

BOARD OF EDUCATION OF BALTIMORE COUNTY

Ethics Review Panel

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January 22, 2018

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Edward J. Gilliss, Esq.
Chair
Board of Education of Baltimore County
6901 Charles Street
Towson, Maryland 21204

Re: Complaint 17 C/ERP 01

Dear Mr. Gilliss:

Enclosed herewith please find the Report issued by the Ethics Review Panel in the above-referenced matter. I am also enclosing copies of the filed Complaint and the responses received by the Panel from the Respondents, Verletta White and Education Research and Development Institute (ERDI).

Please feel free to contact me if you have any questions for the Panel.

Sincerely,



Joseph Schnitzer, Esquire
Chair
Ethics Review Panel

Enclosures: Complaint 17 C/ERP 01 Report
Complaint 17 C/ERP 01
Verletta White Response
Education Research and Development Institute (ERDI) Response

Copies to: Members, Ethics Review Panel
✓ Verletta White, Interim Superintendent (w/encl.)
Andrew W. Nussbaum, Esq. (w/encl.)

BOARD OF EDUCATION OF BALTIMORE COUNTY

ETHICS REVIEW PANEL

COMPLAINT 17 C/ERP 01

REPORT OF THE ETHICS REVIEW PANEL

THE COMPLAINT

The Ethics Review Panel ("Panel" hereinafter) of the Board of Education of Baltimore County received a Complaint dated November 12, 2017, filed by a "citizen of Baltimore County," alleging "several instances of possible Board employee misconduct which may violate the Board's ethics policies." The six (6) specific allegations raised by the Complainant are the following:

- The Interim Superintendent, Verletta White ("White" hereinafter) violated Board Policy 8361 when she "failed to disclose earned income from consulting work she did with ERDI [Education Research and Development Institute] ("ERDI" hereinafter) each year from 2013 through 2016... ."
- White "violated nearly every provision of Policy 8361 with regard to improper influence and eroding the public trust."
- White "violated several provisions of Policy 8363 regarding conflicts of interest and prestige of office."
- White "violated Policy 8364, Section VII.H.1. with regard to reporting sources of earned income for four years from 2013 to 2016."
- ERDI is "engaged in lobbying per the definition given in Policy 8360, Section II.N."
- White "violated Policy 8362 with regard to accepting gifts from a lobbyist."

THE RESPONSES

The Panel received a response from White, dated December 7, 2017, as well as a response from ERDI's President, dated December 6, 2017.

ERDI provided a lengthy description of what it does and how it operates. The response noted that ERDI is an organization providing nationwide educational research services, whose stated purpose is "(1) to draw together outstanding superintendents from across America to share ideas with one another, and (2) to develop client relationships with top corporations that serve the education industry." ERDI noted that the corporations are clients of ERDI "to access the best thinking of top educational leaders who will, as consumers of products and services in the K-12 marketplace, help them shape their products and services to benefit all learners and school districts across the USA and the world." ERDI's corporate partners "meet twice a year to

test ideas, concepts, and products before a panel of experts drawn from the ERDI consulting membership." ERDI "empowers school districts to provide meaningful feedback on educational product and service developments affecting students nationwide." ERDI provides "educational leaders the opportunity to influence the development, refinement and delivery of the products and services entering the educational setting," so that those products and services "can best meet the needs of children." ERDI gives Superintendents "a unique opportunity to comment on and shape what goes into the schools they serve." ERDI claimed that there is no "other venue in this country" that "offers leaders the chance to help create and streamline the products that affect the lives" of students.

At an ERDI conference, corporate client representatives receive a "3-hour panel discussion with five leading educators" and each panel discussion is "meant to be focused on the research and development of products/services." The agenda for the discussion is determined by the corporate client and "can address any issue." ERDI claimed that the panels of Superintendents "provide honest, candid insight and feedback that clients typically incorporate to upgrade their products and services and to modify their marketing plans" and that the corporate client "garners incredibly valuable information." In addition to the panel sessions, "ERDI conferences include different social events to help clients truly harness the power of networking with these top educational leaders."

ERDI invites a "limited number of qualified school district leaders nationwide to serve on its institute panels in a consulting capacity." ERDI offers each of these individuals "an honorarium" in recognition of their "expertise, time and commitment in analyzing and providing feedback relating to educational projects under development."

White provided the following information regarding her participation with ERDI. On August 19, 2013, White received a call from the Chairman of ERDI, who advised her that she had been recommended by her then current and previous Superintendents, to participate in ERDI. At that time, White had been Assistant Superintendent of Schools for four years and was in the process of being promoted to Chief Academic Officer (CAO). White was told by the ERDI Chair that the organization was founded by a former superintendent of schools to provide superintendents a network for professional learning and support. Because superintendents had found value in the experience, ERDI was beginning a new group for deputy superintendents and similarly situated employees, such as CAO's. The Chair also explained to White that ERDI "offered opportunities to network with educational leaders and provide guidance and direction to those who are in the business of developing products and services for children." Within a few days of that call, White advised ERDI that she would participate.

White attended her first ERDI session in the fall of 2013 and she described it as follows: "It was a networking experience with those in like positions, and I found it to be a beneficial and professional learning opportunity." White also "found an added benefit of lending my experience and expertise to companies who sought advice on the products and services that

were in development for use by teachers and school administrators.” White noted that the experience was like a “focus group,” that occurs “in nearly every industry.” White also reported that there were “no sales pitches involved during the focus group sessions.”

White reported that in the 2013-14 school year and in every school year thereafter with the exception of the current year, she participated in ERDI twice a year and was paid \$500 per focus group panel, which occurred on weekends.

The Panel also reviewed a “message” that White sent to the “Team BCPS Family” dated November 9, 2017. In that document, White noted:

The fact of the matter is that [ERDI] is not a technology company. It is an educational research and development company, meaning that ERDI coordinates efforts for companies and educators to collaborate on products and services that are in development. Sales are not involved in this process. The process is purely for feedback. ... I have never been paid by a company doing business with our school system, and the school system has never paid for trips where I participated as a consultant. ERDI does not conduct any business with BCPS. I participated in these sessions on my own time, using vacation days, to do so.

White also acknowledged that she did not disclose her receipt of consulting fees from ERDI, when she completed and filed her Financial Disclosure Statements for the 2013-14 through 2016-17 school years.

ANALYSIS

The Complaint alleged that White violated several provisions of the Board’s Ethics Code and specifically Policy 8361 (Statement of Purpose and Policy); Policy 8362 (Gifts); Policy 8363 (Conflict of Interest – Prohibited Conduct); and Policy 8364 (Financial Disclosure Statements). The Complaint further alleged that ERDI violated Policy 8365 (Lobbying), as defined in Policy 8360 (Applicability and Definitions).

After a thorough review of the facts presented to the Panel, as set forth above, the Panel concludes that White violated Policy 8364 (Financial Disclosure Statements), by failing to disclose the consulting fees she received from ERDI. The Panel further concludes that White violated the “prestige of office” provision of Policy 8363, by accepting compensation for participation in a program in her capacity as a “school official.” The Panel further concludes that White did not violate any other provisions of the Ethics Code.

Although White acknowledged her failure to disclose the compensation she received from ERDI, she stated that she “did not intentionally violate Policy 8361,” that she completed the forms based on her “understanding of the language in the disclosure form and instructions;” and that she was “under the impression that I was to list only

companies with whom the school system had a contract or a pending contract.” White further acknowledged that she now understands that the consulting fees from ERDI should have been reported. In reviewing the Complaint in this matter, the Panel noted that the Financial Disclosure Statement is confusing and unclear as to what is necessary to be disclosed on Schedule H. The checklist page of the Statement, under Schedule H, states: “I, or a member of my immediate family, received a salary or was sole or partial owner of a business entity from which earned income was received, during the reporting period.” Schedule H – Sources of Earned Income - uses similar language, asking whether the filer, or a member of the filer’s immediate family, received “a salary from an entity, other than the Board of Education” or whether the filer or a family member was a “sole or partial owner of a business from which earned income was received.” The Panel further notes that Policy 8364, Section VII, H, also appears to limit the disclosure to the “name and address of each place of employment” and “each business entity of which the individual or a member of the individual’s family was a sole or partial owner and” from which earned income was received. (Similar language is set forth in the State Ethics Commission’s Model Board of Education Ethics Regulations, found at COMAR 19A.05.00.00, Section 6(g)(8).) Thus, from the actual language in the Policy and from the Financial Disclosure Statement, an individual filing the Statement could well be confused as to whether the required disclosures include an intermittent individual consultation fee from a business not owned by the individual or a family member, which would be neither “employment” nor “salary.”

However, the Financial Disclosure Statement Instructions, which is a separate document, available to individuals who are required to file the Statement, more clearly states, with regard to Schedule H: “You are required to report all sources of earned income from any business/entity from which you or a member of your immediate family received a salary or earned income as a sole or partial owner of a business.” The instruction further states: “For example, salaried employment, *individual consulting activities*, private practices, and business activities involving income-producing real property.” (Emphasis added). Although White’s receipt of the compensation from ERDI did not come through a business/entity owned by White or a family member, the intent of the Instructions seem clear that such “consultation activities” should have been reported on Schedule H. Therefore, White’s failure to do so is a technical violation of the reporting requirements.

Section VI of Policy 8363 provides that a “school official may not intentionally use the prestige of office or public position for private gain of that official or the private gain of another.” The Panel concludes that White was “invited” to participate in ERDI conferences directly as a result of her position as an “education leader” in the Baltimore County Public Schools and that she was compensated financially by ERDI for that participation. Although ERDI may not be an entity that “does business” with the Board of Education, it is an entity that compensated a school official for participating in a

program, where the official was asked to provide her expertise and experience as a school official and therefore, the Panel concludes that White used the prestige of her office or public position for private gain.

Based on what the Panel learned about ERDI from White and from the organization itself, the Panel does not find that White “violated nearly every provision of Policy 8361 with regard to improper influence and eroding the public trust,” as alleged in the Complaint. It appears to be the case that ERDI is not an entity that does business with the School System and there is no evidence that White’s participation in the focus group sessions that ERDI organizes resulted in any “improper influence” or “even the appearance of improper influence,” as prohibited by Policy 8361, Section I.C. Furthermore, no evidence was presented to the Panel that White’s participation resulted in her losing her “impartiality and independent judgment.” (Section I.B.). It is also noted that at the times White participated in ERDI sessions, she was not the Superintendent of Schools, but was, instead, the Chief Academic Officer.

The Panel further finds that White’s participation in the ERDI focus groups was not a violation of the conflict of interest provisions of Policy 8363. As noted by both White and ERDI, ERDI is not a technology company and does not have any contractual relationships with the School System. Rather, it is an educational research and development company that provides opportunities for companies in the education field to hear from education leaders regarding their products and services. Although White received remuneration from ERDI, there is no evidence that she received any money from any company which does business with the School System. The Panel concludes that White’s participation in the ERDI focus groups did not create a conflict of interest.

The Complaint contained two allegations regarding ERDI’s status as a “lobbyist” under the Board’s Ethics Code. The Complaint first contends that ERDI is engaged in lobbying pursuant to the definition in Policy 8360, Section II.N. and it alleges that White violated Policy 8362, Section III.C.3. and 4, by accepting “gifts” from a “lobbyist.” With regard to the question of whether ERDI is engaged in lobbying, the Panel concludes that ERDI is not engaged in lobbying activities. The stated definition of lobbying in the Ethics Code is: “Communicating in the presence of a member of the school board or any school official *with the intent to influence* any official action of that member of the school board or official” (Emphasis added). Section 2 states that lobbying also means “engaging in activities having the express purpose of soliciting others to communicate with a school official *with the intent to influence that official*” (Emphasis added). According to the information received by the Panel, the purpose of the ERDI conferences is *not* to “influence” school officials, but rather to provide opportunities for companies in the business of providing products and services to schools to hear directly from “school leaders” regarding the research, development, and marketing of those products and

services. Therefore, the “intent” of the organization is not to “influence” school officials and the entity is not engaged in lobbying.

The Complaint alleges that White violated Policy 8362, Section III.C.3 and 4, because she accepted a “gift” from ERDI. First, the Panel notes that the definition of “gift,” found in Policy 8360, Section II.J. is the “transfer of anything of economic value, regardless of the form, *without adequate and lawful consideration.*” (Emphasis added). In this instance, the compensation received by White was not “without consideration,” and therefore, it was not a “gift.” The compensation was given in exchange for her participation in the focus group and sharing her expertise and experience with those present. Furthermore, as noted above, ERDI is not a “lobbyist,” so White did not receive a gift from a “lobbyist” in any event. Furthermore, subsection 4 prohibits receipt of a gift from a person who has “financial interests that may be substantially and materially affected ... by the performance or nonperformance of the school system duties of the school official.” ERDI’s “financial interests” are not affected by the performance or nonperformance of the School System. It does not appear to be in the business of selling any products or services to the School System and there is no evidence that ERDI has conducted any business with the School System.

REMEDY

Policy 8366, Section VIII provides the procedures for the filing and processing of a Complaint with the Panel. Section VIII.A.4. permits the respondent to a Complaint to “propose a settlement or cure to the Panel prior to the hearing” regarding a violation. 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.” Furthermore, if the “Board concurs with the recommendation of the Panel, the Board shall accept the proposed settlement or cure.”

In her response to the Panel, White proposed the following settlement or cure:

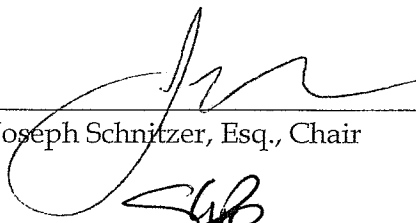
As provided in Policy 8366, my proposed cures for any alleged violation of Policy 8361, are my amendment of the financial disclosure forms for the 2013-14, 2014-15, 2015-16 and 2016-17 school years, and I will no longer participate in ERDI activities or be associated with ERDI in any manner. In addition, the Board and I have agreed that I will not engage in consulting with any entity while I am Interim Superintendent.

It is the Panel’s conclusion that the settlement and cure proffered by White is consistent with the purposes of the Ethics Code and therefore, it is the Panel’s recommendation that the Board of Education accept the proposal. The purposes of the Ethics Code include ensuring that the public maintain trust in their public officials and employees and that impartiality and independent judgment of such officials and

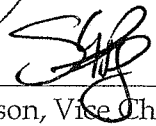
employees will be maintained. Because confidence and trust is eroded when the conduct of public business is subject to improper influence or even the appearance of improper influence, disclosure of the financial affairs of Board Members and school officials is required. The proposed cure in this case is consistent with the purposes of the Ethics Code. White has agreed to amend her Financial Disclosure Statements to disclose the compensation that she had received by ERDI and she has indicated that she will no longer participate in ERDI activities or be associated with ERDI in any manner. Lastly, White agreed that she will not engage in consulting with any entity while she is the Interim Superintendent. All of those conditions should assure the public that the conduct of public business is not subject to improper influence or the appearance of improper influence and that White's impartiality and independent judgment will be maintained.

Before concluding this Report, the Panel would also note the following. It is apparent from the public reporting about ERDI, its education-related business partners, and school officials, that there is considerable suspicion and possible misapprehension about the organization and the roles played by the various participants. In order to avoid any future potential actual or perceived impropriety or conflict of interest, the Panel recommends that at a minimum, participation in ERDI activities by any School System employees and officials not result in any compensation or remuneration in any form or manner and that any participation in ERDI activities be as open and transparent as possible.

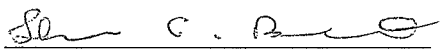
This Report has been signed by the Ethics Review Panel Members and adopted on January 18, 2018.




Joseph Schnitzer, Esq., Chair



Scott Bryson, Vice Chair



Theresa E. Barrett



T. Ross Mackesey