities/mediums so that school officials will be able to fulfill their training requirements within the time period prescribed.

4. Comment

The commenter asked what the impact will be if a district board of education chooses not to approve curricula that is aligned to the New Jersey Student Learning Standards for Comprehensive Health and Physical Education (NJSLs-CHPE). **(B)**

Response

Any person who thinks that a school official has violated a provision(s) of the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., may file a complaint with the School Ethics Commission (Commission). The Department cannot comment, with any certainty, on how the Commission would rule if a school official chose to vote against a particular mandate.

5. Comment

The commenter asked if the Commission would hear the case if a district board of education voted not to adopt a curriculum aligned to the NJSLS-CHPE. (C)

Response

The Act governs the conduct of individual school officials, and not the conduct of a district board of education as a body. If an individual thinks that a school official has violated the Act, a complaint may be filed with the Commission. However, a complaint cannot be filed against a district board of education with the Commission. A complaint alleging a violation of another school law or regulation by a district board of education may be filed with the Office of Controversies and Disputes.

6. Comment

The commenter expressed support for the proposed amendment at N.J.A.C. 6A:28-1.2 to the term “benefit” to clarify that a benefit can be either “direct or indirect” and can also be “financial, personal, or otherwise.” The commenter stated that many individuals think that, because there is no direct financial gain, they are exempt from utilizing their office or organization for personal gain and this would further shut the door from undue influence. (5)

Response

The Department thanks the commenter for the support.

7. Comment

The commenter expressed support for the proposed amendment at N.J.A.C. 6A:28-1.2 to the definition of “frivolous complaint” to include “one that constitutes an abuse of process.” The commenter stated that a district board of education member should not be able to challenge a complaint on the merits that it is frivolous. The commenter also stated that this should automatically be reviewed during the probable cause process and should not be used as a tactic to delay the proceedings or intimidate the public. The commenter further stated that the Commission is the only board that has a penalty for a frivolous complaint, which stifles that transparency that it was intended to create, especially in communities of color where financial penalties of \$500 can be a significant portion of a household's income. The commenter also

stated that individuals should not be intimidated by a well-funded district board of education because they spoke up when they viewed something they deemed to be wrong. (5)

Response

The Department thanks the commenter for the support and notes N.J.S.A. 18A:12-29.e authorizes the Commission to deem a complaint frivolous and to impose sanctions; therefore, the Commission does not have the authority to deny a respondent the ability to assert that a complaint is frivolous. Please see the response to Comment 8 for changes to the definition that will be proposed at adoption.

8. Comment

The commenter expressed concern with the proposed amendment at N.J.A.C. 6A:28-1.2 to the definition of “frivolous complaint.” The commenter stated that the Department does not have the authority to alter this definition to include abuse of process because the definition must be the same as defined at N.J.S.A. 2A:15-59.1.b.

The commenter also stated that, if the Department had the authority to expand the definition of “frivolous complaint,” the concept of abuse of process as used in other areas of the law are not applicable or useful in the administration of the Act. The commenter further stated that abuse of process occurs where, after its issuance, a defendant reveals an ulterior purpose in securing the process by committing “further acts,” whereby the defendant demonstrably uses the process as a means to coerce or oppress the plaintiff (*Tedards v. Auty*, 232 N.J. Super. 541, 550 (App. Div. 1989)). The commenter stated that this concept is not applicable to complaints filed with the School Ethics Commission and will lead to subjects contesting otherwise valid complaints on grounds that they are “malicious.” The commenter stated that the current definition of “frivolous” is sufficient as written. The commenter also stated that the regulations already provide a vehicle for addressing frivolous complaints. (8)

Response

N.J.S.A. 18A:12-29e, in part, states that “[t]he standard for determining whether a complaint is frivolous shall be the same as that provided in subsection b. of section 1 of P.L. 1998, c. 26 (C.2A:15-59.1). Therefore, the Department agrees with the commenter that N.J.S.A. 18A:12-29e does not allow the Commission to expand the definition of frivolous complaint beyond the provisions of N.J.S.A. 2A:15-59.1. The Department proposes at adoption to delete the proposed amendment as follows to maintain the definition’s alignment with State statute.

“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] **or**

2. One [which] **that** 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[.][[; or]].

[[3. **One that constitutes an abuse of process.**]]

9. **Comment**

The commenter stated the term “relative” at N.J.A.C. 6A:28-1.2 has been expanded to include the same definition of “relative” at N.J.A.C. 6A:23A-6.2. **(1)**

Response

The Department proposed amendments to the definition of “relative” at N.J.A.C. 6A:28-1.2 so it mirrors the definition at N.J.A.C. 6A:23A-1.2.

10. **Comment**

The commenter expressed concern with the amendments to the terms “trustee” and “board member” at N.J.A.C. 6A:28-1.2. The commenter stated that the proposed amendments to the definitions to apply to individuals “upon being sworn in” would have the unintended and adverse consequence of narrowing the Act’s application because, the commenter contends, that the Act historically has applied to members who have been elected or appointed but not yet sworn in. The commenter also stated that, if the proposed amendments are adopted, a board member or trustee could violate the Act between their election or appointment and the date the individual is sworn-in and would not face consequences. The commenter stated that the definitions need to remain consistent with the definition of “board member” at N.J.S.A. 18A:12-23. If the Department seeks to identify a particular point in time that an individual becomes a board member or trustee for clarity, the commenter recommended that the Department uses the date election results are certified for elected board members and the date of appointment for appointed board members. **(8)**

Response

The Department disagrees with the commenter. N.J.S.A. 18A:12-23 defines a “board member” as someone holding membership; therefore, an individual is not a “school official” until being sworn in or appointed. An individual cannot be sworn in as a board member until all required qualifications for membership, including successful completion of a criminal background check, are satisfied. The Department also notes the Commission does not have jurisdiction to adjudicate the conduct of individuals who are not “school officials” within the meaning of the Act.

11. Comment

The commenter stated that N.J.A.C. 6A:28-1.3(a)9iv enables the Commission to deny a request for an advisory opinion. The commenter inquired how many advisory opinion requests are received per year and how many of them are denied. The commenter expressed support for the Commission's practice, when denying a request, of providing the requestor with the public advisory opinion(s) that may be germane to the inquiry and the opinion's location on the Commission's website. **(1)**

Response

The Commission receives approximately 30 to 40 advisory opinion requests per year. Of the requests received annually, approximately 10 to 15 are denied for various reasons, including: the requestor is not a school official; the question/issue has already been addressed in a publicly available advisory opinion; the requestor has not identified and/or copied the subject of the advisory opinion request; the conduct that the requestor is inquiring about is not prospective and has either already occurred or is only hypothetical; and/or the Commission does not have jurisdiction over the subject or issue referenced in the request. The Department thanks the commenter for the support of the Commission's current practices related to the denial of an advisory opinion.

12. Comment

The commenter stated that the proposed N.J.A.C. 6A:23-1.6(a)3, which would allow the Commission, on its own initiative, to issue an Order to Show Cause when the Commission finds a complaint frivolous, is unnecessarily duplicative. The commenter stated that respondents already have the right to oppose a complaint on grounds that it is frivolous. The commenter also stated that the proposed regulation will chill potential complainants from pursuing non-frivolous claims and prevent them from exercising their due process rights. The commenter further stated that it is unclear whether the proposed regulation contemplates that the Commission might acquire evidence that would justify the issuance of an Order to Show Cause against a subject in connection with an otherwise frivolous complaint. The commenter recommended clarifying when the Commission would issue an Order to Show Cause by replacing the proposed regulation with the following: "The Commission's determination that a related complaint is frivolous shall not preclude the issuance of an Order to Show Cause against a subject under this subsection." **(8)**

Response

Although the Department agrees that respondents have the right to argue that a complaint is frivolous, there are instances when respondents could allege that a complaint is frivolous, but fail to do so. In the past calendar year, complaining parties have filed repeated complaints on bases that had previously been dismissed by the Commission. In an effort to prevent the filing of baseless and/or frivolous complaints, the Commission would, pursuant to its authority, issue an Order to Show Cause only in those instances when it was warranted under the circumstances.

Additionally, the Department declines to accept the language recommended by the commenter, as the proposed language explains the circumstances under which the Commission would issue an Order to Show Cause, which includes when the Commission has determined that a complaint is frivolous.

13. Comment

The commenter commended the Department for modernizing the procedure for proof of e-service at N.J.A.C. 6A:28-1.7 by permitting electronic service. The commenter stated that a party might not have an accurate email address for the party being served and, therefore, suggested that the Department amend the section to add safeguards in addition to the copy of the “delivered” and/or “read” receipt as proposed at N.J.A.C. 6A:28-1.7(a)5. The commenter suggested that the Department also require the proof of service to contain a statement that the email address served was the respondent’s accurate and current email, to the serving party’s knowledge. The commenter also suggested that the party could mail a copy simultaneously with electronic service. **(8)**

Response

The Department thanks the commenter for the support. Pursuant to N.J.A.C. 6A:28-6.6, the complainant is not required to effectuate service of process on the respondent, but rather to provide the Commission with the respondent’s email address (if known). To the extent that a complainant is not able to locate an accurate email address for the respondent, the Commission will serve the respondent via certified mail, and will also ask the respondent to provide an accurate email address. The email address provided to the Commission will then be shared with the complainant so that the parties may effectuate service of process on one another electronically.

14. Comment

The commenter stated that proposed N.J.A.C. 6A:28-1.8(b), which enables the Commission to provide relief to school officials who are unable to comply with the chapter’s requirements, is an overbroad expansion of powers and an unnecessarily duplicative provision. The commenter stated that the section already provides the Commission discretion to relax the rules when it would not interfere with a statutory requirement or underlying rule of the Office of Administrative Law (OAL) and whenever strict adherence to the rule is inappropriate or unnecessary or may result in an injustice. The commenter stated that the section, instead, needs to either identify specific categories of “extraordinary circumstances” and/or set specific aggregate timelines under which a subject may be relieved, due to extraordinary circumstances from complying with the rules and the Act. **(8)**

Response

The Department disagrees that proposed N.J.A.C. 6A:28-1.8(b) is an overbroad expansion of the Commission’s powers as set forth in N.J.S.A. 18A:12-28, and declines

to propose the suggested change. The Commission currently has the latitude to consider all attendant facts and circumstances and to determine when relaxation is appropriate.

15. Comment

The commenter stated that the proposed amendments at N.J.A.C. 6A:28-3.1 to change the timing of the filing of Personal/Relative and Financial Disclosure Statements could possibly jeopardize the district board of education's business because school officials could be engaging in violations of the Act without public accountability during the time in between their election or appointment and 30 days after being sworn in or their first day of employment. The commenter recommended requiring newly elected or appointed school officials to submit their Personal/Relative and Financial Disclosure Statements upon their election or appointment to minimize potential violations of the Act. The commenter recommended the same changes at N.J.A.C. 6A:28-3.2, which sets forth the requirements for district boards of education and charter school or renaissance school project boards of trustees in relation to Personal/Relative and Financial Disclosure Statements. **(8)**

Response

The Department declines to accept the commenter's recommendation because the proposed amendments at N.J.A.C. 6A:28-3.1 are appropriate and necessary to avoid present non-compliance. In practice, a new administrator may be approved for employment by a district board of education, but the administrator's start date may not be for 30 days or more in the future. In addition, a newly elected/appointed board member may not complete all prerequisites for swearing in, including the completion of a criminal background check, until close to reorganization. Therefore, requiring submission of Personal/Relative and Financial Disclosure Statements within 30 days of being sworn in for board members/trustees, and within 30 days of the first date employment for other school officials is appropriate and intended to ensure compliance.

16. Comment

The commenter acknowledged the Department's efforts to modernize the procedure set forth at N.J.A.C. 6A:28-3.1 by having Personal/Relative and Financial Disclosure Statements posted on the Commission's website. The commenter stated that additional safeguards are necessary and recommended the addition of a deadline or set schedule for posting the Personal/Relative and Financial Disclosure Statements. The commenter also recommended that the regulations be amended to clarify that posting on the Commission's website does not supplant obligations under the Open Public Records Act (OPRA). The commenter recommended the same changes at N.J.A.C. 6A:28-3.2, which sets forth the requirements for district boards of education and charter school or renaissance school project boards of trustees in relation to Personal/Relative and Financial Disclosure Statements. **(8)**

Response

Pursuant to N.J.S.A. 18A:12-25 and 26, school officials are aware that their Personal/Relative and Financial Disclosure Statements are retained by the Commission as public records and are subject to OPRA. Therefore, additional amendments at N.J.A.C. 6A:28-3.1 are unnecessary.

17. Comment

The commenter expressed disagreement with the Commission's proposed outsourcing of its professional and clerical duties and powers under N.J.S.A. 18A:12-28 to school administrators. The commenter stated that N.J.A.C. 6A:28, as proposed for readoption with amendments, expands the role of the charter school designee beyond the current role of ensuring that disclosure forms are filed with the Commission. The commenter also stated that the volume of the newly imposed administrative tasks violates the prohibition against unfunded mandates established at N.J.S.A. 52:13H-1 et seq. The commenter further stated that the expanded administrative tasks go well beyond any pre-existing statutory and regulatory obligations, and the expenditures required to implement them are significant. The commenter also stated that charter schools receive a fraction of per-pupil funding in comparison to school districts, and should not be required to pay the costs of the State's enforcement of the Act, especially when the Act allows the Commission to appoint staff and to incur expenses that are necessary to carry out the Act. The commenter requested that the Department amend the chapter to remove the following additional, unfunded administrative responsibilities:

- N.J.A.C. 6A:28-3.1(a)2, which requires the charter school designee to evaluate the completeness and accuracy of school officials' disclosure statements;
- N.J.A.C. 6A:28-3.2(b)2, which requires the charter school designee to ensure that school officials receive instructions on how to complete disclosure statements;
- N.J.A.C. 6A:28-3.2(b)3 and (c)3, which requires the charter school designee to ensure that school officials' disclosure statements are filed with the Commission within 30 days of a school official being sworn in;
- N.J.A.C. 6A:28-3.2(f), which requires the charter school designee to review individual disclosure statements for conflicts of interest;
- N.J.A.C. 6A:28-3.2(d), which requires the charter school designee to transmit all disclosure statements to the executive county superintendent;
- Recodified N.J.A.C. 6A:28-3.2(e), which requires the charter school designee to transmit to the executive county superintendent a list of school officials who have not filed disclosure statements;

- Proposed N.J.A.C. 6A:28-3.4(a), which will require the charter school designee to ensure that school officials correct disclosure statements and then resubmit the disclosure statements to the executive county superintendent; and
- N.J.A.C. 6A:28-4.2(a). which requires the charter school designee to provide written notice to the NJSBA and Commission when a trustee is appointed or reappointed or when the trustee’s term expires. **(6)**

Response

The Department disagrees that the requirements imposed on school administrators, and charter school designees in particular, are an “outsourcing” of the Commission’s professional and clerical duties, and/or constitute an unfunded mandate. Pursuant to N.J.S.A. 18A:12-25 and N.J.S.A. 18A:12-26, the Commission is required to prescribe only a form to be utilized by school officials when filing Personal/Relative and Financial Disclosure Statements, and to receive and retain Personal/Relative and Financial Disclosure Statements. In current practice, and pursuant to N.J.A.C. 6A:28-3.1, board secretaries and charter school designees are already responsible for maintaining and submitting the list of school officials required to file Personal/Relative and Financial Disclosure Statements, and for disseminating and collecting Personal/Relative and Financial Disclosure Statements from all filers in their school district or charter school. The proposed amendments are designed to assist board secretaries and charter school designees with facilitating the timely filing of Personal/Relative and Financial Disclosure Statements and, thereby, to avoid the issuance of an Order to Show Cause and the associated penalties that can be imposed on both the school official and the school district or charter school for failure to comply with statutory deadlines.

18. Comment

The commenter stated there is a “lack of due process” afforded to charter school administrators and trustees prior to its issuance of Orders to Show Cause for failure to file their Personal/Relative and Financial Disclosure Statements. The commenter suggested that before issuing discipline, the Commission should duly serve school officials in a manner consistent with the Rules of Court. More specifically, the Commission should notify each and every charter school trustee by personal service through email, regular mail, and certified of an overdue filing requirement. **(6)**

Response

The Commission’s staff sends multiple warning emails and reminders to charter school trustees, and to the charter school designees, to advise them their Personal/Relative and Financial Disclosure Statements need to be filed in order to avoid the issuance of an Order to Show Cause. In this way, the Commission makes good faith efforts to advise charter schools trustees, and charter school designees, of outstanding delinquencies well in advance of the issuance of Orders to Show Cause. There is no statutory requirement for the Commission to engage in multiple methods of notice prior to the issuance of an

Order to Show Cause, or to otherwise comply with the Rules of Court. Moreover, the deadlines are statutorily based, and all charter school trustees should be advised of their filing requirement by the charter school designee upon appointment.

19. Comment

The commenter expressed support for the amended requirement at N.J.A.C. 6A:28-4.1(a) for newly elected district board of education members to complete a training program offered by the NJSBA within their first 90 days of their first term. The commenter stated that the statutorily required training provided by the NJSBA is designed to provide members access to all of the information they need to be effective in their first year. The commenter also stated that the training is based on the fundamental belief that well-trained board members – and the effective district boards of education on which they sit – have a positive impact on student achievement. The commenter further stated that the 90-day requirement will permit the NJSBA to continue to offer a diverse variety of training experiences for new board members that accommodates all learning styles while meeting the scheduling challenges inherent with volunteer positions. The commenter stated that the 90-day deadline will still meet the Commission’s goal of ensuring all new district board of education members understand, at the beginning of their first terms, the ethical standards that must guide their behavior. **(1)**

Response

The Department thanks the commenter for the support of the proposed amendments at N.J.A.C. 6A:28-4.1(a).

20. Comment

The commenter expressed support for the proposed amendments at N.J.A.C. 6A:28-4.1(c) that will allow the advanced training for reelected or reappointed board members to include relevant information, in addition to school law. **(1)**

Response

The Department thanks the commenter for the support.

21. Comment

The commenter recommended amendments at N.J.A.C. 6A:28-4.2(a)1, which requires the board secretary, or the charter school or renaissance school project designee, to provide the New Jersey School Boards Association (NJSBA) with the name, school address, telephone number, and email address of each board member or trustee. The commenter recommended adding the following as the second sentence: “Should this information change during the term of a board member or trustee, the board secretary shall provide the Commission and the New Jersey School Boards Association with that updated information within 10 days.” The commenter stated that the additional language will ensure that updated contact information is provided and reflects the

best practice of board members and trustees using board email addresses for board communication. The commenter also stated that the Department's proposed amendment provides 30 days but having timely updated contact information supports the Commission and NJSBA in carrying out their respective functions. (1)

Response

The Department thanks the commenter for the support and suggestion. The Department agrees it is important for updated information to be provided to the NJSBA, but is concerned that requiring the submission of this information within 10 days may be too onerous. The Department contends that 30 days is a more reasonable timeframe to provide updated information and, therefore, proposes at adoption to amend N.J.A.C. 6A:28-4.2(a)1 to state as follows:

1. The board secretary, or **the charter school or renaissance school project** designee, shall provide **the New Jersey School Boards Association** with the name[s], [and] **school** address[es], **telephone number, and email address** of [such] **each** board member[s] or [charter school] trustee[s]. **Should this information change, the board secretary, or the charter school or renaissance school project designee, shall provide updated information to the New Jersey School Boards Association within 30 days of its occurrence.**

22. Comment

The commenter said that there is a lack of due process afforded to charter school administrators and trustees prior to its issuance of Orders to Show Cause for failure to complete training. The commenter stated that trustees have been subject to due process violations by the Commission and Commissioner without the trustee receiving notice. The commenter suggested that before issuing discipline, the Commission should duly serve school officials in a manner consistent with the rules applicable to State courts. The commenter also said that new charter school trustees receive training within 90 days of their appointment but must file Personal/Relative and Financial Disclosure Statements within 30 days of their appointment and, therefore, they could be found in violation of the Act and sanctioned before they have had the opportunity to attend training. The commenter further stated that the Commission should notify every trustee by personal service through email, regular mail, and certified mail of an overdue training requirement. (6)

Response

The NJSBA regularly emails trustees and charter school designees to advise them if a training is delinquent and needs to be completed prior to the Commission's issuance of an Order to Show Cause. The NJSBA makes a good-faith effort to advise trustees and charter school designees of outstanding delinquencies well in advance of the issuance of Orders to Show Cause. There is no statutory requirement for the Commission to engage in multiple methods of notice prior to the issuance of an Order to Show Cause, or to otherwise comply with the Rules of Court. Moreover, the deadlines for completion of

training are set forth in N.J.S.A. 18A:12-33, and the charter school designee should advise trustees of their training requirement upon appointment.

23. Comment

The commenter stated that the proposed amendments at N.J.A.C. 6A:28-5.1 should also permit any majority representative for any group of school employees, or their attorney, to request an advisory opinion. The commenter stated that groups of school employees are interested parties, directly impacted by the district board of education's action, often engaged participants in district board of education meetings, and safeguard the interests of the public and the school community.

(8)

Response

The Department appreciates the commenter's recommendation. However, N.J.S.A. 18A:12-31 allows only school officials to submit a request for an advisory opinion.

24. Comment

The commenter stated the ability to seek advisory opinions is a unique and invaluable tool for all school officials to seek the advice of the Commission concerning future conduct. The commenter noted that an advisory opinion educates the school official while reducing the potential number of complaints filed with the Commission. The commenter thanked the Department for clarifying during the State Board's rulemaking process that the Commission will hold harmless the school official if there is an existing advisory opinion that is found to be responsive to the requestor's inquiry, even though proposed N.J.A.C. 6A:28-5.2(a)1 will require the request for an advisory opinion to include a statement that the school official has reviewed the public advisory opinions available on the Commission's website and the concern raised in the request has not already been addressed by the Commission in an existing advisory opinion. **(1)**

Response

The Department thanks the commenter for the support.

25. Comment

The commenter expressed concern with proposed N.J.A.C. 6A:28-5.2(a)1, which would require school officials who request an advisory opinion to include a statement that the school official has reviewed the public advisory opinions available on the website. The commenter stated that the ability to seek an advisory opinion is a valuable tool for the requesting school official and the advisory opinion educates the school official while reducing the potential number of complaints filed with the Commission. The commenter recommended that a school official be held harmless if there is an existing advisory opinion that is found to be responsive to the requesting school official's inquiry. **(7)**

Response

If a school official includes the newly required statement, but there is, in fact, an existing public advisory opinion that is responsive to the inquiry, the requesting school official faces no harm or penalty.

26. Comment

The commenter expressed concern that proposed N.J.A.C. 6A:28-5.2(a)2 will permit the Commission to copy the attorney who represents the district board of education on advisory opinion requests. The commenter stated that the proposed regulation is problematic, at best. The commenter thanked the Department for clarifying during the State Board’s rulemaking process that the Commission will not notify the district board of education attorney about the request if the board member seeking the advisory opinion makes such a request. **(1)**

Response

The Department thanks the commenter for the support. Proposed N.J.A.C. 6A:28-5.2(a) states that the Commission may copy the district board of education attorney but does not require it. The Department notes that most advisory opinion requests are submitted by the attorney for the district board of education or the school official voluntarily copies the attorney for the district board of education on their request. However, if the requestor asks for the submission to remain confidential, the Commission honors the request and does not copy or otherwise notify the attorney for the district board of education about the request.

27. Comment

The commenter thanked the Department for clarifying that if a request for an advisory opinion is declined pursuant to N.J.A.C. 6A:28-5.2(c)3, the Commission directs the requestor to the public advisory opinion that addresses the concern. The commenter stated that the ability for board members and other school officials to seek information regarding their individual circumstances is an invaluable tool for the regulated community. **(1)**

Response

The Department thanks the commenter for the support.

28. Comment

The commenter expressed concerns that the Commission processes all complaints, even those that have no legal basis. The commenter stated that this results in baseless complaints becoming a public record that can be found on the Internet, thereby potentially causing harm to the person against whom the complaint is filed. The commenter recommended that the Commission retain legal counsel to determine the legal sufficiency of each filed complaint. **(2)**

Response

The Department declines to propose the recommended changes. Pursuant to N.J.S.A. 18A:12-28, the Commission and its staff have the power to, among other things, “receive complaints filed pursuant to [N.J.S.A. 18A:12-29] of this act.” Unless the complaint has not been signed under oath by the complainant, the Commission does not have the statutory authority to reject a complaint or to otherwise review the legal sufficiency of a complaint.

In addition, the Department notes that the Commission does not post pleadings (that is, complaints) or motions on its website. However, any filing with the Commission, even if a complaint could be deemed legally insufficient, would still be subject to disclosure pursuant to the Open Public Records Act. Furthermore, the named respondent(s) may request that a complaint be deemed frivolous and sanctions imposed if the named respondent(s) believes a complaint is without merit.

Any change to the Act to permit this kind of legal review must be initiated by the New Jersey Legislature as the State Board, Department, and Commission do not have the authority to modify or amend the statutory language.

29. Comment

The commenter noted the practice of law, which the Commission allows, does not qualify under the “pro se” exception that allows an individual to prosecute or defend an action when that individual is a real party in interest to an action. The commenter also noted a complainant in an ethics complaint under the Act is not the real party in interest to the action. The commenter stated that anyone can file an ethics complaint against any school official and, therefore, the complainant does not need to have a connection to the school district in which the board member serves. The commenter also stated that a complainant does not have to demonstrate any connection to, or interest in, the alleged violations of the Act.

The commenter stated that the State of New Jersey is the “real party in interest.” The commenter also stated that N.J.A.C. 6A:28-1.6 authorizes the Commission to issue an Order to Show Cause and N.J.A.C. 6A:28-10.7 and 10.9 remove a complainant from a complaint in certain circumstances when probable cause is found.

The commenter suggested that the Commission should not permit a complainant who is not a licensed attorney to engage in what the commenter maintained to be the practice of law and represent the interests of the State by filing and prosecuting an ethics complaint under the Act. The commenter also suggested that “pro se” is not applicable to the joint prosecutions that the Commission allows because “pro se” means “on one’s own behalf” not on the behalf of someone who wished to join in one’s complaint or action. Therefore, the commenter stated that the Commission should not permit multiple complainants to file joint complaints. **(2)**

Response

The Department declines to propose the recommended changes. N.J.S.A. 18A:12-29.a states “[a]ny person ... may file a complaint.” The Act does not require complainants to be licensed attorneys, nor does it require complainants to retain an attorney to file a complaint. Requiring complainants to be licensed attorneys and/or to retain an attorney would contravene public policy, and unnecessarily chill the public from filing a complaint.

In addition, when the Commission finds probable cause to credit any alleged violation of N.J.S.A. 18A:12-24 (Prohibited acts), the complainant is dismissed from the action, and a Deputy Attorney General prosecutes the claims on behalf of the Commission. However, with regard to alleged violations of N.J.S.A. 18A:12-24.1 (Code of Ethics for School Board Members), the Act states, “In making a determination regarding an alleged violation of the Code of Ethics for School Board Members, the burden of proof shall be on the accusing party to establish factually a violation of the code.”

Therefore, any change to the Act to require the complainant to be a licensed attorney, or to retain an attorney, or to require the Commission to prosecute alleged violations of N.J.S.A. 18A:12-24.1 must be initiated by the New Jersey Legislature. The State Board, Department, and Commission do not have the authority to modify or amend the statute.

As to the commenter’s concern that the Commission permits complainants to serve as “pro se” parties, the complainant can choose whether to retain an attorney or to represent their own interests, as in any other civil, criminal, or administrative legal proceeding. In this way, the Commission defers to the complainant’s choice as to whether to proceed pro se, and the Commission cannot mandate that a complainant hire an attorney and expended funds when the complainant is willing and able to serve as their own representative.

30. Comment

The commenter recommended that the existing requirement at N.J.A.C. 6A:28-6.3 for a complainant to provide the respondent’s home address of respondent(s) be amended to allow the complaint to contain the district board of education’s address and for service to be effectuated upon the board secretary, who should then be “obligated” to provide the filing to the respondent.
(8)

Response

The Department declines to accept the recommendation because the Commission is required to maintain the confidentiality of all complaints, and service of the complaint on the board secretary would breach confidentiality. Moreover, when a complainant is unable to locate the home address for a named respondent despite demonstrable good faith efforts, the Commission has permitted the complainant to use the district board of education’s address.

31. Comment

The commenter stated that the Department should amend N.J.A.C. 6A:28-6.3(b)2 to provide that a complaint may be served on a respondent by serving the board secretary at the applicable business address because the respondent's home address may not always be attainable. **(8)**

Response

The Commission has permitted a complainant to use the district board of education's address when the complainant is unable to locate the home address for a named respondent despite demonstrable good faith efforts.

32. Comment

The commenter stated that N.J.A.C. 6A:28-6.3 should not require complainants to set forth legal arguments as to how the Act has been violated and providing only a factual basis should be sufficient. The commenter stated an initial pleading contains the factual allegations and assertions of a violation of the Act, not the specific arguments upon which a party will rely. The commenter recommended that recodified N.J.A.C. 6A:28-6.3(b)3iii be amended to delete "or arguments." **(8)**

Response

The Department disagrees with the commenter and maintains that the requirement for a complainant to provide legal support for how the facts as pled could constitute a violation of the Act does not preclude the complainant from making additional or other legal arguments in the future. In many instances, complainants file a wealth of documents and exhibits and do not explain how the information set forth in their filings could violate the Act. The requirement for legal arguments is intended to provide clarity as to the complainant's arguments and to describe the legal basis for the complaint.

33. Comment

The commenter opposed proposed N.J.A.C. 6A:28-6.3(b)5, which will require the complainant to provide evidence to support the allegations set forth in the complaint. The commenter stated the proposed paragraph will impose a substantial burden on a complainant because certain evidence may not be obtainable without a subpoena or compelling a witness to provide a certification. The commenter also stated the proposed paragraph would result in the dismissal of non-frivolous complaints due to procedural/ technical grounds without the opportunity for discovery or the development of a record. The commenter further stated that the proposed paragraph would sacrifice accuracy, truth seeking, and justice for the sake of administrative convenience. **(8)**

Response

Although the Commission requires the complainant to include evidence that supports the complainant's claims, a complainant's failure to submit all evidence will not be a

basis for dismissal. The Commission understands that certain evidence may not be available to the complainant at the time of filing. Instead, proposed N.J.A.C. 6A:28-6.3(b)5 evidence helps the Commission to make an informative decision about a case's merits.

34. Comment

The commenter stated that requiring a "General Statement of Facts" and a "Statement of Specific Facts" in the recommended complaint form at N.J.A.C. 6A:28-6.3(d) will confusing complainants and result in dismissal of non-frivolous complaints due to procedural/technical grounds. The commenter also stated that the proposed amendments to the form do not improve the form's existing content. **(8)**

Response

The recommended complaint form is a suggestion for individuals filing a complaint; complainants will not be penalized if they do not strictly adhere to the recommended format. To provide clarity, the Department will amend the proposed language for the suggested format of a complaint at N.J.A.C. 6A:28-6.3(d) to replace "General Statement of Facts" with "Relevant Background Information."

[[General Statement of Facts]] Relevant Background Information

35. Comment

The commenter stated that the Commission should specify in its written decisions denying a motion to dismiss how an allegation was reasonably supported by applicable law. **(2)**

Response

In ruling on a motion to dismiss, the Commission's review is limited to determining whether "the allegation(s), if true, could establish a violation of the Act" when reviewing the facts in the light most favorable to the complainant. When drafting its decisions on motions to dismiss, the Commission always endeavors to provide the rationale for its decision-making.

The chapter, as proposed for amendments, no longer will permit respondents to file a motion to dismiss, thus eliminating the Commission's need to draft decisions on motions to dismiss.

36. Comment

The commenter stated that proposed N.J.A.C. 6A:28-9.7(b), which will require the Commission to issue a written notice to the parties if it does not find probable cause and to dismiss the complaint, with the dismissal constituting final agency action, is unclear. The commenter stated

that the proposed subsection does not make clear the procedure for when the Commission finds probable cause for some of the allegations in a complaint but not others. The commenter questioned whether the complainant would be required to appeal the dismissed counts to the Appellate while the other counts are pending before the Commission and, if so, whether it is to be considered an interlocutory appeal or an appeal as of right. The commenter recommended that the proposed N.J.A.C. 6A:28-9.7(b) be amended to clarify that action on a complaint is not deemed final agency action until all counts in a complaint have been adjudicated. (8)

Response

The Department thanks the commenter for the suggestion. The Department proposes at adoption to amend N.J.A.C. 6A:28-10.1(b) to clarify that a complaint is appealable to the Appellate Division of the Superior Court only when dismissed in its entirety. N.J.A.C. 6A:28-10.1(b), which discusses appeals, is the appropriate regulation to address this issue rather than proposed N.J.A.C. 6A:28-9.7(b).

- (b) 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.

37. Comment

The commenter stated that the proposed amendments at recodified N.J.A.C. 6A:28-9.10(b) state that dismissal of a complaint shall be appealable directly to the Appellate Division but do not specify when agency action is deemed final if only some counts of a complaint are dismissed while others continue to be litigated. The commenter suggested that recodified N.J.A.C. 6A:28-9.10(b) be amended to clarify that agency action on a complaint is deemed final upon conclusion of any appeal that takes place under recodified N.J.A.C. 6A:28-10.1. (8)

Response

The Department thanks the commenter for the suggestion. The Department proposes at adoption to amend recodified N.J.A.C. 6A:28-10.1(b) to clarify that a complaint is appealable to the Appellate Division only when dismissed in its entirety, as indicated in the above response. N.J.A.C. 6A:28-10.1(b), which discusses appeals, is the appropriate regulation to address this issue and not recodified N.J.A.C. 6A:28-9.10(b).

38. Comment

The commenter stated that the process by which the Commission requires a respondent to allege, and the Commission to determine, that a complaint is frivolous is lacking. The commenter also stated that it is not strategically desirable or cost effective for a respondent to put in the time, effort, and expense necessary to pursue sanctions for a frivolous complaint because the Commission rarely finds a complaint to be frivolous. (2)

Response

The Department disagrees with the commenter's assessment that it rarely finds a complaint to be frivolous. In the past 12 months, the Commission found two complaints to be frivolous and imposed a monetary sanction in each matter. During this same period of time, only 29 named respondents asserted that a complaint was frivolous. If a respondent does not assert that a complaint is frivolous, the Commission does not presently have the authority to find a complaint frivolous. However, the chapter, as proposed for amendment, will authorize the Commission to find that a complaint is frivolous even if not alleged by a named respondent.

39. Comment

The commenter stated that the Commission has been improperly applying the standard under which sanctions should be imposed under the Act. The commenter also stated the Commission appears to be asserting that it needs evidence concerning the complainant's state of mind in determining whether to find that a complaint was frivolous under the Act. The commenter further stated that the Commission does not need information to suggest that a complainant should have known an allegation was without any reasonable basis in law or equity in many cases. The commenter also stated that, if a complaint has no legal basis under the Act, the Commission can -- and should -- find that a complainant "should have known that the complaint was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension." The commenter further stated the Commission's improper application of the standard for determining whether a complaint is frivolous has harmed the integrity of the Act's enforcement.

The commenter stated that there appears to be some recognition that the ethics complaint process does not provide sufficient protection against frivolous complaints, as evidenced by the proposed amendment to the definition of "frivolous complaint" at N.J.A.C. 6A:28-1.2, to include "one that constitutes an abuse of process," but the proposed amendment is not sufficient to address the underlying problems. The commenter stated the Commission already has the ability to find a complaint frivolous and has demonstrated that it is unwilling to award sanctions even when an allegation can be demonstrated to have no basis under applicable law. (2)

Response

Pursuant to N.J.S.A. 18A:12-29(a), "[a]ny person" can file an ethics complaint with the Commission alleging that a school official has violated the Act. The Commission does not maintain it is in the best interest of the public to find all complaints frivolous merely because the filing party was unable to adduce sufficient factual allegations to support a violation. Such a precedent would unnecessarily chill the rights of all persons to file a complaint alleging a violation of the Act.

40. Comment

Based on the commenter's observations concerning how the Commission has handled a number of matters, the commenter stated that the Commission's enforcement of the Act is fundamentally flawed and the Act cannot serve to ensure and preserve public confidence in the integrity of elected and appointed school officials if the public does not have confidence in how the Commission enforces the Act.

The commenter also stated the Commission's enforcement of the Act does not include any effective safeguards that function to protect board members from baseless ethics complaints that are filed. The commenter further stated that a lack of safeguards has enabled local activists to weaponize the ethics complaint process and misuse the Act to threaten and harass duly elected volunteer board members who do not do what the activists want them to do.

The commenter stated the Commission cannot protect board members from all inappropriate threats of harm intended to improperly influence their actions or decisions as public servants, but the Commission can and should prevent the ethics complaint process under the Act from being improperly used as a weapon to attempt to influence district board of education decisions or to force members to resign. The commenter maintained that board members are being threatened with ethics complaints if they do not pursue certain agendas, take specific actions, or resign their positions, which is not the proper use of the ethics complaint process under the Act.

The commenter offered that the Act lacks the necessary safeguards throughout the entire complaint process and stated that the rules must be amended to protect the integrity of the Commission's enforcement of the Act. The commenter also stated that the Commission should encourage and facilitate the filing of ethics complaints that are made in good faith and are supported by applicable law. The commenter further stated the Commission must protect the integrity of the ethics complaint process so that school districts are not forced to pay tens of thousands of dollars in legal fees to defend board members from baseless ethics allegations. (2)

Response

The Department disagrees with the commenter's assessment of the Commission's inability to safeguard school officials who are charged with ethics violations. First, if a complaint truly lacks merit, the respondent can ask for a matter to be dismissed, and can also assert that the complaint is frivolous. If deemed frivolous, the Commission is authorized to impose a fine of up to \$500 on the complainant. Second, the chapter as proposed for amendment, provides the Commission the authority to find a complaint frivolous even if a respondent does not make the allegation. Finally, the Commission does not have the statutory authority to determine that a complaint is frivolous until the matter is litigated; the Commission must afford due process to the filing party without pre-determining that the complaint lacks merit.

41. Comment

The commenter stated that the Commission should modify the process by which it finds a complaint to be frivolous to be more in line with that utilized by the State's courts. (2)

Response

The Department disagrees that changes to how the Commission finds a complaint frivolous are necessary. By permitting a named respondent to assert an allegation of frivolousness in either the motion to dismiss in lieu of answer or the answer to complaint, and by applying the standard set forth at N.J.S.A. 2A:15-59.1, the Commission's review process is appropriate and efficient.

42. Comment

The commenter stated that the fine of \$500.00 for a frivolous complaint should be changed to \$500.00 per frivolous allegation. (2)

Response

Pursuant to N.J.S.A. 18A:12-29.e, the Commission is authorized to impose a fine "not to exceed \$500" when it determines, by majority vote, that a complaint is frivolous. As such, the Commission has the authority only to deem a complaint frivolous and does not have the statutory authority to determine frivolousness based on each allegation pled in the complaint.

Any change to the Act to increase the fine for a frivolous filing, or to permit the levy of a fine for each specific allegation rather than the complaint in its entirety, must be initiated by the New Jersey Legislature as the State Board, Department, and Commission do not have the authority to modify or amend the statute.

43. Comment

The commenter objected to the Commission's authority to, sua sponte, find a complaint frivolous. The commenter also noted that such an amendment is unnecessarily duplicative as respondents have the right to make this argument, and it would chill potential complainants from pursuing non-frivolous complaints.

The commenter also stated that the proposed amendments are overly broad and would penalize complainants who institute complaints in good faith, but may not be able to pursue their complaint to completion. The commenter further stated that the ability to freely file a complaint without fear of undue penalty effectuates the important public policy of ensuring the integrity of subjects, vis-à-vis the Act. (8)

Response

Although the Department agrees that respondents have the right to argue that a complaint is frivolous, there are instances when respondents could allege that a complaint is frivolous but fail to do so. In the past calendar year, complaining parties have filed repeated complaints on bases that had previously been dismissed.

In addition, although the Department recognizes that there may be good-faith reasons why a party cannot litigate a matter to completion, in the interest of fairness to the named respondent, it is incumbent upon the complaining party to notify the Commission and the respondent(s) when the complaining party no longer wishes to, and/or cannot, proceed with the claims. Failing to respond to multiple correspondence from the Commission as to the complaining party's desire to move forward is inefficient, and unfair to the individual against whom ethics charges have been levied.

44. Comment

The commenter recommended that the Commission use legal counsel to investigate and review ethics complaints to determine whether a complaint is valid. The commenter also recommended that, in lieu of complainants prosecuting the allegations in their complaints, the Commission should require a deputy attorney general from the Department of Law and Public Safety, Division of Law, to prosecute all complaints that the Commission determines have merit. **(2)**

Response

The Department declines to propose the recommended changes. Neither the Department nor the Commission have the authority to require the Department of Law and Public Safety's Division of Law to allocate additional personnel to assist the Commission and its staff with its statutory obligations under the Act.

Nonetheless, when the Commission finds probable cause to credit any alleged violation of N.J.S.A. 18A:12-24, Prohibited acts, the complainant is dismissed from the action, and a deputy attorney general prosecutes the claims on behalf of the Commission. Regarding alleged violations of N.J.S.A. 18A:12-24.1, Code of Ethics for School Board Members, the Act states the following: "In making a determination regarding an alleged violation of the Code of Ethics for School Board Members, the burden of proof shall be on the accusing party to establish factually a violation of the code." Accordingly, any change to the Act to require the Commission to prosecute alleged violations of N.J.S.A. 18A:12-24.1 must be initiated by the New Jersey Legislature as the State Board, Department, and Commission do not have the authority to modify or amend the statute.

45. Comment

The commenter stated that because the term "penalty" is proposed at N.J.A.C. 6A:28-1.2, N.J.A.C. 6A:28-9.11 needs to be amended to replace "sanction" with "penalty" for clarity. The commenter stated that the suggested amendment would avoid potential confusion that "sanction" has a different meaning than "penalty." **(8)**

Response

The Department thanks the commenter for the suggestion. The term "sanction" appears at N.J.S.A. 18A:12-29; therefore, the Department will propose at adoption to amend the term "penalty" at N.J.A.C. 6A:28-1.2 to "'penalty' or 'sanction'" so both terms will

have the same meaning. The definitions section, rather than N.J.A.C. 6A:28-9.11, is the appropriate section to amend to ensure that the terms have the same meaning.

“Penalty” or “sanction” means the form of discipline the Commission recommends to the Commissioner. Penalties include reprimand, censure, suspension, or removal of a board member, a member of a board of trustees, or an administrator.

46. Comment

The commenter stated that school officials and their school districts should be permitted to recover attorney’s fees and other related expenses when a complaint is deemed frivolous. (2)

Response

Pursuant to N.J.S.A. 18A:12-29.e, the Commission is only authorized to impose a fine “not to exceed \$500” when a complaint is deemed frivolous. Therefore, the Commission does not have the statutory authority to require a complainant to pay attorney’s fees and/or to bear financial responsibilities for the expenses that the named respondent may have incurred. Any change to the Act to authorize the Commission to impose additional sanctions must be initiated by the New Jersey Legislature as the State Board, Department, and Commission do not have the authority to modify or amend the statute.

47. Comment

The commenter recommended that the Commission consider implementing penalties in statute against board members who spend an unreasonable amount of taxpayer dollars in defending against an ethics complaint. The commenter questioned whether public funds can be used toward the defense of an ethics complaint and suggested that board members be held responsible for legal expenses if they do not prevail. (5)

Response

The breadth of the penalties that the Commission can recommended for a violation of the Act is set forth at N.J.S.A. 18A:12-29.f, which does not include the ability to impose a penalty for excessive use of taxpayer dollars, or to otherwise impose personal responsibility on a board member for use of taxpayer dollars. The Commission is authorized to recommend only a reprimand, censure, suspension, or removal of a school official. Any change to the Commission’s authority must be initiated by the New Jersey Legislature as State Board, Department, and Commission do not have the authority to modify the Act.

48. Comment

The commenter recommended that the Commission impose more severe penalties for violations of the Act to deter unethical behavior. The commenter stated that, given the facts of some of the complaints acted upon by the Commission, a censure or short-term suspensions appear to educators to be watered down and weak. The commenter provided an example of a scenario of a board member using the position to make demands on a school district employee and stated that this will continue to occur because the qualifications to be a board member have no basis for how educators feel or how education systems operate and the Commission does not remove board members for violating the Act. The commenter stated that qualifications to be a board member need to be bolstered and appropriate, meaningful punishments for poor behavior by board members needs to be supported. **(3)**

Response

A range of penalties, namely reprimand, censure, suspension, or removal, can be recommended for a violation of the Act based on a number of different factors, including, without limitation, the severity of the conduct at issue, and also whether the school official has previously violated the Act. The qualifications to be a board member are set in State statute and, therefore, any change must be initiated by the New Jersey Legislature. The State Board, Department, and Commission do not have the authority to modify statute.

49. Comment

The commenter expressed opposition to the proposed requirement at recodified N.J.A.C. 6A:28-9.11(d)1 for a school district, charter school, or renaissance school project to post on its website for 30 days the Commission's resolution indicating the Commission has found that a school official has violated the Act and has imposed a penalty of censure, suspension, or removal. The commenter expressed concern with the proposed regulation because of due process. The commenter stated that a board member or trustee may appeal the Commission's or the Commissioner of Education's (Commissioner) ruling, and the posting of the Commission's resolution may give the impression to the public that the ruling is final and, therefore, the public would not have the knowledge of any subsequent appeal(s). The commenter requested that the proposed regulation be amended to indicate that the posting of the penalties is not required until all appeals have been determined. **(1)**

Response

If a penalty of censure, suspension, or removal is imposed for a school official's violation(s) of the Act, recodified N.J.A.C. 6A:28-9.11(d) requires the Commission to adopt a resolution at its next meeting following the imposition of the sanction by the Commissioner. The existing regulation also requires the Commission to send the resolution to the district board of education, or charter school or renaissance school project board of trustees, to be read at a public meeting. However, the Commission does not adopt a resolution if it receives information that the named school official is appealing or otherwise challenging the finding of a violation and/or the penalty. If the

Commission adopts a resolution and then later learns that the named school official is appealing or otherwise challenging the finding of a violation and/or the penalty, the Commission will advise the district board of education, or charter school or renaissance school project board of trustees, that the resolution does not need to be read, or posted on its website, until the school official has completed the appeals process.

50. Comment

The commenter expressed concern regarding proposed N.J.A.C. 6A:28-9.11(d)2, which will require a district board of education or board of trustees to post, for at least 30 days, the Commission's resolution indicating a school official has violated the Act and been imposed a penalty of censure, suspension, or removal. The commenter stated that the proposed regulation will allow no time for the school official to appeal the decision, which is a common occurrence. The commenter recommended that the regulation be amended to indicate that the posting of penalties is not required until all appeals have been determined. (7)

Response

If, following a recommendation from the Commission, the Commissioner imposes a penalty of censure, suspension, or removal for a school official's violation(s) of the Act, recodified N.J.A.C. 6A:28-9.11(d) requires the Commission to adopt a resolution at its next meeting following the imposition of the sanction by the Commissioner. The existing regulation also requires the Commission to send the resolution to the district board of education, or charter school or renaissance school project board of trustees, to be read at a public meeting. However, the Commission does not adopt a resolution if it receives information that the named school official is appealing or otherwise challenging the finding of a violation and/or the penalty. If the Commission adopts a resolution and then later learns that the named school official is appealing or otherwise challenging the finding of a violation and/or the penalty, the Commission will advise the district board of education, or charter school or renaissance school project board of trustees, that the resolution does not need to be read until the school official has completed the appeals process.

51. Comment

The commenter stated that eliminating baseless complaints should provide the necessary resources to fund the use of deputy attorneys general to investigate and prosecute ethics allegations. The commenter also stated that, if the Commission needs additional funding, the Commission should require each school district to pay an annual assessment to have a deputy attorney general prosecute all cases. (2)

Response

Because any person may file a complaint against a school official, the Commission does not have the authority to prevent the filing of "baseless" complaints. By statute, the Commission must process all complaints that have been filed in accordance with its

regulatory requirements, regardless of their merit. However, if a complaint is not supported by probable cause, the Commission can and will dismiss it.

Furthermore, the Department declines to propose the recommended change because it would result in an impermissible unfunded mandate on school districts.

52. Comment

The commenter stated that the Commission should make it abundantly clear that the school official named in a final decision was exonerated when posting the decision on the Commission's website. **(2)**

Response

When a matter is dismissed, the written decision makes clear that the school official against whom an ethics complaint has been filed has not been found in violation of the Act.

53. Comment

The commenter stated that he has witnessed countless examples of poor behavior by board members and that this kind of conduct leads to attrition of chief school administrators. The commenter stated that the current qualifications to serve as a board member, which include being a resident and registered voter of a municipality, being able to read and write, and not being convicted of certain crimes, are "laughable." The commenter stated that entities such as hospitals and law firms have more stringent qualifications to be a member of their boards and it is absurd that New Jersey has lose qualifications for boards that serve children. **(3)**

Response

This comment is outside the scope of the rulemaking. State law at N.J.S.A. 18A:12-1 sets forth the qualifications for an individual to serve as a board member. Any change to State law must be initiated by the New Jersey Legislature. The State Board, Department and Commission do not have the authority to modify statute.

54. Comment

The commenter stated that chief school administrators should be afforded the opportunity to earn tenure in their positions to enable chief school administrators to carry out their duties and responsibilities without fear of retaliation and undue pressure and influence from board members. The commenter also stated that the burden of proof for filing a complaint against a board member for violation of the Act cannot be met because the pressure often placed on chief school administrators by superintendents is unwritten and unspoken rather than overt. **(3)**

Response

This comment is outside the scope of the rulemaking. State law at N.J.S.A. 18A:17-15 et seq. governs the appointment of chief school administrators and their contracts. Any change to State law must be initiated by the New Jersey Legislature. The State Board, Department, and Commission do not have the authority to modify statute.

55. Comment

The commenter stated that the final provision of N.J.S.A. 18A:12-24.e “eviscerates” the Act’s remaining provisions and should be deleted. **(4)**

Response

Any change to N.J.S.A. 18A:12-24.e must be initiated by the New Jersey Legislature. The State Board, Department, and Commission do not have the authority to modify the Act.

56. Comment

The commenter recommended the establishment of a commission to study the reasons why educational leaders, especially chief school administrators, do not serve in positions for significant periods of time. The commenter stated that anecdotal data indicates that district board of education management is the top frustration for chief school administrators. The commenter also stated that a study could inform policies and/or statutes that change qualifications, limit the influence of district board of education members, or change a district board of education’s structure (that is, expand to a countywide board of education). **(3)**

Response

The comment is outside the scope of the rulemaking, which concerns the readoption with amendments of the rules governing the Commission and effectuating the Act.

57. Comment

The commenter stated that millions of dollars are being pumped into district board of education campaigns to elect district board of education members who promote a particular agenda. The commenter also stated that the Act is the only State law that addresses the politicization of district boards of education. The commenter further stated that the Act at N.J.S.A. 18A:12-24.e has two loopholes that need to be addressed. The commenter stated that the Act does not apply to individuals who are running for a position on a district board of education because the term “school official” does not include district board of education candidates. The commenter indicated that the Act should be expanded to also apply to district board of education candidates. The commenter also stated that the provision at N.J.S.A. 18A:12-24.e that allows the solicitation or acceptance of campaign contributions by announced candidates for elective public office if the

school official has no knowledge that the campaign contribution was made to influence the school official needs to be removed. The commenter further stated that the provision allows district board of education members to accept contributions and then merely claim they were unaware that the contributor was trying to influence them. (4)

Response

Any change to the definition of “school official” at N.J.S.A. 18A:12-23 to include “district board of education candidate” or to amend N.J.S.A. 18A:12-24.e must be initiated by the New Jersey Legislature. The State Board, Department, and Commission do not have the authority to modify the Act or any other statute.