



State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

KEVIN DEHMER
Commissioner

SCHOOL ETHICS COMMISSION

April 22, 2025

For Public Release

Subject - Public Advisory Opinion – A05-25

The School Ethics Commission (Commission) received your request for an advisory opinion on behalf of your client, the Board of Education (Board). You verified that you copied the subjects of your request, Board member A, Board member B, Board member C, Board member D, Board member E, Board member F, and Board member G, thus complying with *N.J.A.C. 6A:28-5.2(b)*. The Commission notes that the subject Board members did not submit a response to your request, and therefore, the Commission will issue its advice based solely on the information included in your request, and in your supplemental response to the Commission's request for additional information. 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 at its meetings on March 25, 2025, and April 22, 2025.

In your initial request, and in your supplemental response to the Commission's request for additional information, you inform the Commission that "seven of the Board's nine members have either an immediate family member or relative employed by the" Public Schools (District). You state that you have reviewed the Commission's public advisory opinions, namely *Advisory Opinion A05-23 (A05-23)*, which you indicate notes "that a Board member cannot be involved in any and all matters including service on a committee that remotely touches upon or directly related to the Board members' immediate family member or relative's employment."

You further inform the Commission that the seven conflicted Board members are currently not members of the "Finance, Governance, Negotiations, and/or Instruction & Programming Committees," and you note that decision was "in accordance with the Commission's" advice in A05-23. In addition to a list of committees and their assigned duties and responsibilities, you have provided the Commission with the names of the conflicted Board members, the relationship of each employee to each named conflicted Board member, and the employee's title/position within the District as follows:

1. Board member A, Board President, has a child who is employed as a student facilitator, and the child is a member of the local employee's association (LEA).

2. Board member B, Board member, has a child who is employed as a substitute teacher and another child who is employed as a substitute athletic trainer.
3. Board member C, Board member, has a spouse who is employed as a teacher, and is a member of the LEA, and a mother-in-law who is employed as an instructional assistant and is a member of the local federation of teachers (LFT).
4. Board member D, Board member, has an aunt who is employed as an instructional assistant and is a member of the LFT.
5. Board member E, Board member, has a spouse who is employed as the Director of Personnel.
6. Board member F, Board member, has a child who is employed as a wellness coach and is a member of the LEA, and a niece who is employed as a teacher/student facilitator and a member of the LEA.
7. Board member G, Board member, has a child who is employed as a substitute teacher, and another child whose “application as a substitute teacher is pending.”

Based on the information in your initial request, and the supplemental response to the Commission’s request for additional information, you inquire whether the Board is “limited to having only the two non-conflicted Board members continue to serve as the only members of the majority of committees”; the Board can “restructure the committee’s roles and responsibilities to have other members involved without posing a direct conflict”; and “can the Board legally invoke the Doctrine of Necessity [(Doctrine)] in order to balance the membership of the committees.”

As an initial matter, the Commission notes that, pursuant to *N.J.S.A. 18A:12-23*, “Member of immediate family” is defined as “the spouse or dependent child of a school official residing in the same household,” and “relative” is defined as “the spouse, natural or adopted child, parent, or sibling of a school official.” The Commission further notes that the Commission’s regulations for the term “relative” are more expansive and, pursuant to *N.J.A.C. 6A:28-1.2*, include:

... an individual’s spouse, civil union partner pursuant to *N.J.S.A. 37:1-33*, domestic partner as defined in *N.J.S.A. 26:8A-3*, or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister of the individual or of the individual’s spouse, civil union partner, or domestic partner, whether the relative is related to the individual or the individual’s spouse, civil union partner, or domestic partner by blood, marriage, or adoption.

In addition, neither the provisions of *N.J.S.A. 18A:12-24* (“Prohibited acts”) nor the provisions of *N.J.S.A. 18A:12-24.1* (“Code of Ethics for School Board Members”) specifically refer to the “relative” of a school official. Instead, the “relatives” of a school official fall within the umbrella of “others” set forth in *N.J.S.A. 18A:12-24(b)*.¹ As explained in Advisory Opinion A24-17 (A24-17), “[a]lthough ‘others’ is not defined by the Act, **any individual** can be an ‘other,’ including people that fall within the definition of ‘relative’ as set forth in *N.J.S.A. 18A:12-23*, and those that fall within the broader definition of ‘relative’

¹ *N.J.S.A. 18A:12-24(b)* states, “No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or *others*” (emphasis added).

that is required to be incorporated in district nepotism policies.” *See, N.J.A.C. 6A:23A-1.2; N.J.A.C. 6A:23A-6.2.*

With the above in mind, and based on the familial and employment relationships detailed above, the Commission advises as follows with respect to the Board members and the questions posed.

**Immediate Family Members Employed by the Board
Board member A, Board member C, Board member E(2) and Board member F**

You have indicated that these Board members have immediate family members who are employed by the Board and who are also members of the LEA or the LFT. Therefore, in keeping with previously issued advisory opinions, namely A24-17 and A05-23, the Commission advises that these Board members cannot be on any committee that even remotely touches upon or directly relates to their family members’ employment, the local union and matters related to the Superintendent’s employment, including but not limited to the Finance Committee, the Governance Committee, the Instruction & Programs Committee and the Negotiations Committee. Moreover, and as advised in A05-23, as the Board President, Board member A may not choose any committee members due to these conflicts, and therefore, that responsibility may be delineated to the Board Vice President who, based on your request, does not appear to have any conflicts.

**Immediate Family Members who are Substitutes
Board member B and Board member G**

You have indicated these Board members have immediate family members who work in the District as substitutes; however, you have not indicated how the District hires these substitutes. Therefore, as detailed in A24-17, if the Board has a contractual relationship with an agency that provides substitute personnel to work in the District as needed, including teachers and athletic trainers, and the Board pays this agency for the substitute personnel that it provides, the Commission regards the substitute personnel as employees of the agency, and not employees of the District.³ If that is the case here, then the Commission advises that Board member B and Board member G do not have a *per se* conflict related to any of the committees because the placement of their immediate family members is determined by the agency, and because they are not employees of the Board/District. The committees are not linked to their employment.

Conversely, if the Board is directly responsible for hiring the substitute personnel to work in the District, the Commission considers these substitute personnel to be employees of the District. In this case, Board member B and Board member G would have a conflict regarding any and all matters related to those committees that are linked to their immediate family members and the employment of their immediate family members, including but not limited to the Finance Committee, the Governance Committee, the Athletics Committee (Board member B only), the Instruction & Programs Committee and the Negotiations Committee.

² Board member E’s spouse is the Director of Personnel, and therefore, Board member E has a conflict related to all matters related to District personnel.

³ <https://www.nj.gov/education/legal/ethics/advisory/>.

Relatives Employed by the Board

Board member D⁴

You state that this Board member has a relative who is employed by the Board and who is also a member of the LFT. Based on Board member D's aunt's employment as an instructional aide, Board member D has a conflict related to the LFT and matters related to the Superintendent's employment, and is therefore, prohibited from any committees that are linked to his/her aunt's employment, such as the same committees as the Board members who have immediate family members employed by the Board.

As to your next inquiry, whether the Board can "restructure the committee's roles and responsibilities to have other members involved without posing a direct conflict," please be advised that the Commission's authority is limited to enforcing the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.*, a set of minimum ethical standards by which all school officials must abide. In this regard, the Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, *N.J.A.C. 6A:28-1.4(a)*. To the extent you are requesting that the Commission opine on the "restructure" of the Board's committees, a matter that exclusively relates to Board governance, the Commission notes it does not have the jurisdiction over such a determination.

Regarding your last inquiry, "can the Board legally invoke the [Doctrine] in order to balance the membership of the committees," the Commission would like to clarify the advice offered in *Advisory Opinion A03-98* (A03-98), which you cited and *Advisory Opinion A19-17* (A19-17), which is particularly relevant here. First, in A03-98, the subject board of education (board) sought advice on which members could serve on the negotiations team (with the local education association) and vote on the resulting contract. Based on the conflicts as set forth therein, it was determined that only one board member was able to serve on the board's negotiations committee, but "one board member does not constitute a committee." As a result, the Commission advised that the Doctrine would have to be invoked to allow other members of the board to participate in negotiations. However, that is not the case here, as each of the committees named in your request have at least two Board members who are able to serve on the committee, and therefore, your inquiry is more akin to A19-17. In that advisory opinion, the board of education (board), when fully seated, was comprised of seven members. Of those seven members, four members had a conflict of interest under the Act and, as a result, the remaining three members served as the negotiations committee. Subsequently, the committee was reduced to two members following a resignation, and one of those board members had difficulty with regular attendance. As a result, the board asked two questions, including whether it could invoke the Doctrine to permit additional conflicted board members to join the negotiations committee. Based on the information presented, the Commission advised that the two remaining non-conflicted Board members could serve as the negotiations committee, and that, in lieu of invoking the Doctrine, they could obtain assistance from other individuals as part of negotiations, e.g., hiring an outside consultant or using a technical resource, such as the Superintendent or Business Administrator.

As in A19-17, the Commission again advises here that two non-conflicted Board members are enough to serve on a committee. To the extent the non-conflicted Board members may require assistance, the committee can consult with Board counsel and/or seek the assistance from a technical resource, such as the Business Administrator or other administrator as appropriate. The advice offered in A03-98 was

⁴ Although Board member F also has a relative employed in the District, Board member F's conflict has already been addressed because he/she has an immediate family member employed within the District.

exclusive to the circumstances described within. Moreover, A19-17 discusses when it is appropriate for a board of education to invoke the Doctrine, namely when its membership has conflicts of interest on a matter such that it is unable to obtain the number of *votes* needed to approve or reject a motion or action. To the extent that the Board does invoke the Doctrine in order to vote on a matter, the Commission advises you to review its Resolution on Invoking the Doctrine of Necessity⁵ to ensure compliance therewith.

In sum, despite the conflicts that were addressed, there appears to be a minimum of two Board members who are able to serve on each committee, and therefore, invoking the Doctrine is not warranted. In addition, as it has not been indicated that the Board Vice President has a conflict, the Board Vice President may choose the committee members of those committees for which Board member A, as the Board President, has a conflict. The Commission further notes that the mere presence of the Superintendent on a committee is not what presents the conflict, but rather whether that committee will discuss and/or decide matters concerning or related to the employment of the Superintendent that presents a conflict for those Board members who have family employed by the Board.

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

⁵ The Resolution on Invoking the Doctrine of Necessity: [School Ethics Commission Resolution On Invoking The Doctrine Of Necessity](#).