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SCHOOL ETHICS COMMISSION

April 25, 2023

For Public Release

Subject: Public Advisory Opinion – A06-23

The School Ethics Commission (Commission) received your request for an advisory opinion on behalf of your client, the Board of Education (Board). You verified that you copied Board member A, the subject of your request, thus complying with *N.J.A.C. 6A:28-5.2(b)*. The Commission notes that Board member A did not submit a response to your request and, therefore, the Commission will issue 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:12-21 et seq.* (the Act). See *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 meeting on April 12, 2023, and again at its regularly scheduled meeting on April 25, 2023.

In your request, you inform the Commission that Board member A has a "sister-in-law," the brother's spouse, who is employed in the School District (District) as the secretary for the middle school principal. You note that, to date, Board member A has adhered to the guidance in [Advisory Opinion A20-21 \(A20-21\)](#), which you note, "essentially establishes that there is no *per se* conflict due to a sibling-in-law being employed in a subject district." However, your request indicates that the District is "in the process of hiring a Superintendent," and "is intending to move forward with hiring [the middle school principal] as Superintendent."

With the above in mind, you inquire (1) whether Board member A may "participate in deliberations and actions relative to the hiring of [the middle school principal] as Superintendent, in light of [the sister-in-law's] current employment status as a direct report to [the middle school principal]"; (2) if Board member A is "required to recuse from the hiring process for [the middle school principal] as Superintendent," whether "that recusal ceases upon [the middle school principal's] appointment, at which point [the middle school principal] would no longer be the direct supervisor of [the sister-in-law], or if further recusals are required, such as the Superintendent's evaluation"; and (3) "in the event of a recusal requirement past [the middle school principal's] appointment as Superintendent," whether "such a recusal requirement would

cease upon a potential notice of retirement by [the sister-in-law], or if it would only cease upon [the sister-in-law's] separation from District employment.”

Before more directly responding to your request, the Commission notes that, pursuant to *N.J.S.A.* 18A:12-23, “Member of immediate family” is defined as “the spouse or dependent child of a school official residing in the same household,” and “relative” is defined as “the spouse, natural or adopted child, parent, or sibling of a school official.” In addition, neither the provisions of *N.J.S.A.* 18A:12-24 (“Prohibited acts”) nor the provisions of *N.J.S.A.* 18A:12-24.1 (“Code of Ethics for School Board Members”) specifically refer to the “relative” of a school official. Instead, the “relatives” of a school official fall within the umbrella of “others” set forth in *N.J.S.A.* 18A:12-24(b).¹ As explained in [Advisory Opinion A24-17 \(A24-17\)](#), “[a]lthough ‘others’ is not defined by the Act, **any individual** can be an ‘other,’ including people that fall within the definition of ‘relative’ as set forth in *N.J.S.A.* 18A:12-23, and those that fall within the broader definition of ‘relative’ that is required to be incorporated in district nepotism policies.” See, *N.J.A.C.* 6A:23A-1.2; *N.J.A.C.* 6A:23A-6.2.

Although the term “relative” does not appear in *N.J.S.A.* 18A:12-24 (“Prohibited acts”) or the provisions of *N.J.S.A.* 18A:12-24.1 (“Code of Ethics for School Board Members”), all school officials are required, by virtue of *N.J.S.A.* 18A:12-25 (“Annual disclosure as to employment and financial interests”) of the Act, to disclose certain financial/contractual information regarding their “relatives” on their annual filing. In recognition of the fact that the employment of a school official’s “relative” can create a clear and palpable conflict of interest, A24-17 clearly explained, based on the Commission’s previously issued advisory opinions and precedent, that “A Board member with a **relative** who is employed **in the District**, **cannot** participate in any aspect of negotiations, including the vote on the collective negotiations agreement following attainment of the memorandum of the agreement,” and “a Board member who has a **relative ... employed in the District** would also be prohibited from participating in any and all issues related to the superintendent, including the search, contract approval, and evaluation of performance.”

With the above in mind, in [Advisory Opinion A21-20 \(A21-20\)](#), a board member inquired whether they were precluded from being involved in contract negotiations with the local education association and/or matters related to the superintendent because the sister-in-law of their spouse was employed in the school district. To reiterate, the individual in question was not the school official’s sister-in-law, but rather their spouse’s sister-in-law. Based on the facts and circumstances presented in A21-20, the Commission determined that the sister-in-law of the board member’s spouse was neither a “member of their immediate family” nor a “relative,” and that the board member could participate in contract negotiations and matters related to the superintendent absent another conflict.

Similarly, A20-21, which you cited in your request, discusses whether two different board of education members had a conflict due to the employment of certain “relatives” in their school district. Of relevance here, one board member inquired whether they could participate in “labor negotiations as well as typical matters involving the superintendent” if the aunt-in-law of

¹ *N.J.S.A.* 18A:12-24(b) states, “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*” (emphasis added).

their spouse was employed in the school district. Again, the individual in question was not the school official's aunt-in-law, but rather their spouse's aunt-in-law. Ultimately, the Commission opined that this individual was neither a member of the subject board member's immediate family nor a "relative," but rather an "other"; there was no presumption of a conflict of interest; and the board member could participate in labor negotiations with the local education association, and vote on the collective negotiations agreement, as well as participate in all matters related to the superintendent so long as they did not extend an *unwarranted* privilege, advantage or employment for themselves, members of their immediate family or *others*, including the aunt-in-law of the school official's spouse.

Importantly, the Commission's advice in A21-20 and A20-21 was "expressly limited" to the facts and circumstances described in those requests, and do not stand for the proposition that the employment of an "in-law" in a school district can never constitute a conflict or preclude a school official from being involved in negotiations with the local education association and/or in matters related to the superintendent.

Of equal importance is that, effective March 6, 2023, the Commission's regulations for the term "relative" have become more expansive, and now corresponds to the definition set forth in the accountability regulations. More specifically, and pursuant to *N.J.A.C.* 6A:28-1.2, "relative" is defined as:

... an individual's spouse, civil union partner pursuant to *N.J.S.A.* 37:1-33, domestic partner as defined in *N.J.S.A.* 26:8A-3, or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister of the individual or of the individual's spouse, civil union partner, or domestic partner, whether the relative is related to the individual or the individual's spouse, civil union partner, or domestic partner by blood, marriage, or adoption. *N.J.A.C.* 6A:23A-1.2, *N.J.A.C.* 6A:28-1.2.

Returning to your request, Board member A's sister-in-law – the spouse of Board member A's brother – is still regarded as an "other" for purposes of *N.J.S.A.* 18A:12-24(b), and Board member A may not use or attempt to use his/her official position to secure an unwarranted privilege, advantage, or employment for the "sister-in-law." Moreover, like the family members discussed in A21-20 and A20-21, Board member A's "sister-in-law" (the brother's spouse) is not Board member A's "relative," even under the Commission's more expansive definition of "relative." Therefore, Board member A's "sister-in-law's" employment in the District does not place any *per se* limitations on Board member A's ability to be involved in contract negotiations with the local education association, or in any and all matters related to the superintendent. In rendering this determination, the Commission advises that it is the school official's marriage that determines whether an individual is regarded as a "relative." In this way, whether the school official's relatives, or the school official's spouse's relatives, marry another person does not expand the breadth of their relatives. To illustrate:

FAMILIAL RELATIONSHIP	CONSIDERED A “RELATIVE” FOR PURPOSES OF CONTRACT NEGOTIATIONS WITH THE LOCAL EDUCATION ASSOCIATION AND MATTERS RELATED TO THE EMPLOYMENT OF THE SUPERINTENDENT
School official’s spouse	Yes
School official’s parents	Yes
School official’s children	Yes
School official’s brother (sister)	Yes
School official’s brother’s (sister’s) spouse	No
School official’s aunt (uncle):	Yes
School official’s aunt’s (uncle’s) spouse	No
School official’s nephew (niece)	Yes
School official’s nephew’s (niece’s) spouse	No
School official’s grandparents	Yes
School official’s grandchildren	Yes
School official’s grandchildren’s spouses	No
School official’s son-in-law (daughter-in-law)	Yes
School official’s step-parent	Yes
School official’s step-child	Yes
School official’s step-child’s spouse	No
School official’s step-sibling	Yes
School official’s step-sibling’s spouse	No
School official’s half-sibling	Yes
School official’s half-sibling’s spouse	No
School official’s spouse’s parents	Yes
School official’s spouse’s children	Yes
School official’s spouse’s brother (sister)	Yes
School official’s spouse’s brother’s (sister’s) spouse	No
School official’s spouse’s aunt (uncle):	Yes
School official’s spouse’s aunt’s (uncle’s) spouse	No
School official’s spouse’s nephew (niece)	Yes
School official’s spouse’s nephew’s (niece’s) spouse	No
School official’s spouse’s grandparents	Yes
School official’s spouse’s grandchildren	Yes
School official’s spouse’s grandchildren’s spouses	No
School official’s son-in-law (daughter-in-law)	Yes
School official’s spouse’s step-parent	Yes
School official’s spouse’s step-child	Yes
School official’s spouse’s step-child’s spouse	No
School official’s spouse’s step-sibling	Yes
School official’s spouse’s step-sibling’s spouse	No
School official’s spouse’s half-sibling	Yes
School official’s spouse’s half-sibling’s spouse	No

Although there is no per se conflict, because Board member A’s sister-in-law currently works for, and reports directly to, the middle school principal, the Commission advises that Board member A’s involvement in any and all matters related to the middle school principal’s

appointment to the position of the superintendent could be perceived as securing an unwarranted privilege, advantage or employment for an “other,” and it could create a justifiable impression among the public that their trust was being violated. Therefore, the Commission advises that based on the information provided in your request, Board member A may not “participate in deliberations and actions relative to the hiring of the middle school principal as Superintendent.”

However, if and when the middle school principal is appointed to the position of Superintendent, and Board member A’s sister-in-law no longer directly reports to the middle school principal, Board member A will then, ***absent another conflict which is not set forth in your request***, be able to participate in any and all matters related to the superintendent, including evaluations. If Board member A’s sister-in-law was regarded as a “relative,” then Board member A would have been precluded from being involved in any and all matters related to the Superintendent.

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