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DEPARTMENT OF EDUCATION
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Governor

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CHRISTOPHER D. CERF
Commissioner

April 22, 2014

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A05-14

Pursuant to your request for an advisory opinion filed on behalf of a member of the Board of Education (Board), and consistent with its authority under N.J.S.A. 18A:12-28(b), the School Ethics Commission (Commission) discussed this matter at its March 6, 2014 meeting. Initially, the Commission notes that you properly verified that the Board members whose conduct is the subject of the advisory opinion request were copied on the request, thus complying with N.J.A.C. 6A:28-5.2(b). Because the Board members did not submit comments, the Commission bases its advice on the facts included in your request. The Commission's authority to issue advisory opinions is expressly limited to determining whether any proposed conduct or activity would constitute a violation of the School Ethics Act (Act). N.J.S.A. 18A:12-31.

You have indicated that five of your nine-member Board have conflicts and that you anticipate one or more of those who have conflicts would be unavailable for a vote on the employment of the Acting Superintendent. You have asked if the Board could invoke the Doctrine of Necessity in the absence of any of the Board members or must you wait for all five conflicted members to be present before invoking the Doctrine.

In Advisory Opinion A55-95, the Commission determined that three members without conflicts were sufficient to negotiate on behalf of the Board or to conduct the Board's business as it relates to the selection of a new Superintendent. It believes the same reasoning is applicable in this circumstance and sees no reason to disturb its prior advice.

Accordingly, the four Board members without conflicts shall conduct the Superintendent's annual evaluation. Moreover, it would not be necessary to wait until all members return to invoke the Doctrine. It is sufficient for you to have a majority of your Board present for the vote.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission