

School Ethics Commission Public Advisory Opinions

Feb 2022 - June 2023

Advisory Opinion A17-21 (10/20/2021)

Question Posed – Can a Board member volunteer to be a football official, “work the chains,” at a school district football game?

A board member asked if his proposed volunteer service as an official at football games involving the school district’s football team, without compensation, would constitute a violation of the School Ethics Act. As an official, “working the chains,” the board member would not “be taking direction from or giving direction to any District staff members, students, or other Board members.” The board member would waive the fee and “would not receive any type of pay or compensation for serving as an official” at the football games.

SEC advised that the BOE member may volunteer as an official who “work[s] the chains” at the school district’s football games. SEC views the volunteer role as an official “working the chains” as passive, because the BOE member is not in a supervisory or leadership role over District personnel or students, nor would the BOE member issue widespread direction to/from staff, students or other Board members.

The SEC further advised that before the BOE member begins volunteering at the school district’s football games, in the “limited” role of “working the chains,” the BOE member should advise the Superintendent and relevant staff that he will be performing this work and, when doing so, will be there in the capacity as a volunteer, not as a Board member. This notification to the Superintendent and relevant staff will avoid any confusion when the BOE member is present on school grounds to perform volunteer work.

In previous public advisory opinions (A17-15, A10-15 A32-14 and A08-13), the SEC had advised that where the BOE member was in a supervisory position and generally oversaw staff or students, such volunteer interaction would be inconsistent with the School Ethics Act.

Advisory Opinion A03-22 (2/4/2022)

Question Posed – To what level can a Board member, who is a bus driver in another school district, a member of the same statewide union with which the BOE is negotiating (NJEA) and who has opted out of the union, be involved in negotiations?

SEC advised that previous advisory opinion A24-17 addressed the question. Although the board member chose not to be a dues-paying member of the local education association (LEA) in the school district in which he worked, the LEA remained the exclusive bargaining representative for his bus driver position/title and negotiated his terms and conditions of employment. The board member received the benefit of the negotiated labor agreement even though he was not a member of the union.

The board member is precluded from being involved in all aspects of contract negotiations. However, as noted in A24-17, absent another conflict, once the memorandum of agreement,

including salary guides and the total compensation package, has been resolved, board member may vote on the final form of contract.

Advisory Opinion A02-22 (2/25/2022)

Question Posed – Can a Board member post information related to the Board on social media?

A Facebook group, **School District Q&A between Parents & the BOE** was formed to take conversation threads from several Facebook interactions on non-confidential topics and index them for easy reference by the community. A board member disclaimer was included and the board member was “not an administrator of the account, no fees are charged, only current BOE member on the page (former members, members from other towns, but no quorum).

Any questions that “deal directly with the decision making of the school district are referred to the administration, and questions regarding confidential information are not answered. Operational questions are answered. There is often a basic misunderstanding by members of the public as to how schools operate. The requesting board member is a working school administrator in another school district and could easily answer many questions using publicly available resources.

Would the board member violate the School Ethics Act (Act) N.J.S.A. 18A:12-21 et seq., if “as a private citizen,” the board member, on this Facebook page, answered operational questions about how the school district functions on social media?

SEC advised that it could not opine on whether anticipated action taken “as a private citizen,” violated the School Ethics Act. SEC does not have authority to regulate private conduct, including speech and postings on social media, that is unrelated to the position on the Board and does not occur in the board member’s capacity as a school official. Said differently, the Commission cannot regulate the behavior and/or actions strictly taken as a “private citizen.”

Notwithstanding that fact, A02-22 stated that the “SEC recognizes that board members do not abdicate their fundamental rights as citizens after they become members of a board of education, and this necessarily includes the sacrosanct rights to freedom of speech and freedom of expression. However, board members, unlike most other individuals, are also public school officials subject to the provisions of the Act and, therefore, must exercise certain precautions to avoid violating, or being accused of violating, the Act. In this regard, when making comments or statements at a time and/or place other than at a public board meeting, the board member must ensure that the views expressed and/or information shared do not appear to be written on behalf of, or with the authorization of the Board.”

The SEC added that “Although you want to provide information to the public that would be useful and beneficial, because you would be providing information relating to the Board and/or your official duties and responsibilities, any attempt to disclaim your speech (as being in your personal or private capacity) would likely be futile. People in your community are aware of your status as a Board member and would likely attribute any statement from you as being from you in your capacity as a Board member, and/or on behalf of the Board. If you only ever provide

links to publicly available information, it is possible that your conduct would be less precarious; however, that would not immunize you from being the subject of an ethics complaint.”

The SEC concluded that “Based on the foregoing, although the catalyst for creating and maintaining a social media page has laudable intentions, it will be difficult, if not impossible for you to avoid conduct that is violative of the Act (whether actual, or perceived), particularly in light of the fact that the Facebook group you would be commenting on is entitled “[School District] Q&A between Parents & the BOE” and you are currently a member of the Board.”

The board member further informed the SEC that the school district’s “legal advice has been to avoid any and all social media in its entirety.” Is the School District’s bylaw “in conflict with the NJ School Ethics Law?”

The SEC cannot opine on this question because its authority is limited to enforcing the provisions of the School Ethics Act and its implementing regulations. Therefore, the SEC cannot determine whether a rule or regulation promulgated by the board of education on which the board member served is contrary to a state law or regulation. The board member was directed to consult with the board attorney for additional advice and guidance on this question.

Advisory Opinion A12-22 (11/22/2022)

Question Posed – Can a Board member vote to refuse to implement the New Jersey Student Learning Standards for Comprehensive Health and Physical Education?

A board member asked would an individual board member violate the School Ethics Act if the board member (1) votes in the affirmative on a Board motion to refuse to implement the New Jersey Student Learning Standards (NJSLS) for Comprehensive Health and Physical Education for the 2022-2023 school year, and/or (2) votes in the affirmative on a Board motion to change the application of the statutory language in *N.J.S.A.* 18A:35-4.7 from “opt-out” to “opt-in” of instruction in health, family education or sex education.

SEC discussed matter at its Advisory Opinion Committee meeting on 7/13/22, and again at its meetings on 7/26/22, 8/23/22, 9/14/22, and 10/17/22.

SEC advised that if “a final decision from any court of law or administrative agency of this State” were issued and it showed that an individual school official had acted contrary to the laws, rules, and regulations promulgated by the State Board of Education, he/she could then be found in violation of *N.J.S.A.* 18A:12-24.1(a) for the conduct outlined in the request.

Even if an individual school official could not be found in violation of *N.J.S.A.* 18A:12-24.1(a), if the BOE ultimately refused to implement the NJSLS for CHPE, or changed the application of *N.J.S.A.* 18A:35-4.7 from “opt-out” to “opt-in,” the BOE, as a public body, would be violating various education laws and regulations, and ramifications could follow, such as QSAC violations and possible loss of state aid.

While the SEC is not presently aware of any relevant decisions against individual school officials, the failure of a district board of education to comply with the NJSLS for

Comprehensive Health and Physical Education could lead to the issuance of a final decision that would support a violation of *N.J.S.A.* 18A:12-24.1(a).

Advisory Opinion A01-23 (1/31/2023)

Question Posed – Can a Board member work for a food service vendor as a “lunch lady” in the school district?

Board member requested an advisory opinion as to whether she would violate the School Ethics Act if she were to continue to serve as a “lunch lady” for the school district’s food service vendor. Board member has been employed by a food services vendor as a “lunch lady” since 2017, was presently assigned to work at the high school. Her job responsibilities included prep for lunch, serving the high school students on a daily basis, and serving as cashier. She was typically on site an average of seven hours per school day, had very limited interaction with district staff, and only interacted with students as they passed through the cafeteria line to get their meals and snacks.

SEC advised that it would be a conflict of interest for board member to continue as a “lunch lady” in the school district. While the board member’s request indicated that there was “limited interaction with District staff” the board member was still ultimately subject to supervision from senior leadership, including the District Superintendent and building principal(s), and there could be instances, albeit infrequent, when the District Superintendent and/or building principal would need to issue directives to the board member.

SEC recommended that the board member discuss, with the food service vendor, reassignment opportunities to another school district. Assuming a transfer to another school district occurs, the SEC further advised that the board member must recuse from any and all discussions and votes concerning the food service vendor employer. This prohibition would apply for as long as board member is employed by the food services vendor. In addition, this prohibition would apply to any and all discussions and votes concerning competing vendors or entities that offer the same (or similar) products or services as board member’s employer.

It should be noted that in a 6/23/93 School Ethics Commission decision, *Fitzpatrick/Ridgefield Park*, the board member who served as a lunch lady was permitted to retain the position but needed to abstain from all food service-related discussions and votes.

Advisory Opinion A02-23 (1/31/2023)

Question Posed – Can a Board member, whose spouse is a member of the local governing body, participate in matters related to a shared services agreement between the BOE and the town for a School Resource Officer?

SEC advised that because the board member’s spouse is a councilman for the borough, it would be a conflict of interest for the board member to vote on any matter involving the entity or public body on which the spouse contemporaneously serves as a voting member.

SEC regards these facts and circumstances as being similar to a school official’s vote on a matter involving their spouse’s employer. Regardless of whether the board member and/or his/her

spouse may have an actual or only a perceived personal or financial involvement (direct or indirect) in such matters, the board member's involvement could violate the public confidence.

Board member must recuse himself/herself from participating in any and all discussions and votes related to the borough, including participating "in negotiations and/or voting on contractual matters with the borough ... including the ... SRO contract." Whether the board member's spouse (councilperson) should also recuse from matters involving the board is a matter outside the scope and jurisdiction of the SEC. See Local Government Ethics Act.

Advisory Opinion A03-23 (1/31/2023)

Question Posed – Can a Board member become a member of the school district Special Education Parent Advisory Group (SEPAG) and serve as a special education advocate for families in the school district?

Newly elected board member, a retired NYC DOE administrator and special education teacher, was asked by the SEPAG to attend training for the purpose of advocating for students and families in the school district. As a SEPAG advocate, the board member would "participate in IEP meetings, representing families of students with disabilities who are seeking to initiate an IEP or to request related service, modification, or accommodation to an IEP on behalf of their child."

SEC advised that it would be a conflict of interest for board member to serve as a SEPAG advocate in the district while also serving as a board member. Board member status may cause the public to view the advocate role to be in substantial conflict with the duties and responsibilities as a board member. It could be perceived that SEPAG would be a mechanism through which the board member could use or attempt to use the official position to secure unwarranted privileges or advantages for others; and/or as service which might reasonably be expected to prejudice the board member's independence of judgment in the exercise of official duties as a board member. Moreover, in advocating for a district student(s) and family, the board member could be doing so in opposition, whether directly or indirectly, to district staff and administration, and in opposition to the board itself.

SEC commended the board member for his efforts, stating that while serving as an advocate for students and families in need of special education and related services is truly laudable, the board member must do so outside of the school district.

Advisory Opinion A04-23 (3/21/2023)

Question Posed – Can a charter school trustee member serve on two charter school boards of trustees at the same time without violating the School Ethics Act?

Trustee currently serves as an appointed member of a charter school board. Would it violate the School Ethics Act if he were to serve as an appointed member of a founding board for a new charter school before the new charter school is approved, and remain as a trustee after the new charter school is approved by the NJDOE.

SEC advised that it does not have jurisdiction to determine whether simultaneously being a member of two charter school board of trustees violates *N.J.S.A.* 19:3-5.2 and/or *N.J.S.A.* 40A:9-4, or whether it may be prohibited based on the ruling pronounced in *Fischer v. Attorney Gen. of N.J.* (an elected “public officer ... shall not hold simultaneously any other elective public office.”)

Should a court of law or administrative agency determine that simultaneously serving on two appointed charter school boards of trustees violates the law, a violation of *N.J.S.A.* 18A:12-24.1(a) could then be sustainable.

SEC cautioned the trustee that if he chooses to serve as a trustee for the “new founding board” while simultaneously serving as a trustee for the current board, should any matter come before your current board concerning the “new founding board,” the trustee would have to recuse from any and all discussions and votes. Similarly, if any matter comes before the “new founding board,” concerning the trustee’s current board, the trustee would have to recuse from any and all discussions and votes.

Advisory Opinion A05-23 (5/23/2023)

Question Posed – May two board members, one of whom is the board president, with various family and employment relationships in and outside of the school district, have involvement in the appointment to and service on board committees?

Board member A has a child who is an instructional aide in the district, a child-in-law who is an instructional assistant and coach in the district and a child who is a teacher in a neighboring school district. Board member B has a spouse who is employed in the district Technology Department

SEC advised that board member A, as board president, may not choose the members of, chairs of, and/or serve as an ex-officio member of any committee that even remotely touches upon or directly relates to board members A’s family members’ employment including, but not limited to, the personnel committee, the negotiations committee, the instructional committee, and the finance committee.

Because the Vice President does not appear to have a conflict, the Vice President may choose the committee members of, and serve as the ex-officio member of, those committees for which board member A, as the board president, has a conflict.

SEC advised that board member B (spouse employed in district) cannot be involved in any and all matters, including service on committees, that remotely touch upon or directly relate to the spouse’s employment including, without limitation, the personnel committee, negotiations committee, and/or finance committee.

See A24-17 for comprehensive analysis of conflict principles when Board members have familial relationships with Board employees and/or who are members of same statewide unions.

Advisory Opinion A06-23 (4/25/2023)

Question Posed – May a board member, whose sister-in-law (brother’s spouse) is secretary to the middle school principal, participate in the hiring process for a new superintendent when the middle school principal is a candidate?

Board member’s sister-in-law (brother’s spouse; *sibling-in-law*) is not a relative or immediate family member, but an “other” for purposes of *N.J.S.A.* 18A:12-24(b). Board member may not use or attempt to use his/her official position to secure an unwarranted privilege, advantage, or employment for “others” such as his “sister-in-law.” Board member’s sister-in-law’s (not a relative) employment in-district, creates no per se limitations on board member’s involvement in contract negotiations with the local education association, or in any superintendent matters, absent other conflicts.

SEC advised that because the board member’s sister-in-law currently works for, and reports directly to, the middle school principal, board member’s involvement in middle school principal’s appointment to superintendent could be perceived as securing an unwarranted privilege, advantage or employment for an “other,” and could create a justifiable impression among the public that their trust was being violated. Board member may not “participate in deliberations and actions relative to the hiring of the middle school principal as Superintendent.”

SEC further advised that if and when the middle school principal is appointed to the position of Superintendent, and the board member’s sister-in-law no longer directly reports to the middle school principal, board member will, absent other conflicts, be able to participate in any and all matters related to the superintendent, including evaluations. If board member’s sister-in-law were regarded as a “relative,” then board member would have been precluded from being involved in any and all matters related to the Superintendent.

Advisory Opinion A07-23 (4/25/2023)

Question Posed – May Board members A, B, and C, who have family members working in the school district, participate in negotiations and matters involving the superintendent?)

SEC advised that board member A’s sister-in-law (spouse’s sister), is a “relative.” Board member A is prohibited from being involved in discussions and votes regarding the Superintendent, and also prohibited from being involved in negotiations with the local education association while the sister-in-law is employed in the school district and a member of the association. Board member A’s sister-in-law (spouse’s sister) is regarded as an “other” for purposes of *N.J.S.A.* 18A:12-24(b), and board member A may not use or attempt to use their official position to secure an unwarranted privilege, advantage, or employment for his “sister-in-law.”

Board member B’s child resides at an out of state college during school year, returns to the family home during college breaks and intends to work as a per diem substitute in the district. Board member B’s child as an immediate family member. *N.J.A.C.* 6A:23A-6.3(b), Board may and has excluded “per diem substitutes” from scope of its nepotism policy. Board member B’s child may be hired as a per diem substitute teacher in the district while board member B is a board member.

SEC advised that if board member B's child is hired as a per diem substitute and becomes a member of the school district's local education association, board member B would be prohibited from being involved in contract negotiations with the local education association and would also be prohibited from being involved in any and all matters related to the Superintendent of schools, including the Superintendent's evaluation. See A24-17

SEC further advised that if board member B's child is hired by the school district as a per diem substitute but is not a member of the school district's local education association, then the prohibitions in A24-17 would not apply.

SEC advised that since board member C's spouse works in the school district, board member C is conflicted with respect to issues involving the superintendent, including the superintendent's evaluation. Once the superintendent's evaluation has been completed by the other non-conflicted board members, board member C is still not permitted to have access to the contents/results of the finalized evaluation. Board member C's ability to access the superintendent's evaluation is akin to that offered to any other member of the public.

Advisory Opinion A08-23 (4/25/2023)

Question Posed – May a board member's company serve as a subcontractor on a six tennis courts upgrade at the school district's middle school, four of six courts owned by the board, that is part of a shared services agreement between the board and the town.

SEC advises that board member would not violate the School Ethics Act if his company bids on, and is awarded, a contract with the town to "serve as a subcontractor on the tennis court job." Should board need to review, discuss, and/or approve the selection of the subcontractors, the subcontractor agreements/contracts, and/or payments, the board member is prohibited from participating in discussions and votes.

SEC further advised that the board member may not be privy to the minutes on such discussion or votes until such time as they would otherwise be made available to the general public. In all matters related to the shared services agreement between the town and the board, the board member only has rights as great as those of the public, and may not use any knowledge not known to or accessible by the public to assist in business ventures.

If the board member's company is selected as a subcontractor, it is preferable, to the fullest extent possible, that someone other than the board member physically perform the required work on the school district's premises. If board member's physical presence cannot be avoided, and another employee cannot perform required work, while on district grounds, the board member must be zealous in remembering that he is not representing the board, has no authority over district personnel, and is not entitled to receive any unwarranted privilege or advantage. If board member encounters an issue while working on district grounds, board member, like any business or guest who may be present on district property, may not personally act to resolve an issue or matter, and must follow the appropriate chain of command.

SEC further advises that, prior to arrival on district property, board member should advise the Superintendent so that Superintendent can communicate to relevant staff members who may

need to interact with board member that board member's presence is as the owner of the company, and not as a board member.

Advisory Opinion A09-23 (4/25/2023)

Question Posed – The superintendent and board secretary/school business administrator have been in a personal relationship since 2022. Both were employed in the school district before the relationship began. Are the alternative supervision and evaluation mechanisms that have been put in place by the school district sufficient to address the conflict?

SEC advised that because the superintendent and SBA/BS are not married, but in a “personal relationship,” they are regarded as “others.” As such, neither can use or attempt to use their official position in order to secure an unwarranted privilege, advantage, or employment for the other without running afoul of *N.J.S.A. 18A:12-24(b)*.

SEC further advised, given that the Superintendent and the SBA/BS are two of the highest-ranking administrators in the district, and ultimately oversee the full breadth of the district's operations, including finances and personnel, ensuring that clear boundaries are implemented and adhered to is of critical importance, both for the district, and for the superintendent and SBA/BS.

SEC agrees with the “alternative supervision” put in place by the board for the SBA/BS while the superintendent and SBA/BS remain in a personal relationship; SBA/BS “formal annual evaluation will be performed by another administrator in the district that holds a School Administrator Certificate, namely the high school principal,” and that the high school principal will also “address any routine day-to-day supervisory issues that may arise such as leave requests, disciplinary issues, etc.” for the SBA/BS.

SEC advises that the superintendent should not be involved in supervising any aspect of SBA/BS employment, including those that “*may be necessary for District operations*” as suggested by the board. Superintendent's involvement in any aspect of SBA/BS supervision is riddled with potential ethical violations, and could lead to the filing of ethics complaints. Superintendent must recuse from any and all aspects of SBA/BS employment, including the evaluation and the supervision of work, regardless of whether it is “necessary” for District operations.

SEC recognizes that these limitations may make it difficult for superintendent and SBA/BS to perform their duties and responsibilities efficiently and effectively. This is, unfortunately, the consequence of entering into a personal relationship in the workplace. Of course, in recognition of these limitations, either is free to pursue employment opportunities in other school districts so as to avoid conduct which is, or may appear to be, violative of the Act.

Advisory Opinion A10-23 (6/27/2023)

Question Posed – May a board member whose child is a student employee in the school district after care program participate in employment decisions and matters related to the superintendent, including evaluation of performance and labor negotiations? What is the

minimum number of non-conflicted board members required to conduct the superintendent's evaluation?

SEC advises that the board member's child is an immediate family member. Board policy, as per *N.J.A.C. 6A:23A-6.2(b)*, excludes student employees from the scope of its nepotism policy, allowing the board member's child to be hired as a student employee in the school district after school care program.

Because the directors of the after-care program are employees of the school district, the board member has a conflict with the immediate supervisor of the board member's child, and a conflict with other employees and administrators up the chain of command over that supervisor, up to and including the Superintendent. Therefore, for the duration of board member's child's student employment and to protect against a violation of the Act, as long as board member's child remains a student employee in the after-care program, board member must recuse from all matters concerning the Superintendent and other supervisors in the chain of command over board member's child's employment and abstain from any vote on same. This includes any and all matters related to the local union because a teacher serves as the director and directly supervises board member's child.

Board member's child should be treated no differently by the board than any other student employee; no unwarranted privileges or advantages.

As per A19-17, a minimum of two (2) non-conflicted Board members can negotiate the Superintendent's contract. To the extent these non-conflicted Board members need assistance, they may consult with Board counsel, hire an outside consultant and/or obtain assistance from the Business Administrator or another administrator as appropriate. Board may invoke the Doctrine of Necessity when the board has so many conflicts on a matter that it is unable to establish a voting quorum to act; such as voting on the superintendent's contract. See A19-17 and the SEC Resolution on Invoking the Doctrine of Necessity.

Advisory Opinion A11-23 (6/27/2023)

Question Posed – Board member's mother-in-law is employed in the school district as a paraprofessional and regular substitute in the principal's office. May the board member participate in matters involving the superintendent, school principal search, selection and interviews, principal and local association contract negotiations and personnel committee discussions that may affect paraprofessionals? SEC Opines – Board member's mother-in-law is a "relative" under the SEC's more expansive definition. See Chart and definition

SEC advises that so long as the board member's mother-in-law (relative) is employed in the school district, the board member is prohibited from participating in any matters that touch upon the mother-in-law's employment, including

- discussions and votes related to the Superintendent, including those detailed in your request,

- school principal search, selection committee, candidate interviews, and the contract negotiations
- collective negotiations with local NJEA union affiliate
- routine personnel committee discussions that affect mother-in-law's scheduling or employment
- staff annual contract appointment voting that includes the mother-in-law
- budget discussion that may affect paraprofessional staffing counts or responsibilities

It is hoped that this review of several recent School Ethics Commission public advisory opinions will assist school administrators in making decisions that are legal and ethical. School administrators are encouraged to share these opinions with their fellow school administrators and board of education members.

