



State of New Jersey

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School Ethics Commission

November 30, 2021

For Public Release

Subject: Public Advisory Opinion – A19-21

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 members who are the subject of your request, thus complying with *N.J.A.C. 6A:28-5.2(b)*. The Commission notes that the Board members did not submit comments and, therefore, the Commission will provide 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)*, this matter was preliminarily discussed at the Commission's Advisory Opinion Committee meeting on November 3, 2021, and again at its regularly scheduled meeting on November 16, 2021.

In your request, you inform the Commission that Board member A and Board member B both have spouses employed by the Board. More specifically, Board member A's spouse is the Athletic Supervisor and Board member B's spouse is a teacher within the District.

You further inform the Commission that on August 16, 2021, the Board "voted to accept the resignation of the Superintendent and to appoint a new Superintendent ... effective August 23, 2021." You state at that same meeting, the Board "was presented with a resolution to approve [the Superintendent's] successful completion of three quantitative merit goals"; however, the Board "failed to pass the resolution by a majority vote of the Board members eligible to vote." You further state, Board members A and B were recused from the discussion and vote related to the Superintendent's merit goals due to the employment of their immediate family members.

In addition, you note that you have reviewed public advisory opinion, *Advisory Opinion A24-17* (A24-17). Accordingly, the Board "understands that Board members with relatives currently employed by the Board are prohibited from participating in discussions regarding the current Superintendent's employment contract." You further note that because the Superintendent has not been employed by the Board since August 23, 2021, "no benefit could accrue to the identified board members or their relative by their participation and vote upon the former Superintendent's attainment of the merit goals at this time."

Based on the information provided in your request, you are seeking to determine whether the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* “still limits and/or prohibits” Board members A and B from “deliberating and voting upon a resolution on the former Superintendent’s alleged satisfaction of quantitative merit goals.”

As an initial matter, the Commission notes that advisory opinions are limited to prospective activity or conduct only. Although your request appears to seek advice regarding whether the proposed activity or conduct of two Board members would violate the Act, the activity that you are inquiring about has already occurred. According to your request, at the Board meeting on August 16, 2021, Board members A and B were “recused from the discussion and vote” related to the Superintendent’s merit goals due to the employment of their immediate family members and, therefore, the Board “failed to pass the resolution by a majority vote of the Board members eligible to vote.” As such, the Commission avers that the discussion and vote at issue was settled at the August 16, 2021 meeting.

Notwithstanding the above, in its review of the specific circumstances described in your request for an advisory opinion, the Commission reaffirms that Board members A and B are conflicted from, among other things, *any and all matters related to* the Superintendent because they both have members of their immediate family, namely spouses, employed by the Board. Therefore, the Commission advises that the same conflicts that applied to Board member A and Board member B while the Superintendent was employed as the Superintendent, and that apply to their involvement with the current Superintendent, continue to apply to the former Superintendent despite the fact that he/she no longer serves as Superintendent. Consequently, Board members A and B are prohibited from “deliberating and voting upon a resolution” for the former Superintendent’s quantitative merit goals.

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