ADVISORY OPINION

OF THE

BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS

ETHICS PANEL

The panel is issuing this advisory opinion pursuant to Section III(B)(5) of the Code of Ethics, which provides that "[a]ny Board member, employee or other person subject to the provisions of this policy may request an advisory opinion from the Ethics Panel concerning the application of this policy."

It has been requested that this Panel conduct a review of the practice of vendors under contract with City Schools of hiring City Schools teachers for summer learning programs as well as the practice of hiring City Schools teachers during the school year.

There are two parts to the reply of this Panel: first, it is the opinion of the Panel that a conflict of interest exists in both scenarios and, second, it is the opinion of the Panel that in both situations, an exemption or modification is appropriate.

With regard to establishing that a conflict of interest exists in the employment of City Schools teachers by vendors who have contracts with City Schools, whether during the school year or spring summer break, the applicable section of the Code of Ethics is III(C)(2)(b)(i), which states that "[e]xcept as permitted by policy of the Board when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official may not: [b]e employed by or have a financial interest in an entity that is doing business with the Board or City Schools."

In the question posed by the requestor of this opinion, City Schools has a contract with the vendor who has hired or proposes to hire the City Schools teachers. Whether the City Schools teacher is employed by this vendor during summer break or during the school year, in both scenarios, the teacher is an active employee of City Schools and would be financially compensated by City Schools as well as by the vendor who has a contract with City Schools; therefore, a conflict of interest exists.

It is the opinion of this Panel that, with some exceptions, exemptions or modifications would be appropriate to address the conflict of interest described above. The applicable section of the Code of Ethics is III(F). According to this section, "[t]he Ethics Panel may grant exemptions and modifications to the provisions of §§ III.C. and III.D. of this policy, for a specified period of time, if the interests of the employee are too remote and insubstantial to affect the integrity of public actions, or if it is determined that application of those provisions would:

2. significantly reduce the availability of qualified persons for public service; or

3. not be required to preserve the purposes of this policy."

It is the understanding of this Panel that, in most instances concerning the employment of City Schools teachers by vendors who also have a contract with City Schools, an exemption or
modification should be granted, although a conflict of interest exists, because the interests of
the employee are too remote and insubstantial to affect the integrity of public actions. For
example, if the City Schools teachers are paid by the hour and hired for a limited period, it is
difficult to imagine that this hourly, temporary employment could affect the integrity of the public
action of the teacher. Further, the Panel is not aware of any scenario in which the City Schools
teacher would be in a position to exercise favoritism or partial treatment toward the vendor. For
example, in a bid or request to enter into or renew their contract with City Schools, the teacher
is not in a position of decision-making.

Additionally, precluding these teachers from employment by the vendors may significantly
reduce the availability of qualified persons for public service particularly if the vendor is
providing a learning program to the students of City Schools. If City Schools teachers are
prohibited from participating as paid employees of such programs, the vendor would be forced
to try to hire teachers who are not employees of City Schools. City Schools teachers, because
of their familiarity with the students and the community, are best positioned to serve in this
capacity.

Finally, it is the opinion of this Panel that the application of these provisions would not be
required to preserve the purpose of this Policy, which is, in part, to provide assurance of the
“impartiality and Independent judgment of public officials and employees” of City Schools. As is
noted above, it is the understanding of this Panel that the teachers of City Schools who are
employed by the vendors are not in a position to exercise partial treatment or favoritism toward
such vendors.

This Panel concludes, for the above reasons, that a conflict of interest exists and that
exemptions or modifications should be granted, in most cases, in order to allow the teachers to
continue to serve the community when their employment with the vendor would not have a
negative impact on the integrity of the teachers’ public actions or their impartiality or
independence of judgment.

Date:
19 April 20X

Respectfully submitted,

[Signature]

Andrew G. Flacks
Chair, Ethics Panel