



State of New Jersey

DEPARTMENT OF EDUCATION

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October 31, 2012

**FOR PUBLIC RELEASE**

SUBJECT: Advisory Opinion A20-12

The School Ethics Commission is in receipt of your request for an advisory opinion on your behalf as a member of the Board of Education. You have advised that since both your husband and brother teach in the district, you have recused yourself from participation in any closed session discussions and performance evaluations of the assistant superintendent or of the superintendent because your participation in these discussions as a member of the Board would violate the School Ethics Act, N.J.S.A. 18A:12-21 et seq. While you have voluntarily determined that you may not be present or participate in these discussions, you would like to know if you may read the executive session meeting minutes so that you may understand the policies and decisions that have been made in these closed executive sessions. Your inquiry turns on the application of N.J.S.A. 18A:12-24(c), which provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

The Commission has determined that by having recognized your personal conflict and by recusing yourself, you now have only the same rights to review the executive session meeting minutes as any member of the public does and no more. Therefore, you may receive the executive session minutes only when they are available to the public, when the reason for

confidentiality no longer exists and not beforehand. Moreover, should a Board member share the executive minutes with you, that member would be in violation of N.J.S.A. 18A:12-24.1(g), which provides in part:

I will hold confidential all matters pertaining to the schools, which, if disclosed, would needlessly injure individuals or the schools.

You have also questioned whether you may participate in executive meeting discussions about the positions of the Vice Principals, who administer the school in which your brother works. In your letter you note that the district's solicitor told you that you are again in conflict because your brother teaches where these vice principals serve.

The Act defines "member of the immediate family" as the spouse or dependent child of a school official residing in the same household. Therefore, your brother is not a member of the immediate family, but rather a "relative," defined by the Act as a spouse, natural or adopted child, parent or sibling of a school official. Nevertheless, the Commission has applied this provision to situations where Board members voted on, or were otherwise involved in, matters pertaining to their relatives. See, I/M/O James Russo and Thomas Scarano, Woodbridge Twp. Bd. of Ed., Middlesex County, C12-97 (January 27, 1998) Commissioner of Education Decision No. 22-1/98, decided April 16, 1998; I/M/O Carmelo Garcia, Hoboken Bd. of Ed., Hudson County, C41-05 (October 24, 2006) Commissioner of Education Decision No. 436-06SEC, decided December 8, 2006; I/M/O Dino Pettinelli, Alpha Bd. of Ed., Warren County, C01-04, (July 27, 2004), Commissioner of Education Decision No. 266-7/04, decided September 8, 2004. The Commission looks to the entire statute, which provides that a school official cannot act in a manner in which she has an indirect personal or financial involvement, which might reasonably be expected to impair her objectivity or independence of judgment.

The Commission also considers that in adopting the School Ethics Act, the Legislature found that :

[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)

The Commission finds that a board member should not evaluate or review the positions of the supervisors of a sibling.

Finally, you have asked whether as a board member with personal conflicts you may sit in on the negotiations committee's updates on the negotiations, which are given to the total board during executive session meetings. The Commission finds that a board member, who has recused herself because a spouse or sibling is subject to the district's bargaining agreement, should receive the information only when it is released to the general public. In such a situation,

the concern remains that district board members must be able to meet, discuss and vote on such matters freely.

In summary, you are advised that you may not participate in the closed session discussions and performance evaluation of either of the direct administrators or the central administration evaluations of the superintendent or assistant superintendents or review any of the executive minutes unless they are available to the public. Additionally, you are advised that you may not participate in an executive session that considers the administrators positions in schools in which your brother or husband teach. Finally, you may not sit in on the negotiation of committee's updates unless the information is also available to the general public.

We trust this opinion answers your inquiry.

Sincerely,

Robert W. Bender, Chairman  
School Ethics Commission