

February 27, 1998

**FOR PUBLIC RELEASE**

Subject: Advisory Opinion A01-98

The School Ethics Commission considered the request for an advisory opinion that you filed on behalf of the Board you represent at its meeting on February 24, 1998. The Board requested an opinion on whether certain Board members can participate in the discussion and vote on a proposal to give greater weight to certain courses when their children are enrolled in such courses without violating the School Ethics Act, N.J.S.A. 18A:12-21 et seq. For the following reasons, the Commission advises that those Board members can participate in the discussion and vote on the general proposal without violating the Act. However, they cannot participate in the discussion and vote on whether the weighted grading system should apply retroactively.

You have set forth that the school district you represent offers pupils at the District's two high schools an optional educational program designated as the "Academy." The Academy functions as a "school within a school," designed to offer a rigorous academic curriculum. Pupils may choose to participate in any or all of four components: academics, community service, team participation, and the building of a job portfolio. To aid the Commission, you have submitted a description of the Academy concept and a copy of the current brochure. Currently, 500 of the District's 1500 high school freshmen, sophomores and juniors participate in the Academy, and 470 of these are taking Academy courses.

You indicate that the Superintendent of Schools has now proposed to the Board that the grades of the pupils enrolled in the Academy program be weighted. This would increase the numerical value of a grade by one-half of a point in recognition of the Academy courses' greater rigor. This would mean that a pupil receiving a "B" in an Academy course would be credited on his or her transcript with 3.5 grade points instead of the usual three. The proposed change would be retroactive to the first year the District offered Academy courses. Class ranking would remain unaffected by the modification.

Three members of the Board have children who are enrolled in the Academy program. Children of these Board members are currently juniors and will be applying for college this spring. The Board desires an advisory opinion on whether these Board members may participate in the discussion of and vote upon the superintendent's proposal to weight grades.

As noted in your request, N.J.S.A. 18A:12-24(c) applies to the facts set forth in your request. It provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

In the situation you have posed, the Board members in question and their children have a personal involvement in the proposal. By definition, children who are students are in the same household and, thus, members of the school official's immediate family pursuant to N.J.S.A. 18A:12-23. The question is whether that personal involvement might reasonably be expected to impair the Board members' objectivity or independence of judgment. Note that the emphasis is on public perception and not on whether the board member feels that he or she can be objective.

The New Jersey Supreme Court stated that:

The question will always be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty. Wyzykowski v. Rizas, 132 N.J. 509, 523 (1993)(quoting Van Itallie v. Borough of Franklin Lakes, 18 N.J. 258 (1958)).

The Court distinguishes remote and speculative interests, which should not disqualify an official. Id. Similarly, the Commissioner of Education has noted that no school board member can be totally free of potential conflict of interest since he must be a resident and must vote on school referenda and budget. He also must vote on a school calendar that may affect the family vacation schedule. Sweeney v. Komorowski, 1976 S.L.D. 740, 743-744. A conflicting interest arises when the public official has an interest not shared in common with the rest of the public. Wyzykowski, 132 N.J. at 524 (citing Griggs v. Borough of Princeton, 33 N.J. 207, 220-221, (1960)).

The circumstances presented here are such that the school Board members in question, who have children who are juniors, might reasonably be expected to lack objectivity when it comes to a proposal affecting their children. The public recognizes a basic tenet that all parents want what is best for their children. Adoption of the proposal would clearly be best for the children of the Board members in question. However, if you

applied that principle consistently, then Board members with children in the District would be disqualified from voting on too many issues that concern all children of the district. Thus, the Commission advises that the decision on whether to adopt the proposal is similar to a situation when a board member who is a parent of a district student with musical talent has to vote on whether to keep the music program. Such a board member would reasonably be expected to consider the ramifications to his or her child, but the decision is one that will affect every parent of a student in the district. Thus, the Commission believes that N.J.S.A. 18A:12-24(h) provides an exception to allow the Board members in question to vote on whether to weight grades in Academy courses, without the clause making it retroactive.

N.J.S.A. 18A:12-24(h) of the School Ethics Act codifies the principle that a conflict does not exist if the interest is shared with the public, although the exception is somewhat narrower. It provides:

No school official shall be deemed in conflict with these provisions if, by reason of his participation in any matter required to be voted upon, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain would reasonably be expected to accrue to any other member of that business, profession, occupation or group.

The question of whether subsection (h) applies depends on how one defines the “group.” The Commission defines the group herein as the parents of all students, not just parents of Academy students. The Commission notes that Academy course enrollment is open to any interested student. Moreover, if the Board adopts the proposal, Academy course students will have two separate grade point averages, one for college transcripts and one for class ranking. These two factors indicate that although the Board members in question have a personal involvement, they do not stand to gain more than other parents in deciding whether to weight grades without making it retroactive. The proposal will not enrich Academy students to the detriment of non-Academy students. Furthermore, any student who is not presently an Academy student has the opportunity to enroll in Academy courses and benefit from the weighted grades in the future. Thus, the decision of whether to weight grades alone is a matter of policy, as any other curriculum decision, and the Board members in question would not violate the Act by participating in that decision.

However, the Commission finds that the same overall public interest is lacking in making the proposal retroactive to the start of the program. By voting in favor of making the policy retroactive, the Board members in question would be voting to make their own children’s transcripts look better for their application to college. In contrast to the general proposal, this is not a voting matter such as the school calendar or other curriculum decision, that affects every parent of a student in the District. It will particularly affect those parents who have had children in Academy courses who are now college-bound. Also, the personal involvement of the Board members in making the proposal retroactive is not remote or speculative since the junior year is crucial for the college transcript. The

question of whether to make the proposal retroactive is a matter in which the Board members have a personal involvement that might reasonably be expected to impair their objectivity or independence of judgment. For these reasons, the Board members with children in the Academy courses would violate N.J.S.A. 18A:12-24(c) of the Act if they were to participate in the discussion and vote on the proposal's retroactivity.

Unlike the general proposal, the Commission advises subsection (h) does not apply to the decision on whether to weight the grades retroactively. The circumstances indicate that if the proposal is applied retroactively, the Board members in question may accrue material gain to a greater extent than any gain would reasonably be expected to accrue to any other parent of a student. Thus, the circumstances concerning the retroactive application of the proposal do not meet the standard for an exception to N.J.S.A. 18A:12-24(c).

Although every parent with a student in the District does not share the interest in the proposal being applied retroactively, counsel has noted 470 students and their parents share such interest. While 470 is a large number, the Commission has not found this factor to eliminate the conflict of interest. A collective bargaining agreement that sets forth salary for a board member's spouse may affect hundreds of employees. However, there is a clear conflict of interest in that any salary increase would directly enrich the board member. This prohibits the board member from participating in negotiations. See Advisory Opinion A01-93 and In the Matter of Russo and Scarano, SEC #C12-97. Thus, the Commission reiterates that the Board members in question have a personal involvement in determining whether to weight Academy courses retroactively that is not in common with the other parents of District students. Moreover, that involvement could impair their objectivity and subsection (h) would not provide an exception that would allow the Board members to participate.

For the foregoing reasons, the Commission advises that the Board members who now have children taking Academy courses would not be in violation of N.J.S.A. 18A:12-24(c) if they were to participate in the discussion and vote on the superintendent's proposal to give greater weight to Academy courses. However, the Commission advises that the Board members would be in violation of N.J.S.A. 18A:12-24(c) if they were to discuss and vote on whether to make the proposal retroactive to the start of the program.

Because this opinion may be of interest to other board members, the Commission is making this advisory opinion public. The specific circumstances may not be replicated, but the principles have general applicability.

Sincerely,

Paul C. Garbarini,  
Chairperson

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I hereby certify that the  
School Ethics Commission adopted this  
Advisory Opinion and voted to make it  
public on February 24, 1998.

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Lisa James-Beavers, Executive Director