



## State of New Jersey

DEPARTMENT OF EDUCATION

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*Acting Commissioner*

March 28, 2018

### FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A06-18

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on behalf of a member of the Board of Education (Board). You verified that you copied the Board member who is the subject of your request, thus complying with N.J.A.C. 6A:28-5.2(b). The Commission notes that the Board member did not submit comments and, therefore, the Commission will provide 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), the Commission discussed this matter at its meeting on February 27, 2018.

You inform the Commission that Board Member A, a newly elected Board member (November 2017), is eighteen (18) years old and a current student (Senior) of the School District (District), attending the District's high school. You further inform the Commission that Board Member A has two siblings in the District, his mother is a school nurse in the District and a member of the local education association (LEA), and his father is the varsity golf coach at the high school and that although the father is not a member of the LEA, the stipend for the golf coach position is governed by the collective negotiations agreement with the union.

Broadly speaking and pursuant to the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., you seek advice as to the limitations on Board Member A's activity on the Board due to the familial relationship Board Member A has with family members attending or employed within the District, including discussion and/or votes on particular matters.

First, concerning Board Member A's relatives, you state that various public advisory opinions, including, Advisory Opinion A24-17 (A24-17), Advisory Opinion A16-15 (A16-15), and Advisory Opinion A20-12 (A20-12) have "provided clear guidance in two areas in which Board Members A's authority to act as a board member is restricted." You state that the advice in these advisory opinions indicates that Board Member A cannot participate in the evaluations, personnel actions and/or decisions regarding individuals who are in a direct reporting relationship to Board Member A's parents, up to and including your position as Superintendent. This is due to Board Member A's mother's employment as the school nurse in the District and Board Members A's father's employment as varsity golf coach in the District. Next, you indicate that it is your understanding that Board Member A is limited in matters involving: discussion, voting and serving on the negotiations committee with the LEA or any other bargaining unit within the District in which there is evidence of linkage to the LEA collective negotiations

agreement, and participation in executive session regarding the collective negotiations agreement with the LEA or any other bargaining unit within the District in which there is evidence of linkage to the LEA collective negotiations agreement. You state, “The Board does not believe that any further direction as to these issues is warranted from the Commission.”

With the above in mind, the Commission acknowledges and affirms your analyses based on A24-17, A16-15 and A20-12. Board Member A is prohibited from participating in the evaluations, personnel actions and/or decisions regarding individuals who are in direct reporting relationship to Board Member A’s parents, up to and including the Superintendent. Furthermore, he is limited in matters involving discussing, voting and serving on the negotiations committee with the LEA or any other bargaining unit within the District in which there is evidence of linkage to the LEA collective negotiations agreement and participating in executive session regarding the collective negotiations agreement with the LEA or any other bargaining unit within the District in which there is evidence of linkage to the LEA collective negotiations agreement based on his mother’s employment as a nurse and his father’s position as a golf coach in the District.

Second, you are seeking advice as to whether Board Member A can fully or partially participate in discussions and vote on the District budget for the 2018-2019 fiscal year, as Board Member A will no longer be a student when the budget goes into effect. Further, you state, the Board believes that, absent any other conflicts, Board Member A may discuss and vote on policy formation, payment of bills, hiring of professionals to serve the District, and approval of various contracts.

As you may know, the Commission recently issued an advisory opinion on a similar matter, Advisory Opinion A36-17 (A36-17), which also concerns a recently elected board of education member in a school district in which the new board member is still a student in the high school.<sup>1</sup> The Commission believes that A36-17 is sufficient to respond to your request concerning Board Member A’s participation in budgeting issues. A36-17 states that a board member who is a student, absent another conflict, does not have a conflict simply because he/she is a student in the district. The student/Board member, **similar to any other Board member**, must avoid being involved in discussions of, and votes on, matters which would create a personal and direct benefit to him, ensure that he does not provide an unwarranted privilege, advantage or employment to himself, a member of his immediate family or others, and must also ensure that he safeguards the sensitive and confidential nature of the information and materials that he is entitled to, and will have access to, as a Board member.

Based on A36-17, the Commission notes that, similar to all other newly elected, as well as currently seated Board members, Board Member A is bound by and charged with understanding and complying with the ethical standards set forth in the Act. The fact that Board Member A is a currently enrolled student in the District does not, in and of itself, limit his involvement in Board activities, restrict him from having access to Board documents or materials, or otherwise prohibit him from fulfilling the full extent of his duties and responsibilities as a Board member. In short, there is no basis to presume that Board Member A’s status as a Board member is somehow diminished, or limited, because he is a student. Therefore, and absent any other conflicts, the Commission is confirming that Board Member A may fully participate and vote on the District budget for the 2018-2019 fiscal year and may discuss and vote on policy formation, payment of bills, hiring of professionals to serve the District, and approval of various contracts.

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<sup>1</sup> See: <http://www.state.nj.us/education/legal/ethics/advisory/>

Finally, in addition to the confirmations requested above, your inquiry also seeks to determine whether there are any ethical prohibitions on Board Member A's activities given his familial relationships *and* given that Board Member A is also currently enrolled in the District as a student. More specifically, you seek to determine whether, without violating the Act, Board Member A may:

- (1) Be eligible for senior awards and/or post graduate scholarships at the high school that would be selected by the high school faculty and/or coaches. Specifically, there are several monetary awards given by the high school teaching staff to seniors. Teachers make the selection decision based on criteria established in these awards. Additionally, you state, Board Member A may be a candidate for the [donating family] Memorial Award, which is a ten thousand dollar (\$10,000) award that is selected by the high school scholarship committee on behalf of the donating family. The scholarship committee is comprised of select teaching staff, the high school principal and the high school football coach. You are also inquiring whether Board Member A's status as a Board member would result in his disqualification from being considered for any of these awards, and more specifically, if he is selected as a recipient of any of these monetary awards would this violate N.J.S.A. 18A:12-2;
- (2) Participate in employment discussions and/or decisions regarding his *current* high school teachers, any teacher he had throughout his high school career, and/or all high school teaching staff, including, but not limited to; discussion and voting on their hiring, renewal/non-renewal of contracts, tenure charges, withholding of increments, transfers, approval of leaves of absence, tuition reimbursements, etc.;
- (3) Participate in the same matters mentioned in (2), with respect to the teachers his siblings currently have and/or all teachers who are employed in the schools in the District where his siblings attend;
- (4) Have access to student records<sup>2</sup>;
- (5) Participate in the discussions and votes involving Harassment, Intimidation and Bullying (HIB) matters; and
- (6) Participate in discussions and votes regarding special education settlement agreements.

The Commission will address your inquiry in question (1) individually. As detailed in A36-17, Board Member A is only a Board member while serving and sitting on the Board; for the remainder of Board Member A's time, he is a student. Based on the information provided in your request, it does not appear that the award is related to or is an issue that would come before the Board. As stated in your request, "Teachers make the selection decisions based on criteria established in the award." Therefore, to your inquiry, Board Member A is eligible for senior awards and/or post graduate scholarships at the high school that would be selected by the high school faculty and/or coaches.

Regarding the remaining concerns listed in questions two (2) through six (6), the Commission believes A36-17, is also sufficient to respond to those concerns. Based on A36-17 and absent any other conflicts, Board Member A may participate in employment discussions and/or decisions regarding his

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<sup>2</sup> You state that you are aware that Board members cannot have access to student records unless there is a particular action to be taken by the Board such that these records would be relevant in fulfilling the Board member's obligations.

*current* high school teachers, any teacher he had throughout his high school career, and/or all high school teaching staff, including, but not limited to: discussion and voting on their hiring, renewal/non-renewal of contracts, tenure charges, withholding of increments, transfers, approval of leaves of absence, tuition reimbursements, etc.; participate in the same matters mentioned with respect to the teachers his siblings currently have and/or all teachers who are employed in the schools in the District where his siblings attend; have access to student records; participate in the discussions and votes involving Harassment, Intimidation and Bullying (HIB) matters; and participate in discussions and votes regarding special education settlement agreements.

In summary, the Commission advises that, absent another conflict, Board Member A ***does not have a conflict*** simply because he is a student in the District. However, as you know and as detailed above, Board Member A ***does*** have a conflict on certain Board activities due to the employment of his mother and father by the District. The Commission reiterates that advisory opinions are determined by, and are limited to, the facts presented before it; therefore, should additional facts arise or facts exist that have not been disclosed to the Commission, a violation may indeed occur. In addition, you and/or Board Member A are free to request an additional advisory opinion if/when more specific facts can be provided as to whether some prospective conduct or activity would violate the Act. 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 Board, and to periodically re-evaluate the existence of potential conflicts.

Sincerely,

Robert W. Bender, Chairperson  
School Ethics Commission