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November 26, 2014

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A44-14

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) of the Local School District (District). You have verified that you copied the Board member, Board Member A, who is the subject of the advisory opinion request, thus complying with N.J.A.C. 6A:28-5.2(b). The Commission notes that this Board member did not submit comments and, therefore, the Commission will provide its advice based solely on the information you included in your request dated October 2, 2014. Pursuant to its authority under N.J.S.A. 18A:12-28(b), the Commission discussed this matter at its October 28, 2014 meeting.

Your request provides a series of facts advising the Commission that, due to a lack of space in the District's facilities, the District contracts with "various State-approved sites" to house its pre-kindergarten program. One of these sites is the Private Day Care Center (Center), which employs a member of the Board, Board Member A, as an aide. In Board Member A's role as an aide, the Board member works with certified staff who teach the District's pre-kindergarten students. Your request asks whether there would still be a violation of the School Ethics Act (Act) if the Board member abstained from "any consideration, discussion or vote" involving the Center, its contract with the Board, or the Board's use of the pre-kindergarten program. The Commission finds that a violation of the Act would still be implicated under these circumstances.

N.J.S.A. 18A:12-24(b) provides that "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." If Board Member A abstained in matters revolving around the Board and District's relationship with the Center and the prekindergarten program Board Member A would still be privy to the nature of that relationship which would lead to a violation of (b).

N.J.S.A. 18A:12-24(c) provides that "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.” As with the analysis of (b), *supra*, if Board Member A abstained in matters concerning the Board and District’s relationship with the Center and the prekindergarten program, Board Member A would still be privy to the nature of that relationship and could lead to a benefit to Board Member A which would lead to a violation of (c).

As explained in the analysis of N.J.S.A. 18A:12-24(b) and (c), Board Member A cannot simply abstain from any and all aspects related to the contract between the Board and the Center, the prekindergarten program, including issues pertaining to curriculum, facilities inspections or supervisors going to the Center to monitor the program. Board Member A must recuse, not merely abstain, from any and all participation in the foregoing.

The Commission is wary that even taking the broadest possible steps to avoid a violation of the Act, Board Member A’s Board actions may still violate N.J.S.A. 18A:12-24(d) and N.J.S.A. 18A:12-24.1(f).

N.J.S.A. 18A:12-24(d) provides that “no school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.” As it is certainly reasonable for a member of the public to believe Board Member A’s independence of judgment may be prejudiced with regard to any matter, however remotely, touching upon the Board and District’s relationship with the Center and the prekindergarten program, his recusal must be as broad as possible to avoid a violation of (d).

N.J.S.A. 18A:12-24.1(f), of the Code of Ethics for School Board Members (Code), provides that a board member “will refuse to surrender his independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.” As with the analysis of (d), *supra*, Board Member A’s independent judgment concerning the Board and District’s relationship with the Center and the prekindergarten program may certainly be at risk of a violation.

Non-recusal in any form by Board Member A in matters touching upon the Board and District’s relationship with the Center and the prekindergarten program may call into question violations of additional parts of the Act and Code, depending on the factual circumstances. The Commission encourages you as the general counsel of the Board to engage in an in-depth discussion of the prohibited acts outlined in N.J.S.A. 18A:12-24, the provisions of the Code outlined in N.J.S.A. 18A:12-24.1, and other aspects of the Act with Board Member A.

We hope this information is helpful.

Sincerely,

Robert W. Bender, Chairperson