

BOARD OF EDUCATION OF BALTIMORE COUNTY

Ethics Review Panel

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TO: Principals and Office Heads

FROM: Ethics Review Panel

DATE: October 1, 2004

RE: Advisory Opinion 04-05

At its September 23, 2004, meeting, the Ethics Review Panel adopted Advisory Opinion 04-04 in response to an application received from a petitioner.

In compliance with Ethics Code Policy 8363, "any Board member, employee, volunteer, or other person subject to the provisions of the policies of the Ethics Code may request that the Ethics Review Panel issue an advisory opinion concerning the applications of these policies." In an effort to keep individuals abreast of the Panel's interpretations of the Ethics Code policies, please share this information with your staff.

Consistent with the Panel's rules of procedure, you will note the deletion of the petitioner's name and any personally identifiable information in order to ensure anonymity. As subsequent advisory opinions are issued, they will be made available through Outlook.

If you or members of your staff have any questions, please contact Risa Schuster, Administrative Liaison to the Ethics Review Panel, at 4138.

BOARD OF EDUCATION OF BALTIMORE COUNTY

ETHICS REVIEW PANEL

ADVISORY OPINION 04-05

This Advisory Opinion 04-05 is in response to a request made by the Petitioner, an employee of the Baltimore County Public Schools ("BCPS"), inquiring as to whether a conflict of interest would exist in the event that a former BCPS clinical social worker, who resigned one year ago from the BCPS, wishes to enter into an "In-School Community Partnership to provide mental health services to families and children by charging a fee to the parents' health insurance." The Petitioner states in the Application for an Advisory Opinion that the former BCPS employee provided the same services to the families and children while employed by the BCPS.

Policy 8363 of the Ethics Code addresses conflicts of interest.

ETHICS CODE: Conflict of Interest

Section 8363(1)

Board members, employees, and volunteers shall not participate on behalf of the school system in any matter which would, to their knowledge, have a direct financial impact, as distinguished from the public generally, on them, their spouse, dependent child, ward, parent, or other who shares the Board member's, employee's, or volunteer's legal residence or a business entity with which they are affiliated.

1. Outside Employment

(a) Board members, employees, and volunteers may not participate in outside employment if the work:

- is incompatible with the proper performance of official duties*
- impairs the impartiality or independence of judgment or action of the employee*
- affects the performance of the employee.*

(b) A person engaged in outside employment may not:

- benefit from business with the school system or from relationships with students*
- represent any party before the school system*
- use confidential information acquired in his or her official school system position for personal benefit or that of another.*

(c) Any employee with instructional responsibility shall not tutor, for compensation, any student whom he or she is currently teaching.

2. Stock Ownership

(a) A Board member or employee may own stock in an entity that does business with the Board of Education as long as the individual is not in a position of influence with a publicly-traded company and if the individual is not in a school system position which can benefit the company.

(b) A Board member or employee may not hold a position of influence in a non-stock company that does business with the Board of Education (including, but not limited to, a partnership or a limited liability corporation).

3. Exception

The prohibitions listed in sections 1(a-b) and 2(a-b) of this policy do not apply to individuals appointed to the Board who hold an employment or financial interest when appointed if the employment or financial interest is publicly disclosed to the appointing authority and the Ethics Review Panel.

4. Political Activity

(a) *Affirmation of Political Rights*

The Baltimore County Public Schools recognize the rights of Board members, employees, and volunteers to participate in political and governmental affairs in the manner afforded all other citizens: the right to vote, the right to be an active member of a political party, the right to campaign for election to public office, and the right to seek, campaign for, and serve in public office.

(b) *Restrictions*

- *The political activities of any employee or volunteer seeking or holding public office or campaigning for a political candidate must be conducted outside the workplace and outside working hours.*
- *An employee or volunteer must refrain from exploiting the privilege of his or her position.*
- *An employee or volunteer must not involve students in political activities for him or herself or for any party, candidate, or political issues which the person is promoting.*

(c) *Prohibited Activities*

The following activities are specifically prohibited on property under the jurisdiction of the Board, except by guidelines established by the Board and bargaining units:

- *posting of political circulars or petitions*
- *the use of any school or office stenographic help, telephones, supplies, or equipment.*

5. Royalties/Personal Gain

(a) *No royalties will be paid to employees or volunteers for textbooks, instructional materials, or programs written or produced during working hours.*

(b) *No Board member, employee, or volunteer, will be permitted to use--for commercial purposes--any photographs or information--including test scores and other confidential data--gained through his*

or her position unless prior approval is provided in writing from the Superintendent of Schools.

- (c) *No Board member, employee, or volunteer will be permitted to compile lists of students' and/or parents' names, addresses, phone numbers, or related information available through his or her position for any other person or commercial enterprise unless the compilation of such data has been approved in writing by the individual's supervisor and serves a valid educational purpose and only as permitted by the provisions of the Annotated Code of Maryland, State Government Article, 10-611 et seq.*

6. Prohibitions

- (a) *No Board member or employee shall:*

- *represent any party, for a contingent fee, before or involving the Board of Education*
- *act as a compensated representative of another party in connection with a case, contract, or any specific matter in which he or she participated substantially as a Board member or employee, within one (1) year following termination of service to the school system*
- *use the prestige of office for personal benefit or that of another*
- *use confidential information acquired in an official school system position for personal benefit or that of another.*

- (b) *An employee may not be in a position that directly supervises, evaluates, or disciplines an immediate family member. An employee may not use his or her position to benefit an immediate family member.*

The Petitioner asked three (3) specific questions which were examined by the Panel, and the Panel concluded as follows with respect to each question:

1. Q. “Can some parents be charged for services that the school system formerly had the same individual provide at no cost to parents?”
 - A. The Panel cannot answer this question as it does not have jurisdiction to determine whether or not such a practice would be in compliance with the BCPS’ policies and procedures. This question does not raise an ethical issue that would violate any provision of the Ethics Code.
2. Q. “Is that former employee and the school administrator using the advantage of the previous employment for financial gain? Is there an explicit conflict of interest?”
 - A. The Panel does not have sufficient information to determine whether there is a conflict of interest, based upon the facts presented. The Panel has not

been provided information that would lead it to conclude that the situation, as presented, would result in personal financial gain that would violate the terms of the Ethics Code. The limited facts presented state the former employee resigned from employment with the BCPS one (1) year ago (the Application was received on August 6, 2004). Section 8363 (6)(a) of the Ethics Code which sets forth prohibitions regarding the ability of former employees “to act as a compensated representative of another party in connection with a case, contract, or any specific matter in which he or she participated substantially as a Board member or employee”, applies only for a period of one (1) year following the termination of service to the BCPS. Therefore, since the former employee resigned more than one (1) year ago, there is no conflict of interest under the Ethics Code, based upon the limited facts known to the Panel at the time of this Opinion.

3. Q. “With reference to Policy 8363, #6A, in which former employees must have a one year elapse of employment in order to enter into contract with the Board of Education, is there any specificity in terms of the setting that a former employee may pursue their business interest? In other words, does it matter where the former employee works in the school system and whether currently employed school system personnel are engaged in recruiting for the former employee’s business in the same school community in which the employee worked for the Board of Education?”
 - A. No, the Ethics Code does not specifically place any restrictions on the capacity or the setting in which former employees may conduct business with the BCPS after the one (1) year restricted period expires. Since the Ethics Code affirmatively prohibits a former employee’s provision of services for compensation which involve “a case, contract, or any specific matter in which he or she participated substantially as a Board member or employee” for a period of one (1) year after the termination of service to the BCPS, and the Ethics Code does not contain restrictions for any periods after the conclusion of the one (1) year, it is implied that no such restrictions apply.

The Ethics Panel has concluded that this business relationship, as presented, does not violate the Ethics Code. Any question(s) as to whether it violates the BCPS’ policies and/or procedures should be referred to the appropriate unit of the BCPS.

This Advisory Opinion has been signed by the Ethics Review Panel members and adopted on September 23, 2004.

Meryl D. Burgin, Esq., Chair
Karen Strand, RN, Vice Chair
Donald A. Gabriel, Ph.D., Panel Member

Raymond A. Hein, Esq., Panel Member
Roland Unger, CPA, Panel Member