

160-5-1-.36 LOCAL SCHOOL BOARD GOVERNANCE

(1) DEFINITIONS.

(a) **Georgia Department of Education (GaDOE)** – the state agency charged with the fiscal and administrative management of certain aspects of K-12 public education, including the implementation of federal and state mandates. Such management is subject to supervision and oversight by the State Board of Education.

(b) **Immediate Family Member** – a spouse, child, sibling, or parent or the spouse of a child, sibling, or parent.

(c) **Local Board of Education** – a county or independent board of education exercising control and management of a local school system pursuant to Article VIII, Section V, Paragraph II of the Georgia Constitution.

(d) **Local Educational Agency (LEA)** – local school system pursuant to local board of education control and management.

(e) **Meeting** – a gathering of members of a board of education that is subject to the Georgia Open Meetings Act, O.C.G.A. § 50-14-1, et. seq.

(f) **State Board of Education (SBOE)** – the constitutional authority which defines education policy for the public K-12 education agencies in Georgia.

(g) **Vacancy** – a position on a local board of education that is unoccupied and there is no incumbent who has a lawful right to the position. A vacancy may occur for any reason detailed in O.C.G.A. § 45-5-1, including resignation or death, for any reason detailed in O.C.G.A. § 20-2-51, or for any other reason provided by operation of general or local laws.

(2) REQUIREMENTS.

(a) The State Board of Education shall adopt a model code of ethics for members of local boards of education by October 1, 2010. Such model code of ethics shall also include appropriate consequences for violation of a provision or provisions of such code. The State Board of Education may periodically adopt revisions to such model code as it deems necessary.

1. Within three months of adoption by the State Board of Education of a model code of ethics pursuant to subsection (2)(a) of this rule, each local board of education shall adopt a code of ethics that includes, at a minimum, such model code of ethics. Each local board of education shall incorporate into its code of ethics any revisions

adopted by the State Board of Education to the model code of ethics pursuant to subsection (2)(a) of this rule within three months of adoption of such revisions.

2. Each local board of education shall adopt its code of ethics and any revisions thereto at a regularly scheduled meeting.

3. A local board of education shall not adopt or follow any code of ethics which prevents the members of such board from discussing freely the policies and actions of such board outside of a board meeting. This shall not apply to any matter or matters discussed in executive session or which are exempt from disclosure under Code 50-18-72.

4. Each local board of education shall submit a copy of its code of ethics and any revisions thereto to the Georgia Department of Education in accordance with GaDOE's *Guidance for the Local School Board Governance Rule*.

(b) The State Board of Education shall adopt a training program for members of local boards of education by July 1, 2011. The State Board of Education may periodically adopt revisions to such training program as it deems necessary.

1. Within three months of adoption by the State Board of Education of a training program pursuant to paragraph (3)(b) of this rule, each local board of education shall adopt a training program for members of such boards that includes, at a minimum, such training program and requirements established by the State Board of Education pursuant to paragraph (3)(b) of this rule. Each local board of education shall incorporate any revisions adopted by the State Board of Education to the training program within three months of adoption of such revisions.

2. Each local board of education shall adopt its training program and any revisions thereto at a regularly scheduled meeting.

3. Each local board of education shall submit a copy of its training program and any revisions thereto to the GaDOE in accordance with GaDOE's *Guidance for the Local School Board Governance Rule*.

(c) In addition to any other requirements provided by law, and as required by O.C.G.A. § 20-2-51(e), no person shall be eligible for election as a member of a local board of education unless he or she:

1. Has read and understands the code of ethics and the conflict of interest provisions applicable to members of local boards of education and has agreed to abide by them; and

2. Has agreed to annually disclose compliance with the State Board of Education's policy on training for members of local boards of education, the code of ethics of the

local board of education, and the conflict of interest provisions applicable to members of local boards of education.

(d) Each person offering his or her candidacy for election as a member of a local board of education shall file an affidavit with the officer before whom such person has qualified for such election prior to or at the time of qualifying, which affidavit shall affirm that he or she meets all of the qualifications required pursuant to O.C.G.A. § 20-2-51(e). This paragraph shall apply only to local board of education members elected or appointed on or after July 1, 2010.

(e) In addition to any other requirements provided by law and in accordance with O.C.G.A. § 20-2-51, no person shall be eligible for election as a member of a local board of education who:

1. Is not a resident of the Local Education Agency in which that person seeks election and of the election district which such person seeks to represent. Whenever there is in a portion of any county LEA having a board of education of its own, receiving its pro rata of the public school fund directly from the Georgia Department of Education and having no dealings whatever with the local board, then the members of the board of such county shall be selected from that portion of the county not embraced within the territory covered by such LEA.

(i) Whenever a member of a local board of education moves that person's domicile from the district which that person represents, such person shall cease to be a member of such local board of education, and a vacancy shall occur. The member shall provide notice of such move to the secretary of the local board of education and the election superintendent within ten days of such move.

2. Serves on the governing body of a private elementary or secondary educational institution.

3. Is employed by the local board of education for which that person seeks election.

4. Is employed by the Georgia Department of Education or serves on the State Board of Education; or

5. Is on the National Sex Offender Registry or the state sexual offender registry.

(3) LOCAL BOARD OF EDUCATION SIZE.

(a) In accordance with O.C.G.A. § 20-2-52, each local board of education shall have no more than seven members as provided by local Act.

1. Paragraph (3)(a) shall not apply to a local board of education whose board size exceeds seven members as provided by local constitutional amendment or federal court order or pursuant to a local law in effect prior to July 1, 2010; provided,

however, that if the local law of any such local board of education is amended to revise the number of members on such board, paragraph (3)(a) shall apply.

(4) COMPENSATION FOR MEMBERS OF LOCAL BOARDS OF EDUCATION.

(a) In accordance with O.C.G.A. § 20-2-55, members of local boards of education who were elected or appointed prior to July 1, 2010 shall be compensated in accordance with the following:

(1) In any LEA for which no local Act is passed, members of the local board of education shall, when approved by the local board affected, receive a per diem of \$50.00 for each day of attendance at meetings of the board and while meeting and traveling within or outside the state as a member of a committee of the board on official business first authorized by a majority of the board, plus reimbursement for actual expenses necessarily incurred in connection therewith.

(2) Notwithstanding paragraph (4)(a)(1), in any independent LEA with a full-time equivalent (FTE) program count of less than 4,000 students for which no local Act is passed, members of the local board of education may, when approved by the affected local board, receive a per diem of not less than \$50.00 and not more than \$100.00 for each day of attendance at meetings of the board and while meeting and traveling within or outside the state as a member of a committee of the board, plus reimbursement for actual expenses.

(b) In accordance with O.C.G.A. § 20-2-55, members of local boards of education who were elected or appointed after July 1, 2010 shall be compensated in accordance with the following:

(1) In any local school system for which no local Act is passed, members of the local board of education shall, when approved by the local board affected, receive a per diem of \$50.00 for each day of attendance at a meeting of the board, plus reimbursement for actual expenses necessarily incurred in connection therewith.

(2) Notwithstanding paragraph (4)(b)(1) in any independent school system with a full-time equivalent (FTE) program count of less than 4,000 students for which no local Act is passed, members of the local board of education may, when approved by the affected local board, receive a per diem of not less than \$50.00 and not more than \$100.00 for each day of attendance at a meeting plus reimbursement for actual expenses.

(c) The accounts for service and expenses of members of local boards of education shall be submitted for approval to the local school superintendent.

(d) The compensation of members of local boards shall be paid only from the local tax funds available to local boards for educational purposes.

(e) All local boards of education are authorized to pay such board members for attendance at a required training program the same per diem as authorized by local or general law for attendance at regular meetings, as well as reimbursement of actual expenses for travel, lodging, meals, and registration fees for such training, either before or after such board members assume office.

(5) NEPOTISM.

(a) Each local board of education shall adopt policies regarding nepotism. Local board of education policies regarding nepotism shall, at a minimum, include the following provisions:

1. No person who has an immediate family member sitting on a local board of education or serving as the local school superintendent or as a principal, assistant principal, or system administrative staff in the LEA shall be eligible to serve as a member of such local board of education provided that the immediate family member's employment in his or her position in the LEA began on or after January 1, 2010. This paragraph shall apply only to local board of education members elected or appointed on or after July 1, 2009. Nothing in this paragraph shall affect the employment of any person who is employed by an LEA on or before July 1, 2009, or who is employed by an LEA when an immediate family member becomes a local board of education member for that LEA.

2. Notwithstanding O.C.G.A. § 20-2-244(b), in LEAs in which the initial fall enrollment count conducted in 2009 pursuant to O.C.G.A. § 20-2-160 does not exceed a full-time equivalent count of 2,800, the State Board of Education shall be authorized to waive paragraph (5)(a)(1) of this rule upon the request of a local board of education or an individual attempting to qualify to run for local board of education member and in accordance with the provisions of subsections (d) and (e) of O.C.G.A. § 20-2-244.

(i) Prior to submitting waiver request pursuant to this paragraph, the local board of education shall, upon its own initiative, or at the request of such individual attempting to qualify to run for local board of education member:

I. Provide 30 days' notice of the individual's intent to run for office; and

II. Conduct a public hearing for the purpose of providing an opportunity for full discussion and public input on the issue of potential nepotism problems and other concerns with regard to such waiver. The public hearing shall be advertised at least seven days prior to the date of such hearing in a local newspaper of general circulation which shall be the same newspaper in which other legal announcements of

the local board of education are advertised. The public hearing may be conducted in conjunction with a regular or called meeting of the local board or may be conducted independently, at the local board's discretion. The cost of such notice and public hearing shall be borne by the local board.

(ii) A local board of education seeking a waiver pursuant to this paragraph shall submit a written waiver request that contains, at a minimum:

(I) Identification of the specific laws, rules, regulations, policies, procedures, or provisions that are requested for waiver;

(II) A description of the laws, policies and procedures the school or school system shall substitute for the waived rules, regulations, policies, procedures, or provisions;

(III) A description of any familial relationship that is the subject of the waiver request.

(IV) A description of how the proposed waiver will improve student performance;

(V) A description of the students who will be affected by the proposed waiver, including their estimated number, current performance, grade level, and any common demographic traits;

(VI) A list of schools by name that will be affected by the proposed waiver, and a description of each school, including current performance, grade levels, and demographic traits of the students of each such school;

(VII) Methods for collection of data, and for measuring and evaluating any change in student performance resulting from the proposed waiver;

(VIII) The period of time for which the proposed waiver is requested and the proposed starting date; and

(IX) A resolution from the local school board approving or disapproving the waiver request and outlining the reasons for its approval or disapproval.

(X) A description of any public comment received at the public hearing held pursuant to (5)(a)(2)(i)(II) of this rule.

(iii) The State Board of Education may grant or deny a waiver request, or grant a waiver request subject to specified modifications in the waiver request.

(iv) The State Board of Education shall approve or deny a waiver request pursuant to this paragraph no later than 45 days after receipt of such waiver request, taking into consideration whether the benefit to the public would justify approval of the waiver.

(v) An approved waiver must be received by the local election superintendent prior to an individual's filing of a declaration or notice of candidacy in accordance with Article 4 of Chapter 2 of Title 21 of the Official Code of Georgia.

3. No person shall be eligible to be appointed, employed, or to serve as superintendent of schools of any county or independent LEA who has an immediate family member sitting on the local board of education for such LEA or who has an immediate family member hired as or promoted to a principal, assistant principal, or system administrative staff on or after July 1, 2009, by that LEA provided that the immediate family member's employment in his or her position in the LEA began on or after January 1, 2010. Nothing in this Code section shall affect the employment of any person who is employed by a LEA on or before July 1, 2009, or who is employed by a LEA when an immediate family member becomes the superintendent for that LEA.

(6) SANCTIONING MEMBERS OF LOCAL BOARDS OF EDUCATION.

(a) No local board of education member shall:

1. Use or attempt to use his or her official position to secure unwarranted privileges, advantages, or employment for himself or herself, his or her immediate family member, or others.

2. Act in his or her official capacity in any matter where he or she, his or her immediate family member, or a business organization in which he or she has an interest has a material financial interest that would reasonably be expected to impair his or her objectivity or independence of judgment. Compliance with O.C.G.A. § 20-2-505 shall not constitute a violation of this subparagraph.

3. Solicit or accept or knowingly allow his or her immediate family member or a business organization in which he or she has an interest to solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, political contribution, service, promise of future employment, or other thing of value was given or offered for the purpose of influencing that board member in the discharge of his or her official duties. This paragraph shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office if the local board of education member has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the local board of education member in the discharge of his or her official duties. For purposes of this subparagraph, a gift, favor, loan, contribution, service, promise, or other thing of value shall not include the items contained in subparagraphs (a)(2)(A) through (a)(2)(J) of O.C.G.A. § 16-10-2.

4. Use, or knowingly allow to be used, his or her official position or any information not generally available to the members of the public which he or she

receives or acquires in the course of and by reason of his or her official position for the purpose of securing financial gain for himself or herself, his or her immediate family member, or any business organization with which he or she is associated.

5. Shall represent, either in his or her individual capacity or through a or business organization in which he or she has an interest, any person or party other than the local board of education or LEA in connection with any cause, proceeding, application, or other matter pending before the LEA in which he or she serves or in any proceeding involving the LEA in which he or she serves.

6. Be prohibited from making an inquiry for information on behalf of a constituent if no fee, reward, or other thing of value is promised to, given to, or accepted by the local board of education member or his or her immediate family member in return therefor.

7. Disclose or discuss any information which is subject to attorney-client privilege belonging to the local board of education to any person other than other board members, the board attorney, the local school superintendent, or persons designated by the local school superintendent for such purposes unless such privilege has been waived by a majority vote of the whole board.

8. Also be an officer of any organization that sells goods or services to that LEA, except as provided in O.C.G.A. § 20-2-505 and excluding nonprofit membership organizations.

9. Be deemed in conflict with paragraph (6)(a) of this rule, if, by reason of his or her participation in any matter required to be voted upon, no material or monetary gain accrues to him or her as a member of any profession, occupation, or group to any greater extent than any gain could reasonably be expected to accrue to any other member of that profession, occupation, or group.

(b) Upon a motion supported by a two-thirds' vote, a local board of education may choose to conduct a hearing concerning the violation by a local board of education member of any conflict of interest provision in paragraph (6)(a) of this rule or O.C.G.A. § 20-2-63. Such hearing shall be conducted in accordance with the policies and procedures adopted by the local board in accordance with State Board of Education Rule 160-1-3-.04 SCHOOL LAW TRIBUNALS AND APPEALS, provided that the local board of education member accused of violating said provision shall have 30 days' notice prior to a hearing on the matter, and said accused member may bring witnesses on his or her behalf. Further, the local board of education may call witnesses to inquire into the matter. If it is found by a vote of two-thirds of all the members of the board that the accused member has violated a conflict of interest provision contained in paragraph (6)(a) of this rule or O.C.G.A. § 20-2-63, the local board shall determine an appropriate sanction. This subparagraph shall apply only to local board of education members elected or appointed on or after July 1, 2010.

(c) A board member subject to sanction pursuant to paragraph (6)(b) of this rule may, within 30 days of such sanction vote, appeal such decision to the State Board of Education, in accordance with the procedures set forth in paragraph (4) of State Board of Education Rule 160-1-3-.04 SCHOOL LAW TRIBUNALS AND APPEALS. The State Board of Education shall affirm or reverse the decision to sanction such board member in accordance with the procedures set forth in paragraph (4) of State Board of Education Rule 160-1-3-.04 SCHOOL LAW TRIBUNALS AND APPEALS.

(7) SUSPENSION OF LOCAL BOARDS OF EDUCATION.

(a) Any accrediting agency included in subparagraph (6.1)(A) of O.C.G.A. § 20-3-519 shall notify in writing the State School Superintendent upon placing any LEA or school on the level of accreditation immediately preceding the loss of accreditation for school board governance reasons. Such notice shall include the reason or reasons for the decision of the accrediting agency.

(b) Notwithstanding O.C.G.A. § 20-2-54.1 or any other provisions of law to the contrary, if an LEA or school is placed on the level of accreditation immediately preceding loss of accreditation for school board governance related reasons by one or more accrediting agencies included in subparagraph (6.1)(A) of O.C.G.A. § 20-3-519, the local board of education shall notify the State board of Education in writing within three business days of such placement and the State Board of Education shall conduct a hearing in not less than ten (10) days of such notice nor more than ninety (90) days and recommend to the Governor whether to suspend all eligible members of the local board of education with pay. A majority of the members of a local board of education may petition the State Board of Education to continue any hearing scheduled under this subsection. Upon a showing of good cause, the State Board may in its sound discretion continue any such hearing. Notwithstanding any other provision of law, deliberations held by the State Board of Education pursuant to this subsection to formulate its recommendation to the Governor shall not be open to the public; provided however, that testimony shall be taken in an open meeting and a vote on the recommendation shall be taken in an open meeting following the hearing or at the next regularly scheduled meeting. If the State Board of Education makes such recommendation, the Governor may, in his or her discretion, suspend all eligible members of the local board of education with pay and, in consultation with the State Board of Education, appoint temporary replacement members who shall be otherwise qualified to serve as members of such board. Any temporary replacement members appointed pursuant to this paragraph or O.C.G.A. § 20-2-73 shall serve until the completion of the suspension or until the seat becomes vacant, whichever occurs first.

(c) All hearings pursuant to paragraph (7)(b) of this rule shall be conducted by the State Board of Education, a committee thereof, or a hearing officer appointed by the State Board of Education, who shall hold all hearings pursuant to the following procedures:

1. The presiding officer shall notify the parties of the time and place of the hearing.

2. All witnesses shall testify under oath and shall be subject to cross-examination.
3. The presiding officer shall require the testimony and other evidence to be transcribed by a court reporter or recorded by other appropriate means.
4. The strict rules of evidence prevailing in courts of law shall not be applicable.
5. At the conclusion of the hearing, or within 15 days thereafter, the State Board of Education shall notify the Governor and the parties of its decision in writing.

(d) Any suspended board member may petition the Governor for reinstatement as provided in O.C.G.A. § 20-2-73. Any suspended board member who is reinstated by the Governor pursuant to O.C.G.A. § 20-2-73 may be reimbursed by the local board of education for his or her reasonable attorney's fees and related expenses incurred in pursuing such reinstatement.

(e) Paragraph (7) of this rule shall apply only to a local school system or school which is placed on the level of accreditation immediately preceding loss of accreditation on or after April 20, 2011. Paragraph (7) of this rule shall apply only to local board of education members who were serving on the local board at the time the accrediting agency placed the local school system or school on the level of accreditation immediately preceding loss of accreditation.

(f) A local board of education shall not expend any public funds for attorney's fees or expenses of litigation relating to proceedings initiated pursuant to O.C.G.A. §20-2-73 except to the extent such fees and expenses are incurred prior to and through the recommendation of the State Board as provided for in O.C.G.A. § 20-2-73. However, nothing in O.C.G.A. § 20-2-73 shall be construed to prohibit an insurance provider from covering attorney's fees or expenses of litigation under an insurance policy.

Authority: O.C.G.A § 20-2-51; 20-2-54.1; 20-2-63; 20-2-72; 20-2-73; 20-2-230; 20-2-240.

Adopted: September 22, 2016

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