

CHAPTER 178

AN ACT concerning school board members and employees, amending N.J.S.18A:12-20, N.J.S.18A:16-6, and N.J.S.18A:16-6.1 and amending and supplementing P.L.1991, c.393.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.18A:12-20 is amended to read as follows:

Indemnity of members of boards of education against cost of defense.

18A:12-20. Whenever a civil, administrative, criminal or quasi-criminal action or other legal proceeding has been or shall be brought against any person for any act or omission arising out of and in the course of the performance of his duties as a member of a board of education, and in the case of a criminal or quasi-criminal action such action results in final disposition in favor of such person, the board of education shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom. Indemnification for exemplary or punitive damages shall not be mandated and shall be governed by the standards and procedures set forth in N.J.S.59:10-4. Any board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

2. N.J.S.18A:16-6 is amended to read as follows:

Indemnity of officers and employees against action, proceeding; exceptions.

18A:16-6. Whenever any civil or administrative action or other legal proceeding has been or shall be brought against any person holding any office, position or employment under the jurisdiction of any board of education, including any student teacher or person assigned to other professional pre-teaching field experience, for any act or omission arising out of and in the course of the performance of the duties of such office, position, employment or student teaching or other assignment to professional field experience, the board shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom; provided that

a. no employee shall be entitled to be held harmless or have his defense costs defrayed in a disciplinary proceeding instituted against him by the board or when the employee is appealing an action taken by the board; and

b. indemnification for exemplary or punitive damages shall not be mandated and shall be governed by the standards and procedures set forth in N.J.S.59:10-4.

Any board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

3. N.J.S.18A:16-6.1 is amended to read as follows:

Indemnity of officers and employees in certain criminal, quasi-criminal actions.

18A:16-6.1. Should any criminal or quasi-criminal action be instituted against any such person for any such act or omission and should such proceeding be dismissed or result in a final disposition in favor of such person, the board of education shall reimburse him for the cost of defending such proceeding, including reasonable counsel fees and expenses of the original hearing or trial and all appeals. No employee shall be entitled to be held harmless or have his defense costs defrayed as a result of a criminal or quasi-criminal complaint filed against the employee by or on behalf of the board of education.

Any board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

4. Section 9 of P.L.1991, c.393 (C.18A:12-29) is amended to read as follows:

C.18A:12-29 Complaint procedures.

9. a. Any person, including a member of the commission, may file a complaint alleging a violation of the provisions of this act or the Code of Ethics for School Board Members as set

forth in section 5 of P.L.2001, c.178 (C.18A:12-24.1), by submitting it, on a form prescribed by the commission, to the commission. No complaint shall be accepted by the commission unless it has been signed under oath by the complainant. If a member of the commission submits the complaint, the member shall not participate in any subsequent proceedings on that complaint in the capacity of a commission member. If a commission member serves on the school board of, or is employed by, the school district which employs or on whose board the school official named in the complaint serves, the commission member shall not participate in any subsequent proceedings on that complaint.

b. Upon receipt of a complaint, the commission shall serve a copy of the complaint on each school official named therein and shall provide each named school official with the opportunity to submit a written statement under oath. The commission shall thereafter decide by majority vote whether probable cause exists to credit the allegations in the complaint. If the commission decides that probable cause does not exist, it shall dismiss the complaint and shall so notify the complainant and any school official named in the complaint. The dismissal shall constitute final agency action. If the commission determines that probable cause exists, it shall refer the matter to the Office of Administrative Law for a hearing to be conducted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and shall so notify the complainant and each school official named in the complaint.

In making a determination regarding an alleged violation of the Code of Ethics for School Board Members, the burden of proof shall be on the accusing party to establish factually a violation of the code. A decision regarding a complaint alleging violations of the code shall be rendered by the commission within 90 days of the receipt of the complaint by the commission.

c. Upon completion of the hearing, the commission, by majority vote, shall determine whether the conduct complained of constitutes a violation of this act, or in the case of a board member, this act or the code of ethics, or whether the complaint should be dismissed. If a violation is found, the commission shall, by majority vote, recommend to the commissioner the reprimand, censure, suspension, or removal of the school official found to have violated this act, or in the case of a board member, this act or the code of ethics. The commission shall state in writing its findings of fact and conclusions of law. The commissioner shall then act on the commission's recommendation regarding the sanction.

d. Any appeal of the commission's determination regarding a violation of this act, or in the case of a board member, this act or the code of ethics, and of the commissioner's decision regarding the sanction shall be to the State Board of Education in accordance with Title 18A of the New Jersey Statutes.

e. If prior to the hearing the commission determines, by majority vote, that the complaint is frivolous, the commission may impose on the complainant a fine not to exceed \$500. The standard for determining whether a complaint is frivolous shall be the same as that provided in subsection b. of section 1 of P.L.1988, c.46 (C.2A:15-59.1).

f. Notwithstanding the provisions of subsections c. and d. of this section, the commission shall be authorized to determine and impose the appropriate sanction including reprimand, censure, suspension or removal of any school official found to have violated this act who is an officer or employee of the New Jersey School Boards Association. Any action of the commission regarding a violation of P.L.1991, c.393 (C.18A:12-21 et seq.) or the sanction to be imposed in the event that the school official involved is an officer or employee of the New Jersey School Boards Association shall be considered final agency action and an appeal of that action shall be directly to the Appellate Division of the Superior Court.

C.18A:12-24.1 Code of Ethics for School Board Members.

5. A school board member shall abide by the following Code of Ethics for School Board Members:

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.

6. This act shall take effect immediately and shall also apply to any claim for reimbursement, defrayal or indemnity made in writing to a board in the two years preceding the effective date.

Approved July 26, 2001.