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DEPARTMENT OF EDUCATION
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Acting Commissioner

SCHOOL ETHICS COMMISSION

April 27, 2021

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

SUBJECT: A05-21, South Orange-Maplewood BOE

Dear Mr. Joshua:

The School Ethics Commission (Commission) received your request for an advisory opinion regarding a member of the South Orange-Maplewood Board of Education (Board). You verified that you copied Elissa Malespina (Ms. Malespina), the Board member who is the subject of your request, thus complying with *N.J.A.C.* 6A:28-5.2(b). The Commission notes that Ms. Malespina submitted a response to your request and, therefore, the Commission will provide its advice based on the information included in your request, as well as on the information detailed in Ms. Malespina's response. The Commission's authority to issue advisory opinions is expressly limited to determining whether any prospective conduct or activity would constitute a violation of the School Ethics Act (Act). *N.J.S.A.* 18A:12-31. Pursuant to *N.J.S.A.* 18A:12-28(b), the Commission discussed this matter at its meeting on March 23, 2021.

You inform the Commission that the Black Parents Workshop (BPW) organization "filed a lawsuit against the Board ... alleging a longstanding and widespread pattern of discriminating against students based on their race and other legally protected classifications with respect to academic opportunities, discipline and other matters." You state, "several students and their parents" joined as plaintiffs, including Ms. Malespina "individually and on behalf of her minor child," who is a student in the South Orange-Maplewood School District (District). You further state although the Board denied the allegations, the matter was settled by way of settlement agreement, and the Board was required to pay "monetary compensation to the individual plaintiffs, including Ms. Malespina and her minor child," and also agreed to certain "prospective measures to build on the Board's ongoing efforts to achieve access and equity for its students." You note, "The broad settlement agreement implicates many areas that are an integral part of [the Board's] budgeting process and the goals the Board has and will set for the Superintendent."

You further inform the Commission that Ms. Malespina received her portion of the settlement prior to her election to the Board (November 2020); however, “the terms of the settlement also require various activities going forward, which may entail closed-session discussion among the Board and the [a]dministration regarding the adequacy of the measures under consideration, consultation with Board legal counsel and other discussions and communications in furtherance of implementing the settlement terms.”

Based on the foregoing information, you seek to determine “the appropriate boundaries” regarding Ms. Malespina’s “access to confidential information and internal Board discussions, and the permissible extent of her involvement in public Board discussions and Board decision-making regarding the activities enumerated in the settlement agreement,” given her involvement in the lawsuit prior to becoming a Board member.

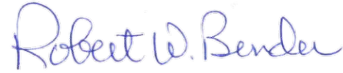
Following submission of your request, Ms. Malespina submitted additional information. More specifically, Ms. Malespina notes that she is not a member of the BPW, and the only relationship between her and the BPW was as a party to the BPW’s lawsuit “to address inequities against African-American children and children with disabilities in the [District].” Ms. Malespina confirms that she and her husband joined the BPW’s lawsuit on behalf of their child, a District student with a disability. Ms. Malespina further notes, “While the terms of the settlement require various activities going forward, [she has] no ongoing connection to the litigation and no role in monitoring the District’s compliance.” Instead, the BPW has oversight to ensure that the Board complies with the settlement agreement. Ms. Malespina “hope[s]” that the Board is not taking this action “as a way of punishing [her] for advocating for [her child], which is [her] right as a parent.”

With the above in mind, the Commission advises that, based on the specific facts and information set forth in your request and Ms. Malespina’s response, Ms. Malespina is prohibited from participating in 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. In other words, to the extent that the Board and/or the District is required to take specific action to effectuate the terms of the settlement agreement, Ms. Malespina must recuse herself from any and all discussions of those matters, and must also abstain from any and all votes. The Commission notes that its advice is predicated on avoiding a situation whereby Ms. Malespina may be involved in a discussion or vote in her capacity as a Board member, which the BPW seeks to challenge or otherwise argue is contrary to the terms of the parties’ settlement agreement. In the event this was to occur, Ms. Malespina would be an interested party in both sides of the litigation. As such, and in order to avoid such a situation from occurring, the Commission advises that recusal and abstention as discussed herein is the most prudent course of action, and to avoid any appearance of a conflict of interest. Should you require further guidance regarding a specific matter not addressed by this advisory opinion, you are encouraged to file an additional request in the future.

As a reminder, 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,



Robert W. Bender, Chairperson
School Ethics Commission

c: South Orange-Maplewood BOE Attorney
Elissa Malespina