

notes DIGEST

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School Ethics Commission Issues Public Advisory Opinions

Recently New Jersey's School Ethics Commission (SEC) made public 36 advisory opinions, dating back to February 2013.

Any school official who has questions as to whether some particular future conduct would violate the School Ethics Act may request an advance opinion (called an advisory opinion) from the School Ethics Commission.

When the SEC believes that its advice on a particular matter will provide guidance on an issue of importance to board members, the SEC can make that advisory opinion public by a vote of six of its nine members; in such cases the confidentiality of the name or district of the person requesting the opinion will not be publicly disclosed.

It is important to remember that each opinion is based on the specific facts before the School Ethics Commission and may or may not be comparable with a specific factual situation in another school district. Board members and school administrators are encouraged to discuss the new opinions with board counsel as to local district applicability.

Over the next few editions of School Board Notes, NJSBA will be providing summaries of the newly released public advisory opinions. Each week will cover a particular conflict area, starting this week with collective bargaining, negotiations and contracts.

The full opinions may be found on the New Jersey Department of Education (NJDOE) website at the School Ethics Advisory Opinion section. The case number at the beginning of each summary is also linked to the full text of the specific opinion.

A29-12 (2/20/13) - Setting aside the question as to whether the board member's child is a

dependent, because the child is a "relative" under the School Ethics Act, a board member whose daughter is under contract as a coach in the district may not evaluate the superintendent and must recuse himself from any committee issue, policy discussion or vote wherein there is any potential benefit for the daughter. The linkage was found because coaching stipends are a line item of discussion during negotiations. The superintendent also has indirect supervisory authority over coaches in the district. The conduct is a potential violation of *N.J.S.A. 18A:12-24(c)*.

A03-13 (5/1/13) - The School Ethics Commission determined that board members must recuse themselves from any discussion, decision, vote or action related to the superintendent when a board member's mother is employed by a community organization that independently sponsors an after-care program using district facilities. The board issues a paycheck to the board member's mother and annually approves her re-appointment. The conduct is a potential violation of *N.J.S.A. 18A:12-24(c)*.

A10-13 (6/25/13) - Where the district has entered into a shared services agreement providing for professional security and a civilian safety program, a board member who works for the local police department or who has a spouse working in the department must recuse him or herself from any discussion or vote on any matter regarding the shared services agreement. Additionally, the member may not vote on any non-itemized bills for payment to the police department for the services in the shared services agreement. The conduct is a potential violation of *N.J.S.A. 18A:12-24(c)*.

A13-13 (7/31/13) - Board members must recuse themselves from participation in negotiations with the local union affiliate (NJEA) or in other matters related to their duties on the board if the member is employed by the NJEA; or, the member is employed by County Special Services with which the local board of education has a number of contracts for classified student services. The conflict endures for the duration of the board member's term of office.

A15-13 (8/28/13) - A board member who is not married but has been in a long-term personal relationship and cohabitates with the confidential secretary of the business administrator creates a conflict for the board member under application of *N.J.S.A. 18A:12-24(b)*. The board member may not participate in employment matters involving the business administrator or superintendent of schools.

A19-13 (12/20/13) - Board members who are municipal employees affiliated with a municipal union whose collective bargaining agreements are voted upon by the town council, must recuse themselves from negotiations, employment discussions and voting on teacher contracts when a teacher is member of the municipal town council. Similarly, the board members must recuse themselves and abstain from voting on all individual issues involving the teacher/council member. The conduct is a potential violation of *N.J.S.A. 18A:12-24(b)* and (c).

A07-14 (4/23/14) A board member would violate *N.J.S.A. 18A:12-24(c)* if he were to participate in the negotiation of the local collective bargaining agreement when he is a secretary in another district who is subject to a local union contract because the two unions

are NJEA affiliates, despite the fact that the board member is not a member of the union and only pays a representation fee.

A09-14 (4/23/14) A board member would violate *N.J.S.A. 18A:12-24(c)* if he were to negotiate or be involved in discussions with the local New Jersey Education Association (NJEA) affiliate when the board member is employed in a different district and represented by the American Federation of Teachers (AFT), even though it is a different statewide teachers union. The two unions share common traits and common goals in their efforts to negotiate a contract. Moreover, they often share the same personnel, the same strategies, negotiators, and labor relations officials.

A10-14 (4/23/14) A board member must limit certain board activity when the member's spouse is the mayor of the local municipality or the board member's cousin is employed by the school district. The conduct is a potential violation of *N.J.S.A. 18A:12-24(b), (c)* and *(f)*.

A25-14 (6/25/14) – The SEC declined an advisory opinion request, citing an existing opinion, *Martinez v. Abolino*. The commission noted that a board member whose spouse is a district paraprofessional or substitute-paraprofessional employee may not participate in any employment or personnel issues of those who have influence over or affect the spouse's employment in any manner. Such involvement would reasonably be expected to impair the

board member's objectivity or independence of judgment. This includes, but is not limited to, participation in any discussion pre-hire or post-hire, selection of a search committee or firm, the vetting process, evaluation or contract discussion regarding the superintendent.

A30-14 (8/27/14) – A board member whose son is employed as a summer student worker or whose spouse is employed as a substitute in the school district may not participate in any employment or personnel issues of those who have influence over or affect the son or spouse's employment in any manner. Such involvement would reasonably be expected to impair the board member's objectivity or independence of judgment. This includes, but is not limited to, participation in any discussion pre-hire or post-hire, selection of a search committee or firm, the vetting process, evaluation or contract discussion regarding the superintendent. These limitations will exist for as long as the son is employed with the district as a summer student worker or the spouse is employed as a substitute teacher in the district.

A34-14 (8/27/14) – A board member's 45-year affiliation with the NJEA over the course of his career, prior to retiring and becoming a board of education member, is so extensive that the member is prohibited from engaging in all negotiations and discussions regarding NJEA members or participating in board deliberations with the NJEA affiliate. The board

member was a teacher and NJEA member for 26 years, union president for 20 of those years, an NJEA employee for seven years as a field representative, seven years as an organizing representative and receives lifetime health and prescription benefits paid entirely by the NJEA. The close nexus between the board member and the NJEA is reasonably expected to impair his objectivity and independence of judgment. This prohibition extends for the duration of the board member's term or the length of his service on the board.

A43-14 (11/26/14) – A superintendent who resides with a non-dependent child employed in another district, who, through an agency shop provision, receives the benefit of the collective bargaining agreement in the other district, negotiated by the same statewide union with which the board is negotiating (NJEA) may not participate in negotiations between the board and local union (NJEA) affiliate. Participation in negotiations would constitute use of the superintendent's official position to secure unwarranted privileges, advantages or employment for herself, members of her immediate family or others. The non-dependent child would be considered an "other" in this context.

Information on how to request an advisory opinion from the School Ethics Commission is online at the NJDOE website.

JANUARY 28, 2015 • VOL. XXXVIII NO. 23

New Advisory Opinions Issued by SEC, Part II

Recently New Jersey's School Ethics Commission (SEC) made public 36 advisory opinions, dating back to February 2013.

Any school official who has questions as to whether some particular future conduct would violate the School Ethics Act may request an advance opinion (called an advisory opinion) from the School Ethics Commission.

When the SEC believes that its advice on a particular matter will provide guidance on an issue of importance to board members, the the commission can make that advisory opinion public by a vote of six of its nine members; in such cases the name or district of the person requesting the opinion will not be publicly disclosed.

It is important to remember that each opinion is based on the specific facts before the School Ethics Commission and may or may not be comparable with a specific factual situation in another school district. Board members and school administrators are encouraged to discuss the new opinions with board counsel as to local district applicability.

Over the next few editions of School Board Notes, NJSBA will be providing summaries of the newly released public advisory opinions. Each week will cover a particular conflict area, starting last week with collective bargaining, negotiations and contracts and moving this week to search, hire and participation in employment decisions for the chief

school administrator/superintendent and other administrative positions.

The full opinions may be found on the New Jersey Department of Education (NJDOE) website at the School Ethics Advisory Opinion section. The case number at the beginning of each summary is also linked to the full text of the specific opinion.

A29-12 (2/20/13) – The SEC found that the public might reasonably perceive that a board member's objectivity could be impaired where the board member's daughter was appointed to a coaching position in the district. The board member may not discuss or vote on actions involving the superintendent's employment. Further, the board member must recuse and

abstain from any committee issue, policy discussion, or vote on any matter where his child would receive a direct or indirect financial benefit or where there is a potential benefit to the board member or his daughter, as this is inextricably linked to the superintendent as an administrator. The question of whether the board member's child was a dependent was set aside by the School Ethics Commission as the child is a "relative" under the School Ethics Act.

A02-13 (5/1/13) Board members who are involved with pending outside litigation with the superintendent must recuse themselves from any discussion, decision, vote or action related to the superintendent or violate *N.J.S.A. 18A:12-24(b)*. The superintendent is a party to a complaint in one matter, fact witness in a criminal complaint lodged against a board member's child, and the complaining witness in another matter.

A03-13 (5/1/13) – The SEC determined that board members must recuse themselves from any discussion, decision, vote or action related to the superintendent when a board member's mother is employed by a community organization that independently sponsors an after-care program using district facilities. The board issues a paycheck to the board member's mother and annually approves her re-appointment. The conduct is a potential violation of *N.J.S.A. 18A:12-24(c)*.

Similarly, despite the fact that "brother-in-law" is not included in the definition of "relative" in *N.J.S.A. 18A:12-23*, the School Ethics Commission determined that where a brother-in-law is employed by the district as a custodian, with an indirect chain of command leading to the superintendent, that board member may not participate in discussion, decision, vote or action related to the superintendent. The conduct is a potential violation of *N.J.S.A. 18A:12-24(b)*. Participation would constitute use of the board member's official position to secure unwarranted privileges, advantages or employment for herself, members of her immediate family or others. The brother-in-law would be considered an "other" in this context. Conflicted board members would not violate the Act by attending public discussion of matters involving the superintendent's contract.

A06-13 (7/31/13) – Where a board member of a constituent school district is employed as a coach in the regional school district, which includes the constituent district, that board member would violate the School Ethics Act if she voted on the appointment of a shared superintendent; the public would reasonably believe that the board member's objectivity may be impaired. Moreover, the board member may not retain both employment and board membership, even on a part-time basis. This dual role violates *N.J.S.A. 18A:12-24(c)*.

A11-13 (7/31/13) – A sitting board member whose board recently entered into a joint services agreement with a regional district must resign from the board to avoid a violation of *N.J.S.A. 18A:12-24(c)*, if she were to accept offer of employment with the regional district, even where her job search began prior to the effective date of the agreement with the regional district.

A15-13 (8/28/13) – A board member who is not married but who has been in a long-term personal relationship and cohabitates with the confidential secretary of the school business administrator, creates a conflict for the board member under *N.J.S.A. 18A:12-24(b)*. The board member may not participate in employment matters involving the school business administrator or superintendent of schools.

A06-14 (4/23/14) A board member who is employed in a regional school district may participate in discussions involving the superintendent's contract and vote in the election of a new board president in a local constituent district where the member's direct employment supervisor is also a member of the local constituent board. No benefit would inure to either board member, as his employment evaluations are performed by other school officials. In the future, should the facts change creating a benefit to the board member or his supervisor, either member may have to recuse himself or herself from such involvement.

A08-14 (4/23/14) A board member would violate *N.J.S.A. 18A:12-24(b)* if he were to participate in the interview and selection process for a new chief school administrator when a stepdaughter, stepdaughter-in-law and nephew are employed by the district as certified teachers. Although not considered "relatives" under the Act, these members of the board member's

family are considered an "other" within the meaning of this subsection, and as such, the public may view your action as an attempt to secure unwarranted privileges or advantages for them in violation of the public trust.

A16-14 (4/23/14) A board member, who is aware he has conflicts, is directed to the *Martinez v. Abolino (C45-11)* decision, which prohibits the board member's participation in pre- and post-employment decisions involving the superintendent and other administrators. *Martinez* held that where a board member who has an immediate family member (as defined in *N.J.S.A. 18A:12-23*) or a relative (as defined in *N.J.S.A. 18A:12-23*) employed in the district, the board member may not participate in the search, selection and/or the vote for a new superintendent, irrespective of whether there is an in-house candidate being considered for the position because the School Ethics Commission maintains that the board member's involvement in the search, discussion and/or vote for a new superintendent under such circumstances would constitute a violation of *N.J.S.A. 18A:12-24(c)*. He retains the rights of the public, however, and may attend the public session of board meetings where those matters are discussed.

A10-14 (4/23/14) A board member must limit certain board activity when the member's spouse is the mayor of the local municipality or the board member's cousin is employed by the school district. The board member would violate *N.J.S.A. 18A:12-24(b)* if he were to participate in the pre-hire and post-hire board functions in selecting and discussing personnel matters involving the Superintendent. The official actions of this board member may be seen as an attempt to secure unwarranted privileges or employment for her cousin, an "other" under this section. Such participation in employment discussion involving the superintendent, who supervises the principals or the agreement, that sets salary guides, benefits and other emoluments, may also create a justifiable perception that the public trust has been violated. The conduct is a potential violation of *N.J.S.A. 18A:12-24(b), (c)* and *(f)*.

A25-14 (6/25/14) – The School Ethics Commission declined an advisory opinion request, citing an existing opinion, *Martinez v. Abolino*. The commission noted that a board member

whose spouse is a district paraprofessional or substitute-paraprofessional employee may not participate in any employment or personnel issues of those who have influence over or affect the spouse's employment in any manner. Such involvement would reasonably be expected to impair the board member's objectivity or independence of judgment. This includes, but is not limited to, participation in any discussion pre-hire or post-hire, selection of a search committee or firm, the vetting process, evaluation or contract discussion regarding the

superintendent.

A30-14 (8/27/14) - A board member whose son is employed as a summer student worker or whose spouse is employed as a substitute in the school district may not participate in any employment or personnel issues of those who have influence over or affect the son or spouse's employment in any manner. Such involvement would reasonably be expected to impair the board member's objectivity or independence of judgment. This includes, but is not limited to, participation in any discussion pre-hire or

post-hire, selection of a search committee or firm, the vetting process, evaluation or contract discussion regarding the superintendent. These limitations will exist for as long as the son is employed with the district as a summer student worker or the spouse is employed as a substitute teacher in the district.

Information on how to request an advisory opinion from the School Ethics Commission is online at the NJDOE website.

FEBRUARY 3, 2015 · VOL. XXXVIII NO. 24

Ethics Commission Releases Advisory Opinions on Board Member Conflicts, Other Issues

Recently, New Jersey's School Ethics Commission (SEC) made public 36 advisory opinions, dating back to February 2013.

School Board Notes has provided summaries of the newly released opinions in the past two issues of the online edition. In the Jan. 21 issue, decisions on collective bargaining, negotiations and contracts were covered; the Jan. 28 issue included summaries of cases involving search, hire and participation in employment decisions for chief school administrator and other administrative positions. This week, the third and final installment of the series on the advisory opinions covers board member involvement in other ventures and businesses, the doctrine of necessity, board member speech, and other items.

Advisory Opinion Procedures Any school official who has questions as to whether some particular future conduct would violate the School Ethics Act may request an advance opinion (called an advisory opinion) from the School Ethics Commission.

When the SEC believes that its advice on a particular matter will provide guidance on an issue of importance to board members, the SEC can make that advisory opinion public by a vote of six of its nine members; in such cases the confidentiality of the name or district of the person requesting the opinion will not be publicly disclosed.

It is important to remember that each opinion is based on the specific facts before the

School Ethics Commission and may or may not be comparable with a specific factual situation in another school district. Board members and school administrators are encouraged to discuss the new opinions with board counsel as to local district applicability.

The full opinions may be found on the New Jersey Department of Education (NJDOE) website at the School Ethics Advisory Opinion section. The case number at the beginning of each summary is also linked to the full text of the specific opinion.

A22-13 (3/7/14) A board member would violate *N.J.S.A. 18A:12-24(b)* and (c) if he were to participate in negotiations with the local education association when his father-in-law is a custodian in the district and the board member lives with the father-in-law and co-owns his home with the father-in-law. Although "father-in-law" is not considered a "relative" under the Act, it is considered to be an "other" within the meaning of *N.J.S.A. 18A:12-24(b)*, and as such, the public may view the board member's participation in negotiations as an attempt to secure unwarranted advantages for him.

The fact that the board member and his father-in-law co-own and reside in the same house, creates a "personal involvement." A school official shall not participate in a matter in which he has a "personal involvement" that is or creates some benefit to the school official or member of his immediate family. While the father-in-law is not a part of the board mem-

ber's immediate family under the definition set forth at *N.J.S.A. 18A:12-23*, co-owning a home and sharing a close familial bond establishes a sufficient dual nexus to suggest that there is a personal as well as financial benefit to the board member.

Moreover, participation in employment discussions involving the superintendent may also create a justifiable perception that the public trust has been violated. Since the superintendent evaluates and makes recommendations about the father-in-law's continued employment, the School Ethics Commission determined that the board member's participation would be in violation of the Act and would foster the perception that the public's trust has been violated as he may gain some privilege or advantage.

A04-13 (5/1/13) The School Ethics Commission determined that multiple violations of the School Ethics Act would occur if a board member were to survey the board and superintendent, anonymously survey all teachers in the school district, or conduct focus groups with teachers to fulfill a requirement of the board member's doctoral program research. Such conduct exceeds the scope of a board member's duties.

A08-13 (6/25/13) A board member who offers pro bono counseling services to students in the local high school would violate multiple provisions of the School Ethics Act whether the services are offered on a volunteer or for-profit basis. The public could reasonably believe that

the board member used his position to acquire new clients. The board member was also advised to recuse himself from discussion of, and abstain from voting on, any other vendor offering similar services.

A10-13 (6/25/13) Where the district has entered into a shared services agreement providing for professional security and a civilian safety program, a board member who works for the local police department or who has a spouse working in the department must recuse him or herself from any discussion or vote on any matter regarding the shared services agreement. Additionally, the board member may not vote on any non-itemized bills for payment to the police department for the services in the shared services agreement. The above actions would be a potential violation of *N.J.S.A. 18A:12-24(c)*.

A11-13 (7/31/13) A sitting board member, whose board recently entered into a joint services agreement with a regional school district, must resign from the board to avoid a violation of *N.J.S.A. 18A:12-24(c)* if she were to accept an offer of employment with the regional district, even where her job search began prior to the effective date of the agreement with the regional district.

A12-13 (7/31/13) A board member whose spouse works for a government authority which does business with the board, and who himself was formerly employed by the government authority, must recuse himself from matters involving the government authority to avoid violating *N.J.S.A. 18A:12-24(c)*.

A19-13 (12/20/13) Board members, who are municipal employees affiliated with a municipal union whose collective bargaining agreements are voted upon by the municipal town council, must recuse themselves from negotiations, employment discussions and voting on teacher contracts when a teacher is a member of the municipal town council. Similarly, the board members must recuse themselves and abstain from voting on all individual issues involving the teacher/council member under *N.J.S.A. 18A:12-24(b)* and (c).

A11-14 (4/23/14) Four non-conflicted board members are sufficient to conduct an evaluation of the superintendent. The use of the doctrine of necessity is unnecessary in this situation.

A13-14 (4/23/14) A board member, who is a

freelance journalist, would not violate *N.J.S.A. 18A:12-24(f)* as long as the member does not report on board of education discussions or issues. Additionally, the board member must ensure that no information is disclosed through the freelancer reporting to the public on matters solely discussed in board executive sessions.

A20-14 (5/28/14) A board member, who owns a company which does business with the school district, must recuse himself or herself from all matters related to that relationship. If the relationship is contractual, the contract may run its course but not be renewed. If the relationship consists of separate individual transactions, the board must find a new company for future business needs. Failure to do so would implicate *N.J.S.A. 18A:12-24(c)*.

A23-14 (5/28/14) Three non-conflicted board members are sufficient to conduct an evaluation of the superintendent. The use of the doctrine of necessity is unnecessary in this situation.

A24-14 (6/25/14) Conflicted board members may not participate in the board's search for a new superintendent, including any aspect of the vetting process or any evaluation of the superintendent.

A27-14 (7/23/14) - A superintendent lacks the standing to request an advisory opinion regarding the actions of a school official in the school district in which the superintendent was formerly employed. As a former employee, the superintendent no longer has authority to control board action in the original school district.

A29-14 (9/2/14) A board member, who owns and operates a business, may not continue to offer, in partnership with the local educational foundation, an annual fundraiser, where students are charged a fee (\$20) and the profits are split between the foundation (20 percent) and the business (80 percent). Given the financial and personal involvement, the public could reasonably perceive that the board member's ownership in the business would take precedence over the best interests of the school district. Additionally, the board member must cease distribution of the advertisement and general solicitation of the business through leaflet distribution in the schools, as that avenue is not generally available to the public. The board member may resume these activities at the end of his or her term of office.

A32-14 (8/27/14) A board member would violate multiple subsections of the Code of Ethics for School Board Members if he were to serve as a volunteer in certain school-sponsored theatrical events. The board member's spouse is employed in the district as a teacher and theater advisor. The board member's spouse would be responsible for supervising, directing and managing the board member, as he would be subject to the supervision, management and direction of other board personnel, supervisors and administrators. The board member/volunteer would be in regular contact with students, parents and staff and would maintain an active presence in the school. Such activity would be inherently inconsistent with the board member's executive role as an elected official, would exceed his scope of authority as a board member, would involve day-to-day administration of the schools, and would have the potential to compromise the board and the integrity of its decisions.

A33-14 (8/27/14) A board member, employed as a director of product management by an educational resource company which sells vocabulary workbooks to the school district, would not violate the School Ethics Act by participating in board actions including pre- and post-hire employment issues regarding the superintendent, principal, supervisor of curriculum/instruction or any other administrative position in the school district. The board member is a salaried employee with no interest in the company and is not responsible for sales or presales contacts with customers. Given that the company's contractual relationship predates his becoming a board member and the board member is not involved in the section of the company which sells workbooks to the school district, the School Ethics Commission found no interference with the ability to conduct board business. The board member's independence of judgment and objectivity must remain unquestioned, requiring recusal on all discussions, contract negotiations, purchase or payment to his employer. Should some benefit accrue to the board member from the company's contract, the board member must refrain from participating from the personnel decisions set forth above.

A35-14 (8/27/14) Only individuals who meet the definition of "school official" pursuant to *N.J.S.A.*

18A:12-23 may request, obtain and/or be the subject of advisory opinions from the School Ethics Commission. The School Ethics Commission does not have jurisdiction to consider advisory opinions regarding individuals who do not meet the definition of "school official."

A36-14 (10/29/14) - A board member may endorse candidates up for election to the board, so long as the endorsement is clearly made as a private citizen and not as a board member or on behalf of the board. Any publications created by the endorsing board member, be they print or electronic, must contain a disclaimer, making it clear that the board member's endorsement is as a private citizen and not as a

member of the board or on behalf of the board. Any use of electronic or social media must be on the board member's own personal account and not that of the board.

A38-14 (10/29/14) - A board member may donate funds to the county special services district to be "applied towards capital improvements and technology" so long as the member receives no benefit as a result and exerts no special control over how the donated funds are spent. The board member should not use his donation to advocate for his reappointment to that board.

A44-14 (11/26/14) - A board member, who is employed as an aide by a private day care center which contracts with the board/district

to provide pre-kindergarten services, must recuse him/herself from any and all participation related to the contract between the board and the center, the pre-kindergarten program, including issues pertaining to curriculum, facilities inspection or supervisors going to the center to monitor the program. Recusal must be as broad as possible in order to prevent public perception that the board member's independence of judgment would be affected.

Information on how to request an advisory opinion from the School Ethics Commission is online at the NJDOE website.

APRIL 28, 2015 · VOL. XXXVIII NO. 36

Ethics Opinion Expands Negotiations Prohibition

In a recently issued public advisory opinion that has significant implications for board members, the School Ethics Commission advised that a board member, whose sister-in-law was an NJEA member in another school district, could not participate in the negotiation of the collective bargaining agreement with the local education association. In the opinion, A03-15, the board member was advised to recuse himself from any matters touching upon the negotiations between the board of education and the local education association.

The commission based its decision on the application of N.J.S.A. 18A:12-24 (b), which states, "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 board member's "sister-in-law" was

considered by the commission to be an "other" within the meaning of this subsection. As such, the board member's familial relationship with the sister-in-law would violate N.J.S.A. 18A:12-24 (b). The public could view the board member's action in participating in the negotiation of the collective bargaining agreement with the local education association as an attempt to secure unwarranted privileges or advantages in violation of the public trust.

Significant Implications In reaching this opinion, the commission expanded the scope of conflicted board members in out-of-district, similar-statewide-union conflicts beyond the immediate family member definition of spouse, child, parent and sibling living in the household to include other familial relationships as well. In other conflict contexts, the commission has found "others" to include in-laws, cousins,

stepdaughters, stepdaughters-in-laws, nephews and cohabitating partners. A03-15 would likely extend to these family relationships as well.

The opinion also expanded the scope of conflicted board members in out-of-district similar statewide union conflicts beyond the board member's household to other households as well. A03-15 would appear to apply to any family member in any school district who has a similar statewide union affiliation. Boards of education may find that this opinion prompts more frequent use of the Doctrine of Necessity.

A03-15 did not specifically address the issue of voting on the collective bargaining agreement.

Board members are encouraged to discuss the ramifications of this decision at their local board level and consult with their board attorney for advice as to how to proceed.

MAY 5, 2015 · VOL. XXXVIII NO. 37

School Ethics Commission OKs Board Personnel Interviews

In a recently issued public advisory opinion, A01-15, the School Ethics Commission advised that board members would not violate the School Ethics Act if the board of education were to conduct interviews of potential candidates for employment other than the superintendent of schools and/or the school business administrator. Each local board of education may determine by its own policy

whether or not to establish board committees to conduct such interviews.

The advisory opinion under consideration involved a sending-receiving relationship. The School Ethics Commission advised that the sending delegate to the receiving board could not be a member of such committees for positions other than for the high school. The commission further cautioned that

membership of such committees should be kept small so as not to meet or exceed the minimum number of board members to meet a quorum, which would implicate the Open Public Meetings Act.

NJSBA strongly advises boards of education to discuss this advisory opinion with their superintendent and board attorney. In discussing the matter, boards should consider:

- Advisory Opinion A15-10 in which the School Ethics Commission found that participation in exit interviews was inconsistent with the role of a board member.
- *N.J.S.A.* 18A:12-24.1 (c) of the Code of

Ethics for School Board Members, which advises that a board member is “not to administer the schools, but together with my fellow board members, to see that they are well run.”

- *N.J.S.A.* 18A:27-4.1, which states that board of education may appoint, transfer or remove an employee only with the recommendation of the chief school administrator.

JUNE 2, 2015 VOL. XXXVIII NO. 41

Ethics Commission Clarifies Participation in Negotiations and Employee Interviews

Recently, the School Ethics Commission (SEC) provided guidance to board members and school administrators regarding participation in employee interviews and negotiations.

In Advisory Opinion A04-12, made public at the commission’s May 26, 2015 meeting, the commission advised that a board member’s participation on an interview committee, which was established to interview candidates for high-level administrative and supervisory positions, would not violate the School Ethics Act. The commission provided the following caveats for committee interview participation: the committee should not have more than one or two board members; the committee should be coordinated by a member of the administrative staff; board member participation should be strictly limited to offering observations and assessments; and the final recommendations are wholly within the purview of the superintendent.

The commission reasoned that participation on such an interview committee was fairly considered “board action” and would be within a board member’s policy making, planning and appraisal duties, as provided by *N.J.S.A.* 18A:12-24.1 (c) and (d).

In reaching this decision, the commission retracted opinion A01-15 from its public advisory list. The opinion was reported upon in the May 5, 2015 edition of School Board Notes.

The commission found A04-12 to provide a better explanation of its position on employee interviews and was of a more general application for school districts.

Negotiations Participation The commission recently provided clarification as to the extent of negotiations prohibition when a board member has a family member who works in another school district and is covered by a union agreement. In A03-15, reported on in the April 28, 2015 edition of School Board Notes, the commission advised that a board member, whose sister-in-law was an NJEA member in another school district, could not participate in the negotiation of the collective bargaining agreement with the local education association. The board member was advised to recuse himself from any matters touching upon the negotiations between the board of education and the local education association. A03-15 did not specifically address the issue of voting on the collective bargaining agreement. The commission revised the A03-15 summary on the chronological list of public advisory opinions on the School Ethics Commission Decisions webpage to include a prohibition on voting on the collective bargaining agreement. The summary now states:

A Board member would violate *N.J.S.A.* 18A:12-24(b) if he were to participate in the Collective Bargaining, Negotiation & Con-

tract, which includes the vote on the contract, when a sister-in-law is employed by another district and is a member of its local education association.

While not revising A03-15 itself, the commission through the amended summary, has indicated that when it said “any matters touching upon negotiations,” it was including the vote on the contract. By so doing, the commission has revised its position on out-of-district similar statewide union affiliation conflicts. Previously, board members with an out-of-district similar statewide union affiliation conflict were able to fully participate in the negotiations process and vote on the Memorandum of Agreement when all salary guides and compensation issues were finalized. This position of the commission was memorialized in public advisory opinion A14-00, which was issued in light of the State Board of Education’s decision, In the Matter of Pannucci, issued March 3, 2000. A14-00 is no longer considered valid advice.

Board members are encouraged to discuss the ramifications of these clarifications at their local board level and consult with their board attorney for advice on how to proceed.

Also see BlogTalkRadio: SEC Members Address Recent Opinions in this week’s *SBN*.

NJSBA's BlogTalkRadio: SEC Members Address Recent Opinions

On May 18, Conversations on New Jersey Education, NJSBA's online radio show, featured an interview with the acting executive director of the School Ethics Commission, and two long-time commission members, about recent advisory opinions. During the program, the participants addressed several areas regarding the Commission's recent decisions. These included:

- *Volunteer Activities Advisory.* Opinion A32-14 advised that a board member could not volunteer in school theater productions when his spouse was a teacher and theater advisor. The employee/spouse would be supervising, directing and managing the board member. The board member's contact with students, parents and staff would be inconsistent with the board member's role, according to the commission.

During the show, the participants commented that the following factors would be considered in determining whether a board member's volunteering would violate the

School Ethics Act: Is it a one-day or a day-to-day activity?; Does the board member have authority over school funds or school personnel?; Does school personnel have authority over the board member?; Is the board member a guest; Does the board member have involvement in decision-making and direction of the activity?

- *Administrator Participation in Negotiations.* Advisory Opinion A43-14 advised that a chief school administrator (CSA), whose non-dependent daughter lived in the household, worked as a paraprofessional in another school district and was covered by the union agreement through an agency shop clause, could not participate in negotiations between the board and the local education association.

When asked about the ability of the conflicted CSA to provide technical information to the board when no one else could do so, the radio show participants commented that the

technical information exception for conflicted administrators was probably no longer operational. If an administrator is conflicted, then he or she is conflicted, they said. While not part of a formal advisory opinion or case law decision, this represents a departure from long-standing commission advice, dating back to 1994. Board members should discuss this new commission position with their board attorney to determine the impact on collective negotiations in their school district.

Listen on Demand The program, "A Conversation with Members of the New Jersey School Ethics Commission," is available on demand through the NJSBA's BlogTalk Radio web page. Board members are encouraged to discuss the ramifications of these decisions with their board attorney.

Board members are encouraged to discuss the ramifications of School Ethics Commission Advisory Opinions with their board attorney.

School Ethics Commission Clarifies Conflicted Board Member's Role

In a recently issued public Advisory Opinion, A08-15, the School Ethics Commission advised that a board member, whose spouse was employed as a per diem elementary school lunch aide, must recuse himself from participation, including discussion and voting, on the superintendent's evaluation and contract. The board member would similarly be precluded from participation on matters regarding the elementary principal who supervised his spouse, and other administrators supervising the spouse, including the supervisors of those administrators. Failure of the board member to recuse himself from every matter touching upon the superintendent's position and that of other relevant supervisors would represent a violation of the School Ethics Act.

The board member's spouse was an "immediate family member" under the School Ethics Act. She was hired in 2008 as a per diem employee, worked 2.5 hours per day

and had her employment renewed each year by the board upon recommendation of the superintendent.

A concern was expressed by the requesting party that the inability of the conflicted board member to vote in many instances would likely result in a number of 2-2 tie votes on this five-member board of education. The commission advised that, without this conflicted member, the board maintained a quorum of four non-conflicted members, which could vote on matters related to the superintendent and other school administrators. The board could not invoke the Doctrine of Necessity simply because a vote on one of those matters would result in a tie. The Doctrine of Necessity may only be invoked when a majority of the board is conflicted on a matter, which was not the case here.

School officials are advised to consider this opinion in conjunction with public Advisory

Opinion A05-15, in which the commission advised that conflicted board members must recuse themselves from all discussions in executive session and abstain from any votes in public session pertaining to all matters regarding the position of superintendent. The conflicted board members may not be a part of any aspect of the vetting process or any evaluation and contract discussion post-hire and may not be in the room when executive session discussions occur. Each conflicted board member must also not be privy to the minutes of such executive session discussions until the minutes are made available to the general public. In matters concerning the position of superintendent, conflicted members have rights as great as members of the public—and no more.

Board members are encouraged to discuss the ramifications of this decision at their local board level and consult with their board attorney for advice as to how to proceed.

Ethics Commission Issues New Opinions on Volunteering, Participating in Negotiations

Recently, the School Ethics Commission issued two public advisory opinions regarding board of education member conduct.

Lead Volunteer In Advisory Opinion A10-15, made public at the SEC's July 28 meeting, the commission advised that a board member would violate the Code of Ethics for School Board Members by serving as a "lead volunteer" of a club that meets in a school in the board's school district.

"As the lead volunteer of the Club, you oversee and have authority over students in the Club, give awards to certain students based on performance, and have regular contact with school administration, other personnel and students, and possibly parents," the commission advised. "This level of engagement is inconsistent with your duty as a Board member to develop the general rule and principles that guide the management of the District. The engagement represents your overreach into the District to manage and oversee an aspect of the school, the Club."

According to the commission, the executive function of a board member prohibits him or her from serving in a volunteer role within the district in which the individual directs students, school personnel, resources, or funds and which occurs on a regular, frequent basis. Such action is beyond the scope of a board member's duties, the commission stated. "Similarly, a volunteer activity in which a board member is directed by school personnel or administration on a regular frequent basis is also inconsistent with one's role as a board member."

The commission indicated that by serving as the lead volunteer of the club, a board member would violate the following provisions of the Code of Ethics, contained in the New Jersey School Ethics Act:

- Confine board action to policy-making, planning and appraisal (*N.J.S.A.* 18A:12-24.1(c)). Engaging as a regular volunteer would be inconsistent with the board member's duties to develop the general rules and principles that guide the management of the school district. By overseeing and

having authority over students in the club, giving awards to certain students based on performance and having regular contact with school administration, other personnel and students and possibly parents, the board member would overreach and violate this provision.

- Board member responsibility is not to administer the schools but, together with fellow board members, to ensure that schools are well run (*N.J.S.A.* 18A:12-24.1 (d)). The board member's presence in the school as a volunteer leader of the club enmeshed him in the building and blurred the line between the role of board member and volunteer in the building. The frequency of the volunteer activity, the level of interaction, and control of the club evidenced direct involvement in the day-to-day administration of the school district in violation of the Code of Ethics.
- Make no personal promises nor take any private action that may compromise the board (*N.J.S.A.* 18A:12-24.1(e)). The board member's volunteering as the leader of the club, which is a regular, on-going activity involving contact with students, personnel and administrators, including the supervision of school administrators, created the potential to compromise the board in violation of this provision.

No General Ban on Volunteering In issuing this opinion, the commission made it clear that it was not making a general prohibition against volunteering in activities within the school district. One-time, infrequent, non-executive volunteer activities are not inherently contradictory to board member duties. For example, reading to a class during "Read Across America Day" or chaperoning a school trip in which his or her child is participating are not in conflict with the Act—provided that the board member has cleared such activity with the superintendent and relevant staff who will be overseeing the activity as well as other staff who will be present.

Board members must make it clear to all that their involvement in the activity is not as a board member, the commission noted.

Involvement in Negotiations In Advisory Opinion A09-15, also made public on July 28, the commission advised that a board member whose niece was employed as a cheerleading advisor and who was recently hired as a teacher, would violate the School Ethics Act if she were to be involved in or be present for the board's negotiations or other matters with the local teachers' union. To avoid a violation of the Act, the commission said the board member must recuse herself from matters touching upon negotiations and all other matters between the board and the local education association.

The board member's niece is considered an "other" relative in the law. As such, the public may view the board member's prospective participation in any discussion, negotiations or vote involving the local education association contract as an attempt to secure unwarranted privileges or advantages in violation of the public trust.

Board members are encouraged to discuss the ramifications of these opinions at their local board level and consult with their board attorney for advice as to how to proceed.

Advisory Opinions A school official may request an advisory opinion about his or her prospective conduct, or that of another school official. Published advisory opinions may be relied upon by the requesting school official and other school board members, administrators and charter school trustees in conducting themselves in office.

For information about the New Jersey School Ethics Act and School Ethics Commission, see "Frequently Asked Questions About the New Jersey School Ethics Act" at www.njsba.org/ethics-faq.

SEC: Board Member Out-of-District Conflicts Don't Automatically Bar Participation in Negotiations

On Oct. 27, the School Ethics Commission (SEC) released two new advisory opinions that affect board member participation in negotiations.

In the first, Advisory Opinion A11-15, the SEC advised that where two board members had relatives who were members of the same statewide union that worked in other school districts, those out-of-district conflicts were not an automatic bar to the board members' participation in negotiations or vote on the negotiated agreement.

One board member had a first cousin employed in another district. A second board member had a first cousin-in-law (the first cousin of the board member's spouse) employed in another district. Both relatives were members of the local education association in their districts and members of the NJEA. The SEC has stated on many occasions that "others" includes relatives as defined in the School Ethics Act, but has also determined that the term is flexible enough to encompass extended family and non-family members, such as the cousins and cousins-in-law at issue in its advisory opinion.

Out-of-District Conflicts The SEC reasoned that a board member's potential to influence contract negotiations in another district is generally too remote to assume that it would automatically have the effect of securing unwarranted privileges, advantages or employment for the relative. Further, a board member has no direct influence on how another district may negotiate a contract with its own local bargaining unit. Another district may rely on information in the contract on which a board member voted (for example, in looking at comparable settlement rates), but that in-district board member has no involvement in the other district's contract development. Moreover, according to the SEC, any suspicion that the board member is able to advance the cause of an out-of-district family member is further quelled by the enactment of the statewide property tax cap, which limits negotiators on

both sides of a contract to how much salary or reimbursement rates may rise.

Further Inquiry Required While the SEC concluded that while board members with relatives in the same statewide union in other districts were not automatically barred from participating in negotiations or voting on the contract, board members must inquire if, and to what extent, their out-of-district relatives are involved in out-of-district negotiations or union activities. The SEC recommended that board members who have relatives that work in other districts begin by asking the following questions, among others:

- Is the out-of-district relative an officer in the NJEA or local education association?
- Is the out-of-district relative on the negotiating team for that district?

Does the out-of-district relative have some other leadership role in his or her union or district which may influence the outcome of negotiations in the other district?

The answers to these questions would be required to help the board member determine whether their participation in contract negotiations would reasonably lead to the securing of unwarranted privileges, advantages or employment in violation of the public trust and in violation of the Act as a result of his familial relationship with an out-of-district employee.

On the same day, the SEC issued another advisory opinion reiterating the holdings and determinations of A11-15. In A16-15, an inquiry was made about seven of nine board members who had either an in-district or out-of-district involvement that could affect their participation in negotiations. Following the holdings of A11-15, the SEC determined that, while out-of-district conflicts with the same statewide union were not an automatic bar to participation in negotiations or voting on the contract, the board members must inquire about their relatives' involvement in the out-of-district union or its negotiations in order to determine if the individual circumstances of

that involvement would bar the board member from negotiations or voting on the final contract. For example, if the relative in the other district were a leader in that district's union affiliate or a member of the negotiations team for that union, it would be more reasonable for a member of the public to believe it possible for the board member to discuss negotiation strategies with the relative or to provide other information which could lead to a benefit for the relative. In such a scenario, the commission finds there would be a violation of the Act and the public trust would be breached.

In-district Conflicts Neither A11-15 nor A16-15 impact the SEC's previous decisions concerning board members who may have relatives that work in-district. Board members may not participate in any matter touching upon the relatives' employment, including negotiations with the local bargaining unit of which the relative is a member or, if not a member, who receives the benefits of the bargaining. (i.e. a teacher who declines to be in the local union but nonetheless receives the same contract negotiated by the union.) In addition, a board member may not be involved in the hiring or evaluation of the superintendent or any other officials or staff members who oversee the relative.

There is no automatic recusal required from participation in labor negotiations and vote on the contract when a board member's relative is a member of the same statewide union in another district. If a board member has an out-of-district conflict, the member must conduct an inquiry into the nature of that involvement by the relative as the ultimate determination will necessarily turn on the facts for the specific situation.

NJSBA urges affected board members to discuss these opinions with their board attorneys concerning how these decisions may impact their individual circumstances.

Ethics Commission Clarifies Conflict of Interest, Volunteer Question

According to a new advisory opinion, A13-15, issued by the School Ethics Commission (SEC) last week, a board member who is also employed as an administrator in another school district is not prohibited from participating in negotiations with the local NJEA affiliate, so long as there is no linkage between either district's NJEA affiliate and the union representing the board member/school administrator.

Conflict of Interest Questions In this most recent clarification of administrator conflicts-of-interest, the individual who requested the advisory opinion, in addition to serving as a board member, was also employed as a supervisor in a nearby district and was an active member of the New Jersey Principals and Supervisors' Association (NJPSA). The SEC noted that in this particular case, there was no connection between NJPSA and the local NJEA affiliate with which the local district was negotiating. While teachers in both of the local districts were represented by NJEA affiliates, neither affiliate was engaged in a contractual relationship with the other. In addition, the supervisors of the employing district were not governed by terms in the contracts between the boards and their respective NJEA affiliates.

Because there was no linkage between any of the teaching or supervisory affiliates, or between either of the boards of education,

the SEC found that no violation of the School Ethics Act would occur if the board member/supervisor were to negotiate with the NJEA in the district in which she served as a board member. It should be noted, however, that the SEC explicitly limited its advisory opinion to the facts specified in the request, and advised that different facts, or a newly discovered personal involvement, could lead to a different result.

Board Member Volunteers In another opinion, A17-15, the SEC clarified the roles that board members can play when they volunteer in their local districts. In the advisory opinion, the board member volunteered to construct sets for the high school play and props for the marching band. The board member's volunteer services for the play were limited to ensuring that the props were appropriately constructed and/or repaired, while as a marching band volunteer, the board member loaded and unloaded equipment and made repairs to props. In both roles, the board member's interaction with staff was very limited.

The SEC began its analysis by indicating that it does not consider its prior opinions as imposing a general prohibition against volunteering by board members and went on to recognize the significant contribution made by board members who, by definition, serve

as volunteers.

The SEC then went on to distinguish the above types of volunteer activities from the activities contemplated in previous advisory opinions. Accordingly, volunteering under the following conditions appears to be permissible: the board member/volunteer cannot serve in a leadership role over a committee or group nor can the board member/volunteer be subject to a widespread level of direction from staff, students or other board members. In addition, the instruction the board member/volunteer receive from staff should be limited to that instruction necessary for the successful completion of the task at hand, in this instance, the school play and marching band performances. The SEC went on to note that it did not view the intermittent, non-executive volunteer activities of constructing and maintaining props for musicals/plays or unloading and uploading band equipment for the marching band as being inherently contradictory to a board members' statutory duties. As with A13-15, the SEC limited the advisory opinion to the facts recited in the initial request; different facts could yield a different result. Accordingly, board members should seek the advice of the board attorney before volunteering to serve in their local districts. ■

School Ethics Commission Issues Opinions on Conflicts, Volunteering

Earlier this month, the School Ethics Commission (SEC) issued two public advisory opinions regarding board of education member conduct. Conflict Question In AO 19-15, the School Ethics Commission (SEC) was faced with the question of whether board of education members whose nieces, spouse's uncle and spouse's cousin's daughter, were full-time employees in the school district, represented conflicts under the School Ethics Act. In addition, the question was posed as to whether one board member, whose son was a full-time student and part-time summer substitute, had a conflict under the Act as well.

In reaching its decision, the SEC advised that an individual who meets the definition of "relative" under the nepotism regulation of the Accountability Regulations, N.J.A.C. 6A:23A-6.2(a)(1) will be considered to be an "other" under N.J.S.A. 18A:12-24(b) of the School Ethics Act, which states that no school official shall use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others. "Relative," as defined in the nepotism regulation, includes an individual's spouse or the individual's or spouse's parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother or half-sister, whether the relative is related to the individual or the individual's spouse by blood, marriage or adoption.

The commission concluded that if a board member's relative may not be hired under the nepotism regulation policy, then he also may not use his position on the board to secure unwarranted privileges or advantages for that relative. This means that the board member cannot participate in any matter regarding the employment of his/her relative. This prohibition applies to board members whose relative was hired by the school district before the board member was seated and includes, but is not limited to, any discussion and votes on the collective bargaining agreement or any con-

tracts affecting the employment of the relative and any discussion and vote concerning administrators who oversee the relative, including the supervisors of those administrators.

Applying these principles, the SEC determined that a board member who has a relative identified under the nepotism policy has a conflict under the Act. Given the executive authority of each member of the board, the commission considers it reasonable that members of the public might perceive a board member's involvement in any matter in which a relative is an interested party as an attempt to benefit himself, his immediate family or others, including his relatives.

Board members with such a conflict must recuse themselves from participating in any involvement over any matter of the relative's employment or supervision, and must abstain on any vote taken which is connected to the conflict, in this case generated through the employment of their relative. This includes the negotiation of and the vote on the collective bargaining agreement where the relative is a member of the local union or receives some benefit from the contract. The conflict also includes the evaluation, negotiation and engagement in other employment matters with the superintendent, as he or she oversees all staff in the district, as well as any other school administrators who are in the line of command over the board member's relative. Should a matter come before the board where a majority of the seated board has a conflict arising under the Act, the board must invoke the Doctrine of Necessity.

In a footnote, the commission affirmed Advisory Opinion A10-14, in which the commission found a board member's first cousin to be considered an "other" under the Act. However, absent additional information, the commission deemed it unreasonable for the public to view the relationship between a board member and the daughter of his spouse's cousin to be a conflict. All other family relationships which were part of the Advisory Opinion request were deemed to be in conflict.

Board Member on a Education Foundation Board? In decision A24-15, the School Ethics Commission was faced with the question of whether a board president could serve as a trustee on the Township Foundation for Educational Excellence in accordance with the foundation's bylaw, which identified the president of the board as a trustee.

The foundation consists of approximately 20 trustees, from which an executive board is formed. Trustees include other education stakeholders in the township such as community members, retired and/or current district employees and local business owners. The mission of the foundation is to enhance the quality of education and educational opportunities and to generate and distribute financial and other resources for the benefit of the students of the district. The foundation is not directly affiliated with the board and is not overseen by the board.

Based on the facts presented, the SEC determined that the foundation was wholly independent from the board member's role as president of the board and from board oversight. The commission found that the board member's service as a trustee for the foundation was not incompatible with his role as board president and the requirements of the Act. The foundation was an outside organization of the school district, incorporated as a self-governing entity, separate from the board and school district, and was not under the control or management of the board, despite their shared goals of furthering education in the school district.

In making its determination, the SEC likened the foundation to other organizations such as a local "Pop Warner Football" or "Varsity" Cheerleading Camp, two well-known, private organizations. Those groups are similar to the foundation in that the board member's presence and involvement with those organizations may put him in the company of current district employees, which may include teachers, supervisors, principals, assistant

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superintendents and the superintendent. As with the foundation, there is no prohibition on the board member's involvement with a private organization which may have district

employees, or the parents of students, likewise involved.

The commission, in rendering this advice, viewed the volunteering, as described in the advisory opinion request, as not in violation

of the Act; however, should an issue involving the foundation come before the board in any manner, the board member must recuse himself from participation or involvement and abstain from the vote.

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School Ethics Commission Issues Advisory Opinions on Board Member Conflicts

Earlier this month, the School Ethics Commission (SEC) made public three advisory opinions which it had approved for public status at its Jan. 26 meeting. Advisory opinions are made public by the SEC when six of its nine members vote to make them public. Board members and school administrators are encouraged to review these opinions with their school board attorney to determine the impact that they may have on their particular local board operations.

NJSBA has been closely monitoring the many School Ethics Commission advisory opinions that have been released in recent months. "We understand that the School Ethics Commission is working to promote public trust, which we, of course, support," said Dr. Lawrence S. Feinsod, NJSBA executive director. "While the commission is well-intentioned, many of their opinions have unfairly curtailed the management rights that boards of education must have to effectively represent their communities and perform their oversight functions."

Details of the latest advisory opinions are below.

Board Members with Relatives in School Districts In opinion A25-15, the SEC responded to a request regarding several board of education members who had relatives who either were full-time employees and members of the local NJEA affiliate union in either their own district or another. The relatives included:

- Board member's spouse, NJEA member employed in another school district
- Board member, New Jersey Principals and Supervisors Association (NJPSA) member employed in another school district
- Board member's spouse, paraprofessional

in-district, NJEA affiliate union member

- Board member's sister, NJEA member employed in another school district.

The SEC advised that the board members should review recently issued public advisory opinions A11-15, A16-15 and A19-15, which addressed these topics.

The SEC further advised that board members with relatives employed in-district, who are members of an NJEA affiliated union, are considered to have a conflict under the School Ethics Act. The conflict extends to all matters involving the union and all aspects of the collective negotiations process, including voting on the collective bargaining agreement. The conflict further extends into the personnel area as to the relative and the relative's supervisors, and other superiors in the chain of command ending with and including the superintendent. No participation in personnel matters regarding these individuals is permitted, including, but not limited to discussion, evaluation and voting.

Board members who have immediate family members (spouse, child, parent, sibling) in their household, who are employees in another school district and members of a similar statewide union with which the board is negotiating, are also deemed conflicted under the School Ethics Act. The conflict extends to all matters involving the union and all aspects of the collective negotiations process, including voting on the collective bargaining agreement. School administrators who are conflicted in this manner may provide technical information to the board of education when no one else in the school district can do so.

Board members who have out-of-household relatives who are union members employed by

a different board of education, have a different analysis to perform. Employment with union membership in another school district is not automatically a conflict for out-of-household relatives. The conflict analysis turns on the relatives' involvement with the union in their district of employment. If the relative has a heightened union role (officer, bargaining team member, union building representative) the board member is conflicted, with the conflict extending to all matters involving the union and all aspects of the collective negotiations process, including voting on the collective bargaining agreement. School administrators who are conflicted in this manner may provide technical information to the board of education when no one else in the school district can do so.

For board members who are employed in another school district as school administrators and are members of the NJPSA, the SEC referred them to previously issued public advisory opinion A13-15. A board member, in this circumstance, may negotiate with the in-district local NJEA affiliate when there is absolutely no linkage, in either district, between the respective NJEA affiliates and the administrators' union which represents the board member. Board members should consult with their school board attorney as to whether similar statewide union status may create a linkage as NJEA does represent supervisor units in certain school districts and likely has the same goals and objectives for its members as does NJPSA.

Former District Employee and Union President The SEC responded to a request regarding a newly-appointed board of education member, a 28-year former employee in the

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school district who served as union president for 13 years. In advisory opinion A26-15, the question was what, if any, involvement the new board member could have with respect to issues and matters involving the union, including possible collective negotiations and votes on contracts between the board and the union, without violating the School Ethics Act.

The SEC determined that the board member's prior employment in the school district and prior service as union president was not a bar to her service on the board of education. However, it did create a conflict of interest for purposes of collective negotiations participation. The SEC considered it reasonable for members of the public to believe that, as a new board member, having so recently been an employee of the school district and union president, she would be unable at this time to separate her past union involvement from her new role on the board. In order to avoid a violation of the Act and to preserve the public trust, the SEC advised that the new board member must recuse herself from any union matters, and must abstain from any union-related votes for the duration of her initial term of office. The SEC did not consider this conflict to be in perpetuity, but only for the new board member's initial term on the board, as she becomes acclimated to her new role of

serving the public. After her first term, there would no longer be the appearance that the board member's independence of judgment and objectivity with regard to the union would be impaired.

Should she serve a second term, the new board member, while not possessing a presumption of conflict, must continue to be cognizant of her responsibility to protect the public trust and her obligation to serve the interests of the public and board.

Participation in District Staff Interviews In A31-15, the SEC responded to a request for clarification regarding a perceived conflict between the exit interview prohibition of A15-10 and the limited participation in higher level administrative employee interviews of A04-12; each of which was analyzed under *N.J.S.A. 18A:12-24.1 (c) and (d)* of the Code of Ethics for School Board Members, but with seemingly different results.

In issuing this advisory opinion, the SEC advised that it does not support board members conducting interviews for positions below that of superintendent. However, the SEC's jurisdiction does not extend to actions of the board of education, only to actions of individual board of education members. Accordingly, each individual board of education may determine if it wants to have an interview committee for

high-level administrative positions, pursuant to A04-12. As set forth in A04-12, if a board forms an interview committee, no more than one or two board members may participate, the committee would be coordinated by a member of the administrative staff and the board members' role would be limited. The board members may not conduct the interview, but may offer observations and assessments, with full knowledge that final recommendations are wholly within the purview of the superintendent. For boards of education choosing to have an interview committee, the committee should function with the approval of the superintendent. It is the superintendent's authority to recommend hires to the board. An interview committee cannot supersede or usurp that authority.

The SEC noted that *N.J.S.A. 18A:12-24.1(h)* establishes that it is a board member's role to vote to appoint the best-qualified personnel available after consideration of the recommendation of the superintendent. The role of interviewing is an administrative function not generally within the authority of the board or its members. Accordingly, the SEC does not advocate for board member involvement in any interview process, prior to candidates first being recommended for hire by the superintendent, except for the limited purpose outlined in A04-12. ●

SEC Issues Advisory Opinions on Board Conflicts

Recently, the School Ethics Commission (SEC) made public two advisory opinions which it had approved for public status at its March 22 meeting. Board members and school administrators are encouraged to review these opinions with their board attorney to determine the impact that they may have on their local board operations.

School Administrators with Relatives Employed in Other Districts In advisory opinion A40-15, the SEC responded to a joint request from a superintendent and school business administrator who had relatives employed as teachers in other school districts, who were members of their respective local education associations; local affiliates of the NJEA. Neither relative was involved with the local union negotiating

team or otherwise involved in union activity. The superintendent's relative was a non-dependent daughter, who did not live with the superintendent. The school business administrator's relative was a sister-in-law. The SEC advised that the analysis in A16-15, an advisory opinion that advises board of education members in a similar situation, applies to school administrators, including the superintendent and the school business administrator.

A16-15 advised that board of education members, (and now school administrators) who had relatives employed by another school district, who were members of a similar statewide union with which the board was negotiating, would not automatically violate the School Ethics Act (SEA) if they were to participate

in negotiations and vote on the contract with the local union. The conflict would hinge on whether the relative had a heightened involvement with the local union. A conflict would exist if the relative were an officer of the NJEA or the local education association, were a member of the local negotiations team, or had some other leadership role with the local union such as a grievance chairperson, building representative, or county representative. Absent heightened union involvement or other facts to suggest a conflict, the board member (and now school administrator) could fully participate in the collective negotiations process without violating the SEA.

Police Officer/Board Member as Local DARE Officer In opinion A01-16, the SEC responded

to a request regarding a newly elected board of education member, who was employed as a police officer in the municipality and was assigned as the Drug Abuse Resistance Education (D.A.R.E.) officer in the school district. The board member/D.A.R.E. officer provided the students with drug resistance education, through a program aligned with the nationwide D.A.R.E. America standards, interacting with students approximately once per week, over a three month period. In addition to his role in the schools as a D.A.R.E. officer, the new board member also conducted safety checks in the district's schools in his capacity as a law enforcement officer. On a daily basis he would spend "five to ten minutes in each building walking hallways to ensure doors are secure and other safety protocols are followed." During these checks he did not typically interact with students and his contact with staff was limited to discussions with the school principal or his/her designee.

Notably, the board member did not serve as the "School Resource Officer" (SRO); a position which 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 SEC advised that the SRO position involved "significant entangle-

ments with the district, its staff, students and parents," and due to that level of entanglement, a board member could not serve as an SRO in the same district in which he were a board member.

It was acknowledged that the board member had a conflict on the board with regard to matters touching upon the shared services agreement between the school district and the police department, as well as issues arising regarding the D.A.R.E. program and its use in the school district. However, the question was whether the board member's role, despite being narrower than that of SRO, created an absolute conflict such that the board member could not simultaneously serve on the board and be employed by the police department in the capacity of D.A.R.E. officer and/or conduct daily safety checks of the schools.

The SEC determined that the regular, daily interaction of the board member with the schools and its personnel was in substantial conflict with his duties on the board of education. 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 police department in such a way as to entangle himself in the affairs of the school district. The conflict was not that the board member was a police officer, but with the assignment of duties, which requires his extensive, day-to-day involvement with school district personnel and facilities. While the board member's involvement was less than that of an SRO, the board member's activities still involved significant entanglements with

the district, its staff, students, and parents. The board member's status in the school was similar to that of an employee, which would compromise his judgment as a board member. This regular interaction between district staff, students, and parents meant he could be viewed as a natural liaison between the board, the schools and the police 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, which would compromise his judgment on the board.

The SEC advised 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 of Ethics for School Board Members if he were to serve as a member of the board of education while also being assigned by the police 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 SEC acknowledged that it was not stating a police officer cannot serve on a board of education, but that the assignments of this board member, which required his extensive daily interaction with the schools, presented the inescapable likelihood for conflicts. His assignment to the schools and with juveniles created the situation where his employment was so entangled with matters touching upon the schools and the school district as to be incompatible with his service on the board. ❁