

# Leadership Conference: Calming the Waters – Session 2

## The Impact of Recent Advisory Opinions by the School Ethics Commission

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June 23, 2023

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# Agenda

Subjects to be covered:

- Negotiations
- Social Media and Endorsements
- Volunteering
- Employment

# *Negotiations*



# Consider ...

**Can a board member vote on matters related to the superintendent if their spouse works in the district?**

**What if they get divorced?**

**Can a board member vote on matters related to the superintendent if their cousin works in the district?**

# A24-17 (September 26, 2017)

**Facts:** a board member has a sister who is employed by a company that contracts with the board; by virtue of this contract, the sister works in the district (as a substitute).

**First question:** is the board member's sister an employee of/employed by the district?

# A24-17 (September 26, 2017)

**Answer: No.**

The sister's employment relationship is with the company (not the board).

**However**, the board member would need to disclose their sister's employment on their Personal/Relative and Financial Disclosure Statements.

# A24-17 (September 26, 2017)

**Second question**: based on the employment of the board member's sister (with the company), what limitations are there, if any, on the board member's activities?

# A24-17 (September 26, 2017)

The School Ethics Act (Act) does not specifically address prohibited conduct by board members regarding their “relatives.” Pursuant to *N.J.S.A. 18A:12-24(b)*, the board member cannot provide an “other” (their sister) with an unwarranted privilege, advantage, or employment.

“Others” include those within the definition of “relative.”

# A24-17 (September 26, 2017)

The board member must recuse from any and all matters (discussions/votes) regarding their relative's employer, and their relative specifically.

However, because there is **no information** that the administration has any influence over his sister's employment (or any nexus between her employment and the local education association), the board member **can** be involved in matters related to negotiations, the superintendent, other personnel, and the budget.

# A24-17 (September 26, 2017)

A24-17 also clarifies the limitations on a board member's activity with regard to **contract negotiations** and **the employment of the superintendent** when they have an **immediate family member** or **relative** employed ***in and out of the district*** (and notes these limitations do not apply to just the same statewide public teachers' union, but rather **any** statewide public teachers' union).

# A24-17 (September 26, 2017)

RELATIONSHIP TO BOARD MEMBER	CURRENT MEMBER OF THE LOCAL UNION	CURRENT MEMBER OF ANY STATEWIDE PUBLIC TEACHERS' UNION	PARTICIPATE IN NEGOTIATIONS Yes or No	VOTE TO RATIFY THE CONTRACT Yes or No	PARTICIPATE IN ISSUES RELATED TO THE SUPER. (Search, Hire, Contract, and Evaluation) Yes or No
SELF		X	No	Yes*	Yes*
SPOUSE	X		No	No	No
SPOUSE		X	No	Yes*	Yes*
DEPENDENT CHILD	X		No	No	No
DEPENDENT CHILD		X	No	Yes*	Yes*
CHILD (NOT DEPENDENT)	X		No	No	No
CHILD (NOT DEPENDENT)		X	Yes*	Yes*	Yes*
RELATIVE	X		No	No	No
RELATIVE		X	Yes*	Yes*	Yes*
* Absent another conflict					

# Important Definitions

**Member of immediate family:** the spouse, civil union partner, or domestic partner of a school official, or a dependent child residing in the same household as the school official.

**Relative (*now*):** an individual's spouse, civil union partner pursuant to N.J.S.A. 37:1-33, domestic partner as defined at N.J.S.A. 26:8A-3, or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister of the individual or the individual's spouse, civil union partner, or domestic partner, whether the relative is related to the individual or the individual's spouse, civil union partner, or domestic partner by blood, marriage, or adoption.

# A21-20 (February 11, 2022)

**Question:** Can a board member, whose **sister-in-law (the spouse of the board member's spouse's brother)** is employed in the district, participate in negotiations with the local education association and/or in matters related to the superintendent?

Of note, the board member's spouse also co-owns a business with their brother (but it has no relationship to the board or district business).

# A21-20 (February 11, 2022)

**Answer: Yes.**

“Sister-in-law” (based on these facts) is not a relative, but rather an “other.” Therefore, the board member may participate in labor negotiations with the local education association, may vote on the collective negotiations agreement, and participate in all matters related to the superintendent, so long as the board member does not secure an unwarranted privilege, advantage or employment (for himself/herself, members of his/her immediate family or others, such as the “sister-in-law”).

# A21-20 (February 11, 2022)

In addition, because the business between the board member's spouse and their brother has no relationship to the board or district business, it does not pose a conflict.

***However***, if a matter related to the business was ever presented to the board, the board member would have to recuse from the matter.

# A16-21 (February 11, 2022)

**Question:** Can a board member, whose **ex-spouse** is employed in the district, be involved in any and all matters related to the superintendent; the local education association; and/or in any and all matters related to the administrators in the ex-spouse's chain of command?

Of note, the board member continues to pay a "reduced amount" of spousal support and child support.

# A16-21 (February 11, 2022)

**Answer:** As for all issues, **NO**.

Because the board member is still paying child support and spousal support to their ex-spouse, the board member has a direct or indirect personal or financial involvement in all matters related to the ex-spouse's continued employment, and any change in the ex-spouse's financial condition could impact the board member's financial obligation. In these matters, the board member's independence of judgment or objectivity may be compromised.

A divorce does **not** necessarily remove all possible conflicts.

As a result of a divorce, an ex-spouse is no longer a relative or member of immediate family, but rather an "other."

# A19-21 (February 11, 2022)

**Question:** Can board members, with immediate family members employed in the district, vote on matters related to the ***outgoing/former*** superintendent (e.g., the approval of his merit goals)?

# A19-21 (February 11, 2022)

**Answer: *No.***

The limitations that apply to conflicted board members while the superintendent was employed continue to apply *even after* the superintendent is no longer employed. The conflict is to “any and all matters related to the superintendent,” regardless of whether they are presently or formerly employed.

# A20-21 (February 11, 2022)

## Questions:

Can a board member (A) participate in negotiations (discussions/votes), and matters related to the superintendent, if their **“aunt in law” (the spouse of the school official’s spouse’s uncle)** works in the district?

Can a board member (B) participate in negotiations (discussions/votes), and matters related to the superintendent, if their **“distant cousin”** is employed in the district?

# A20-21 (February 11, 2022)

**Answer: Yes.**

“Aunt in law” (based on the facts presented) and “distant cousin” are not relatives, but rather “others.”

Both board member A and board member B may participate in labor negotiations with the local education association, and may vote on the collective negotiations agreement, as well as participate in all matters related to the superintendent, so long as neither extends an unwarranted privilege, advantage or employment (for himself/herself, members of his/her immediate family or others, such as board member A’s “aunt-in-law” or board member B’s “distant cousin”).

# A03-22 (February 21, 2023)

**Question:** Can a board member, who is employed as a full-time bus driver in another school district but is a *non*-dues paying member of that local education association (which is affiliated with the same statewide union), participate in negotiations?

# A03-22 (February 21, 2023)

**Answer: *No.***

Even though the school official is not a dues paying member of their local education association, because his position/title is included within the scope of the bargaining unit (and the local education association is the exclusive bargaining representative for their position/title), the analysis from A24-17 still applies.

# ***Social Media (and Endorsements)***

# Consider ...

**Can a board member talk about the superintendent on their Facebook page?**

**Does it matter if the comment is positive or negative?**

**Does it matter if they have a disclaimer?**

# Lessons Learned ...

**Facts:** In C70-17, the board member had a blog and several entries made negative references about a teaching staff member in the district. The board member's blog had a disclaimer.

**Decision:** Board member violated *N.J.S.A.* 18A:12-24.1(c), *N.J.S.A.* 18A:12-24.1(e), *N.J.S.A.* 18A:12-24.1(g), and *N.J.S.A.* 18A:12-24.1(i). The board member was suspended for six (6) months.

# Lessons Learned ...

- In finding violations of the Act, the Administrative Law Judge stated, “while Respondent claims to be writing as a private citizen and uses a disclaimer, ‘it also indisputably represents him as a Board member.’” Therefore, it was “not convincing” that Respondent was speaking in his capacity as a private citizen.

# Lessons Learned ...

**Facts:** In C71-18, the board member wrote an Op-Ed and included a disclaimer. In the Op-Ed, the board member endorsed certain candidates for the board, but also repeatedly referenced his position on the board and the board generally.

**Decision:** Board member violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24.1(e), and was reprimanded (the School Ethics Commission (Commission) recommended censure).

# C56-22 (October 17, 2022)

## Following C70-17 and C71-18, the Commission made clear...

- A school official does not violate the Act merely because they engage in social media activity.
- The analysis is whether a reasonable member of the public could perceive that the school official is speaking in their official capacity or pursuant to their official duties.
- Whether a school official is perceived as speaking their official capacity and pursuant to their official duties turns, in large part, on the ***content of the speech***.

# C56-22 (October 17, 2022)

- If the speech in question has absolutely no correlation or relationship to the business of the board and/or its operations and, therefore, could not possibly be regarded as a statement or position on behalf of the Board (as a body), a school official will not violate the Act.
- If the speech in question does relate to the business of the board and/or its operations, it is then reasonable for the reader to perceive the speech as being offered in an official capacity and pursuant to their official duties. **However**, the filing party would still need to prove all elements of the cited provision of the Act.

# C56-22 (October 17, 2022)

## Disclaimers:

- The use of a disclaimer on social media **can help** to clarify whether an individual is speaking in his or her official capacity and pursuant to his or her official duties, but its presence is **not** dispositive.
- The **failure** of a school official to parrot the exact language recommended by the SEC will not mean, without more, that he or she did not use an appropriate disclaimer.
- If a school official **utilizes** an appropriate disclaimer, but the content or substance of the statements would still lead a reasonable member of the public to believe that the school official is speaking in his or her official capacity or pursuant to his or her official duties, then the disclaimer will be inadequate and of no force or effect, and the social media activity could violate the Act.

# A02-22 (February 21, 2023)

**Question:** Can a board member create/maintain a Facebook page to discuss/address matters related to the board (and answer operational questions about how the school district functions) if they do so in their private/personal capacity, and with an appropriate disclaimer?

# A02-22 (February 21, 2023)

**Answer: *They should not.***

By providing information related to the board and/or the official's duties and responsibilities, any attempt to use a disclaimer would likely be futile (and would be viewed as being offered/made in an official capacity).

Therefore, it would "be difficult, if not impossible ... to avoid conduct that is violative of the Act (whether actual, or perceived) ..."

# C103-22 (April 25, 2023)

**Facts:** On her **personal** Facebook page, Respondent posted information regarding candidates for the upcoming election, and endorsed certain candidates over others. Importantly, Respondent did ***not*** include a disclaimer.

**Decision:** The Commission dismissed the complaint because the social media posts were on Respondent's personal Facebook page and there was seemingly no connection between her personal Facebook page and her relationship to the Board; as a result, a reasonable member of the public could not possibly perceive Respondent's social media posts as being made in her official capacity as a member of the Board, or pursuant to her official duties.

# C103-22 (April 25, 2023)

In the Commission's review, it found that Respondent's posts were nothing more than an expression of her personal opinion on whom she believed would be the most suitable and appropriate candidate(s) in the upcoming Board election.

# C103-22 (April 25, 2023)

## Following C103-22, the Commission made *more* clear...

- Just as the inclusion of a disclaimer is not dispositive, neither is the omission of a disclaimer.
- The fact that a school official may engage in social media activity does not mean that they must always include a disclaimer and that the failure to do so, in and of itself, is a violation(s) of their ethical obligations.
- When evaluating whether a school official may have violated the Act when using any and all social media platforms, online magazines or newspapers, blogs, or any other electronic or online medium for communication, the focus of the analysis must be on the **content of the speech**, and whether a **reasonable member of the public could perceive that the school official is speaking in their official capacity or pursuant to their official duties**.

# C103-22 (April 25, 2023)

- If a reasonable member of the public could perceive that the school official is speaking in their official capacity or pursuant to their official duties, regardless of whether a disclaimer is used, a violation(s) of the Act may be established if the filing party can prove all elements of the cited provision of the Act.
- If a reasonable member of the public could **not** perceive that the school official is speaking in their official capacity or pursuant to their official duties, regardless of whether a disclaimer is used, a violation(s) of the Act will not be substantiated.

# C13-23 (May 23, 2023)

**Facts:** A board member (and licensed realtor) wrote on her professional Facebook page, “Please remember to support your local [r]ealtors, we do a lot for the community – we sit on boards of [education], give back in a lot of ways ... please support us.”

**Decision:** The Commission dismissed the complaint “because the statement was made on Respondent’s “business” or “professional” Facebook page, and there is no explicit connection between her “business” or “professional” Facebook page and her relationship to or service on the board.

# C13-23 (May 23, 2023)

In dismissing the Complaint, the Commission stated, “Although Respondent’s statement did generally refer to the fact that realtors in the community “give back” by, among other things, serving on their local boards of education, Respondent did not indicate that she was a Board member, and did not specifically name the Board on which she sits.”

# *Volunteering*



# Consider ...

**Can a board member do *any* volunteer work in the district?**

**Does it matter if they interact with staff or students?**

# A15-18 (public in April 2018)

**Question:** Can a board member, who holds various positions with the PTA, continue to serve in those positions without violating the Act?

# A15-18 (public in April 2018)

**Answer: Yes**, because, in the roles at issue (e.g., homeroom parent, coordinator of movie night, coordinator of field day), the board member is not in a leadership role over a district sponsored committee or group; does not issue widespread direction to/from staff, students, or other board members; and is deferential to the principal and/or teaching staff.

Because the roles are **passive**, they are permissible.

However, the board member must notify the superintendent, and also clarify for all the capacity in which they are present on school grounds.

# A03-21 and A04-21 (February 11, 2022)

**Question:** Can a board member, who is establishing a non-profit that helps families in crisis, continue to run the non-profit? (A03-21)

**Question:** Can a board member remain affiliated with, and serve as a chapter lead for, a **non-profit organization** after becoming a board member (as a **volunteer**)? (A04-21)

# A03-21 and A04-21 (February 11, 2022)

**Answer: Yes**, because the non-profits do not appear **to be under the control of, are not overseen by, and are not otherwise managed by the board**; therefore, there is **no *per se* conflict**.

Although there is **no *per se* conflict**, the board members would violate the Act if they directly solicited financial contributions, donations, or supplies from district families; provided services to district families; and/or collaborated with the district PTO.

# A03-21 and A04-21 (February 11, 2022)

The board members would also have to recuse from any and all discussions/votes involving the non-profit that come before the board.

# A13-21 (February 11, 2022)

**Question:** Can a board member serve as a “public facing community liaison” for their employer, when part of their duties would include “forg[ing] links between the [e]mployer and **local schools**, businesses and non-governmental organizations”?

# A13-21 (February 11, 2022)

**Answer: Yes.** Although there is **no *per se* conflict**, the board member **cannot**:

- Participate in discussions/votes concerning their employer; or
- Participate in discussions/votes concerning any financial assistance and/or services that their employer (or a competitor) could potentially provide to the district; or
- Serve as their employer's representative in the district where they serve as a board member (stated different, the board member cannot represent their employer in the district); or
- Use or rely on their board status as a basis to promote their employer in *other* school districts.

# A17-21 (February 21, 2023)

**Question:** Can a board member serve as a **volunteer sports official** (in football games “working the chains”) in the district where they serve as a board member?

Per the board member, the volunteer work in question is “intermittent, relatively infrequent, passive, and non-executive.”

# A17-21 (February 21, 2023)

**Answer: *Yes*, because this type of volunteer work is passive, the board member is not in a supervisory or leadership role over staff or students, and the board member would not issue widespread direction to/from staff, students, or others.**

*However*, the board member should advise the superintendent of this service, and clarify the role in which the board member is serving.

# A17-21 (February 21, 2023)

Permissibility of volunteering generally turns on:

- Whether the activity is passive;
- The **degree of involvement** a board member has with staff or students;
- Whether the board member is in a **supervisory or leadership role** over staff or students; and
- The degree to which the board member **has the authority to give and receive directions and orders** to staff or students.

# A03-23 (February 21, 2023)

**Question:** Can a board member, who is a former out of state administrator/teacher, serve on the local special education parent advisory group, and advocate for students/families *in the district?*

# A03-23 (February 21, 2023)

**Answer: No.** However, such work can be done in another school district (not in the district in which the official serves as a board member).

Per the Commission, “in advocating for a District student(s) and family, you could be doing so in opposition, whether directly or indirectly, to District staff and administration, and in opposition to the board itself.”

# *Employment*



# Consider ...

**As part of their daily employment, can a board member work in the district?**

**Can they vote on matters related to their employer's competitor?**

# A01-21 (February 11, 2022)

**Question:** Can a board member, who is employed as an accountant, provide accounting services to district employees, and/or serve as a member of the board's negotiations committee if an accounting client is a member of the local education association's negotiations committee?

## A01-21 (February 11, 2022)

**Answer: No**, because the board member and their company financially benefit from the accounting services that are provided, continued service would violate the Act.

Therefore, the board member would violate the Act if they, or any other member of the accounting firm, provide accounting services to any district employee or family.

# A01-21 (February 11, 2022)

For as long as the board member (and/or the accounting firm) has an active client who is employed by the board, the board member must recuse from any matter involving the paying client (including from negotiations if a paying client is “sitting across the table”).

# A12-21 (February 11, 2022)

**Question:** Can a board member accept a position with a company (as a Sales and Marketing representative) that, among other things, markets a product that is “predominantly a platform which consolidates student records in school districts for easy access”?

# A12-21 (February 11, 2022)

**Answer: Yes.** Although there is **no *per se* conflict**, the board member **cannot**:

- Participate in discussions/votes concerning their employer; or
- Participate in discussions/votes regarding any product or service that their employer could provide; or
- Participate in discussions/votes concerning competing vendors or entities that offer the same (or similar) products or services as their employer; or
- Represent their employer, in any way, in the district; or
- Use or rely on their board status as a basis to promote their employer (or their services/products) in *other* school districts.

# A01-23 (February 21, 2023)

**Question:** Can a board member work for their **employer** (food services vendor) in the district where they serve as a board member (“lunch lady”)?

# A01-23 (February 21, 2023)

**Answer: No**, it would be a conflict of interest. Although the interaction with staff/students is generally passive, the school official is “ultimately subject to supervision from senior leadership, including the District Superintendent and building principal(s).”

In addition, the board member cannot participate in discussions/votes related to their employer.

# A02-23 (February 21, 2023)

**Question:** Can a board member, whose spouse serves as a Borough councilman, negotiate and/or vote on matters related to a contract with the Borough?

# A02-23 (February 21, 2023)

**Answer: *No***, 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.

# Questions



# Commission Information

- The provisions of the Act can be viewed at:

<https://www.nj.gov/education/ethics/act.shtml>

- Decisions and advisory opinions issued by the Commission can be found at:

<https://www.nj.gov/education/legal/ethics/index.shtml>

- Commission email address:

[school.ethics@doe.nj.gov](mailto:school.ethics@doe.nj.gov)

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