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November 24, 2015

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—19-15

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on behalf of the Board of Education (Board). You have verified that you copied the Board members who are the subjects of this request, thus complying with N.J.A.C. 6A:28-5.2(b). The Commission notes that these Board members did not submit comments and, therefore, the Commission will provide its advice based solely on the information included in your request. The Commission's authority to issue advisory opinions is expressly limited to determining whether any prospective conduct or activity would constitute a violation of the School Ethics Act. N.J.S.A. 18A:12-31. Pursuant to N.J.S.A. 18A:12-28(b), the Commission discussed this matter at its October 27, 2015 meeting.

You inform the Commission that members of the Board have relatives, who are full-time employees of the District. The nature of the relationships is as follows:

- 1) Four Board members have children who are employed by the District full-time;
- 2) Two Board members have nieces who are employed by the District full-time;
- 3) One Board member has a "spouse's uncle" and a "spouse's cousin's daughter" who are employed by the District full-time.

In addition to the relatives of Board members, who are full-time employees employed by the Board, you also inform the Commission that one member's son, who is a full-time student, was recently hired to be a part-time, summer substitute. You inquire as to whether the Board

members whose nieces, “spouse’s uncle,” “spouse’s cousin’s daughter,” and son, who is a full-time student and will be a part-time summer substitute, represent conflicts under the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., and if so, “whether the Doctrine of Necessity is triggered to enable the Board to evaluate, negotiate and engage in other employment matters with the Superintendent.”

First, in its review, the Commission must consider the purpose of the Act and those protected by its authority. In adopting the School Ethics Act, the Legislature found:

[I]t is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated. N.J.S.A. 18A:12-22(a).

Fundamentally, each set of circumstances must be viewed from the perspective of what the reasonable members of the public might perceive as a Board member’s attempt to benefit himself, his immediate family or others, which includes relatives. If a Board member’s conduct violates the public trust or creates a justifiable impression that its trust has been breached, then that conduct violates the Act.

Moreover, the Commission must examine the nature of the relationship between the Board member and the individual to determine whether there is a conflict sufficient to require the member to recuse from matters dealing with that individual and to abstain from any vote involving that person, singularly or as a member of a class.

The applicable provision of the School Ethics Act, N.J.S.A. 18A:12-24(b), prohibits a school official from using or “attempting to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others.”

“Member of the immediate family” is defined in the Act as the “spouse or dependent child of a school official residing in the same household.” N.J.S.A. 18A:12-23. None of the individuals mentioned in your request are included in this class of relative. Although the individuals are a part of the Board members’ families, for the purposes of the Act, they cannot be considered immediate family. In contrast, these relatives would be included as an “other” under N.J.S.A. 18A:12-24(b). While “others” is not defined by the Act, the Commission has construed it to be a fact-specific determination based on the relationship between the “other” and the Board member. To add some clarity to this, the Commission has stated on many occasions that “others” includes relatives as defined in the Act, but is not limited to that definition.

“Relative” is defined by the Act as the “spouse, natural or adopted child, parent, or sibling of a school official.” N.J.S.A. 18A:12-23. However, the Department of Education’s fiscal accountability regulations contain a more expansive definition. Those regulations require each district to implement a nepotism policy that contains a definition of “relative” that is

consistent with N.J.S.A. 52:13D-21.2(d). N.J.A.C. 6A:23A-6.2(a)(1).¹ Relative is defined in N.J.S.A. 52:13D-21.2(d) as including an individual's spouse or the individual's or spouse's parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister, whether the relative is related to the individual or the individual's spouse by blood, marriage or adoption. In order to read all of these provisions consistently, the Commission concludes that an individual who meets the definition of "relative" under N.J.S.A. 52:13D-21.2(d) and N.J.A.C. 6A:23A-6.2(a)(1) will be considered to be an "other" under N.J.S.A. 18A:12-24(b). Therefore, a Board member may not use his official position to secure unwarranted privileges or advantages for any individual meeting the definition of relative covered by the nepotism policy required in N.J.A.C. 6A:23A-6.2(a)(1).

N.J.S.A. 18A:12-24(b) prevents seated Board members from securing "unwarranted privileges, advantages or *employment* for... others." As stated above, "others" includes relatives identified under the nepotism policy as individuals for whom employment cannot be granted. These same individuals are covered by this subsection of the Act. Consequently, the Commission concludes that if a Board member cannot *hire* a relative under the nepotism policy and N.J.S.A. 18A:12-24(b), then he also cannot then use his position on the Board to secure that relative unwarranted privileges or advantages. Thus, if a Board member cannot hire a "relative," he cannot participate in any matter regarding the employment of that relative. This prohibition applies to Board members whose relative was hired by the District before the Board member was seated and includes, but is not limited to, any discussion and votes on the collective bargaining agreement or any contracts affecting the employment of the relative and any discussion and vote concerning administrators who oversee the relative, including the supervisors of those administrators.

Applying the principles discussed, a Board member who has a relative identified under the nepotism policy is an "other" under N.J.S.A. 18A:12-24(b), and a conflict exists for the Board member under the Act.² Given the executive authority of each member of the Board, the Commission considers it reasonable that members of the public might perceive a Board member's involvement in a matter over which a relative is an interested party as an attempt to benefit himself, his immediate family or *others*, which includes relatives. A Board member who has a relative employed by the Board may not act to benefit that relative by affording them any unwarranted privileges or advantages.

¹ N.J.A.C. 6A:23A-6.2 explains "that as a condition of receiving State aid, the school district or county vocational school district board shall implement the nepotism policy established by this subsection by October 1, 2008, except that districts previously subject to N.J.A.C. 6A:10 and 6A:10A shall implement such policy on July 1, 2008. The nepotism policy shall include following:

1. A definition of "relative" that is consistent with N.J.S.A. 52:13D-21.2 and N.J.A.C. 6A:23A-1.2 and a definition of "immediate family member" that is consistent with N.J.S.A. 52:13D-13 and N.J.A.C. 6A:23A-1.2." This statute and regulation were enacted to regulate the conduct of school officials, the very same individuals the School Ethics Act was authorized to oversee. The Commission in applying the same definitions to "immediate family" and "relative" is simply following the prevailing laws and regulations extant.

² The Commission affirms Advisory Opinion A10-14, in which the Commission found a Board member's first cousin to be considered an "other" under the Act. However, absent additional information, the Commission deems it unreasonable for the public to view the relationship between a Board member and the daughter of his spouse's cousin to be a conflict.

Board members with a conflict must recuse from participating in any involvement over any matter of the relative's employment or supervision, and must abstain on any vote taken which is connected to the conflict, in this case generated through the employment of their relative. This includes the negotiation of and the vote on the collective bargaining agreement where the relative is a member of the local union or receives some benefit from the contract. The conflict also includes the evaluation, negotiation and engagement in other employment matters with the Superintendent, as he or she oversees all staff in the District, as well as any other school administrators who are in the line of command over the Board member's relative. Should a matter come before the Board where a majority of the seated Board has a conflict arising under the Act, the Board must invoke the Doctrine of Necessity.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission