

BALTIMORE COUNTY PUBLIC SCHOOLS

DATE: August 14, 2007

TO: **BOARD OF EDUCATION**

FROM: Dr. Joe A. Hairston

SUBJECT: **REQUEST FOR EXCEPTION TO ETHICS CODE POLICY 8363**

ORIGINATOR: Margaret-Ann F. Howie, Esq.
General Counsel

**RESOURCE
PERSON(S):** Mr. Roland Unger, Chair, Ethics Review Panel
Dr. Carol R. Batoff, Ombudsman and
Administrative Liaison to the Ethics Review Panel

RECOMMENDATION

That the Board of Education review and approve the Exception requested by the Ethics Review Panel.

In Advisory Opinions 07-06 and 07-08 (see attached), the Ethics Review Panel has asked the Board of Education to exercise its authority, pursuant to Board Policy 8366, to make “exceptions or modifications” to the Ethics Code. The Panel has asked for such an exception with respect to Ethics Code Policy 8363 (Conflict of Interest). Specifically, the Panel deems the employment of school personnel by vendors providing before- and after-school childcare in school buildings to be a violation of the Code.

However, because the Panel has opined that its determination would “significantly limit the availability of public service providers,” an exception is requested.

**BOARD OF EDUCATION OF BALTIMORE COUNTY
ETHICS REVIEW PANEL**

**ADVISORY OPINION 07-06 and
ADVISORY OPINION 07-08**

This Advisory Opinion 07-06 is in response to a request made by Petitioner, an employee of Baltimore County Public Schools (BCPS), inquiring as to whether it is permissible for a BCPS employee to serve as an employee of a before- and after-school childcare program located in many of the schools throughout the BCPS system.

Advisory Opinion 07-08 is in response to a request made by Petitioner, a vendor, and Petitioners, employees of Baltimore County Public Schools (BCPS), inquiring as to whether it is permissible for a BCPS employee to serve as an employee of a before- and after-school childcare program located in many of the schools throughout the BCPS system.

The issue(s) in these requests for advisory opinions are identical and therefore the Advisory Opinions will be combined as one Opinion.

The relevant section(s) of the Ethics Code are as follows:

ETHICS CODE: Conflict of Interest (Section 8363)

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.*

ETHICS CODE: Ethics Review Panel (Section 8366)

2. Role of the Ethics Review Panel

- (a)(i) *The Ethics Review Panel shall serve as an advisory body to the Board of Education of Baltimore County.*
- (ii) *The Ethics Review Panel shall be responsible for interpreting this Ethics Code and advising persons subject to these policies as to their applications.*
- (b)(i) *The Ethics Review Panel shall be responsible for accepting, hearing, or initiating any complaints as deemed necessary in accordance with these policies. The Ethics Review Panel shall provide hearings in accordance with the Board's currently adopted Policy 8339 (Appeal Before Hearing Examiner).*
- (ii) *The Ethics Review Panel will provide the opportunity for a hearing on any complaint deemed viable, after a review, regarding an alleged violation of these Ethics policies.*
- (iii) *The Ethics Review Panel shall issue a written report on each case heard to the Board of Education.*
- (iv) *From the time a complaint is filed until there is a final determination by the Board of Education of Baltimore County, all actions and information shall be treated as confidential, in accordance with the laws of the State of Maryland.*
- (c) *The Ethics Review Panel shall recommend exceptions or modifications to the provisions of these Ethics policies if it is determined that there would be an unreasonable invasion of privacy, that there would be a significant reduction of the availability of qualified individuals for public service, and if it is deemed not necessary to preserve the purposes of these Ethics policies. Recommendations for exceptions are not approved or rejected until the Board acts.*

The matter before the Ethics Panel is whether a BCPS employee may work in a before- or after-school childcare program located in a Baltimore County public school. Due to the nature of these services, it is probable that such activity would be found by the Ethics Panel to be a violation of Ethics Code Section 8363.

The Ethics Panel understands that these activities are pervasive and widespread throughout the BCPS system and that valuable services are being provided to students and parents by BCPS employees who have a sound record of providing services to children. Furthermore, these programs have existed in the BCPS system for many years.

It is the feeling of Panel members that finding these services to be in violation of the Ethics Code would severely limit the availability of persons to staff these before- and after-school programs, causing a significant shortage of persons available to provide such services. Ethics Code Section 8366 provides that the Panel may elect to recommend exceptions in cases where an opinion might significantly limit the availability of public service providers.

Therefore, the panel recommends to the Board of Education of Baltimore County (Board) that an exception to Ethics Code Section 8363 be made in cases involving before- and after-school programs of the kind administered by the vendor. During the period that the Board considers this exception, the Panel will refrain from issuing an advisory opinion related to both these requests, and any ongoing activity related to programs as herein mentioned shall not be considered a violation of the Ethics Code.

This recommendation for exception does not preclude the Panel from finding, in other specific instances involving the before- and after-school programs or other similar programs, that there are violations of the Ethics Code based on different statements of fact or circumstances.

This opinion has been signed by the Ethics Panel members and adopted on July 19, 2007.

Roland L. Unger, CPA, Chair

ABSENT

Mary C. Burke, LCSW-C, BCD, Vice Chair

Meryl D. Burgin, Esq., Panel Member

Raymond A. Hein, Esq., Panel Member

Janel D. Sexton, M.A., Ph.D., Panel Member