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SCHOOL ETHICS COMMISSION

November 25, 2025

For Public Release

Subject – Public Advisory Opinion A22-25

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, 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. 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 November 12, 2025, and again at its regular meeting on November 25, 2025.

You inform the Commission that “[p]rior to October 8, 2025, only a minority of the [Board] was conflicted from discussing and voting on matters concerning the terms and conditions of the Superintendent’s employment.” More specifically, you state that three Board members have conflicts due to having family members employed within the school district (District), namely Board member A has a sister, Board member B has a child and nieces/nephews and Board member C has a daughter-in-law. You further state that these family members began their employment with the District prior to the Superintendent being appointed.

You further inform the Commission the non-conflicted Board members (6 remaining), “and a subcommittee thereof engaged in discussions and negotiations with the Superintendent to extend [his/her] employment contract.” You note in September 2025, “there appeared to be consensus among five of the non-conflicted members regarding the terms and conditions to be included in the contract extension.” You further note based on this consensus, the Board Secretary “advertised a special meeting to be held on October 8, 2025,” related to the “proposed amendment of the employment contract of the Superintendent.” You state that “[n]one of the non-conflicted Board [m]embers objected to the scheduled special meeting or the advertisement.” You also state the District’s labor counsel submitted the Superintendent’s proposed contract to the Executive County Superintendent, and it was approved for the term effective July 1, 2025, through June 30, 2030.

You provide that on or about October 8, 2025, “several of the non-conflicted [Board] members were contacted by either the Mayor [], [], or members of [his/her] staff demanding that they vote against the Superintendent’s proposed contract.” Specifically, you state the Board President was contacted by the Chief of Staff (Chief) of the Township, and the Chief “admonished” the Board President via text “to vote against the proposed contract.” You further state Board member D was contacted separately by the Mayor via text stating that he/she “considers the District and Superintendent to be a complete embarrassment.” You further provide that the Mayor “has been and continues to be critical of the Superintendent and District.”

You state that Board members E, F and G “deny being contacted by the Mayor or members of [the] administration.” You state that Board member F is employed by the Township in the Building Department. You also state that Board member F initially was supportive of the proposed contract but has since “advised that [he/she] had changed [his/her] mind and would not be voting to approve the proposed contract.” You also state that Board member G’s stepchild is employed as an assistant Township attorney.

You indicate that on October 15, 2025, during the executive session of the Board meeting, the Board President and Board member D “expressed their concerns regarding outside influence and political pressure being exerted on individual board members.” Specifically, they expressed concerns regarding “the appearance of impropriety and potential violations of the” Act.

Based on the information provided in your request, you inquire whether the Board may invoke the Doctrine of Necessity “to deliberate and vote on the proposed Superintendent’s contract.”

As an initial matter, the Commission notes it has issued public advisory opinions that discuss when it is appropriate for a board of education to invoke the Doctrine of Necessity, namely *Advisory Opinion A19-17* (A19-17), which is especially relevant here. As indicated in A19-17, a board of education may invoke the Doctrine of Necessity when a quorum of the board of education has conflicts of interest on a matter required to be voted upon. Said differently, if five of the nine members of the board of education have conflicts of interest on a matter requiring the majority vote of the full membership, the Doctrine of Necessity may be invoked.

Turning to your inquiry, and in its review of the specific facts and circumstances provided in your request, the Commission advises that the Board **may not** invoke the Doctrine of Necessity to allow conflicted members of the Board “to deliberate” because the deliberation process is not a matter that needs to be voted upon.

As it is relevant to your inquiry, the Commission would like to clarify what constitutes a conflict of interest. First, as indicated in *Advisory Opinion A24-17* (A24-17), board members who, like Board member A, Board member B and Board member C, have immediate family members or relatives employed in the District are prohibited from participating in any and all issues related to the superintendent, including the search, contract approval, and evaluation of performance. Therefore, as you have indicated, Board members A, B and C clearly have a conflict related to the Superintendent’s contract due to their family members’ employment within the District and cannot participate in the deliberation and/or vote.

Next, as for the remaining six members of the Board, it is unclear, based upon the information provided in your request, how they are conflicted, and therefore, not able “to deliberate and vote on the proposed Superintendent’s contract.” You have stated that the Chief contacted the Board President and the Mayor contacted Board member D. This contact, without more, does not support a *per se* conflict regarding these two Board members related to the Superintendent. The Commission notes that you have not provided any information to demonstrate that the contact by the Mayor and Chief presents a conflict for the Board President and/or Board member D. Absent additional facts, which are not present here, it cannot be assumed that the Board President and Board member D have or will surrender their independent judgment to the Mayor or anyone on his/her staff. Therefore, as long as the Board President and Board member D do not, among other things, attempt to leverage or otherwise rely upon their Board positions to engage in conduct which substantially conflicts with their service as Board members and/or surrender their independent judgment to the Mayor and/or anyone on his/her staff, they are not prohibited from “deliberat[ing] and vot[ing] on the proposed Superintendent’s contract.”

You further indicated that Board member F is employed by the Township in the Building Department and that Board member G’s stepchild is employed as an assistant Township attorney. The Commission notes that the Superintendent’s contract is not linked to the employment of the Board member and/or their family member within the Township. Board membership is not appointed by the Mayor, but rather by election. However, if the Board were to be involved in matters that involved the Township, i.e., a transfer of land with the Township, then these Board members could have a conflict. Nonetheless, Board member F and Board member G should be cautious that they do not, among other things, attempt to leverage or otherwise rely upon their Board positions to engage in conduct which substantially conflicts with their service as Board members and/or surrender their independent judgment to the Mayor and/or anyone on his/her staff.

Notwithstanding the above, if a quorum of the Board were conflicted, which is not the case here, A19-17 advises that the Doctrine of Necessity cannot be invoked for negotiations, the remaining non-conflicted board members could serve as the negotiations committee, and they could obtain assistance from other individuals, e.g., hiring an outside consultant or using a technical resource, such as the Superintendent or Business Administrator. To this end, you stated, “the non-conflicted members and a subcommittee thereof engaged in discussions and negotiations with the Superintendent to extend [his/her] employment contract,” “there appeared to be consensus among five of the non-conflicted members regarding the terms and conditions to be included in the contract extension” and “the District’s labor counsel submitted the Superintendent’s proposed contract to the Executive County Superintendent, and it was approved for the term effective July 1, 2025, through June 30, 2030.” Therefore, it appears that it is not necessary for the Board to “deliberate” because the terms of the Superintendent’s contract have been determined. Consequently, the Commission advises that the Board **may not** invoke the Doctrine of Necessity because it may only be invoked when a majority of the Board has a conflict related to a matter that needs to be voted upon, and based on the information you provided, that does not appear to be the case here.

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