

BOARD OF EDUCATION OF BALTIMORE COUNTY

ETHICS REVIEW PANEL

ADVISORY OPINION 19-03

This Advisory Opinion 19-03 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 Opinion regarding the following situation. The Applicant is a School System employee who serves on an Advisory Board of a University. One of the Advisory Board’s projects is reviewing the work generated by an Institute that is part of the University. There is a federal grant project that is a partnership between the University and another Maryland public School System. The Applicant, and other members of the Advisory Board, were asked to review the curriculum of the other School System and it was determined that a comprehensive re-write of the curriculum was needed. The University and that School System have requested to utilize the Applicant as a paid contractor to modify the curriculum. The work would be performed outside of BCPS using resources provided by the other School System and the University. The resulting work product would be unique to the other School System and would not replicate the BCPS curriculum. The Applicant participates with the Advisory Board on his own time and receives compensation for that participation. The Applicant will be paid on an hourly rate for the services rendered for the curriculum writing.

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 the employee participating in the project 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. It is not clear whether the payment to the Applicant will come from the University, from the grant, or from the other School System. However, even assuming that the compensation comes from the University and that the University is an entity with contracts with BCPS, it appears that the payment to the Applicant 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 Applicant will be providing a service to the other School System, and the payments are not "without consideration."

Additionally, the Panel assumes that the Applicant is not directly involved in the procurement process that resulted in any contracts between BCPS and the University, or in the administration of those contracts. Therefore, it would appear that his "impartiality and independence of judgment" would not be a part of the contracting process with the University.

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 Applicant is not part of the procurement process and is not involved in the administration of any contract between BCPS and the University. Therefore, although employment by the University, or its Institute, which has contracts with BCPS could be a conflict of interest, the Panel concludes that the consulting services described by the Applicant would not create an actual or perceived conflict of interest.

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 Applicant is receiving “private gain” as a result of his position with BCPS, 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, this Panel found no violation of the Ethics Code when teachers serve, for compensation, as AP exam readers. (See Advisory Opinion 18-03). Furthermore, the Panel is unaware of any BCPS policy prohibiting teachers from being employed as adjunct faculty members at the college or university level. The Applicant has indicated that the project will be done outside of BCPS, using resources provided by the University and the other School System. In addition, the revisions to the curriculum would be unique to the other School System and would not be a replication of the BCPS curriculum. As long as the Applicant is working on his own time on the curriculum project and is not being paid by BCPS at the same time he is working on the project, the Panel concludes that there is not a violation of the prestige of office provision.

CONCLUSION

The Panel concludes that based upon the information provided by the Applicant, there is no violation of any provision of the Ethics Code in the situation where the Applicant is serving as a paid consultant writing curriculum, on his own time, for another public School System, as part of his participation on a University Advisory Board.

This opinion has been signed by the Ethics Review Panel members and adopted on October 17, 2019.

T. Ross Mackesey, Chair
Ralph Sapia, Esq., Panel Member
Tim Topoleski, Panel Member

Samuel Johnson, Vice Chair
Joseph Schnitzer, Esq., Panel Member