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July 28, 2015

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A10-15

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion filed on your own behalf as a member of the Board of Education (Board). Board Counsel submitted comments on your request at the request of the Board and provided you with a copy of his letter pursuant to N.J.A.C. 6A:28-5.2(b). The Commission will provide its advice based solely on the information included in your request and the comments submitted by Board Counsel. It'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. N.J.S.A. 18A:12-31. Pursuant to N.J.S.A. 18A:12-28(b), the Commission discussed this matter at its June 30, 2015 meeting.

Your inquiry concerns whether your role as the sole volunteer leader of the Club, which meets in a school in the Board School District, is inconsistent with your duties as a member of the Board, and therefore in violation of the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. After considering your inquiry and the relevant facts, the School Ethics Commission determined that given the nature of this type of volunteering, you would violate the Act if you were to continue as the volunteer leader of the Club.

The nature of your inquiry turns on the application of N.J.S.A. 18A:12-24.1(c), (d) and (e), which provide, respectively:

c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

Under N.J.S.A. 18A:12-24.1(c), a Board member is limited to:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that the respondent(s) took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty to:

- i. Develop the general rules and principles that guide the management of the school district or charter school;
- ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or
- iii. Ascertain the value or liability of a policy.

[N.J.A.C. 6A:28-6.4(a)3]

Engaging as a regular volunteer of the Club is unrelated to your Board member duties to develop the general rules and principles that **guide** the management of the District. As the lead volunteer of the Club, you oversee and have authority over students in the Club, give awards to certain students based on performance, and have regular contact with school administration, other personnel and students, and possibly parents. This level of engagement is inconsistent with your duty as a Board member to develop the general rules and principles that **guide** the management of the District. The engagement represents your overreach into the District to manage and oversee an aspect of the school, the Club.

Under N.J.S.A. 18A:12-24.1(d), violations are limited to:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(d) shall include, but not be limited to, evidence that the respondent(s) gave a direct order to school personnel or became directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district or charter school. [N.J.A.C. 6A:28-6.4(a)4]

The Commission considers the frequency of your volunteer activity, level of interaction, and control of the Club as evidence that you have become directly involved in the day-to-day administration of a part of the District, the Club. The facts presented in your request for an advisory opinion and the supplemental information provided by Board Counsel indicate that your presence in the school as leader of the Club has enmeshed you in the building and blurred the line between your role as a Board member and as a volunteer in the building. The Commission is informed by Counsel that you have been the subject of informal complaints from District personnel over your involvement in the workings of the school building where the Club meets. Further, Counsel informs that you have been "reprimanded" over your actions related to the Club in the past, but the Commission has no further information on the nature of such reprimands or

how they were handled. It is problematic to consider that the Board itself may have to review a reprimand of one of its own members.

Under N.J.S.A. 18A:12-24.1(e), violations are limited to:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. [N.J.A.C. 6A:28-6.4(a)5]

The Commission considers that a Board member who volunteers on a regular basis, on school grounds, and who engages with students, administration and personnel, and who takes or gives orders to personnel is acting beyond the scope of his duties as a Board member. Given the nature of your volunteering as leader of the Club, which is a regular, ongoing activity, with contact of students, personnel and administrators, and your supervision by school administrators, there is potential to compromise the Board.

For the forgoing reasons, the Commission advises you that service as a volunteer for the Club would violate N.J.S.A. 18A:12-24.1(c), (d) and (e) of the Code of Ethics for School Board Members.

As outlined in this advisory opinion, the executive function of a Board member prohibits each member of any Board of Education from serving in a similar role within the very same district. A volunteer activity in which a Board member directs students, school personnel, resources, or funds, and which occurs on a regular, frequent basis is action beyond the scope of the Board member's duties. Similarly, a volunteer activity where a Board member is directed by school personnel or administration on a regular, frequent basis is also inconsistent with one's role as a Board member.

The Commission wants to make it clear that it does not consider there to be a general prohibition on Board members volunteering in activities within the District they oversee. As a member of the Board, you are an individual contributing your valuable time and consuming efforts to the community of which you serve. This service, in itself, is among the most important volunteering for which an individual can engage.

Without additional facts, the Commission does not view one-time, infrequent, non-executive activities in volunteering as inherently contradictory to the duties placed on Board members by the Act, e.g. a Board member volunteering to come to a school to read for "Read Across America Day" or chaperoning a school trip, in which his or her child is attending, as being in conflict with the Act, providing that the Board member has cleared such activity with the Superintendent and relevant staff, who will be overseeing the activity, and other staff that will be present is aware. In such cases the Board member must make it clear to all that his involvement in the given activity is not as a Board member. Finally, Board members must always be cognizant that the obligations of the Act follow them in all activities in which they engage, be it chaperoning a school trip or engaging with the public at the supermarket. A

violation of the Act may occur in any given scenario (ex: divulging of Executive Session matters). The Commission, with this advice, views the activity of a Board member leading a Club as inherently in violation of the Act, whereas chaperoning or other volunteer activities may only open the door to potential violations, as the actions may be, but would not appear to be inherent violations of the Act.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission