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State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
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ANGELICA ALLEN-MCMILLAN, Ed.D.
Acting Commissioner

SCHOOL ETHICS COMMISSION

October 25, 2021

Mr. Thair Joshua, Board President
South Orange-Maplewood Board of Education
525 Academy Street
Maplewood, NJ 07040

SUBJECT: School Ethics Commission Advisory Opinion Request - ***Denied***

Dear Mr. Joshua:

At its meeting on March 23, 2021, the School Ethics Commission (Commission) discussed a request for an advisory opinion that you submitted, on behalf of the South Orange-Maplewood Board of Education (Board). More specifically, you sought to determine the "appropriate boundaries" regarding Board member Elissa Malespina's "'access to confidential information and internal Board discussion, and the permissible extent of her involvement in public Board discussion and Board decision-making regarding the activities enumerated in the settlement agreement,' given her involvement in the lawsuit prior to becoming a Board member." After the submission of your request for an advisory opinion, Ms. Malespina submitted additional information. The Commission reviewed the submissions and following its discussion, the Commission adopted the advice set forth in *Advisory Opinion A05-21* (A05-21), which was provided to you and Ms. Malespina by electronic correspondence dated April 27, 2021.

Subsequent to the issuance of A05-21, on September 28, 2021, Ms. Malespina sent email correspondence informing the Commission that although A05-21 advised that Ms. Malespina must recuse herself from "any and all matters related to the litigation, including in connection with any measure(s) or action(s) that may be taken by the Board and/or the District to comply with or otherwise carry out the terms of the settlement agreement," A05-21 did not state that the Board "must remove [Ms. Malespina] from the dais when discussions are occurring and moved to the audience." Based on this correspondence, Ms. Malespina requested the Commission "provide guidance on how [the Board] should proceed moving forward."

In response to Ms. Malespina's email correspondence, the Commission informed Ms. Malespina that it could not "opine on a matter and/or conduct that has already occurred" as requests for advisory opinions "**must** *be prospective*." Furthermore, the Commission offered guidance on filing a complaint or requesting a revised advisory opinion.

With the above in mind, and at its meeting on October 19, 2021, the Commission reviewed your request for clarification regarding the advice set forth in A05-21. Based on its review, and in accordance with the Commission's discretion pursuant to *N.J.A.C.* 6A:28-5.2(c)(3), the Commission has **denied** your request for clarification because your request does not meet the requirements set forth in the Commission's regulations at *N.J.A.C.* 6A:28-5.2(c)(3). Specifically, rather than address whether Ms. Malespina's or the Board's activity or conduct may violate the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq*., or run afoul of the Commission's regulations, your request for clarification seeks guidance as to the "appropriate way" Ms. Malespina, as a Board member, shall effectuate her recusal from the Board matters described in A05-21.

The Commission notes that the manner in which a Board member should exercise recusal from a particular Board matter goes beyond the authority of the Commission. Accordingly, the Commission recommends that you and Ms. Malespina consult with Board counsel regarding an appropriate manner that Ms. Malespina shall exercise her recusal from specific Board matters in accordance with the provisions set forth in the School Ethics Act, the Commission's regulations, and other applicable laws and regulations governing the general powers and conduct of members of boards of education. The Commission further recommends contacting the New Jersey School Boards Association for further guidance or best practices on how a Board member may recuse from a matter.

Once again, please be reminded that school officials must always be cognizant of their responsibility to protect the public trust, to honor their obligation to serve the interests of the public and Board, and to periodically re-evaluate the existence of potential conflicts. In addition, the only way for a public school official to truly safeguard against alleged violations of the Act is to avoid any conduct, which could have the appearance, actual or perceived, of being in violation of the Act.

Sincerely,

Salma T. Chand

Salma T. Chand, Executive Director
School Ethics Commission

c: South Orange-Maplewood BOE Attorney
Elissa Malespina