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SCHOOL ETHICS COMMISSION

March 25, 2025

For Public Release

Subject – Public Advisory Opinion A02-25

The School Ethics Commission (Commission) received your request for an advisory opinion on behalf of a member of the Board of Education (Board). You verified that you copied the subject of your request, Board member A, thus complying with *N.J.A.C. 6A:28-5.2(b)*. The Commission notes that Board member A submitted a response to your request, and therefore, the Commission will issue its advice based on the information included in your request, as well as on the information detailed in Board member A's response. 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 your request, and Board member A's response, at its meetings on February 18, 2025, and March 25, 2025.

You inform the Commission that Board member A began his/her current Board term in January 2025, and he/she is the Board President. You note that Board member A also "previously served on the Board from 2016 to 2022," which was prior to the beginning of your May 1, 2023, employment as Superintendent. You state during Board member A's previous service on the Board, he/she "directed the School Business Administrator [(BA)] to remove three Request[s] for Proposal (RFP) agenda items from the June 29, 2021, Board meeting agenda – items related to Legal Services, Negotiation Services, and Insurance Consulting Services for Health Benefits (RFP #22-014)" and subsequently "introduced a motion to approve the Insurance Consulting Services proposal as the 'most responsive proposal.'"

You state that "[u]pon investigation, it was determined that[] the awarded proposal received the lowest evaluation scores from both employees who ranked submissions; Board counsel had formally documented concerns about the proposal's considerable defects, including [l]ack of public school district references, [f]ailure to identify the partner firm, [n]o description of staff or team availability and [a]bsence of resumes, licensing information, and relevant professional experience." You further state these "deficiencies were outlined in a June 24, 2021, legal memorandum, which has since been released from attorney-client privilege." You indicate Board member A proceeded with the approval, despite "being copied on this documented legal analysis."

You provide that after you became Superintendent, you "became aware of [Open Public Record Act (OPRA)] requests related to this process and began reviewing documentation." Consequently, you

discovered “the low evaluation scores and legal concerns surrounding the awarded proposal.” You state, “[o]n August 20, 2024, [you] formally presented these findings of concern regarding the process and Board member A to the [Board].” You further state that you also reported your “concerns to the Office of Public Integrity and Accountability” (OPIA).

You further inform the Commission “[i]n addition to the concerns outlined above, Board member A has a contentious history with [you] that stems from [your] whistleblowing actions against his/her prior to his/her election to the Board, which took effect in January 2025.” You note that prior to Board member A “taking [his/her] [B]oard seat in January,” he/she sent several emails to the Board “demand[ing] apologies for [your] whistleblowing,” “alleging that [you] had put the Board ‘at risk,’” “claiming [your] actions were illegal,” “accus[ing] [you] of spreading deliberate misinformation,” and “accus[ing] [you] of political maneuvering.”

Based on the information provided in your request, you inquire whether (1) Board member A’s status as the subject of your whistleblower disclosure creates a conflict of interest under the Act, thereby precluding him/her from participating in discussions or decisions related to your employment; (2) Board member A is permitted to issue a RICE notice to you, given that you have raised whistleblowing concerns specifically about his/her actions, and (3) Board member A may participate in any employment related discussions, deliberations or decisions regarding your position as Superintendent, including but not limited to contract matters, evaluations or disciplinary actions.

Following submission of your request, Board member A submitted a response and notes, “[i]t is critical to recognize the timing of these allegations,” as this request was “submitted only two days after [Board member A] issued [the Superintendent] a RICE notice to discuss [the Superintendent’s] evaluation in an executive session” Board member A notes that the “so-called investigation was neither independent nor impartial – it was initiated and conducted solely by [the Superintendent] [], without any oversight” and the Superintendent’s “‘findings’ are demonstrably inaccurate.” Board member A further notes that he/she did not receive scoring sheets from the budget committee and the “recommendation from the [BA] was removed from the agenda because of ethical concerns regarding his/her personal relationship with the recommended broker.” Board member A states “it was within [his/her] purview” as Board President “to ensure the integrity of the selection process.”

Board member A indicates that the Superintendent is not a whistleblower, but rather “is using [his/her] position as Superintendent to retaliate against a sitting Board President.” Board member A notes that a random OPRA request concerning this “three-year-old agenda item” does not exist, and instead the Superintendent “began scrutinizing [his/her] past actions only after [Board member A’s] name appeared on the ballot in July 2024.” Board member A notes he/she has contacted the OPIA, and he/she was informed by a detective that “no formal investigation has been opened against [him/her],” as Board member A has not received a formal notice of such action. Board member A also notes that the Superintendent “exploited the waiving of attorney-client privilege to publicly name both [Board member A] and the insurance broker, falsely claiming that he/she was ‘massively concerned,’” among other things. Board member A states that the Superintendent’s public comments subjected the Board to “potential litigation” and also prompted a public attack on Board member A, which “has been nearly impossible to endure.” Board member A also states that despite his/her attempts to “try to work with” the Superintendent, he/she continues to send “harassing emails to [Board member A] and the other [B]oard members about [Board member A’s] ‘behavior’ with words and situations taken out of context to paint [Board member A] in a negative light” and the Superintendent’s “actions and tone are aggressive and constant.”

As an initial matter, the Commission notes the jurisdiction of the Commission is limited to enforcing the Act, *N.J.S.A. 18A:12-21 et seq.*, a set of minimum ethical standards by which all school officials must abide, and it cannot render a legal determination as to any policies beyond its purview. *N.J.A.C. 6A:28-1.4(a)*. Therefore, the Commission does not have jurisdiction to review the Local Public Contracts Law (*N.J.S.A. 40A:11*), any Board policies concerning RFPs, or potential criminal matters. Additionally, the Commission notes that it does not have the authority or the jurisdiction to render a determination related to Board governance, including the issuance of a RICE notice, and therefore, cannot render a determination related to your inquiry as to whether Board member A “is permitted to issue a RICE notice to you.” That is a matter that you may discuss with Board counsel.

Additionally, although it is apparent that you and Board member A do not agree with the chain of events described in your request, namely there appears to be opposing accounts of what transpired in June 2021, as well as contradictory reports regarding the facts of this matter, the Commission is not in a position to adjudicate what transpired between you and Board member A. Moreover, the Commission cannot resolve disputed facts as part of the advisory opinion process or review the validity of the underlying matter. More specifically, you indicate you reported Board member A to the OPIA; however, Board member A provides that he/she was informed by a detective that “no formal investigation has been opened against [him/her],” as Board member A has not received a formal notice of such action. Should an investigation commence, you may seek an additional advisory opinion regarding this issue, and you should provide the most recent information regarding any results related to the investigation.

Notwithstanding, based on the specific facts and circumstances set forth in your request, as well as the information contained in Board member A’s response, the Commission notes that Board member A does not have a *per se* conflict which would prohibit him/her from participating in any matters related to your employment at this time. There are not any facts nor information present here, that Board member A cannot exercise independence of judgment or otherwise be objective in matters related to your employment.

Although Board member A is the subject of your whistleblower disclosure and despite his/her demands for an apology related to the same, that in and of itself, is not enough to create a *per se* conflict of interest for Board member A related to your employment matters including, but not limited to, “any employment related discussions, deliberations or decisions regarding your position as Superintendent,” such as “contract matters, evaluations or disciplinary actions.” Therefore, the Commission advises that at this time, Board member A’s actions do not appear to be enough to create a conflict for Board member A regarding matters related to your employment.

Finally, 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 the Board, and to periodically reevaluate the existence of potential conflicts of interest. In addition, the only way for a school official to truly safeguard against alleged violations of the Act is to avoid any conduct which could have the appearance, actual or perceived, of being in violation of the Act.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission