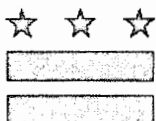


**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**



Office of Government Ethics

In Re: [REDACTED] Henderson Case No.: 1031-007

PUBLIC NEGOTIATED DISPOSITION

Pursuant to section 221(a)(4)(A)(v)¹ of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 et seq.) the Office of Government Ethics (“OGE”) hereby enters into this Public Negotiated Disposition with the Respondent, K. Henderson. Respondent agrees that the resulting disposition is a settlement of the above-titled action, detailed as follows:

I. FINDINGS OF FACT

Respondent was the Chancellor of the District of Columbia Public Schools (“DCPS”). As the Chancellor of DCPS, Respondent was in charge of the administration of DCPS, including continuing and instituting reforms and systematic changes, such as curriculum and program offerings, in order to effect continued positive changes at DCPS.

Section 2106.6 of Title 5E of the D.C. Municipal Regulations, provided Respondent with the authority to grant discretionary out-of-boundary transfers to students who desired to attend a certain DCPS school, but were not offered placement through the My School DC Lottery program. Section 2106.6 provides:

The Chancellor, and only the Chancellor, is authorized to grant a discretionary transfer and set the duration of the approval of the transfer when the Chancellor determines that *the transfer would be in the best interests of the student, and that the transfer would promote the overall interests of the school system.* (Emphasis added).

In 2015, Respondent granted seven discretionary out-of-boundary placements to students who otherwise would not have been able to attend an out-of-boundary school under the usual lottery process, from a total of 44,000 applications. According to the Inspector General’s report (“OIG”), those discretionary placements were granted to such persons as officials in the Executive Office of

¹ Section 221(a)(4)(A) of the Ethics Act provides, in pertinent part, that “[i]n addition to any civil penalty imposed under this title, a violation of the Code of Conduct may result in the following: . . . Any negotiated disposition of a matter offered by the Director of Government Ethics, and accepted by the respondent, subject to approval by the Ethics Board.”

the Mayor, the Director of a non-profit DCPS partner, a White House Official, a DCPS Principal, a former-elected official and one of Respondent's former-graduate school classmates. Two of the placements were to schools that were already full to capacity.²

In one of the instances, a former elected official requested a discretionary transfer for their youngest child to attend the same school that the child's older siblings had attended pursuant to discretionary transfers granted by Respondent's predecessor. The official had not registered their youngest child in the My School DC Lottery. None of the official's older children attended the school at that time.³ Respondent granted the request.

II. NATURE OF VIOLATIONS

OGE has determined that Respondent's conduct, as reflected in the OIG report, is a violation of the District's Code of Conduct, as set forth below:

- **One:** District Personnel Manual ("DPM") § 1800.3(n), which states: "[a]n employee shall not take actions creating the appearance that they are violating the law or the ethical standards set forth in this chapter."

This section states that "an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts." DPM § 1800.3(h) states that "[e]mployees shall act impartially and not give preferential treatment to any private organization or individual." The rules set forth in the DPM apply to DCPS employees and the Chancellor.⁴ Although 5E DCMR 2106.6 provided the Chancellor with the authority to grant discretionary out-of-boundary transfers, that authority was not unfettered and the Chancellor was still required to consider the best interests of the student and the overall best interests of the school system when granting those transfers. OGE has determined that Respondent's conduct of granting the discretionary transfer requests of those persons identified in the OIG report, while denying the requests of others, gave the appearance that she failed to act impartially, in violation of section 1800.3(n).

In Respondent's view, DPM section 1800.3(h) would seem to prohibit any discretionary transfer since such a transfer necessarily gives the student to whom it is granted a preference over other students seeking to attend an out-of-boundary school. Respondent states that she never sought or received any guidance from OGE or any other arm of the DC government in how to reconcile this perceived conflict in regulatory provisions, but believed that the more specific provisions of section

² Inspector General's Amended Report of Investigation 2016-1571, issued on May 11, 2017.


³ According to sections 2106.2 and 2106.5 of Title 5E of the D.C. Municipal Regulations, a student whose sibling currently attends an out-of-boundary school is given first preference when applying for an out-of-boundary transfer request through the lottery.

⁴ According to D.C. Official Code § 1-1162.01a, the Ethics Act and "the Code of Conduct shall apply to all employees and public officials serving the District of Columbia, its instrumentalities, subordinate and independent agencies, the Council of the District of Columbia, boards and commissions, and Advisory Neighborhood Commissions, but excluding the courts." The DPM is a part of the Code of Conduct. *See*, D.C. Official Code § 1-1161.01(7)(E).

2106.6 governed. Essentially, Respondent believed that when certain government officials and others show support for DCPS by sending their children to DCPS rather than private schools, they send a powerful message to the community that promotes the overall interests of the school system. Respondent contends that there was no blanket or indiscriminate transfers granted to government officials.


III. TERMS OF THE NEGOTIATED DISPOSITION

Respondent notes that she did not intend to engage in any act that violated the District Code of Conduct. Respondent now recognizes that her conduct of granting certain discretionary transfers while denying others gave the appearance that she failed to act impartially, in violation of DPM § 1800.3(n). In order to resolve this matter without further proceedings, Respondent enters into this Negotiated Disposition with OGE. Accordingly, Respondent is hereby **"Reprimanded"** for her conduct.



Henderson

10/16/17
Date

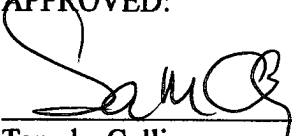


Brian K. Flowers
Interim Director of Government Ethics

10/16/17
Date

This agreement shall not be deemed effective unless and until it is approved by the Board of Ethics and Government Accountability, as demonstrated by the signature of the Chairman below.

APPROVED:



Tameka Collier
Chairperson, Board of Ethics and Government

19 Oct 17
Date

#1031-007

BF/AC/RC