

July 27, 2004

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion A16-04

The School Ethics Commission is in receipt of your request, on behalf of the entire Board of Education (Board), for an advisory opinion. The Commission also received a request regarding the same question from the Board member who is the subject of the request. You have asked whether the Board member may continue in her role as co-facilitator of the Special Education Parent Discussion Group (SPED) during her service as a Board member.

Both you and the Board member have set forth the following facts related to the request for an advisory opinion. The Board member was elected to the Board in April 2004. She is one of three co-facilitators of SPED. She is also co-editor of the SPED Informant newsletter and she contributes many articles to the newsletter. The Director of Special Education Services (Director), also contributes an article for each newsletter. SPED was formed in September 2002 as a result of a district self assessment whereby a recommendation was made for the district to provide a forum for the parents of special education students.

SPED provides support to special education parents, helps disseminate relevant information regarding special education, facilitates training and workshops, provides information regarding other district activities, and meets on a monthly basis. To set the monthly agenda, the Director mails a survey to all special education families to determine what their interests are. In July, the three co-facilitators meet with the Director and they set the monthly agenda based upon the survey results. At the monthly SPED meeting, the role of the co-facilitators is to open up the meeting, read the mission statement, welcome parents, lead a discussion on pending issues, introduce the speakers and facilitate a

question and answer period at the end of the meeting. The Director and district staff attend the SPED monthly meetings.

The school district provides space for SPED to meet and refreshments for each meeting. The district also paid for printing and dissemination of the newsletter. However, the Director informed the Board member, via e-mails dated February 18 and 24, 2004, that the district would no longer be able to fund the printing and dissemination of the newsletter because SPED had become incorporated and there were non-district members. The Board member disputed this and indicated that SPED was not incorporated. The Director also indicated that, similar to the PTA, SPED would have to fund its own activities such as newsletters. The Director agreed that the district would continue to send out flyers and let SPED use the web page as well as the school marquis. The Director indicated that he had spoken with the board attorney who advised that, similar to the PTA, SPED would have to fund its own newsletter. He also noted that since the Board member was running for a Board seat, it raised political, legal and ethical issues. The Board member and another co-facilitator sent a letter dated February 28, 2004 to the Director asking for clarification of the connection between the funding of the newsletter and her candidacy for a Board seat. The Board attorney responded on March 4, 2004 stating that her candidacy had nothing to do with funding of the newsletter. He indicated that funding could not be provided because SPED was a private organization. He noted that it was an error to fund the newsletter in the first place, and that he had so advised the administration. The Board member indicated to the Commission that the newsletter has not been published since the last issue in January 2004 and that SPED has no funds to publish the newsletter.

At its June 22, 2004 meeting, the Commission determined pursuant to its authority in N.J.S.A. 18A:12-28(b) that there is no conflict of interest under the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., for the Board member to serve as co-facilitator of SPED while serving as a Board member. However, the Commission cautions her that, pursuant to N.J.S.A. 18A:12-24(f) and N.J.S.A. 18A:12-24.1(g) she should remain mindful of her duty to maintain the confidentiality of any information, not generally available to the members of the public, which she acquires by reason of her office.

Your inquiry turns on the application of N.J.S.A. 18A:12-24(a) and (d), which set forth:

- (a) No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

- (d) No school official shall undertake any employment or service, whether compensated or not, which might reasonably

be expected to prejudice his independence of judgment in the exercise of his official duties;

At N.J.S.A. 18A:12-23, the Act defines “interest” as ownership or control of more than 10 percent of the profits, assets, or stock of a business. SPED is not a business organization in which the Board member could hold an interest. Therefore, for the Commission to find a conflict of interest under subsection 24(a) there would have to be a “substantial conflict” between the Board member’s duties as a Board member and her role as co-facilitator in SPED. The Board member is one of three co-facilitators of an organization that provides support to special education parents. As set forth in the request, the SPED organization is similar to the PTA. Usually, a PTA provides support, both financially and otherwise, to students and teachers of the district. In Advisory Opinion A07-00, the Commission found the position of President of the PTA to be compatible and not in conflict with a board member’s duties. Here, especially where the Board member is not in such a significant leadership role as in A07-00, the Commission advises that service as co-facilitator in SPED would not create a “substantial conflict” with the proper discharge of the Board member’s duties in the public interest.

For a conflict of interest to exist under subsection 24(d), the Commission would have to find that the Board member’s role as co-facilitator of SPED would reasonably be expected to prejudice her independence of judgment in the exercise of her official duties. In A07-00, the Commission also found that a board member’s service as President of the PTA could not reasonably be expected to prejudice her independence of judgment in the exercise of her official duties. The Commission recognizes that board members may have specific concerns and interests, such as an interest in the special education services provided by the district, or the interest in providing certain services to students that either the PTA or the SPED may wish to provide. However, these interests should not impair or prejudice a board member’s independence of judgment in relation to her board member duties. Therefore, the Commission advises that the Board member’s role as co-facilitator in SPED would not reasonably be expected to prejudice her independence of judgment in the exercise of her official duties as a Board member.

However, the Commission cautions the Board member regarding N.J.S.A. 18A:12-24(f) and N.J.S.A. 18A:12-24.1(g). N.J.S.A. 18A:12-24(f) provides:

No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associate;

N.J.S.A. 18A:12-24.1(g) provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

The Board member will have access to confidential information regarding Board business related to special education issues that she will obtain from attending executive session meetings of the Board. This information could be used to the benefit of SPED or its members. The Commission advises the Board member that she would violate N.J.S.A. 18A:12-24(f) and N.J.S.A. 18A:12-24.1(g) if she were to use, or allow to be used, confidential information obtained in her capacity as a Board member to the benefit of SPED or its members. She should remain mindful of her duty to maintain the confidentiality of any information, not generally available to the members of the public, which she acquires by reason of her office.

We hope that this opinion answers your inquiry.

Sincerely yours,

Paul C. Garbarini,
Chairperson

PCG/LJB/MET/advisory opinions/A16-04

c: Sandra Lopez