

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 8366 – ETHICS REVIEW PANEL**

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 8366.
This is the third reading.

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Attachment I – Policy Analysis
Attachment II – Policy 8366

**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 [:]

Ethics Review Panel

I. POLICY STATEMENT [Panel Members]

[A.] THERE IS AN [A.. The] Ethics Review Panel (PANEL) of the Baltimore County Public Schools (BCPS) THAT CONSISTS [will consist] of five members appointed by the Board of Education of Baltimore County (Board).

II. PANEL MEMBERS

A. At least one member OF THE PANEL must be an attorney duly licensed to practice law in the State of Maryland and who is in good standing with the State Court of Appeals.

B. All members are eligible to serve two five-year terms and continue to serve until their successors are appointed and qualify.

1. Terms will be staggered to ENSURE [assure] continuity and political independence. [The initial terms of appointees will be staggered by the Board to provide that each year one of the members' terms is concluded.]

2. A PANEL MEMBER MAY SERVE UNTIL A SUCESSOR IS APPOINTED BY THE BOARD.

C. A member of the Panel will be replaced in the event of:

1. Death;
2. Resignation;
3. Just cause, which may include failure to attend, without good cause, more than fifty percent of the panel's scheduled meetings in one calendar year or three consecutive absences subject to the discretion of the Panel;
4. The Board shall appoint qualified persons to complete any unexpired terms. ANY [The] appointee TO AN UNEXPIRED TERM shall be eligible to be reappointed for two additional terms.

III. [II.] Qualifications of Panel Members

- A. Every person who resides in Baltimore County and is at least eighteen years of age is eligible to serve on the [Ethics Review] Panel if that person:
 - 1. Is a U.S. citizen;
 - 2. Does not hold AN [any] elected or appointed office; is not a candidate for an office of the United States, the State, any political subdivision, [or] incorporated municipality of the State, or in any political party;
 - 3. Is not an incumbent member of the Board, A SCHOOL OFFICIAL OR [an] employee, or employed by a business entity subject to the authority of the Board; AND
 - 4. Is not a registered lobbyist for any organization in the State that may create a conflict of interest.

- B. Panel members may not participate in the decisions or discussion of any matter involving his/her immediate family OR AS RESTRICTED IN PARTICIPATION BY POLICY 8363.

IV. [III.] Role of the [Ethics Review]_ Panel

- A. The [Ethics Review] Panel shall:
 - 1. Serve as an advisory body to the Board; [.]
 - 2. CREATE, RECEIVE, AND MAINTAIN ALL FORMS REQUIRED BY THE ETHICS CODE;
 - 3. [B. The Ethics Review Panel shall be responsible for interpreting] INTERPRET THE [this] Ethics Code and PROVIDE ADVISORY OPINIONS TO [advising] persons subject TO THE ETHICS CODE [to these policies; as to their applications.]
 - 4. [C. The Ethics Review Panel shall be responsible for accepting, hearing, or initiating any] PROCESS AND MAKE DETERMINATIONS REGARDING complaints ALLEGING VIOLATIONS OF THE ETHICS CODE [as deemed necessary in accordance with these policies.];
 - 5. REFER FINDINGS REGARDING COMPLAINTS AND OTHER ENFORCEMENT MATTERS TO THE BOARD FOR ACTION; [The Ethics Review Panel shall Provide hearings in accordance with the Board's currently adopted Policy 8339 (*Appeal Before Hearing Examiner*)];

[D. 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.]

6. [E. The Ethics Review Panel shall] Issue a written report TO THE BOARD on each case heard BY THE PANEL [to the Board.]; AND
7. ESTABLISH A PUBLIC INFORMATION AND EDUCATION PROGRAM REGARDING THE PURPOSE AND IMPLEMENTATION OF THE ETHICS CODE.

B. CONFIDENTIALITY

From the time a complaint is filed WITH THE PANEL until there is a final determination by the Board, all actions and information shall be treated as confidential, in accordance with the laws of the State of Maryland.

V. EXCEPTIONS AND MODIFICATIONS

- A. [G.] The [Ethics Review] Panel OR THE BOARD, AS APPROPRIATE, MAY [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, OR [and if] it is deemed not necessary to preserve the purposes of these Ethics policies. EXCEPT THAT NEITHER THE PANEL NOR THE BOARD MAY GRANT EXCEPTIONS OR MODIFICATIONS TO THE CONFLICT OF INTEREST AND FINANCIAL DISCLOSURE PROVISIONS FOR BOARD MEMBERS.
- B. Recommendations for exceptions are not approved or rejected until the Board acts.

VI. [IV.] Administration of the Panel

- A. The [Ethics Review] Panel will develop rules and procedures in consultation with THE BOARD'S ATTORNEY [the Office of Law of the Board].
 1. THE BOARD'S ATTORNEY SHALL ASSIST THE PANEL IN CARRYING OUT ITS DUTIES.
 2. IF A CONFLICT OF INTEREST PREVENTS THE BOARD'S ATTORNEY FROM ASSISTING THE PANEL IN A SPECIFIC MATTER, THE PANEL SHALL IDENTIFY OTHER COUNSEL TO ASSIST THE PANEL IN THE MATTER.

- B. THE PANEL SHALL ELECT A CHAIR FROM AMONG ITS MEMBERS. [The Chair of the Ethics Review Panel will be selected by members of the Panel.]
 - 1. The term of the Chair will be one year.
 - 2. THE CHAIR MAY BE REELECTED.

- C. The [Ethics Review] Panel will meet, AT A MINIMUM, [regularly] on a quarterly basis and will submit minutes to the Board. However, any Member of the Panel may call a meeting of all members should an unexpected circumstance arise.

- D. An affirmative vote of at least three members of the Panel is required for any and all action of the [Ethics Review] Panel.

- E. Members of the [Ethics Review] Panel will receive no compensation for their services. They will, however, be reimbursed for reasonable and necessary expenses incurred in the discharge of their official duties.

- F. The [Ethics Review] Panel will administer the provisions of this Ethics Code.

- G. The SUPERINTENDENT [Office of Ombudsman] shall provide administrative support to the [Ethics Review] Panel.
 - 1. The Superintendent shall ensure that SUFFICIENT FUNDS ARE PROVIDED FOR [the Office of Law has the needed budgetary support to provide] legal, technical, and clerical staff support for the [Ethics Review] Panel.
 - 2. As an advisory body to the Board, the [Ethics Review] Panel may be assisted in carrying out its responsibilities by the Board's attorney and/or internal auditor.

- H. The members of the [Ethics Review] Panel shall be insulated by the defense of sovereign immunity as provided by the laws of the State of Maryland.
 - 1. The Board shall provide, in accordance with Maryland law, inclusion for the [Ethics Review] Panel and each of its members comprehensive liability insurance coverage (either through the Board's policy or otherwise) from any personal or joint civil liability action arising out of and in the course of the performance of their duties.

VII. [V.] Advisory Opinions

- A. Any Board member, SCHOOL SYSTEM OFFICIAL, employee, CONSULTANT, 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.
- B. The Panel will respond promptly to such requests, providing interpretations of the policies contained in the Code, based on the facts provided or reasonably available to it.
 - 1. THE PANEL WILL MAKE EVERY ATTEMPT TO ISSUE AN ADVISORY OPINION WITHIN SIXTY (60) DAYS OF THE RECEIPT OF THE REQUEST.
 - 2. Copies of THE PANEL'S ADVISORY OPINIONS [these interpretations], with the identity of the subject(S) deleted, will be made available to the Board, the Superintendent, and the public in accordance with applicable State law regarding public records.

VIII. [VI.] Complaints

- A. Any person may file with the [Ethics Review] Panel a complaint alleging a violation of any of the provisions of the Ethics Code.
 - 1. All complaints must be submitted in writing, UNDER OATH, AND must contain a signature(s) of the individual(s) with knowledge of the complaint.
 - a. THE PANEL MAY REFER A COMPLAINT [, and may be referred] to the Board's attorney OR OTHER LEGAL COUNSEL, IF APPROPRIATE, FOR INVESTIGATION AND REVIEW [to obtain the necessary investigative services].
 - 2. If, [--after the Ethics Panel review of any investigation that may have taken place--] the Panel determines that there are insufficient facts upon which to base a determination of violation, the Ethics Review Panel shall RECOMMEND TO THE BOARD THAT [dismiss] the complaint BE DISMISSED.
 - 3. If there is reasonable basis for believing a violation has occurred, the individual who is the subject of the complaint will BE GIVEN AN OPPORTUNITY [get a chance] for a hearing conducted BY THE PANEL, in accordance with the Board's hearing procedures [(Board Policy 8339)] for actions on the record. (*SEE, BOARD POLICY 8340, APPEAL BEFORE THE BOARD OF EDUCATION, AND*

BOARD POLICY 8341, *APPEAL BEFORE A HEARING EXAMINER*)

4. A RESPONDENT MAY PROPOSE A SETTLEMENT OR CURE TO THE PANEL PRIOR TO THE HEARING. IF THE PANEL DETERMINES THAT THE PROPOSED SETTLEMENT OR CURE IS CONSISTENT WITH THE PURPOSES OF THE ETHICS CODE, THE PANEL SHALL RECOMMEND THAT THE BOARD ACCEPT THE PROPOSED SETTLEMENT OR CURE. IF THE BOARD CONCURS WITH THE RECOMMENDATION OF THE PANEL, THE BOARD SHALL ACCEPT THE PROPOSED SETTLEMENT OR CURE.

B. [4.] Hearings

1. [a. For purposes of the Ethics Review Panel hearings, the] THE Panel will act as the hearing examiner and conduct the opportunity hearing. [After a complaint is filed and until there is a final determination by the Board, all actions regarding a complaint will be treated confidentially, in accordance with the laws of the State of Maryland.]
2. [For purposes of the hearing, a member of the Ethics Review] THE Panel'S CHAIR will [act as hearing chairperson to] conduct the hearing and provide for its efficient administration. [The Ethics Review Panel will be advised by an attorney from the Office of Law or such other counsel that may be engaged at the Board's expense for such purpose regarding the rule on motions, objections, and issues of law.]
3. [b.] All evidence will be presented on the record, and a written transcript of the hearing will be produced.
4. [c.] All testimony will be taken under oath, and all parties will be provided with the right to cross-examine witnesses.
5. [d.] The [Ethics Review] Panel will produce a written report to the Board in every case.
 - a. The report will state, where appropriate, [dismissal of the complaint,] that a determination was reached, that a violation of the Ethics Code had occurred, or that evidence was inconclusive [,] and the Panel was unable to reach a final determination.

6. [e.] Any final determination resulting from the hearing will include written findings of fact, a statement of alleged violation, a conclusion of law, and recommendations, which may include: DISMISSAL OF THE COMPLAINT OR recommendations for corrective action, disciplinary or other appropriate personnel action, UP TO AND INCLUDING [or] termination.
7. [f.] The [Ethics Review] Panel will have the right to demand the appearance of any SCHOOL SYSTEM OFFICIAL, employee, CONSULTANT, OR VOLUNTEER of the Board at any meeting or hearing.
8. The Panel will have the right to inspect and/or have copies produced of any relevant document, paper, electronic media, or other tangible object in the possession of the BCPS and/or the Board.
9. [g.] THE FORMAL RULES OF EVIDENCE AND PROCEDURE DO NOT APPLY TO PROCEEDINGS BEFORE THE PANEL. NEITHER THE BOARD NOR THE PANEL HAS THE AUTHORITY TO SUBPOENA DOCUMENTS OR WITNESSES [The Ethics Review Panel does not have the right to issue subpoenas].

C. FINAL ACTION

1. THE PANEL SHALL ISSUE ITS RECOMMENDATION TO THE PARTIES AND THE BOARD WITHIN SIXTY (60) DAYS OF THE CLOSE OF THE HEARING.
2. IF THE BOARD CONCURS WITH THE FINDINGS OF A VIOLATION AND RECOMMENDATIONS OF THE PANEL, THE BOARD MAY TAKE ENFORCEMENT ACTION AS PROVIDED IN THE ETHICS CODE.
3. THE BOARD MAY DISMISS A COMPLAINT ON THE RECOMMENDATION OF THE PANEL OR IF THE BOARD DISAGREES WITH A FINDING OF VIOLATION BY THE PANEL.
 - a. CONCURRENCE BY THE BOARD WITH A FINDING OF VIOLATION BY THE PANEL IS PUBLIC INFORMATION.

IX. [VII.] Rules of Procedure

- A. The provisions of Board Policy 8341, *APPEAL BEFORE A HEARING EXAMINER*, [8339] will be followed, except that the Panel will act as hearing examiner.
- B. A majority vote of the Panel consists of three or more votes.
- C. A quorum consists of three members present.
- D. The [Ethics Review] Panel will adopt rules for the transaction of its business.
- E. The [Ethics Review] Panel will keep a file of the minutes of its proceedings.
- F. All official actions and decisions of the [Ethics Review] Panel will be in writing.

[VIII. Sanctions

- A. Violations of the Ethics Code by any Board member, employee, or volunteer will constitute grounds for discipline or personnel action, or termination where provided by law, consistent with procedures set forth in the Education Article of the *Annotated Code of Maryland* and the policy manual of the Board.
- B. Persons or organizations found in violation of the lobbying provisions of the Ethics Code shall be publicly identified and subject to other penalties as provided by law.]

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*

Related Policies: BOARD OF EDUCATION POLICY 8340, *APPEAL BEFORE THE BOARD OF EDUCATION*
Board of Education Policy 8341 [8339], *APPEAL [Hearing] Before A Hearing Examiner*

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