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SCHOOL ETHICS COMMISSION

September 23, 2025

For Public Release

Subject – Public Advisory Opinion A14-25

The School Ethics Commission (Commission) received your request for an advisory opinion on your own behalf as members 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 discussed your request at its meetings on August 19, 2025, and September 23, 2025.

You inform the Commission that the three of you are "either explicitly or substantively implicated in the complaint filed by" the Superintendent, which you have attached.

Based on the information provided in your request, you are requesting "whether any or all of the above-named Board members are precluded under the School Ethics Act [(Act), *N.J.S.A. 18A:12-21 et seq.*], from participating in discussions or voting on the Superintendent's employment, in light of the civil actions filed by the Superintendent. You also inquire whether "the invocation of the Doctrine of Necessity would be appropriate if a quorum is not available due to required recusals."

As an initial matter, 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)*.

With the above in mind, and pursuant to *N.J.S.A. 18A:12-32*, the Commission shall not process any complaint nor issue a final ruling or advisory opinion where the subject matter of the complaint or advisory opinion is pending in any court of law or administrative agency of this State. You have indicated that one or more of you are "either explicitly or substantively implicated in the complaint filed by" the Superintendent, and therefore, the Commission is *presently* unable to opine on this issue.

As to your second inquiry, related to whether it would be appropriate to invoke the Doctrine of Necessity if a quorum is not available, the Commission notes that *Advisory Opinion A19-17* discusses when it is appropriate for a board of education to invoke the Doctrine of Necessity, namely when its membership has conflicts of interest on a matter(s) such that it is unable to obtain the number of ***votes*** needed to approve or reject a motion or action. Consequently, to the extent that the Board needs to vote on any matter(s) related to the Superintendent, and it does not have the necessary number of votes to do so, it is appropriate for the Board to invoke the Doctrine of Necessity to allow the conflicted Board members to vote. To the extent that the Board does invoke the Doctrine of Necessity, the Commission advises you to consult with Board counsel regarding the process related to same.

Finally, as a reminder, 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. 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