

BOARD OF ETHICS
WASHINGTON SUBURBAN SANITARY COMMISSION

ADVISORY OPINION # A-25-01

SUBJECT: CODE OF ETHICS § 1.70.180
RESTRICTIONS ON OTHER EMPLOYMENT
AND FINANCIAL INTERESTS

By request dated May 23, 2025, a Commission senior manager (Requestor) sought an advisory opinion from the Board of Ethics (Board) regarding whether the WSSC Code of Ethics (Code) restricts new hires from the federal government from continuing to participate in a Deferred Resignation Program (DRP) once they begin working at WSSC.

Generally, the federal DRP allows employees to enter a Deferred Resignation Program with their employing agency during which they are placed on administrative leave and continue to receive their current salary and benefits until a specified resignation date (currently September 30, 2025). These employees may accept non-federal employment during this period, but any such employment must not violate federal ethical standards.

Code of Ethics § 1.70.180(a) provides:

“An employee must not engage in outside employment if the hours of such employment conflict with the employee’s normal work shift at WSSC or where the outside employment is of such a nature which does or may create a conflict of interest or the appearance of a conflict of interest.”

This provision aims to ensure that WSSC employees are solely committed to their WSSC duties during their work hours and to prevent any actual or perceived conflicts of interest that could compromise the integrity of WSSC operations.

Code of Ethics § 1.70.180(c)(3) allows an exception to the prohibition contained in the above-referenced subpart (a) for an “[e]mployee exempted by [the] Board under extraordinary circumstances to recruit, hire, or retain highly qualified or uniquely qualified

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individuals for public service or to assure the availability of competent services to the public.”

The first issue presented is whether participation in the DRP constitutes “outside employment”, which is defined in Code of Ethics § 1.70.030(q) as “any employment other than an employee’s position with WSSC.” It is undisputed that such employees remain active in the federal employment system until the resignation date and are still subject to some federal employment restrictions (i.e., cannot take employment that violates federal ethics regulations) while participating in the DRP. Accordingly, it is outside employment and Code of Ethics § 1.70.180 is applicable to this situation.

The next analysis is whether DRP employees are engaged in work that “conflict[s] with the employee’s normal work shift at WSSC.” In support of the Advisory Opinion request, the Requestor attached a redacted version of the DRP agreement for a person offered WSSC employment. The submitted agreement specifies that the person is not expected to perform work for his agency during the administrative leave period.¹ Based on this language, there is no conflict with WSSC work hours. However, DRP agreements are drafted by each agency and can contain different requirements regarding being subject to recall or have a continuing obligation to assist the agency during the administrative leave period. Thus, each agreement must be analyzed to determine whether a commitment of time conflict exists.

Additionally, any analysis concerning whether other conflicts exist must be done on an individual basis and depend on factors such as the employing federal agency, the role the person holds, and the duties they will perform at WSSC. In the case before the Board, no such conflicts exists because the federal agency has no duties related to WSSC. Going forward, the Board delegates analysis of these types of conflicts to the Ethics Officer. The Ethics Officer can consult with the Board on these decisions as needed.

¹ In particular, the agreement states: “Employee shall not be expected to work during the Deferred Resignation Period and shall be exempt from all applicable return-to-office requirements.”

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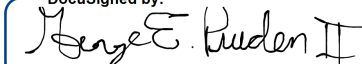
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Lastly, the Board does not opine on the applicability of the exception contained in Code of Ethics § 1.70.180(c)(3) because there is no conflict in the situation presented here. Similar to the Waiver process contained in Code of Ethics § 1.70.070, the Board must conduct this analysis on a case-by-case basis particular to the individual being hired. The Human Resources department is advised to consult with the Ethics Officer if it wants to hire someone under this exception. The Board will rely on the Ethics Officer to elevate these situations to the Board when necessary.

In conclusion, based on the facts presented, the Board holds that the Code does not prohibit hiring a federal employee who is participating in the federal DRP solely on the basis that it is outside employment if the DRP agreement specifies that the person is not expected to work while on administrative leave. For similar situations that may arise, the Board delegates to the Ethics Officer the ability to determine whether conflicts exist that may require an employee to resign from other government employment prior to the expiration of any deferred resignation period.

This opinion applies to the specific facts presented herein. Should circumstances change or additional concerns arise, Requestor should consult with the Ethics Officer.

At its meeting held on **July 9, 2025**, the Board unanimously agreed to adopt the foregoing advisory opinion.

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George E. Pruden, II, Chair