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Commissioner

February 20, 2013

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A29-12

Pursuant to your request for an advisory opinion filed on behalf of a member of the Local Board of Education (Board), and consistent with its authority under N.J.S.A. 18A:12-28(b), the School Ethics Commission (Commission) discussed this matter at its January 22, 2013 meeting. Initially, the Commission notes that you properly verified that the Board member whose conduct is the subject of the advisory opinion request was copied on the request, thus complying with N.J.A.C. 6A:28-5.2(b). Because the Board member 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 (Act). N.J.S.A. 18A:12-31.

You have stated that the Board member has a daughter who serves as a co-coach for the Local High School cheerleading squad. You further state that the daughter receives a Board-approved stipend for the 2012-2013 school year. Finally, you advise that the daughter is not a part of any bargaining unit and reports exclusively to the Board's Athletic Director. You have specifically asked whether it would be a violation of the Act if this Board member were to be involved in discussions regarding the Superintendent and whether the Board member may vote on actions related to the Superintendent.

This matter implicates N.J.S.A. 18A:12-24(c), which provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

It is not clear from your request whether the Board member's daughter is a dependent child, and thus within the definition of an "immediate family member." However, she is, nevertheless, a "relative" under the Act. See, N.J.S.A. 18A:12-23. In addition, the daughter serves under a non-curricular contract for which stipends are a traditionally bargained for line

item during negotiations of the yearly agreement and reports to the Athletic Director who reports to the Superintendent. Her contract, therefore, is inextricably linked not only to the Superintendent in his/her role during these negotiations, but also to the Superintendent as an administrator. These would create a conflict for the Board member, sufficient to bar the Board member's involvement on actions regarding the Superintendent.

Moreover, applying the standard in subsection (c), i.e., what "might reasonably be expected to impair objectivity," the Commission must determine whether the public might reasonably perceive that the board member's objectivity could be impaired by his relationship to his child. The Commission has determined in the past and finds so here that "[t]he public could reasonably expect or perceive that a board member would have a great interest in his child's financial well being that would conflict with his duty to the board." (See Advisory Opinion A19-05 [July 22, 2005]). Accordingly, the Board member would violate N.J.S.A. 18A:12-24(c) if he were to be involved in discussions regarding the Superintendent or vote on actions related to the Superintendent.

Further, the Commission cautions that in order to avoid a violation of N.J.S.A. 18A:12-24(c), the Board member must recuse himself on any committee issue, policy discussion or vote wherein his daughter has a direct or indirect financial involvement or where there is the potential for some benefit to the Board member or his daughter. Lastly, the Commission suggests that you review the school's nepotism policy, pursuant to N.J.A.C. 6A:23A-6.2, for additional guidance in avoiding conflicts of this nature.

We trust that this opinion answers your inquiry.

Sincerely,

Robert W. Bender, Chairperson