



State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

KEVIN DEHMER
Acting Commissioner

SCHOOL ETHICS COMMISSION

April 30, 2024

For Public Release

Subject: Public Advisory Opinion – A09-24

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 the subject of the request, thus complying with *N.J.A.C. 6A:28-5.2(b)*. The Commission notes that the Board member did not submit a response to your request, and therefore, the Commission will issue 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)*, your request was preliminarily discussed by the Commission at its Advisory Opinion Committee meeting on April 10, 2024, and again at its regularly scheduled meeting on April 30, 2024.

You inform the Commission that the Board member is a member of the Board and has adult child, who resides with the Board member and who is employed by a "third party provider" as a substitute teacher. You state that the adult child works within the District as a substitute, without a contract, through the "third party provider." You further state that the adult child has "acted as a musical director, a stipend position, during the" 2022-2023 school year (SY), and 2023-2024 SY, and may apply for the same position for the 2024-2025 SY. You note the adult child has "never had a contract with the Board."

You further inform the Commission that you have reviewed public advisory opinions, namely *Advisory Opinion A11-23* (A11-23), *Advisory Opinion A10-23* (A10-23), *Advisory Opinion A07-23* (A07-23), *Advisory Opinion A06-23* (A06-23), *Advisory Opinion A24-17* (A24-17) and *Advisory Opinion A19-21* (A19-21); however these advisory opinions "appear to deal with situations in which the relative is a direct employee of the district, even if a student during the same period."

Based on the information provided in your request, you inquire whether the Board member would be in violation of the School Ethics Act (Act) *N.J.S.A. 18A:12-21 et seq.*, if he/she participated in the Superintendent's evaluation.

Before more directly responding to your request, the Commission notes although you indicate in your request that the Board member's adult child has previously "acted as the musical director, a stipend

position,” and “has never had a contract with the Board,” the issuance of stipends is generally contained within the collective bargaining agreement for the local union and ultimately would then come before the board of education for discussion and a vote.

Turning to your inquiry, and in its review of the specific facts and circumstances detailed in your request, the Commission advises that if the stipend that the Board member’s adult child receives as the musical director is not part of any bargaining unit and is paid to the adult child directly through the “third party provider” without Board involvement i.e., voting to approve the stipend, then the advice the Commission offered in the advisory opinion previously issued to the Board member is instructive here. As the Commission stated in the previously issued advisory opinion, “if the Board has a contractual relationship with an agency that provides substitute personnel to work in the District as needed . . . and the Board pays this agency for the substitute personnel it provides, the Commission regards the substitute personnel as employees of the agency, and not employees of the District,” and therefore, the Board member would not have a conflict related to the Superintendent.

However, if the stipend for the musical director is under a non-curricular contract for which stipends are a traditionally bargained-for line item during negotiations of the yearly agreement, and if the Board member’s adult child therefore reports to an administrator, who ultimately reports to the Superintendent, then the stipend would be inextricably linked not only to the Superintendent, but also to the administrator who oversees the activity. The stipend is a financial gain to the Board member and the adult child, and therefore, the Board member would have a direct financial involvement that might reasonably be expected to impair his/her objectivity. As such, the adult child’s stipend position would create a conflict for the Board member sufficient to bar his/her involvement in matters related to the stipend, the Superintendent and the administrator(s) who oversees the position, as well as the negotiations related to the same.

Finally, the Commission further notes that the adult child’s stipend position as the music director with the District would implicate the Board as a whole. As a result, neither the Board member, nor any other member of the Board, should take any action that would provide the Board member’s adult child with any *unwarranted* privilege, advantage or employment. 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 reevaluate 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