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DEPARTMENT OF EDUCATION  
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Acting Commissioner

June 25, 2014

**FOR PUBLIC RELEASE**

SUBJECT: Advisory Opinion—A25-14

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion, regarding several members of the Local Board of Education (Board). Pursuant to your request for an advisory opinion and consistent with its authority under N.J.S.A. 18A:12-28(b), the Commission discussed this matter at its March 6, 2014 meeting. Initially, the Commission notes that you properly verified that the Board members whose conduct is the subject of the request was copied on the request, thus complying with N.J.A.C. 6A:28-5.2(b). Because the Board members did not submit comments, the Commission bases its advice solely on the facts included in your request. The Commission's authority to issue advisory opinions is expressly limited to determining whether any proposed conduct or activity would constitute a violation of the School Ethics Act. N.J.S.A. 18A:12-31.

Please be advised that the Commission, in accordance with its discretion under N.J.A.C. 6A:28-5.2(c)3, has specifically declined to accept your request in that this tribunal maintains its determination in Martinez v. Albolino et al., Hackensack Board of Education, Bergen County, SEC Dkt. No. C45-11 (June 26, 2012), and its progeny sufficiently address the questions raised in your request. Moreover, it is important to check our website from time to time for updates. Currently, two of the decisions you have cited, A30-05 and A23-06, have been flagged as no longer good advice to the extent they conflict with the Martinez decision. For your convenience, we are providing you with the website: <http://www.state.nj.us/education/legal/ethics/advisory/>.

Under Martinez, the conflicted Board member may not participate in any discussion pre- or post-hire, may not be a part of any aspect of the vetting process or any evaluation and contract discussion post-hire of the superintendent. That would include voting on who should be on the selection committee or which firm will conduct the superintendent search. These conflicted Board members may not be in the room when discussions are underway and they should not be privy to any information regarding those discussions. In short, they have rights only as great as the public does and no more.

The Commission wishes to address two classes of employees: Paraprofessionals and Substitute Paraprofessionals. The classification of a spouse who is an employee does not change the application of statutory and regulatory prohibitions on the conduct of the school official. Based on the reasoning in Martinez and Advisory Opinion A16-07, the same proscriptions inure to Board members whose spouses are so employed. These Board members would violate

N.J.S.A. 18A:12-24(c) if they were to participate in any employment or personnel issues of those who have influence over or affect their spouses' employment in any manner. Such involvement would reasonably be expected to impair the Board members' objectivity or independence of judgment. You may wish to discuss this or any other questions you may have with your Board Attorney.

We hope this answers your inquiry.

Sincerely,

Robert W. Bender, Chairperson