



State of New Jersey

DEPARTMENT OF EDUCATION

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Commissioner

July 28, 2015

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A09-15

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on behalf of a member of the Board of Education (Board). You have verified that you copied the Board member, who is the subject of the request, thus complying with N.J.A.C. 6A:28-5.2(b). The Commission notes that this Board member did not submit comments and, therefore, the Commission will provide 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 proposed 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 this matter at its June 30, 2015 meeting.

You have asked whether it would be a violation of the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.*, for a Board member to participate in "any discussion, negotiation, or vote involving the Local Education Association (teachers' union) contract" when the Board member's niece is currently employed by the Board as a cheerleading advisor and has been "recently hired as a teacher" in the District for the 2015-2016 school year. A niece is not considered a "member of the immediate family" for the Board member within the meaning of the Act, as required under N.J.S.A. 18A:12-24(c). Therefore, the Commission determined that your inquiry turned on the application of N.J.S.A. 18A:12-24(b), which provides:

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.

In this instance, the Board member's "niece" is considered an "other" within the meaning of this subsection, and as such, the public may view the Board member's prospective participation in any discussion, negotiation, or vote involving the Local Education Association contract as an attempt to secure unwarranted privileges or advantages in violation of the public trust. The Commission makes this finding pursuant to the Department's nepotism policy, which took effect January 17, 2006, and is found at N.J.S.A. 52:13D-21.2(d). "Relative" is broadly

defined in N.J.S.A. 52:13D-21.2(d)¹ and includes an individual's "niece." In light of this Board member's familial relationship with her niece, the Commission has determined that the Board member would violate N.J.S.A. 18A:12-24(b) if she were to be involved in *or* be present for the Board's negotiation or other matters with the local teachers union. Accordingly, in order to avoid a violation of the Act, the Board member must recuse herself from any matters touching upon negotiations and all other matters between the Board and the local education association.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission

¹ N.J.S.A. 52:13D-21.2(d): As used in this section, "relative" means an individual's spouse or the individual's or spouse's parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister, whether the relative is related to the individual or the individual's spouse by blood, marriage or adoption.