

TOWNSHIP OF UNION BOARD OF EDUCATION  
SPECIAL MEETING MINUTES – APRIL 10, 2018

NOTICE OF MEETING:

The special meeting of the Board of Education of the Township of Union was held on Tuesday, April 10, 2018 at 7:00 p.m. at the Administration Building, 2369 Morris Avenue, Union, New Jersey pursuant to the notice sent to each member. The purpose of this meeting is for Board member ethics training.

Mr. Nufrio called the meeting to order at 4:22 p.m.

PRESENT AT ROLL CALL:

Mr. David Arminio, Dr. Guy Francis, Mrs. Sherry Higgins, Mrs. Nancy Minneci, Mr. Jeffrey Monge, Mr. Vito Nufrio, Mrs. Nellis Regis-Darby, Mrs. Linda Richardson, Mrs. Mary Lynn Williams

ABSENT AT ROLL CALL:

None

ADMINISTRATORS PRESENT:

Mr. Gregory Tatum, Mrs. Annie Moses (arrived at 4:35), Mr. Gregory Brennan

ALSO PRESENT:

Mr. Paul Griggs, Esq., Mrs. Gwen Thornton (NJSBA field service representative)

Mr. Nufrio asked is there a problem with Mrs. Williams. Mrs. Williams stated we are fine. Mr. Nufrio stated I will call people out of order and I may actually ask that person to leave if it continues; that is also my prerogative.

Mr. Arminio led the Board in the Pledge of Allegiance.

Mr. Brennan read the statement required under the “Open Public Meetings Act”, a copy of which is on file in the office of the Board Secretary.

Mrs. Higgins read the District’s mission statement.

Mrs. Gwen Thornton facilitated ethics training to all the Board members.

Mrs. Thornton stated the School Ethics Act was created to help your community feel comfortable that you are accountable to them and that you deserve the public trust by making sure that Board members act in a way that is above board, completely transparent as well as conduct board business with honesty.

It is enforced through the School Ethics Commission and they meet once a month. They hear complaints against board members who had a complaint filed against them. As well as

using advisory opinions from board members who write to them to ask for advice prior to involving or engaging in a discussion on a particular topic or on an issue that they might have a particular conflict about. They also require on an annual basis to file a financial disclosure form. Those are due by April 30<sup>th</sup>. I am sure by now you received notification from the SEC and filled out those forms. It is now done all electronically. When you submit them they are also available to the public online. We also at NJSBA have to complete because we have to abide by the Code of Ethics as professional employees and staff members. Your school leaders are also required to fill them out.

The School Ethics Act also lays out the training requirements for board of education members. You recall as brand new board members you had to attend the new board member orientation – that is the training for year one. You are required to attend training in years 2 and 3 and the first year in any subsequent term. Just to make sure you are keeping up to date with the changes that are going on with the School Ethics Commission State law budgets and that is why you are required to do that particular course.

There are nine members on the SEC – two are board members, two are administrators and five are non-school officials. They are appointed by the Governor. They serve at his pleasure. Not more than five of the nine can be of the same political party to make sure that it is non-partisan. You should be aware of that and they meet once a month.

You can request an advisory opinion from the School Ethics Commission if you believe there could be an issue coming before the board that you may have a conflict with and you want to get their opinion before participating in discussions or before voting on a particular issue and that is always a good thing to do.

Advisory opinions are made public by the SEC if the SEC believes that an advisory opinion has a Statewide impact – all the names are removed so you would not know who originally filed and asked for that opinion. If they believe it is important for all board members to know, they will make an advisory opinion public. Ninety-five percent of all advisory opinions go directly back to the person who saw it and are not made public because most of them are so district specific that it wouldn't apply to boards across the State but the ones that do are made public absent any identifiable information around district or individuals who filed it.

Interestingly enough if you violate a public advisory opinion, the SEC takes a dimmer view of that violation than if you violate the ethics code. There is an expectation that you will know and be aware of, not only the ethics decision, but also the advisory opinions. So ignorance of either is not an excuse. The SEC has the authority to either reprimand, censure, suspend or remove a board member from their position as a board member. A reprimand is in a form of letter, a censure is a form of letter but it gets posted and read and has to be left up for 30 days. A suspension is for a finite period of time and a removal is very clear.

The SEC in one particular case wrote language that said if we had the ability to prevent you from ever holding any public office and not just as a board member, we would authorize that as well. If they find a particular violation to be so egregious, they will in fact remove you from the board of education.

The Code of Ethics – the first one is that you are responsible for withholding all the laws, rules and regulations of the State, because you are publicly elected and/or appointed officials. You must follow all State rules, regulations and requirements. Some boards had a problem with this when the PARCC assessments came into being and some boards wanted to not participate in PARCC for a whole host of reasons but they came to us that we want to pass a resolution that says that we are not going to participate and we had to tell them that is not your choice. You may not like the assessment, you may have valid points and not weighing in on the merits but it was in code, it was part of a regulation and therefore as a board of education, you are required to uphold those laws and regulations. Even the ones that you are not wild about.

You are required to make all decisions around the welfare of all children – not the football parents, singers parents, lacrosse team, girls field hockey team – but all students of all ages even if your child is only in the middle school, you have to look at the welfare of every child. What I tell my boards all the time – every group within your school district has the opportunity to have a voice. The public can get up to speak at a board meeting. The teachers have an association that has a grievance process. Your administrators have an association that has a grievance process. The only people that don't have a voice are the students so you need to be their voice, that is who you were elected by your community to represent – the very best interest and welfare of every one of the students. You need to make sure that when you are making decisions, you are making it from that lense – what is good for all children not my child, your best friends but of all children.

You are responsible for confining your board roll to planning, policy making, oversight and appraisal. You are not hired, you are not employees, you are elected officials responsible for providing oversight, policy development, helping to plan and for appraisal. The appraisal piece goes to the evaluation of the superintendent. You have one employee in this school district and that is the superintendent. You hold the superintendent accountable for his/her performance and he holds all other employees responsible for their performance. If you have a concern, you go to your employee not to the staff. They do not report to you. The superintendent is responsible and they report to him. You don't want to make sure that you involve yourself in the day-to-day operation of the district. The simplest example I can give you is by asking you this question – how many board members does it take to change a light bulb. Mr. Monge stated it isn't our job. Mrs. Thornton stated you know why because you are responsible for saying, we want there to be light – the superintendent is responsible for figuring out how many, what kind, where to put it – that is the point. You are the “what” people not the “how” people. It doesn't take any number of board members to change the lightbulb because it is not your job. Your job is to say we want light. The superintendent's job is to make that happen. I know that sounds like an overly simplistic example but it is a very clear one – you are responsible for the “what”; the “how” is the responsibility of your professional educational staff – your educators and administrators.

It is your responsibility to carry out with your colleagues the decisions that will make the district hum and student achievement increase. No individual board member has any authority outside of sitting at this table at a duly advertised meeting of the board of education. Once this meeting is adjourned, you have no more authority in this community than I do and I don't live here. Individually, no one board member has any authority except when you are sitting here.

Which means you cannot direct staff – it is not your role. Your job is to see that the schools are well run but not to run them.

Let's consider a couple of these – a board member going directly to a guidance secretary and demanding copies of their scholastic aptitude test reports – absolutely not. You don't have the authority to demand anything from any staff member. Even if you kindly requested it – it wouldn't make a difference, it is still not your job. If you need to see those and it is something that majority of the full board wants to look at because it is of concern and interest of the full board, then the full board and only the full board can have the superintendent act by passing a motion and directing the superintendent to move that forward.

Dr. Francis asked it can't just be the committee? Mrs. Thornton stated no, committees are not authorized to have the board act. The committees only have the authority to make recommendations to the full board and the full board has a discussion and takes action on the recommendations from the committee.

A board member sends a letter to the superintendent claiming the superintendent's treatment of his wife, a district employee – absolutely not. If you have a family member that is employed in the district, you must recuse yourself and not participate in any way of setting terms and conditions of employment or any manner interfering with their employment – on a positive side or negative side. It doesn't matter which.

A board member sends a confidential memo to other members criticizing a principal's performance – no. If you have a concern about a staff member or you are hearing from the public that there is a concern around a staff member, the appropriate thing for you to do as a board member is to let the superintendent know. It goes to the first rule of effective board governance – no surprises. You don't surprise the superintendent and the superintendent does not surprise the board. If you are hearing something out there in the community that there is an issue or concern – what you should do is contact the superintendent and make him aware of it and he will address it in whatever fashion is appropriate depending on the circumstances.

A board member homeschools his children and bases every decision on a reducing spending because he homeschools – is that ethical? No, it is not. The ethics commission actually found against this board member because these are actual cases and in that instance he was only acting on behalf of his own personal interest and not around the welfare of all children in the school district. You are always welcomed to homeschool your children if you so choose but if you want to be a board member, you still have to consider all those children in the district that are not being homeschooled.

Or if you are a charter school parent but you sit on the public board of education again the same thing applies – you can't make decisions based solely on the welfare and wellbeing of a charter school. You have to look at the entire school district.

Recognizing that the authority rests with the full board and we talked about this a little bit before. You cannot take any kind, or should you make any kind, of personal promise or commitment which might compromise the board. Very often because board members are

volunteers and good people and people may come to you with their issues or their concerns, you might think the right thing to do is to try to solve the problem but again that is not your role – you are the “what” people not the “how”. You don’t have the authority to solve individual parental problems with busing, activities, sports, classroom teacher assignments – what you can do and what is most important for you to do is to provide parents and community members with access to the system. Help them to understand who they need to contact to get a solution to whatever concerns they may have. If it is a transportation issue – you need to say to the parent here is the number for the Director of Transportation – you need to reach out to this individual, share with them what your concern is and they will be able to do something on your behalf. Most members of the public think you may have more authority to do things than you actually do. You can help them best by providing them with accurate information around who they should speak to. If someone comes to you with a concern about something that happened in a classroom, you need to direct them up the chain of command – did you talk to your child’s teacher? After you have spoken to the teacher and if you are not satisfied with that resolution, talk to the principal and if you are still not satisfied with the resolution, then you need to speak with the Assistant Superintendent in charge of curriculum and instruction – if it is a curriculum issue. If ultimately that is still not a resolution for you, you can speak to the superintendent because issues may indeed come to you if there is a failure of an administrative solution but if you involve yourself, and think of yourself as the supreme court, so you can only adjudicate those issues where all of the lower courts – meaning all of the other staff in the district – have not been able to resolve an issue successfully. Typically that is only what the supreme court hears is when there hasn’t been a resolution to the issue at the lower levels as you move through the court system. It is very much akin to that which is why you don’t want to involve yourself back there because at some point it might get to here. If it got to here and you have done that you would not be able to participate in this level – you would have to recuse yourself and not participate.

Refusing to surrender your judgement to special interests or partisan political groups or personal gain or the gain of friends – you need to make decisions based on your district goals. What are you focused on and always around your policies. Your policies provide you with the framework of all of your decision making. As you are making decisions you are looking at your policy and making those determinations based on what you are working on, district goals in a given year so you need to maintain your independence of judgement. One of our concerns obviously was with the movement of the elections from April to November – there was a really large concern that a number of us had on staff as well as a lot of board members had too that the elections would become more political and there might be more involvement of larger political entities that hadn’t paid very much attention to boards of education and in some communities that has happened and often times it has created great difficulties for boards of education. You need to remember that you sit on your board of education in a non-partisan way. Even with a big “D” and big “R” those are not what gets represented at a board of education. It is non-partisan. It is not aligned.

Mr. Monge stated what teeth does that have? Someone goes and runs for a board of ed based on being a democratic candidate when you know it is smoke and mirrors. Mrs. Thornton stated there are not teeth to it. Mr. Monge stated while you have that it is individuals that basically have to police themselves to be ethical and to follow that road. Mrs. Thornton stated absolutely and what I would tell you is that 9.9% of all boards’ behavior gets policed by the

board. It is your responsibility to police yourselves as a board. It is not one board members responsibility to police the board. It is the entire boards responsibility to police itself. Certainly it is not the responsibility of your superintendent or administrators or your board attorney. It is really the responsibility of every board to police itself on any issue; that is your job because at the end of the day if you are spending more time on those issues then you are around how do we improve student achievement, how do we move this district forward – then you are not being affective as you need to be for the kids and because they don't have any other voice, you are it and that is why it is so important that you do police yourselves and focus on those kinds of issues that are district based, not personally based and certainly not adult based.

Dr. Francis stated since the movement of the elections from April to November, have you seen a lot of ethics charges being brought up because of that. Mrs. Thornton stated no, not because of that reason. There are sometimes ethic decisions that come up but this is not one of the leading violations that are cited. Typically it is taking personal or private action that compromises the board and also violations of confidentiality are the two leading pieces that we see the School Ethics Commission dealing with most often.

Dr. Francis asked is it possible to move the elections from November back to April? Mrs. Thornton stated you can but if you do that, guess what you have to approve again. The budget – it goes with that. When I say you can – hypothetically you can, it is in the law but my recollection was that there was a commission and I don't know if this is still moving forward because we have a new governor – there was a commission created by Governor Christie to look at moving them back – whether you can or can't because there were a couple of districts that were playing games around it and also whether you can slate a ticket and that was what that commission was looking at. Trenton is famous for having commissions that fade into oblivion and I don't mean that in disrespect – just with the change in administration sometimes things get lost and it's not a priority for the incoming administrations so it goes away on its own. Right now that moratorium is still in place because he did that with the creation of that commission to look at running as a slate and moving the elections back and forth. When you moved it from April to November, you had to move it for at least three (3) years which would turn into four because before you can change it you would be in year four and that was to ensure that people weren't bouncing back and forth. But the legislation wasn't very well written and there are a lot of parameters around it on how you do that which are missing from the law which is part of the reason that he created that commission.

Mr. Nufrio asked what would it take to move the election? Mrs. Thornton stated you would have to approve a resolution on behalf of the entire board and then you would have to get that resolution to the Executive County Superintendent and notify him and then it would go to the Commissioner who would have to sign off on it. I think right now the moratorium is still in place. Mr. Nufrio stated to make that resolution it would require five votes. Mrs. Thornton stated the majority of the board – that is correct.

This one is actually the most violated and that is you are required to hold confidential all information that would needlessly create issues if it is disclosed for the district and/or your staff and/or students. There are certain pieces of information that will never become public – personnel records, that is confidential. When you take action on someone's employment that is

public but their personnel records remain confidential. Student records as well as student disciplinary actions will always remain confidential. There are other matters that are confidential at the time because there is a need for confidentiality. When the need for confidentiality no longer exists, your closed session minutes on those subjects will be made public. There should be a process outlined in your policy that speaks to how closed session minutes become public when the need for confidentiality no longer exists.

For example, if you were negotiating the purchase of a piece of property, you purchased the property or you decided to forego the purchase of the property – either way once you reached resolution on that, then those minutes could become public after the need for confidentiality exists. Once you negotiated it the deal is closed you bought the property then those minutes would become public. There is a process for that but again there are some items that will never see the light of day; student records and information and staff which is not public.

Mr. Monge stated we don't have any executive session minutes public from my understanding. Mrs. Thornton stated I don't know and there is a process and once the need for confidentiality no longer exists, those minutes should be made public. You should be approving closed session minutes on a regular basis – the same way you approve your public session minutes – the private ones don't get before the public until that need for confidentiality no longer exists.

Keeping confidentiality – not to hammer you over the head – but it is really important to maintain confidentiality – it goes to the respect and the transparency of the Board that you are held in high regard by the public because you can expose the district to liability issues if you are disclosing information that is not yet meant to be public. There is some thinking that if you expose a negotiation or a dollar amount, you can drive up the value of property or you can drive it down and it is not too much different than the stock market. That kind of stuff that needs to be kept confidential must be held confidential.

A board member uses her position to access an internship for her son that was not afforded to other candidates who had to go through an application and vetting process. Not ethical – you are not entitled to any kind of privilege or benefit that is not extended to everyone across the board. Sometimes I have board members say to me – can I vote to approve a field trip for the fourth grade, I have a fourth grader and the answer is yes because the benefit to your child is no greater than any other child in the fourth grade so you are not receiving any unwarranted or unearned privilege to your child at the expense of anyone or anything.

A board member puts up a sign that says “vote no during the school board election” – absolutely you can do it but just because you can doesn't mean it is a good idea. I just want to point that out because perception is reality. If you put up a vote no sign during an election of a district referendum to construct new facilities and the board had voted to approve that referendum and put it out to the public – what does it say to the public? Is it legal – absolutely I'm not going to tell you that it is not but sometimes just because you can doesn't mean you should because of the impact on the overall of the district.

A board president unilaterally issues a RICE notice to the school business administrator. A RICE notice is when you let an employee know you are going to be holding an evaluation discussion or something that is evaluative about an individual. No board member, not even the board president, has the unilateral authority with the exception of the superintendent. Mr. Griggs stated there is a case that disagrees with that. Mrs. Thornton stated I know but that was with the superintendent but not the business administrator. The board president can unilaterally issue a RICE notice to the superintendent but not to any other employee.

Mr. Monge stated when you layer in conflicted board members, can the board president being conflicted? Mrs. Thornton stated my recommendation in that instance would be to have the vice president, assuming the vice president isn't conflicted, and if the vice president is conflicted than whoever is in charge of the Personnel Committee, if there was one. Mr. Monge stated the same person. Mrs. Thornton stated I'm not quite clear on how that all works out being that they are conflicted.

Dr. Francis stated I thought it would be the full board. Mrs. Thornton stated the majority of the non-conflicted board members could RICE an employee or the superintendent. Dr. Francis stated I'm not talking about an employee just the superintendent. Mrs. Thornton stated the Board, even if you are not doing anything with it, before you decide whether to grant by May 15th to the list of tenure and non-tenure folks, you are ricing those employees. It goes through the Business Administrator and Superintendent and there is actually a case out of Rutgers Board of Trustees – where RICE notices have to be sent to all employees every time they appear on the agenda. Even if it has nothing to do with performance – just naming “Mrs. Smith teacher from Harding Elementary School – teacher of the year” – even if it is a good thing, you have to rice them so districts have taken to blanket rice notifications for every meeting and in some districts, every member of the staff – just in case. You have to rice them even if it not evaluative in nature. That decision is being appealed and we are as an Association submitting a brief on behalf of repealing that as being unduly administratively burdensome for districts to have to do that – there is a cost involved in that and the time to notify everyone because it is not evaluative. You are just letting them know and it is just burdensome to the school district.

Mrs. Regis-Darby stated for my frame of reference, in terms of the rice letters – the president is the only one who can rice the superintendent. Mrs. Thornton stated he can but again here is what I will tell you. Just because you can doesn't mean you should so I was a board member for a decade and president for the last five before I left to join the Association 15 years ago – I have been doing this for a long time and my advice to every board president would be that when you are going to rice a superintendent it is typically around evaluation, terms and conditions of employment and so I would have the entire board affirm a calendar that looks at all of the dates that you need to rice the superintendent to have those discussions based on whatever it is you are doing which is typically the annual evaluation and have your business administrator and the board agree to the calendar which is in essence agreeing to rice the superintendent for those meetings that the board is going to holding evaluative discussions.

Mrs. Regis-Darby stated in terms of employees. Mrs. Thornton stated it comes from the board secretary. Mrs. Regis-Darby stated no one else. Mrs. Thornton stated no one else, the board secretary works for the board in those instances although he reports to the superintendent

and is evaluated by the superintendent that kind of board business would be done through your board secretary. He would send the RICE notices to the superintendent. Mr. Monge stated with the direction from whom? Mrs. Thornton stated for the superintendent it can come directly from the board president but what I'm saying to you is it is a far better practice to be more collaborative and have the full board involved in that process because at the end of the day all of you who are not conflicted and I will say that to you again – all of you that are not conflicted can participate. Those of you that are conflicted should not be participating in any way in the rice process, the evaluation process, if you are doing a search, you can't be involved in the search process, you can't pick out a consultant, you can't set criteria, you can't sit in the interviews, you can't write interview questions, you cannot have anything to do with it if you are conflicted.

I will go back again – there is what is legal and then there is what is best practice. I'm a firm believer in doing what is legal but also what is best practice for everyone.

Mr. Tatum stated where does the board attorney fit in all of this because I thought I heard Paul say he can do it on behalf of the president. Mr. Griggs stated I didn't say that. Mr. Tatum stated I thought you said in the event that they are conflicted, you would be able to do it on their behalf. Mr. Griggs stated that is not what I said. Mrs. Thornton stated the board president can legally do that. He can't do it for any other member of the staff like the business administrator which is why we had that example because that was actually an ethics decision where a board president unilaterally riced a business administrator; sometimes board members think they can do that because most districts the business administrator is also the board secretary but you can't. That is not something the board president can do.

Your board president can in fact unilaterally rice the superintendent but what I'm suggesting is a better practice because you are only going to rice the superintendent when you are going to talk about contracts or an evaluation and terms and conditions of employment.

Mr. Griggs stated if you rice the superintendent other than for those reasons, nothing to do with employment or evaluation, how would you approach that? Mrs. Thornton stated again as long as it is a concern of the full board, I would not know why you would rice the superintendent that it would not be a concern to the full board and to make the full board at least aware of your intention to do that as an informational piece while you still can but again, if they are conflicted out it becomes very problematic and a little dicey. Mr. Griggs stated logistically timing wise, the common practice not just with this Board but other boards typically, a week for a board meeting when you send the RICE notices out and something comes up at the last moment, and you need to have that discussion at the board meeting so while best practice would be you would be...Mrs. Thornton stated to have the board in consultation. Mr. Griggs stated essentially you have to convene a meeting see what I mean logistically. Mrs. Thornton stated you would but this is what I would tell you, other than meeting a statutory deadline that has not changed for evaluation and if you were determining the renewal of a contract, that also has a statutory deadline that again is the board's responsibility to know what that looks like and to have that discussion in an appropriate timeframe so that their back doesn't get pushed up against a wall. So yes in an extraordinary circumstance I would agree with you that it would delay it but most boards meet twice a month so at best you are talking about at most a two-week delay and I don't know of too many circumstances – if a superintendent did something so egregious to

warrant a RICE notice I would be thinking that you are looking at an emergency meeting as well for something particularly significant and not in a good way. I can't really come up in my head with a circumstance where a two-week delay would be problematic but again that assumes that the board is aware of your statutory deadlines and timelines. If they are not, then you are correct and that could create a problem. My assumption is since the board has only one employee, you should know when you are legally required to evaluate him or her by and you should know the date of expiration of the contract and what that contracts says because I would tell you that every board member should have access to contracts for all of your associations as well as your superintendent because you only have one employee and most of the terms of that are available in the user friendly budget online but board members shouldn't have to OPR that to get a copy of that. If they weren't on the board when a contract was negotiated, it is something that they should probably be given when they become new board members along with a year's worth of agendas so they could know what happened in the last board year and a copy of all negotiated agreements. I believe a well-informed board makes better decisions. I also think and it goes back to my comment about policing yourselves and that you have to be responsible and you have to know what those deadlines are. I think most boards want to be on top of those things and I think it is your responsibility to be on top of those things and I don't think that is unreasonable.

A board member recorded executive session discussion and disclosed it to her attorney. Absolutely not – there are some boards that have decided not to permit electronic devices at the board table during closed session because they had issues around that very piece.

Mr. Arminio stated at one other presentation you made, you mentioned cell phone use and that cell phones shouldn't even be open during executive session, let alone public session and they shouldn't be taken out, on, on the table, looked at during executive session. Mrs. Thornton stated absolutely, totally not during executive session; but there are people that have it in their pocket and have it on record and that kind of thing has happened which is why some boards have created a policy. I would tell you that is a little extreme but I do understand boards that have that anxiety if something like that has transpired in their district and it doesn't provide great faith. I would also say to you that as responsible board members who live by the Code of Ethics and the need to maintain confidentiality, I have an expectation that no one would do that. The piece around the phones is because if you are all sitting here texting and reading your email during the course of a public meeting what message does it send to your public about what it is you are doing. The public is either going to come to the conclusion that you are texting each other saying what wonderful people you think each other are or they are going to think that you are not paying attention. Neither is a good thing for the public to be thinking. You all signed up for this. You all ran for elections, this is something that you wanted to do, but you may wonder why you did it periodically but nevertheless you want to send a message to the public that you are paying attention to the business of the board.

Mr. Monge stated speaking about best practices as it pertains to that – many times I have my laptop and we have so much material and if we actually brought everything – all the attachments behind it – so what is best practice as it pertains to those materials. If I don't have my laptop, I try to find it on my phone, it just looks bad. Mrs. Thornton stated I would agree with you. I have members on boards that do anything and everything, and we are going the way of the world, although I was listening to Zuckerberg trying to explain all the leaks but forgive me

because I am not a digital native and it does make me a little nervous that all that stuff is online, but lots of boards have gone to it and there is nothing wrong with it and they all sit at their meetings with their computers open. What I would suggest to you is that when the public is commenting just shut them slightly so that you are not staring at the screen while they are trying to talk to you. It is just good judgment. The same thing with the phone, if you need to refer to something and you don't have your laptop and if you can read it on your phone more power to you I would have trouble seeing it but nevertheless you can do that but be mindful and you may want to say and make a comment I just looked on my phone about this policy and here is what I read. Just to make it clear to the public that you are still doing the board's business. I appreciate and I understand because everyone has family and obligations – you may have a babysitter at home, a sick child at home and you want to be able to see that phone in case the babysitter calls, whoever, put it on silent and if you need to take a call just get up and go outside and don't disrupt the meeting. Again it is just a matter of common sense and courtesy to your colleagues and to the public and making sure that we don't forget that the public is watching and when they speak they really want to believe you are paying attention and you should be.

Voting to appoint the most qualified personnel after consideration and recommendation of your superintendent. You can vote no on someone who the superintendent recommends. There is no requirement that every board member vote yes on every appointment. But that being said, once the board makes a decision you don't want to find yourself in the position of not supporting the decision of the board that doesn't mean you have to be a cheerleader for every decision that the board makes and this is on any vote. You may be in the minority and vote no on a motion – that is o.k. you are allowed to do that but once the board has spoken and you are standing around at ShopRite and someone comes up to you and says I can't believe the board did that stupid thing – you voted no you were smart – what do you think? You need to be able to say I hear that you disagreed, I disagreed, but the board has made a decision and I support the decision of the board. Again, you don't have to be a cheerleader but you do have to support the decision of the board. You can vote no as long as your reasons are not arbitrary and capricious. What does that mean? It means you can't vote no against someone because it is your next door neighbor and you don't like the way they blow their leaves into your yard. You can't vote no on someone because you didn't like the tie they wore when they came before the board to say hello before you appointed them – that is arbitrary and capricious. You have to have a sound reason for voting no on that.

You are required to support and protect school personnel and the proper performance of their duties. You need to make sure that you are not making derogatory comments about the staff in public even to your BFFs or your spouse or anyone else. You might say that you have First Amendment speech rights – you do but this is not one of them. Once you became a board member it now becomes your obligation to support school personnel and the proper performance of their duties. If a staff member goes out and does something particularly illegal and egregious, I would see where the board would need to have a discussion on that and that is something different but that would be done in executive session. You can't just start trashing the tennis coach because your little sweet thing didn't get to star in the first match of every competition that they had even if you believe in your heart of hearts. Trust me I was a parent, I had kids in the school while I was on the board of education, they played sports, they did other things and sometimes you might not agree with the decisions of the staff in regards to your child. You have

to learn to go into your car, roll up the windows and screen quietly to yourself because that is the only way you can do it. This gets board members in trouble a lot.

Dr. Francis asked when the public comes to make their comments, are they allowed to talk about us? Mrs. Thornton stated yes and staff as long as they are civil, as long as they don't use language that is appropriate and by that words that we don't want to hear out of our children's mouths. I don't mean "you're a fool" – you might not like it but that is not what I really mean as inappropriate and as long as they don't create disorder. Now if people begin to get out of control at a board meeting, there are several ways to handle it – probably the best way is to have your board chair suspend the meeting for a few minutes and take a break. Someone can take a motion to go into recess, someone can second it – you can all do it by voice vote and go into recess until someone can speak to that individual and counsel them that they need to exit the building if they cannot control themselves.

Mr. Monge stated the word proper – what is the purpose? Mrs. Thornton stated proper performance of their duty – classroom responsibilities, co-curricular responsibilities – I'm not talking about what they do in their free time; I'm talking in the performance issues. Mr. Monge stated what they should be doing essentially. Mrs. Thornton stated right – what they should be doing as a teacher and an educator. While you may not agree with what they do in their personal time, you don't in most instances get to adjudicate it unless the kind of conduct that they are engaging in is either highly unprofessional or illegal and there have been instances where there have been teachers that have run afoul of their employer school districts for postings on Facebook for example and participation in some kind of activities in their personal lives that might not be illegal but are not considered socially acceptable and they go beyond the norms of society – whatever those norms happen to be in a particular district. That is very difficult and iffy and sometimes boards again get themselves in trouble which is why it is so important to have competent legal counsel because what someone does in their free time on your staff maybe offensive to you personally, it may not constitute any kind of real violation. While you can be morally outraged, it is not going to do anything.

You are responsible for referring all complaints to the Chief School Administrator. You are not there to solve problems so you want to make sure that you notify the superintendent of any complaints and you don't want to attempt to help them as much as I know that is all of your instincts because you are good people and you want to help folks solve their problems; it is not your job. You need to refer them up the chain of command and ultimately to the superintendent.

A board member sends a letter to superintendent criticizing his performance and just by the way he sends it to the State Board of Ed and the Executive County Superintendent. Not now, not ever.

A board member requests information directly from the supervisor of CNI and responds in a demeaning and harassing way when the information was not available. Absolutely not. You need to work through the superintendent. The superintendent is your only employee. If the curriculum and instruction committee is demanding data or information, you need to do that through your superintendent. Most district committees have administrative liaisons so I am assuming in your district, perhaps your business administrator for example may be the advisor to

the finance committee and supply support, but again when there are questions or an issue, it needs to run through your superintendent no matter who the staff member is that is staffing a particular committee.

A board member goes into a school and takes pictures because he wants to show the staff and administration where the problems are – so he has open windows, debris – is that your job? No, absolutely not. Board members have no right to be in any school building unless you have official school business there as a board member meaning with the knowledge and permission of the superintendent because a committee, like the facility committee, is going to walk through and look at the technology we purchased last year for this school year and they want to see how it is being used – that is official business or you are a parent of a child in that school and you have a conference, a science fair or instrumental music thing or an art show, you are welcome to go to anything that is open to the public at any one of your schools and I would encourage all board members in that capacity to go to as many events in the district as you can. Your staff will know you are there, the kids will know you are there, parents will know you are there and they do appreciate it. You all have personal, professional and family lives and I'm not suggesting you need to be at everything but those things that you can get to I know in districts where board members are present, it is always appreciated when they are there in an appropriate way.

Dr. Francis asked does that include central office too? Mrs. Thornton stated meaning what? Dr. Francis stated coming up to the business office. Mrs. Thornton stated if you have official business here – yes but there is no reason why anyone should be in central office on a regular basis. Central office has as much to do as any school building. The work they do is different obviously than the work that gets done in a school building but board members should not be routinely dropping off and sitting in administrative offices just to chat or catch up or to see what is going on. Not that I think there is anything of ill-intention going on, but it is time consuming and staff members are loath to tell board members – it puts staff in a very awkward position for them to say to you – you know I have 45 things I have to do before the close of business today and we have a board meeting and I'm working on the agenda and I got to do this and that and you are taking up my time. They are not going to tell you that so you put them in a very uncomfortable position by taking up their time and they are not going to want to say that to you although they should. I have said to some administrators in some districts be Nancy Reagan – just say no because if you don't no one else will but I will tell you that is not what you should be doing. If you need some documentation before a board meeting, you can call and say can I have this, can you get this together for me and it will be right out here at the desk and you can pick it up. I am not saying that you can't have a positive working relationships with your administrators – you should but we also have circumstances where board members sometimes don't understand what their appropriate roll is and they come up and camp out in the administrative offices and there is not a day that goes by and you don't see their car there and you begin to wonder what is going on and people begin to talk and not necessarily in a positive way. That is something to keep in mind as well.

Conflicts of interest – when do you know when to recuse yourself – you need to recuse yourself if there is a benefit to any school official or immediate family due to a business interest – meaning if you have family members that are part of a company that would personally benefit from work with the district. You need to recuse yourself and not participate in that or using your

position to secure unwarranted privileges, advancements or employment. There was an ethics decision around a board member who was really an enthusiastic individual who went to TD Bank to see if he could get a better rate for the districts deposits because all the districts money was held by another bank and he used TD Bank and he thought they were wonderful and so he went and asked to try to negotiate a more favorable interest rate for all the district funds if they were deposited into a TD Bank. Another board member filed an ethics charge against him for taking personal action that would compromise the board because (a) it is not your job – it goes beyond the role of a board member and (b) they wanted to know if he had any financial gain that would accrue to him. He didn't work for TD Bank, he had nothing to do with TD Bank, he just banked there just like you or I bank. The Ethics Commission still found him guilty because he was trying to secure an unwarranted benefit for TD Bank even though no financial benefit accrued to him. Again that might seem a little silly that I'm using that as an example but it gives you an idea on how seriously the School Ethics Commission takes this. They didn't say well he didn't get any benefits so no harm no foul, his family wasn't making any money. He didn't have any family members that worked with the bank, he wasn't getting a better interest rate on his checking account or savings account. He was really legitimately trying to do something good for the board. It was just misguided. If the board wanted to do that, they could have directed the business administrator and superintendent to look at exploring other banks for deposit of school funds to see if there were any other banks that offered a more competitive interest rate and then there would have been no problem. Even though he didn't benefit personally, they held it to be an ethics violations.

Mr. Monge stated I was asked about a year ago to go to the meeting with ConnectOne. Mr. Brennan stated you came with me. Mrs. Thornton stated that is o.k. That is authorized board business. This guy just went on an afternoon; he was a teacher and he went on his way home from school thinking he was doing a good thing and got himself in a pile of trouble.

You cannot take gifts or favors that are offered with the intent to influence a board member. You can't have any personal involvement that creates a personal benefit. Let's go to the field trip example and any kind of service or employment that may prejudice your independent judgement.

A board member uses his email to solicit and receive campaign contributions – absolutely no, you can't do that. Again you can put an employee in an uncomfortable position. You are actually their employer so if you are soliciting campaign money from them, you are putting them in a position where saying no is very problematic.

A board member may serve as the president of the local PTA but cannot represent the PTA before the board in any matter. Absolutely true; again just because you can doesn't mean you should. It is hard to serve two masters but they have upheld that you can be a PTA officer and still serve on the board and continue to hold your PTA office.

A board member voted to reappoint his mother, a teacher in the district and her supervisor, a principal – no. If you have a family member who is employed in the district prior to your becoming a board member, they are grandfathered. They obviously can continue to be employed in the district but you as a board member cannot participate in anything having to do

with their employment, evaluations or setting terms and conditions of employment. You could not vote on that. Again, just because you can do something doesn't mean that you really want to do it because perception is important.

In order to understand what we just talked about, you need to know under the ethics law what an immediate family member is – a spouse, civil union or domestic partner, having a child residing in the same household. In very recent decisions, the School Ethics Commission has expanded the definition of a family member to include a much broader list that is found in the nepotism law so even if it doesn't reside in the ethics law they have morphed that broader definition from the nepotism law into school ethics decisions. You need to be aware of that. To be an immediate family member it had to be a spouse or dependent child residing in the same household; under nepotism it can be a non-dependent child living by themselves and it is still a problem. The accountability regulations you can see how much larger the definition is there. This is all in this PowerPoint so you don't have to copy all of these. Also they have expanded the definition to include others. They originally issued some opinions around first cousins being included and conflicting you out but they have now changed that. In March there was a new advisory opinion that took first cousins out. This one made me laugh because how many of you know your first cousins. Some people might but fewer and fewer people and even if you know them very many times you don't have an ongoing relationship with first cousins – some people don't have it with their brothers and sisters. Mr. Nufrio asked when was that done – the last one. Mrs. Thornton stated the first cousins, they just took it out now in March.

Some others are cohabitating partners including ex-spouses particularly if an ex-spouse is employed in the district and you are paying either child support or alimony to an ex-spouse, that creates the monetary tie which creates a conflict.

District may not hire any relative of a board member or a family member of the chief school administrator. You simply can't do it. If he can't recommend them to you and you couldn't vote yes on it and a district administrator may not exercise supervision over a relative of an administrator.

Mr. Tatum stated maybe I don't know my first cousins and I recommend them for a position and then what happens. Mrs. Thornton stated you would have to notify your ECS. There is an exception to employing a family member of the chief school administrator or a board member and that is if there is no one else qualified for a particular position. The example I give is if you can teach AP physics and mandarin and have dual certification in those, you can probably be hired. It still has to go to the County but my point is to be the only best person qualified you would have to be multiple certificated in such things that are in such demand and which there is not enough supply of teachers such as mandarin, Latin, AP physics and then you might get that exemption.

This applies to all family members working in the district – whether they are a substitute, a summer worker, it doesn't matter what your family member does in the district because originally summer workers were excluded, substitutes were excluded but now the Ethics Commission has said if you are working in the district in any capacity you are conflicted out and

some board members were really irate about this – have them sub in other districts. We have 581 school districts you can find a district close by to sub in.

Collective bargaining and again there has been shifts around it that are ever so subtle. If you have a family member who works in the district, you can't participate in negotiations and you can't vote on the contract. If you have a family member who works for the same or similar statewide union – NJEA – which most districts are affiliated with or AFT – American Federation of Teachers – we have some districts that are AFL/CIO – so they have held those to be similar statewide districts and you can't participate in negotiations but you can vote on the contract. Once there is a memorandum of agreement and once salary guides have been finished. So if you have a family member in a similar statewide union, you cannot negotiate but you can vote on the final contract after there is a memorandum of agreement and all other pieces of the contract are settled – meaning all the salary guides are done. Again if you live in a small town and you think people will think your voting will somehow benefit you personally, I would simply abstain and not participate. Again perception can be important.

Mr. Nufrio stated that is relegated strictly to self, spouse or dependent child? Mrs. Thornton stated correct. Mr. Nufrio stated not relative – that is the broader term. Mrs. Thornton stated that is the broader term. It used to be very simple but they keep changing it and it makes it very hard.

Other possible conflicts – if you have been endorsed by the union in the election immediately preceding negotiations and you sought that endorsement, you can't participate in negotiations for at least a year. If you are supervised by employees in the unit, you cannot participate in that. If you are not in the unit but in terms of employment but you are linked to it, you cannot participate. Immediate family members or a family member has heightened union involvement so remember when we said if you have a family member who works in another district in the same statewide union, you can then vote unless they have heightened union involvement – which means they are a building rep, they are president or another officer of the association and/or they sit on the negotiation team in the district in which they are employed. That is what the FCC has said heightened union involvement means. Please keep in mind that this is not me talking, this is the FCC. Mr. Nufrio stated that includes the broader terms. Mrs. Thornton stated yes it does.

The doctrine of necessity is only invoked when you need a majority of the full membership of the board to vote on something; it is a legal formulation that requires posting all of the conflicts – making those public in order to be able to have the full membership of the board eligible to vote because you don't have a majority eligible because of conflicts.

Volunteerism – I think we talked about this the last time I was here and this is the one that everyone wants to shoot me and I want to make a quick exit because I didn't create these. Recent opinions have not expanded but rather contracted board members' ability to volunteer in the district. Here is what we know and is acceptable. One time infrequent non-executive work in the district – so you can chaperone a field trip, you can come in and do read across America, you can attend and speak at National Honor Society induction if they ask, volunteer activities and organizations that are solely self-governing – your ed foundation if you have one, pop

warner, park and recreations, girl scouts, boy scouts, blue birds – anything that is solely organized for children which may include all district students. You can do that because it is outside of school.

Mr. Arminio asked what does the word “infrequent” mean? Mrs. Thornton stated it means that you can’t be in the district every Tuesday at 10 a.m. to help out Mrs. Smith. Mr. Arminio stated four times a year? Mrs. Thornton stated that is infrequent – think of it once a quarter or once every nine weeks for 36 weeks – that to me is infrequent. What would be more frequent would be weekly or even bi-weekly would be skating on the edge. In some instances this is very difficult.

Here is what we know is in violations – things anywhere you are supervising management and directing school personnel or funds. Don’t handle any school funds. Active day-to-day presence in the school – you can’t have that. We know you can’t be a volunteer coach, club advisor, playground aide, lunch aide, or whatever kind of assistant for a teacher in the classroom on a regular basis. You can’t do it. Can you go in and still provide food at a party as a room mom? Yes you can because that is infrequent.

Interview committees – they have held in two recent decisions that except in very narrow circumstances and with the permission of the superintendent. Only one or two board members can participate and by participate I mean observe in an interview of a high level administrative position and that is not a principal or vice principal, it would have to be a cabinet level position and with the position of the superintendent – one or two board members can sit and watch the interviews.

These are in direct opposition to the advisory opinion that says you can’t conduct exit interviews. You can’t. You can sit in on an interview and listen but you can’t sit in and listen to an exit interview – doesn’t make a lot of sense to me but in certain instances they haven’t been as consistent. Some of it has to do when they change members.

In conclusion, we certainly recommend that you may want to put together with your attorney a list of everyone and what those conflicts are and by doing that keep an ongoing running list so you are always up to date as board members change. I don’t mean updating it weekly or monthly but as board members come and go and keep that list up to date so they are always clear on what the issues are.

Continue to check school board notes because whenever there is a public advisory opinion and/or ethics decision that has impact on boards we publish it in school board notes all the time and you can get it electronically.

Please complete the acknowledgement of receipt of the Code of Ethics – sign and date and give to Mr. Brennan and he can file it with the County Executive Superintendent.

Are there any other questions that I can answer for you?

Dr. Francis stated in our situation here with our board, we have our board president serving as board president but also as chair personnel and he is conflicted and we have our vice president as well on personnel and she is conflicted. We have been told by our attorney that it is not unethical but my question to you is what is your take on it? Mrs. Thornton stated I think it is difficult operationally. At least the chair or another member should be the chair of that committee that can fully participate in that. I think it makes it difficult to have both officers who are both conflicted sit on that committee. I think it is an operational issue. I would agree with your attorney it is not an ethics issue but from my perspective it is an operational issue just because so much can be dealt with in personnel because the two leaders of that committee are ineligible to really participate in any part of it. I'm not sure that it makes great sense from a logistical point of view to have that be the case. It has nothing to do with the people sitting.

Dr. Francis stated I know but if they are discussing those matters which they shouldn't be wouldn't that be considered an ethical violation? Mrs. Thornton stated I would consider it problematic. I am assuming they are recusing themselves from any discussions that would be of an ethical issue. I'm making that assumption because I don't know any board member who wishes to have themselves in jeopardy of having an ethics charge filed against them. I'm making the assumption that they are recusing themselves and participating in those discussions. I think it is operational and that it might be easier for board operations to have at least the chair of that committee who is not conflicted and can fully interact with the superintendent around employment kinds of concerns for personnel.

Dr. Francis stated I sent an advisory opinion on a policy that we have which gives the president of the board the right to pull things off the agenda and my question is – it's not illegal in the opinion but is there anything that you would say that gives the right of the board president to pull anything off the agenda without even the full board's seeing exactly what is being pulled? Mrs. Thornton stated you operate by policy. The School Ethic Commission is not going to address anything that has to do with your policy because that policy is not a mandated policy – as long as that policy is on the books – that gives that authority to the board president. Now that being said I would think again that if you want that changed, the board needs to consider changing your policy and then you need to think about how to operationalize that change to make it workable. In most instances, the reason probably for that policy was there might have been difficulty in getting the board to come to consensus around an item to be on the agenda or off the agenda. There should also be a policy as to how something gets on your agenda so that if the majority of the board wanted an item added to an agenda, you can direct that it be added to the agenda by a vote of the majority of the board. There should be a policy in place that is a counterweight to this policy and if that policy is no longer a policy of the majority of the board wants, you can simply as a district revise the policy manual to reflect the change you want to see made.

Dr. Francis stated if the superintendent wanted to for example to hire someone and the board president was against that wouldn't that be administering the district and getting in the way of the superintendent from making a decision and for the rest of us...Mrs. Thornton stated your board president can't have anything to do with that because he is conflicted out of personnel. He can't weigh in on who is on the agenda or not on the agenda.

Dr. Francis stated say he wasn't conflicted. Mrs. Thornton stated if the board president was not conflicted, he could weigh in on that but if I was the superintendent it is something that I would certainly push back against because at the end of the day and this is what I will also tell you - in large part there is very little reason for our board of education to have a personnel committee and here is why because at the end of the day, the personnel decisions are made by a full majority of the board that is not conflicted. You are all going to have to hear about what you are doing in personnel in order to have a majority of the board vote to either appoint or grant tenure, or not grant tenure or renew or not renew or any of those pieces – it has to be discussed by the full board that is not conflicted so very often many boards have gone to handling personnel as committee of the whole and those personnel meetings are happening in closed session prior to the beginning of a board meeting so that the full board is getting all of that information at the same time because you are all going to have to vote on all personnel items unless you are conflicted out.

Mr. Monge stated two things – one is best practice because that is one thing I put in there because the do's and don'ts and make a lot of sense but the reality here is I'm not on personnel and I have never been and I don't know of the discussions in personnel a lot of times and we had voting items on personnel and a lot of times we have these conversations whether it is operations or fiscal we are able to talk among ourselves openly about this is what is happening in our committee but we never hear. Mrs. Thornton stated and you can't in personnel. Mr. Monge stated going back to best practices – if you are not going to be a committee of a whole. Mrs. Thornton stated committee of a whole/personnel – it authorizes the full board of education to meet to discuss personnel items. Mr. Monge stated in a case of we have what we have – what do you see as a practice to be able to inform all the board members about personnel items for vote. Mrs. Thornton stated typically boards would hold a closed session prior to a board meeting to review the personnel agenda so that all of you are comfortable and get your questions answered if you are going to be expected to vote and approve something.

The board always has the right to have information and have questions answered so that they have enough information to make an informed decision so that is true in personnel too and that is why boards have gone to that other best practice but even what you have here is what I would recommend is before you vote on an action meeting on a personnel agenda or items, you have a closed session prior to beginning of that meeting to be able to ask those questions and if you do it that way then the full board who is non-conflicted is here and present and gets to hear the answers at the same time. It is much more efficient and effective for the operation of the board and it reduces administrative time repeating the answers over and over to six different people.

Mr. Monge stated policies don't trump statutes – it is supposed to be in the spirit of the statute. Mrs. Thornton stated correct. Mr. Monge stated so that is something that has to be considered as a board because if we have policy. Mrs. Thornton stated you can't have a policy that is violative of a statute. All of your policies and your attorney reviews your policies to make sure that you don't have policies that are violative of any statute whether it is a federal reg or state law. You can't enact a policy that is in opposition of the law.

Mrs. Richardson stated it probably has been past practice of the Board that operational and fiscal were separate but I'm finding that Mr. Monge is chairperson of fiscal and I'm chairperson of operational yet we seem to work together. Mrs. Thornton stated so I'm assuming operation is food service, transportation, building and grounds. Mrs. Richardson stated but a lot of it has to do with fiscal. Mrs. Thornton stated in many districts, again in best practice, in order to reduce the number of committees and hence the number of meetings, as well as staff time, many districts have operations and fiscal together as one committee. Mrs. Richardson stated that is what I have felt since I have been on the committee. Mrs. Thornton stated what you are talking about in transportation or buildings, ultimately impacts and has to be paid for. Again that is change to your Board bylaws which obviously are in policy but it is something that the board controls. I will tell you again that you may want to think about maybe not this board year but perhaps for the next board year, thinking about prior to reorganization, looking at some of your bylaws and looking at ways you could streamline your committee system to make it more efficient and more effective for all of you and one of the ways to do that and it may be something that you haven't thought about in a while but you may want to do a board self-evaluation. Once you complete your evaluation of the superintendent which is due by July 1 – all done by July 1. Do a board self-evaluation and before you do goal setting for next year and think about what are we doing well, what are we doing that we can improve on, how can we support the administration in achieving their goals and one of the ways you might be able to do that is your committee structure and making sure it is efficient as it can be.

Mrs. Regis-Darby asked when will the evaluation be opened? Mrs. Thornton stated it is open now. That is up to your board president.

Mrs. Ciampi stated when you said them coming into an executive session prior to the meeting, the statute has always read that they have to open as a public meeting and then go into executive session. Mrs. Thornton stated yes they do. Mrs. Ciampi stated it didn't sound that way. Mrs. Thornton stated they have to open the meeting then adjourn to close and then come back out to open.

Again you have to open the meeting in public, then you can adjourn to close, do the personnel items, and then come back out to open public meeting.

Presentation appended to minutes.

**MOTION TO ADJOURN:**

There being no further business before the Board in public session it was moved by Mr. Arminio, seconded by Mrs. Williams, that the meeting be adjourned at 5:55 p.m.

**AYE:** Mr. Arminio, Dr. Francis, Mrs. Higgins, Mrs. Minneci, Mr. Monge, Mrs. Regis-Darby, Mrs. Richardson, Mrs. Williams, Mr. Nufrio

**NAY:** None

**ABSTAIN:** None

**MOTION CARRIED**

**RESPECTFULLY SUBMITTED,  
GREGORY E. BRENNAN  
BOARD SECRETARY**