

BALTIMORE COUNTY PUBLIC SCHOOLS

DATE: December 6, 2011

TO: **BOARD OF EDUCATION**

FROM: Dr. Joe A. Hairston, Superintendent

SUBJECT: **CONSIDERATION OF THE PROPOSED CHANGES TO BOARD OF EDUCATION POLICY 8363 - PROHIBITED CONDUCT**

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

RESOURCE PERSON(S): Patricia Clark, Policy and Compliance Officer
Andrew W. Nussbaum, Esquire, Counsel to the Board of Education

RECOMMENDATION

That the Board of Education approves the proposed changes to Policy 8363.
This is the third reading.

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Attachment I – Policy Analysis
Attachment II – Policy 8363

**POLICY ANALYSIS FOR
REVISIONS TO THE BOARD OF EDUCATION’S ETHICS CODE POLICIES
POLICY 8360, *APPLICABILITY AND DEFINITIONS*
POLICY 8361, *STATEMENT OF PURPOSE AND POLICY*
POLICY 8362, *GIFTS*
POLICY 8363, *CONFLICT OF INTEREST – PROHIBITED CONDUCT*
POLICY 8364, *FINANCIAL DISCLOSURE STATEMENTS*
POLICY 8365, *LOBBYING*
POLICY 8366, *ETHICS REVIEW PANEL***

Statement of Issues or Questions Addressed

In 2010, the General Assembly enacted legislation designed to subject members of county boards of education to conflict of interest standards and financial disclosure requirements that are at least equivalent to the State’s requirements for State officials and public officials. The State Ethics Commission issued revised Board of Education Ethics regulations that became effective on April 18, 2011. All county boards of education are required to bring their ethics codes into compliance with the new law and to provide notice to the State Ethics Commission of their progress towards enactment by October 1, 2011.

All policies were edited to conform with the State Ethics Commission’s MODEL BOARD OF EDUCATION ETHICS REGULATIONS and the Policy Review Committee’s editing conventions.

Some of the required changes include: additional reporting requirements for board members and board employees; more stringent lobbying guidelines; defining financial interests; clarifying post-Board service employment restrictions.

The Policy Review Committee is submitting the Ethics Code policies to the full Board for its consideration and action.

Cost Analysis and Fiscal Impact on School System

Because of the comprehensive nature of these revisions, the staff anticipates that education and training of employees, volunteers and consultants will be necessary to ensure compliance.

Relationship to Other Board of Education Policies

These policies form the basis of the Board’s expectations for employee ethical behavior and conduct.

Legal Requirements

1. *Annotated Code of Maryland, State Government Article §15-101, Legislative Findings; Policy; Liberal Construction*
2. *Annotated Code of Maryland, State Government Article §§15-811 to 15-815, Local Boards of Education*
3. *COMAR 19A.05, Board of Education Regulations*

Similar Policies Adopted by Other Local School Systems

1. CALVERT COUNTY BOARD OF EDUCATION
Policy Number 1740, *Ethics*
Policy Number 1740.1, *Definitions*
Policy Number 1740.2, *Ethics Panel*
Policy Number 1740.3, *Conflict of Interest and Outside Employment*
Policy Number 1740.4, *Gifts*
Policy Number 1740.5, *Lobbying Disclosure*
<http://www.calvertnet.k12.md.us/departments/administration/policies/policies.asp>
2. CARROLL COUNTY BOARD OF EDUCATION
Policy Number BC, *Ethics*
<http://www.boarddocs.com/mabe/ccps/Board.nsf/Public>
3. FREDERICK COUNTY BOARD OF EDUCATION
Policy Number 109, *Ethics*
Policy Number 109.1, *Definitions*
Policy Number 109.3, *Prohibited Conduct and Interest*
Policy Number 109.4, *Financial Disclosure*
Policy Number 109.5, *Lobbying Disclosure*
<http://fcps.schoolwires.com/152910821132356427/site/default.asp>
4. HOWARD COUNTY BOARD OF EDUCATION
Policy Number 2070, *Ethics*
<http://www.hcpss.org/board/policies/>
5. MONTGOMERY COUNTY BOARD OF EDUCATION
Policy Number BBB, *Ethics*
<http://www.mcps.k12.md.us/departments/policy/>
6. PRINCE GEORGE'S COUNTY BOARD OF EDUCATION
Board Policy 0107, *Ethics*
Board Policy 0107.1, *Ethics - Definitions*
Board Policy 0108, *Ethics Panel*
Board Policy 0109, *Conflict of Interest*
Board Policy 0111, *Board Financial Disclosure*
Board Policy 0112, *Lobbying Disclosure*
<http://www1.pgcps.org/generalcounsel/boardpolicies/bp0000.aspx>
7. WASHINGTON COUNTY BOARD OF EDUCATION
Policy Number BBF-E, *Code of Ethics for School Board Members*
Policy BDF-E, *Ethics Advisory Panel*
<http://www.boarddocs.com/mabe/wcps/Board.ns>

Draft of Proposed Policy

Attached

Other Alternatives Considered by Staff

No other alternatives were considered.

Timeline

First reading – October 25, 2011

Public comment – November 8, 2011

Third reading/vote – December 6, 2011

*The Ethics Code must be approved by the State Ethics Commission prior to adoption by the Board.

INTERNAL BOARD OPERATIONS: ETHICS CODE [:]

Conflict of Interest – PROHIBITED CONDUCT

I. POLICY STATEMENT

MEMBERS OF THE BOARD OF EDUCATION OF BALTIMORE COUNTY (BOARD), THE SUPERINTENDENT, EMPLOYEES, CONSULTANTS, AND VOLUNTEERS (HEREINAFTER, “SCHOOL SYSTEM OFFICIAL”) [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 IMMEDIATE FAMILY, [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.

II. PARTICIPATION

- A. EXCEPT AS PERMITTED BY BOARD POLICIES OR IN THE EXERCISE OF AN ADMINISTRATIVE OR MINISTERIAL DUTY THAT DOES NOT AFFECT THE DISPOSITION OR DECISION IN THE MATTER, A SCHOOL SYSTEM OFFICIAL MAY NOT PARTICIPATE IN:
1. ANY MATTER IN WHICH, TO THE KNOWLEDGE OF THE SCHOOL SYSTEM OFFICIAL, THE OFFICIAL OR A QUALIFIED RELATIVE OF THE OFFICIAL HAS AN INTEREST;
OR
 2. ANY MATTER IN WHICH ANY OF THE FOLLOWING IS A PARTY:
 - a. A BUSINESS ENTITY IN WHICH THE OFFICIAL HAS A DIRECT FINANCIAL INTEREST OF WHICH THE OFFICIAL MAY REASONABLY BE EXPECTED TO KNOW;
 - b. A BUSINESS ENTITY FOR WHICH THE SCHOOL SYSTEM OFFICIAL OR A QUALIFIED RELATIVE OF THE OFFICIAL IS AN OFFICER, DIRECTOR, TRUSTEE, PARTNER, OR EMPLOYEE;

- c. A BUSINESS ENTITY WITH WHICH THE SCHOOL SYSTEM OFFICIAL OR, TO THE KNOWLEDGE OF THE OFFICIAL, A QUALIFIED RELATIVE OF THE OFFICIAL IS NEGOTIATING OR HAS ANY ARRANGEMENT CONCERNING PROSPECTIVE EMPLOYMENT;
 - d. A BUSINESS ENTITY THAT IS A PARTY TO AN EXISTING CONTRACT WITH THE SCHOOL SYSTEM OFFICIAL OR WHICH, TO THE KNOWLEDGE OF THE OFFICIAL, A QUALIFIED RELATIVE OF THE OFFICIAL, IF THE CONTRACT REASONABLY COULD BE EXPECTED TO RESULT IN A CONFLICT BETWEEN THE PRIVATE INTERESTS OF THE OFFICIAL AND THE SCHOOL SYSTEM OR BOARD DUTIES OF THE OFFICIAL;
 - e. AN ENTITY, DOING BUSINESS WITH THE BOARD OR SCHOOL SYSTEM, IN WHICH A DIRECT FINANCIAL INTEREST IS OWNED BY ANOTHER ENTITY IN WHICH THE SCHOOL SYSTEM OFFICIAL HAS A DIRECT FINANCIAL INTEREST, IF THE OFFICIAL MAY BE REASONABLY EXPECTED TO KNOW OF BOTH DIRECT FINANCIAL INTERESTS; OR
 - f. A BUSINESS ENTITY THAT THE SCHOOL SYSTEM OFFICIAL KNOWS IS A CREDITOR OR OBLIGEE OF THE OFFICIAL OR A QUALIFIED RELATIVE OF THE OFFICIAL WITH RESPECT TO A THING OF ECONOMIC VALUE; AND AS A CREDITOR OR OBLIGEE, IS IN A POSITION TO DIRECTLY AND SUBSTANTIALLY AFFECT THE INTEREST OF THE SCHOOL SYSTEM OFFICIAL OR QUALIFIED RELATIVE OF THE OFFICIAL.
- B. A SCHOOL SYSTEM OFFICIAL WHO IS DISQUALIFIED FROM PARTICIPATING UNDER PARAGRAPH A OF THIS SECTION SHALL DISCLOSE THE NATURE AND CIRCUMSTANCES OF THE CONFLICT AND MAY PARTICIPATE OR ACT IF:
- 1. THE DISQUALIFICATION LEAVES THE BOARD OR SOME OTHER BOARD-APPOINTED BODY WITH LESS THAN A QUORUM CAPABLE OF ACTING;
 - 2. THE DISQUALIFIED OFFICIAL IS REQUIRED BY LAW TO ACT; OR

3. THE DISQUALIFIED OFFICIAL IS THE ONLY PERSON AUTHORIZED TO ACT.

C. THE PROHIBITIONS LISTED ABOVE DO NOT APPLY IF PARTICIPATION IS ALLOWED BY OPINION OF THE PANEL.

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 SYSTEM OFFICIAL MAY NOT:

1. BE EMPLOYED BY OR HAVE A FINANCIAL INTEREST IN AN ENTITY THAT IS SUBJECT TO THE AUTHORITY OF THE BOARD OR SCHOOL SYSTEM;
2. HAVE A FINANCIAL INTEREST IN OR MAINTAIN SECONDARY EMPLOYMENT WITH A BUSINESS ENTITY THAT IS NEGOTIATING WITH OR HAS ENTERED INTO A CONTRACT WITH THE BOARD OR SCHOOL SYSTEM; OR
3. HOLD ANY OTHER EMPLOYMENT RELATIONSHIP THAT WOULD IMPAIR THE IMPARTIALITY OR INDEPENDENCE OF JUDGMENT OF THE OFFICIAL.

B. THE PROHIBITION DESCRIBED ABOVE DOES NOT APPLY TO:

1. A SCHOOL SYSTEM 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 WAS PUBLICLY DISCLOSED TO THE APPOINTING AUTHORITY AND THE PANEL AT THE TIME OF APPOINTMENT; OR

3. EMPLOYMENT OR FINANCIAL INTERESTS ALLOWED BY OPINION OF THE 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.

IV. POST-EMPLOYMENT

A FORMER SCHOOL SYSTEM OFFICIAL MAY NOT ASSIST OR REPRESENT ANY PARTY OTHER THAN THE BOARD OR SCHOOL SYSTEM FOR COMPENSATION IN A CASE, CONTRACT, OR OTHER SPECIFIC MATTER INVOLVING THE BOARD OR THE SCHOOL SYSTEM IF THAT MATTER IS ONE IN WHICH THE FORMER OFFICIAL SIGNIFICANTLY PARTICIPATED WHILE A SCHOOL SYSTEM OFFICIAL.

V. CONTINGENT COMPENSATION

EXCEPT IN A JUDICIAL OR QUASI-JUDICIAL PROCEEDING, A SCHOOL SYSTEM OFFICIAL MAY NOT ASSIST OR REPRESENT A PARTY FOR CONTINGENT COMPENSATION IN ANY MATTER BEFORE OR INVOLVING THE BOARD OR SCHOOL SYSTEM.

VI. PRESTIGE OF OFFICE

A SCHOOL SYSTEM OFFICIAL MAY NOT INTENTIONALLY USE THE PRESTIGE OF OFFICE OR PUBLIC POSITION FOR PRIVATE GAIN OF THAT OFFICIAL OR THE PRIVATE GAIN OF ANOTHER. THIS SECTION DOES NOT PROHIBIT THE PERFORMANCE OF USUAL AND CUSTOMARY CONSTITUENT SERVICES BY A MEMBER OF THE BOARD WITHOUT ADDITIONAL COMPENSATION.

VII. DISCLOSURE OF CONFIDENTIAL INFORMATION

OTHER THAN IN THE DISCHARGE OF OFFICIAL DUTIES, A SCHOOL SYSTEM OFFICIAL MAY NOT DISCLOSE OR USE CONFIDENTIAL INFORMATION THAT THE OFFICIAL ACQUIRED BY REASON OF THE OFFICIAL'S POSITION AND THAT IS NOT AVAILABLE TO THE PUBLIC FOR THE ECONOMIC BENEFIT OF THE OFFICIAL OR THE ECONOMIC BENEFIT OF ANOTHER PERSON.

VIII. PROCUREMENT

- A. AN INDIVIDUAL OR PERSON THAT EMPLOYS AN INDIVIDUAL WHO ASSISTS THE BOARD OR SCHOOL SYSTEM IN THE DRAFTING OF SPECIFICATIONS, AN INVITATION FOR BIDS, OR A REQUEST FOR PROPOSALS FOR A PROCUREMENT MAY NOT SUBMIT A BID OR PROPOSAL FOR THAT PROCUREMENT OR ASSIST OR REPRESENT ANOTHER PERSON, DIRECTLY OR INDIRECTLY, WHO IS SUBMITTING A BID OR PROPOSAL FOR THE PROCUREMENT.

- B. THE PANEL MAY ESTABLISH EXEMPTIONS FROM THE REQUIREMENTS OF THIS SECTION FOR PROVIDING DESCRIPTIVE LITERATURE, SOLE SOURCE PROCUREMENTS, AND WRITTEN COMMENTS SOLICITED BY THE PROCURING UNIT OF THE SCHOOL SYSTEM.

IX. POLITICAL ACTIVITY

- A. AFFIRMATION OF POLITICAL RIGHTS
THE BOARD RECOGNIZES THE RIGHTS OF SCHOOL SYSTEM OFFICIALS 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
 - 1. THE POLITICAL ACTIVITIES OF ANY SCHOOL SYSTEM OFFICIAL SEEKING OR HOLDING PUBLIC OFFICE OR CAMPAIGNING FOR A POLITICAL CANDIDATE MUST BE CONDUCTED OUTSIDE THE WORKPLACE AND OUTSIDE WORKING HOURS;
 - 2. AN OFFICIAL MUST REFRAIN FROM EXPLOITING THE PRIVILEGE OF HIS OR HER POSITION
 - 3. AN OFFICIAL 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. THE FOLLOWING ACTIVITIES ARE SPECIFICALLY PROHIBITED ON PROPERTY UNDER THE JURISDICTION OF THE BOARD, EXCEPT BY GUIDELINES ESTABLISHED BY THE BOARD, APPLICABLE COUNTY ORDINANCES, AND ITS BARGAINING UNITS:
 - 1. POSTING OF POLITICAL CIRCULARS OR PETITIONS;
 - 2. THE USE OF ANY SCHOOL OR OFFICE STENOGRAPHIC HELP, TELEPHONES, SUPPLIES, OR EQUIPMENT.

X. ROYALTIES/PERSONAL GAIN

- A. NO ROYALTIES WILL BE PAID TO A SCHOOL SYSTEM OFFICIAL FOR TEXTBOOKS, INSTRUCTIONAL MATERIALS, OR PROGRAMS WRITTEN OR PRODUCED DURING WORKING HOURS.
- B. NO SCHOOL SYSTEM OFFICIAL WILL BE PERMITTED TO USE, FOR COMMERCIAL PURPOSES, ANY PHOTOGRAPHS OR INFORMATION – INCLUDING, BUT NOT LIMITED TO, TEST SCORES AND OTHER CONFIDENTIAL DATA.
- C. NO SCHOOL SYSTEM EMPLOYEE WILL BE PERMITTED TO COMPILE LISTS OF STUDENT AND/OR PARENT NAMES, ADDRESSES, PHONE NUMBERS, OR RELATED INFORMATION AVAILABLE THROUGH HIS OR HER POSITION FOR ANY OTHER PERSON OR COMMERCIAL ENTERPRISE.

XI. EMPLOYEE PROHIBITIONS

- A. AN EMPLOYEE MAY NOT BE IN A POSITION THAT DIRECTLY SUPERVISES, EVALUATES, OR DISCIPLINES AN IMMEDIATE FAMILY MEMBER.
- B. AN EMPLOYEE MAY NOT USE HIS OR HER POSITION TO BENEFIT AN IMMEDIATE FAMILY MEMBER.
- C. AN EMPLOYEE WITH INSTRUCTIONAL RESPONSIBILITY SHALL NOT TUTOR, FOR PRIVATE GAIN, ANY STUDENT WHO HE OR SHE IS CURRENTLY TEACHING.

[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.

Also see Master Agreement between Board of Education of Baltimore County and the Teachers' Association of Baltimore County]

Legal ReferenceS: *ANNOTATED CODE OF MARYLAND*, STATE GOVERNMENT
ARTICLE §15-101, *LEGISLATIVE FINDINGS; POLICY;
LIBERAL CONSTRUCTION*
ANNOTATED CODE OF MARYLAND, STATE GOVERNMENT
ARTICLE §§15-811 to 15-815, *LOCAL BOARDS OF
EDUCATION*
COMAR 19A.05, *BOARD OF EDUCATION REGULATIONS*
[Annotated Code of Maryland, State Government
Article, §10-611 et seq.]

RELATED POLICIES: BOARD OF EDUCATION POLICY 4005,
TUTORING/EDUCATIONAL SERVICES
BOARD OF EDUCATION POLICY 4100, *EMPLOYEE
CONDUCT AND RESPONSIBILITIES*

Policy
Adopted: 10/08/96
Revised: 08/12/97
Revised: 09/23/98
REVISED: _____

Board of Education of Baltimore County