



THE ROLE OF A BOARD MEMBER IN A PUBLIC HEALTH EMERGENCY

Many school board members have expressed concerns and sought clarification regarding their roles as board members with regard to the novel coronavirus pandemic (COVID-19), which has already resulted in long-term school closures throughout the State, as well as the rescheduling or cancellation of board meetings. It is understandable that as elected officials, many board members are eager to offer assistance to help guide their communities through the various school-related issues that arise during this Statewide public health crisis.

While school board members can and should consider providing additional support and assistance with regard to pandemic preparation and planning for their districts, in doing so, they must also remain cognizant of the concerns and issues that may arise if they engage in activities that could be viewed as beyond the role of a board member. Following are examples of issues that are related to potential conduct of board members in a public health emergency, which may implicate one or more of the provisions of School Ethics Act and the Code of Ethics for Board Members:

Support the Administration, But Do Not Administer the Schools

- Board members *must* confine their board action to “policy making, planning, and appraisal,” and “help to frame policies and plans only after the board has consulted those who will be affected by them.” N.J.S.A. 18A:12-24.1(c).
- Board members *must* carry out their responsibility, “not to administer the schools,” but, together with their fellow board members, “to see that they are well run,” and are obligated to “support and protect school personnel in proper performance of their duties.” N.J.S.A. 18A:12-24.1(d) and (i).
 - Board members *may* review and provide input on any policies, procedures, or plans that are considered or developed by their school districts to prepare for or address the ramifications of a public health crisis.
 - Board members *may* participate in committees that are designed to support the school district and its administration in properly addressing the district’s needs throughout a public health crisis.
 - However, board members *may not* take a primary or active role in actually creating or drafting procedures or plans related to the operation of the school

REPLY TO

387 PARK AVENUE S
5TH FLOOR
NY, NY 10016
212 278 0058

450 MAIN STREET
METUCHEN, NJ 08840
732 243 9588
FAX: 732 243 9590

309 FELLOWSHIP RD
STE 200
MT LAUREL, NJ 08054
863 350 1030

district, including but not limited to the distribution of “grab and go” meals for students, the implementation of remote/virtual learning, etc. Rather, they must defer to the appropriate school district administrator(s), and confine their roles to policy making, planning and appraisal.

Maintain Confidentiality As Required and Ensure Accuracy of Information Made Public

- Board members *must* “hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools.” In all other matters, board members *must* “provide accurate information” and, in cooperation with their fellow board members, *must* “interpret to the staff the aspirations of the community for its school.” N.J.S.A. 18A:12-24.1(g).
 - Board members *must* exercise a high level of caution when disclosing any information or updates that may not yet be final or that may otherwise be considered confidential for any reason.
 - If board members are not certain as to whether any decisions or updates have been approved by the administration or the board, as necessary, they *must* refrain from sharing that information with the public until the accuracy of such decisions or updates is confirmed.

Refer All Complaints to the Administration and Avoid Private Action that May Compromise the Board

- N.J.S.A. 18A:12-24.1(e) mandates that board members “recognize that authority rests with the board of education” and “make no personal promises nor take any private action that may compromise the board.”
- Board members are also required to “refer all complaints to the chief administrative officer,” and “act on the complaints at public meetings only after failure of an administrative solution.” N.J.S.A. 18A:12-24.1(j).
 - In the event that a board member receives any complaints or reports from a staff member, parent, student, or member of the community regarding any aspect of the school district’s response to the COVID-19 public health crisis – including, but not limited to, school closures and the provision of online instruction and distance learning – the board member *must* refer them to the Superintendent,

and the board may not act on them unless and until an administrative solution is insufficient to resolve the issue.

- School officials, including, but not limited to board members, may not “undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.” N.J.S.A. 18A:12-24(d).
 - To the extent that board members are considering participation in volunteer service and/or employment that may relate in any way to the services that the board is providing to students, parents, and the community during the period of a school closure, such as online instruction services and/or meal services to students who receive free and reduced lunch, board members must consider whether their service or employment would reasonably be expected to impact their independence of judgment in serving on the board.

We understand that these uncertain times may lead to unusual issues that require guidance from seasoned school law attorneys. The attorneys at The Busch Law Group are always available to help board members and administrators develop and implement strategies to enable to continued and orderly operation of their respective school districts. Should you have any questions regarding legal issues implicated by COVID-19, the firm’s attorneys are available to assist you.

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