

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

Office of Government Ethics

In Re: R. Young  
Case No. 20-0104-P

**NEGOTIATED DISPOSITION:**

Pursuant to section 221 (a)(4)(A)(v)<sup>1</sup> of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012, D.C. Law 19-124, D.C. Code § 1-1161.01 et seq., (“Ethics Act”), the Office of Government Ethics (the “Office” or “OGE”) hereby enters into this public negotiated settlement agreement with the Respondent, R. Young. Respondent agrees that the resulting disposition is a settlement of the above-titled action, detailed as follows:

**FINDINGS OF FACT:**

The Respondent served as the City Administrator for the District of Columbia government from January 2, 2015 through August 14, 2020. According to the Office of the City Administrator’s (OCA) website, he was responsible for the day-to-day management of the District government, setting operational goals and implementing the legislative actions and policy decisions of the Mayor and the City Council.<sup>2</sup> He was an “employee” of the District reporting directly to the Mayor, and required to comply with the city’s ethics laws.

On August 13, 2020, the Respondent asked OGE to provide him with guidance with respect to the circumstances surrounding his discussions with Howard University (“the University”) about prospective employment. Specifically, he asked OGE to determine if there were any “conflicts or ethical issues” related to the performance of his official duties in connection with a request from the University on July 14, 2020. The Respondent provided OGE with information and correspondence related to the University’s request and a timeline of events describing both his official duties related to the University and his personal communications with Howard regarding prospective employment.

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

<sup>2</sup> <https://oca.dc.gov/page/about-oca> (last accessed September 18, 2020).

On August 14, 2020, Mayor Muriel Bowser referred a “a matter to [BEGA] for review of the employment negotiations of a departing cabinet member.” On July 31, 2020, the Respondent had informed the Mayor that he was in discussions with the University regarding prospective employment. After talking with the Respondent again, the Mayor referred the matter to BEGA so that an “independent office [could] conduct a full review to ensure that all District policies and procedures were followed,” given that a high level District official was potentially going to work for a private entity with whom the District does business and given that there was a significant Tax Abatement Bill pending before the Council on which the Respondent had worked.

In light of the Respondent’s request and the Mayor’s referral letter, OGE conducted a preliminary investigation into the circumstances related to the Respondent’s work involving the University and his employment discussions with the University.

### **Respondent’s work on the Redevelopment Tax Abatement Act of 2020**

In August 2019, at the Mayor’s initiative and including the Respondent, the District led a presentation to Howard University officials regarding the construction of a new University hospital to replace the current facility on Georgia Avenue NW. The presentation included discussions about financial support from the District for the development of the facility. Led by the Respondent and his staff, the negotiations regarding the location, amount and types of financial support, along with regulatory, zoning, and permitting assistance continued for several months. By December 2019, the District and Howard reached agreement in principle on the terms for the project. These terms were never changed.

On April 29, 2020, the Mayor executed a Memorandum of Understanding which memorialized the term sheet of the project that the District and the University had agreed to in principle in December 2019, Under the agreement, the District would provide for a \$225 million tax abatement for the University, along with other incentives for the hospital’s development.<sup>3</sup>

By May 2020, the term sheet and Memorandum of Understanding between the District and the University became the basis for draft Bill 23-0778, “New Howard University and Redevelopment Tax Abatement Act of 2020,” (“the Bill”) and it was circulated throughout District government for study and review. On June 8, 2020, the Mayor submitted the Bill to the District’s City Council and Council Chairman Phil Mendelson introduced the Bill at the request of the Mayor. The substantive terms of the Bill were the same as the terms agreed to by the parties in April 2020.

Throughout the month of June 2020, the Respondent met with several members of the District Council to advocate for the Bill. The Respondent’s work on the Bill culminated with his testimony on June 30, 2020, when the Council held the first public hearing on the Bill.

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<sup>3</sup> <https://newhospitals.dc.gov/release/mayor-bowser-announces-agreements-two-new-hospitals-bring-equity-dc%E2%80%99s-health-care-system> (last accessed September 18, 2020).

Respondent fully believed that his work related to the District's support for the project ceased after his testimony before the Council and that the terms of the project were final.

As of the date of this agreement, the legislation is under Council review.<sup>4</sup>

### **Respondent's interactions with Howard University regarding employment**

In early July, the Respondent sought advice from an acquaintance who is affiliated with the University, but with whom he is acquainted from a sector unrelated to the University, about his interest in a posted position with a private employer (not the University). After their discussion, the Respondent's acquaintance then relayed that the Respondent was interested in opportunities in the private sector to the President of the University, unbeknownst to the Respondent.

On or about July 10, 2020, the University President contacted the Respondent to set up an in-person meeting. Early in the day on July 14, 2020, the Respondent and the University President met on campus to discuss the University's interest in creating a new position that might of interest to the Respondent given his background and skill set. At that time, the Respondent and the University had not discussed a title for the position, the portfolio and duties of the position, or potential compensation.

Thereafter, the Respondent and the President exchanged emails regarding questions the Respondent had as a follow up to their July 14<sup>th</sup> meeting. In a letter dated July 16, 2020, the University President memorialized the conversations between himself and the Respondent from their July 14, 2020 communications. He thanked the Respondent for his interest in joining the University administration, detailed some of the functions of the positions, and encouraged him to "continue [their] dialogue." The Respondent then discussed prospective employment with other University employees on July 21<sup>st</sup> and July 22<sup>nd</sup>. On July 27, 2020, the University circulated the first offer of employment to the Respondent.

On July 24, 2020, the Respondent contacted OGE and set up a call for Monday, July 27, 2020, to seek guidance as to how the post-employment restrictions would apply to him, should he accept a position with the University. In that call, he described his work on the tax abatement Bill and the nature of his discussions with the University. The Respondent believed that he had last worked on matters involving the University when he testified before the District Council on June 30, 2020. After that point, since the matter was pending before the Council, the Respondent believed that he no longer had any authority or responsibility with respect to the Bill. Even though the Bill was before the Council, OGE staff advised the Respondent to recuse himself formally from all OCA matters related to Howard University since the Bill was still pending under Council review.

As a result of his discussions with OGE, on July 27<sup>th</sup> the Respondent then emailed a recusal from matters involving Howard University to his staff and his General Counsel. On July 29, 2020, Respondent and OGE staff had additional discussions about Respondent's work on the tax abatement and related Bill and about his prospective duties with the University. The Respondent

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<sup>4</sup> <https://lims.dccouncil.us/Legislation/B23-0778> (last accessed September 18, 2020).

emphasized his commitment to following the ethics rules and asked detailed and specific questions to ensure that he was clear on how the post-employment restrictions would apply to his prospective employment. The Respondent stated he intended to share the guidance with the University, so that they would be fully informed of his limitations before making a final decision about employment.

On August 2, 2020, OGE issued guidance to the Respondent regarding how the post-employment would affect his prospective employment with the University. On August 2, 2020, the Respondent also accepted the University's offer of employment.

### **Howard University's July 14, 2020 Amendment Request**

The Respondent was unaware that at approximately the same time he was meeting with the University President on July 14, 2020 at 11:38 a.m., the University's Chief of Staff forwarded an email to OCA's Chief of Staff containing proposed revisions and amendments to the Bill that had been formulated by the University's Real Estate development team. The University employee who authored the email was also unaware that the University President was meeting with the Respondent at the time he sent the email. and the proposed amendments were not sent to the Respondent. The email included 13 suggested edits to the Bill, most notably a suggestion that by OCA's calculations would increase the nominal value of the tax abatement to \$314 million.

OCA's Chief of Staff and General Counsel exchanged telephone calls and emails that afternoon and evening regarding the suggested edits. At 2:17 p.m. that day, OCA's Chief of Staff asked that the email be printed for Respondent's later review. At 3:14 p.m., OCA's General Counsel provided an analysis of the University's proposed amendments. OCA staff recommended that Respondent communicate that the District could not support the University's request because the parties had already agreed to terms in April of 2020, which as the agency head, Respondent did. Although the Respondent rejected any substantive changes in the proposed amendments, he did support and approve other changes that would make the Bill consistent with the terms that the University and the District agreed and were reflected in the term sheet.

By the evening of July 14, 2020, OCA's Chief of Staff and General Counsel spoke with the Respondent about the proposed amendments and the Respondent confirmed that he could not and would not authorize or support the University's proposed amendments before the Council. The Respondent then contacted the University's President to relay that the terms of the project remain unchanged and that OCA was unwilling to support or forward the amendments and that the matter was pending before the Council.

Based on OGE's review of correspondence, calendars, and witness interviews, it is undisputed that the OCA rejected the substantive changes in the University's proposed amendments by the evening of July 14, 2020. Our investigation found no evidence suggesting that the Respondent or anyone from the OCA attempted to promote the edits on behalf of the University. In addition and most importantly, our investigation did not uncover any evidence suggesting that the Respondent in anyway attempted to leverage his official position for private gain – neither for his own nor the University's interests.

## **NATURE OF VIOLATIONS**

Respondent's conduct in following his staff's advice and making the decision to reject the University's proposed changes on July 14, 2020, after he had begun seeking employment with the University, violated the following provision of the District Personnel Manual ("DPM").

Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with their official government duties and responsibilities. DPM § 1800.3(j).

When the Respondent met with the University President on July 14, 2020, he formally began seeking employment with the University.<sup>5</sup> In retrospect, the Respondent should have recused himself from matters involving the University on July 14, 2020 after that meeting, even though he believed that his work on the matter had formally ceased and he could not make any substantive changes to the legislation.

Despite having preliminary discussions with the University about employment that same morning, the Respondent followed his staff's recommendation to tell the University that his office would not support the University's proposed amendments to Bill 23-0778, which sought to change the amount of the tax abatement.

**The above-referenced incident is not authorized by the District of Columbia.**

## **MITIGATING FACTORS**

OGE did not identify any evidence that the Respondent intended to misuse his position with the District to gain employment with the University or that he intended in any way to use his official position to benefit neither himself nor the University financially. Other witnesses confirmed that they did not believe that the Respondent ever attempted to misuse his position for private gain to benefit himself or the University and stated that they believed him to be an ethical employee. The Respondent had sought OGE's guidance before beginning his job search. Unfortunately, his understanding that his weighing in on the proposed amendments was not an issue because he could not approve them, nor tried to approve them, did not reflect the broad nature of the District's Code of Conduct. Thus, it appears that the Respondent inadvertently committed a technical violation of the Code of Conduct

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<sup>5</sup> Because the Respondent did not immediately reject the possibility of employment with the University during the July 14, 2020 meeting and the University had not yet specified the position title, responsibilities, or compensation regarding a specific position, OGE find that the Respondent was formally seeking employment with the University. *See* 5 CFR § 2635.603(b)(1)(iii). An employee should recuse themselves from participating in particular matters involving employers with whom they are seeking employment. *See* 5 C.F.R. § 2635.604(a). It is important to note that on July 14, 2020, Respondent had not begun to engage in the type of bilateral employment negotiations with the University that would implicate 18 U.S.C. § 208 (which prohibits an employee from participating in a particular matter involving an entity with whom he is 'negotiating or has any arrangement concerning prospective employment.'). *See* 5 CFR § 2635.603(b)(1)(i).

OGE also considered the following factors as mitigating circumstances in deciding upon an appropriate remedy in this matter, which factors OGE took into consideration and gave such weight as OGE believed was warranted:

1. Respondent sought assistance from OGE well before he sought to leave District employment and promptly contacted OGE to self-report and seek guidance once he realized that the July 14, 2020 amendments raised an ethics concern.
2. Respondent asserts that he has an impeccable record of compliance with all laws and regulations regarding his employment in the District.
3. Respondent asserts that he believed that his June 30, 2020 testimony before the Council was his last official action on matters related to the Bill, and because the legislation was before the Council for consideration, he was without authority to make any changes to the original term sheet, nor did he attempt to exert any influence over anyone with such authority.
4. Respondent asserts that his office actually undermined the position of the University in that his office rejected the proposed amendment.
5. Respondent asserts that he did not believe that any input or commentary on the Bill after the June 30, 2020 ultimately conflicted with his duties/position as the City Administrator.

Moreover, by agreeing to settle this matter via a negotiated disposition, Respondent will allow OGE to avoid expending significant time and resources to litigate this matter through a contested hearing, and to focus its finite resources on other investigations.

#### **TERMS OF THE NEGOTIATED SETTLEMENT**

Respondent acknowledges his actions hereinabove inadvertently, but not intentionally, violated the District's Code of Conduct. Accordingly, Respondent agrees to pay a total fine of Two Thousand Five Hundred Dollars (\$2500.00) no later than December 31, 2020.

All payments will be submitted by certified check or money order, made out to the D.C. Treasurer, and delivered to and received by OGE at 441 4<sup>th</sup> Street N.W., Suite 830 South, Washington D.C. 20001.

**Respondent acknowledges and understands that this Negotiated Disposition is only binding upon himself and OGE. Respondent acknowledges and understands that OGE does not have the authority to bind any other District or federal government agency to this agreement, including but not limited to the United States Office of Government Ethics, the Metropolitan Police Department, the Federal Bureau of Investigations, the District of Columbia Office of the Attorney General ("OAG"), the United States Attorney for the District of Columbia ("USAO") or the United States Department of Justice ("DOJ"). Respondent further acknowledges and understands that notwithstanding the terms of this Negotiated Settlement, his conduct described hereinabove may also subject him to the imposition of civil and/or criminal penalties by other government agencies who are not bound by the terms of this agreement whatsoever.**

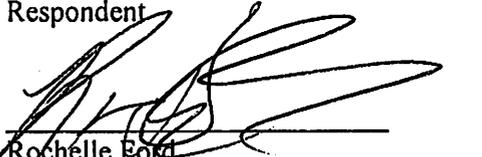
Respondent understands that if he fails to pay the full \$2500.00 fine in accordance with the terms set forth hereinabove, pursuant to section 221(a)(5)(A) of the Ethics Act (D.C. Official Code § 1-1162.21(a)(5)(A), the Ethics Board may file a petition in the Superior Court of the District of Columbia for enforcement of this Negotiated Disposition and the accompanying Board Order assessing the fine. Respondent agrees that this Negotiated Disposition constitutes various facts that may be used in any subsequent enforcement or judicial proceeding that may result from his failure to comply with this agreement. Respondent also understands that, pursuant to section 217 of the Ethics Act (D.C. Official Code § 1-1162.17), he has the right to appeal any order or fine made by the Ethics Board. Nonetheless, the Respondent knowingly and willingly waives his right to appeal the accompanying Board Order assessing the \$2,500.00 fine in this matter in exchange for the concessions made by this Office in this Negotiated Disposition.

Respondent further understands that if he fails to adhere to this agreement, OGE may instead, at its sole option, recommend that the Ethics Board nullify this settlement and hold an open and adversarial hearing on this matter, after which the Ethics Board may impose sanctions up to the full statutory amount as provided in the Ethics Act for each violation.<sup>6</sup> Because the Office is, at this time, foregoing requesting that the Ethics Board hold an open and adversarial hearing on this matter, Respondent waives any statute of limitation defenses should the Ethics Board decide to proceed in that matter as a result of Respondent's breach of this agreement.

The mutual promises outlined herein constitute the entire agreement in this case. Failure to adhere to any provision of this agreement is a breach rendering the entire agreement void. By our signatures, we agree to the terms outlined therein.

  
R. Young  
Respondent

9 / 21 / 20  
Date

  
Rochelle Ford  
Acting Director of Government Ethics

9/21/2020  
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 Chairperson below.

APPROVED:

  
Norma B. Hutcheson  
Chair, Board of Ethics and Government Accountability

9/21/2020  
Date

<sup>6</sup> Section 221(a)(1) (D.C. Official Code § 1-1162.21(a)(1)).  
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