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August 23, 2016

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A22-16

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on behalf of the Board of Education (Board). The Commission will provide its advice based solely on the information included in your request dated June 30, 2016, and your subsequent correspondence, dated July 7, 2016. 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 this matter at its July 26, 2016 meeting.

In your June 30, 2016 request for an advisory opinion, you inform the Commission that the Board is in negotiations with the teachers union and is encountering difficulties because both the Business Administrator and Superintendent have conflicts arising under the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.*, preventing their involvement. You state that the nature of the conflicts are: 1) the Business Administrator has "relatives within the School District"; and 2) the Superintendent has a relative who is "involved in education outside of the district." The Commission advises that the nature of the conflicts for the administrators is detailed in Advisory Opinion A16-15, which is a public document, and can be accessed at the following link: <http://www.nj.gov/education/legal/ethics/advisory/cat1/A16-15.pdf>.

In your correspondence dated July 7, 2016, you clarify that the Superintendent's relative is his spouse, who is employed in a neighboring School District, and is a member of the local union affiliate of the NJEA. Further, you retract your request for the Business Administrator, as you state it has been determined that the Superintendent's presence in information sessions for negotiations would be sufficient. Therefore, the Commission will only advise with regard to the Superintendent's conflict.

Applying the analysis in A16-15 to the relationship of the Superintendent, it is clear that he may not participate in negotiations. The Superintendent may not participate in negotiations because he has an immediate family member – a spouse – who is a member of the NJEA in another district, which is similar to the AFT, the teachers union that represents the teachers in the District.¹

¹ The Commission advised in Advisory Opinion A09-14 that the NJEA and AFT are similarly situated unions, and therefore a conflict exists in such a situation. See: <http://www.nj.gov/education/legal/ethics/advisory/cat1/A09-14.pdf>.

N.J.A.C. 6A:23A-6.2(a)6. However, your request acknowledges this conflict and inquires about the “technical exception” found in N.J.A.C. 6A:23A-6.2(a)6, and whether the “technical exception” applies in this situation for the Superintendent whose knowledge, access and/or expertise is necessary to assist with and support the negotiations process between the Board and the local union. The “technical exception” found at N.J.A.C. 6A:23A-6.2(a)6 states:

[A] district administrator who has an immediate family member who is a member of the same Statewide union in another district may serve as a technical resource to the negotiating team and may provide technical information **necessary** to the collective bargaining process when **no one else** in the district can provide such information.

The exception exists only for those **unique** situations during labor negotiations when **only** the conflicted administrator can provide the technical information necessary to the collective bargaining process. The exception does not permit a conflicted administrator to be involved in **every** facet of the negotiations, but only to serve as a resource in those areas where the administrator possesses expertise, knowledge or access to information that cannot be provided by another person. Despite the exception, a conflicted administrator is prohibited from fully participating in negotiations with the local education association.

The Superintendent is responsible for operational, budgetary and other sensitive matters within the district, and if access to these matters/issues is necessary for aspects of negotiations, and no one else is able to supply it to the negotiations committee, the committee must seek the information from the Superintendent. This is the very purpose of the exception. Therefore, and based on your representation that **no one else** has the operational or business-related information that the Superintendent possesses, the Commission considers the Superintendent to have necessary knowledge which would allow him to provide that technical information to the negotiations. The Commission advises that the Superintendent may only participate in the negotiation process for the limited purpose of providing technical information, as long as he restricts his comments and involvement to providing the information requested by the Board members, administrators and union representatives fully involved in the negotiations.

Therefore, based on the information included in your request, the conflicted Superintendent may participate in the negotiation process for the limited purpose of providing technical assistance, as necessary, and limiting his comments and presence to the unique information that each possess, without violating the Act.²

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission

² The Commission notes that the analysis for the Superintendent is the same as it would be for the Business Administrator, whose technical exception is found at N.J.A.C. 6A:23A-6.2(a)5.