

Protecting Against Ethical Violations and Appearances of Impropriety Involving Local School  
Council Members in the Chicago Public Schools

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Every Chicago public school has a Local School Council (“LSC”), an elected school-based management unit comprised of the school’s principal, several teachers, a non-teaching school staff member, parents, and community members, which carries out important duties for the school in which it is affiliated.<sup>1</sup> These duties include, but are not limited to, evaluating the principal’s performance, approving the school improvement plan, and assessing the school’s budget.<sup>2</sup> Further, as elected and appointed state officials with significant authority over their respective schools, Local School Council members are held to strict ethical standards, specifically: a fiduciary duty of loyalty, a duty to avoid conflicts of interest, and a duty to refrain from nepotism.<sup>3</sup> At the same time, Local School Councils have been publicly criticized for failing to effectively revitalize the Chicago Public School system after it was declared “the worst in the nation” in 1987 by President Reagan’s Secretary of Education.<sup>4</sup>

Today, the Chicago Public Schools’ Ethics Committee (“Ethics Committee”) is faced with the challenging task of resolving ethical inquiries involving Local School Council members in light of the strict ethical standards to which LSC members are held while at the same time

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<sup>1</sup> 105 Ill. Comp. Stat. 5/34-2.3 (2010).

<sup>2</sup> *Id.*

<sup>3</sup> Chicago Board of Education Code of Ethics, sections 3, 9(a), 5 (2004); Section 503.1 of the Chicago Public Schools Policy Manual.

<sup>4</sup> Lillemor McGoldrick. *Reforming Urban School Systems: Putting the Public Back in Public Education*, 6 GEO. J. ON POVERTY L. & POL’Y 111, 127 (1999).

ensuring that Local School Councils remain viable and effective school-based management units. When resolving ethical inquiries on a weekly basis and arriving at sound decisions, the Ethics Committee engages in a complicated balancing act. Specifically, the Ethics Committee assesses ethical inquiries in light of the competing tension between adequately resolving ethical violations and preventing the appearance of improprieties against the overarching goal of ensuring Local School Councils operate effectively, which includes attracting the best candidates and ensuring that hard-working candidates are not unnecessarily disqualified from serving on LSCs because of overly-stringent ethics policies. This task is especially difficult given the fact that Local School Councils are unique to Chicago and, therefore, the Ethics Committee cannot look to outside jurisdictions for guidance on how to resolve ethical scenarios involving Local School Council members.<sup>5</sup> Further, the way in which the Ethics Committee resolves certain ethical inquiries involving LSC members will likely have far-reaching consequences throughout the Chicago Public School system which could, in turn, impact the sustainability of Local School Councils as well as the ability of LSCs to attract the most qualified candidates.

The volume of ethical inquiries involving Local School Council members that are brought to the attention of the Ethics Committee suggests LSC members are either unaware of the strict ethical standards to which they are held or that LSC members are simply failing to take their ethical obligations into consideration before engaging in certain conduct. Either way, the number of ethical violations involving LSC members needs to be addressed and the ambiguity surrounding some of the ethical scenarios that LSC members face should be clarified. By enacting explicit provisions in the Code of Ethics for the Chicago Board of Education (“Code of

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<sup>5</sup> Donald R. Moore. *Designs for Change. Chicago’s Local School Councils: What the Research Says* (2002), [http://www.designsforchange.org/pdfs/LSC\\_rpt\\_final.pdf](http://www.designsforchange.org/pdfs/LSC_rpt_final.pdf).

Ethics”) regarding Local School Council members and requiring that LSC members undergo an extensive ethics training program prior to the start of their terms could help to accomplish some of the needed clarification in this area. A revised Code of Ethics and a comprehensive LSC ethics training program would at least reduce the number of LSC members committing ethical violations and improprieties and would help the Ethics Committee resolve some of the ambiguous ethical situations which it currently faces.

Part I of this paper will address the background, history, and purpose of Local School Councils. Part II will outline some of the strict ethical standards, including fiduciary duties and anti-conflict of interest and anti-nepotism standards, to which Local School Council members are held. Part III will discuss the procedures for dealing with direct ethical violations within the Chicago Public Schools. Part IV will describe ambiguous ethical issues that the Ethics Committee currently faces and the factors that the Ethics Committee considers when deciding whether or not these situations should be deemed prohibited ethical violations. Finally, Part V will outline possible ways to reduce the number of ethical violations involving LSC members that come before the Ethics Committee as well as provide some methods for the Ethics Committee to use to clarify whether certain ambiguous situations should be considered ethical violations.

### **I. Background, History, & Purpose**

The Chicago Public School system has a history of mismanagement, which negatively impacted the school system’s academic effectiveness, particularly in the late 1970s and 1980s.<sup>6</sup> In 1979, the Chicago Public School system went bankrupt<sup>7</sup> which likely factored into the

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<sup>6</sup> McGoldrick, *supra* note 4, at 127; Designs for Change, *supra* note 5.

<sup>7</sup> Chicago Public Schools, [www.cps.edu](http://www.cps.edu).

Secretary of Education's, William Bennett, conclusion in 1987 that the Chicago Public Schools were "the worst in the nation."<sup>8</sup> The Secretary of Education's declaration led the Chicago public to lose confidence in its public school system, evidenced by the fact that in that same year approximately half of Chicago public school teachers sent their children to private schools.<sup>9</sup>

Motivated by the Secretary of Education's proclamation regarding Chicago's schools as the most challenged in the nation, as well as the Chicago public's diminishing confidence in its school system, the Illinois legislature sought assistance from Chicago reform organizations to effect widespread change throughout the Chicago Public Schools.<sup>10</sup> Fueling the legislature's momentum for school reform was research which indicated that children in smaller school districts, particularly children from low-income families, gained more from their educations than did children in large urban school districts.<sup>11</sup> Therefore, in an effort to shift control away from a centralized Board of Education, develop greater accessibility and accountability for the Chicago public, and foster a sense of autonomy within each Chicago public school, the Illinois General Assembly passed the Chicago Reform Act of 1988, which applied only to Chicago public schools.<sup>12</sup>

In addition to dissolving the sitting Board of Education, developing a different Board of Education selection process, and destroying life-time tenure for principals, the most fundamental change created by the Chicago Reform Act of 1988 was the development of Local School

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<sup>8</sup> McGoldrick, *supra* note 4, at 127.

<sup>9</sup> S. Raja Krishnamoorthi. *Making Local School Councils Work: The Implementation of Local School Councils in Chicago Public Elementary Schools*, 29 J.L. & EDUC. 285, 286 (2000).

<sup>10</sup> McGoldrick, *supra* note 4, at 128.

<sup>11</sup> Designs for Change, *supra* note 5.

<sup>12</sup> *Id.*

Councils, school-based management groups with tremendous decision-making authority to address local problems within each school.<sup>13</sup> As a result of the Act, every Chicago public school was led by a locally-elected Local School Council consisting of parents, community members, teachers, principals, and, in secondary schools, high school students.<sup>14</sup> Moreover, the Act gave parents, community members, and students an opportunity to actively participate in the management of their schools, a significant change from the former centralized and bureaucratic authority retained exclusively by the Board of Education. Pursuant to the Chicago Reform Act of 1988, the first Local School Council elections took place in the Chicago Public Schools in October of 1989.<sup>15</sup>

The theory behind Local School Councils was controversial from its inception as entrusting school-based elected and appointed officials with important decisions impacting children was unheard of in urban school districts across the country and many were therefore wary of this significant change.<sup>16</sup> In fact, some considered the Chicago Reform Act of 1988 to be the most radical restructuring of an urban school district in over one hundred years.<sup>17</sup> According to Designs for Change's comprehensive report on Local School Councils in 2002, Chicago is still the most decentralized urban school district in the country.<sup>18</sup>

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<sup>13</sup> Designs for Change, *supra* note 5; McGoldrick, *supra* note 4, at 128.

<sup>14</sup> McGoldrick, *supra* note 4, at 128.

<sup>15</sup> [www.cps.edu](http://www.cps.edu).

<sup>16</sup> Designs for Change, *supra* note 5.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

Although the Illinois legislature amended the Chicago Reform Act in 1995, giving the mayor greater authority over Chicago Public Schools' central Board as well as the authority to assist schools facing significant challenges, the overall structure of Local School Councils remained the same.<sup>19</sup> The main change promulgated by the 1995 amendments was the creation of the Chief Executive Officer position for the Chicago Public Schools, which is a mayoral appointed position.<sup>20</sup> Further, the Local School Council Advisory Board was established, Local School Councils were given the power to exercise authority over school budgets, and Local School Council members were mandated to undergo a three-day training session pursuant to the 1995 reforms.<sup>21</sup>

While there have been changes in the composition of Local School Councils since their inception in 1988, the main structure of Local School Councils remains the same.<sup>22</sup> Currently, every Chicago Public School has its own Local School Council which consists of the following twelve or thirteen voting members<sup>23</sup>: (1) the school's principal; (2) two teachers employed by the Board of Education who work in the school in which they serve; (3) six parent representatives not employed by the Board of Education during the time in which they serve and who are parents of students currently enrolled at the school in which they serve; (4) two community representatives who are not employed by the Board of Education during the time in which they serve and; (5) pursuant to Illinois House Bill 6017, an amendment to section 5/34-2.1 of the

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<sup>19</sup> Designs for Change, *supra* note 5.

<sup>20</sup> [www.cps.edu](http://www.cps.edu).

<sup>21</sup> McGoldrick, *supra* note 4, at 132.

<sup>22</sup> Designs for Change, *supra* note 5.

<sup>23</sup> Designs for Change, *supra* note 5.

Illinois School Code in July of 2010, one non-teaching school staff member.<sup>24</sup> The purpose of the additional non-teaching school staff member position was to involve teacher's aides, school clerks, library assistants, computer technicians, janitors, and lunchroom managers in Local School Councils and has been somewhat controversial as it removed the former parent-majority on each Local School Council.<sup>25</sup> Further, every secondary school has one full-time high school student representative on its Local School Council who is appointed to serve a one-year term.<sup>26</sup>

The parent and community resident Local School Council member positions are two-year elected positions and are filled as a result of elections conducted by the eligible voters of each school.<sup>27</sup> Chapter VI section 28 of the Board Rules for the Board of Education of the City of Chicago indicates that parent Local School Council members are eligible to serve on LSCs so long as they have a child attending the school in which they serve and are not employed by the school in which they serve or by the Board of Education. Community resident Local School Council members are eligible to serve on LSCs so long as they are not a parent of a student in the school in which they intend to serve, reside in the attendance area in which they serve and are not employed by the school in which they serve or by the Board of Education.<sup>28</sup> After the parent and community resident Local School Council members are elected, the Board appoints two teacher members to serve two-year terms that coincide with the terms of the elected parent and

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<sup>24</sup> 105 Ill. Comp. Stat. 5/34-2.1(a) (2010).

<sup>25</sup> 105 Ill. Comp. Stat. 5/34-2.3 (2010).

<sup>26</sup> 105 Ill. Comp. Stat. 5/34-2.1 (2010); Rules Board of Education of City of Chicago, chapter VI section 28(B) (2011).

<sup>27</sup> 105 Ill. Comp. Stat. 5/34-2.1(d)(i)-(ii) (2010).

<sup>28</sup> Rules Board of Education of City of Chicago, chapter VI section 28(B) (2011).

community members of each Local School Council.<sup>29</sup> These appointments are made from a list of teachers that have been nominated at their respective schools.<sup>30</sup> Unlike the parent and community resident LSC members, teacher Local School Council members must be employed at the school in which they serve.<sup>31</sup> The Board also appoints high school student Local School Council representatives from a list of students who have been recommended by their peers to serve on Local School Councils.<sup>32</sup> Pursuant to chapter six of the Board Rules, the Chicago Board of Education oversees Local School Council elections and is responsible for ensuring that it functions as a fair and impartial process.<sup>33</sup>

The twelve or thirteen-member Local School Councils are granted a significant degree of authority over the schools in which they manage<sup>34</sup> and each Local School Council member, therefore, has a variety of important duties. For example, Local School Council members are responsible for evaluating their school's principal throughout the principal's four-year contract in light of educational and administrative criteria such as academic performance, absenteeism rates, and school management.<sup>35</sup> Further, each Local School Council member, except the principal, votes on whether to renew the principal's contract at the end of the principal's four-year term and

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<sup>29</sup> 105 Ill. Comp. Stat. 5/34-2.1(l)(i) (2010).

<sup>30</sup> 105 Ill. Comp. Stat. 5/34-2.1(l)(i) (2010).

<sup>31</sup> Board Rule, *supra* note 26.

<sup>32</sup> 105 Ill. Comp. Stat. 5/34-2.1(m) (2010).

<sup>33</sup> Board Rule, *supra* note 26.

<sup>34</sup> 105 Ill. Comp. Stat. 5/34-2.1(a) (2010).

<sup>35</sup> 105 Ill. Comp. Stat. 5/34-2.3; Designs for Change, *supra* note 5.

plays a part in selecting a new principal when a principal vacancy arises.<sup>36</sup> Additionally, Local School Council members approve their school's expenditure plan which governs all of the funds that the Board of Education allocates to each school.<sup>37</sup> Further, Local School Council members make suggestions to their school's principal regarding curriculum and textbooks, evaluate the allocation of teaching resources within their school, and decide whether or not to adopt a school uniform policy at their respective schools.<sup>38</sup> Local School Council members also help to create goals for the school improvement plan and develop and vote on their school's budget.<sup>39</sup> Finally, each Local School Council approves receipts and expenditures for all of their school's internal accounts and approves all fundraising activities by non-school organizations that use school facilities.<sup>40</sup>

Research from a report on Local School Councils conducted in 2002 by Designs for Change suggests that approximately ten to fifteen percent of Local School Councils are facing serious challenges,<sup>41</sup> approximately four percent are inactive, about thirteen percent are having significant problems carrying out their fundamental duties, and about five percent consist of members who have committed ethical violations.<sup>42</sup> However, despite these statistics research suggests that overall, Local School Councils are self-sufficient management groups that are

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<sup>36</sup> 105 Ill. Comp. Stat. 5/34-2.3 (2010).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> 105 Ill. Comp. Stat. 5/34-2.3; Designs for Change, *supra* note 5.

<sup>40</sup> 105 Ill. Comp. Stat. 5/34-2.3.

<sup>41</sup> Designs for Change, *supra* note 5.

<sup>42</sup> *Id.*

effectively exercising their duties and contributing to the common goal of academic improvement throughout the Chicago Public School system.<sup>43</sup> Further, a study in 1999 suggests that contrary to significant criticism that Local School Council members are unqualified for their positions due to lack of education and experience, many Local School Councils are comprised of educated and competent members.<sup>44</sup> While many Local School Councils are high functioning local management units, the effectiveness of Local School Councils is a paramount concern to the Chicago Public School system as well as the Ethics Committee and, therefore, this concern should be factored into discussions regarding how to resolve the high volume of ethical issues involving Local School Council members.

## **II. Ethical Standards & Obligations**

Chicago's long history of governmental corruption led to fears that Local School Councils would devolve into hundreds of corrupt governmental units throughout the city.<sup>45</sup> This concern, along with the notion that with great power and authority, comes great responsibility, led the Illinois legislature to place Local School Council members under strict ethical obligations.<sup>46</sup> Specifically, Local School Council members are considered fiduciaries and, therefore, owe a duty of loyalty to the Board of Education.<sup>47</sup> Further, Local School Council members are held to high conflict of interest and anti-nepotism standards.<sup>48</sup>

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<sup>43</sup> Designs for Change, *supra* note 5.

<sup>44</sup> McGoldrick, *supra* note 4, at 130.

<sup>45</sup> Designs for Change, *supra* note 5.

<sup>46</sup> *Id.*

<sup>47</sup> Chicago Board of Education Code of Ethics, *supra* note 3, section 3.

<sup>48</sup> Chicago Board of Education Code of Ethics, *supra* note 3, sections 5, 9.

**A. *Fiduciary Duty***

Fiduciary duty is defined by Black’s Law Dictionary as: “A duty of utmost good faith, trust, confidence, and candor owed by the fiduciary to the beneficiary; a duty to act in the highest degree of honesty and loyalty toward another person [or entity] and in the best interests of the other person [or entity].”<sup>49</sup> Because of the responsibilities required of fiduciaries, a position which requires an individual to serve as fiduciary in some capacity should be filled only by exceptionally trustworthy and responsible individuals. Since the Code of Ethics for the Chicago Board of Education places Local School Council members in a fiduciary relationship with the Board of Education and the public, it is apparent that the drafters of the Code intended Local School Council members to be held to strict ethical guidelines.<sup>50</sup>

Section three of the Code of Ethics for the Chicago Board of Education states: “at all times in the performance of their public duties, officials and employees of the Board owe a fiduciary duty to the Board and to the taxpayers of the City of Chicago and the State of Illinois.” The drafters of the Code of Ethics explicitly included Local School Council members in the definition of “official” in order hold Local School Council members to the same strict ethical standards required of all Board of Education members and employees.<sup>51</sup> Therefore, the same fiduciary duty of loyalty that employees owe to the Board of Education applies to Local School Council members.

By creating a fiduciary relationship between Local School Council members and the Board of Education and the public, the Code of Ethics requires Local School Council members

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<sup>49</sup> Black’s Law Dictionary, Brian A. Garner, 8th ed. (2004).

<sup>50</sup> Chicago Board of Education Code of Ethics, *supra* note 3, section 3.

<sup>51</sup> Chicago Board of Education Code of Ethics, *supra* note 3.

to refrain from engaging in conduct that may impair or compete with their fiduciary duty of loyalty to the Board of Education and to the public. For example, parent and community Local School Council members are prohibited from seeking employment from the Board of Education and from the school in which they serve<sup>52</sup> due, in part, to the fact that one's interests and obligations as a school or Board employee may compete with his or her fiduciary duty of loyalty as a parent or community Local School Council member to act in the best interest of the Board and the public.<sup>53</sup> Since Local School Council members are entrusted with approving and voting on principal contracts, the school budget, and the allocation of teaching resources, among many other duties,<sup>54</sup> parent or community Local School Council members acting in the best interest of the Board and the public may have a different perspective than would an employee of the school on how to exercise these duties. Therefore, if a parent or community Local School Council member is also an employee of the school, she may find herself torn between these competing interests, and thus she would be compromising her fiduciary duty as a Local School Council member.

Therefore, parent and community resident Local School Council members must, as a matter of policy, refrain from becoming employed at the schools in which they previously served as Local School Council members for at least one year after their terms as LSC members have ended.<sup>55</sup> Although it would be a conflict of interest for a parent or community resident Local School Council member to resign from his or her position on an LSC and then assume a position

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<sup>52</sup> Board Rule, *supra* note 26.

<sup>53</sup> Chicago Board of Education Code of Ethics, *supra* note 3, section 3.

<sup>54</sup> 105 Ill. Comp. Stat. 5/34-2.3.

<sup>55</sup> Chicago Board of Education Code of Ethics, *supra* note 3, section 16(d).

as a teacher's assistant one month later in the school in which he served, this situation has come before the Ethics Committee. This scenario is particularly problematic because the principal, who serves on the Local School Council, is responsible for making hiring decisions at the school. Although this is a direct breach of fiduciary duty and conflict of interest under the Chicago Board of Education's Code of Ethics, the situation outlined above is an example of the types of ethical scenarios that frequently come before the Ethics Committee.

The number of ethical violations like the one outlined above that come before the Ethics Committee suggests that Local School Council members are unaware of their ethical duties and what these duties mean in terms of their conduct. One possible solution is to require that all Local School Council members participate in an extensive ethics training program prior to the commencement of their LSC terms.

#### ***B. Conflict of Interest Guidelines***

An extension of the fiduciary duty of loyalty required of all Local School Council members, is the duty to refrain from engaging in conflicts of interests.<sup>56</sup> Black's Law Dictionary defines conflict of interest as "a real or seeming incompatibility between one's private interests and one's public or fiduciary duties."<sup>57</sup> Moreover, the Illinois School Code states, in relevant part, that:

The Board shall promulgate rules regarding conflict of interest and disclosure of economic interests which shall apply to all Local School Council members and which shall require reports or statements to be filed by council members at regular intervals with the Secretary of the Board. Failure to comply with such rules or intentionally falsifying such reports shall be grounds for disqualification from Local School Council membership. Rules regarding conflict of interest and disclosure of economic interests promulgated by the Board shall apply to Local School Council members.<sup>58</sup>

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<sup>56</sup> 105 Ill. Comp. Stat. 5/34-2.1(q).

<sup>57</sup> Black's Law Dictionary, Brian A. Garner, 8th ed. (2004).

<sup>58</sup> 105 Ill. Comp. Stat. 5/34-2.1(q).

Further, section 9 (a) of the Code of Ethics for the Chicago Board of Education states, in relevant part: “No official or employee shall make, participate in making, or in any way attempt to use his position to influence any Board decision or action in which he [or she] knows or has reason to know that he [or she] has any direct or indirect economic interest distinguishable from that of the general public.”

Given that Local School Council members exercise a degree of the authority over their schools’ curriculum, textbook selection, and school uniform policies<sup>59</sup>, it would be a conflict of interest, for example, for a Local School Council member to participate in the evaluation or selection of a textbook or school uniform supplier in which he or she has a financial interest as a result of his or her own financial situation or the financial situation of his or her relative. If a Local School Council member has a financial interest in a particular school uniform supplier, for example, it would be a conflict of interest for him to vote to approve that school uniform supplier at a Local School Council meeting. Although the above situation is one in which the Code of Ethics specifically articulates as a conflict of interest, this type of situation has come before the Ethics Committee.

To give another example, it is a conflict of interest for a teacher Local School Council member who plans to apply for principal at the school in which she serves as an LSC member to vote on the current principal’s contract. Rather, if the teacher wishes to apply for principalship at the school in which she is employed, the teacher Local School Council member must abstain from voting on the current principal’s contract and resign from the LSC before the LSC begins the principal selection process. This situation presents a conflict of interest because if it was

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<sup>59</sup> 105 Ill. Comp. Stat. 5/34-2.3.

permitted it would grant a teacher Local School Council member the power to vote out the principal of the school in which she is employed with the hope that she will replace the principal herself. This ability would conflict with teacher Local School Council member's duty to act for the best interest of the Board, the school and the children it serves.

**C. *Anti-Nepotism Standard***

In addition to strict fiduciary duty of loyalty and anti-conflict of interest standards, Local School Council members are also held to high anti-nepotism guidelines. For example, section 5 (a) of the Code of Ethics for the Chicago Board of Education states:

No official or employee of the Board, including... Local School Council members, shall hire or advocate for hiring, or appoint or advocate for appointment, in any Board facility, including any school, in which the official or employee serves or over which he exercises Contract Management Authority, supervision, or control any person (i) who is a relative or domestic partner of that official or employee or (ii) in exchange for or in consideration of the hiring or appointment of any of that official's or employee's relative or domestic partner by any other official or employee.

Further, section 5 (b) of the Chicago Board of Education Code of Ethics states: "No personal may be hired for, or transferred to, a position in which he would exercise supervision and evaluation authority over a relative or domestic partner who is employed at the school or Board facility."

Section 5 (c) of the Code of Ethics states, in relevant part: "No person may become a contract principal at a school in which a relative or domestic partner of that person is employed or is a member of the Local School Council. No personal, otherwise eligible, shall be a candidate for, or be appointed to, a Local School Council where the person's relative or domestic partner is the principal."

Finally, section 5 (f) of the Code of Ethics reads:

No Local School Council member may recommend or advocate any personnel action which affects any of his or her relatives or any domestic partner employed at the school

affiliated with that Local School Council member. No relative or domestic partner of a Local School Council member shall be hired as a consultant, employee, or in any other capacity at the school affiliated with that Local School Council member. If a relative or domestic partner of a Local School Council member is employed at the school at which the Local School Council serves, the Local School Council member shall abstain from voting on approval of the expenditure plan and approval of the school improvement plan.

According to the strict anti-nepotism policy which applies to all Local School Council members, relatives and domestic partners of Local School Council members may not be hired as employees, consultants, or in any other way by the school at which the Local School Council member serves during the LSC member's term or for at least six months after the LSC member's term has ended. In addition, it would be a breach of the anti-nepotism policy as well as a conflict of interest for a Local School Council member who has a relative employed by the school in which she serves to vote on the budget which affects the salaries of any of her relatives in the school.<sup>60</sup> Further, relatives of principals are not permitted to sit on Local School Councils of the schools in which the principal is employed for this very reason. The above examples are based off of situations that have come before the Ethics Committee, which suggests that LSC members need to be better informed on the severity of their ethical obligations.

However, the Code of Ethics does not prohibit relatives or domestic partners of LSC members from remaining employed with the school or Board of Education if the relative or domestic partner was hired prior to the LSC member's election. Rather, in this situation, the LSC member must abstain from voting on approval of the school's expenditure plan, the school's improvement plan, as well as budget issues that in any way benefit the LSC member's relative.

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<sup>60</sup> [www.cps.edu](http://www.cps.edu).

In 2002, Designs for Change reported in its comprehensive study of Local School Councils, that there is a very small amount of corruption among Local School Councils.<sup>61</sup> However, while most Local School Council members likely do not intentionally engage in corrupt or unethical conduct, a large percentage of the ethical inquiries that come before the Chicago Public School's Ethics Committee each week involve Local School Council members. This fact alone suggests that LSC members could benefit from a comprehensive ethics training program as well as explicit language in the Code of Ethics that speaks to their roles and responsibilities in certain common scenarios.

### **III. Procedure for Handling Direct Ethical Violations**

Despite the strict ethical standards to which all Local School Council members are held, a large percentage of the ethical issues that come before the Ethics Committee on weekly basis involve LSC members engaging in direct ethical violations, specifically involving alleged breaches of fiduciary duty, conflicts of interest, and nepotism. Regardless of whether or not LSC members are intentionally engaging in direct ethical violations, the Chicago Board of Education has established specific procedures for how to handle direct ethical violations within the organization.

Pursuant to Chapter VI section 28(D) of the Board Rules, any individual may challenge an LSC member's eligibility based on an alleged ethics violation established in the Board Rules and Illinois School Code.<sup>62</sup> All challenges based on alleged ethical violations should be made in writing and should include a statement of facts outlining the basis for the challenge along with

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<sup>61</sup> Designs for Change, *supra* note 5.

<sup>62</sup> Board Rules, *supra* note 26, sections 28(D), 29(A)(1).

any corroborating evidence.<sup>63</sup> Further, any LSC member or Board employee who challenges the eligibility of any other LSC member may do so without revealing his or her identity throughout the investigation process, pursuant to the Illinois School Code's whistleblower protection provision.<sup>64</sup> In addition, all challenges to LSC member eligibility based on ethical violations should be filed with the Chicago Public School's Law Dept or the Ethics Advisor so that they may request an investigation if necessary.<sup>65</sup> Once the challenge is filed with the General Counsel or the Ethics Advisor to review, they determine whether or not the allegation has merit.<sup>66</sup> If the allegation is found to have merit, the General Counsel will arrange a hearing in which the LSC member may present evidence and make a statement.<sup>67</sup> Finally, if an ethics violation is deemed to have occurred, the LSC member will be declared ineligible.<sup>68</sup>

#### **IV. Consequences of Strict Ethical Standards for More Ambiguous Ethical Issues**

While there are strict procedures in place for addressing direct ethical violations involving Local School Council members, the procedures for handling some of the more ambiguous ethical violations that implicate issues such as breach of fiduciary duty, conflict of interest, and nepotism, are less clearly defined. However, the way in which the Ethics Committee addresses these issues will have far-reaching consequences throughout the organization and may, in turn, impact the sustainability of Local School Councils and the ability

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<sup>63</sup> Board Rules, *supra* note 26, section 29(A)(1).

<sup>64</sup> 105 Ill. Comp. Stat. 5/34-2.4(c).

<sup>65</sup> Board Rules, *supra* note 26, sections 28(d), 29(A)(4).

<sup>66</sup> Board Rules, *supra* note 26, section 29(A)(5).

<sup>67</sup> Board Rules, *supra* note 26, section 28(D).

<sup>68</sup> Board Rules, *supra* note 26, section 29(A)(7).

of LSCs to attract the most qualified candidates. Therefore, when the Ethics Committee attempts to resolve these ambiguous ethical issues involving LSC members, it must engage in a challenging balancing act which involves weighing the competing interests of reducing the appearance of impropriety against the equally important, if not more important, issue of ensuring LSCs remain effective school-based management units.

For example, an ambiguous ethical scenario involving Local School Council members that the Ethics Committee and the Law Department are currently grappling with is whether it is a conflict of interest and/or a breach of a fiduciary duty for an individual to serve as both a Local School Council member as well as a director of an independent, non-profit organization (such as a “Friends of [name of school] School”, PTA, or PTO) that fundraises for the school or is otherwise closely affiliated with the school in which the individual serves as an LSC member. Specifically, the Ethics Committee and the Law Department are currently contemplating whether it is it a conflict of interest and/or breach of fiduciary duty for an LSC member who also serves on the board of directors of an independent fundraising organization that is closely affiliated with the school in which the LSC member serves to vote on fundraising proposals involving the school at LSC meetings.

The Ethics Committee and Law Department are further considering whether if it is an ethical violation for an LSC member to vote on fundraising activities involving the school and the independent fundraising organization at LSC meetings, if it follows that it is also an ethical violation for the LSC member to participate in general discussions regarding the fundraising organization’s proposal at LSC meetings.

Unfortunately, this situation cannot be resolved by merely reading the current Code of Ethics or relevant sections of the Illinois School Code as the Code of Ethics is silent on this issue

as well as non-profit organizations in general. There is nothing definitive in the case law regarding this issue either. The Ethics Committee and the Law Department have not yet determined whether the above outlined scenario should be deemed an ethical violation as they are still in the process of weighing the tension between preventing impropriety and the appearance of impropriety versus the goal of preserving the viability and functionality of Local School Councils. Further, the way in which the Ethics Committee and the Law Department resolve this issue will have far-reaching consequences throughout the Chicago Public School organizational system.

For example, if the Ethics Committee and the Law Department determine that the situation outlined above constitutes a conflict of interest and a breach of fiduciary duty, they must then consider whether the conflict of interest may be waived and, if so, under what circumstances. Moreover, the Ethics Committee and Law Department must also determine whether to establish a procedure in which an LSC member may recuse himself or herself in light of a conflict of interest.

On the one hand, the above situation should be considered an ethical violation because it is imperative to preserve the public's trust by preventing improprieties as well as the appearance of impropriety. The Ethics Committee and Law Department recognize that even the slightest appearance of impropriety can affect the public's opinion of its local government and public school system,<sup>69</sup> especially given Chicago's history of governmental corruption. According to an article by Christopher McFadden published in Northwestern University's Law Review in 2000, the appearance of impropriety is "particularly troublesome in the context of school

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<sup>69</sup> Christopher R. McFadden. *Integrity, Accountability, and Efficiency: Using Disclosure to Fight to Appearance of Nepotism in School Board Contracting*, 94 N.W.U. L. Rev. 657, 658 (2000).

administration as ethical disputes weaken the moral authority school boards need to serve as educational leaders and role models for community children.”<sup>70</sup>

However, while the maintenance of the public’s trust is of utmost importance, a variety of negative consequences may result from holding that the above situation is an ethical violation, which may directly impact the functionality and effectiveness of Local School Councils. First, if the Ethics Committee and Law Department decide that the above situation is a violation and that LSC members may not vote on fundraising proposals affecting the school made by independent non-profit organizations in which they are on the board of directors, quorum issues affecting Local School Council meetings may be implicated,<sup>71</sup> thus negatively impacting the viability and functionality of LSCs. Further, if the Ethics Committee and Law Department consider this situation to be a conflict of interest or breach of fiduciary duty, they may be required, for the sake of consistency, to handle situations in which Chicago Board of Education members who serve on the boards of directors of local non-profit organizations that engage in activities related to the Board of Education, such as the Chicago Public Building Commission and the Chicago Teacher’s Pension Fund, similarly. This is problematic because Board of Education positions are mayoral appointments and, therefore, the Ethics Committee and Law Department want to avoid creating inadvertent pre-qualifications for mayoral appointed Board of Education positions. Additionally, the Ethics Committee is mindful of the dual role that parents and Board members may have as active participants in a variety of non-profit organizations throughout Chicago.

Moreover, if they find that the outlined situation is an ethical violation, the Ethics Committee and the Law Department must then consider how far they need to extend the conflict.

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<sup>70</sup> *Id.*

<sup>71</sup> 105 Ill. Comp. Stat. 5/34-2.2(c).

For example, they must consider whether it would be a violation for relatives of LSC members to serve on the boards of non-profit organizations that are involved with the school in which the LSC member serves, as this issue implicates not only conflict of interest and fiduciary duty issues but also the anti-nepotism policy. If this is ultimately determined to be a violation, this situation would be particularly problematic because many of the best candidates for LSCs are also be the best candidates for director positions on non-profit fundraising boards. Further, active individuals are more likely to have spouses and relatives who are also active within the community. Therefore, if this situation is considered a conflict, it might prevent LSCs and non-profit fundraising organizations from attracting the best candidates, which will in turn affect the effectiveness and viability of Local School Councils, which could in turn negatively impact children.

Finally, with respect to this ambiguous ethical issue, the Ethics Committee and the Law Department are particularly concerned about dissuading or impeding upon fundraising activities that raise money for schools, and thus directly benefit children. Given the current economic climate, the last thing they want to do is deter money from coming into the schools as many LSCs do not have the resources to fundraise to the extent that outside non-profit organizations like PTAs, PTOs, and Friends of groups do.

While the situation outline above involving Local School Council members who wish to serve as directors on boards of outside fundraising organizations that are affiliated with the schools in which the LSC members serve is one of the bigger ethical issues that the Ethics Committee is currently confronted with, there are other ethical situations that represent this competing tension as well. For example, the policy which prohibits parent and community resident LSC members from becoming employed by the school in which they previously served

on an LSC for at least one year due to fiduciary duty as well as anti-conflict of interest obligations can have negative implications in schools and for children as these LSC members may be the most qualified candidates for the positions.

Here is another hypothetical based off of an ambiguous ethical situation that the Ethics Committee is currently confronted with: Assume a teacher Local School Council member who voted on the principal's contract later becomes an assistant principal at the school in which she served as a Local School Council member. If the teacher LSC member was a part of some sort of deal with the principal to be hired for the assistant principal position in exchange for voting in favor of renewing principal's contract, that would no doubt constitute a conflict of interest. However, the language in the Code of Ethics does not address or anticipate what to do in situations like the one outlined above in which there was no evidence of a deal or a quid pro quo. The Code of Ethics as it reads would not prohibit this activity. In order to resolve this situation then, the Ethics Committee must balance the competing tension between preventing conflicts of interest and ethical violations as well as mere appearances of improprieties against the overarching goal of ensuring LSCs remain effective and viable management units.

Consider one last hypothetical based off of an ambiguous ethical situation that the Ethics Committee faces: A teacher began serving on a Local School Council at the school in which she was employed on July 1, 2010. The teacher's son interviewed for a position as a teacher's aid in the school in which the teacher LSC member was employed in September of 2010. On November 10, 2010 the Local School Council voted to renew the principal's contract by a vote of 12-0, which means that the teacher LSC member voted in favor of the principal's contract. The teacher LSC member's son was hired by principal in November 2010. The teacher then resigned from the Local School Council on December 10, 2010. This situation implicates a

variety of ethical issues, namely nepotism and conflict of interest. The teacher LSC member has likely committed an ethical violation under section 5(a) of the Code of Ethics which prohibits an LSC member from hiring or advocating for the hiring of a relative as here the teacher LSC member likely advocated on behalf of her son. The principal has also committed an ethical violation by hiring the son of a teacher LSC member who voted on her contract. Therefore, both the teacher and principal should be disciplined. However, this situation also raises issues of enforceability. For example, should the son be fired from the teacher's aid position in the school even though his mother, the teacher LSC member, resigned from the LSC once he was hired? The Code of Ethics is silent on this point as well.

Depending on how the ethical situations outlined above are determined, they may impair principals from hiring most qualified candidates for positions in the school, such as teachers and assistant teacher positions which could have a direct positive impact on children and also may prevent LSCs from attracting the best candidates. Therefore, the weighing of these competing interests involves careful consideration.

## **V. Possible Solutions**

Given the volume of ethical inquiries and allegations of ethical violations that come before the Ethics Committee involving Local School Council members, it is necessary for the Chicago Public Schools as an organization to create methods in which to reduce these numbers as well as methods that will assist the Ethics Committee in determining whether certain ambiguous situations should be considered ethical violations at all.

First of all, the Ethics Committee should revise the current Code of Ethics to explicitly address and provide for some of the common ambiguous ethical issues involving Local School Council members and in that section address methods of enforceability. Particularly, the revised

Code of Ethics should address conflicts of interest involving Local School Council members who serve as directors on non-profit organizations. In general, revising the current Code of Ethics will provide the Ethics Committee with guidance so that it may balance more effectively the tension between ensuring Local School Council members do not engage unethical conduct while at the same time ensuring that ethical policies are not unnecessarily stringent.

Additionally, a comprehensive ethics training program should be required of all Local School Council members prior to the commencement of their terms. This will help to ensure that the high standards to which Local School Council members are held are enforced while recognizing that Local School Council members should be equipped with an adequate support system in which to fulfill these high expectations.<sup>72</sup> The many ethical inquiries and alleged violations that come before Ethics Committee on a weekly basis involving LSC members are not necessarily the result of intentional misconduct. Rather, this suggests that perhaps many LSC members are unaware of the how broad and far-reaching their ethical obligations extend. It is also possible that many LSC members act without their ethical duties in mind. Therefore, LSC members may benefit from a comprehensive ethics training program that could be incorporated into the regular mandated LSC member training program currently in place. While all Local School Council members are currently required to undergo an eighteen-hour general training program prior to the commencement of their terms, this program does not specifically cover many of the ethical responsibilities to which LSC members are held. Further, the generalized LSC member training program has been criticized for failing to address the unique issues and

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<sup>72</sup> Designs for Change, *supra* note 5.

scenarios in which LSC members often find themselves and this is especially true in the realm of complicated and ambiguous ethical situations involving LSC members.<sup>73</sup>

Finally, annual follow-up ethics training programs should be facilitated and run by the Chicago Public Schools Ethics Advisor to remind Local School Council members of the importance of keeping their ethical responsibilities and obligations at the forefront of their minds.

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<sup>73</sup> Designs for Change, *supra* note 5.