

## Advisory Opinion 23-09

This advisory opinion is in response to your request, [REDACTED] regarding the permissibility of BCPS employees [REDACTED] engaging in secondary employment with [REDACTED] a company that has a contract with BCPS, during time periods the BCPS employees are not receiving their regular pay.

You shared the following information along with your advisory opinion request:

- For about twenty (20) years, [REDACTED] has had multiple contracts with the BCPS to provide curriculum, professional learning, direct support for teachers, counselors, and administrators, and access to learning tools and resources that support college and career readiness for students at every grade level.
- Some BCPS educators who qualify [REDACTED] engage in secondary employment with [REDACTED] to facilitate Communities of Practice across the country [REDACTED]. [REDACTED] compensates BCPS [REDACTED] Staff Developers for their preparation, travel, and work time associated with their employment.
- 12-month BCPS employees take their vacation time to participate [REDACTED] and 10-month BCPS employees attend [REDACTED] during non-work time.
- Because multiple BCPS employees [REDACTED] and can provide training [REDACTED] to BCPS employees, the school system saves thousands of dollars in training costs.
- [REDACTED] you manage [REDACTED] within the BCPS, but you do not influence BCPS' contracting [REDACTED]. No current [REDACTED] Staff [REDACTED] who has secondary employment [REDACTED] impacts the awarding of BCPS' contract [REDACTED].
- As of August, 2023, you do not have any pending secondary employment [REDACTED]
- [REDACTED] trained educators remain in the profession at a higher-rate than non-[REDACTED] trained teachers.

The Panel also took notice of the following facts found in multiple documents published on the BCPS website in its review of your request for this advisory opinion: (1) Board of Education (Board) contract renewals [REDACTED] and (2) BCPS' [REDACTED] press release regarding [REDACTED] BCPS employees chosen to serve [REDACTED] [REDACTED].

- [REDACTED] the Board approved a sole-source procurement contract [REDACTED] for a three year-period. The contract was extended on multiple occasions, [REDACTED]

- [REDACTED] Teachers provide professional learning for, and co-plan and co-teach lessons [REDACTED] in all content areas schoolwide.

- [REDACTED] the Board voted to modify the BCPS contract [REDACTED] to provide for continued and expanded use [REDACTED] in BCPS elementary and secondary schools.

- [REDACTED] BCPS implemented [REDACTED] at 56 sites: 11 elementary, 24 middle, and 22 comprehensive high schools reaching more than 7,000 students.

- [REDACTED] students in Grades 6-12, who are identified as “students in the academic middle” [REDACTED] have higher attendance rates, and enter advanced courses at a faster pace than their [REDACTED] peers. According to [REDACTED] data [REDACTED], 100 percent of [REDACTED] seniors in Maryland graduate from high school and 78 percent are accepted to four-year colleges.

- [REDACTED] professional learning system benefits both beginning and experienced educators, and trainings cover all core content areas and all grade levels [REDACTED]

- BCPS educators have served [REDACTED] since 2008. [REDACTED] seven BCPS educators [REDACTED] were selected to serve [REDACTED] which take place between June and August in 12 different cities, to facilitate professional learning workshops.

### CONFLICT OF INTEREST

The relevant sections<sup>1</sup> of the Board of Education’s Ethics Code provide as follows:

<sup>1</sup> The Panel did not consider Policy 8362’s prohibitions on BCPS employees accepting gifts [REDACTED] because the compensation you receive is not a transfer of anything of economic value “without adequate and lawful consideration.” In addition, because you are not involved in the procurement process that resulted in

Policy 8360, *Ethics Code – Applicability and Definitions*

I. Applicability

The Ethics Code of the Board of Education of Baltimore County (Board) applies to members of the school Board, candidates to be members of the school board, the Superintendent, and employees.

Policy 8363, *Conflict of Interest – Prohibited Conduct*

II. Definitions

D. School Official – Each member of the Board of Education of Baltimore County, the Superintendent, and school system employees.

IV. 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 in Paragraph IV(A) 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:

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the Board's contract [REDACTED] or that may result in modification of said contract, your "impartiality and independence of judgment" would not be a part of the contracting process [REDACTED]

- 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.

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ANALYSIS

The Panel notes that the express language of Policy 8363 prohibits your secondary employment with [REDACTED], a business entity that has a contract with BCPS, except under narrowly defined exceptions.

You indicate in your request that you supervise the [REDACTED] program in BCPS, which currently provides services to 7,000 students. Accordingly, the Panel does not believe your duties are ministerial. Therefore, the exception in Section 2(B)(1) does not apply.

Because you are not a Board member, the exception in Section 2(B)(2) does not apply.

Section 2(B)(3) identifies a third exception to Policy 8363's general prohibition on the secondary employment - if the Panel determines the unique circumstances of the employment do not create a conflict of interest or the appearance of a conflict of interest<sup>2</sup>. In considering this issue, the members of the Panel expressed the following concerns:

- When the Board agreed to renew the [REDACTED] contract [REDACTED] did it know that some BCPS employees were engaging in secondary employment [REDACTED] [REDACTED]?
- Whether it may appear that the Board entered into the contract [REDACTED] knowing that it may provide additional employment opportunities for BCPS employees?
- Whether a conflict of interest or the appearance of a conflict of interest may arise in the future if you engage in secondary employment [REDACTED] and BCPS has a dispute with [REDACTED] over performance of the long-term contract?

During the Panel's consideration of the above questions it reviewed prior Advisory Opinions issued to BCPS employees who sought or held secondary employment with an organization that had a current contract with the Board. For example, the Panel reviewed Advisory Opinion 18-03, which concluded it was permissible for BCPS teachers to engage in secondary

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<sup>2</sup> Because Policy 8363, Section 2(B)(3) describes a narrow case-by case analysis by the Panel, this opinion is limited to your request concerning your secondary employment [REDACTED].

employment [REDACTED]. The Board had an existing contract with [REDACTED] those BCPS [REDACTED] teachers hired [REDACTED] received a stipend for their work and reimbursement for travel and lodging costs. In Advisory Opinion 18-03, the secondary employment did not create a conflict of interest or the appearance of a conflict of interest because, in part, the teachers who participated in the [REDACTED] program gained professional knowledge that supported their classroom instruction and thereby benefited BCPS students. This Panel notes that you and BCPS have indicated that your participation and that of other BCPS employees [REDACTED] greatly benefits the school system.

Moreover, in Advisory Opinion 18-03, the teachers' secondary employment [REDACTED] did not violate the Ethics Code because none of the BCPS employees were involved in the procurement process [REDACTED] or involved in the administration of any Board contracts [REDACTED]. This Panel notes that while you supervise BCPS staff who provide [REDACTED] to approximately 7,000 students, and your supervisor handles the [REDACTED] contract and is a signatory on that contract, you "do not influence the contracting [REDACTED]."

The Panel also reviewed Advisory Opinion 22-04, which concluded that a BCPS employee's secondary employment on an advisory board for a grant funded study conducted [REDACTED] with whom BCPS had a contract regarding a mathematics program, was permissible under the Ethics Code. The Advisory Opinion's conclusion was based in part on the fact that BCPS had elected to participate in this grant-funded study, thereby reflecting BCPS' interest in the study, and that the BCPS staff member's participation on the advisory board would align with BCPS' interests in the study rather than create a conflict of interest or an appearance of a conflict of interest. This Panel notes that the Board entered into a contract [REDACTED] and voted to renew the contract on at least six occasions over the last twenty-one years, and [REDACTED] is utilized across all academic levels and provides substantial benefit to participating BCPS personnel and students. Additionally, this Panel notes that your paid participation [REDACTED] is aligned with BCPS' interest in providing professional development to teachers who implement [REDACTED] in their respective classrooms.

In Advisory Opinion 22-04, the BCPS employee also was reminded that he needed to utilize his own leave or personal time when performing his duties as a member [REDACTED] and ensure he did not utilize BCPS materials or equipment in furtherance of his work [REDACTED] to avoid violating the Code of Ethics. This Panel notes that you have represented that your secondary employment [REDACTED] occurred during your leave periods [REDACTED], you do not receive any additional compensation [REDACTED] to train BCPS employees during the school year, and you did not utilize BCPS materials when presenting to attendees [REDACTED].

In Advisory Opinion 22-04, the BCPS employee was advised to seek a further advisory opinion should the employee anticipate any material changes to their service [REDACTED]. This Panel notes that you do not currently influence the procurement process [REDACTED] but that your immediate supervisor may participate in the contract procurement process [REDACTED]; have some influence over decision making regarding the [REDACTED] contract. Accordingly, this Panel encourages you to seek further advisory opinion should you experience any material changes in your employment with BCPS.

For the above reasons, this Panel concludes that it would not be a violation of Policy 8363, Conflict of Interest, for you to secure employment [REDACTED] in the summer of 2024 [REDACTED] provided that at that time you have no involvement in the Board's procurement process [REDACTED] and you have no involvement in the administration of any aspect of the Board's contract [REDACTED].

USE OF PRESTIGE OF OFFICE

The relevant sections of the Ethics Code, Policy 8363, *Conflict of Interest – Prohibited Conduct*, provide as follows:

VII. Use of Prestige of Office

A. A school official may not intentionally use the prestige of office or public position:

1. For private gain of that school official or the private gain of another; or
2. To influence, except as part of the official duties of the school official or as a usual and customary constituent service by a member of the Board without additional compensation, the award of a state or local contract to a specific person.

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ANALYSIS

During the Panel's analysis of your request, it reviewed prior Advisory Opinions issued to BCPS employees who held secondary employment with an external organization as a result of their positions as BCPS employees.

For example, in Advisory Opinion 18-03, where BCPS teachers who instructed students in AP classes received stipends from [REDACTED] serve as [REDACTED] it was determined that those teachers "clearly are receiving 'private gain' as a result of their positions as BCPS teachers." Similarly, you have and likely will receive private gain [REDACTED] [REDACTED] as a result of your position within the BCPS and your work [REDACTED] for a number of years.

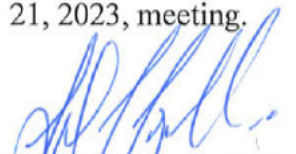
In Advisory Opinion 18-03, the teachers' earnings from the secondary employment with [REDACTED] were found not to violate the prestige of office prohibition in Policy 8363 because the teachers took appropriate leave of absence when they engaged in the secondary employment, and were not being paid by BCPS at the same time they worked for [REDACTED]. This Panel also notes that in multiple advisory opinions BCPS teachers who have earned money outside the school system directly related to their position as teachers were found not to have violated the prestige of office provision, such as Advisory Opinion 19-03, where no violation was found when a BCPS employee was paid to write curriculum for another school system; and Advisory Opinion 19-02, where a BCPS attorney was found not to violate the Ethics Code by receiving compensation to teach a school law course at a law school.

For the above reasons, even though your experience, knowledge, and background in the [REDACTED] program as a BCPS employee [REDACTED] the Panel does not believe you have improperly used the prestige of your office or position. And, as long as you are not using BCPS equipment, technology, or material, and are preparing for and working [REDACTED] during non-duty hours, the Panel concludes that there would not be a violation of the prestige of office provision.

#### LIMITATION


The Panel notes that employees, school officials, and board members who are involved in either the procurement process for the [REDACTED] contract or the administration of the [REDACTED] contract likely would violate the Code of Ethics if they were to participate in secondary employment [REDACTED].

This Advisory Opinion has been adopted by the Ethics Review Panel members at its September 21, 2023, meeting.

  
Tim Topoleski, Ph.D.  
Chair

  
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