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SCHOOL ETHICS COMMISSION

April 22, 2025

For Public Release

Subject – Public Advisory Opinion – A08-25

The School Ethics Commission (Commission) received your request for an advisory opinion on your own behalf as a member of the Board of Education (Board). 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 preliminarily discussed your request at its advisory opinion committee meeting on April 9, 2025, and again at its meeting on April 22, 2025.

You inform the Commission that you are currently a Board member and that you previously served on the Board "from 2021 through 2023." You state during your prior service, "the Board undertook a Request for Proposals (RFP) process for various professional services including Legal Services, and Insurance Consulting Services for Health Benefits." You further state that "[a]ccording to publicly discussed information" and a recent request for an advisory opinion, the RFP process for Insurance Consulting Services recently "became a subject of review and concern."

You further inform the Commission that the Superintendent began his/her tenure in May 2023, and thereafter, "identified documentation indicating that the awarded proposal received lower evaluation scores and was the subject of a legal memorandum outlining potential deficiencies" You note, upon this discovery, the Superintendent "presented [his/her] concerns to the Board and reported them to the Office of Public Integrity and Accountability [(OPIA)]."

Based on the information set forth above, you inquire "[g]iven the historical context, [your] past service on the Board during the RFP process, and [your] current role in evaluating or voting on matters related to the Superintendent's employment" as to whether you would violate the School Ethics Act (Act), *N.J.S.A.* 18A:12-21, *et. seq.*, if (1) you participated in employment related discussions, deliberations or decisions related to the Superintendent, including but not limited to contract matters, evaluation and disciplinary actions and (2) whether your prior service during the 2021 RFP process creates a conflict of interest or appearance of impropriety "in light of the concerns previously raised and reported by the Superintendent."

With the above in mind, and in its review of the specific facts and circumstances detailed in your request, the Commission advises that absent another conflict, the facts and circumstances of which were not present in your request, you do not have a conflict regarding any and all matters related to the Superintendent's employment. Your request does not indicate that you are/were the subject of the investigation related to the RFP process. Simply being a Board member during the RFP process, without more, does not create a conflict that would prohibit you from participating in employment matters related to the Superintendent. You have not presented any facts, that you cannot exercise independence of judgment or otherwise be objective in matters related to the Superintendent's employment.

The Commission notes it is unclear whether the OPIA is investigating the matter that the Superintendent reported; however, if and when the OPIA initiates an investigation into the matter, and if you are a person of interest related to the investigation, you should recuse yourself from any matters, and abstain from any votes related to the Superintendent until the OPIA's investigation is complete. Thereafter, you can request an additional advisory opinion based on the facts related to the potential investigation and your prospective action related to the school officials involved.

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