



State of New Jersey

DEPARTMENT OF EDUCATION

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SCHOOL ETHICS COMMISSION

May 3, 2019

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion – 06-19

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on behalf of your client, who is 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 who is the subject of your request 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 March 26, 2019.

You inform the Commission that a newly elected Board member, is employed as a bus driver by a bus company that contracts with the Board to transport the District's students. You state that the Board member does not have an ownership interest in the bus company, and does not obtain financial benefit, other than her earnings as a bus driver. You note that the Board does not have supervisory authority over the Board member in connection with her duties and responsibilities as a bus driver. However, when there is a concern with the performance of an employee of the bus company, "the common practice" is for the bus company to honor the administration's request and remove the employee from all District routes. You also note that the Board member/bus driver needs to drive a route/routes in the District because she needs to be in close proximity to her child (who has significant medical concerns).

You also inform the Commission that if an issue arises regarding a student's behavior while on the bus, the bus driver's role is to write a disciplinary report and to submit it to the administration. The administration then takes action with regard to the report. In addition, there are aides who are employed by the District and who ride the bus to assist students. The Board member, in her role as the bus driver, may have to give orders or directives to those aides. Similarly, should the Board member be involved in an accident or engage in misconduct while serving in her role as a bus driver, "the District would have to possibly take action against her."

You further state that it is "clear" that the Board member has an indirect conflict of interest by virtue of her employment with a District service provider, and that same can be cured by her abstention "from all discussions, participation and voting in any matters touching upon any bus transportation services and the contract with [the bus company]." However, your request is whether "her employment by [the bus company]

on an in-district route creates an incurable substantial and material conflict due to her daily employment duties having the potential to put her in regular interaction with District staff, students and parents, in violation” of *N.J.S.A. 18A:12-24(a)*, *N.J.S.A. 18A:12-24(d)*, *N.J.S.A. 18A:12-24.1(c)*, and *N.J.S.A. 18A:12-24.1(j)* and “thereby disqualifies [her] from Board membership.”

The Commission notes that although the Board member would have authority over students while transporting them, her role is primarily to maintain order for the short duration of time during which she is actually driving the students. The primary responsibility of the Board member in this capacity is to ensure the safe travel of the bus and transportation of its occupants. Should any incident occur during the transportation, the Board member, like any other bus driver, would be required to report the incident through the appropriate channels, even if that includes members of the District’s administration.

With the above in mind, the Commission views the Board member as a private employee of a private company doing her job. She is a Board member who is an employee of a company that contracts with the District and, as a result thereof, she comes into casual, temporary contact with students and bus aides over whom she has a limited level of authority. Therefore, the Commission advises that, absent additional facts and information, the Board member may continue as a Board member while she is employed as a bus driver for the bus company without violating the Act.

Notwithstanding the above, and because the Board member does and will continue to have contact with District students and personnel (bus aides), to the extent feasible, the Commission recommends that the Board member and her employer discuss reassignment to a bus route that does not include the District’s students and personnel. A potential reassignment would eliminate the opportunity for the Board member to have even temporary contact and/or authority over District students and personnel (bus aides), and also would eliminate the possibility of any “incident” involving the need for her employment to be reviewed or considered by the Board. Changing bus routes, if possible, avoids these scenarios.

Should it not be feasible for the Board member to be reassigned to a different route, and should she continue to provide transportation for the District’s students, she would, as you stated in your request, have to limit her Board activity as a result of her employment. In this regard, the Board member would need to, among other things, refrain from being involved in the discussion (and vote) of any transportation issue involving the bus company (including contracts and payments), any issue involving the specific students who are on her route(s), and any issue involving the specific bus aides that may be on her bus. In addition, should an incident occur on a bus that the Board member witnesses and/or reports to District officials, she would be prohibited from being involved in any discussion (and vote) of the incident. Finally, and for as long as she maintains her employment with the bus company, the Board member should refrain from being involved in the discussion (and vote) of transportation services/issues, generally.

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.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission