

December 22, 1998

FOR PUBLIC RELEASE

RE: Advisory Opinion A22-98

The School Ethics Commission is in receipt of your request for an advisory opinion on behalf of the Board that you represent. You have asked whether three board members who either are members of the New Jersey Education Association (“NJEA”) or who have spouses who are members of the NJEA may participate in a certain grievance hearing. One of the three members also has a daughter who is a teacher in the district. At its December 15, 1998 meeting, the Commission issued an opinion advising that the board member with a daughter who teaches in the district may not participate in the grievance hearing, but the other board members may do so without violating the School Ethics Act, N.J.S.A. 18A:12-21 et seq.

You have set forth that two of the members of the nine-member board teach in other school districts, one of which is the high school sending district for this district. One of these members also has a daughter who teaches in the district in which he serves. A third member has a spouse who is a teacher in another district. The spouse is not a union member, but does pay a representation fee and works under a contract negotiated by the NJEA. A teacher is alleging a violation of the collective bargaining agreement, arguing that the number of students she has been assigned has impacted on her workload, and has recently served the Board with a grievance. Your Board requests an opinion on whether these members may participate in the hearing on the grievance without violating the School Ethics Act.

The question you have asked turns on the interpretation of N.J.S.A. 18A:12-24(c), which provides:

No school official shall act in his official capacity in any matter in which he, a member of his immediate family, or a business organization in which he holds an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

At the Commission's request, you have provided a copy of the grievance and the collective bargaining agreement. Although the grieving party claims that there has been a violation of the collective bargaining agreement, the Commission could discern no provision that addressed the number of students that a teacher is required to teach in a class. Therefore, it appears that the outcome of the grievance will turn on past practice, rather than the interpretation of the collective bargaining agreement. Given that the issue does not appear to be addressed in the collective bargaining agreement, the outcome is not likely to impact upon the terms and conditions of employment of the board members who are NJEA members or the third board member's spouse. Therefore, the three board members do not appear to have a personal involvement that might reasonably be expected to impair their objectivity in violation of N.J.S.A. 18A:12-24(c) due to their connection with the NJEA.

However, the Board member who, in addition to his NJEA membership, has a daughter who teaches in the district, raises different issues. The first question is whether the daughter is emancipated since the act defines an "member of immediate family" as "the spouse or dependent child of a school official residing in the same household." N.J.S.A. 18A:12-23. In response to the Commission's inquiry as to whether the daughter was emancipated, you stated that you would imagine that she is emancipated although she resides with the Board member. Since the child is employed as a teacher and your response indicates a belief that she is emancipated, the Commission will assume that she is not dependent and thus, not a member of the Board member's immediate family.

The Commission believes that there is a strong likelihood that the outcome of the grievance will affect the daughter's employment even if the outcome turns on past practice rather than an interpretation of the collective bargaining agreement. The issue is not personal to the grieving party. The outcome is likely to set precedent for other teachers within the local bargaining unit. For these reasons, the daughter has a personal involvement in the outcome of the grievance. However, because the Board member's daughter is not a member of the immediate family, the question becomes whether the Board member him or herself has a personal involvement that might reasonably be expected to impair his or her objectivity. As set forth below, the Commission has determined that this board member does have a personal involvement that might reasonably be expected to impair his or her objectivity.

The Commission has previously advised that a Board member has a personal involvement that prohibits him from negotiating and voting on a contract with a local bargaining unit in which his emancipated child is a member. *Advisory Opinion A23-94* (January 23, 1996). In that opinion the Commission noted that the public would perceive that a parent has an interest in seeing his child obtain a better salary and benefits even if the child is emancipated. The Commission finds the parent's interest in this grievance to

be comparable. The grieving party is seeking additional compensation based on the number of students that she has in her class. A favorable determination could result in increased compensation for all similarly situated teachers, which renders this similar to situations involving negotiation of contracts. The Board member has a personal interest in the outcome of this grievance due to his daughter's employment that the public might reasonably expect to impair his objectivity or independence of judgment. Therefore, although the Commission recognizes that the daughter is not dependent, and thus, is not an immediate family member, the Board member would violate N.J.S.A. 18A:12-24(c) by participating in the hearing of the grievance.

For the foregoing reasons, the Commission advises that the Board member who is a teacher and NJEA member in another district and has no other potential conflicts and the other Board member with a spouse who teaches in another district may participate in the hearing of the grievance without violating the Act. The Commission further advises that the Board member who is an NJEA member in another district who has a daughter who teaches in the district may not participate in the hearing of the grievance without violating the act.

We hope this answers your inquiry.

Sincerely yours,

Paul C. Garbarini
Chairperson

I hereby certify that the Commission
voted to make the within opinion public
at its meeting of February 23, 1999.

Lisa James-Beavers, Executive Director