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FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A24-17

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on your own behalf as a member of the Board of Education (Board). The Commission will provide its advice based solely on the information included in your request, and its 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 August 22, 2017.

You inform the Commission that when you initially completed your Personal/Relative and Financial Disclosure Statements (Disclosure Statements) in January 2016, you included your sister and sister-in-law because, at that time, both were employed (part-time) by School Staffing Company (Company); in addition, by virtue of a contract between the Company and the Board, both worked in the School District (District) as classroom assistants or aides when the District had such staffing needs. Following this disclosure, you report that you were directed by the former assistant to the Business Administrator to remove both your sister and sister-in-law from your Disclosure Statements because they were not employed by the Board directly. After revising and resubmitting your Disclosure Statements as directed, the Board President and the Board's Solicitor advised you that you had not properly disclosed your relatives, and that you "could not vote or be involved with personnel matters, contracts, budgets..." As a result of this direction, you abstained on these issues until the end of the year when your "vote was needed on a particular matter." For this matter, you "made it very clear" that your vote was strictly based on the information provided by the involved committee, and that you did not have direct input or other knowledge about the decision.

You further inform the Commission that, in January 2017, as you prepared to file your annual Disclosure Statements, you requested guidance from the new assistant to the Business Administrator as to whether you should disclose your sister on your Disclosure Statements because of her employment with the Company, and the Board's contract with the Company.¹ You indicate that you were again directed not to include your sister on your Disclosure Statements, and that the

¹ You also reported that, as of January 2017, your sister-in-law was no longer employed by the Company.

New Jersey Department of Education would notify you if something was “wrong.” In addition, throughout this year, you indicate that you have been “excluded” from “the interview process for the hiring of the new superintendent, contract negotiations, budget meetings, [and] personnel.”

Your inquiry first seeks to determine whether, based on your sister’s employment with the Company and the Board’s contract with the Company, you should include your sister on your Disclosure Statements. You also seek to determine whether, and to what extent, your sister’s employment with the Company creates a conflict for your Board activity.

Before more fully responding to your inquiry, and for purposes of this advisory opinion, the Commission accepts your representation that there is a contractual relationship between the Board and the Company and that, as a result of this contractual relationship, the Company provides the District with substitute personnel, including assistants and aides, to work in the District as needed. Therefore, the Commission regards the substitute personnel as employees of the Company, and not as employees of the District. In addition, it is the Commission’s understanding that the Board pays the Company for the substitute personnel it provides, and then the Company, not the Board, directly compensates the substitute personnel who work in the District.

Returning to your request, your first inquiry is whether your sister’s employment with the Company, and the Board’s contract with the Company, should be disclosed on your Disclosure Statements. In this regard, N.J.S.A. 18A:12-25(a)(3) states:

On a form to be prescribed by the commission and to be filed annually with the commission, each school official shall state:

whether the school official *or a relative* is employed by, receives compensation from, or has an interest in any *business* which is a party to a *contract with the school district* with which the school official holds office or employment... and, if so, the name of each such business.

Pursuant to N.J.S.A. 18A:12-23, a “relative” is defined as the spouse, natural or adopted child, parent, or *sibling* of a school official. Based on this definition, it is clear that your sister is a “relative” within the meaning of the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. It is also clear that your sister is receiving compensation from the Company, a business that has a contractual relationship with the Board. Therefore, and although she is not employed directly by the Board, your sister’s employment with the Company must be disclosed on your Disclosure Statements in Section II, in response to Question #3 (Do you or does *any relative receive compensation from* or have any interest in *any business which is a party to a contract with the school district* or charter school in which you hold office or are employed?). To the extent you were previously advised to remove this information from your Disclosure Statements and/or not to include it, that guidance was incorrect. For all future filings, please be sure to include this information on your Disclosure Statements.

Your second inquiry is whether, and to what extent, your sister’s employment with the Company, and the Company’s contractual relationship with the Board, creates a conflict for your

Board activity. According to your request, you have been advised by District personnel that, as a result of your sister's employment "in" the District, you cannot vote on, or be involved in, issues related to the hiring of the new superintendent, contract negotiations, budget meetings, and personnel.

The Commission advises that, based on the facts and circumstances you provided, the breadth of your conflict is not as broad as represented. The Act, and N.J.S.A. 18A:12-24 in particular, does not specifically address prohibited conduct by Board members with regard to their "relatives." Instead, any such allegation falls within the umbrella of "others" as set forth in N.J.S.A. 18A:12-24(b), which states:

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*;

Although "others" is not defined by the Act, **any individual** can be an "other," including people that fall within the definition of "relative" as set forth in N.J.S.A. 18A:12-23, and those that fall within the broader definition of "relative" that is required to be incorporated in district nepotism policies. See, N.J.A.C. 6A:23A-1.2; N.J.A.C. 6A:23A-6.2.

For these "others," a school official is prohibited from using his/her official position to secure an *unwarranted* privilege, advantage or employment. Consequently, in your capacity as Board member, you are prohibited from securing any unwarranted privilege, advantage or employment for your sister's benefit. In this regard, you would provide your sister with an unwarranted privilege, advantage or employment if you were to participate in any issue related to her employer, Company. However, without any representation that specific District personnel, such as the superintendent or a building principal, have any influence over or can affect her employment in the District, and without any representation that your sister's salary is affected by or tied to contract negotiations with the local union, it would not be a violation of N.J.S.A. 18A:12-24(b) for you to participate in any and all issues concerning District personnel, the superintendent, or the budget. Nonetheless, in the event that an issue involving your sister or her employer is presented to the Board for review and action, you would need to recuse yourself from any and all discussions and votes on those matters.

Please note that if your sister was employed by the District directly, then the prohibitions on your Board member activity would be significantly greater. In those circumstances, you would be prohibited from participating in all aspects of negotiations with the local union, including the vote on the collective negotiations agreement, and also prohibited from participating in all issues relating to the superintendent, including his/her hiring and evaluation. However, because your sister is employed by the Company, and there are no facts or circumstances presented which suggest that specific District personnel have any influence over or can affect her employment in the District, or that the terms and conditions of her employment are affected by or tied to contract negotiations with the local union, those broader limitations on your Board activity do not apply.

In summary, the Commission advises that, moving forward, you should identify your sister's employment with the Company on your Disclosure Statements (in Section II, in response

to Question #3) and that, absent additional facts and circumstances which have not been presented here, you are not prohibited from participating in any and all issues concerning District personnel, the superintendent, or the budget. Your conflict on Board activity as a result of your sister's employment with the Company is limited, absent additional facts and circumstances, to matters concerning the Company and its status in the District.

The nature of your inquiry makes it clear that there is confusion regarding the limitations of a Board member's activity with regard to contract negotiations and the employment of the superintendent when he/she has an immediate family member or relative who is employed in the District. Therefore, the Commission will take this opportunity to provide clarity on these and related issues.

As an initial matter, the Commission wants to clarify which provisions of the Act are implicated when allegations are levied against a school official with regard to actions taken for the benefit of his/her "immediate family member" or a "relative." Any allegation that a Board member is acting in a way that could benefit a member of his/her immediate family implicates *nearly all* subsections of N.J.S.A. 18A:12-24, but principally N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24(c). Any allegation that a Board member is acting in a way that could benefit his/her relative implicates only N.J.S.A. 18A:12-24(b), as relatives are considered to be "others."

Previously issued decisions and advisory opinions are also instructive to this conflict analysis, and require brief review. First, in I/M/O Pannucci (Pannucci), the State Board of Education reversed the Commission's previous determination and found, "After careful review, we reject the view that status as a member of another local union within the same statewide union should, on a *per se basis*, preclude a board member from *voting* on a collective negotiations agreement in the district where he or she is a member of the district board of education." Pannucci at 13 (emphasis added). Following this determination, it is clear that a Board member, who is employed as a teacher in another school district and a member of the same statewide union as the local union, did not "*automatically*" violate N.J.S.A. 18A:12-24(c) by **voting on the collective negotiations agreement** between the Board and the local education association. This decision was limited to finding that the vote on the collective negotiations agreement in such circumstances was permissible, but did not address whether participation in negotiations was likewise permissible.

In Advisory Opinion A14-00 (A14-00), the Commission addressed whether Board members, who were employed as teachers in other school districts and members of the same statewide union as the local union, could participate in contract negotiations with the local union without violating the Act. In response, the Commission advised that the Board members in question would violate N.J.S.A. 18A:12-24(c) by **negotiating contracts with the local bargaining unit** of the same statewide union to which they belong, and by **simply being present during negotiations**. A14-00 at 3. However, *after* the memorandum of agreement has been attained (and signed), the Commission advised that the Board members could vote on the collective negotiations agreement without violating N.J.S.A. 18A:12-24(c).

In 2009, the Commissioner of Education adopted regulations regarding fiscal accountability, efficiency, and budgeting procedures. These regulations offer a more expansive

definition of “relative”² than that set forth in the Act. More specifically, pursuant to N.J.A.C. 6A:23A-1.2, a “relative” is defined as:

... an individual’s spouse, civil union partner pursuant to N.J.S.A. 37:1-33, domestic partner as defined in N.J.S.A. 26:8A-3, or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister of the individual or of the individual’s spouse, civil union partner, or domestic partner, whether the relative is related to the individual or the individual’s spouse, civil union partner, or domestic partner by blood, marriage, or adoption. N.J.A.C. 6A:23A-1.2.

In addition to broadening the scope of “relatives,” the new regulations require districts to implement a nepotism policy that includes certain provisions. In particular, N.J.A.C. 6A:23A-6.2(a)(5) and (6) state:

(a) As a condition of receiving State aid, the district board of education... shall implement a nepotism policy, which shall include:

...

5. A provision prohibiting a school district administrator or district board of education member *whose relative is a member of the bargaining unit from discussing or voting on the proposed collective bargaining agreement* with that unit or from participating in any way in negotiations, including, but not limited to, being a member of the negotiating team...

6. A provision prohibiting a school district administrator or district board of education member who has an *immediate family member who is a member of the same Statewide union in another school district from participating in any way in negotiations*, including, but not limited to, being a member of the negotiating team or being present with the district board of education in closed sessions when negotiation strategies are being discussed, prior to the district board of education attaining a tentative memorandum of agreement with the bargaining unit that includes a salary guide and total compensation package; *once the tentative memorandum of agreement is established, a school district administrator with an immediate family member who is a member of the same Statewide union in another district may fully participate in the process, absent other conflicts....*

² The Commission would like to note that the definition of “relative” as defined in N.J.A.C. 6A:23A-1.2 encompasses the definition of “immediate family” as defined in N.J.A.C. 6A:23A-1.2.

In essence, these regulations codified the holding in Pannucci and the advice issued in A14-00. Specifically, N.J.A.C. 6A:23A-6.2(a)(5) clarified that if a Board member has a **relative**, as broadly defined in N.J.A.C. 6A:23A-1.2, who is a **member of the local union**, he/she cannot participate, to any extent, in negotiations with the local union. This prohibition covers **all aspects of negotiations, including voting on the contract** after the memorandum of agreement has been executed. If a Board member participated in any aspect of negotiations in violation of N.J.A.C. 6A:23A-6.2(a)(5), his/her activity would also implicate **N.J.S.A. 18A:12-24(b)** of the Act as it extends to “others,” which necessarily includes, among others, all persons enumerated in the definition of “relative” in N.J.A.C. 6A:23A-1.2. Every board of education is required to incorporate this definition in its nepotism policy.

In addition, N.J.A.C. 6A:23A-6.2(a)(6) clarified that if a Board member has an **immediate family member**, as defined in N.J.A.C. 6A:23A-1.2, who is a **member of the same statewide union in another school district**, he/she cannot participate, to any extent, in negotiations with the local union. However, once the memorandum of agreement, including salary guides and the total compensation package, has been attained, the Board member **can then participate in negotiations, including the vote on the contract**. If a Board member participates in any aspect of negotiations in violation of N.J.A.C. 6A:23A-6.2(6), his/her activity would also implicate **N.J.S.A. 18A:12-24(b) and (c)**, and possibly other subsections of N.J.S.A. 18A:12-24.

In Martinez v. Albolino et al., Hackensack Board of Education, Commission Docket No. C45-11 (Martinez), a complaint was filed against multiple Board members alleging that they violated N.J.S.A. 18A:12-24(c) when they participated in the search for, and the interviews of, candidates (both internal and external) for the position of superintendent.³ Martinez at 1-2. Because Respondent Albolino’s spouse and Respondent Stein’s daughter were tenured teaching staff members in the district, Complainant argued that they should not have been involved in the search for, or the interviews of, applicants for the position that supervised their spouse and daughter’s employment. Martinez at 1-2. Citing the lack of a “bright line rule,” and ambiguity in its own decisions, the Commission declined to find probable cause.⁴ Martinez at 7-8. Nonetheless, the Commission noted two critical things, namely:

...where the Board member has an immediate family member or relative employed in the District, the Commission has taken a clear position in its advisories prohibiting that Board member’s subsequent involvement in the Superintendent’s employment issues *once the Superintendent is hired*, irrespective of whether the new Superintendent was once an employee of the District.

...Accordingly, henceforth, a Board member who has an immediate family member... or a relative... employed in the district may not

³ The initial complaint named three Respondents, Francis Albolino, Mark Stein, and Philip Carroll. Respondent Carroll was dismissed following a Motion to Dismiss, and only Respondent Albolino and Respondent Stein remained at the time the Commission decided the issue of probable cause.

⁴ Prior to Martinez, the finding of a conflict concerning the hiring of administrators, including the Superintendent, turned on whether the candidate for that position was an internal or external applicant. Following Martinez, the internal or external status of an applicant was made irrelevant. This ambiguity was the reason the Commission found no probable cause.

participate in the search, selection and/or vote for a new Superintendent, irrespective of whether there is an in-house candidate being considered for the position.... Martinez at 8.

In brief, Martinez found that a Board member would violate the Act if he/she had an immediate family member or relative employed in the District, and he/she participated in the search for or the hiring of the superintendent. Although not raised as an issue, the Commission also noted that this prohibition would also apply to involvement in post-employment issues involving the superintendent.

In Advisory Opinion A16-15 (A16-15), seven (7) of the nine (9) members of the Board either had relatives who were employed in the District, or who were members of the same statewide union, but in other school districts. With regard to the Board members who had relatives employed in the District, the Commission advised that those Board members could not participate in any aspect of negotiations, including the vote on the collective negotiations agreement. For the Board members who had relatives who were members of the same statewide union but in other school districts, the Commission advised that:

...without evidence of additional circumstances, the Commission cannot find that a Board member who has a relative who is a member of the same statewide union in another district violates N.J.S.A. 18A:12-24(b) if he or she were to participate in the negotiations or vote on the contract with the local education association simply because of kinship. Without more facts, the reach of those familial bonds is too attenuated to effect a distinct benefit, and the impact of that relationship is too speculative to establish a definable gain.

In short, the Commission advised that while there was **no “automatic recusal” from participation in negotiations with the local union, or from voting on the collective negotiations agreement, when a relative is a member of the same statewide union but in a different school district, there *could* be a violation of N.J.S.A. 18A:12-24(b) if certain facts and circumstances were present.** Stated differently, unless there were facts presented which would reasonably lead to the securing of unwarranted privileges, advantages or employment in violation of the public trust and N.J.S.A. 18A:12-24(b), it could not be presumed, without more, that a Board member was precluded from participating in negotiations, including the vote on the collective negotiations agreement, simply because he/she had a relative who was a member of the same statewide union but in a different school district. As noted herein, the definition of “relative” necessarily includes those who fall within the definition of immediate family member.

Although, in A16-15, the Commission limited its review of conflicts to the *same* statewide union, the Commission believes that conflicts exist if a Board member or a member of his/her immediate family is *currently* employed as a teacher outside of the district and is a member of *any*

statewide teacher's union.^{5,6} Because teachers' unions share common traits and common goals in their efforts to negotiate a contract with public school districts, and they often share the same personnel, the same strategies, the same negotiators, the same labor relations officials, and they disclose the outcome of their respective contract negotiations (i.e., financial information), the Commission believes that the analysis for conflicts should extend to all public school teachers' unions, regardless of which union the Board member and/or a member of his/her immediate family may *currently* belong to. See A09-14.

With the above in mind, the following principles should guide Board members who have immediate family members or relatives who are employed in or outside of the District, and are members of any statewide public teachers' union:

- **Absent another conflict, a Board member** who is currently a member of **any statewide public teachers' union**, but in **another school district**, **cannot** participate in any aspect of negotiations **until** the memorandum of agreement, including salary guides and the total compensation package, has been attained. Participation by the Board member in any aspects of negotiations prior to this time implicates N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24(c), and possibly other subsections. After the memorandum of agreement, including salary guides and the total compensation package, has been attained, the Board member can, absent another conflict, vote on the collective negotiations agreement;
- A Board member with an **immediate family member** who is employed **in the District**, **cannot** participate in any aspect of negotiations, including the vote on the collective negotiations agreement following attainment of the memorandum of the agreement. Participation by a Board member in these circumstances implicates N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24(c), and possibly other subsections;
- **Absent another conflict**, a Board member with an **immediate family member** who is currently a member of **any statewide public teachers' union**, but in **another school district**, **cannot** participate in any aspect of negotiations **until** the memorandum of agreement, including salary guides and the total compensation package, has been attained. Participation by the Board member in any aspects of negotiations prior to this time implicates N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24(c), and possibly other subsections. After the memorandum of agreement, including salary guides and the total compensation package, has been attained, the Board member can, absent another conflict, vote on the collective negotiations agreement;
- A Board member with a **relative** who is employed **in the District**, **cannot** participate in any aspect of negotiations, including the vote on the collective negotiations

⁵ The Commission would also like to note that the same conflict analysis would apply if the Board member and/or a member of his/her immediate family is a member of *any* administrators' union, and the Board was considering a matter pertaining to the District's administrators' union.

⁶ When a Board member and/or a member of his/her immediate family ceases to be a teacher in another district and a member of any statewide public teachers' union, whether the Board member's conflict would immediately cease, or would cease after a period of time, is a fact specific inquiry.

agreement following attainment of the memorandum of the agreement. Participation by a Board member in these circumstances implicates N.J.S.A. 18A:12-24(b); and

- **Absent another conflict**, a Board member with a **relative** who is currently a **member of any statewide public teachers’ union** , but works in **another school district**, *can* participate in all aspects of negotiations, including the vote on the collection negotiations agreement following attainment of the memorandum of agreement.

In addition to participating in contract negotiations, and as detailed in Martinez, a Board member who has a **relative or immediate family member** employed **in the District** would also be prohibited from participating in any and all issues related to the superintendent, including the search, contract approval, and evaluation of performance. However, **absent another conflict**, a Board member who is a member of the same statewide union as the local union, but in another school district, and a Board member with an immediate family member or relative who is a member of the same statewide union as the local union, but in another school district, is not, per se, prohibited from participating in any and all matters related to the superintendent.

RELATIONSHIP TO BOARD MEMBER	CURRENT MEMBER OF THE LOCAL UNION	CURRENT MEMBER OF ANY STATEWIDE PUBLIC TEACHERS’ UNION	PARTICIPATE IN NEGOTIATIONS Yes or No	VOTE TO RATIFY THE CONTRACT Yes or No	PARTICIPATE IN ISSUES RELATED TO THE SUPER. (Search, Hire, Contract, and Evaluation) Yes or No
SELF		X	No	Yes*	Yes*
SPOUSE	X		No	No	No
SPOUSE		X	No	Yes*	Yes*
DEPENDENT CHILD	X		No	No	No
DEPENDENT CHILD		X	No	Yes*	Yes*
CHILD (NOT DEPENDENT)	X		No	No	No
CHILD (NOT DEPENDENT)		X	Yes*	Yes*	Yes*
RELATIVE	X		No	No	No
RELATIVE		X	Yes*	Yes*	Yes*
* Absent another conflict					

To the extent that previously issued advisory opinions (public and private) and decisions are contrary to the Commission's position as set forth above, they are now superseded and abrogated as necessary to conform with the advice in this Advisory Opinion.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission