

TOWNSHIP OF UNION BOARD OF EDUCATION
SPECIAL MEETING AGENDA – ETHICS TRAINING
APRIL 23, 2019 – 5:00 p.m.

NOTICE OF MEETING:

TO ALL BOARD OF EDUCATION MEMBERS:

The special meeting of the Board of Education of the Township of Union for ethics training was held on Tuesday, April 23, 2019 at 5:00 p.m. at the Union High School Library, 2350 North Third Street, Union, New Jersey pursuant to notice sent to each member.

Mrs. Minneci called the meeting to order at 5:14 p.m.

PRESENT AT ROLL CALL:

Mr. Ronnie McDowell, Mrs. Nancy Minneci, Dr. Kalisha Morgan, Mrs. Nellis Regis-Darby, Mrs. Linda Richardson, Mrs. Kim Ruiz, Mrs. Mary Lynn Williams

ABSENT AT ROLL CALL:

Mrs. Sherry Higgins, Mr. Vito Nufrio (arrived 5:28 p.m.)

ADMINISTRATORS PRESENT:

Mr. Gregory Brennan

ALSO PRESENT:

Kathleen Helewa, Field Service Representative from New Jersey School Board Association.

Mr. McDowell led the Board and audience members 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. Williams read the District’s mission statement.

Mrs. Minneci stated tonight we have Kathleen Helewa here from NJSBA to give us our ethics training.

Ms. Kathleen Helewa stated thanks for having me. I am happy to be here. I am a field service representative like Gwen Thornton who sends her regrets that she can’t be with you tonight. She was my field rep when I was a board member. She is a terrific resource for you and happy to come in and work in her place. I usually do Sussex, Passaic and Warren counties. I was a board member myself in Somerset County.

Nothing is new with ethics but it is always good to have a refresher. Your QSAC requires an annual discussion of school ethics.

We won't go through everything in the packet but it is a great resource and comprehensive. If you have any questions, Gwen will be able to help you and I can in her absence. Field reps are not attorneys but we are very immersed in the School Ethics Act. We always tell you when we do training is your best source for each individual districts on questions on the Ethics Act is your school attorney – actually they are your second best. Your best source is the Ethics Commission.

The Ethics Act is in your packet and this is a Board's member best friend. Most people do not view it that way but as Board members, you can make the decisions for the schools and that is an honor and wonderful position to be in. But you have to know what your role is and sometimes that is kind of fuzzy. The Ethics Act really does tell you what exactly that is supposed to be – what your role is and what your role isn't.

The Ethics Act is law – it is legislative so we do need to go by it. The whole reason for an ethics act is by some manner the people who sit at the dais, people who represent their constituents, need to hold the trust of the people that they serve. They need to be accountable. The Ethics Act is the same for everyone. It helps to have everyone on the same page.

A lot of times there are questions you really aren't sure about and that is why you would ask your field representative or your attorney or the Ethics Commission for advice on an ethical dilemma you are experiencing or you can see coming down the road or something that may have passed.

It is important that you hold the trust and confidence of the people and you have to avoid conduct which is in violation of the public trust or create a justifiable impression among the public that the trust is being violated. Even if you have the best of intentions or even if at the end of the day you didn't do anything with ill intent, you did something that may have been misperceived by a member of the public or one of your constituents, you may still be in violation of the School Ethics Act because it doesn't matter quite so much about what you do that is important but what kind of impression you are giving your constituents and we all know that there is a lot of times where your actions can be misinterpreted. It really helps to keep this close and to revisit it and to view all actions through the lens of your constituents – how will they perceive your actions? How are they reading you? You talk about transparency and this is your best friend as far as transparency goes and as far as establishing yourself as a type of leader that you want to be as a school board member. You have important decisions to make. This keeps us all on the right path.

The Ethics Act has five main parts to it. The bottom one is training requirements for Board members – your annual governance training; your disclosure statements.

The Ethics Commission in itself is the code of ethics and conflicts of interest. The Ethics Commission is a nine-member body and they hold you accountable. If there is a violation you answer to the Ethics Commission. They meet every month in Trenton and they are an all-volunteer body. Each of these people are appointed by the Governor and each is for a three-year term. They can be renewed. The constitution of it is there are two school board members, two

school administrators and five members of the general public. You can request advisory opinions and request to examine a possible ethics violation. Right now there is not a nine-member board. There are five non-school officials, two school administrators and only one school board member. I don't know if Governor Murphy will fill the seat.

What do they do? They are not the Board police. They are reactive and tend not to be proactive but they have to answer what they put in front of them. Two things – a request for an advisory opinion or an ethics complaints and there are significant differences between the two. The advisory opinion is about activity that is either before the Board of Education or the Board sees coming in the near future. If you have an initiative towards you as a Board member, as a Board of Education, and you are not sure if it is going to be square for the Ethics Act or you are not sure you are conflicted, you are not sure you can vote on an agenda item, you are not sure you can take a particular position, you write to the Ethics Commission and ask them. It is not a form it is just a letter, they have a website on the Department of Education and you just ask the request. You can ask them a question about yourself or about anyone on your Board of Education. You can't ask them about Verona or Florida but you can ask them about Union Township.

If you are asking about a fellow board member you just need to show the Ethics Commission that you have notified the board member that you are asking about him or her and they will issue their advisory opinion most likely at their next meeting. They need two weeks' notice. They will consider your opinion and they will send you their conclusion. It is never punitive. If it turns out that the situation you are asking about is probably not dealing with the ethics fact they will ask you to change course. If it turns out everything is fine, then everything is fine. That is an advisory opinion.

Mr. Nufrio arrived at Board meeting (5:28 p.m.)

An ethics complaint is a very different animal. The ethics complaint is about a past action and someone out there does not think it is in line with the Ethics Act. They will file an ethics complaint. An ethics complaint is not only is it about something in the past but it can also be filed by anybody. It doesn't have to be a fellow board member. It can be a staff member, a community member, somebody from outside of the community – maybe somebody that read the newspaper and didn't like what you did. Anyone can file an ethics complaint. Mr. McDowell asked even from another state? Ms. Helewa stated even from another state. It is really rare but it has come up before. Even a commissioner on the Commission can serve – which I just saw for the first time this month. You need to keep your nose clean.

If you are found to have violated the code of ethics there are punitive measures. Also the ethic complaint, whether it is dismissed or found to be in violation or you are cleared, that is published word for word on the ethic commission's website. Advisory opinions will go up there if the commission feels that the advice that they are issuing to you may be of use to other boards of education and they clean it up so you can't tell which district is asking but the ethics complaints are right there and make some very interesting and unfortunate reading. Sometimes they are dismissed and sometimes it is found that the person has not violated the ethics act but sometimes there is a violation that the commissioner has found to exist.

In case of violations there are four penalties and they go in different degrees of severity. Reprimand is just between you and the commission and stop doing it and you are reprimanded. Censure is a step up from that – where the Board President has to read at a public meeting that you are being censured and why – that is embarrassing. In very egregious cases you can be suspended – the commission does have the power to recommend suspension and the Commissioner of Education signs off on it for a number of meetings or in the most severe cases you can be removed. There is no monetary damages. It also makes a block on the district's QSAC.

The Code of Ethics is the most popular part of the Ethics Act – this goes to the heart of what a Board member does. The Board member should be doing and shouldn't be doing. What your role is and what your role isn't.

According to New Jersey statute, a school board member shall abide by the following Code of Ethics:

- a. I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.
- b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.
- c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.
- d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.
- e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.
- f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.
- g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.
- h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

- i. I will support and protect school personnel in proper performance of their duties.
- j. I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

The real clue of keeping that process moving smoothly is have an orderly meetings. Where you have your meetings in public not with the public – you have everybody keep their public comments within your policy restrictions and then the Board President and Superintendent work together to address any issues.

When you are a Board member and away from the table, you can't just walk into the schools you have to follow the same procedures – two buzzards, driver's license and you shouldn't be offended if someone asks you for that. You can't just visit a classroom. If there is something you wanted to see in the school that would require a visit you would need to go through your Superintendent and ask. The best practice is to bring it up at the Board table. You can't do much but as a Board together you can do a lot. Everyone should be working off the same information and bringing their viewpoints together for the full Board to consider. There shouldn't be one outlier Board member that knows more than everybody else. It should be a team effort.

Rice notices are not part of the Ethics Act but there are a lot of noise about rice notices last year with that whole case years ago. A rice notice can only be issued by the Superintendent not by the Board and the Superintendent is riced by the Board President.

Mrs. Regis-Darby asked if the Board President is conflicted what should happen? Ms. Helewa stated your policy manual probably dictates that but typically the majority vote of the Board rules. Your attorney can give you complete clarification but if the majority of the Board wants to rice the Superintendent then they can.

Conflicts of interest – just because you are conflicted it doesn't mean you can't sit on the Board. The conflicts are spelled out in the School Ethics Act. Most of them are pretty obvious – if you have a business interest, personal involvement that creates a benefit regarding an outcome of a particular resolution – then you step away from the table and the discussion and the vote – you recuse yourself. I do urge you to rely on the advice of your Board attorney and in some cases you may have to ask for an advisory opinion.

Where these really come into play is when we talk about family members. It is important that we know the definition of immediate family member and a relative. An immediate family member is a spouse or dependent child that resides in the same household. A relative is a much wider net – parents, niece, nephews, aunts, uncles, half-brother, half-sister, stepchild, domestic partner, grandchild, ex-spouse or by marriage. It is a lot wider and the reason why we talk about this is because we have to think about our family members when we are hiring and negotiating.

Your nepotism policy states “a school district may not hire a relative to work in the district of yourself or of your superintendent” with a very narrow exception. If you are looking

to fill a highly specialized position, you advertised it and the only people who are willing to fill it is a relative of a board member than you can ask the Executive County Superintendent for a waiver and on occasion that happens.

Mr. Nufrio stated you stated to step away from a discussion regarding a relative, you are talking about executive session obviously. There won't be any talking about personnel out here openly. Ms. Helewa stated yes that is a very fair statement. But if you are talking about something roundly that doesn't particularly affect your relative but may benefit your relative because you are talking about the collective unit, then you need to step away.

Mr. Nufrio stated but you don't need to step away, you need to recuse yourself from voting. Ms. Helewa stated in NJSBA's interpretation you need to step away from the table. Typically these discussions take place in executive session and you know – people who are conflicted get a half time – they get a night off when everyone else goes into the negotiations, you can leave. If there is any kind of question that is making you nervous, you ask your board attorney or Gwen – she is a terrific news source. A superintendent cannot recommend a relative.

Mr. McDowell asked when a board member has a spouse that works in the district, how does that work? Ms. Helewa stated you can't hire someone belonging to you except with that waiver. There is a loop and it is a valid way of doing things. You could resign from your seat and if your relative is hired while you are not sitting on the Board, that is o.k. and if you are reappointed to fill that vacancy then the reappointment is appropriate. Mrs. Minneci stated you just can't be a sitting board member at that time. Ms. Helewa stated exactly. If you get reappointed, then you are recusing yourself from negotiations and any kinds of decisions.

If you have anyone belonging to you – immediate family member, relatives – who works for the Union Board of Education – you are completely out of negotiations and you are also completely out of any discussion that has to do with the performance of the superintendent. You are out from hiring a superintendent but you are also out of reviewing the superintendent – the superintendent's evaluation – if you have an immediate family member or relative that works in the district – you are out. You cannot vote on the superintendent's contract; any kind of employment matters that have to do with the superintendent.

As far as negotiating with the union, this chart is in your packet and it is part of the SEC decision A2417 and you can look it up. If you have someone belonging to you that works in the district, you are completely out of negotiations from start to finish. If you have an immediate family member, who works out of district, you are out of negotiations until the salary guides and memorandum of agreement have been reached and then you can vote on the final ratification. Once those two things are reach, you are back in.

If you have someone that belongs to you and is out of district, the large definition of relative, then you are in. You will notice once it is all over, so that is absent another conflict. If you have somebody like your sister-in-law lives in Pennington and she is president of her local education association, that may mean you are conflicted and can't participate but go on the advice of your attorney and you may ask the school ethics commission for an advisory opinion. Typically if you have someone in your relative pool that has that a union involvement, an officer

that sat on the negotiations team with their local education association, you are likely to be conflicted out.

Mrs. Ruiz asked does out-of-district include, out of state? Ms. Helewa stated that is a really good question because it is about a similar union so there is a little uncertainty about the AFC – the American Federation Commission – I don't know if the commission considers that to be similar. It is something to ask your attorney.

Mr. Nufrio stated for clarification – if a spouse works out of district, the Board cannot participate in the negotiations depending on what unit that spouse is in. Ms. Helewa stated yes. Mr. Nufrio stated if the spouse is an administrator, then that would conflict the board member from participating in the negotiations of administrators. Ms. Helewa stated yes. Mr. Nufrio stated it should only reflect on the unit the spouse is in – if it an officer in the association then it would only be that problem. Ms. Helewa stated your point is right – if you have an administrator spouse, you can negotiate with the teachers. If you have a teacher spouse, then you can negotiate for the administrators.

Doctrine of Necessity – if you have a majority of the board members who were conflicted you may need to invoke the doctrine of necessity on a board action only. The SEC has determined that you do not need to invoke the doctrine of necessity if you are forming a negotiations committee because a negotiations committee does not take action on behalf of the board. The attorney has to type up a Doctrine of Necessity and post it publicly on your agenda and website that the board is going to take action on something that would normally be conflicted because of x, y, z – run through the members and why they are conflicted and then you can vote on it.

A few years ago the commission issued an advisory opinion for those people that had those large relative definition – you were out of negotiations which created a major uproar. It affected so many board members. The SEC was in demand as speakers and it was a big deal but eventually they reversed it.

Volunteerism used to be not a concern for board members but as often the case there was one case of egregious behavior; someone asked for an advisory opinion and there was a blanket decision made about putting some conditions on board members volunteering at schools. The whole reason was we wanted to stay away from creating the appearance of running the schools but seeing that they are well run. The SEC came up with some guidelines and if you are doing a one-time thing like chaperoning a field trip or read to the younger grades – that is perfectly fine. But if you get into something where you have an active day-to-day presence in the building and the word used in the decision was that you were enmeshed in the building – it seems that way than that is not aligned with your duties as a board member and you will need to step away. This is not for the PTO because the PTO is a separate organization with its own bylaws and tax ID number but if you were volunteering on behalf of the board and in regularly every month and the commission ruled that it really gave the impression of violating because of that active presence of being enmeshed. And nothing to do with money – do not handle money.

Interview committees – you have one employee, the superintendent. With that in mind the SEC strongly cautions against interview committees. If you were to have one, there are very strict rules of what you can and cannot do. Exit interviews are an absolute solid no. An exit interview is not the role of a board member.

If there are other developments in school ethics or new and pertinent advisory, we will put them in School Board Notes. As I said many times, talk to your board attorney if you have detailed questions. Mr. Nufrio stated consult your board attorney, he is your final arbiter – not because the SEC has yet to support that the board attorney is the fact and final arbiter. Ms. Helew stated the board attorney is not the final arbiter, the SEC is the final arbiter. Mr. Nufrio stated that exactly so then it winds up in administrative law which the judge says what are you doing here – if the attorney supported it, it is o.k. Ms. Helew stated if your board attorney is not giving you advice that is in line with the facts because most of the time you have a board that has an attorney that specializes in school law. That is a critical hire for the board because you need to go by what your attorney says. You are not school lawyers. If you call our attorney of the day, we will give you general advice but we will not tell you what to do – that is for your school attorney. But if your board attorney gives you advice that is not sound and not solid, it doesn't excuse you and that is where advisory opinions are a real critical tool. Thank you for having me.

Mr. McDowell asked the advisory opinion, you can call them. Ms. Helew stated it is not a call, you have to write them a letter and if they get it two weeks before their monthly meeting, then they will consider it and they will draft you a letter and send it to you. When I say talk to your attorney, just to be clear but I'm sure you know this, board members just can't call the board attorney. There is a protocol for talking to your attorney. It is in your policy manual. Typically it is the board president, the superintendent and the business administrator can contact him. If you have a question you have to pose it to the board president and she will channel it. Thank you so much and I wish you the best.

Presentation appended to minutes.

MOTION TO ADJOURN:

There being no further business before the Board in public session it was moved by Mr. McDowell, seconded by Mrs. Regis-Darby, that the meeting be adjourned at 6:20 p.m.

AYE: Mr. McDowell, Dr. Morgan, Mr. Nufrio, Mrs. Regis-Darby,
Mrs. Richardson, Mrs. Ruiz, Mrs. Williams, Mrs. Minneci

NAY: None

ABSTAIN: None

MOTION CARRIED

RESPECTFULLY SUBMITTED,

**GREGORY E. BRENNAN
BOARD SECRETARY**