May 28, 2014

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A23-14

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion regarding the Local Board of Education (Board). At its meeting on May 28, 2014, the Commission discussed whether the Board must invoke the Doctrine of Necessity to allow conflicted members to participate in final interviews for the finalists seeking the Superintendent's position. After its review, the Commission again determined that it may not invoke the Doctrine, and doing so is contrary to its counsel.

In light of previous and recent advisory opinions and the ruling in Martinez v. Albolino, SEC Dkt. No. C45-11 (June 26, 2012) and Public Advisory Opinion A24-12, invoking the Doctrine would violate the Act. As the Commission has already determined, three or four Board members without conflicts were sufficient to negotiate on behalf of the Board or to conduct the Board's business as it relates to the selection of a new Superintendent. It believes the same reasoning is applicable in this circumstance.

Previously, the Commission had determined in Public Advisory Opinion A55-95 that three members without conflicts were enough to negotiate on behalf of the Board. In Advisory Opinion A24-12, the Commission recently advised that four members without conflicts are sufficient to conduct the Board's business as it relates to the selection of a new Superintendent, thus obviating the need for the Doctrine of Necessity. The Commission advises that the same is true of the Local Board of Education where the three members, who are free of conflicts, are available to execute the Board's objectives.

Consequently, it is not necessary to invoke the Doctrine of Necessity, and the three Board members without conflicts shall conduct the final interviews for the Superintendent's position.

We trust that this opinion answers your inquiry.

Sincerely,

Robert W. Bender, Chairperson