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SCHOOL ETHICS COMMISSION

October 22, 2024

For Public Release

Subject – Public Advisory Opinion A14-24

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 the subject 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 October 16, 2024, and again at its regularly scheduled meeting on October 22, 2024.

You inform the Commission that the Superintendent recently recommended a candidate "to be hired for employment with the Board." You note that before the Board voted on the candidate, the Board member "requested to review the resumes of all of the candidates who were within the candidate pool for that position." You further note, "the Administration and Board are unclear as to how to handle such a request from a Board member to review the resumes of all the candidates who were within a candidate pool for a position that is being recommended for hire by the Superintendent."

You further inform the Commission that you have reviewed public advisory opinions, namely *Advisory Opinion A31-15 (A31-15)*, *Advisory Opinion A04-12 (A04-12)* and *Advisory Opinion A15-10 (A15-10)*; however, you note "[t]he absence of any guidance that can be found within any of the questions or decisions previously issued by the Commission results in a lack of clarity regarding the Board members' obligations under the Act with respect to this issue."

Based on the information provided in your request, you inquire whether the Board would violate the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.*, "if a board member . . . were to personally review the resumes of all candidates in the candidate pool for that position."

As an initial matter, please be advised that the authority of the Commission is limited to enforcing the Act, a set of minimum ethical standards by which all school officials must abide. The Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or

consider any pleadings, motion papers, or documents of any kind relating to any matter that does not arise under the Act. *N.J.A.C. 6A:28-1.4(a)*.

With the jurisdiction of the Commission in mind, your request does not inquire whether certain prospective conduct would violate a specific provision of the Act, but rather it inquires whether the Commission believes the Board member “is obligated under the Act to refrain from reviewing any resumes of candidates” At its essence, your request appears to be seeking the Commission’s position on a board member’s entitlement to resumes, i.e., the general lawfulness of the Board member’s access to the resumes of individuals who applied for a position with the Board, and therefore, the request falls beyond the scope and authority of the Commission.

Notwithstanding the above, if it is determined that individual board members, are permitted to view resumes of potential candidates for employment, the Commission cautions that the Board member’s role would be limited to observation and assessment, with full knowledge that all final recommendations are wholly within the purview of the Superintendent. Selecting candidates for District positions and making recommendations is exclusively the role of the Superintendent. Therefore, the Commission further cautions the Board member that if he/she is permitted to review the resumes, he/she should not become directly involved in selecting a candidate for the position, as that responsibility belongs solely to the Superintendent (*N.J.S.A. 18A:12-24.1(d)*).

The Commission notes that the role of a Board member, is to appoint the best qualified personnel available *after* considering the Superintendent’s recommendation (*N.J.S.A. 18A:12-24.1(h)*). Individual Board members, and the Board as a whole, must always be mindful that the Superintendent is responsible for recommending personnel actions to the Board, including the hiring of candidates for employment. Although individual Board members, and the Board as a whole, cannot supersede or usurp the Superintendent’s authority in this regard, individual Board members can always choose whether to vote in favor of, or against, a personnel matter recommended by the Superintendent.

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