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DEPARTMENT OF EDUCATION

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SCHOOL ETHICS COMMISSION

June 27, 2023

For Public Release

Subject: Public Advisory Opinion – A11-23

The School Ethics Commission (Commission) received your request for an advisory opinion on behalf of the Board of Education (Board) and one of its members, Board member A (Board Vice President). 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:12-31. 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 June 14, 2023, and again at its regularly scheduled meeting on June 27, 2023.

In your request, you inform the Commission that Board member A's mother-in-law is "employed by the [Board] as a paraprofessional" and "also serves as a regular substitute in the principal's offices for the school district."

With the above in mind, you inquire whether Board member A is "precluded from participating in all matters related to the Superintendent, "[s]chool principal search, selection committee and candidate interviews," "[s]chool principal contract negotiations," "[c]ollective negotiations with [the] local [New Jersey Education Association] NJEA union affiliate," "[r]outine personnel committee discussions that affect the scheduling or employment of the [B]oard member's mother-in-law," "[s]taff annual contract appointment voting that include the Board [m]ember's mother-in[-]law," and "[b]udget discussions that may affect paraprofessional staffing counts or responsibilities."

Before more fully 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.”

Importantly, 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.

With the above in mind, Board member A’s mother-in-law is a “relative” under the Commission’s more expansive definition. Stated differently, because Board member A’s mother-in-law is related to Board member A by virtue of Board member A’s marriage to a spouse, the mother-in-law is Board member A’s “relative.” In rendering this determination, the Commission advises that it is the school official’s marriage or partnership that determines whether an individual is regarded as a “relative.” To illustrate:

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).

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/partner	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/partner	<i>No</i>
School official’s aunt (uncle):	Yes
School official’s aunt’s (uncle’s) spouse/partner	<i>No</i>
School official’s nephew (niece)	Yes
School official’s nephew’s (niece’s) spouse/partner	<i>No</i>
School official’s grandparents	Yes
School official’s grandchildren	Yes
School official’s grandchildren’s spouses/partners	<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/partner	<i>No</i>
School official’s step-sibling	Yes
School official’s step-sibling’s spouse/partner	<i>No</i>
School official’s half-sibling	Yes
School official’s half-sibling’s spouse/partner	<i>No</i>
School official’s spouse’s/partner’s parents	Yes
School official’s spouse’s/partner’s children	Yes
School official’s spouse’s/partner’s brother (sister)	Yes
School official’s spouse’s/partner’s brother’s (sister’s) spouse/partner	<i>No</i>
School official’s spouse’s/partner’s aunt (uncle):	Yes
School official’s spouse’s/partner’s aunt’s (uncle’s) spouse/partner	<i>No</i>
School official’s spouse’s/partner’s nephew (niece)	Yes
School official’s spouse’s/partner’s nephew’s (niece’s) spouse/partner	<i>No</i>
School official’s spouse’s/partner’s grandparents	Yes
School official’s spouse’s/partner’s grandchildren	Yes
School official’s spouse’s/partner’s grandchildren’s spouses/partners	<i>No</i>
School official’s son-in-law (daughter-in-law)	Yes
School official’s spouse’s/partner’s step-parent	Yes
School official’s spouse’s/partner’s step-child	Yes
School official’s spouse’s/partner’s step-child’s spouse/partner	<i>No</i>
School official’s spouse’s/partner’s step-sibling	Yes

School official's spouse's/partner's step-sibling's spouse/partner	<i>No</i>
School official's spouse's/partner's half-sibling	Yes
School official's spouse's/partner's half-sibling's spouse/partner	<i>No</i>

Because, under the facts and circumstances presented here, Board member A's mother-in-law is Board member A's "relative," Board member A is prohibited from participating in any matters that touch upon the mother-in-law's employment, namely any and all discussions and votes related to the Superintendent, including those detailed in your request, the "[s]chool principal search, selection committee and candidate interviews," the "[s]chool principal contract negotiations," the "[c]ollective negotiations with [the] local [New Jersey Education Association] NJEA union affiliate," the "[r]outine personnel committee discussions that affect the scheduling or employment of the [B]oard member's mother-in-law," the "[s]taff annual contract appointment voting that include the Board [m]ember's mother-in[-]law," and the "[b]udget discussion that may affect paraprofessional staffing counts or responsibilities" while Board member A's mother-in-law is employed in the District.

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