

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



Office of Government Ethics

May 1, 2013

VIA EMAIL TO:

[name redacted]  
[title redacted]  
District of Columbia Public Schools  
[email address redacted]

Dear [name redacted]:

This responds to your request for advice concerning whether the District of Columbia Public Schools (“DCPS”) may accept a monetary award, as a donation, in the amount of \$3,000, from *The Washington Post*, and use the donation to reward a teacher for excellence in teaching.

You state that *The Washington Post* sponsors an annual awards program, known as the *Agnes Meyer Outstanding Teacher Awards*, which recognizes excellence in teaching, encourages creative and quality instruction, and contributes to the improvement of education in the Washington, D.C. metropolitan area. Along with the award, the recipient is given \$3,000. A total of twenty-one awards are given to teachers from Washington, D.C., eight counties in Maryland, and ten counties in Virginia. You state that although *The Washington Post* provides the funds for the award and establishes the criteria for the nominating process, DCPS is responsible for administration of the nomination process and the selection of the winning candidate.

You explained that *The Washington Post* nomination criteria requires that the teacher be a full-time teacher in an accredited school in one of the participating jurisdictions and have a minimum of five years of teaching experience, three of which must be in the school system in which he or she is currently serving. In addition, the teacher must submit four statements of support, one of which is from a professional educator. Also required are a career summary, a description of contributions in each of the nomination criteria, and two color photographs. The nomination criteria includes the following: 1) instills in students the desire to learn and achieve; 2) understands the individual needs of students, encourages their talents and fosters their self-esteem; 3) demonstrates a thorough knowledge of subject matter and the ability to share it effectively with students; 4) fosters cooperative relationships with their colleagues and the community; 5) demonstrates outstanding leadership; and 6) maintains his or her teaching position throughout the 2013-2014 school year.

All employees of the District of Columbia government have responsibilities, codified in Chapter 18, Title 6B of the D.C. Municipal Regulations,<sup>1</sup> to which they must adhere as District employees. A District employee is prohibited from accepting a salary or anything of monetary value from a private source as compensation for his or her government position.<sup>2</sup> This is not to say, however, that employees cannot be recognized and rewarded for outstanding accomplishments, especially when doing so would provide future incentives to other employees to do likewise. Moreover, members of the public who wish to participate in these incentive-type awards should be permitted to do so, as long as ethical considerations are satisfied. The discussion below provides guidance for properly permitting an outside entity to contribute to a government incentive award program.

As already stated, a government employee cannot accept funds from an outside entity for government work. As a result, *The Washington Post* must first donate the monetary award, \$3,000, to the District before it can be awarded to the DCPS teacher. Because “a contribution by an outside source for an awards program most likely would be considered a donation to DCPS, rather than a gift to an individual employee,”<sup>3</sup> we must first look to the law governing donations to the District of Columbia. The D.C. Official Code states:

§ 1-329.01(a) (1) *An entity of the District of Columbia government may accept and use a gift or donation during fiscal year 2003 and any subsequent fiscal year if--*  
*(A) the Mayor approves the acceptance and use of the gift or donation;*  
*and*  
*(B) the entity uses the gift or donation to carry out its authorized functions or duties.*

For DCPS to accept the donation from *The Washington Post*, the Mayor must approve the donation. The Mayor has listed three criteria for an agency to accept a donation: (1) the agency must submit to the Director of the Office of Partnerships and Grant Services (“OPGS”) an application to accept a donation; (2) the Office of the Attorney General (“OAG”) must review and certify the donation application; and (3) the District agency and the donor must enter into a donation agreement approved by the Director of OPGS.<sup>4</sup> Lastly, DCPS is required to keep an accurate and detailed record of the donation from *The Washington Post*.<sup>5</sup>

Insofar as donations to a District government agency fall under the purview of OPGS, the Board of Ethics and Government Accountability (“BEGA”) can alert you to the donation process, but will not opine on whether DCPS may accept this donation from *The Washington Post*.<sup>6</sup> If OPGS approves the donation from *The Washington Post*, the

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<sup>1</sup> Hereinafter, Title 6b of the D.C. Municipal Regulations will be referred to as the District Personnel Manual or DPM.

<sup>2</sup> See, DPM § 1803.7; See also, 18 U.S.C. § 209.

<sup>3</sup> See, D.C. Attorney General Advisory Memorandum AG-98-493: Clarification of March 4, 1996 Opinion Regarding Cash Awards Program in the Office of the Recorder of Deeds (1998).

<sup>4</sup> See, Mayor’s Memorandum 2012-3 (dated May 16, 2012) (hereinafter Mayor’s Memorandum).

<sup>5</sup> See, D.C. Code § 1-329.01(b).

<sup>6</sup> It should be noted that DCPS, absent a waiver, would not be able to accept a donation from a prohibited source. A “prohibited source” is defined as “any person or entity that: (1) has or is seeking to obtain contractual or other business or financial relations with the District government; (2) conducts operations or activities that are subject to regulation by the District government; or (3) has an interest that may be favorably affected by the performance or non-performance of the employee’s official responsibilities.” (DPM § 1803.2 (b)). Under this definition, BEGA does not consider *The Washington Post* to be a prohibited source.

donation must be used by DCPS to carry out its authorized functions or duties. The DCPS website states that DCPS's mission is a commitment to graduate District students and prepare them for college and work, and the teachers' roles are to ensure achievement of the students.<sup>7</sup> The nominating criteria for this award appear to conform to the stated functions of DCPS.

Assuming OPGS approves the donation from *The Washington Post* to DCPS, we then move to an analysis of the award to the individual teacher. You advise that DCPS, following the applicable nomination criteria and selection process, selected a DCPS teacher to receive this award. We must determine whether it is permissible for the teacher to receive the \$3,000 award.

Here, however, if OPGS approves the donation of the \$3,000 from *The Washington Post* to DCPS, the money then would be District property. At that point, the employee would be receiving the award from DCPS, not a private source. In a 1998 Office of the Attorney General ("OAG") opinion, the OAG stated that an awards program that conforms to D.C. Official Code §§ 1-620.1 and 1-620.2, qualifies as a "bona fide awards program,"<sup>8</sup> and, therefore, is not considered a supplement to the employee's salary by an outside source, in violation of 18 U.S.C. § 209.<sup>9</sup>

D.C. Official Code §§ 1-619.01 and 1-619.02 [formerly §§ 1-620.1 and 1-620.2] state:

*§ 1-619.01 (a) [Formerly § 1-620.1(a)] The Mayor and the District of Columbia Board of Education shall issue rules and regulations authorizing the granting of cash and honorary awards to employees for their suggestions, inventions, superior accomplishments, length of service, and other meritorious efforts which contribute to the efficiency, economy, or otherwise improve the operation of the District government.*

*§ 1-619.02 [Formerly § 1-620.2] A cash award authorized under the provisions of § 1-619.01(a) may not exceed \$ 5,000 or 10% of the employee's scheduled rate of basic pay, whichever is greater.*

The award at issue in the instant matter satisfies § 1-619.01(a) because its criteria includes superior accomplishments and other meritorious efforts. The amount of the award, \$3,000, satisfies § 1-619.02 in that it does not exceed \$5,000 or 10 % of the employee's scheduled rate of basic pay, whichever is greater.

The U.S. Office of Government Ethics ("U.S. OGE") opined on a similar ethics question in 2007.<sup>10</sup> The question concerned whether federal government employees were able to accept monetary awards underwritten by a corporation.<sup>11</sup> The process for selecting employees was conducted through written criteria. In addition, the corporation did not participate in the selection process, nor was it allowed to "brand" the particular award.<sup>12</sup> Because the awards program issued awards pursuant to written criteria, the awards were

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<sup>7</sup> See, DCPS website, "Who We Are," <http://dcps.dc.gov/DCPS/About+DCPS/Who+We+Are>.

<sup>8</sup> See, D.C. Attorney General Advisory Memorandum AG-98-493: Clarification of March 4, 1996 Opinion Regarding Cash Awards Program in the Office of the Recorder of Deeds (1998).

<sup>9</sup> Also known as the "salary supplementation rule," 18 U.S.C. § 209 is a federal statute that prohibits a District employee from receiving any contribution to his salary from an outside source. DPM § 1803.7 cites to this rule.

<sup>10</sup> See, OGE Informal Advisory Letter 07 x 6.

<sup>11</sup> Id.

<sup>12</sup> Id.

part of an established program of recognition, and the awards were distributed on a regular basis, the U.S. OGE stated that the awards met the requirements of a “bona fide award for public service or other meritorious achievement,” and 18 U.S.C. § 209, which prohibits government employees from receiving any contribution to their salaries, does not apply to these types of awards.<sup>13</sup> The U.S. OGE opinion, however, stated that:

An employee may accept . . . a bona fide award . . . that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee’s official duties . . . .

Accordingly, we find that, based on the written criteria issued by *The Washington Post*, the *Agnes Meyer Outstanding Teacher Awards* qualify as a bona fide awards program pursuant to D.C. Official Code §§ 1-619.01 and 1-619.02. No facts or information were provided to indicate that *The Washington Post* has interests that may be substantially affected by the performance or nonperformance of the official duties of the teacher ultimately selected to receive this award. Therefore, if OPGS approves DCPS’s donation application, DCPS may use the donation to give an award to a teacher who meets the requirements of the written criteria as part of an established, annual program of recognition.

We also note that because this is a bona fide award based on written criteria issued by *The Washington Post* for excellence in teaching, provisions such as DPM § 1803.1(a)(1)<sup>14</sup> are not implicated. The teacher’s acceptance of this \$3,000 monetary award, from DCPS, is akin to receiving a raise for a job well done. The teacher has not used his or her public office for private gain. Instead, he or she is receiving recognition, from his or her employing agency, for his or her excellence in teaching.

Moreover, if OPGS approves the donation to DCPS, then the teacher is permitted to attend the awards ceremony to accept the physical award and the monetary award, as these are all parts of the process of receiving the monetary award. We do not make a distinction between the award and the manner or venue in which it is received. Similarly, in the 2007 opinion, the U.S. OGE agreed, stating that if the employee is permitted to accept the monetary award, he or she may also accept free attendance to the event at which the award is presented.<sup>15</sup>

Please be advised that this advice is provided to you pursuant to section 219 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.*, which empowers me to provide such guidance. As a result, no enforcement action for violation of the District’s Code of Conduct may be taken against the DCPS teacher who accepts the award in this context, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion.

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<sup>13</sup> Id.

<sup>14</sup> 1803.1(a)(1) states, in pertinent part, that an employee shall avoid action which might result in or create the appearance of using public office for private gain.

<sup>15</sup> See, U.S. OGE Informal Advisory Letter 07 x 6.

Finally, you are advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that the identifying information of the requestor will not be disclosed unless and until the requestor consents to such disclosure in writing. Given that in this instance you requested this opinion on behalf of DCPS and the identity of the award recipient was not disclosed to this Office, this opinion will be published in its entirety, with the exception of your name and title.

Please let me know if you have any questions or wish to discuss this matter further. I may be reached at (202) 481-3411, or by email at [darrin.sobin@dc.gov](mailto:darrin.sobin@dc.gov).

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
DARRIN P. SOBIN  
Director of Government Ethics  
Board of Ethics and Government Accountability

AA-023-13