



State of New Jersey  
DEPARTMENT OF EDUCATION  
PO Box 500  
TRENTON, NJ 08625-0500

PHILIP D. MURPHY  
Governor

SHEILA Y. OLIVER  
Lt. Governor

ANGELICA ALLEN-MCMILLAN, Ed.D.  
Acting Commissioner

**School Ethics Commission**

September 21, 2021

**For Public Release**

Subject: Public Advisory Opinion – A16-21

The School Ethics Commission (Commission) received your request for an advisory opinion on your own behalf as a member of the Board of Education (Board). 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), this matter was discussed by the Commission at its Advisory Opinion Committee meeting on September 8, 2021.

In your request, you inform the Commission that the Board on which you serve employs your ex-spouse, as a teacher, and that your ex-spouse is a member of the local education association (LEA). You further inform the Commission as follows: you and your ex-spouse have been divorced since September 2018, and have not lived together since that time; as part of the divorce agreement/settlement, you and your ex-spouse share custody of your two children "with a 48/52 split"; you pay your ex-spouse "a reduced amount of child support and spousal support because your ex-spouse has adequate employment"; you do not provide your ex-spouse with any additional financial assistance other than the child support and spousal support; your ex-spouse does not provide you with any financial assistance; and you are the "primary parent for the educational decisions for [your] two [children] who attend school outside of the School District" (District). You also note that as a result of your divorce, your ex-spouse is no longer a "member of your immediate family" or a "relative," you do not share any business interests with your ex-spouse, and the only interaction you have with your ex-spouse concerns your children.

With the above in mind, you seek "clear, unambiguous, and direct answers" to determine whether your ex-spouse's employment by the Board precludes you from being involved in any and all matters related to the Superintendent, any and all matters related to the LEA, and/or any and all matters related to personnel issues "pertaining to the administrators within the supervisory chain of command of [your] ex-[spouse]."

As an initial matter, the Commission notes that a divorce does not necessarily remove all possible conflicts of interest pursuant to the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* In addition, and as a result of your divorce, your ex-spouse is no longer regarded as a "member of your immediate family" or a "relative," and instead is regarded as an "other." Therefore, and in accordance with *N.J.S.A.* 18A:12-24(b), you must not engage in any Board activity in which you use or attempt to use your official position to provide your ex-spouse with any unwarranted privileges, advantages, or employment.

Turning to your inquiries regarding participation in matters related to the Superintendent and participation in matters related to your ex-spouse's supervisors, the Commission advises, based on the information detailed in your request, that you would violate the Act if you participate in these matters. As acknowledged in your request, you are responsible for paying child support and spousal support, albeit in "a reduced amount," to your ex-spouse. Therefore, you have (whether actual or perceived) an "indirect personal or financial involvement that might reasonably be expected to impair your objectivity" when participating in matters related to the Superintendent and the supervisors/administrators who are within the chain of command of your ex-spouse.

As for your inquiry regarding participation in matters related to the LEA, e.g., contract negotiations, the Commission advises, based on the information set forth in your request, that you would violate the Act if you participated in these matters. Once again, because of the nexus or relationship between your ex-spouse and the LEA, you have (whether actual or perceived) an "indirect personal or financial involvement that might reasonably be expected to impair your objectivity" when negotiating with the LEA. As a member of the Board's negotiations committee, you could, among other things, determine the breadth and value of your ex-spouse's future benefits and salary. As any change in your ex-spouse's financial condition could impact the amount of money you are required to pay your ex-spouse (or vice versa), your involvement in contract negotiations would violate the Act. Although you are prohibited from participating in the contract negotiations with the LEA, once the memorandum of agreement, including salary guides and the total compensation package, has been attained, you may, absent another conflict, vote on the collective negotiations agreement.

In summary, both you and your ex-spouse are responsible for the support of your children, and a divorce does not relieve either of you from that duty. Consequently, you may not participate in any and all matters related to the Superintendent, including, among other things, the evaluation, "renewal or non-renewal of the contract," "resolutions pertaining to search firms for the hiring of a new [S]uperintendent," and the "selection of a [S]uperintendent"; you may not participate in any matters related to the administrators/supervisors who directly supervise your ex-spouse; and you may not participate in the contract negotiations with the LEA. In its review, the Commission finds that your participation in these matters would give rise to a public perception that your independence of judgment or objectivity may be compromised.

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 Board, and to periodically 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, which could have the appearance, actual or perceived, of being in violation of the Act.

Sincerely,

Robert W. Bender, Chairperson  
School Ethics Commission