

November 15, 2006

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion A23-06

The School Ethics Commission is in receipt of your request for an advisory opinion on behalf of four school board members. The Commission notes that you have complied with N.J.A.C. 6A:28-5.2(b) by copying the four board members whose conduct is the subject of the advisory opinion request. The four board members did not submit a response to the Commission within the 10 day time limit set forth in N.J.A.C. 6A:28-5.2(b).

You have requested an opinion as to how recent advisory opinions would impact four members of the Board. You have specifically asked whether it would be a violation of the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., for the four Board members to participate in:

1. the search for a new superintendent;
2. the interview process for the potential candidates;
3. contract negotiations;
4. the hiring of the new superintendent; and
5. employment issues related to the new superintendent such as performance reviews.

You have set forth that the school district is a K-12 district that has nine elementary schools, one middle school and one high school. You have further set forth that:

- Board member A's husband is a substitute custodian who reports to the supervisor of custodians, who is supervised by the business administrator, who reports to the superintendent.

- Board member B has two family members employed by the district. His mother is a full time aide at one of the elementary schools and his brother holds the position of Media Services Coordinator. Board member B's mother reports to the school principal, who reports to the director of curriculum, who reports to the superintendent. Board member B's brother reports to the superintendent. Neither relative resides within board member B's household.
- Board member C's wife is a teacher's aide at one of the elementary schools. His stepmother is a four-hour aide within the district. All aides report to their respective principals, who report to the director of curriculum, who reports to the superintendent.
- Board member D's daughter-in-law is a teacher at one of the elementary schools. Teachers in the elementary schools report directly to their respective principals, who report to the director of curriculum, who report to the superintendent. Board member D's daughter-in-law does not reside within his household.

At its October 24, 2006 meeting, the Commission determined, pursuant to its authority in N.J.S.A. 18A:12-28(b) and based on the reasoning below, as follows:

- Board member A and D may participate in the search for a new superintendent, the interview process for the potential candidates, the contract negotiations, the hiring of the new superintendent and in employment issues related to the new superintendent.
- Board member B may participate in the search for the new superintendent, the interview process for the potential candidates and the hiring of the new superintendent unless either his or her mother or brother has some familiarity with a potential candidate because such candidate worked in the district. The Commission also advises that board member B may not participate in contract negotiations or employment issues related to the new superintendent.
- Board member C may participate in the search for the new superintendent, the interview process for the potential candidates and the hiring of the new superintendent unless either his or her spouse has some familiarity with a potential candidate because such candidate worked in the district. The Commission also advises that board member C may not participate in contract negotiations or employment issues related to the new superintendent.

As you have noted in your request, your inquiry turns on the application of N.J.S.A. 18A:12-24(c), which provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might

reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

In determining whether there is a conflict with N.J.S.A. 18A:12-24(c), the Commission must first determine whether the public could reasonably perceive that the four board members' objectivity or independence of judgment may be impaired because the board members or their immediate family members have some direct or indirect financial involvement in situations you have set forth in your request. The Commission must next determine whether the four board members have a personal involvement that is or creates some benefit to them or members of their immediate family. The School Ethics Act at N.J.S.A. 18A:12-23 defines "member of immediate family" as the spouse or dependent child of a school official residing in the same household.

As you have noted, *Advisory Opinions A10-00*, (June 27, 2000), *A30-05*, (March 10, 2006) and *A07-06*, (July 31 2006) all apply to your advisory opinion request.

In *A10-00*, a board member's spouse was employed as a teacher in the district. The district was a K-8 district with 900 students and the superintendent, principal and vice-principal were located in the same building as the board member's spouse. In *A10-00*, the Commission advised a board member, pursuant to N.J.S.A. 18A:12-24(c), that he or she may participate in the search for the administrators and vote on the appointments. The Commission reasoned that it would not be reasonable for the public to expect that a board member, with a spouse who teaches in the district, would choose to appoint administrators who are most likely to be financially favorable to teaching staff, especially since teachers are employed pursuant to a collective bargaining agreement. The Commission also found that the board member and his spouse do not have a personal involvement in the selection of administrators that would create some benefit to them. However, the Commission also advised that a board member would violate the Act if he or she were to participate in employment decisions regarding the board member's spouse's supervisory administrators after they became the supervisors of the spouse. The Commission reasoned that there was an opportunity for the spouse's employment to be affected by the board member's vote in terms of the way the supervisory administrators treat and evaluate the spouse. See, *Advisory Opinion A10-00*, (June 27, 2000) pg. 2.

In *A30-05*, two board members had spouses who worked in the school district, one spouse as an instructional associate and the other spouse as a secretary in the office of the high school nurse. The Commission found that the two board members had an indirect financial involvement in their spouses' employment under N.J.S.A. 18A:12-24(c). The Commission reasoned that since the board members' spouses are directly supervised by an administrator, that it would be difficult for the board members to be completely objective in acting on employment issues for that administrator and any administrators supervising the spouses' direct administrator. The Commission also reasoned that the public could reasonably expect that the board member's involvement in

employment issues could positively or negatively impact the employment of the board members' spouses. The Commission advised the two board members that they would violate N.J.S.A. 18A:12-24(c) if they were to participate in employment issues regarding the administrators supervising their spouses including the supervisors of those administrators.

In *A07-06*, a board member in a nine-school pre k-12 district had a spouse who worked as a teacher's assistant at the high school and was supervised by the principal who is supervised by the assistant superintendent who is supervised by the superintendent. The Commission advised the board member that he or she would violate N.J.S.A. 18A:12-24(c) if he or she participated in any employment issues regarding the superintendent because the public could reasonably expect that the board member's objectivity or independence of judgment may be impaired. The Commission also advised the board member that he or she would violate N.J.S.A. 18A:12-24(c) if he or she participated in the hiring of the superintendent because the current assistant superintendent is a candidate to become superintendent. The Commission reasoned that, in *A10-00*, it had advised a board member that he or she may participate in the search for the superintendent and vote on the hiring of the superintendent, but it had made an exception for candidates who have some familiarity with a board member's spouse. In such a situation, where a candidate for superintendent has worked in the district and has familiarity with the board member's spouse, the public could reasonably expect that the board member's objectivity and independence of judgment may be impaired if he or she were to participate in discussions regarding the hiring of the superintendent and if he or she were to vote on the hiring of the superintendent. See, *Advisory Opinion A10-00*, (June 27, 2000) pg. 3.

In applying N.J.S.A. 18A:12-24(c) and the aforementioned advisory opinions, the Commission advises as set forth below.

Board Member A

Board member A's spouse is a substitute custodian, as set forth in *A10-00*, it would not be reasonable for the public to expect that a board member with a spouse who works as a substitute custodian would choose to appoint administrators who are most likely to be financially favorable to substitute custodians. Board member A's situation can be distinguished from *A30-05*, because board member A's spouse is not a full time employee, but only a substitute who serves on an as-needed basis. Since board member A's spouse is not a permanent employee, board member A's involvement in employment issues related to the new superintendent would not positively or negatively impact the employment of board member A's spouse. Therefore, the Commission advises that board member A may participate in the search for a new superintendent, the interview process for the potential candidates, the contract negotiations, the hiring of the new superintendent and in employment issues related to the new superintendent. However, the Commission cautions that board member A should abstain from voting on the annual hiring for substitute custodians in order to avoid a violation of N.J.S.A. 18A:12-24(c).

Board Member B

Board member B's mother is a full-time aide and she reports to the principal who reports to the director of curriculum who reports to the superintendent. Board member B's brother is the Media Services Coordinator who reports directly to the superintendent. The Commission first notes, based on the definition of "member of immediate family" in N.J.S.A. 18A:12-23, that board member B's mother and brother are not immediate family members. However, board member B's mother and brother are relatives as defined in N.J.S.A. 18A:12-23. As the Commission noted in *Advisory Opinion A23-94*, (January 23, 1996), the Commission is not constrained to recognize conflicts of interest only when a matter affects a board member's immediate family member. The Commission has found conflicts of interest under N.J.S.A. 18A:12-24(c) where a board member negotiates a sibling's contract when the sibling is in the local bargaining unit. See I/M/O James Russo and Thomas Scarano, C12-97 (January 27, 1998). The Commission also found a conflict of interest under N.J.S.A. 18A:12-24(c) where a board member was present during and participated in two executive session discussions related to the hiring of his brother. See I/M/O Dino Pettinelli, C01-04 (July 27, 2004). Furthermore in *Advisory Opinion A16-00*, (December 1, 2000), the Commission advised a board member that he would violate N.J.S.A. 18A:12-24(c) if he were to participate in negotiations or vote on a contract with the local education association when his brother held a position in the maintenance department and is a member of the local education association. In *A16-00*, the Commission found that the benefit set forth in N.J.S.A. 18A:12-24(c) need not be financial; otherwise the "personal involvement" provision would be redundant. The Commission also noted that "it considers an involvement to be personal whenever a school official has a relationship that the public may perceive as being predominant to the best interest of the district. Therefore, a benefit can be something of intrinsic value, but no monetary worth." *Id.* Page 2. In Pettinelli, the Commission found that there was a benefit of intrinsic value in the personal satisfaction that a board member receives in ensuring that a sibling obtains employment.

The Commission now applies *A10-00*, *A30-05* and *A07-06* to board member B, because board member B has a personal involvement due to board member B's relationship with his or her mother and brother, which may be perceived as being predominant to the best interests of the district. Therefore, the Commission advises that board member B may participate in the search for the new superintendent, the interview process for the potential candidates and the hiring of the new superintendent. However, based on *A07-06*, board member B may not participate in the search for the new superintendent, the interview process for the potential candidates and the hiring of the new superintendent if either the mother or brother has some familiarity with a potential candidate because such candidate directly or indirectly supervised them in the district. The Commission also advises, based on *A10-00*, and because of board member B's personal involvement, that board member B may not participate in employment issues related to the new superintendent such as performance reviews, because his or her participation could have an impact on the mother's or brother's employment in the district. Based on *A10-00*, where the Commission advised that a board member would violate N.J.A.C. 18A:12-24(c) if he were to participate in discussions and vote on

employment issues concerning the administrators who supervise his or her spouse after they are appointed, the Commission further advises that board member B may not participate in contract negotiations for the new superintendent because contract negotiations occur after the superintendent is hired.

Board Member C

Board member C's wife and mother-in-law work as aides in the district, and they both report to their respective principals, who report to the director of curriculum, who reports to the superintendent. A mother-in-law is not a "relative" pursuant to N.J.S.A. 18A:12-23, so it would not be reasonable to perceive board member C's relationship with his mother-in-law as being predominant to the best interests of the district. Therefore, board member C would not violate N.J.S.A. 18A:12-24(c) in relation to his mother-in-law. However, because board member C's wife works in the district, the Commission advises that board member C may participate in the search for the new superintendent, the interview process for the potential candidates and the hiring of the new superintendent unless his or her spouse has some familiarity with a potential candidate because such candidate directly or indirectly supervised her in the district. The Commission also advises that board member C may not participate in employment issues related to the new superintendent such as performance reviews or contract negotiations.

Board Member D

Board member D's daughter-in-law works as a teacher in the district and reports to a principal, who reports to the director of curriculum, who reports to the superintendent. As with board member C's mother-in-law, a daughter-in-law is not a relative, so it would not be reasonable to perceive that board member D's relationship with his or her daughter-in-law would be predominant to the best interests of the district. Therefore, the Commission advises that board member D may participate in the search for the new superintendent, the interview process for the potential candidates, contract negotiations, the hiring of the new superintendent and employment issues related to the new superintendent.

In summary, Board member A and D may participate in the search for a new superintendent, the interview process for the potential candidates, the contract negotiations, the hiring of the new superintendent and in employment issues related to the new superintendent. Board member B may participate in the search for the new superintendent, the interview process for the potential candidates and the hiring of the new superintendent unless either his or her mother or brother has some familiarity with a potential candidate because such candidate worked in the district. Board member B may not participate in contract negotiations or employment issues related to the new superintendent. Board member C may participate in the search for the new superintendent, the interview process for the potential candidates and the hiring of the new superintendent unless his or her spouse has some familiarity with a potential candidate because such candidate worked in the district. Board member C may not

participate in contract negotiations or employment issues related to the new superintendent.

We trust that this opinion answers your inquiry.

Sincerely yours,

Paul C. Garbarini,
Chairperson

PCG/LJB/MET/advisory opinions/A23-06

I hereby certify that the School Ethics
Commission voted to make this opinion public
at its public meeting on November 28, 2006.

Lisa James-Beavers
Executive Director