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DEPARTMENT OF EDUCATION
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CHRISTOPHER D. CERF
Commissioner

May 1, 2013

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A02-13

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion filed at the request of the Superintendent's attorney of the Local Board of Education (Board). 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 (Act). N.J.S.A. 18A:12-31. It will provide its advice solely based on the information you included in your advisory opinion request.

You have asked whether it would be a violation of the Act for three Board members to participate in employment discussions and decisions involving the Superintendent in light of the apparent conflict each has with her. You have explained that each of these Board members is involved in some litigation where the Superintendent is either a party to the complaint, has provided information leading to the filing of criminal charges against a Board member's child or is the complaining witness where a criminal complaint has been filed against the Board member.

In your request for this advisory opinion, you accurately recognize that these separate legal actions create conflicts of interest between the Superintendent and each of these Board members. At its March 19, 2013 meeting, the Commission discussed your request, and it concurs.

Your inquiry turns on 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;

The Commission reminds the Board that in adopting the School Ethics Act, the Legislature found:

[I]t is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their

public trust or which creates a justifiable impression among the public that such trust is being violated. N.J.S.A. 18A:12-22(a)

Permitting these Board members to vote or engage in any matter involving the Superintendent's employment would subvert the fundamental purpose of the Act and call into question the integrity of the vote, the action and ultimately the Board and its members. Such a circumstance would vitiate the foundation of the Board as a fair and impartial tribunal and ultimately damage the public trust.

Consequently, the Commission advises that the three Board members must recuse themselves from any discussion, decision, vote or action involving the Superintendent. Moreover, in light of Advisory Opinion A06-08, this prohibition should continue even after the proceedings conclude because of the negative history engendered by these law suits.

We trust this that this opinion fully answers your inquiry.

Sincerely,

Robert Bender, Chairperson