

**Adoption Level
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State of New Jersey

DEPARTMENT OF EDUCATION

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To: Members, State Board of Education

From: Angelica Allen-McMillan, Ed.D.
Acting Commissioner

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

Reason for Action: Readoption with Amendments

Authority: N.J.S.A. 18A:4-15 and 18A:12-21 et seq.

Sunset Date: July 13, 2023

Summary

The Department of Education (Department) proposes to readopt N.J.A.C. 6A:28, School Ethics Commission, with amendments and new rules. The rules effectuate the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., which seeks to ensure and preserve public confidence in the integrity of elected and appointed school officials.

The Act prescribes the ethical standards by which school officials are to be guided in the conduct of their offices and positions. Under the Act, a school official includes district board of education members (board members), members of a charter school or renaissance school project board of trustees (trustees), and school administrators. The Act also created the School Ethics Commission (Commission), which is charged with enforcing the Act through a procedure for reviewing complaints and ultimately rendering recommendations to the Commissioner of Education (Commissioner) as to the imposition of sanctions when violations are substantiated.

The proposed readoption with amendments and new rules seeks to ensure and preserve confidence in the integrity of elected and appointed members of a district board of education, members of a board of trustees of a charter school or renaissance school project, and school administrators.

The proposed amendments and new rules will align this chapter with current practices. The Department also proposes to specify that the provisions of this chapter apply to renaissance school projects and renaissance school project boards of trustees.

The proposed amendments and new rules also are a result of grievances that individuals have brought forth and inquiries that district board of education members, members of a board of trustees of a charter school or renaissance school project, or school administrators have presented to the Commission for advisement regarding matters related to board governance.

The Department is proposing throughout the chapter to eliminate gendered pronouns (that is, “his or her” and “he or she”) because individuals may not identify with a singular gender.

The following summarizes the chapter and the proposed amendments and new rules. If not discussed in the below summary, amendments are proposed to improve style, clarity, and grammar, and to specify that the provisions of this chapter apply to renaissance school projects.

Subchapter 1. General Provisions

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

N.J.A.C. 6A:28-1.1 Scope and Purpose

This section sets forth the purpose of the Commission’s rules, which is to effectuate the legislative intent of the Act, namely to “ensure and preserve public confidence” in the integrity of elected and appointed board members, trustees, and school administrators.

The Department proposes to amend N.J.A.C. 6A:28-1.1(a), which states the rules set forth in this subchapter have been adopted for the purpose of effectuating the Act’s legislative intent, which seeks to ensure and preserve public confidence in the integrity of elected and appointed school board members. The Department proposes to replace “subchapter” with “chapter” because the rules throughout the chapter effectuate the Act. The Department also proposes to replace “school board members” with “members of a district board of education, members of a board of trustees of a charter school or renaissance school project.” The proposed amendment will clarify that the chapter applies to members of a board of trustees of a charter school or renaissance school project.

The Department proposes to amend N.J.A.C. 6A:28-1.1(b), which states, in part, that N.J.S.A. 18A:12-24 and 24.1 prescribe ethical standards by which school officials are to be guided in the conduct of their offices and positions. The proposed amendment will replace “school officials” with “members of a district board of education, members of a board of trustees of a charter school or renaissance school project, and school administrators.” The proposed amendment will clarify which school officials are subject to the standards set forth in the Act since “school official” is not defined until N.J.A.C. 6A:28-1.2.

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

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

The Department proposes to add the following 11 terms and definitions to define the meaning of the terms used throughout the chapter:

- “Board secretary” to be defined as the school district employee responsible for fulfilling a district board of education’s statutory and regulatory obligations to the Commission.

- “Disclosure statements” to be defined as the Financial and the Personal/Relative Disclosure Statements that board members, members of a board of trustees, and administrators are required to file annually pursuant to N.J.S.A. 18A:12-25 and 26.
- “District board of education” to be defined as “the board of education of a local or regional school district, county special services school district, or county vocational school district; the board of directors of an educational services commission or jointure commission; and the board of education of a school district under State intervention.” The proposed definition is intended to more clearly identify and define the governing body of a school district. The proposed definition does not include “educational resource and demonstration centers” and “educational information and resource centers” because the support centers are not governed by a board of education. However, both are included in the proposed definition of “school district” as discussed below.
- “List of school officials” to be defined as the electronic list prepared by each board secretary or charter school or renaissance school project designee and provided to the Commission on the dates prescribed in this chapter. This list is a public record and is subject to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.
- “Penalty” or “sanction” to be defined as 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. The Commission is included the term “sanction” because it appears in N.J.S.A. 18A:12-29, and the Commission wants to clarify that the terms have the same meaning.
- “Recuse” to be defined as to formally disqualify and remove oneself from participating in a matter, including, without limitation, discussions and/or votes, because of a conflict of interest.
- “Remedy” to be defined as the actions that the Commission may take for violations of the Act or this chapter and include, without limitation, the issuance of an Order to Show Cause, referral to another Department office for appropriate action, the issuance of a complaint, the filing of a cause of action, or the recommendation of an appropriate penalty to the Commissioner.
- “Renaissance school project” to be defined as a school or group of schools that is established pursuant to N.J.S.A. 18A:36C-1 et seq., operated under a Commissioner-approved contract with a school district, independent of the district board of education, and managed by a board of trustees. Pursuant to N.J.A.C. 6A:31-7.2, the members of a renaissance school project board of trustees, as well as administrators of a renaissance school project, under are considered school officials who are required to abide by the Act and its implementing regulations.
- “School district” to be defined as any local or regional school district, charter school, or renaissance school project established pursuant to N.J.S.A. 18A:8, 13, 36A, and 36C and includes, but is not limited to, jointure commissions, county vocational school districts, county special services districts, educational service

commissions, educational research and demonstration centers, environmental education centers, and educational information and resource centers.

- “Suspension” to be defined as a form of penalty imposed for a violation(s) of the Act that results in a school official being barred from engaging in any activity and/or matter related to the school official’s position for a designated period of time.
- “Trustee” to be defined as any person holding membership, upon being sworn in, on any board of trustees of a school district, charter school, or renaissance school project. For the purposes of this chapter, “trustee” includes members of any other board established to be the public agent authorized by the State Board of Education to supervise and control a school district through its administrative personnel.

The Department proposes to amend the beginning of the definition of “administrator,” which states “any officer, other than a board member, or employee of a local school district or charter school who” The proposed amendments will delete “other than a board member” and “local” and add “or renaissance school project, but not a member of a district board of education or a member of a board of trustees of a charter school or renaissance school project” before “who” The proposed amendments will clarify that district board of education members and members of a charter school or renaissance school project board of trustees do not fall within the definition of “administrator.”

The Department proposes to amend the definition of “benefit,” which means advantage, profit, privilege, or gain, to clarify that a benefit can be either “direct or indirect” and can also be “financial, personal, or otherwise.” The proposed amendments will align with the term with N.J.S.A. 18A:12-24.

The Department proposes to amend the definition of “board member,” which means any person holding membership, whether by election or appointment, on any board of education other than the State Board of Education (State Board). The proposed amendment will add “upon being sworn in” after “appointment” to clarify that an individual does not become a board member until the board member is sworn in. The Department also proposes to add “district” before “board of education” and to delete the reference to the State Board since the Act applies to district board of education members but not to State Board members.

The Department proposes to amend the definition of “board of trustees,” which means the public agent authorized by the State Board to supervise and control a charter school, to add “or renaissance school project” after “charter school” and to delete the reference to the State Board.

The Department proposes to amend the definition of “censure,” which, in part, means a formal expression of disapproval by the Commissioner, to add “for a violation(s) of the Act.” The Department proposes to amend the portion of the definition that states the censure is publicized by adoption of a formal resolution by the Commission and the school official’s district board of education or the board of trustees of his charter school at a public meeting. The proposed amendments will state the censure is provided to the district board of education or the board of trustees to read and adopt at its next regularly scheduled public meeting. The proposed amendments will clarify that the Commissioner’s censure must be read and adopted at the board’s next regularly scheduled public meeting.

The Department proposes to amend the definition of “charter school” to add that the Act applies to administrators and members of a board of trustees of a charter school established under N.J.S.A. 18A:12-23.1.

The Department proposes to amend the term “charter school designee” to “charter school or renaissance school project designee.” The Department also proposes to amend the definition, which means the person at the charter school whom the lead person designates as being responsible for assuring that school officials in the school file timely disclosure statements. The proposed amendments will state the designee is the charter school or renaissance school project employee who is responsible for fulfilling the statutory and regulatory obligations of the board of trustees to the Commission.

The Department proposes to amend the definition of “day,” which means a business day when the period specified is less than seven days, and a calendar day when the period specified is seven days or more and describes how periods of time that are stipulated in the chapter are calculated. The Department proposes to amend the provision considering the last day of a period of time as the next business day when the last day falls on a Saturday, Sunday, or holiday. The proposed amendment will add “State” before “holiday” to clarify the type of holiday.

The Department proposes to amend the definition of “dependent child,” which means any child claimed as a dependent on the school official’s Federal and State tax returns. The proposed amendment will replace “school official’s” with “board member’s, member of a board of trustees’, or administrator’s.” This amendment is proposed because the term “school official” has not yet been defined in the chapter. This amendment is proposed throughout the section, where appropriate.

The Department proposes to amend the definition of “Financial Disclosure Statement,” which means the statement of personal finances which school officials are required to file annually pursuant to N.J.S.A. 18A:12-26. The proposed amendment will add “and that are based upon the previous year’s finances” at the end for clarity.

The Department proposes to change the term “Local School District” to “school district,” and to relocate the definition based on alphabetical order. The proposed term will provide clarity since the definition includes regional and county school districts, as well as other types of public education entities.

The Department proposes to replace the definition of “member of the immediate family,” which means the immediate family member as defined in the Act. The proposed amendments will replace the definition with “the spouse, civil union partner, or domestic partner of a school official, or a dependent child residing in the same household as the school official.” The proposed definition is consistent with N.J.S.A. 18A:12-23.

The Department proposes to amend the definition of “newly elected or appointed board member,” which means any board member who has never served as a member of either an elected or appointed school board or who has not served for 10 years or more and has not previously completed a training program prepared and offered by the New Jersey School Boards Association (NJSBA). The proposed amendment will specify the service was on a district board of education in New Jersey. The Department also proposes to delete “has not served for 10 years or more” because the more important qualifier is whether the individual previously completed a training program prepared and offered by NJSBA; therefore, an individual who has never previously received training from NJSBA will be considered “newly elected or appointed” regardless of the years between the board member’s service.

The Department proposes to amend the definition of “person,” which means a human being, and does not include boards of education, labor organizations, or school districts. The proposed amendment will add “boards of trustees” since they also are not covered by the term.

The Department proposes to replace the definition of “relative,” which means a relative as defined in the Act. The proposed new definition states “an individual's spouse, civil union partner pursuant to N.J.S.A. 37:1-33, domestic partner as defined at N.J.S.A. 26:8A-3, or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister of the individual or the individual's spouse, civil union partner, or domestic partner, whether the relative is related to the individual or the individual's spouse, civil union partner, or domestic partner by blood, marriage, or adoption.” The proposed amendment will align the definition with N.J.A.C. 6A:23A-1.1.

The Department proposes to replace the definition of “removal,” which means removal from office for the length of a board member or charter school trustee's term of office or termination of employment. The proposed definition will specify that removal is “a form of penalty imposed for a violation(s) of the Act that results, following adoption by the Commissioner, in the immediate termination of a board member's or a member of a board of trustees' membership. For administrators, removal means a form of penalty that results, following adoption by the Commissioner, in termination of employment.”

The Department proposes to replace the definition of “reprimand,” which means a rebuke by the Commissioner of a school official for having been found to have breached the standards of conduct prescribed by N.J.S.A. 18A:12-21 et seq. The proposed new definition states that reprimand is “a form of penalty that declares the conduct of a board member, a member of a board of trustees, or an administrator violated the standards of conduct prescribed by the Act but does not result in the publication or the adoption of a formal resolution by the Commission.”

The Department proposes to amend the definition of “spouse,” which means the person to whom the school official is legally married under New Jersey law, and also includes a partner in a civil union couple as established at N.J.S.A. 37:1-33. The proposed amendments will delete “couple” and add “or a domestic partner as established at N.J.S.A. 26:8A-1 et seq.”

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

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

The Department proposes new N.J.A.C. 6A:28-1.3(a)7 to include the Commission's existing authority to issue and enforce an Order to Show Cause when a school official fails to file required disclosure statements (as authorized by N.J.A.C. 6A:28-3.4), and fails to complete required ethics training (as authorized by N.J.A.C. 6A:28-1.6 and 4.2).

The Department proposes to recodify existing N.J.A.C. 6A:28-1.3(a)7 as new N.J.A.C. 6A:28-1.3(a)8.

The Department proposes new N.J.A.C. 6A:28-1.3(a)9 to include the Commission's authority to adopt a resolution to designate an individual who has the authority to act on the Commission's behalf (permitted by N.J.S.A. 18A:12-28). The authority provided to the individual includes: issuing Orders to Show Cause for failure to file disclosure statements or to fulfill training requirements, as well as for a violation(s) of the Act that requires immediate review and adjudication; denying a request for an advisory opinion; consolidating complaints, designating lead complaints, and/or sharing information about a complaint; directing that a complaint be amended or denying permission to amend a complaint where an answer has already been filed; issuing a subpoena on behalf of the Commission to compel the attendance of a person to testify or to produce documents; granting or denying requests for extensions to file submissions; administratively dismissing a complaint; adjourning a hearing; performing other managerial or administrative functions not specified in the resolution; and providing the Commission with a summary of the actions taken on a monthly basis. The proposed new subsection will clearly define the authority of the Commission's staff for the public.

The Department proposes to recodify existing N.J.A.C. 6A:28-1.3(a)8 as new N.J.A.C. 6A:28-1.3(a)10.

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

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

The Department proposes to amend N.J.A.C. 6A:28-1.4(b), which prohibits a Commission member from participating in any proceedings on a complaint against a school official in a school district in which the Commission member serves, may be employed, or where the Commission member or a member of immediate family has a personal or financial involvement. The proposed amendments will add "a charter school, or a renaissance school project" after "school district" to ensure consistency and equity in the matters in which a Commission member may participate.

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

This section sets forth the circumstances in which the Commission may issue an Order to Show Cause in the course of implementing and enforcing the provisions of the Act, as well as the procedures that apply when an Order to Show Cause is issued.

The Department proposes new N.J.A.C. 6A:28-1.6(a)3 to state that an Order to Show Cause is appropriate when the Commission, on its own initiative, has determined that a complaint is frivolous.

The Department proposes to amend N.J.A.C. 6A:28-1.6(c)1, which allows the Commission to conduct an investigation and/or hearing when deemed necessary because the material facts of a complaint are in dispute. The proposed amendment will add "and review on a

summary basis is not appropriate” at the end. In these situations, the Commission may conduct an investigation and/or a hearing.

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

This section sets forth the methods by which a complainant and respondent can verify proof of service on their adversary in the course of proceedings before the Commission.

The Department proposes new N.J.A.C. 6A:28-1.7(a)5 to require a copy of the email address at which a party was served, along with a copy of the “delivered” and/or “read” receipt. The proposed rule will modernize the Commission’s filing practice to allow for both hard copy and electronic filing. In addition, it will simplify the process and procedures for service of process so that litigants can be served with legal papers by either certified mail or by electronic mail.

The Department proposes new N.J.A.C. 6A:28-1.7(b) to state that once the Commission determines that the contents of a complaint comply with the format set forth at N.J.A.C. 6A:28-6.3, the Commission will then serve the complaint on the respondent(s). The Department proposes new N.J.A.C. 6A:28-1.7(c) to require, after the Commission’s service of the complaint, all filings to be served by the filing party on their adversary in the same manner as the Commission was served. New N.J.A.C. 6A:28-1.7(c) also will require the parties to provide proof of service on the adversary to the Commission. In current practice, some complainants serve a copy of the complaint on the respondent when, in fact, the complaint is deficient. This causes confusion and can lead a respondent to respond to a filing that has not yet been perfected. Codifying that the Commission will serve a copy of an accurate complaint on the respondent(s) will help to correct the practice.

N.J.A.C. 6A:28-1.8 Relaxation of Rules

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

The Department proposes new N.J.A.C. 6A:28-1.8(b) to state the Commission’s authority to provide, in extraordinary circumstances, relief to school officials who are unable to comply with requirements of the chapter. The proposed rule also states that extraordinary circumstances include, without limitation, when a school official is engaged in military service or is gravely ill. The proposed rule further states that the issuance of extraordinary relief does not relieve the school official from compliance once the period of relief expires. The proposal recognizes that many school officials face extenuating circumstances, but there is no mechanism for them to request a “stay” from compliance.

Subchapter 2. By-Laws of the School Ethics Commission

This subchapter enumerates the composition of the Commission, sets forth the duties of the chairperson, delineates the meeting requirements of the Commission, and discusses the authority of the Commission to act as a committee of the whole.

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

This section explains that the Commission is required to hold regular monthly meetings in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. The section further requires Commission meetings to be governed by Robert's Rules of Order, and contains requirements for conducting special meetings and establishing a quorum. It also explains the process for instances in which the Commission has determined to remove a member of the Commission.

The Department proposes to amend N.J.A.C. 6A:28-2.3(a), which requires Commission meetings to be governed by Robert's Rules of Order Newly Revised (10th Edition). The Department proposes to amend the rule to replace "10th" with "the latest" to update the edition.

The Department proposes to amend N.J.A.C. 6A:28-2.3(b), which requires that regular monthly meetings be held at the time and the place and on the dates established by the Commission. The rule also requires public notice to be made in accordance with the Open Public Meetings Act (OPMA). The proposed amendment will add "Senator Byron M. Baer" before the reference to the OPMA to reflect the law's official title.

The Department proposes to amend N.J.A.C. 6A:28-2.3(d), which requires a quorum to consist of a majority of the number of voting members of the Commission. The proposed amendments will require a quorum to consist of a majority of the Commission's authorized membership reduced by any vacancy(ies). The proposed amendments will align the rule with Robert's Rules of Order.

The Department proposes new N.J.A.C. 6A:28-2.3(f) to permit Commission members, at the chairperson's discretion, to attend regular monthly or special meetings by telephone, or by a live video or audio platform that can also be accessed by the public. The proposed rule will modernize the means by which Commission members, as authorized by the chairperson may attend and participate in meetings. To the extent that the chairperson permits Commission members to attend by telephone, or by a live video or audio platform, the public will also be permitted to attend meetings by the same means.

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

This section sets forth that the Commission shall act as a committee of the whole. This section also requires the chairperson to select a nominating committee for the purpose of selecting a nominee for chairperson. The section allows the chairperson to appoint Commission members to special committees.

The Department proposes to amend N.J.A.C. 6A:28-2.4(b), which requires the Chairperson to select, at the Commission's May meeting, a nominating committee of three persons whose function shall be to select a nominee for Chairperson to present to the Commission. The proposed amendments will require the chairperson to select the nominating committee at the Commission's May meeting and the committee to present the nominee to the Commission at its June meeting for approval. The proposed amendments will clarify that the nominating committee will be selected at the May meeting, and the committee's nominee will be considered at the June meeting.

The Department proposes to amend N.J.A.C. 6A:28-2.4(c), which allows the chairperson to appoint Commission members to special committees to consider and make recommendations to the Commission on any matter. The proposed amendment will add that the chairperson will

designate a special committee chairperson for each special committee to align the rule with current practice.

The Department proposes new N.J.A.C. 6A:28-2.4(d) to enable the special committee chairperson to schedule meetings on the dates and at the times that the chairperson determines necessary to carry out the work of the special committee.

Subchapter 3. Filing of Disclosure Statements

This subchapter sets forth the procedures for school officials to file disclosure statements pursuant to N.J.S.A. 18A:12-25 and 26, the duties of district boards of education with regard to disclosure statements, the procedures that the Commission follows if a school official fails to file disclosure statements or files incomplete disclosure statements.

N.J.A.C. 6A:28-3.1 Procedures for filing of Disclosure Statements

This section sets forth the procedures for the filing of disclosure statements by school officials.

The Department proposes to amend N.J.A.C. 6A:28-3.1(a), which requires all school officials to file, on or before April 30 of each year and on forms provided by the Commission through the executive county superintendent (ECS), disclosure statements with their local school board secretaries. It similarly requires charter school designees to file the original disclosure statements with the ECS' office. The proposed amendments will replace "all school officials" with "all returning school officials who filed disclosure statements in the same school district, charter school, or renaissance school project, in the previous year." The Department also proposes to require school officials to electronically file disclosure statements that are complete and accurate. The Department further proposes new N.J.A.C. 6A:28-3.1(a)1 to require school officials to complete disclosure statements based upon financial information from the preceding calendar year. The Department proposes new N.J.A.C. 6A:28-3.1(a)2 to state that the responses on the disclosure statements shall initially be reviewed by the board secretaries, or the charter school or renaissance school project designees, and then will be approved by the ECS or the Commission's staff. The proposed amendments will streamline the filing process and will align with the newly implemented electronic filing system.

The Department proposes to amend the first sentence at N.J.A.C. 6A:28-3.1(b), which states all disclosure statements filed shall be public records, to add that all filed disclosure statements will be available on the Commission's website. The proposed amendment will codify current practice. As disclosure statements are public records, the Department maintains the posting of the statements on the Commission's website serves as a valuable resource to the public. The Department also proposes to delete the second sentence at N.J.A.C. 6A:28-3.1(b), which requires requests for copies of disclosure statements to be directed to the district board secretary or executive county superintendent and to be subject to copying fees pursuant to N.J.S.A. 47:1A-1 et seq. The proposed deletion reflects that copies will no longer be necessary due to the availability of the disclosure statements on the [Commission's website](#).

The Department proposes to recodify existing N.J.A.C. 6A:28-3.1(d), which requires board members in Type I school districts who are initially appointed to take office on May 16 or June 1, or who are appointed to fill vacancies, to file the required disclosure statements within 30 days of taking office, as new N.J.A.C. 6A:28-3.1(c). The Department also proposes to amend new N.J.A.C. 6A:28-3.1(c) to add "new" before "board members" to clarify that the deadline applies to only new board members. The Department further proposes not to include the

reference to “May 16 or June 1” because the deadline cannot be applied to all new school officials. The proposed replacement of “within 30 days of being sworn in” is precise and consistent. The Department also proposes to require board secretaries in Type I school districts to add to a school official to the list of school officials once the board member is sworn in. The proposed amendments will clarify the process and procedure for new board members in Type I school districts, which have district boards of education members who are appointed by the municipality’s mayor, to file disclosure statements.

The Department proposes to recodify existing N.J.A.C. 6A:28-3.1(c), which requires board members in Type II school districts elected to their positions in the annual April school election or appointed to fill vacancies to file disclosure statements within 30 days of taking office, as new N.J.A.C. 6A:28-3.1(d). The Department proposes to amend new N.J.A.C. 6A:28-3.1(d) to add “new” before “board members” for the same reason as stated above. The Department also proposes to replace “the annual April school election” with “a school election” because Type II school districts, which have district boards of education members who are elected by voters, can hold school elections in April or November. The Department also proposes to replace “taking office” with “being sworn in.” The proposed amendments will clarify that new board members in Type II school districts are required to electronically file disclosure statements within 30 days of being sworn in. The Department also proposes to require board secretaries in Type II school districts to add school officials to the list of school officials once they are sworn in.

The Department proposes to amend N.J.A.C. 6A:28-3.1(e), which requires members of the board of trustees of a charter school to initially file disclosure statements within 30 days after the granting of the charter and requires newly appointed trustees to file within 30 days of their appointment. The proposed amendments will replace “30 days from appointment” with “within 30 days of being sworn in.” The proposed amendments will also include a requirement for trustees of a renaissance school project to electronically file their disclosure statements within 30 days after the renaissance school project’s establishment. The Department also proposes to require the charter school or renaissance school project designee to add the names of new trustees to the list of school officials once they are sworn in.

The Department proposes to amend N.J.A.C. 6A:28-3.1(f), which requires administrators appointed to fill vacancies after the April 30 filing date to file disclosure statements within 30 days of their appointment. The proposed amendments will add “new” before “administrators” and replace “their appointment” with “the first day of their employment.” The proposed amendments will differentiate between a newly hired administrator and an administrator who is already employed within the school district and has already filed disclosure statements for the year and who may have been promoted or moved to fill a vacancy within the same school district. The Department further proposes to require board secretaries and charter school or renaissance school project designees to add the names of new administrators to the list of school officials once they have begun employment. Recognizing there can be a considerable delay between an administrator’s appointment and actual start date, the Department proposes the amendment to clarify that the timeframe to file does not begin following the administrator’s appointment and to allow for a more consistent practice.

The Department proposes new N.J.A.C. 6A:28-3.1(g) to require new officers and employees of the NJSBA who must complete disclosure statements to file the statements within 30 days of the first date of employment. The proposed regulation also requires the NJSBA to designate a current employee to ensure and fulfill the organization’s statutory and regulatory obligations to the Commission. The proposed regulation will provide consistency between the

obligations of school officials and of NJSBA officers and employees who must file disclosure statements.

The Department proposes new N.J.A.C. 6A:28-3.1(h) to specify it is the affirmative responsibility of each school official to confirm with the board secretary, or the charter school or renaissance school project designee, that the school official's name has been added to the list of school officials within the time period required by the section, and that the school official's name continues to appear on the list for as long the individual remains a school official.

N.J.A.C. 6A:28-3.2 Duties of District Boards of Education and Charter Schools

This section sets forth the responsibilities of district boards of education and charter school and renaissance school project boards of trustees to ensure all school officials file disclosure statements. The rules require each board secretary or charter school or renaissance school project designee to create and file, by February 1 annually, a list of school officials who are responsible for filing disclosure statements. The section also requires the same submission throughout the year for newly appointed or elected board members or trustees, or newly appointed administrators or supervisors. The rules further require each board secretary, or charter school or renaissance school project designee, to receive disclosure statements, maintain copies, and ensure the disclosure statements are completed and filed in accordance with the Act.

The Department proposes in this section the following amendments and deletions to generally streamline the duties of board secretaries, and charter school and renaissance school project designees with respect to maintaining the list of school officials and ensuring that all board members and trustees comply with their statutory obligation to file disclosure statements.

The Department proposes to amend N.J.A.C. 6A:28-3.2(a), which requires each board secretary or charter school designee to annually file, on or before February 1, with the ECS a written list of names of school officials, by office and position, whose responsibilities would require disclosure statements to be filed. The regulation also requires the list to include offices and positions that are vacant, or are to become vacant by virtue of expiration of terms or personnel leaving the school district. The Department proposes instead to require the board secretary, and charter school or renaissance school project designee, to create a list of school officials on or before February 1 each year. The proposed amendments also will require the list of school officials to contain the name, telephone number, and email address of each returning school official, by office and position, who is required to file disclosure statements.

The Department proposes to delete existing N.J.A.C. 6A:28-3.2(b) through (e), which require written lists of the names of new board members of Type II and I school districts, new charter school trustees, and newly appointed administrators and supervisors, respectively, to be filed with the ECS. Instead, the Department proposes new N.J.A.C. 6A:28-3.2(b) and (c) to capture the requirements for filing the list of school officials and other related responsibilities.

The Department proposes new N.J.A.C. 6A:28-3.2(b) to set forth the required duties of the board secretary, or the charter school or renaissance school project designee, if a new school official is elected or appointed before April 1. Proposed N.J.A.C. 6A:28-3.2(b)1, 2, and 3 will require the board secretary, or the charter school or renaissance school project designee, to add the new school official to the February list of school officials, to ensure that the school official receives instructions on how to complete the school official's disclosure statements, and to ensure that the school official files the disclosure statements within 30 days of being sworn in. The proposed rules will provide greater detail as to the role of the board secretary and the charter school or renaissance school project designee.

The Department proposes new N.J.A.C. 6A:28-3.2(c) to set forth the required duties of the board secretary, or the charter school or renaissance school project designee, if a new school official is elected or appointed on or after April 1. Proposed N.J.A.C. 6A:28-3.2(c)1, 2, and 3 will require the board secretary, or the charter school or renaissance school project designee, to add the new official to the June list of school officials, to ensure that the school official receives instructions on how to complete the disclosure statements, and to ensure that the school official files the disclosure statements within 30 days of being sworn in.

The Department proposes to recodify existing N.J.A.C. 6A:28-3.2(f), which requires the board secretary or the charter school designee to date stamp the original disclosure statements, provide a copy to the school official, maintain a copy at the district board of education or charter school, and file the original with the ECS' office, as new N.J.A.C. 6A:28-3.2(d). Instead, the Department proposes to require the board secretary, or the charter school or renaissance school project designee, to review disclosure statements, to ensure that all filings are complete and all questions have been answered. The Department also proposes to state that the review by the board secretary, or the charter school or renaissance school project designee, is to be completed on or before April 30 for school officials who are on the February list of school officials, and on or before November 15 for school officials who are on the June list of school officials. The Department further proposes to codify the obligation of the board secretary, or the charter school or renaissance school project designee, to submit the reviewed disclosure statements to the ECS for final review and approval.

The Department proposes to delete existing N.J.A.C. 6A:28-3.2(g) because the requirements with respect to disclosure statements will be contained at new N.J.A.C. 6A:28-3.2(d) as proposed for amendment.

The Department proposes to recodify existing N.J.A.C. 6A:28-3.2(h) as new N.J.A.C. 6A:28-3.2(e). The regulation currently requires, within 10 calendar days of April 30 each year, the board secretary or the charter school designee to provide the ECS with a written list of the names, home addresses, and positions of all persons on the February 1 list of school officials and all newly elected or appointed persons who failed to file disclosure statements. The Department proposes to include renaissance school project designees and to simplify the rule to require the submission to the ECS to be "a written list of school officials who failed to file disclosure statements." This notification will help the Commission with its enforcement obligations as set forth in this chapter, specifically at, N.J.A.C. 6A:28-3.3.

The Department proposes new N.J.A.C. 6A:28-3.2(f) to require the board secretary, or charter school or renaissance school project designee, to review the disclosure statements to identify conflicts of interest. The proposed regulation also will require the board secretary, or the charter school or renaissance school project designee, to post on the school district's, charter school's, or renaissance school project's website, if available, a link to each school official's most recently filed disclosure statements on the Commission's website. The proposed regulation with further require the link to be posted near the contact information for each school official or on a standalone webpage for all school officials.

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

This section establishes that the failure of a school official to timely file disclosure statements constitutes a violation of the Act and may result in the reprimand, censure, suspension, or removal of the school official. This section also allows the Commission to issue an Order to Show Cause if a school official fails to timely file the disclosure statements.

The Department proposes to amend N.J.A.C. 6A:28-3.3(a), which states failure to timely file the requisite disclosure statements shall constitute a violation of the Act, and may result in the reprimand, censure, suspension, or removal of a school official pursuant to the recommendation of the Commission as acted upon by the Commissioner. The proposed amendments will delete “pursuant to the recommendation of the Commission as acted upon by the Commissioner” because this qualifier is already set forth in the definition of “penalty.”

The Department proposes new N.J.A.C. 6A:28-3.3(c) to require the Commission to recommend that a school official who completes the disclosure statements after the Commission issues an Order to Show Cause, but before the Commission issues a decision, receives a censure unless good cause is shown or the school official previously has been the subject of an Order to Show Cause.

The Department proposes new N.J.A.C. 6A:28-3.3(d) to require the Commission to recommend that a school official who completes and files the disclosure statements after the Commission issues a decision, but before the Commissioner issues a final decision, receive a suspension for 30 days unless good cause is shown or the school official previously has been the subject of an Order to Show Cause. The proposed regulation also states the Commission will recommend this penalty only if the school official advises the Commission, in writing, that the school official has successfully completed and filed the disclosure statements before the Commissioner issues a final decision. The proposed regulation further states the Commission will recommend a suspension for 60 days if the school official does provide the notification.

The Department proposes new N.J.A.C. 6A:28-3.3(e) to require the Commission to recommend that a school official who fails to complete and file the disclosure statements after the Commission issues its decision, and has not filed the disclosure statements as of the date the Commissioner issues a final decision, is removed from the school official’s position.

By clearly delineating the penalties that a school official will face if the school official fails to file disclosure statements, as set forth at new N.J.A.C. 6A:28-3.3(c), (d), and (e), all school officials are provided sufficient notice of the consequences for the failure to timely file disclosure statements. The Department anticipates that clearly outlining the possible penalties will secure timely compliance by all school officials.

The Department proposes new N.J.A.C. 6A:28-3.3(f) to require the Commission to adopt a resolution affirming the penalty, if imposed by the Commissioner. The proposed regulation also will require the district board of education or the board of trustees to read the Commission’s resolution at the beginning of its next regularly scheduled public meeting, and to memorialize the reading of the resolution in the meeting’s minutes. Proposed N.J.A.C. 6A:28-3.3(f)1 will require a copy of the minutes, once approved, to be forwarded to the Commission. Under proposed N.J.A.C. 6A:28-3.3(f)1i, the Commission also has the authority to seek any penalty and/or remedy against an appropriate school official if the minutes are not forwarded to the Commission. Proposed N.J.A.C. 6A:28-3.3(f)2 will require the district board of education or the board of trustees to post the resolution for a period of no less than 30 days where public notices are posted. Proposed N.J.A.C. 6A:28-3.3(f)3 will require the resolution to also be published on the school district’s, charter school’s, or renaissance school project’s website, if available, for a period of no less than 30 days. The proposed regulation will ensure that district boards of education and boards of trustees comply with the section’s requirements and will require transparency to the public regarding any penalties that are imposed on school officials for failing to timely comply with their statutory obligations.

Proposed N.J.A.C. 6A:28-3.3(c) through (g) also will codify the respective authority provided to the Commission under the Act.

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

This section establishes the procedures that the ECS and a board secretary, or a charter school or renaissance school project designee, must follow if a school official files incomplete disclosure statements. The section also allows the Commission to issue an Order to Show Cause if completed disclosure statements are not filed within the 20-day time period or a resubmitted disclosure statement fails to provide the statutorily required information.

The Department proposes new N.J.A.C. 6A:28-3.4(a) to require a board secretary, or a charter school or renaissance school project designee, to return disclosure statements that the board secretary, or charter school or renaissance school project designee, determines are incorrect or incomplete to the school official. The proposed regulation also will require the school official, within 20 days from receipt of the returned filing, to correct and/or complete the disclosure statements and to resubmit them to the board secretary, or the charter school or renaissance school project designee. The proposed regulation further will require the board secretary, or the charter school or renaissance school project designee, to then file the corrected or completed disclosure statements with the ECS. The proposed regulation will ensure that disclosure statements are properly completed and tracked before final submission, and will codify existing practice.

The Department proposes to recodify existing N.J.A.C. 6A:28-3.4(a), which establishes the procedures that the ECS and a board secretary, or a charter school designee, must follow if a school official files incomplete disclosure statements, as new N.J.A.C. 6A:28-3.4(b). The Department proposes to amend new N.J.A.C. 6A:28-3.4(b) to include renaissance school project designees. The Department also proposes to add “incorrect and/or,” “correct and/or,” and “corrected and/or” before “incomplete,” “complete,” and “completed,” respectively, to clarify that school officials must resubmit disclosure statements if any element is found to be incorrect and not only if the disclosure statements are incomplete.

The Department proposes to recodify existing N.J.A.C. 6A:28-3.4(b), which allows the Commission to issue an Order to Show Cause at the expiration of the time period or upon further receipt of disclosure statements that fail to provide such information as required by statute, as new N.J.A.C. 6A:28-3.4(c). The Department proposes to replace “[a]t the expiration of such time period or upon further receipt of disclosure statements which fail to provide such information as required by the Act” with “[i]f a school official fails to resubmit corrected and/or completed disclosure statement after 20 days.” The proposed amendment will clarify that the Commission can issue an Order to Show Cause if corrected and/or completed disclosure statements are not resubmitted in the 20-day time period.

The Department proposes new N.J.A.C. 6A:28-3.4(d) to allow the Commission to regard a school official’s incomplete filing as a failure to file if a response is not received within the 20-day period, or if the school official fails to properly file. The proposed rule also will require the Commission to proceed in accordance with N.J.A.C. 6A:28-3.3 in such cases.

Subchapter 4. Board Member Training

This subchapter sets forth the training requirements for board members and trustees, as well as the procedures that the Commission follows if board members or trustees fail to complete training.

The Department proposes to amend the subchapter title to add “and Charter School or Renaissance School Project Trustee” before “Training” to clarify the subchapter applies to members of charter school or renaissance school project boards of trustees.

N.J.A.C. 6A:28-4.1 Training Requirement

This section sets forth the timeline that new and returning board members and trustees must follow to complete training.

The Department proposes to amend N.J.A.C. 6A:28-4.1(a), which requires a new board member or trustee to complete, during the first year of service on any board, a training program prepared and offered by the NJSBA. The proposed amendments will require the new board member or trustee to complete the training within the first 90 days of the board member’s or trustee’s first term. The regulation will continue to require the training to be about the ethical obligations as set forth in the Act. The proposed amendments will ensure that all board members and trustees understand, at the inception of their first terms, the ethical standards that must guide their behavior.

The Department proposes to amend N.J.A.C. 6A:28-4.1(b), which requires each board member and trustee, in both the second and third years of the member’s or trustee’s service on any board, to complete a training program prepared and offered by the NJSBA on school district governance. The proposed amendment will replace “service on any board” with “first term” to clarify when the training must take place.

The Department proposes to amend N.J.A.C. 6A:28-4.1(c), which requires each board member and trustee to complete, within one year after each reelection or reappointment, an advanced training program on relevant changes to New Jersey school law to be prepared and offered by the NJSBA. The proposed amendments will add “and other information deemed appropriate to enable the board member or the trustee to serve more effectively.” The proposed amendment will provide the NJSBA with more flexibility on the nature of the training that can be provided to board members and trustees who are reelected or reappointed.

N.J.A.C. 6A:28-4.2 Procedures for Compliance

This section sets forth the procedures for compliance with the training requirements.

The Department proposes to amend N.J.A.C. 6A:28-4.2(a), which requires each board secretary and charter school designee to notify, in writing, the NJSBA when a board member or a trustee is newly elected or appointed, reelected, reappointed, resigns, or is removed. The proposed amendment will include renaissance school project designees. The proposed amendments will require the written notification to be sent to the Commission in addition to the NJSBA. The proposed amendments will require the notification to be provided when the term of a board member or trustee expires and the notification to be provided to the NJSBA and the Commission within 30 days of occurrence of the event reported. The Department further proposes to authorize the Commission to seek an appropriate remedy if timely notification is not provided. The proposed amendments are necessary because of the regular turnover in board members and trustees. Furthermore, the Commission and the NJSBA take great effort to ensure compliance with statutory obligations, which leads to inefficiency and the unnecessary expenditure of resources when individuals are no longer serving on the district board of education or the board of trustees but the Commission and the NJSBA have not been informed.

The Department proposes to amend N.J.A.C. 6A:28-4.2(a)1, which requires the board secretary or charter school designee to provide the names and addresses of such board members or charter school trustees. The proposed amendments will require the board secretary, or the charter school or renaissance school project designee, to provide the NJSBA with the name, school address, telephone number, and email address of each board member or trustee. The proposed amendments will update the information that must be submitted and specify to which entity the information must be provided.

The Department proposes to amend N.J.A.C. 6A:28-4.2(c), which requires the NJSBA to present to the Commission, by March 31 annually, a list of board members and trustees who have not fulfilled the training requirements. The proposed amendments will replace “March 31 of each year” with “January 1 of the second calendar year for board members elected in November, April 1 of the first calendar year for board member elected in April, and July 1 for charter school and renaissance school project trustees.” The proposed dates reflect the first day after training was to be completed by the board members and the trustees (that is, January 1 of the second calendar year after election for individuals elected in the November election, April 1 of the calendar year after election for individuals elected in the April election, and July 1 for trustees). The proposed amendments will codify existing practice.

N.J.A.C. 6A:28-4.3 Penalties for Non-compliance

The Department proposes new N.J.A.C. 6A:28-4.3 to specify the process the Commission will follow if a board member or a trustee fails to complete training, as well as the penalties that can be imposed for non-compliance. Proposed new N.J.A.C. 6A:28-4.3 will codify existing practice.

The Department proposes new N.J.A.C. 6A:28-4.3(a) to state the Commission will issue an Order to Show Cause if a board member or trustee fails to complete training as required by the chapter.

The Department proposes new N.J.A.C. 6A:28-4.3(b) to require the Commission to recommend censure for a board member or a trustee who completes training only after the Commission issues an Order to Show Cause, but before the Commission issues a decision, unless good cause is shown or the school official previously has been the subject of an Order to Show Cause.

The Department proposes new N.J.A.C. 6A:28-4.3(c) to require the Commission to recommend a 30-day suspension for a board member or trustee who completes training after the Commission issues a decision, but before the Commissioner issues a final decision, unless good cause is shown or the school official previously has been the subject of an Order to Show Cause. The proposed rule also states the Commission will recommend the penalty only if the board member or trustee advises the NJSBA and the Commission, in writing, that the board member or the trustee successfully completed training before the Commission issues a final decision. The proposed rule further states the Commission will recommend a suspension for 60 days if a board member or a trustee does not provide notification.

The Department proposes new N.J.A.C. 6A:28-4.3(d) to require the Commission to recommend removal from the position if a board member or a trustee fails to complete training after the Commission issues its decision and after the Commissioner issues a final decision, unless good cause is shown.

By clearly delineating the process that the Commission will follow in the event of non-compliance with training requirements, as well as the penalty that a board member or a trustee will face if the board member or trustee fails to complete training, all board members and trustees are provided sufficient notice of the process and of the ramification of the failure to timely complete training. The Department anticipates that clearly outlining the process and possible penalties will secure timely compliance by all board members and trustees.

The Department proposes new N.J.A.C. 6A:28-4.3(e) to require the Commission to adopt a resolution affirming a penalty for non-compliance if one is imposed. The proposed rule also will require the district board of education or the board of trustees to read the Commission's resolution at the beginning of the board's next regularly scheduled public meeting, and to memorialize the reading of the resolution in the meeting minutes. Proposed new N.J.A.C. 6A:28-4.3(e)1 will require a copy of the minutes to be forwarded to the Commission once the minutes are approved. Proposed new N.J.A.C. 6A:28-4.3(e)1i will provide the Commission with the authority to seek any penalty and/or remedy authorized by the chapter against an appropriate school official if the minutes are not forwarded to the Commission. Proposed new N.J.A.C. 6A:28-4.3(e)2 will require the district board of education or the board of trustees to post the resolution for a period of not less than 30 days in such places where public notices are posted. Proposed new N.J.A.C. 6A:28-4.3(e)3 will require the resolution to also be published on the school district's or the charter school or renaissance school project's website, if available, for a period of not less than 30 days. The proposed rule, which will codify existing practice, will ensure compliance with the section's requirements and transparency to the public regarding any penalty that is imposed on a board member and trustee who fails to timely comply with statutory training obligations.

Subchapter 5. Advisory Opinions

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

N.J.A.C. 6A:28-5.1 Entitlement to an Advisory Opinion

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

The Department proposes to amend this section to add that a request for an advisory opinion can be made by an attorney on a school official's behalf, in addition to any school official. The Department also proposes an amendment that specifies the school official who is the subject of the request for an advisory opinion must be within the same school district, or within the same charter school or renaissance school project, as that in which the school official making the request serves. The Department also proposes to add a requirement that a request filed by an attorney on behalf of a school official must provide the name of the school official who is the subject of the request, as well as the school official's school district or charter school or renaissance school project. The proposed amendments will promote transparency by all parties and allow the Commission to provide accurate advice based on specific facts.

N.J.A.C. 6A:28-5.2 Procedures for Requesting and Receiving an Advisory Opinion

This section sets forth the procedures for requesting and receiving an advisory opinion, the requirements for the Commission's handling and declining of advisory opinions, and the Commission's procedures when making an advisory opinion public.

The Department proposes to amend N.J.A.C. 6A:28-5.2(a), which requires requests for advisory opinions to set forth in detail the specific conduct or activity the school official seeks to undertake and the exact role the school official will play in that activity or conduct. The proposed amendments will replace "specific conduct or activity" with "anticipated future conduct or activity" and "will play" with "anticipates having," respectively. The proposed amendments also will add "as well as the anticipated date the prospective activity is to occur or begin" at the end of the rule. Requiring this information will help to ensure that requests for advisory opinions are based on actual prospective activity that is likely to occur in the future and are not theoretical or hypothetical.

The Department proposes new N.J.A.C. 6A:28-5.2(a)1 to require the request for an advisory opinion to include a statement by the school official that the school official has reviewed the Commission's publicly available advisory opinions on its website, and has determined that the concern raised in the new request is not addressed by the Commission in an existing advisory opinion. The proposed amendment will put the onus on school officials to read previously issued advisory opinions, and to ensure that the subject of their request has not already been addressed by the Commission.

The Department proposes new N.J.A.C. 6A:28-5.2(a)2 to authorize the Commission to copy the attorney who represents the district board of education or the board of trustees on the Commission's response to a request for an advisory opinion. The proposed amendment will ensure that counsel for district boards of education and boards of trustees are aware of a potential conflict(s) and can properly advise on recusal questions or issues.

The Department proposes to amend the second sentence of N.J.A.C. 6A:28-5.2(b), which states the school official whose conduct is in question will then have 10 days from the date of the advisory opinion request to respond. The proposed amendment will replace "from the date" with "from receipt" to specify that the 10-day time frame to respond is from the date the school official receives the request and not the date on the request.

The Department proposes to amend N.J.A.C. 6A:28-5.2(c)3, which allows the Commission to decline to accept an advisory opinion request where public advisories sufficiently address the questions raised in the advisory opinion request or where the request does not meet the requirements of N.J.A.C. 6A:28-5.2(a) and (b). The proposed amendments will replace the cross-reference to N.J.A.C. 6A:28-5.2(a) and (b) with "this subchapter" because the proposed amendments and new rules have expanded beyond the two sections and are incorporated within the entire subchapter. The Department also proposes to add "or where the Commission has determined there is insufficient time to consider and respond to the request before the proposed activity occurs" as a third condition under which the Commission can decline a request. The proposed amendment will ensure that the Commission does not expend unnecessary resources and time in responding to a request that is not filed in enough time to allow consideration.

The Department proposes to amend N.J.A.C. 6A:28-5.2(d), which states that the Commission or its staff may request additional information from the school official seeking an advisory opinion, to include that the Commission or its staff may also request additional information from the attorney who is seeking the request on behalf of a school official. The

proposed amendment will ensure that the Commission can receive additional information from whomever requests the advisory opinion.

The Department proposes to amend N.J.A.C. 6A:28-5.2(e)1, which requires advisory opinions made public by the Commission to delete the name and school district of the school official requesting the advisory. The proposed amendment will add “as well as any other information that would identify the district board of education, the board of trustees, or the school official.” The proposed amendment will keep board matters confidential and codify current practice.

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

This subchapter identifies who can file a complaint with the Commission, the process for filing a complaint, and the necessary components of a complaint. The subchapter also specifies the burden of proof that applies to alleged violations of the Code of Ethics for School Board Members (N.J.S.A. 18A:12-24.1), the time period to file a complaint, how a complaint will be processed, and how a complaint can be amended.

N.J.A.C. 6A:28-6.2 Process for the Filing of a Complaint

This section sets forth the process for filing a complaint with the Commission.

The Department proposes to amend the first sentence in N.J.A.C. 6A:28-6.2(a), which requires an individual filing a complaint with the Commission alleging a violation of the Act to file an original and two copies of the complaint together with a copy for each respondent named in the complaint. The proposed amendments will replace “shall file an original and two copies of such complaint together with” with “may either file an original hardcopy complaint with related exhibits, along with one copy of such complaint with related exhibits, and an additional copy of the complaint and related exhibits.” The proposed amendments will reduce, from two to one, the number of copies of a complaint (and exhibits) that a complainant must file with the Commission. The Department also proposes to permit a complainant to file an electronic complaint with related exhibits by emailing it to schoolethics@doe.nj.gov. However, the Department will still require the complainant to mail the Commission a hardcopy of the complaint (and exhibits) for each respondent named in the complaint. The proposed amendments are more cost effective and will modernize the Commission’s filing process and ease the filing requirements on complainants.

N.J.A.C. 6A:28-6.3 Contents of a Complaint

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

The Department proposes amendments to N.J.A.C. 6A:28-6.3(b), which sets forth the necessary components of a complaint, to reorganize the rule for clarity. Other proposed changes to N.J.A.C. 6A:28-6.3(b) will improve the quality of complaints filed, reduce the filing of deficient complaints by complainants, and ensure that complainants can provide proof of their claims. The proposed amendments also will provide respondents with the best opportunity to fully understand the nature of the allegations asserted against them so that they can, in turn, respond appropriately. The Department anticipates that the proposed amendments will reduce the filing of complaints that are based on hearsay or are otherwise unsupported by evidence.

The Department proposes to amend N.J.A.C. 6A:28-6.3(b)1, which requires the complaint to include the full name, home address, and phone number of each complainant. The proposed amendment will require each complainant to also provide an email address. The Department proposes to amend N.J.A.C. 6A:28-6.3(b)2, which requires the complaint to include the full name and home address of each respondent. The proposed amendment will also require complainants to provide each respondent's telephone number (if known) and email address (if known). The inclusion of email addresses will help the Commission to more efficiently communicate with the parties, and will permit the parties to effectuate proof of service electronically, if necessary.

The Department proposes to amend N.J.A.C. 6A:28-6.3(b)3, which requires a complaint to include 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 proposed amendments will require individually numbered paragraphs setting forth each alleged violation of the Act, with each paragraph to include, without limitation, the requirements of existing N.J.A.C. 6A:28-6.3(b)4, 5, and 6. The Department also proposes to recodify existing N.J.A.C. 6A:28-6.3(b)4, 5, and 6 as new N.J.A.C. 6A:28-6.3(b)3i, ii, and iii. The proposed recodifications will more clearly detail the necessary components of a complaint.

The Department proposes to amend new N.J.A.C. 6A:28-6.3(b)3iii, which requires the complaint to include a statement giving all pertinent facts as to whether any other action has been instituted in the matter that is the subject of the complaint or is pending in any court of law or administrative agency of the State. The proposed amendment will require complaints to include the specific facts or arguments that support the alleged violations of the Act. The proposed amendment will ensure that respondents can fully understand the nature of the allegations filed against them, and can respond with specificity to what is alleged.

The Department proposes to recodify existing N.J.A.C. 6A:28-6.3(b)7, which requires a notarized signature and certification under oath for each complainant, as new N.J.A.C. 6A:28-6.3(b)4. The proposed amendments will eliminate a burden by no longer requiring complainants to file a complaint with a notarized signature. The Department also proposes to amend N.J.A.C. 6A:28-6.3(d) to delete the portions in the complaint format that are related to the notarized signature.

The Department proposes new N.J.A.C. 6A:28-6.3(b)5 to require complainants to provide evidence in support of the allegations set forth in their complaint. The proposed paragraph includes "meeting minutes, meeting agendas, certifications, and affidavits" as examples of evidence. The proposed paragraph will also require parties to identify by highlighting or other means, where possible, the specific parts of the evidence that support the alleged violation(s). The proposed paragraph will further require the parties to include an index of the highlighted material, identifying the page number or location within the document(s) where the highlighted information is located.

The Department proposes to amend N.J.A.C. 6A:28-6.3(d), which sets forth the format for complaints, to include all of the contact information required in N.J.A.C. 6A:28-6.3(b)1 and 2 as proposed for amendment. The proposed amendments also will include a "General Statement of Facts" that will require complainants to follow a specific format for articulating the individual occurrences and alleged violations of the Act as they relate to each respective occurrence.

N.J.A.C. 6A:28-6.5 Time period for the Filing of a Complaint

This section sets forth the time period in which a complaint can be filed with the Commission.

The Department proposes to amend N.J.A.C. 6A:28-6.5(a)2, which states “[f]or complaints where the matter, which is the subject of the complaint is pending in any court of law or administrative agency of this State, the complaint shall be filed within 180 days of notice of the events which form the basis of the alleged violation(s).” The Department proposes to add “still” before “be filed” to stress that complainants must still file a complaint to preserve their claims even if a matter is pending in a court of law or other administrative agency. The proposed amendments also will add “[i]n this situation, the Commission will place the matter in abeyance as appropriate” to clearly state the procedure the Commission will follow when a subject of a complaint is pending in a court of law or with an administrative agency.

N.J.A.C. 6A:28-6.6 Complaint Processing, Consolidating and Confidentiality

This section sets forth the procedure by which the Commission processes, consolidates, and maintains the confidentiality of complaints.

The Department proposes to amend the first sentence in N.J.A.C. 6A:28-6.6(d), which requires any complaint filed jointly by three or more complainants to designate one lead complainant as a representative of the group for purposes of initial correspondence, receipt of service for answer(s) and/or motions, and all other communications. The proposed amendment will also require that complainants designate the lead complainant by submitting a letter signed by all complainants. The proposed amendment will ensure that all complainants have agreed, in fact, on the individual who is representing their collective interests.

The Department proposes to amend N.J.A.C. 6A:28-6.6(e), which requires the Commission to serve a copy of a complaint, which is not held in abeyance, on the respondent(s) named in the complaint. The proposed amendment will state, “Unless a matter is in abeyance,” the Commission shall serve a copy of the complaint on the respondent(s) by “any of the methods permitted by N.J.A.C. 6A:28-1.7.” The proposed amendment will help the Commission to more efficiently communicate with the parties, and will permit the Commission to effectuate service of complaints electronically, if necessary.

The Department proposes to amend N.J.A.C. 6A:28-6.6(g), which requires the Commission to 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 with specific conditions. The proposed amendment will replace “it first takes action at a public meeting to determine probable cause, or violation” with “the Commission finds that a school official has violated the Act” to clarify that the matter will remain confidential until the Commission makes a final decision .

N.J.A.C. 6A:28-6.7 Amendment of a Complaint

This section establishes the process by which complaints can be amended.

The Department proposes to amend N.J.A.C. 6A:28-6.7(d), which requires any amendment made by the complainant to be submitted in original format with two copies together with a copy for each respondent. The proposed amendment will include that the amendment shall be submitted “in the same manner as the original complaint” and will reduce

from two to one the number of copies that a complainant must file with the Commission. The proposed amendment will ease the filing requirements on complainants.

The Department proposes new N.J.A.C. 6A:28-6.7(e) to set forth that failure to file an amended complaint within the time given may result in the administrative dismissal of the complaint. This proposed provision is necessary to prevent unreasonable delay in the processing of complaints, and to ensure that complaints are adjudicated in a timely fashion.

Subchapter 7. Filing of Answers

This subchapter sets forth the process for filing an answer and for requesting an extension of time to file an answer. The subchapter also establishes the required contents of an answer and the time frame for filing an answer.

The Department proposes to amend the subchapter heading to “Filing of Written Statements.”

The Department proposes to amend the process by which respondents respond to a complaint to improve efficiency and timely resolution of matters.

In current practice, a respondent who has been served with a complaint can file either a motion to dismiss (pursuant to existing Subchapter 8) or an answer (pursuant to Subchapter 7). If a respondent files a motion to dismiss, the complainant is then provided with the opportunity to file a reply. After the respondent files a motion to dismiss and the complainant files a reply, the Commission reviews the matter at its monthly meeting, and determines whether to grant the motion to dismiss based on the standard currently set forth in N.J.A.C. 6A:28-8.3. The Commission’s determination on a motion to dismiss is then affirmed in a written decision that is adopted at a subsequent meeting. If a motion to dismiss is denied, then the respondent is directed to file an answer. If a motion to dismiss is granted, then the matter is concluded.

If a respondent files an answer, whether immediately following service of the complaint or after respondent’s motion to dismiss is denied, then the Commission will, depending on the nature of the allegations in the complaint, (1) review the matter at another monthly meeting to determine whether probable cause exists for the allegations in the complaint or (2) transmit the matter to the Office of Administrative Law (OAL). If the Commission reviews the matter for probable cause, a written decision affirming its evaluation and conclusions will be adopted at a subsequent meeting. If the matter is dismissed, no further action will be taken. If probable cause is found, then the matter is transmitted to OAL.

Instead of permitting a respondent to file either a motion to dismiss or an answer, the Department proposes to limit the responsive pleading to a written statement, which is the only requirement mandated by N.J.S.A. 18A:12-29. As part of the written statement, a respondent will be required to provide the defenses to the allegations in the complaint. A respondent will still be able to request that a complaint be dismissed if the respondent provides the basis for the request for dismissal. By not requiring respondents to choose among types of responsive pleadings to file, the Commission expects to streamline the process, allowing the Commission to render final determinations and/or transmit matters to the OAL more quickly. The Department expects that this change will help reduce the overall duration of a matter in favor of a more prompt resolution.

Therefore, the Department proposes to amend the headings of the subchapter’s sections to replace “an answer” with “a written statement” to reflect that a written statement, as opposed

to an answer, must be filed with the Commission following receipt of a complaint. The Department also proposes the same amendment throughout the subchapter, where appropriate.

N.J.A.C. 6A:28-7.1 Process for Filing an Answer

This section sets forth the process for filing an answer.

The Department proposes to amend N.J.A.C. 6A:28-7.1(a), which requires a respondent to file with the Commission an original and two copies of an answer and to serve a copy of the answer on the complainant. The proposed amendments will reduce from two to one the number of copies that a complainant must file. The Department also proposes to amend the second sentence, which requires proof of service to be submitted, to specify that the proof of service is “on each complainant” and that it must be submitted “to the Commission.”

N.J.A.C. 6A:28-7.2 Contents of an Answer

This section sets forth the required contents of an answer.

The Department proposes to amend the first sentence of N.J.A.C. 6A:28-7.2(a), which requires the respondent to file a written statement under oath, which shall constitute the answer to the complaint, upon receipt of the complaint from the Commission. The proposed amendment will delete “which shall constitute the answer to the complaint” since an answer no longer will be required. The Department also proposes to amend the second sentence, which requires the answer to fully and completely advise the parties and the Commission as to the nature of the respondent’s defenses for each allegation and to admit or deny each allegation set forth in the complaint. The proposed amendments will add “including any grounds upon which dismissal should be granted” after “each allegation” to permit respondents to request that a complaint be dismissed. The proposed amendments also will add “with specificity” after “set forth in the complaint” to require respondents to admit or deny the allegations in the complaint with specificity. The Department further proposes to delete the third sentence, which requires the respondent to respond directly to each allegation set forth in the complaint, because the previous sentence regarding the admittance or denial of the allegations with specificity already explains the process sufficiently. The Department further proposes to add at the end that evidentiary support must be provided, when possible, pursuant to the standards in existing N.J.A.C. 6A:28-10.3 (proposed for recodification as new N.J.A.C. 6A:28-9.3).

The Department proposes new N.J.A.C. 6A:28-7.2(b)1 to require a respondent to properly serve the complainant if the respondent alleges that a complaint is frivolous. The proposed amendment will codify current practice.

The Department proposes to recodify existing N.J.A.C. 6A:28-7.2(b)1 as new N.J.A.C. 6A:28-7.2(b)2.

The Department proposed to amend N.J.A.C. 6A:28-7.2(c), which requires the respondent to sign the answer under oath. The proposed amendment will delete “under oath” and replace the language with “A written statement shall be signed by the respondent(s), and the respondent(s) shall certify as to the accuracy of the written statement.” The proposed amendment will make the process easier for respondents to file a written statement.

N.J.A.C. 6A:28-7.4 Extension of the Time for Filing an Answer

This section sets forth the process for obtaining an extension of time for filing an answer.

The Department proposes to amend N.J.A.C. 6A:28-7.4(a), which allows the Commission to extend the time for the filing of an answer if the respondent submits a written application for an extension, the application was received by the Commission prior to the expiration of the time for filing an answer, and a copy of the application was served upon all complainants. The proposed amendments will delete the requirements for a copy of the application to be served on all complainants and, instead, require that a respondent provide the Commission with respondent's adversary's position on the request for an extension to file a written statement. The proposed amendments will clarify the process that needs to be followed and will codify current practice.

The Department also proposes to delete N.J.A.C. 6A:28-7.4(a)1, which requires the respondent to demonstrate a good faith effort to obtain the consent of the complainant prior to applying for an extension of time if the complaint alleges solely a violation of the Code of Ethics for School Board Members. The proposed deletion is a result of the amendment proposed at N.J.A.C. 6A:28-7.4(a) .

The Department proposes to amend N.J.A.C. 6A:28-7.4(b), which allows requests for extensions that are opposed by one or more of the parties to be granted upon a finding of good cause shown. The proposed amendments will delete "by one or more of the parties" and add "at the discretion of the Commission" after "granted." The proposed amendments will clarify that the Commission may still grant an extension, if good cause is shown, even if the extension is opposed by an adversary.

Subchapter 8. Motion to Dismiss

This subchapter establishes the process for a respondent's filing of a motion to dismiss a complaint in lieu of an answer, the response to the motion, and the Commission's review of the motion.

The Department proposes to delete this subchapter because the option to file a motion to dismiss will be replaced by the requirement for all respondents to file a written statement following receipt of a complaint. As previously explained, the Department has proposed to allow only a written statement to be filed in an effort to streamline and expedite the processing of complaints. Although respondents will not be permitted to file a motion to dismiss, they can still request that a complaint be dismissed as part of a written statement.

Subchapter 9. Subpoenas

This subchapter explains the process for the issuance of subpoenas in connection with the complaints involving violations of the Act.

The Department proposes to recodify existing Subchapter 9 as new Subchapter 8.

Subchapter 10. Review of Complaints

This subchapter establishes the procedures by which the Commission reviews complaints.

The Department proposes to recodify existing Subchapter 10 as new Subchapter 9.

N.J.A.C. 6A:28-10.2 Administrative Dismissals

This section details the circumstances in which the Commission may administratively dismiss a matter.

The Department proposes to amend recodified N.J.A.C. 6A:28-9.2(a)4, which allows the Commission to dismiss a complaint if 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 proposed amendments will add “or a trustee” after “other than a board member” to clarify that trustees are included and must follow the Code of Ethics for School Board Members.

N.J.A.C. 6A:28-10.3 Evidence Rules

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

The Department proposes to amend the existing rule to delete “investigatory” because the Commission holds evidentiary hearings as the charges are not criminal. The Department also proposes to recodify the rule as N.J.A.C. 6A:28-9.3(a) and to add a statement that the rules of the OAL apply if an evidentiary hearing is scheduled before the Commission. The proposed amendment lays out how a matter will be adjudicated. The Department also proposes to add that evidence may include, but is not limited to, meeting minutes, meeting agendas, certifications, affidavits, and any other relevant evidence.

The Department proposes new N.J.A.C. 6A:28-9.3(a)1 to require specific parts of evidence that support the claim of the alleged violation(s) to be highlighted or otherwise identified. The proposed paragraph also states “[p]arties shall include an index of the highlighted material, identifying the page number or location within the document(s) where the highlighted information is located.” It also specifies that parties must provide 10 copies of the evidence they plan to present for distribution to the Commission members for use at the hearing.

The Department proposes new N.J.A.C. 6A:28-9.3(a)2 to require parties to prepare 10 copies to present to the Commission. The Department proposes new N.J.A.C. 6A:28-9.3(a)3, to require parties to provide their adversary with copies of the evidence within 10 days of the hearing, unless otherwise agreed by the Commission and the parties.

The Department proposes new N.J.A.C. 6A:28-9.3(a)4 to state that failure to provide the materials list at N.J.A.C. 6A:28-9.3(a)1 through 3 may result in the Commission barring the admission of the proposed evidence. The proposed paragraph sets forth the ramifications if evidence is not submitted in accordance with this section.

N.J.A.C. 6A:28-10.4 Frivolous Filings

This section sets forth the process by which the Commission may deem a complaint to be frivolous.

The Department proposes to amend recodified N.J.A.C. 6A:28-9.4(b)1, which allows the Commission to take action pursuant to N.J.A.C. 6A:28-1.6 if a complainant(s) who is a school official fails to pay the fine within 30 days after receipt of the decision imposing the sanction. The proposed amendment will add “or as otherwise set forth in this chapter” after “pursuant to N.J.A.C. 6A:28-1.6” because school officials are required to abide by, and are accountable to, the rules and penalties set forth in the entire chapter.

The Department proposes new N.J.A.C. 6A:28-9.4(c) to state that 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 outlined at N.J.A.C. 6A:28-1.6, directing a complainant to show cause as to why the complaint should not be deemed frivolous. When the Commission issues the Order to Show Cause, the Commission will provide the reason why it finds that a complaint frivolous.

The Department proposes new N.J.A.C. 6A:28-9.4(d) to state that failure of the complainant to timely pursue the case, including failure to amend a complaint and failure to attend a hearing, may be viewed as indicia of a frivolous complaint.

The Department anticipates that the proposed provisions will help to further deter complainants from filing complaints that do not have merit.

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

This section details the procedure by which the parties can notify the Commission that a matter has been settled.

The Department proposes to amend recodified N.J.A.C. 6A:28-9.5, which allows parties to notify the Commission of settlement at any time prior to the finding of a violation for complaints alleging solely a violation of the Code of Ethics for School Board Members. The proposed amendments will permit the parties to provide the Commission with a written notification of settlement at any time prior to the finding of a violation. The proposed amendments also will delete “[f]or complaints alleging solely a violation of the code of ethics for school board members” because both parties can agree upon a settlement in all matters that come under the School Ethics Act, not just when the allegations concern alleged violations of the Code of Ethics for School Board Members.

The Department proposes to delete existing N.J.A.C. 6A:28-10.5(a)1, which requires the complainant to officially withdraw the complaint in writing where settlement occurs prior to the filing of an answer. The provision is proposed for deletion because it will be contained in new N.J.A.C. 6A:28-9.5.

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

This section sets forth the process for withdrawing a complaint when the complaint alleges violations of the Code of Ethics for School Board members or prohibited acts.

The Department proposes to amend the first sentence at recodified N.J.A.C. 6A:28-9.6(b), which allows the complainant to submit, prior to a finding of probable cause, a written request to the Commission to withdraw a complaint alleging prohibited acts. The Department proposes to add “by the Commission” after “prior to a finding of probable cause.” The proposed amendment will clarify the timeline that a complainant has to withdraw a complaint.

N.J.A.C. 6A:28-10.7 Processing of Complaints Alleging Solely Prohibited Acts

This section establishes the procedure for processing of complaints alleging solely violations of N.J.S.A. 18A:12-24, Prohibited acts. When the Commission finds probable cause for the allegations in a complaint, the Commission decides whether to retain the matter for a hearing, decide the matter summarily (if all allegations are admitted), or transmit the matter to the OAL for a hearing. Consistent with current practice, 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, the complainant shall no longer be a party, and the Commission's attorney shall litigate the allegations for which probable cause was found. If only alleged violations of N.J.S.A. 18A:12-24.1 remain, the complainant shall litigate the allegations for which probable cause was found.

The Department proposes significant amendments at N.J.A.C. 6A:28-10.7 and 10.8, and to delete N.J.A.C. 6A:28-10.9 to streamline the Commission's process for reviewing or processing complaints. Under the proposed amendments, the Commission will review all complaints for probable cause, regardless of the nature of the allegations.

After a complaint is served and an answer filed, how the matter is processed or reviewed by the Commission currently depends on whether the complainant alleged solely violations of prohibited acts at N.J.S.A. 18A:12-24 (N.J.A.C. 6A:28-10.7), solely violations of the Code of Ethics for School Board Members at N.J.S.A. 18A:12-24.1 (N.J.A.C. 6A:28-10.8), or violations of both statutes (N.J.A.C. 6A:28-10.9).

If a complaint alleges solely violations of N.J.S.A. 18A:12-24 (prohibited acts), N.J.A.C. 6A:28-10.7 stipulates that the Commission will review the matter for probable cause. If probable cause is found, then the Commission issues a decision regarding its findings, the matter is transmitted to the OAL, the complainant is no longer a party to the complaint, and the Commission's attorney litigates the allegations for which probable cause was found. If the Commission does not find probable cause, the matter is dismissed.

If a complaint alleges solely violations of N.J.S.A. 18A:12-24.1 (Code of Ethics for School Board Members), N.J.A.C. 6A:28-10.8 stipulates that the Commission does not review the matter to determine whether there is probable cause. Instead, the Commission determines whether to retain the matter for a hearing, transmit the matter to the OAL, find a violation, or dismiss the matter. In all circumstances, the complainant must prove the alleged violations of N.J.S.A. 18A:12-24.1. If the Commission determines to transmit the matter to the OAL, it is up to the complainant or the complainant's attorney, not the Commission's attorney, to appear at the OAL and to prove the case before the OAL.

If a complaint alleges violations of both N.J.S.A. 18A:12-24 and 24.1, N.J.A.C. 6A:28-10.9 stipulates that the Commission will first review the matter to determine whether there is probable cause for *any* of the alleged violations of N.J.S.A. 18A:12-24. If the Commission does not find probable cause for any violation of N.J.S.A. 18A:12-24, those allegations are dismissed and the remaining N.J.S.A. 18A:12-24.1 allegations (Code of Ethics for School Board Members) are transmitted to the OAL, and the complainant is responsible for litigating the remaining allegations. If the Commission finds probable cause for any violation of N.J.S.A. 18A:12-24, it then determines whether there is probable cause for the alleged violations of N.J.S.A. 18A:12-24.1. Following the issuance of a decision regarding probable cause, the Commission transmits to the OAL the allegations for which it found probable cause, dismisses the complainant as a party, and the Commission's attorney litigates the allegations for which probable cause was found - both N.J.S.A. 18A:12-24 and 24.1.

If the Commission does not find probable cause for *any* violation of N.J.S.A. 18A:12-24, it does not review the alleged violations of N.J.S.A. 18A:12-24.1 to determine whether there is probable cause. Instead, the Commission issues a decision indicating it did not find probable cause for the alleged violations of N.J.S.A. 18A:12-24. The Commission then transmits the alleged violations of N.J.S.A. 18A:12-24.1 to the OAL. The complainant must prove the violations of N.J.S.A. 18A:12-24.1. The complainant is responsible for appearing before the

OAL to pursue the case and prove the violations of the Act. The Commission's attorney will not appear at the OAL, or take any role in the case at the OAL.

The Department anticipates that the review of all complaints for probable cause will significantly reduce the number of matters that are transmitted to the OAL for a hearing. With fewer cases transmitted to the OAL, the Department expects that matters will be resolved in a more expedited manner.

The Department proposes to change the heading of new N.J.A.C. 6A:28-9.7 to "Probable cause determinations."

The Department proposes to delete existing N.J.A.C. 6A:28-10.7(a), which allows the Commission to convene a conference prior to making a probable cause determination and sets forth the process for notifying complainant(s) and respondent(s) about the conference and for pre-conference and post-conference documentary submissions.

The Department proposes to recodify existing N.J.A.C. 6A:28-10.7(b) as new N.J.A.C. 6A:28-9.7(a). The Department also proposes to amend the rule, which currently requires the Commission to decide, after the filing of an answer and the completion of any conference, whether probable cause exists by determining whether there is a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that the Act has been violated. Instead, the proposed amendments will require the Commission to decide, after a written statement has been filed, whether probable cause exists for the allegations in the complaint. The proposed amendments also will delete the reference to "a reasonable ground of suspicion" because proceedings before the Commission are administrative and not criminal in nature; therefore, the language proposed for deletion is not applicable to the Commission's review. The proposed amendments further will state that 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 Act has been violated.

The Department proposes to delete existing N.J.A.C. 6A:28-10.7(b)1, which states that the complainant shall no longer be a party to the complaint upon a finding of probable cause. The regulations also states that the attorney for the Commission shall litigate those allegations in the complaint which the Commission found probable cause to credit when the Commission transmits a complaint to the OAL.

The Department proposes new N.J.A.C. 6A:28-9.7(b) to require the Commission to issue a written notice to the parties if the Commission does not find probable cause and to dismiss the matter. The proposed rule also states that dismissal in this circumstance shall constitute final agency action.

The Department proposes to amend recodified N.J.A.C. 6A:28-9.7(c), which requires the Commission, where it finds probable cause to credit any allegations in a complaint, to issue a written notice to the parties setting forth the findings. Instead, the proposed amendments will require the Commission, if it finds probable cause, to issue a written notice to the parties and for the matter to be processed in accordance with N.J.A.C. 6A:28-9.8. The regulation, as proposed for amendment, also states that findings of probable cause shall not constitute final agency action.

The Department also proposes to delete existing N.J.A.C. 6A:28-10.7(c)1 and 2, which set forth the requirements for the written notice to the parties based on whether the respondent has admitted the material facts alleged in the complaint and allow the Commission to make a determination of violation on a summary basis or to transmit the matter to the OAL for a hearing.

The Department proposes to delete existing N.J.A.C. 6A:28-10.7(d), which requires the Commission to issue a written notice to the parties when the Commission finds no probable cause to proceed with the complaint and requires the complaint to be dismissed.

The Department proposes to delete existing N.J.A.C. 6A:28-10.7(e), which states that findings of probable cause pursuant to existing N.J.A.C. 6A:28-10.7(c) shall not constitute final agency action. The provision will be contained at recodified N.J.A.C. 6A:28-9.7(c) as proposed for amendment.

The Department proposes new N.J.A.C. 6A:28-9.7(d) to state that a decision rendered pursuant to N.J.S.A. 18A:12-29.b means a majority vote of the Commission regarding probable cause.

N.J.A.C. 6A:28-10.8 Processing of Complaints Alleging Solely a Violation of the Code of Ethics for School Board Members

This section establishes the procedure for processing of complaints alleging solely a violation of the Code of Ethics for School Board Members.

The Department proposes to amend the section heading to “Processing of complaints after a finding of probable cause.”

The Department proposes to delete existing N.J.A.C. 6A:28-10.8(a), which requires the processing of complaints alleging solely a violation of the code of ethics for school board members to be in accordance with N.J.S.A. 18A:12-29.b. The existing rule also states that a decision rendered pursuant to N.J.S.A. 18A:12-29.b means a majority vote of the Commission during a public session of its meeting to do one of the following: grant or deny a motion to dismiss in whole or in part; retain a complaint for a hearing by the Commission; transmit a complaint to the OAL for a hearing; find a violation of the Act; or dismiss a complaint.

The Department proposes to delete existing N.J.A.C. 6A:28-10.8(b), which states the complainant has the burden to prove factually a violation under the code of ethics for school board members as provided for at N.J.A.C. 6A:28-6.4.

The Department proposes new N.J.A.C. 6A:28-9.8(a) to require the Commission, if it finds probable cause for the allegations in a complaint, to provide the parties with written notice of the Commission’s findings.

The Department proposes new N.J.A.C. 6A:28-9.8(a)1 to require the written notice from the Commission to also indicate how the matter will be processed. The Commission may either retain the matter for a hearing; determine a violation on a summary basis; or transmit the matter to the OAL for a hearing if one or more material facts are in dispute. If the Commission retains a matter for a hearing, it will require the parties’ written consent in all matters, except those solely involving the Code of Ethics for School Board Members.

The Department proposes new N.J.A.C. 6A:28-9.8(a)2 to state that the complainant shall no longer be a party 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. The proposed rule also will require the attorney for the Commission to litigate the allegations in the complaint for which the Commission found probable cause to credit.

The Department proposes new N.J.A.C. 6A:28-9.8(a)3 to require, in cases where 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 but found probable cause to credit a violation(s) of only

N.J.S.A. 18A:12-24.1, the complainant, or an attorney of complainant's choosing, to litigate the allegations in the complaint for which the Commission found probable cause. The proposed rule also will require the complainant to prove the allegation(s) in accordance with N.J.A.C. 6A:28-6.4.

The Department proposes to recodify existing N.J.A.C. 6A:28-10.8(c), which requires the hearing to be conducted in accordance with the rules of the OAL when the Commission retains a complaint for a hearing, as new N.J.A.C. 6A:28-9.8(b). The Department proposes to amend recodified N.J.A.C. 6A:28-9.8(b)1, which requires any pre-hearing documentary submissions to be provided to the Commission and the adversarial party(ies) at least 10 calendar days prior to the hearing. The proposed amendment will add "[p]arties shall supply their adversary(ies) and the Commission with any" at the beginning to clarify that each party must supply the other and the Commission with the proper documentation. The Department also proposes to add "or as otherwise agreed to by the Commission and the parties" at the end to clarify that the parties and the Commission can agree to modify the deadline by which parties must submit pre-hearing submissions. The Department also proposes new N.J.A.C. 6A:28-9.8(b)3 to require the parties to provide their adversary(ies) and the Commission with sufficient copies of exhibits that are marked for identification to be entered into evidence. "Sufficient" means 10 copies for the Commission plus one for each adversary. The Department proposes to recodify existing N.J.A.C. 6A:28-10.8(c)3 as N.J.A.C. 6A:28-9.8(b)4. The Department also proposes to amend the paragraph, which states the Commission will entertain motions to dismiss from the respondent upon the conclusion of the complainant's case as set forth at N.J.A.C. 6A:28-8.1(d). The proposed amendments will delete the cross reference because N.J.A.C. 6A:28-8.1 is proposed for deletion.

The Department proposes new N.J.A.C. 6A:28-9.8(c) to establish the procedure that will apply when the Commission decides to review a complaint on a summary basis, which occurs only when the material facts are not in dispute. The proposed subsection states the respondent shall be afforded 20 days to submit a statement setting forth the reason(s) why the respondent should not be found in violation of the Act. The proposed subsection also requires the statement to be limited to the allegation(s) for which the Commission has found probable cause. The proposed subsection also will allow the Commission to make a determination of violation on a summary basis after expiration of the time for submission of the respondent's statement.

The Department proposes new N.J.A.C. 6A:28-9.8(d) to state that when the Commission transmits a matter to the OAL for a hearing in accordance with N.J.S.A. 18A:12-29.a, the hearing shall be conducted pursuant to the Uniform Administrative Procedure Rules at N.J.A.C. 1:1. The proposed subsection also states that the hearing shall be limited to the allegation(s) in the complaint for which the Commission found probable cause.

The Department proposes to recodify existing N.J.A.C. 6A:28-10.8(d) as new N.J.A.C. 6A:28-9.8(d)1. The Department proposes to amend recodified N.J.A.C. 6A:28-9.8(d)1, which states, where a matter is transmitted to the OAL and the respondent fails to appear before the OAL and the matter is returned to the Commission for disposition, the allegation(s) in the complaint shall be deemed admitted and the Commission may proceed to a determination of a violation on a summary basis. The Department proposes to amend the first part of the paragraph to state "[w]hen the OAL returns a matter to the Commission for disposition following a respondent's failure to appear, the respondent may provide the Commission, within 13 days of receiving notice that the matter has been returned to the Commission, a written explanation regarding the reason(s) respondent failed to appear." The Department also proposes to add "[i]f the Commission does not receive respondent's written explanation or determines that the written explanation is not satisfactory," before "the allegation(s) in the complaint."

N.J.A.C. 6A:28-10.9 Processing of Complaints Alleging Both Prohibited Acts and a Violation of the Code of Ethics for School Board Members

This section establishes the procedure for processing of complaints alleging both prohibited acts and a violation of the Code of Ethics for School Board Members.

As previously explained, the Department proposes to delete this section because the Commission will be reviewing all complaints for probable cause regardless of whether the complaints allege prohibited acts, a violation of the Code of Ethics for School Board Members, or both.

N.J.A.C. 6A:28-10.10 Adjournment of Hearings

This section establishes the procedure by which a hearing may be adjourned by the parties.

The Department proposes to recodify existing N.J.A.C. 6A:28-10.10 as new N.J.A.C. 6A:28-9.9.

N.J.A.C. 6A:28-10.11 School Ethics Commission Determination on Complaints

This section discusses the Commission's authority with regard to the resolution of complaints.

The Department proposes to recodify existing N.J.A.C. 6A:28-10.11 as new N.J.A.C. 6A:28-9.10.

The Department proposes to amend the second sentence of recodified N.J.A.C. 6A:28-9.10(a), which requires the Commission's decision to be in writing and to set forth its findings of fact, conclusions of law, and penalty recommendation, pursuant to N.J.A.C. 6A:28-10.12, in any case where a violation is found. The proposed amendments will replace "and penalty recommendation, pursuant to N.J.A.C. 6A:28-10.12, in any case where a violation is found" with "[i]n any case where a violation is found, the Commission's decision shall also include a recommended penalty as authorized by N.J.S.A. 18A:12-29.c" to cite the statutory authority, as opposed to the regulatory.

The Department proposes to amend recodified N.J.A.C. 6A:28-9.10(b), which states a determination to dismiss a complaint shall constitute final agency action. The proposed amendment will add that the determination shall be appealable directly to the Appellate Division of the Superior Court to explain the process for filing an appeal of the Commission's decision to dismiss a complaint. This process is also referenced elsewhere in the chapter.

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

This section sets forth the process for the Commission's recommendation of a sanction to the Commissioner.

The Department proposes to recodify existing N.J.A.C. 6A:28-10.12 as new N.J.A.C. 6A:28-9.11.

The Department proposes new N.J.A.C. 6A:28-9.11(a)1 to allow the Commission to recommend an enhanced penalty in instances where a school official was on notice that an

activity would violate the Act or a school official was previously sanctioned for behavior that violated the Act. This proposed addition is intended to dissuade school officials from repeating behaviors that violate the Act.

The Department proposes to amend recodified N.J.A.C. 6A:28-9.11(d), which, in part, requires the Commission to direct that an adopted resolution concerning the Commissioner-imposed censure, suspension, or removal of a school official be read at the next regularly scheduled public meeting of the district board of education or board of trustees. The proposed amendments will specify that the resolution must be read aloud at the beginning of the next regularly scheduled public meeting. The proposed amendments will ensure that the public is aware of penalties imposed on local school officials.

The Department also proposes to recodify the provision at recodified N.J.A.C. 6A:28-9.11(d) that requires a Commission resolution read by the district board of education or board of trustees to be posted for not less than 30 days in such places as the board posts its public notices as new N.J.A.C. 6A:28-9.11(d)1. The Department also proposes new N.J.A.C. 6A:28-9.11(d)2 to require the resolution to also be published online on the school district's, the charter school's, or the renaissance school project's website, if available, for a period of no less than 30 days. The Department further proposes new N.J.A.C. 6A:28-9.11(d)3 to require the reading of the resolution to be memorialized in the district board of education's or the board of trustees' minutes of the meeting and a copy of the approved minutes to be provided to the Commission. The proposed amendments will help ensure public transparency and accountability.

The Department proposes new N.J.A.C. 6A:28-9.11(e) to establish that a written decision of the Commission will create a record of the penalty it would have recommended if not for the resignation of a board member or trustee who resigns following the finding of a violation of the Act and thereby limiting the penalty that the Commission can recommend. The proposed subsection is intended to make school officials aware of the full extent of the potential penalty that can be imposed for similar conduct, regardless of whether a school official has resigned. The Department maintains that the safeguards are necessary as a matter of public policy to ensure that all school officials are accountable for their actions.

Subchapter 11. Appeals

This subchapter establishes the procedures for appealing a determination by the Commission.

The Department proposes to recodify existing Subchapter 11 as new Subchapter 10.

The Department proposes to amend recodified N.J.A.C. 6A:28-10.1(a), which states that any appeal of the Commission's determination regarding a violation of the Act shall be to the Commissioner in accordance with N.J.A.C. 6A:4, Appeals. The Department proposes to add "or the Commission's recommended penalty" after "determination." This proposed amendment will clarify under which circumstances a school official can file an appeal to the Commissioner.

The Department proposes to amend recodified N.J.A.C. 6A:28-10.1(b), which states that any complaint that is dismissed pursuant to this chapter shall be deemed a final decision and may only be appealed to the Appellate Division of the Superior Court. The Department proposes to add "in its entirety" after "dismissed." The proposed amendment will clarify that only after all the counts in a complaint are dismissed will the complaint be considered final and, therefore, appealable.

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

Social Impact

N.J.A.C. 6A:28, School Ethics Commission, was promulgated to ensure that the conduct of school officials must hold the respect and confidence of the public, and that school officials must avoid conduct that violates the public trust or creates a justifiable impression among the public that this trust is being violated. The rules affect approximately 17,500 board members, trustees, and administrators of school districts, charter schools, and renaissance school projects.

The rules proposed for readoption with amendments and the new rules offer the public guidance with respect to the Commission's jurisdiction, along with the process for filing complaints and appearing before the Commission. The Commission reviews approximately 70 to 80 complaints each year, many of which are filed by complainants who do not have an attorney. The Commission also issues 25 to 35 advisory opinions annually.

The rules proposed for readoption with amendments and the new rules will reduce the type of responsive pleading that respondents can file from an answer or motion to dismiss, to a written statement. With the elimination of the option to file an answer or motion to dismiss in favor of a single, written statement, it is anticipated that the Commission will be able to process cases more quickly, as there will not be a need for the Commission to review a case at multiple meetings. The rules proposed for readoption with amendments and the new rules will also delineate the penalties that the Commission will recommend if school officials fail to file disclosure statements in a timely fashion, and if board members and trustees fail to timely complete training. By detailing the penalties that the Commission will recommend for non-compliance, the rules proposed for readoption with amendments and the new rules will place all school officials, board members, and trustees on notice of the ramifications. This, in turn, should ensure more timely compliance. By requiring district boards of education and charter school or renaissance school project boards of trustees to read resolutions detailing the nature of penalties imposed for non-compliance, the rules proposed for readoption with amendments and the new rules will ensure the public will be fully aware of whether school officials are compliant with their statutory and regulatory obligations.

The rules proposed for readoption with amendments and the new rules also aim to modernize the Commission's processes and procedures, and with such amendments, the Commission is aiming to ease the burden on parties in favor of more user-friendly platforms, such as email.

The rules proposed for readoption with amendments and the new rules clarify the minimum requirements of what must be in a complainant, with the objective of reducing the number of deficient complaints that are filed with the Commission. With more detailed information included in complaints, respondents can also more fully understand the nature of the allegations levied against them, and can respond accordingly.

Economic Impact

There is no clear and quantifiable economic impact of the rules proposed for readoption with amendments and the new rules associated with the training requirement for district board of education members and charter school and renaissance school trustees, as required by N.J.S.A. 18A:12-33, with the exception of annual membership dues school districts and charter schools already pay to the NJSBA. Specifically, the Act requires district board of education members and

charter school trustees to complete a training program on school district governance in their first, second, and third years of service. Additionally, within one year after each reelection or reappointment, the member or trustee is required to complete an advanced training program, which must include information on relevant changes to New Jersey school law and other information deemed appropriate to enable to member or trustee to serve effectively. NJSBA provides the training at no cost to district board of education members and charter school and renaissance school trustees.

The rules proposed for readoption with amendments and the new rules require all complaints, regardless of the nature of the allegations, to be subjected to a probable cause review. Requiring all matters to be reviewed for probable cause will likely lead to many more cases being dismissed before being heard on the merits by the Commission or by the OAL. This change will save time and expense for respondents who would have otherwise been required to defend against such allegations. By reducing the number of cases transmitted to the OAL, the rules proposed for readoption with amendments and the new rules should reduce the time and cost related to the hearing process itself.

By reducing the number of copies of complaints (and exhibits) that complainants need to file, and eliminating the need for complainants to notarize their signature, under oath, the rules proposed for readoption with amendments and the new rules will also result in unquantifiable cost savings for complainants. The ability to effectuate service on an adversary through email will also result in unquantifiable cost savings for individuals who would have otherwise paid to send and serve pleadings via certified mail.

The rules proposed readoption with amendments and the new rules further clarify the expectations of complainants when filing complaints, with the objective of reducing the number of deficient complaints that are filed with the Commission. By more clearly detailing such expectations, the rules proposed for readoption will result in unquantifiable cost savings for complainants and also will reduce the amount of time and effort it takes to prepare and submit a complaint.

Federal Standards Statement

There are no Federal requirements or standards that have an impact on the rules proposed for readoption with amendments and the new rules. N.J.A.C. 6A:28 is based on a State statute; therefore, a Federal standards analysis is not necessary.

Jobs Impact

The Department does not anticipate a creation or loss of jobs as a result of the rules proposed for readoption with amendments and the new rules.

Agriculture Industry Impact

The rules proposed for readoption with amendments and the new rules will not have an impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

A regulatory analysis is not required because the rules proposed for readoption with amendments and the new rules do not impose reporting, recordkeeping, or other compliance

requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Commission rules, by statute, apply exclusively to all school officials in public schools in the State of New Jersey. They do not apply to any officials in nonpublic institutions.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments and the new rules will have an insignificant impact on the affordability of housing in New Jersey. There is an extreme unlikelihood the rules proposed for readoption with amendments and the new rules would evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments and the new rules concern proceedings before the Commission.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and the new rules will have an insignificant impact on smart growth. There is an extreme unlikelihood the rules proposed for readoption with amendments and the new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments and the new rules concern proceedings before the Commission.

Racial and Ethnic Community Criminal Justice and Public Safety Impact Statement

There is an extreme unlikelihood that the rules proposed for readoption with amendments and the new rules would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the rules proposed for readoption with amendments and the new rules apply exclusively to the Commission and to school officials in public schools in the State of New Jersey.

Full text of the rules proposed for readoption and the proposed amendments and new rules follows (additions indicated in boldface **thus or *thus***; deletions indicated in brackets [thus]):