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DEPARTMENT OF EDUCATION
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CHRISTOPHER D. CERF
Commissioner

August 28, 2013

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A15-13

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion regarding a member of the Local Board of Education (Board). The Commission notes that you have complied with N.J.A.C. 6A:28-5.2(b) by copying the Board member, who is the subject of your request. Because the Board member did not submit any additional comments within the 10-day time limit set forth in N.J.A.C. 6A:28-5.2(b), the Commission will provide its advice based on the information you included in your advisory opinion 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.

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 the Board member to participate in the search, employment discussions and decisions involving the Board Secretary/Board Administrator (BA) when his partner has been employed by the District for thirty years and is currently the confidential secretary to the BA. You have noted that the Board member and the employee share a home together and have been involved in a "long-term personal relationship." You also mentioned that the Board member has acknowledged the potential for conflict in situations involving his partner and abstains when those issues arise.

The Commission discussed your request at its July 30, 2013 meeting and has determined that it would be a violation of the Act should the Board member continue his participation in any Board activity involving the BA or the hire and rehire of the superintendent or Chief School Administrator (CSA). In its review, the Commission did not consider N.J.S.A. 18A:12-24(c), since the Board member's partner is not a "member of the immediate family" or a "relative" within the meaning of the Act. Instead, 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 partner is considered an "other" within the meaning of this subsection, and as such, the public may see his Board action as an attempt to secure unwarranted privileges or advantages for the partner as a violation of the public trust. The very purpose of the Act as set forth in N.J.S.A. 18A:12-22(a) states:

In our representative form of government, it 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 a trust is being violated.** [Emphasis added.]

In view of this Board member's long-term personal relationship with his partner, with whom he cohabitates, the Commission has determined that should the Board member become involved in the pre-hire and post-hire Board functions in selecting and discussing personnel matters involving the BA, this Board member would violate N.J.S.A. 18A:12-24(b). Moreover, such participation in employment discussions involving the CSA may also create a justifiable perception that the public trust has been violated.

Since this Board member is prohibited from contributing in any way to the search and post-hire personnel discussions regarding the BA and the CSA, he may not be present during closed session when such deliberations are taking place. However, the Board member retains his rights as a member of the public. As such, he may attend the public session since there is no risk that confidential information will be shared with the public nor inquired of any Board member at that time.

We trust this that this opinion fully answers your inquiry.

Sincerely,

Robert W. Bender, Chairperson