



State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ANGELICA ALLEN-McMILLAN, Ed.D.
Acting Commissioner

SCHOOL ETHICS COMMISSION

May 23, 2023

For Public Release:

Subject: Public Advisory Opinion – A05-23

The School Ethics Commission (Commission) received your request for an advisory opinion regarding the Board of Education (Board), and two of its members, Board member A and Board member B. You verified that you copied Board member A and Board member B, the subjects of your request, thus complying with *N.J.A.C. 6A:28-5.2(b)*. The Commission notes that neither Board member submitted a response to your initiating request and, therefore, the Commission will issue its advice based solely on the information included in your initiating request, and in your supplemental response to the Commission's request for additional information.

Please note that 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)*, your request was preliminarily discussed by the Commission at its Advisory Opinion Committee meetings on April 12, 2023, and May 10, 2023, and again at its regularly scheduled meeting on May 23, 2023.

In your initiating request, and in your supplemental response to the Commission's request for additional information, you inform the Commission that Board member A currently serves as the Board President and was previously employed in the School District (District) as a teacher. You state Board member A retired from the District in 2016, and currently receives a pension from same. You further state Board member A's child is employed as a "[S]pecial [E]ducation Instructional Assistant" in the District, Board member A's child-in-law is employed in the District as an "Instructional Assistant/Coach and Sports Coach," and another child is employed as a teacher in a neighboring school district. In addition, you state that Board member B's spouse is employed in the District as a ten month employee in the Technology Department; however, Board member B does not serve as the Vice President as initially indicated.

You further inform the Commission that in April 2023, and in the role as Board President, Board member A appointed Board member B to serve on the "Public Relations Committee, [Construction and Planning] Committee, and as chairperson of the Technology

Committee.” You note Board member A also appointed themselves to the “Legislative Committee, (that meets with county and town legislative leaders to discuss school issues), as one of three [B]oard liaisons to the District-wide Instructional Council, (which meets with teachers, administration and staff regarding instructional issues), and as the State and County School Boards [c]o-representative.” You further note Board member A stated that they “will be included as an ad hoc member on all Board committees except the Negotiations Committee.”

You note that you have reviewed public *Advisory Opinion A28-17* (A28-17), *Advisory Opinion A24-17* (A24-17), *Advisory Opinion A19-15* (A19-15) and *Advisory Opinion A05-15* (A05-15); however, you indicate they “do not address when the conflicted member is the *President* of the Board.”

With the above in mind, you state that if Board member A and Board member B are both conflicted due to their respective familial and employment relationships (as noted above), can (1) Board member A, in the role as Board President, “choose members for, and are there committees [Board member A] shall not be able to choose members for”; (2) Board member A “choose the chairs of any committees”; (3) Board member A “sit and/or participate in any/every committee in any capacity”; and (4) the “non-conflicted members vote and the majority rule regarding choosing committee members?” You note that the Board’s committees include personnel, negotiations, construction and planning, instructional, finance, technology, mental health and wellness, policy, and public relations.

As an initial matter, the Commission advises that because Board member A and Board member B both have either immediate family members (a child and a spouse) and/or relatives (child-in-law) employed in the District, they both have conflicts related to the local education association and the Superintendent. In this regard, A24-17 provides a comprehensive analysis of the conflict principles that apply when currently seated Board members, as here, have familial relationships with people employed by the Board and/or who are members of the same statewide unions.¹

Applying the principles and conflict analysis from A24-17 to Board member A’s role as the Board President, and the selection of committee members, the Commission advises that Board member A cannot, due to the conflict, choose any committee members nor be on any committee(s) involving the local education association or matters related to the Superintendent. In this regard, Board member A may not choose the members of, choose the chairs of, and/or serve as an ex-officio member of any committee that even remotely touches upon or directly relates to Board member A’s family members’ employment including, but not limited to, the personnel committee, the negotiations committee, the instructional committee, and the finance committee. The Commission further notes that because the Vice President does not appear to have a conflict, the Vice President may choose the committee members of, and serve as the ex-officio member of, those committees for which Board member A, as the Board President has a conflict.

Based on the information in your initiating request, and supplemental response to the Commission’s request for additional information, it appears that you believe Board member A

¹ A24-17 can be read at the following link: <http://www.state.nj.us/education/legal/ethics/advisory/>

may be receiving money from the District by way of a pension payment. Although Board member A's previous employment in the District serves as the basis for the pension payment, the District does not "pay" Board member A directly. Instead, like thousands of others school employees, Board member A is paid by a pension fund, a fund to which Board member A contributed while working as a District employee.

As for Board member B, the limitations on Board member B's action are clearly addressed in A24-17 and, due to Board member B's spouse's employment in the District, Board member B cannot be involved in any and all matters (including service on a committee(s)) that remotely touch upon or directly relate to the spouse's employment including, without limitation, the personnel committee, negotiations committee, and/or finance committee.

The Commission reiterates that its advice is based upon the facts and circumstances presented in your initiating request and supplemental response to the Commission's request for additional information, and it cannot determine whether a conflict between Board member A, Board member B, and their involvement in any other committee may present itself, or if one of a different nature may develop, but is unknown at this time.

Finally, 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 the Board, and to periodically re-evaluate the existence of potential conflicts of interest. In addition, the only way for a school official to truly safeguard against alleged violations of the Act is to avoid any conduct which could have the appearance, actual or perceived, of being in violation of the Act.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission