



## State of New Jersey

DEPARTMENT OF EDUCATION

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April 23, 2014

### FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A11-14

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion, regarding five members of the Local Board of Education (Board). Pursuant to your request and consistent with its authority under N.J.S.A. 18A:12-28(b), the Commission discussed this matter at its March 25, 2014 meeting. Initially, the Commission notes that you properly verified that the Board members whose conduct is the subject of the advisory opinion request were copied on the request, thus complying with N.J.A.C. 6A:28-5.2(b). Because the Board members did not submit comments, the Commission bases its advice solely on the facts included in your request. The Commission's authority to issue advisory opinions is expressly limited to determining whether any proposed conduct or activity would constitute a violation of the School Ethics Act. N.J.S.A. 18A:12-31.

In its review, the Commission has determined that little has changed on the Board since the last time the Commission advised the members. Five members of the nine-member Board still have conflicts, which prohibit them from evaluating the Superintendent and participating in any contract issues regarding the Superintendent. The ruling in Martinez v. Albolino, SEC Dkt. No. C45-11 (June 26, 2012) and the two advisory opinions, Public Advisory Opinion A55-95 (January 23, 1996) and Public Advisory Opinion 24-12 (January 2, 2013), are still good advice. The entire Board is not required to perform this function; four members are sufficient to conduct the evaluation of the Superintendent.

Three of the members about whom you inquire are prohibited from participating in or discussing the Superintendent's employment issues since each has an immediate family member employed in the District and who are supervised by the Superintendent. Such conduct may be viewed as action in their official capacities in matters where they had a direct or indirect financial involvement that might reasonably be expected to impair their objectivity or independence of judgment in violation of N.J.S.A. 18A:12-24(c).

Three of the Board members have a "relative," defined by the Act as a spouse, natural or adopted child, parent or sibling of a school official employed in the District. The Commission has applied this provision to situations where Board members voted on, or were otherwise involved in, matters pertaining to their relatives. These members would also be

prohibited from participating in or discussing the Superintendent's employment issues since such conduct may be viewed as action in their official capacities in matters where they had a direct or indirect financial involvement that might reasonably be expected to impair their objectivity or independence of judgment or, in the alternative, action in their official capacities in a matter where they had a personal involvement that is or created some benefit to them in violation of N.J.S.A. 18A:12-24(c).

In the alternative these "relatives" may be considered an "other" under N.J.S.A. 18A:12-24(b), which states:

b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

The Commission is mindful, however, of the overarching purpose of the Act and often reads potential violations in conjunction with N.J.S.A. 18A:12-22(a), which provides:

In our representative form of government, it 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.

The conduct articulated in subsection (b) would be sufficient to violate the Act, but even if the violation never manifests itself, engaging in official action, which seemingly creates a violation of the Act, undermines the public trust and creates a justifiable impression among the public that its trust in the Board and its members has been violated.

Consequently, the conflicted members are prohibited from any involvement in the employment issues of the Superintendent.

Sincerely,

Robert W. Bender, Chairperson