



State of New Jersey

DEPARTMENT OF EDUCATION

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January 3, 2018

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—36-17

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on behalf of a member of the Board of Education (Board). You verified that you copied the Board member who is the subject of your request, thus complying with N.J.A.C. 6A:28-5.2(b). The Commission notes that the Board member 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), the Commission discussed this matter at its meeting on December 19, 2017.

You inform the Commission that a newly elected Board member (November 2017), is eighteen (18) years old and a current student (Senior) in the District. You further inform the Commission that this student/Board member (Board member) also serves as the Senior Class President, and is a member of the Principal's Advisory Council. Based on these facts, your inquiry seeks to determine whether there are any ethical prohibitions on this Board member's activities given that he is currently enrolled in the District as a student. More specifically, you seek to determine whether, without violating the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., this Board member may:

- (1) Participate in discussions and/or vote on personnel matters in general, and, if so, whether there are any prohibitions with respect to his participation on matters involving his current teachers, guidance counselors and club advisors;
- (2) Participate in collective negotiations for the District's teachers' association and, specifically, whether he can be a member of the negotiations team, participate in closed session discussions, and vote on the Memorandum of Agreement and/or the final collective negotiations agreement;
- (3) Participate in grievance hearings;
- (4) Volunteer for school related activities and functions in the same manner as other Board members;

- (5) Participate in student suspension/expulsion hearings;
- (6) Participate in closed session discussions involving particular pupil matters;
- (7) Participate in residency hearings where the superintendent is seeking removal of currently enrolled students;
- (8) Vote for class trips, club trips and/or competitions involving student travel for District clubs or activities;
- (9) Vote for the establishment of new clubs, sports or activities at the high school;
and
- (10) Vote on policies related to pupils or personnel.

As an initial matter, the Commission notes that this Board member's election and qualifications/eligibility to serve as a Board member are governed by statutes outside the jurisdiction of the Act. Therefore, the Commission's advice, as set forth more fully below, accepts that this Board member was duly elected, and qualified, to serve as a Board member.

Similar to all other newly elected, as well as currently seated, Board members, this Board member is bound by and charged with understanding and complying with the ethical standards set forth in the Act. The fact that this Board member is a currently enrolled student in the District does not, in and of itself, limit his involvement in Board activities, restrict him from having access to Board documents or materials, or otherwise prohibit him from fulfilling the full extent of his duties and responsibilities as a Board member. In short, there is no basis to presume that this Board member's status as a Board member is somehow diminished, or limited, because he is a student.

With the above in mind, the Commission advises that, *absent another conflict*, the facts and circumstances of which were not presented in your request, this Board member may participate in and vote on all subjects detailed in your request, as well as the many other matters that he will encounter as a Board member. To your inquiry, this Board member may (1) participate in personnel discussions and vote on personnel matters; (2) participate in collective negotiations with the District's teachers' association; (3) participate in grievance hearings; (4) serve as a volunteer for school related activities and functions in the same manner as any other Board member; (5) participate in student suspension/expulsion hearings; (6) participate in closed session discussions where a particular pupil matter is being discussed; (7) participate in residency hearings where the Superintendent is seeking removal of a currently enrolled pupil; (8) vote for class trips, club trips and/or competitions involving student travel for District clubs or activities; (9) vote for the establishment of new clubs, sports or activities at the high school; and (10) vote on policies related to pupils or personnel.

Although, generally, and absent another conflict, this Board member may participate in Board activities as set forth above, the Commission cautions that this Board member, similar to **any other** Board member, must exercise precautions to protect himself from potential violations of the Act. For example, this Board member, similar to **any other** Board member, must avoid being involved in discussions of, and votes on, matters which would create a personal and direct benefit to him, and to him alone. Similar to **any other** Board member, he must ensure that he does not provide an *unwarranted* privilege, advantage or employment to himself, a member of his immediate family or others. This Board member must also ensure, similar to **any other** Board member, that he safeguards

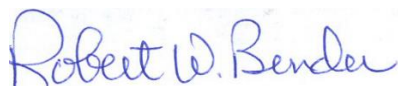
the sensitive and confidential nature of the information and materials that he is entitled to, and will have access to, as a Board member. It cannot be presumed that, simply because he is a student, this Board member cannot be trusted with confidential information. This Board member, similar to **any other** Board member, is charged with knowledge of the Act's provisions, and must always evaluate whether, and to what extent, his Board member activity could implicate the provisions of the Act.

The Commission further reiterates that while there is no presumption of a conflict based on the facts presented in your request, the Commission cannot determine if a conflict between this Board member and a District employee or student may present itself, or if one of a different nature may develop, but is unknown at this time to the Commission, this Board member, other members of the Board or District personnel. 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.

As a matter of best practice, this Board member, similar to any other newly elected Board member, should be briefed on the implications of the Act. The Commission notes that there are an abundance of resources available to you, and to this Board member, including the Act¹ itself, the accompanying regulations,² and the decisions and public advisory opinions issued by the Commission.³ All of these resources can help you, and this Board member, to avoid potential violations of the Act.

In summary, the Commission advises that, absent another conflict, this Board member *does not have a conflict* simply because he is a student in the District. The Commission reiterates that advisory opinions are determined by, and are limited to, the facts presented before it; therefore, should additional facts arise or facts exist that have not been disclosed to the Commission, a violation may indeed occur. In addition, you and/or this Board member are free to request an additional advisory opinion if/when more specific facts can be provided as to whether some prospective conduct or activity would violate the Act.

Sincerely,



Robert W. Bender, Chairperson
School Ethics Commission

¹ The Act can be viewed here: <http://www.state.nj.us/education/ethics/act.htm>.

² The Act's regulations can be viewed here: <http://www.state.nj.us/education/code/current/title6a/chap28.pdf>.

³ Public Advisory Opinions can be found here: <http://www.state.nj.us/education/legal/ethics/advisory/>.