

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



Office of Government Ethics

In Re: D. [REDACTED] Garber
Case No.: 1453-001

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, D. Garber. Respondent agrees that the resulting disposition is a settlement of the above-titled action, detailed as follows:

I. FINDINGS OF FACT

Respondent was a part-time Substitute Teacher for the District of Columbia Public Schools (“DCPS”) for approximately two years and three months. As a Substitute Teacher Respondent was a wages-as-earned employee paid at an hourly rate by the District.

On August 3, 2015, Respondent filed a “Declaration of Candidacy” form with the District of Columbia Board of Elections, indicating he was declaring his candidacy for the Office of “DC Council At-Large (D).”

From that date until March 4th, 2016, Respondent remained both a candidate for D.C. Councilmember at-large and a Substitute Teacher for DCPS. Respondent advised OGE that he did not use government resources to engage in political activity and did not engage in political activity while he was on duty or in a room or building occupied in the discharge of official duties in the District government.

When OGE informed Respondent of the Local Hatch Act prohibition on District employees filing as candidates for partisan political office, Respondent left his position as a Substitute Teacher. Friday March 4th, 2016, was Respondent’s last day substitute teaching at a specific school in the District, and on Monday March 7th, 2016, Respondent withdrew from the DCPS substitute teaching pool through the end of the 2015-2016 school year.

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.”

II. NATURE OF VIOLATIONS

Respondent's conduct is in violation of one section of the District Code of Conduct, as set forth below:

- ❖ **One:** D.C. Official Code § 1-1171.02(a)(3), which states, "An employee may take an active part in political management or in political campaigns; provided, that an employee shall not:... (3)[f]ile as a candidate for election to a partisan political office."

Respondent violated D.C. Official Code § 1-1171.02(a)(3) in that he, an employee² of the District government, filed as a candidate for election to the partisan political office³ of At-Large D.C. Councilmember (D) on August 3, 2015.

III. TERMS OF THE NEGOTIATED DISPOSITION

Respondent acknowledges that his conduct was in violation of the District Code of Conduct in that he was an employee of the District government, specifically a substitute teacher, when he filed as a candidate for At-Large D.C. Councilmember (D), a partisan political office, on August 3, 2015. Respondent agrees to pay a fine in the amount of **\$1000.00** and promises not to engage in such conduct in the future. In return for Respondent's acknowledgement and promise, OGE will not seek any further remedy or take any further action relating to the above misconduct.

Respondent agrees to pay the **\$1000.00** as follows: \$250.00 on March 18, 2016, and \$750.00 on May 31, 2016. Payment will be accepted by money order, made out to the D.C. Treasurer, and provided to OGE.

Respondent also understands that if Respondent fails to pay the **\$1000.00** fine in the manner and within the time limit provided above, 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 is not just an admission of wrongdoing, but constitutes various factual admissions by him that may be used in any subsequent enforcement or judicial proceeding that may result from his failure to comply with this agreement.

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 (\$5,000 per violation) as provided in the Ethics Act for each violation.

² The Local Hatch Act defines an "employee" as: "any individual paid by the District government from grant or appropriated funds for his or her services." D.C. Official Code § 1-1171.01(3).

³ The Local Hatch Act defines "partisan political office" as: "any office in the District government for which a candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude any office or position within a political party or affiliated organization." D.C. Official Code § 1-1171.01(7).

Because OGE 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 manner as a result of Respondent's breach of this agreement.

The mutual promises outlined herein constitute the entire agreement in the above-titled action. By our signatures, we agree to the terms outlined herein.


D. Garber
Respondent

3-14-16
Date


Darrin P. Sobin
Director of Government Ethics

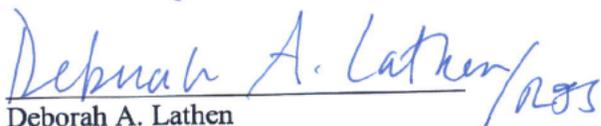
3/14/16
Date

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.

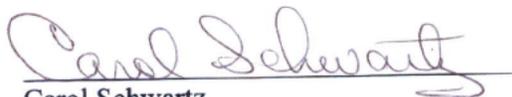
APPROVED:


Robert J. Spagnoletti
Chairman, Board of Ethics and Government Accountability

3/14/16
Date


Deborah A. Lathen
Board Member, Board of Ethics and Government Accountability

3/14/16
Date


Carol Schwartz
Board Member, Board of Ethics and Government Accountability

3/14/16
Date

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DS/ BKF/CP