

November 24, 2025

N.J. Appellate Court Clarifies Process for Filling a Vacancy on the Board of Education under the OPMA

By: Marc H. Zitomer, Esq.

A recently published Appellate Division decision, Arminio v. Monroe Township Board of Education (November 24, 2025), has significant implications for how school boards in New Jersey comply with the Open Public Meetings Act (OPMA) when filling vacancies. The case arose after the Monroe Township Board of Education voted to appoint a new board member following a closed session discussion. Although the Board publicly voted on the candidate's appointment, all substantive deliberations, including the review and comparison of all candidates, occurred privately. Another applicant, who was not selected, challenged the appointment, arguing that the Board violated OPMA by effectively deciding the outcome in private before returning to public session.

The trial court agreed and voided the appointment. On appeal, the Appellate Division affirmed the outcome, though it clarified important legal principles that all school boards must now follow. The court rejected the trial judge's interpretation of earlier case law suggesting that boards may not discuss board-member candidates in closed session. The Appellate Division held that the personnel exception in *N.J.S.A. 10:4-12(b)(8)* does apply to prospective board members being considered for appointment, meaning boards may go into executive session to review applications, discuss qualifications, and deliberate.

However, the court found that the Board violated OPMA because all of its deliberations occurred behind closed doors, and the public was not given a meaningful opportunity to understand or comment on the Board's reasoning before the vote. After forty-five minutes of private discussion, the Board returned to public session, discussed that the county superintendent was permitting the Board to fill the vacancy, and immediately proceeded to nominations and an appointment vote. The public was never permitted to offer comments or ask questions about the candidates or the

Florham Park

220 Park Avenue
Florham Park, NJ 07932
973-539-1000

Paramus

115 West Century Road
Suite 100
Paramus, NJ 07652
201-262-1600

Sparta

351 Sparta Avenue
Sparta, NJ 07871
973-295-3670

New York

9 East 40th Street
New York, NY 10016
646-652-7775

process. The Appellate Division emphasized that transparency is central to OPMA and that the public must be able to witness the governmental decision-making process, particularly when filling an office the public normally elects.

In explaining the proper procedure, the court stated that while a board may deliberate privately regarding candidates and their qualifications, it must, upon returning to public session, explain any decisions made during the executive session and allow public comment before moving to nominations and a vote. That means boards may not move directly from closed-session deliberations to a public vote without giving the public an opportunity to comment. The Appellate Division found that Monroe Township's approach deprived the public of any insight into how or why the Board reached its decision, which contravened OPMA's requirement that government business be conducted openly. Finally, the court upheld the remedy voiding the appointment under *N.J.S.A. 10:4-15(b)*, but it agreed that votes cast by the appointed member during his months of service should not be invalidated.

For school boards, the important lessons of this decision are significant. Boards may continue to enter closed session to discuss candidate qualifications, review applications, and deliberate. But before voting to fill a vacancy, the board must resume public session, summarize the nature of the closed-session discussions, disclose any determinations reached in private, and, critically, open the floor to public comment on the candidates and on the Board's intended course of action. Only after the public has been given a full and fair opportunity to speak may the Board proceed to nominations and a vote.

Of course, it may be best for the Board *not* to reach any determinations in closed session, but rather to limit the discussion to the qualifications of the candidates as most board policies currently and prudently require. Interviewing candidates in public, which has generally been strongly recommended if qualifications are discussed in closed session, will also give the community greater insight into the candidates the board is considering.

Boards should coordinate with their legal counsel to ensure their appointment policies and practices reflect the requirements clarified by this ruling. The attorneys at Schenck Price are prepared to assist with compliance and implementation.

For more information on this new legislation or related issues, please contact Marc Zitomer at MHZ@spsk.com or 973-540-7329.

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