

## Advisory Opinion 22-08

This advisory opinion is in response to a request from the [REDACTED] “requesting a determination by the Ethics Review Panel regarding a practice currently carried out by one of the Pre-qualified Before and After Care providers.”

The request states:

Hot Spots is the not-for-profit division of Celebree Childcare. Hot Spots provides before and after school childcare in many of our elementary schools. It has come to my attention that this provider is also donating approximately \$3,000 to each of their awarded schools on an annual basis. The funds are used at the discretion of the administration at the school. Anecdotally I understand the funds are used for events and products for the entire student body. While I applaud the commitment toward being a part of the school community, this has created an ethical concern.

Principals are part of the evaluation team that decides which childcare provider will be selected for their school. They hold one of five votes on the committee. I have been informed by one of the competing providers that they received a call from a principal asking what would be offered if their company was selected. The fact that this call was received prior to a final award was issued (i.e. no decision had been announced) calls the evaluation for this specific school into question. I believe that principals are swaying the decision of the evaluation committee based on the availability of these additional donation funds, which the other not-for-profit vendors are not able to support.

At this time I would ask for a determination whether the practice of any child care vendor making a donation to individual schools should be discontinued.

This request for an advisory opinion implicates two issues, namely, the applicability of the Ethics Code to vendors and the applicability of the Ethics Code to school Principals. As to vendors, in Advisory Opinion 22-07, wherein a vendor proposed sponsoring a luncheon for school officials, we stated that the gift restrictions in the Ethics Code did not apply to the vendor. The current request for an advisory opinion presents a somewhat different issue. Here, the vendor has been making monetary donations to schools, as opposed to school officials.

In this regard, section III.F of Policy 8362, *Gifts*, states that:

- F. The Board encourages the formation of partnerships between schools and businesses and recognizes that these relationships frequently include gifts of money and/or property to schools and offices that enhance the educational programs of students. The following shall apply to gifts to schools and offices:
  - 1. All gifts shall be accepted in the name of the Board.
  - 2. All gifts will become the property of the Board and may be designated by the Board for use in a particular school or office.
  - 3. Gifts to schools and offices shall meet the criteria outlined in paragraph IV.

Section IV of Policy 8362, *Gifts*, referenced above, also addresses gifts to schools and offices and provides as follows:

IV. Gifts of Money or Property to Schools and Offices

- A. To be acceptable, a gift of money or property to a school or office shall meet the following criteria. The gift of money or property will:
  - 1. Have a purpose consistent with those of the Board of the school system;
  - 2. Be offered by a donor acceptable to the Board of the school system;
  - 3. Be manageable by existing staff;
  - 4. Not begin a program with the assumption that the Board will take over if the funds are exhausted;
  - 5. Place no restrictions on the school program;
  - 6. Be appropriate to the best education of students;
  - 7. Not imply endorsement of any business or product;

8. Not carry an excessive cost of maintenance or installation;
  9. Be consistent with the provisions of Board policies, Superintendent's Rules, school system procedures and applicable federal and state laws and regulations.
- B. When installation of a gift is required, the gift will be installed under the supervision of personnel of the Board. The Board is under no obligation to replace the gift if it is destroyed or becomes worn out.
  - C. Any gift presented must be accompanied by a document of intent from the donor for official action and recognition.
  - D. The school principal or office head shall send the donor a letter of appreciation.

Thus, these provisions, subject to the restrictions noted, contemplate gifts of money or property to schools by businesses and does not appear to exclude vendors doing business with the school system. Accordingly, subject to the above restrictions, the Panel advises that the practice of the childcare vendor in making donations to individual schools is permissible under Policy 8362, *Gifts*.

The request for an advisory opinion also notes that a school Principal contacted a competing childcare provider during the procurement process and asked what would be offered if the potential provider was selected. Such a statement could be construed as a solicitation for a gift, which is prohibited by Policy 8362, III.A. ("A school official may not solicit any gift.") Accordingly, the Panel recommends that the Principal be advised of the prohibition on soliciting gifts, regardless of whether the gift is for their school or BCPS generally. This is especially true where the gift is sought from a person or entity that is doing business, or seeks to do business, with the school system. If Principals are unclear on the gift restrictions set forth in the Ethics Code for a particular matter, they are encouraged to seek an advisory opinion from this Panel.

The Panel would like to express its appreciation for this request for an advisory opinion and the requestor's sensitivity to the ethical considerations which generated the request.

This Advisory Opinion has been adopted by the Ethics Review Panel members on September 15, 2022.

Tim Topoleski, Ph.D.  
Chair

Thomas Keech, Esq.  
Vice Chair

Owen Jarvis, Esq.  
Panel Member

Ralph Sapia, Esq.  
Panel Member

Cynthia Boyd, M.D. M.P.H.  
Panel Member