



State of New Jersey

DEPARTMENT OF EDUCATION

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SCHOOL ETHICS COMMISSION

September 24, 2024

For Public Release

Subject: Public Advisory Opinion A13-24

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 Board member who is the subject of your request, thus complying with *N.J.A.C. 6A:28-5.2(b)*. The Commission notes that you have attached an email from the subject Board member, dated September 4, 2024, in which the Board member requested that Board counsel seek an advisory opinion on his/her behalf, and therefore, the Commission will issue its advice based on the information included in your request, as well as the information included in the Board member's 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 September 11, 2024, and again at its regularly scheduled meeting on September 24, 2024.

You inform the Commission that the Board member has an aunt who is employed by the School District (District) as an administrative assistant to the Director of Curriculum (Director). You indicate that the Board member's aunt is not a member of the local education association (LEA), nor is she "covered by[] a labor union operating with the District." You further indicate that the Director "is similarly not covered by a bargaining unit."

You further inform the Commission that you have reviewed public advisory opinions, namely *Advisory Opinion A24-17* (A24-17) and *Advisory Opinion A11-23* (A11-23); however, you note that "in each of these advisory opinions it is either directly stated or implied that the relative of the board member is not only an employee of the board, but a member of the local or statewide union collective bargaining unit and/or covered by the collective bargaining agreement." You further note the cited advisory opinions "do not explicitly address the question of whether a Board member's non-unit/non-covered relative who is employed by the Board, creates a conflict which precludes participation in negotiations."

Included with your request was an email from the Board member requesting that Board counsel seek an advisory opinion from the Commission, which included additional information related to the aunt's employment. More specifically, the Board member states that as an administrative assistant, the aunt does not "belong to the [LEA]", or the New Jersey Education Association (NJEA), nor is she a member of the "local bargaining unit for teachers." The Board member notes that the administrative assistants "negotiate as individual employees, not as a union." Further, the Board member states that the District's "health

benefits package is no longer negotiated, but rather predetermined and set by the outside broker.” The Board member further notes the “aunt’s direct supervisor [] and other administrators within her chain of command” do not belong to the LEA, but instead they are part of “a separate, standalone bargaining unit.”

Based on the information provided in your request, as well as the information provided by the Board member, you inquire whether the Board member has a conflict under the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.*, which would prohibit him/her from participating in negotiations with the LEA.

As an initial matter, the Commission notes that A24-17, as well as A11-23, thoroughly addressed the meaning of the term “relative,” as well as the conflict principles applied to Board members who have such familial relationships with individuals who are employed by the Board. Therefore, for the purpose of this request, the Commission considers the Board member’s aunt to be a relative.

In further keeping with the Commission’s advice in A24-17 and A11-23, a board member who has a relative employed in the District, cannot participate in any aspect of negotiations, including the vote on the collective negotiations agreement following attainment of the memorandum of the agreement (MOA). Although the Board member’s aunt is not a member of the LEA or the NJEA, the LEA is the exclusive bargaining representative for the teachers, and potentially other personnel employed by the District. In other words, the union contracts may be used by personnel who are not affiliated with the union, as a foundation to negotiate their own “non-unit/not covered” contracts, which may share common traits and goals with the local bargaining unit including, but not limited to, similar salaries and monetary increments.

Therefore, based on the specific facts and circumstances detailed in your request, including the Board member’s email submission, the Commission reaffirms its previously issued advice in A24-17, namely that due to the aunt’s employment as an administrative assistant, the Board member cannot participate in any aspect of negotiations with the LEA, including participating in negotiations or voting on the collective negotiations agreement following attainment of the MOA.

Furthermore, and although not part of your request, the Board member’s aunt’s employment in the District prohibits the Board member from participating in any matters that touch upon the aunt’s employment, including but not limited to any and all discussions and votes related to the Superintendent’s employment, and any other administrators who supervise the aunt.

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 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