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SCHOOL ETHICS COMMISSION

April 25, 2023

For Public Release

Subject: Public Advisory Opinion – A09-23

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 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 A nor Board member B 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:12-31*. 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, the Superintendent of Schools, and Board member B, Board Secretary/Business Administrator (BS/BA), have been in a personal relationship since 2022; however, both were employed in the School District (District) before their personal relationship began. You state, "In this case, it seems clear that Board member A and Board member B are not relatives and should be considered 'others' under the [School Ethics] Act" (Act) *N.J.S.A. 18A:12-21 et seq.*

You further inform the Commission the Board "has taken steps consistent with the [] nepotism regulation to address potential concerns regarding the supervision and evaluation of [Board member B] while the parties remain in a personal relationship." More specifically, in Board member B's role as the BS, Board member B will be directly evaluated and supervised by the Board, and in the role as the BA, Board member B's "formal annual evaluation will be performed by another administrator in the District that holds a School Administrator Certificate, namely the High School Principal." Per your request, the High School Principal will also "address any routine day-to-day supervisory issues that may arise such as leave requests, disciplinary issues, etc." Furthermore, you note that Board member A "will not have any role in" Board member B's evaluation, and Board member A will "not directly supervise [Board member B], *except as may be necessary for District operations*" (emphasis added).

With the above in mind, you inquire whether Board member A or Board member B “have a conflict which affects their roles as Superintendent [of Schools] and Business Administrator, and, if so, whether the alternative supervision and evaluation mechanisms put in place ... sufficiently address any potential conflict.”

Based on the specific facts and circumstances presented in your request, the Commission agrees that, for purposes of the School Ethics Act, *N.J.S.A. 18A:12-21 et seq.* (the Act), and because Board member A and Board member B are not married, but rather in a “personal relationship,” they are regarded as “others.” As such, neither can use or attempt to use their official position in order to secure an unwarranted privilege, advantage, or employment for the other without running afoul of *N.J.S.A. 18A:12-24(b)*. Given that the Superintendent of Schools and the BA/BS are two of the highest-ranking administrators in the District, and ultimately oversee the full breadth of the District’s operations, including its finances and its personnel, ensuring that clear boundaries are implemented and adhered to is of critical importance, both for the District, and for Board member A and Board member B.

In that regard, the Commission agrees with the “alternative supervision put in place for [Board member B]” while Board member B and Board member A remain in a personal relationship, namely that Board member B’s “formal annual evaluation will be performed by another administrator in the District that holds a School Administrator Certificate, namely the High School Principal,” and that the High School Principal will also “address any routine day-to-day supervisory issues that may arise such as leave requests, disciplinary issues, etc.”

However, because of the “personal relationship” between Board member A and Board member B, and the high-ranking administrative roles/positions that they hold, the Commission advises that Board member A should not be involved in supervising any aspect of Board member B’s employment, including those that “*may be necessary for District operations*” (emphasis added). In its review, Board member A’s involvement in any aspect of Board member B’s supervision is riddled with potential ethical violations, and could lead to the filing of ethics complaints. Therefore, Board member A must recuse from *any and all* aspects of Board member B’s employment, including the evaluation and the supervision of their work, regardless of whether it is “necessary” for District operations. Although the Commission recognizes that these limitations may make it difficult for Board member A and/or Board member B to perform their duties and responsibilities efficiently and effectively, this is, unfortunately, the consequence of entering into a personal relationship in the workplace. Of course, in recognition of these limitations, either is free to pursue employment opportunities in other school districts so as to avoid conduct which is, or may appear to be, violative of the Act.

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