



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

2 Lafayette Street, Suite 1010

New York, New York 10007

(212) 442-1400

Fax: (212) 442-1407 TDD: (212) 442-1443

Steven B. Rosenfeld
Chair/Board Member

Monica Blum
Board Member

Angela Mariana Freyre
Board Member

Andrew Irving
Board Member

Jane W. Parver
Board Member

Mark Davies
Executive Director

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& General Counsel*

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*Director of
Administration*

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*Director of Financial
Disclosure & Litigation
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Christopher M. Lall
*Director of Information
Technology*

Joel A. Rogers
*Director of Training &
Education*

Community Education Councils Moonlighting Waivers

Charter Sections: 2601(12), 2604(a)(1)(a), 2604(b)(6), 2604(e)

Advisory Opinion No. 2006-1

The Conflicts of Interest Board (the “Board”) has exercised its waiver authority under Charter Section 2604(e) to permit several members of the Community Education Councils (“CECs”) of the Department of Education (the “DOE”), with the written approval of the DOE Chancellor, to continue their employment with firms that have business dealings with the DOE. Because the Board anticipates receiving additional similar requests in the future, it issues this opinion to delineate the circumstances in which it will issue such waivers and the conditions it will attach to such waivers.

Background

In the most recent revision of the DOE’s governance law, the Legislature created the CECs to replace the Community School Boards (“CSBs”). There is a CEC for each of DOE’s 32 districts, each with eleven voting members, nine of whom are parents whose

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children attend a school in the district. These parent members are selected by the leadership of the Parent Teacher Associations or Parent Associations (“PTA/PA”) of the district. The other two voting members are appointed by the Borough President. One non-voting member is a high school senior residing in the district and appointed by the District Superintendent from among elected student leadership. All members selected and/or appointed in spring 2004 served for one year. Beginning in the spring of 2005, selections made by PTA/PA officers as well as appointments made by Borough Presidents, take place every two years, although high school seniors continue to serve only one-year terms. See N.Y. Educ. Law §2590-c (McKinney’s Consolidated Laws of New York, 2005).

The CECs have various powers and duties, including: submitting comments on the district’s capital plan; playing a role in evaluating the Community Superintendent and Local Instructional Superintendents; approving zoning lines for district schools, as submitted by the Superintendent; reviewing the district’s educational programs and assessing their impact on student achievement; and holding at least one public meeting per month where the public can air its concerns about the schools in the district. CECs have no executive or administrative powers or functions, no involvement with contracts between vendors and their respective districts, and no power to determine how their districts spend funds. Id at §2590-e.

Since membership on a CEC is an unpaid activity, many CEC members are also engaged in full-time or part-time paid employment. Their employers run the range of public and private entities in the City, and include a substantial number of private firms

that provide goods and services to the DOE. These private entities include financial service firms, public utilities, universities, and consulting firms. Some of these entities, particularly the larger ones, enter into multi-million dollar contracts with the DOE negotiated at the DOE's central offices and provide for goods and services throughout the entire public school system. Other employers, typically the smaller firms, enter into smaller contracts, often negotiated at the district or regional level, typically providing for services in a single district or a handful of districts.

The numerous waiver requests received by the Board since the CECs were established have indicated that, where the CEC member's employer has dealings with "DOE central" – again, typically dealings involving large contracts and large firms – the CEC member has had little or no involvement in those dealings on behalf of his or her employer. Where the CEC member's employer has the more localized business with the DOE – for example, when the employer has a contract to provide services in only one district – the business dealings often do not include the district on whose CEC the member sits, although the member is sometimes involved in those dealings on behalf of his or her employer.

Discussion

Charter Section 2604(a)(1)(a) prohibits a public servant from having an interest in a firm that has business dealings with the public servant's City agency. Charter Section 2601(12) defines "interest" to mean a "position" with, or ownership interest in, a firm.

Charter Section 2604(b)(6) prohibits a public servant from representing, for compensation, private interests before his or her City agency.

Thus, Charter Section 2604(a)(1)(a) would prohibit a CEC member from working at a firm that has any business with the DOE. In addition, Charter Section 2604(b)(6) would prohibit the member from communicating with the DOE on behalf of his or her private employer.

Charter Section 2604(e) provides, however, that a public servant may hold a position or engage in conduct otherwise prohibited by Chapter 68 if the Board determines, after receiving the written approval of the head of the agency or agencies involved, that such position or conduct does not involve a conflict with the purposes and interests of the City.

The Board had granted Section 2604(e) waivers to members of the CSBs, the predecessors to the CECs, allowing CSB members to retain outside employment with employers that had business dealings with the DOE, but generally only if there were no business dealings between the CSB member's employer and the district served by the member. But the Board denied waivers if there were such dealings, in order to prevent the appearance that CSB members might use their CSB positions for the benefit of their outside employers.

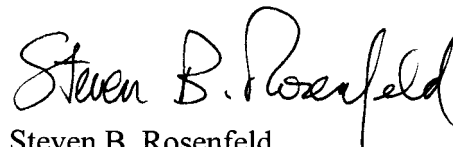
The Board has now received waiver requests from members of the CECs, bodies that, unlike the CSBs, have no administrative or executive authority. Because of this critical difference, the Board has determined that, in appropriate circumstances, it will grant waivers to permit the outside employment of CEC members, not only at firms that

deal only with “DOE central” or that have no business with the member’s own district, but also at firms that have business dealings with the member’s own district – subject, however, to the following conditions:

- (1) The member may not be involved on behalf of his or her outside employer in any matters involving the CEC district the member serves, and may not be involved at the CEC in any matters involving his or her outside employer. *This means, without limitation, that the CEC members must recuse themselves at both their outside employer and the CEC from any business dealings or contracts between the CEC district they serve and their outside employer.*
- (2) The member may not communicate on behalf of his or her outside employer with any employee of the district the member serves or of any school in the district.
- (3) The member may not use his or her official City position or title to obtain any private or personal advantage for the member’s employer.
- (4) The member may not use any DOE equipment, letterhead, personnel, or other DOE resources in connection with his or her non-City work.
- (5) The member may not disclose or use for private advantage any confidential information obtained as a result of the member’s City position.

Conclusion

Members of the Community Education Councils (“CECs”) of the Department of Education (the “DOE”) who work at private firms that have business dealings with DOE would, absent a waiver from the Board, be in violation of Charter Section 2604(a)(1)(a). However, upon the written approval of the DOE Chancellor, the Board will, in appropriate circumstances, grant Section 2604(e) waivers to permit CEC members to hold such positions, but will condition any such waivers on the requirements that the member not participate at the CEC in any matter involving his or her outside employer; not communicate on behalf of that employer with staff of the district on whose CEC the member sits, or with the staff of any school within that district; not use any DOE equipment, supplies, or other resources in connection with the outside employment; and not use or reveal confidential City information.



Steven B. Rosenfeld
Chair

Monica Blum
Angela Mariana Freyre
Andrew Irving
Jane W. Parver

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