



State of New Jersey

DEPARTMENT OF EDUCATION

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February 23, 2016

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A01-16

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 received a second letter from you on January 30, 2016, with supplemental information to the request. The Commission will provide its advice based solely on the information included in your request, the supplemental letter and information from the Police Department's (Department) webpage. 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 January 26, 2016 and February 23, 2016 meetings.

You inform the Commission that a newly sworn in Board member is employed as a police officer by the Department and is assigned to be the Drug Abuse Resistance Education (D.A.R.E.) officer in the District. In this role, the Board member interacts with students "approximately once per week over the course of a three month period." The Board member/D.A.R.E. officer provides the students with drug resistance education, through a program aligned with the nationwide D.A.R.E. America standards. You state that during the time the Board member is in the schools conducting the activities as a D.A.R.E. officer, he does not work directly with any other member of the school's staff, and does not give or receive directions to or from the students' usual teacher.

In your supplemental correspondence, you further advise the Commission that in addition to his role in the schools as a D.A.R.E. officer, the new Board member also conducts safety checks in the District's schools in his capacity as a law enforcement officer. Thus, on a daily basis he spends "five to ten minutes in each building walking hallways to ensure doors are secure and other safety protocols are followed." The Board member has stated that during these checks he does not "typically" interact with students and that his contact with staff is limited to discussions with the school principal or his/her designee. These discussions center "solely" on confirming whether or not any safety concerns exist within the school.

Finally, you state in the same filing that despite his involvement with the schools, the Board member does not serve as the “School Resource Officer” (SRO). You explain that the SRO position involves an assigned police officer with the responsibility to “actively work to improve the security of the school... and to forge positive relationships between students, staff, parents and law enforcement.” The SRO is encouraged to speak and develop relationships with students and staff. The Principal is also able to require the SRO to attend evening and after school events. Previously, in Advisory Opinion A31-05, the Commission advised that the SRO position involves “significant entanglements with the district, its staff, students and parents,” and due to that level of entanglement, the Commission found the role of SRO to be too similar to that of an employee. Consequently, the Commission advised that a Board member could not also serve as the SRO. Here, in your request, you state that the new Board member is not the SRO, and you claim that his involvement in school matters through the D.A.R.E. program and through his safety checks is more limited and does not rise to a similar level of “employee like” entanglement.

You and the new Board member acknowledge that the Board member has a conflict on the Board with regard to matters touching upon the shared services agreement between the District and the Department, as well issues arising regarding the D.A.R.E. program and its use in the District. However, you inquire if the Board member’s role, despite being narrower than that of SRO, creates an absolute conflict such that the Board member cannot simultaneously serve on the Board and be employed by the Department in the capacity of D.A.R.E. officer and/or conduct daily safety checks of the schools.

The Commission’s advice is centered upon the implications of N.J.S.A. 18A:12-24(a), which states:

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, **or professional activity, which is in substantial conflict with the proper discharge of his duties** in the public interest.

It is not in dispute that the Board member is engaging in a professional activity when, as a police officer, he conducts daily safety checks of the schools and when he implements the D.A.R.E. program. The question, however, is whether that activity amounts to a “substantial conflict” with the discharge of his duties as a Board member.

The Commission notes that, based on information provided on the Department’s webpage, there are at least five “squads” to which officers can be assigned. The Board member at issue is assigned to the “Juvenile/SRO” squad, along with a fellow police officer. The website states this other officer is the SRO, but that the Board member “investigates any matter involving juveniles.” Thus, while the Board member may not serve as the SRO, the Commission must examine the totality of the Board member’s involvement with the schools and the children of the District to determine whether his level of involvement poses a conflict.

Under the set of facts outlined above, the Commission considers the regular, daily interaction of the Board member with the schools and its personnel to be in substantial conflict with his duties on the Board. As such, the Commission advises that the Board member would be in violation of N.J.S.A. 18A:12-24(a) if he were to continue his current role with the Department in such a way as to entangle himself in the affairs of the District. As developed below, the conflict is not that the Board member is a police officer, but with the assignment of duties, which require his extensive, day-to-day involvement with District personnel and facilities.

Beyond the analysis of N.J.S.A. 18A:12-24(a), other subsections of the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., are implicated, specifically, N.J.S.A. 18A:12-24(d) and N.J.S.A. 18A:12-24.1(c) and (j) of the Code of Ethics for School Board Members (Code), which provide, respectively:

24(d) No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.

24.1(c) I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

24.1(j) I will refer all complaints to the chief administrative officer and will act on the complaints at public meetings only after failure of an administrative solution.

For a violation to exist under N.J.S.A. 18A:12-24(d), there would have to be an inherent conflict between the position of Board member and his role as D.A.R.E. program officer, and his assignment to conduct daily safety checks of the schools. While it is stated that this level of involvement is less than that of SRO, the Board member's activities still involve significant entanglements with the District, its staff, students, and parents. Although paid by the Department, the Board member's status in the school is similar to that of an employee, which would compromise his judgment as a Board member. As indicated on the Department's webpage, this Board member, in addition to his role as D.A.R.E. program officer, and his assignment to conduct daily safety checks of the schools, he is also assigned to handle "any matter involving juveniles." This regular interaction between District staff, students, and parents means he could be viewed as a natural liaison between the Board, the schools and the Department. His roles as a Board member and D.A.R.E./law enforcement officer blur the distinction between the two positions and their respective obligations. This would compromise his judgment on the Board. It is further conceivable that because of his daily contact with the staff, students and parents in the District, he may be called as a witness before the Board by staff or students should he be involved in an incident which he is called to resolve. Therefore, it is reasonable to expect that his independent judgment would be compromised in the exercise of his duties as a member of the Board. Moreover, the Board member would have to recuse himself and abstain from any discussion or vote on such issues. Thus, the Commission advises that the Board member would violate N.J.S.A. 18A:12-24(d) if he were to continue service on the Board

while performing his duties as the Department's D.A.R.E. Program Officer, his assignment to conduct daily safety checks of the schools, and his assignment to handle "any matter involving juveniles."

N.J.S.A. 18A:12-24.1(c) requires a Board member to limit his activities to policy making, planning, and appraisal. However, by executing his duties as the D.A.R.E. Program Officer, his assignment to conduct daily safety checks of the schools, and his assignment to handle "any matter involving juveniles," this Board member would be acting beyond the scope of his authority in violation of N.J.S.A. 18A:12-24.1(c).

Moreover, while not officially named as the SRO, the Board member serves as a daily resource to the administration of each school and potentially staff, students and parents as he deals with individual problems, concerns and D.A.R.E. program issues. N.J.S.A. 18A:12-24.1(j) requires a Board member to refer all complaints to the chief administrative officer and act on unresolved complaints at public meetings only after failure of an administrative solution. This Board member's assignments to the schools contravene this obligation as he would be expected to resolve problems immediately as a member of law enforcement before referring them. This natural tension between Board member and program officer cannot be overlooked or ignored.¹

This means he would not be bringing complaints to the chief school administrator and acting on complaints at public meetings only after failure of an administrative solution. He would be involved in the resolution of complaints in violation of N.J.S.A. 18A:12-24.1(j).

The Commission advises that the Board member would violate N.J.S.A. 18A:12-24(a), and (d) of the Act and N.J.S.A. 18A:12-24.1(c) and (j) of the Code if he were to serve as a member of the Board while also being assigned by the Department as the D.A.R.E. Program Officer, to conduct daily safety checks of the schools and to handle "any matter involving juveniles."

In rendering its advice, the Commission acknowledges that it is not stating a police officer cannot serve on a Board of Education, but that the assignments of this Board member, that requires his extensive daily interaction with the schools, presents the inescapable likelihood for conflicts. If the new Board member were not D.A.R.E. program officer, who conducts daily safety checks of the schools, and is responsible for "any matter involving juveniles" for the Department but rather assigned to the Patrol Division or Traffic Bureau, his conflict would be limited to the shared services agreement with the District. As it is, his assignment to the schools and with juveniles creates the situation where his employment is so entangled with matters touching upon the schools and the District as to be incompatible with his service on the Board.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission

¹ Notwithstanding this analysis, the Act does not preclude a Board member, who is a member of law enforcement, from responding to an emergency at a school.