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## SCHOOL ETHICS COMMISSION

May 26, 2026

### For Public Release

Subject: Public Advisory Opinion – A10-26

The School Ethics Commission (Commission) received your request for an advisory opinion regarding the conduct of a member of the Board of Education (Board). You verified that you copied the subject of your request, Board Member, thus complying with *N.J.A.C. 6A:28-5.2(b)*. The Commission notes that 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 (Act). *N.J.S.A. 18A:12-31*. Pursuant to *N.J.S.A. 18A:12-28(b)*, the Commission discussed your request at its regular meeting on April 28, 2026, and again at its regular meeting on May 26, 2026.

You inform the Commission that the "Superintendent has recently been placed on administrative leave with pay pending an active Board investigation/forensic investigation into alleged misconduct." You note that Board Member, Board President, "has a documented professional history with the Superintendent that extends across multiple districts."

You further inform the Commission "[d]uring the current decision making to place [the Superintendent] on leave and to pay for an investigation," Board Member has among other things, "[p]ublicly and privately expressed personal loyalty to the Superintendent over the course of 2016 to present"; "[u]rged the Board not to place the Superintendent on administrative leave, citing concern for [the Superintendent's] future employment prospects"; "[i]ndicated that [Board Member] has already participated in providing or facilitating recommendation calls on [the Superintendent's] behalf"; and that "[s]everal Board members have voiced concern about [Board Member's] biasness . . . and being involved in the investigation. [As a result,] [Board Member] wrote to the Board and stated [he/she] would recuse [] from the investigation and the VP would be heading it." However, you note "[Board Member] [has] since back tracked, taking private action on that decision and resumed a leadership role as the primary point of contact without consulting with the Board"; "[Board Member] has used [his/her] position to delay and/or prevent

timely public disclosure of the Superintendent's leave status and the Board's official statement"; and "[d]uring an executive meeting confidential information released in the session was presented back to the Superintendent, who then filed a tort notice against a 'whistleblower' who brought forth allegations." You further note, that "[o]nly three people had access to that information that could have relayed it back to the Superintendent: Board Member, an IT person . . . and Board Counsel."

Based on the information provided in your request, you make the following inquiries:

1. Does a Board member's expressed personal loyalty and advocacy on behalf of a Superintendent constitute a conflict of interest under the School Ethics Act?
2. Does a longstanding professional relationship across multiple districts, combined with current actions supporting the Superintendent, create an appearance of impropriety or compromised objectivity?
3. Is it appropriate for a Board member who initially recused  from an investigation due to potential bias to later reassume a leadership role in that same investigation without Board discussion or agreement (sic)?
4. Do actions such as providing recommendations for the Superintendent during an active investigation, or attempting to influence Board decisions regarding administrative leave, violate ethical obligations of neutrality and fiduciary duty?
5. Can a favorable bias be considered equivalent to a negative bias in determining whether recusal is necessary?
6. Under these circumstances, should the Board member be required to recuse  from:
  - The investigation process
  - Any personnel decisions related to the Superintendent
  - The Superintendent's annual evaluation.

As an initial matter, the Commission notes requests for advisory opinions must clearly set forth in detail the specific conduct or activity that the school official seeks to undertake, and the exact role the official will play in that activity or conduct. *N.J.A.C. 6A:28-5.2(a)*. In short, the conduct which is the subject of a request for an advisory opinion *must be prospective*. It appears, based on your request, inquiries 1 through 5 do not inquire whether certain prospective conduct would violate a specific provision of the Act, but rather appear to question whether Board Member's "expressed personal loyalty and advocacy on behalf of a Superintendent" and alleged "advocacy" "violate ethical obligations of neutrality and fiduciary duty" and/or can "be considered equivalent to a negative bias." At its essence, with the exception of question 6, your request appears to be seeking the Commission's position on a board member's relationship with the Superintendent, i.e., the support Board Member demonstrates toward the Superintendent and whether that support, in general, presents a conflict. However, those inquiries fall beyond the scope and authority of the Commission because they are not prospective.

To this end, if you believe that Board Member has compromised the investigation and/or attempted to influence the Board's decisions and potentially compromised the Board, then you can file a complaint alleging same.

Turning to your request, and in its review of the specific facts and circumstances detailed within, the Commission advises as to question 6, that Board Member is not prohibited from participating in the investigation process, participating in any personnel decisions related to the Superintendent or participating in the Superintendent's annual evaluation. The Commission notes Board Member's support for the Superintendent does not mean, without additional facts and information, which are **not** present here, that Board Member cannot exercise independence of judgment or otherwise be objective in matters related to the Superintendent and/or the Superintendent's employment. However, the Commission cautions that Board Member should ensure that he/she does not take any action that could compromise the investigation and ultimately the Board.

The Commission notes that just as a board member has the right to express contrary views to that of the board and/or the administration, it is their same right to show support for the board and/or administration. Support and/or lack thereof, without more, does not create a *per se* conflict. The Commission further notes that it should be the objective/goal of every school official to show support for fellow board members and administrators and to discuss matters and resolve disagreements in an amicable, mature fashion, even when they have divergent opinions.

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. 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