



State of New Jersey

DEPARTMENT OF EDUCATION

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Governor

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DAVID C. HESPE
Commissioner

June 30, 2015

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinon—A08-15

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on behalf of a member of the Board of Education (Board). You have verified that you copied the Board member, who is the subject of the request, thus complying with N.J.A.C. 6A:28-5.2(b). The Commission notes that this Board member 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 May 26, 2015 meeting.

You inform the Commission that a Board member's spouse is employed as a lunch aide in one of the School District's elementary schools. The spouse was hired in 2008 as a per diem employee, who works 2.5 hours/day and whose employment is renewed each year by the Board upon recommendation of the Superintendent. The Board member was first elected to the Board in November 2012.

Consistent with Advisory Opinion A30-14, the Board member is conflicted under the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Specifically, the Board member is conflicted under 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 Board member's spouse is a member of his "immediate family" as defined by the Act at N.J.S.A. 18A:12-23. The Board member must recuse from participation, including discussion and voting, on the Superintendent's evaluation and contract. This prohibition also applies to the same matters with regard to the elementary principal who supervises the Board member's spouse, and other administrators supervising the spouse including the supervisors of those administrators. Failure of the Board member to recuse from every matter touching upon the Superintendent's position and that of other relevant supervisors would represent a violation of the Act.

The Commission acknowledges your concern that the Board of Education is a five member body and that as the Board member is conflicted and unable to vote on many matters, the Board may now be more likely to result in many tied, 2-2 votes. The Commission views that scenario as little different from that of a nine member board with a single conflicted member, which may result in that board to having many tied, 4-4 votes. Finally, in the situation as explained in your request, the Commission notes that the Board maintains a quorum of non-conflicted members to successfully vote on matters related to the Superintendent and other school administrators. Therefore, the Board cannot invoke the Doctrine of Necessity should a vote on one of those matters result in a tie. The Doctrine of Necessity may only be invoked when a majority of the Board is conflicted on a matter.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission