

BEFORE THE OFFICE OF CAMPAIGN FINANCE  
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS  
FRANK D. REEVES MUNICIPAL BUILDING  
2000 FOURTEENTH STREET, N.W., SUITE 433  
WASHINGTON, D.C. 20009  
(202) 671-0550

IN THE MATTER OF:

Michelle A. Rhee, Chancellor  
District of Columbia Public Schools  
Respondent

Docket No.: FI-2010-101

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**ORDER**

**I. Introduction**

This matter arises from a complaint filed by Robert Vinson Brannum alleging that Michelle A. Rhee, Chancellor, District of Columbia Public Schools, may have violated the District of Columbia's conflict of interest statute, D.C. Official Code §§ 1-1106.01 et seq. and/or the District of Columbia Employee Standards of Conduct, Chapter 18, D.C. Personnel Regulations, when she solicited and/or accepted private funding to support certain provisions of a tentative contract agreement between District of Columbia Public Schools (DCPS) and the Washington Teachers Union Local 6 (WTU). According to the complaint, these actions may have resulted in a direct personal, financial benefit to her. Further, it is alleged that Chancellor Rhee may have abused her office by negotiating an agreement on behalf of the District Columbia which may require or secure her continued employment as Chancellor. Moreover, it is alleged that Chancellor Rhee may have been required to disclose this [potential] conflict of interest and to recuse herself from participation in these negotiations.<sup>1</sup>

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<sup>1</sup> See Appendix for documents comprising OCF's investigative record.

## **Findings of Fact**

In 2007, Mayor Adrian Fenty assumed control of the District of Columbia Public Schools (DCPS), and appointed Michelle A. Rhee as Chancellor in June of that year. In November 2007, the D.C. Public Education Fund (DCPEF), a registered 501(c)(3) organization, was founded with a goal of raising over \$100 million dollars in support of DCPS through the 2012-2013 school year. The mission of DCPEF is three-fold: (1) to secure funding for District of Columbia school reform initiatives; (2) to facilitate partnerships and donations of in-kind support for DCPS; and (3) to manage grants and hold DCPS accountable for commitments made. DCPEF acts as a fiscal agent to DCPS for funding raised by the organization.

DCPEF directed its resources toward securing private funding to support implementation of certain compensation-related components of the WTU contract. DCPEF, as grantee, sought the interest of private funders for this initiative, and identified four (4) private foundations (grantors)<sup>2</sup> to commit funds to cover these components of the collective bargaining agreement. Currently, DCPEF is negotiating grant agreements on behalf of DCPS with private donors to fund certain portions of the WTU contract. Disbursement of grant funding is contingent upon, among other things, fiscal certification of the tentative agreement between DCPS and WTU; ratification of the tentative agreement by the WTU membership; and, reservation of “the right to reconsider support for this initiative if there is a material change in DCPS’ senior leadership.” Grant disbursements are to be made to DCPEF, and, subsequently donated to the District of Columbia Government through its Office of Partnerships and Grant Services (OPGS).<sup>3</sup> OPGS has the

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<sup>2</sup> The Eli and Edythe Broad Foundation, Los Angeles, California; The Laura and John Arnold Foundation, Houston, Texas; The Robertson Foundation, New York, New York; and The Walton Family Foundation, Bentonville, Arkansas.

<sup>3</sup> Mayor’s Order 2010-60 (dated April 6, 2010) requires the OPGS Director to review all requests by District officials to solicit or accept donations and approve or disapprove such requests in accordance with the Rules of Conduct Governing Donations (Mayor’s Memorandum 2010-1) and Section 115 of the 2003 D.C. Appropriations Act.

exclusive authority to receive and accept donations on behalf of the District of Columbia Government.<sup>4</sup>

On April 7, 2010, the District of Columbia Public Schools (DCPS) and the Washington Teachers Union Local 6 of the American Federation of Teachers AFL-CIO (WTU) reached a tentative contract agreement, including the following: (1) significant increases in base salaries, (2) performance bonuses, and (3) funding to support the negotiated performance-based excessing policy or elimination of a teacher's position based on negotiated criteria.

On April 28, 2010, DCPEF received a response from an inquiry made of District of Columbia attorney, Celia Roady, Esq., whose practice focuses on tax and governance issues affecting tax-exempt organizations, including charities, foundations and other non-profit organizations. Specifically, DCPEF sought information on whether the condition stated in the grant commitment letters from the four private foundations, i.e., the grantors' reservation of the right to reconsider any remaining grant payments in case of a material change in DCPS leadership, was consistent with conditions customarily imposed by private grant-making entities for specific projects. Ms. Roady concluded that they were. Further, she added that "the reason for the change in leadership restriction is readily apparent. When foundations evaluate projects, an important consideration is whether the foundations have confidence that the project leadership is capable of carrying out the terms of the grant."

Further, to bolster the fact that it is not uncommon for funders to attach restrictions on grant funding based on material changes in project leadership, DCPEF proffered a commitment

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<sup>4</sup> Mayor's Order 2008-33, which rescinded and reissued Mayor's Order 2002-2, gives the District's Office of Partnership and Grants Services (OPGS) exclusive authority to solicit review, receive and approve donations to the District government.

letter from City Bridge Foundation, which contained similar, restrictive language to that used by the prospective funders of the DCPS/WTU contract.<sup>5</sup>

On April 30, 2010, in testimony before the District of Columbia Council, the District's Chief Financial Officer (CFO), Natwar M. Gandhi, would not certify the use of private foundation funds to support the salary and benefits under the DCPS and WTU Tentative Agreement. This position was taken, in part, due to the conditions attached to the funding by the foundations, i.e., the right to reconsider their financial commitment in the event of a change in leadership at DCPS.

On April 30, 2010, in a letter to the editor of the *Washington Post*, the D.C. Public Education Fund's President, Cate Swinburn, clarified that "funders typically place conditions such as these on grants to ensure accountability and the recipient's commitment to using funds for the agreed-upon purpose."

On May 7, 2010, in a letter to Natwar M. Gandhi, CFO for the District of Columbia, Chancellor Rhee confirmed the manner in which DCPS proposed to realize the funds needed in FY 2010 to support the proposed contract with the WTU, as well as how she would address the spending pressures identified by the CFO.

On May 10, 2010, the CFO certified the availability of funding for the DCPS/WTU Tentative Agreement. He further certified that the proposed revisions to the DCPS FY 2010 budget and the FY 2010 through FY 2013 financial plan were balanced, thereby assuring the CFO's confidence in the fiscal soundness of the Tentative Agreement.

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<sup>5</sup> See commitment letter from City Bridge Foundation to DCPEF.

On June 28, 2010, according to DCPEF's President, in "cultivating" the interest of prospective funders in the DCPS/WTU contract, Chancellor Rhee was used occasionally in conversations with the funders to add "color" or content and detail to the broader scope of information that DCPEF could provide to funders relative to DCPS' progress and priorities. Notwithstanding, it was stated that the Chancellor did not play a role in negotiating or drafting the provisions of the grant agreements.

On July 9, 2010, Chancellor Rhee submitted a Declaration to OCF in response to the allegations in the complaint. In her Declaration, the Chancellor stated that she explored the possibility of private monetary donations to close the funding gap in the tentative collective bargaining agreement between DCPS and the WTU because it did not appear that sufficient appropriated funds would be available to fully support DCPS' compensation objectives. She further stated that pursuit of private funding was undertaken by DCPEF who identified the four private foundations. The Chancellor maintained that she did not "seek, suggest, encourage, or play any other role" in the funders' reservation of the right to reconsider their commitments to fund the WTU contract in the event of a material change in DCPS leadership. Chancellor Rhee further [affirmed] that she did not obtain any financial gain from the funders' reservation of the right to reconsider continued funding in the event of a change in DCPS leadership, nor did she receive any money from the funders.

On August 31, 2010, the Walton Family, Broad, Robertson and Arnold Foundations responded to OCF inquiries concerning the extent of Chancellor Rhee's role in negotiating the proposed grant agreements between the private foundations and DCPEF, as well as the Chancellor's involvement in negotiating or influencing the key personnel provision in the proposed grant agreements. These foundations affirmed that the Chancellor had no involvement in either matter. While the foundations admit having engaged "in several high-level discussions"

with the Chancellor, they deny that she had a role in negotiating the grant agreements with DCPEF. Further, the foundations attested that “Retention of Key Personnel” clauses are customary and standard in foundation grant agreements.

### **III. Conclusions of Law**

D.C. Official Code § 1-1106.01(i) defines a public official as any person required to file a financial disclosure statement under § 1-1106.02. Chancellor Michelle A. Rhee, a subordinate agency head of the District of Columbia Government pursuant to D.C. Official Code § 1-1106.02(a), is a public official required to file a Financial Disclosure Statement.

D.C. Official Code § 1-1106.01(b) provides that a public official shall not use his or her official position or office to obtain financial gain for himself or herself other than that compensation provided by law to the public official.

The grant agreements negotiated between D.C. Public Education Fund (grantee) and the four private foundations (grantors) made no provision for the payment of a salary, stipend, fringe benefits or any other form of financial gain to Chancellor Rhee. The purpose of the grants was to cover only specific costs associated with the negotiated District of Columbia Public Schools/Washington Teachers Union contract to include increases in base salaries of teachers, performance-based bonuses for teachers, and performance-based “excessing” of teachers. DCPEF is charged with the responsibility of managing the grants. Grant funds are to be remitted by the grantors directly to DCPEF, in accordance with an approved budget and payment schedule. Subsequently, DCPEF is scheduled to donate funds, under the terms of the grant agreements, to the District of Columbia Public Schools by means of a Donation Agreement entered between

DCPEF and the District of Columbia Government, and duly executed by the Director of the Office of Partnerships and Grant Services on behalf of the District of Columbia Government.

In her Declaration to OCF, Chancellor Rhee maintained that she did not play any role in the funders' reservation of their right to reconsider funding; that she did not receive any financial gain from the funders' reservation of the right to reconsider funding of the DCPS/WTU contract in the event of a change in DCPS leadership; nor did she receive any money from the prospective funders. Moreover, DCPEF and each of the funders also affirmed that the Chancellor did not have a role in the negotiation of the grant agreements. On the basis of the foregoing, we conclude that Chancellor Rhee did not use her official position to obtain personal financial gain relative to the DCPEF grant agreements.

D.C. Official Code § 1-1106.01(c) prohibits a person from offering or giving anything of value to a public official, and a public official's solicitation or receipt of anything of value based on an understanding that the public official's actions or judgment would be influenced thereby, or where an inference could be made that the thing of value would influence the public official in the discharge of his or her duties.

In this case, Chancellor Rhee was instrumental in negotiating the collective bargaining agreement between the District of Columbia Public Schools and the Washington Teachers Union. She was not a party to the grant agreements pursued ultimately by DCPEF with private foundations to fund certain portions of the DCPS/WTU contract. The condition placed on the grants by the grantors, i.e., reservation of the right to reconsider funding should there be a "material change in DCPS leadership", was an exercise of their sole prerogative to repose confidence in a project leader they deemed capable of executing the terms of the grant. Further, the condition merely reserved the right to reconsider funding, as opposed to terminating the

funding in the event of a change in DCPS leadership. Moreover, such conditions have been established as not unusual in larger and more complex, multi-year grants of this type.<sup>6</sup> Therefore, we conclude that Chancellor Rhee did not solicit or receive anything of value relative to the DCPEF grant agreements in contravention of this provision of the conflict of interest statute.

D.C. Official Code § 1-1106.01(d) prohibits any offer or payment to a public official, and the solicitation or receipt of money by a public official for advice or assistance given in the course of his or her official employment or related thereto.

The grant agreements between DCPEF and the private funders to support certain provisions of the DCPS/WTU contract did not obligate any of its funds to pay Chancellor Rhee. The agreements were specific in terms of the provisions of the contract that would be funded, and they restricted the use of the funds for any other purposes. While there is testimony indicating that Chancellor Rhee spoke with the prospective funders to provide information about DCPS' priorities, etc., there is no evidence to suggest that the Chancellor was paid for doing so. Further, in her Declaration, Chancellor Rhee affirmed that she did not solicit the funders in any manner relative to the DCPS grants; nor did she receive money from the funders. Consequently, we conclude that Chancellor Rhee did not solicit or receive payment for providing assistance during the course of her employment relative to matters involving the DCPEF grant agreements.

D.C. Official Code § 1-1106.01(g) requires a public official to disclose any direct or indirect financial interests which may affect the discharge of his or her official duties, or a conflict situation created by a personal, family or client interest.

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<sup>6</sup> See letter of Celia Roady, Partner, Morgan, Lewis & Bockius LLP; See letters from the Walton Family Foundation, the Broad Foundation, the Robertson Foundation and the Arnold Foundation.



Chancellor Rhee had no financial interest in the grant agreements between DCPEF and the private funders associated with the DCPS/WTU negotiated collective bargaining agreement. Teachers employed by DCPS were the beneficiaries of the grant agreements, not the Chancellor. Further, since the grant agreements had no effect on the salary or employment of the Chancellor, no conflict of interest was created thereby. The funders' reservation of the right to reconsider funding should there be a "material change in DCPS leadership" did not confer any direct or indirect financial benefit upon Chancellor Rhee. Despite the fact that the language of the grant agreements could be interpreted loosely as providing job security for the Chancellor, there is no evidence that suggests that this was either the intent or the impact. Further, as a subordinate agency head, the Chancellor serves at the pleasure of the Mayor, notwithstanding the grantors' apparent confidence in the Chancellor's ability to lead the District of Columbia Public Schools. Consequently, we conclude that Chancellor Rhee had no financial interest, nor an apparent conflict of interest to disclose relative to the DCPEF grant agreements.

Chapter 18 of the District of Columbia Personnel Regulations, 18 DPM §1801.1 (Employee Standards of Conduct), requires that District of Columbia government employees maintain high levels of ethical conduct in the performance of their official duties, and prohibits employees from engaging in official actions that would adversely affect the public's confidence in the integrity of the District government.

Here, it is alleged that Chancellor Rhee participated in negotiating an agreement on behalf of the District of Columbia that may secure her continued employment as Chancellor, thereby reflecting adversely on the integrity of the District Government. Chancellor Rhee was a participant in negotiating a collective bargaining agreement between the District of Columbia Public Schools and the Washington Teachers Union Local 6. That agreement did not address her

continued employment as Chancellor, but rather focused on a myriad of issues and reforms deemed critical to improving classroom practice and raising student achievement levels in DCPS.

Chancellor Rhee was not a party to the grant agreements negotiated by the D.C. Public Education Fund on behalf of DCPS with private funders; and, it has been established that she did not solicit the conditions attached thereto. Because the grantors of the private agreements considered the Chancellor a key player in executing the collective bargaining agreement reached between DCPS and WTU, they viewed the Chancellor's leadership as critical to the implementation of the DCPS reforms they were willing to support. Notwithstanding, there is no evidence to support a conclusion that the Chancellor either solicited or negotiated terms in the grant agreements relative to her continued employment with DCPS. We conclude, therefore, that Chancellor Rhee's conduct as related to the negotiations referenced herein did not violate the District's Employee Standards of Conduct Regulations.

**IV. Recommendation**

In view of the foregoing and information included in the record, I hereby recommend that the Director dismiss this matter.

\_\_\_\_\_  
Date

\_\_\_\_\_/s/\_\_\_\_\_  
Jean Scott Diggs  
Senior Hearing Officer

**V. Concurrence**

In view of the foregoing, I hereby concur with the Recommendation.

\_\_\_\_\_  
Date

\_\_\_\_\_/s/\_\_\_\_\_  
William O. SanFord  
Acting General Counsel

**VI. Order**

Based upon the foregoing findings of fact and conclusions of law, it is this 3<sup>rd</sup> day of September, 2010:

**ORDERED**, that this matter be hereby dismissed.

Dated: September 3, 2010

\_\_\_\_\_/s/\_\_\_\_\_  
Cecily Collier-Montgomery  
Director  
Office of Campaign Finance

This Order may be appealed to the Board of Elections and Ethics within 15 days from the date of issuance.

## **SERVICE OF ORDER**

This is to certify that I have served a true copy of the foregoing Order by personal service on September 3, 2010 on the following:

Robert Vinson Brannum  
158 Adams Street, N.W.  
Washington, D.C. 20001

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## **NOTICE**

Pursuant to 3DCMR §3711.5 (March 2007), any fine imposed by the Director shall become effective on the 16<sup>th</sup> day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this Order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 433, 2000 Fourteenth Street, N.W., Washington, D.C. 20009.