

BOARD OF EDUCATION OF BALTIMORE COUNTY

ETHICS REVIEW PANEL

ADVISORY OPINION 18-03

This Advisory Opinion 18-03 is in response to an Application to Provide an Advisory Opinion (“Application”) filed by the Applicant, which seeks from the Ethics Review Panel (“Panel”) an answer to the following question: “Under what circumstances is it permissible for BCPS Teachers to participate” as AP exam readers for the College Board “during the work day.” The Panel understands that BCPS Advanced Placement (AP) Course teachers are eligible to become AP exam readers for the College Board. Those individuals will read and score AP exams for students from other jurisdictions, not Baltimore County. The individuals will receive a stipend from the College Board for their work, travel reimbursement and lodging reimbursement. Teachers will submit applications and are selected by the College Board. School administrators must agree to release the teacher for the week of their content exam if selected. Furthermore, BCPS currently has contracts with the College Board for PSAT Test Exams, SAT Test Exams, and AP Courses. The Panel was advised that teachers who participate in the program will gain professional knowledge that would support their classroom instruction, and thereby benefit the School System.

The Application did not reference any particular sections of the Ethics Code, but the Panel reviewed three potentially applicable sections of the Code in its analysis of the issue presented. The relevant sections are as follows:

**Policy 8362 - Gifts**

III. Gifts to a School System Official

- A) A school official may not solicit any gift.
- C) A school official may not knowingly accept a gift, directly or indirectly, from a person that the official knows or has reason to know:
  - 1) Is doing business with or seeking to do business with the Board or school system;
  - 2) Is subject to the authority of the school system;
  - 3) Is a lobbyist with respect to matters within the jurisdiction of the school official; or
  - 4) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the school system duties of the school official.

- E) Notwithstanding the restrictions set forth in this paragraph, a school official may accept:
  - 6) A specific gift or class of gifts which the Panel exempts from the operation of this subparagraph upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the Board or school system and that the gift is purely personal and private in nature.
- F) Subparagraph E above does not apply to a gift, regardless of value:
  - 1) That would tend to impair the impartiality and independence of judgment of the school system official receiving the gift;
  - 2) Of significant value that would give the appearance of impairing the impartiality and independent judgment of the school official; or
  - 3) Of significant value that the recipient school official believes or has reason to believe is designed to impair the impartiality and independent judgment of the official.

### **Policy 8363 - Conflict of Interest - Prohibited Conduct**

#### III. Employment and Financial Interests

- A) Except as permitted by Board policies when the interest is disclosed, or when the employment does not create a conflict of interest or appearance of a conflict, a school official may not:
  - 1) Be employed by or have a financial interest in an entity that is:
    - (a) Subject to the authority of the Board or school system; or
    - (b) Negotiating with or has entered into a contract with the Board or school system; or
  - 2) Hold any other employment relationship that would impair the impartiality or independence of judgment of the school official.
- B) The prohibition described above does not apply to:
  - 1) A school official whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted in accordance with policies adopted by the Board;
  - 2) Subject to other provisions of regulation and law, a member of the Board in regard to a financial interest or employment held at the time of the oath of office, if the financial interest or employment:
    - (a) Was publicly disclosed to the appointing authority and the Ethics Review Panel at the time of appointment; or
    - (b) Was disclosed on the financial disclosure statement filed with the certificate of candidacy to be a candidate to be a member of the school board; or

- 3) Employment or financial interests allowed by opinion of the Ethics Review Panel if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

#### VI. Prestige of Office

- A) A school official may not intentionally use the prestige of office or public position for private gain of that official or the private gain of another.

The Panel determined that a teacher participating as an AP exam reader as described above would not implicate any of the provisions cited above for the following reasons.

### **THE GIFT PROVISION**

The gift prohibitions cited above in Policy 8362 generally prohibit a school system official (which is defined in Policy 8360 to include employees) to accept gifts from individuals or entities who do business with the School System. Although the College Board is an entity with contracts with BCPS, it appears that the stipend and reimbursements received by the AP teachers is not a gift, as defined by Policy 8360, which defines “gift” as the transfer of anything of economic value “without adequate and lawful consideration.” According to the information provided to the Panel, the teachers are providing a service to the College Board and therefore, the stipend and reimbursements are not “without consideration.” The teachers are essentially being paid for the services they provide to the College Board.

Additionally, the Panel assumes that the teachers who will become AP exam readers are classroom teachers who are not involved in the procurement process that resulted in contracts between BCPS and the College Board, or in the administration of those contracts. Therefore, it would appear that the “impartiality and independence of judgment” of those teachers would not be a part of the contracting process with the College Board.

### **THE CONFLICT OF INTEREST PROVISIONS**

Policy 8363 generally prohibits BCPS employees from being employed by an entity that has a contract with the School System, with certain exceptions. Section III.A. of that Policy begins with: “Except as permitted by Board policies when the interest is disclosed, *or when the employment does not create a conflict of interest or appearance of a conflict,*” (emphasis added), an employee may not be employed by an entity that has entered into a contract with the Board or School System. Furthermore, section III.B.3. provides that the prohibition does not apply to employment “allowed by opinion of the Ethics Review Panel if the employment does not create a conflict of interest or the appearance of a

conflict of interest.” As noted above, the Panel assumes that the AP classroom teachers who apply to be AP exam readers are not part of the procurement process and are not involved in the administration of the contract between BCPS and the College Board. Therefore, although employment by the College Board, which has contracts with BCPS is, by definition, a conflict of interest, the Panel concludes that employment of classroom teachers with the College Board for the purpose of scoring or grading AP exams would not create an actual or perceived conflict of interest, if those teachers are not involved in the procurement process or the administration of the contract. It should be noted, however, that employees who are involved in either the procurement process or the administration of the contract should *not* participate as AP exam readers and should *not* be employed by the College Board, in any capacity.

### **THE PRESTIGE OF OFFICE PROVISION**

Policy 8363 also contains a provision prohibiting employees from “intentionally” using “the prestige of office or public position for private gain.” Although the teachers who apply for, and are selected as, exam readers clearly are receiving “private gain” as a result of their positions as BCPS teachers, the Panel does not see this situation as a violation of the prestige of office provision of the Ethics Code. The Panel is aware of other situations where teachers earn money outside the School System directly related to their position as teachers and are not violations of the prestige of office provision. For example, teachers are expressly allowed to provide private tutoring services or offer private educational services outside of school, as long as those services are not provided to a student the “employee currently instructs.” (Policy 8363, section X.C.)(See also Board Policy 4005 – Tutoring/Educational Services, which also prohibits providing such services during the duty day.) Also, the Panel is unaware of any BCPS policy prohibiting teachers from being employed as adjunct faculty members at the college or university level. As long as the individual takes the appropriate leave of absence to participate in the AP exam reader program, and is not being paid by BCPS at the same time the teacher is working for the College Board, the Panel concludes that there is not a violation of the prestige of office provision.

### **CONCLUSION**

Although the Application seeks advice regarding the “circumstances” under which participation would be permissible, the Panel’s role is limited to interpreting the School System’s Ethics Code and this Advisory Opinion is limited to those issues. The Panel has reviewed the provisions of the BCPS Ethics Code and has concluded that there would be no violation of the gift provision or the prestige of office provision. With regard to the

conflict of interest provisions, as long as the selected employees are not involved in the procurement process with the College Board and are not involved in the administration of any contracts with that organization, such employment would not create a conflict of interest or the appearance of a conflict of interest.

The Panel recognizes that there are other issues that may impact the situation described here, such as: the impact that the teacher's absence may have on the classroom; the type of leave that the teacher should take while participating as an exam reader; the possibility of a number of teachers from the same school participating at the same time, etc. However, these are policy and procedural issues that are beyond the scope of the Panel's review, which is limited to the Ethics Code. Furthermore, the BCPS administration may determine that, contrary to the view expressed by the Panel, such employment would create the appearance of a conflict of interest. The Applicant is strongly urged to consult with appropriate BCPS leadership regarding the proper process and procedures that should be used utilized in this situation.

This opinion has been signed by the Ethics Review Panel and adopted on April 26, 2018.



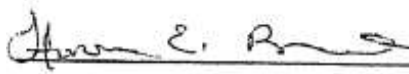
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Joseph M. Schnitzer, Chair



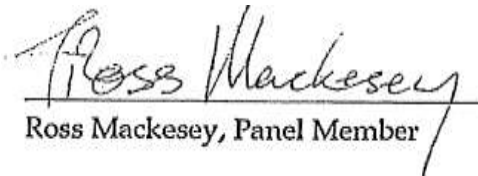
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Scott Bryson, Vice Chair



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Theresa E. Barrett, Panel Member



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Ross Mackesey, Panel Member