



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

April 25, 2023

For Public Release

Subject: Public Advisory Opinion – A07-23

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, Board member B, and Board member C, the subjects of your request, thus complying with *N.J.A.C. 6A:28-5.2(b)*. The Commission notes that neither Board member A, Board member B, nor Board member C submitted 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.

Board Member A

First, and with regard to Board member A, your request notes that Board member A's spouse has a sister who is employed in the School District (District). Although you reviewed [Advisory Opinion A24-17 \(A24-17\)](#), [Advisory Opinion A21-20 \(A21-20\)](#), and [Advisory Opinion A20-21 \(A20-21\)](#), your request states, "We are not aware of an opinion specifically addressing whether all 'in-laws' are considered 'others,' or whether a board member needs to analyze the exact details of the relationship to determine whether a potential conflict exists." As such, you are seeking guidance as to whether Board member A may participate in "typical matters involving the Superintendent," as well as in labor negotiations, while Board member A's spouse's sister works in the District.

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 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 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 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 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.

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).

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, although Board member A’s sister-in-law – the sister of Board member A’s spouse – 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 their official position to secure an unwarranted privilege, advantage, or employment for their “sister-in-law.” However, unlike the family members discussed in A21-20 and A20-21, Board member A’s “sister-in-law” (their spouse’s sister) is a “relative” under the Commission’s more expansive definition. Stated differently, because Board member A’s “sister-in-law” is related to Board member A by virtue of the marriage to Board member A’s spouse, she is a “relative.” 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,” and 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	<i>No</i>
School official’s aunt (uncle):	Yes
School official’s aunt’s (uncle’s) spouse	<i>No</i>
School official’s nephew (niece)	Yes

School official's nephew's (niece's) spouse	<i>No</i>
School official's grandparents	Yes
School official's grandchildren	Yes
School official's grandchildren's spouses	<i>No</i>
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	<i>No</i>
School official's step-sibling	Yes
School official's step-sibling's spouse	<i>No</i>
School official's half-sibling	Yes
School official's half-sibling's spouse	<i>No</i>
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	<i>No</i>
School official's spouse's aunt (uncle):	Yes
School official's spouse's aunt's (uncle's) spouse	<i>No</i>
School official's spouse's nephew (niece)	Yes
School official's spouse's nephew's (niece's) spouse	<i>No</i>
School official's spouse's grandparents	Yes
School official's spouse's grandchildren	Yes
School official's spouse's grandchildren's spouses	<i>No</i>
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	<i>No</i>
School official's spouse's step-sibling	Yes
School official's spouse's step-sibling's spouse	<i>No</i>
School official's spouse's half-sibling	Yes
School official's spouse's half-sibling's spouse	<i>No</i>

Because, under the facts and circumstances presented, Board member A's sister-in-law is a "relative," Board member A is prohibited from being involved in any and all discussions and votes regarding the Superintendent, and also prohibited from being involved in negotiations with the local education association while the sister-in-law is employed in the District.

II. Board Member B

Second, and regarding Board member B, your request notes that Board member B has a child who resides at an out of state college during the school year, but returns to the family home during the college breaks and intends to work as a per diem substitute in the District. Even though you reviewed *Advisory Opinion A25-14* (A25-14) and *Advisory Opinion A30-14* (A30-14), you are seeking guidance as to whether Board member B may participate in "typical matters involving the Superintendent of schools, including [the Superintendent's] annual evaluation" if Board member B's child is employed as a per diem substitute during college breaks.

For the purposes of this request, the Commission regards Board member B's child as a member of Board member B's immediate family. Pursuant to *N.J.A.C. 6A:23A-6.3(b)*, and as

noted in your request, a school district may exclude “per diem substitutes” from the scope of its nepotism policy.² Therefore, and unless your District’s nepotism policy states otherwise, Board member B’s child may be hired as a per diem substitute teacher in the District while Board member B is a Board member.

However, if Board member B’s child is hired by the District as a per diem substitute and, by virtue of the child’s employment, is regarded as a member of the District’s local education association, then the limitations on Board member B’s activities are clearly detailed in A24-17. More specifically, Board member B would be prohibited from being involved in contract negotiations with the local education association, and would also be prohibited from being involved in any and all matters related to the Superintendent of schools, including the Superintendent’s evaluation. Conversely, if Board member B’s child is hired by the District as a per diem substitute but is **not** a member of the District’s local education association, then the prohibitions in A24-17 would **not** apply.

III. Board Member C

Finally, and with regard to Board member C, you indicate that Board member C’s spouse works in the District, and Board member C understands that Board member C is conflicted with respect to issues involving the Superintendent, including the Superintendent’s evaluation. However, you are seeking guidance “as to whether, once the Superintendent’s evaluation has been completed by the other non-conflicted Board members, [Board member C] is permitted to have access to the contents/results of the finalized evaluation.”

Because Board member C’s conflict extends to *any and all matters* related to the Superintendent, he is prohibited from having access to the Superintendent’s evaluation, even after it has “been completed by the non-conflicted Board members.” In this way, Board member C’s ability to access the Superintendent’s evaluation is akin to that offered to any other member of the public.

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

² Generally, a school district’s nepotism policy otherwise prohibits a board of education from employing a “relative” of any board member and, by definition, “relative” includes a board member’s child.