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**School Ethics Commission**

July 21, 2020

**For Public Release**

Subject: Public Advisory Opinion – A13-20

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on your own behalf as the Superintendent of the School District (District). 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), the Commission discussed this matter at its meeting on June 23, 2020.

You inform the Commission that your sister-in-law (your brother's wife) is employed by the Board of Education (Board) as a lunch aide, and is a member of the local education association. According to your request, your sister-in-law began her employment in 2015, which was prior to your employment on January 2, 2017.

You further inform the Commission that your sister-in-law has applied for a secretarial position within the District, "went through a complete vetting process with both building principals," and "was selected as the finalist based on being most qualified and job ready." In addition, "[b]oth principals have knowledge of [her] prior work ethic and attendance from their evaluations" in her role as a lunch aide, and you note "all [are] superb." You further state that you do not supervise your sister-in-law in her current position, and would not supervise her if she were to be employed as the secretary in the middle school.

Based on the information set forth above, you inquire "is it fair to a current in-house employee and member of the local association [not to] be given the opportunity as qualified and vetted to move into another job description/role within the same local association ONLY because her brother-in-law is now [Superintendent], even though she was hired by the district prior to the superintendent's hire?"

As the Superintendent, and pursuant to *N.J.S.A.* 18A:27-4.1, you have a statutory obligation to recommend all appointments, transfers, removals or renewals of board employees to the Board. Although your sister-in-law was employed prior to your appointment as Superintendent, and therefore; her continued employment and potential promotion does not violate *N.J.A.C.* 6A:23A-6.2 (Nepotism

policy), these facts do not relieve you of your ethical obligations pursuant to the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*

Therefore, if you were to recommend your sister-in-law for a promotion, you would violate the Act, including *N.J.S.A.* 18A:12-24(b) and/or *N.J.S.A.* 18A:12-24(c), which state:

- b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;
- c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family.

Although it may not seem “fair” to you that your sister-in-law may not be able to receive a promotion while you are employed as the Superintendent, there is no question that the public would perceive your action as securing an unwarranted privilege, advantage or employment for an “other,” and it would create a justifiable impression among the public that their trust was being violated. Nonetheless, your sister-in-law is free to pursue secretarial positions in other school districts, or to be considered for a promotion at a time when you do not serve as the Superintendent.

In addition, while your request indicates you do not currently supervise your sister-in-law, the Commission advises that, as the chief school administrator, you are ultimately responsible for the supervision of all staff in the District, which necessarily includes your sister-in-law. As a result, you must recuse yourself from any and all discussions regarding your sister-in-law’s employment as a lunch aide, including her evaluation, retention, and possible future promotions, and you may not make any recommendations relative to these issues.

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 periodically to re-evaluate the existence of potential conflicts. In addition, the only way for a public school official to truly safeguard against alleged violations of the Act is to avoid any conduct that could have the appearance, actual or perceived, of being in violation of the Act.

Sincerely,

Robert W. Bender, Chairperson  
School Ethics Commission