



## State of New Jersey

DEPARTMENT OF EDUCATION

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### SCHOOL ETHICS COMMISSION

June 27, 2023

#### For Public Release

Subject: Public Advisory Opinion – A10-23

The School Ethics Commission (Commission) received your request for an advisory opinion on behalf of your client, the Board of Education (Board). You verified that you copied Board member A, the subject of your request, thus complying with *N.J.A.C. 6A:28-5.2(b)*. The Commission notes that Board member A did not submit a response to your initiating request and, therefore, the Commission will issue its advice based solely on the information included in your initiating request, and in your supplemental response to the Commission's request for additional information.

Please note that 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)*, your request was preliminarily discussed by the Commission at its Advisory Opinion Committee meeting on May 10, 2023, and again at its regularly scheduled meetings on May 23, 2023, and June 27, 2023.

In your initiating request, and in your supplemental response to the Commission's request for additional information, you inform the Commission that Board member A has a child who is employed by the School District (District) as a student employee in the District's After School Care program (Program). You note the District "excludes per diem substitutes and student employees from its nepotism policy." You explain the employees in the Program, "including student workers, are District employees, but they are not part of the normal District chain of command. Each school has a separate After School Director who supervises the District teachers and student workers that staff the program at that school outside of the normal work day." You clarify each District building has a director, who was recommended by the Superintendent and approved by the Board, and who is also employed as a teacher in the District. You also note, "the teachers and aftercare directors report to the building principal and ultimately to the Superintendent [].".

You further inform the Commission the Program "is separate from the District's regular education program. Families must register annually and are charged a monthly fee based on the

frequency of attendance.” You explain the Program “is not part of the District’s regular operating budget but is a fund 60 ‘enterprise fund’” and student employees receive payment from the Board.

You indicate that you have reviewed public advisory opinions, namely *Advisory Opinion A25-14* (A25-14), *Advisory Opinion A30-14* (A30-14), *Advisory Opinion A16-15* (A16-15), *Advisory Opinion A11-14* (A11-14) and *Advisory Opinion A28-17* (A28-17) as they relate to your request.

With the above in mind, you inquire whether Board member A “has a conflict which would preclude Board member A from participating in employment decisions and matters related to the Superintendent [], including the evaluation of his performance, and labor negotiations.” You further inquire, if Board member A is conflicted in these matters, “whether there is a minimum number of non-conflicted Board members required to conduct the Superintendent’s evaluation.”

As an initial matter, and for the purposes of this request, the Commission regards Board member A’s child as a member of Board member A’s immediate family. Pursuant to *N.J.A.C. 6A:23A-6.2(b)*, and as noted in your request, a school district may exclude “per diem substitutes and student employees” from the scope of its nepotism policy.<sup>1</sup> Therefore, and unless your District’s nepotism policy states otherwise, Board member A’s child may be hired as a student employee in the District’s After School Care program while Board member A is a Board member. However, while Board member A’s child’s employment does not violate *N.J.A.C. 6A:23A-6.2* (Nepotism policy), these facts do not relieve Board member A of the ethical obligations pursuant to the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.*

Notwithstanding the above, turning to your request, you noted in the supplemental information that you provided, “Each building has an aftercare director that is a teacher at the school during the day ... and are hired by the [Board] ... upon the recommendation of the [Superintendent]. The teachers ... report to the building principals and ultimately to the [Superintendent].” Consequently, and because the directors are employees of the District (*i.e.*, teachers), Board member A has a conflict with respect to the immediate supervisor of Board member A’s child, and a conflict with other employees and administrators up the chain of command over that supervisor, up to and including the Superintendent.

Therefore, for the duration of Board member A’s child’s student employment and to protect against a violation of the Act, Board member A must recuse from any and all matters concerning the Superintendent, as well as any other supervisors in the chain of command over Board member A’s child’s employment and abstain from any vote on same. This further includes any and all matters related to the local union because a teacher serves as the director and directly supervises Board member A’s child in the Program. The Commission notes Board member A’s conflict ends upon the conclusion of Board member A’s child’s employment as a student employee.

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<sup>1</sup> Generally, a school district’s nepotism policy otherwise prohibits a board of education from employing a “relative” of any board member and, by definition, “relative” includes a board member’s child.

Furthermore, Board member A's child's employment in the Program also implicates the Board as a whole. As a result, neither Board member A nor any other member of the Board should take any action that would provide Board member A's child with any *unwarranted* privilege, advantage or employment while the child is employed as a student employee. Board member A's child should be treated no differently than any other student employee.

Regarding your second inquiry, "whether there is a minimum number of non-conflicted Board members required to conduct the Superintendent's evaluation," the Commission notes the advice offered in *Advisory Opinion A19-17* (A19-17) is particularly relevant here. As indicated in A19-17, a minimum of two (2) non-conflicted Board members can negotiate the Superintendent's contract. To the extent these non-conflicted Board members need assistance, they may consult with Board counsel, hire an outside consultant and/or obtain assistance from the Business Administrator or another administrator as appropriate. Moreover, A19-17 discusses when it is appropriate for a board of education to invoke the Doctrine of Necessity, namely when its membership has conflicts of interest on a matter(s) such that it is unable to obtain the number of *votes* needed to approve or reject a motion or action. Consequently, to the extent that the Board needs to vote on any matter(s) related to the Superintendent it is appropriate for the Board to invoke the Doctrine of Necessity to allow the conflicted Board members to vote. To the extent that the Board does invoke the Doctrine of Necessity, the Commission advises you to review its [\*Resolution on Invoking the Doctrine of Necessity\*](#) to ensure compliance therewith.

Finally, as a reminder, school officials must always be cognizant of their responsibility to protect the public trust, to honor their obligation to serve the interests of the public and the Board, and to periodically re-evaluate the existence of potential conflicts of interest. In addition, the only way for a school official to truly safeguard against alleged violations of the Act is to avoid any conduct which could have the appearance, actual or perceived, of being in violation of the Act.

Sincerely,

Robert W. Bender, Chairperson  
School Ethics Commission