



## MONTGOMERY COUNTY ETHICS COMMISSION

Susan Beard  
*Chair*

Bruce Romer  
*Vice Chair*

**November 9, 2021**

**Waiver 21-11-018**

Since 1965, Montgomery County Government has been the grantee of federal funds for a Head Start program. There are a number of different programmatic components associated with the disposition of these funds, pursuant to federal policy dictates and the County's organizational approaches to providing the Head Start comprehensive service model. The county government has delegated fiscal oversight of the Head Start grant to the Community Action Agency (CAA) that is a unit within DHHS. CAA, School Health Services (SH), and Early Childhood Services (ECS), all located within DHHS, receive a portion of the Head Start funding to support the program. Approximately 80% of the Head Start grant funding is delegated to Montgomery County Public Schools (MCPS), the Head Start "delegate agency" of record.

The Community Action Board (CAB) serves in an advisory capacity to the County Executive and County Council, and as an advocate on behalf of the poor and working poor of the County. Members are appointed by the County Executive and confirmed by the County Council. The CAB supports governance of Community Action Agency programs, including Head Start.

The Ethics Commission has been asked to issue a waiver to Tiffany Jones, a Board Member of the CAB in connection with her employment by Non-profit Montgomery to coordinate an early childhood education pilot program called BASICS with \$100,000 that was allocated by the CAB.

On March 19, 2021, the County issued a press release explaining the BASICS program.

Today, the Montgomery County Department of Health and Human Services Head Start Program launched a pilot of The Basics, a public health strategy that raises awareness about early childhood development and builds capacity throughout the community for engaging families around five science-based parenting and caregiving tenets that support social, emotional, and cognitive development of young children. The five tenets are Maximize Love and Manage Stress; Count, Group and Compare; Talk, Sing, and Point; Explore through Movement and Play; and Read and Discuss Stories.

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The pilot program, funded with \$100,000 in federal CARES Act funding, will focus on Head Start families in Germantown and Gaithersburg. The funding is one-time and the BASICS advisory committee must secure funding for a fully implemented program.

“During this year of the pandemic, families are facing incredible stress and this effort will help strengthen parents as they build their children’s social, emotional and cognitive development, which are pivotal foundations for early learning and good health,” said County Executive Marc Elrich. “We appreciate how all the partners have embraced this effort.”

The Basics pilot program is a partnership that includes Montgomery County Department of Health and Human Services Head Start (Community Action Agency, the grantee), Early Childhood Services and School Health Services, as well as Montgomery County Public Schools (MCPS) Division of CARES Act, Early Childhood & Title I, and Montgomery Moving Forward, an initiative of Nonprofit Montgomery.

As part of its four-year action plan to expand child care options for infants, toddlers and preschoolers; provide greater access to more families; and support schools and community providers, The Basics pilot program aligns with the County’s Early Care and Education Initiative.

Montgomery County’s Department of Health and Human Services’ Community Action Agency has served as the County’s Head Start grantee since its inception. MCPS serves as the delegate agency for the County’s Head Start program, serving 648 children and their families with high-quality education and comprehensive services. The Community Action Board, along with the Head Start Parents Policy Council, is the governing body for the County’s Head Start program.

The Commission understands that the Executive Committee of the CAB, as part of the governing body of the County’s Head Start program, decided, pursuant to a vote that Ms. Jones participated in on November 10, 2020, to reallocate unused Cares Act funding for Head Start to start the Basics pilot program in the County.

The minutes from the November 10, 2020, meeting state:

Head Start [the Community Action Agency representative] presented an action item to the EC. She explained that the CARES Act funding received by the Head Start program was initially allocated for the summer program. The summer program was entirely virtual and this resulted in funding being left over. The program would like to use some of the CARES funding to implement a Basics Framework pilot program. Basics is a system-wide campaign for Early Care and Education. The funding would cover one year of the pilot program. EC members received an overview of the Basics Framework, which includes parenting and caregiving pillars to promote cognitive and emotional development in children. This is a trauma-informed approach that is geared toward

children birth through age five. The pilot program will be a public-private partnership, so there are opportunities to leverage additional support in the future. It is also hoped that the program can expand to Early Head Start and to children who do not participate in formal Early Care and Education. This will be a self-contained program staffed by a consultant. [A member] moved to reallocate CARES Act funding for Head Start to support a Basics pilot program. [Another member] seconded the motion. [One member] abstained from the vote and all other EC members [4] voted in favor.

The member of the executive committee that abstained from the vote works at Non-profit Montgomery.

The Commission further understands that the mechanics of the implementation of the Basics pilot program was handled by Early Childhood Services at the Department of Health and Human Services. Early Childhood Services contracted with Non-Profit Montgomery to deploy the funds for the pilot program, which would be executed by an initiative of Non-profit Montgomery called Montgomery Moving Forward. It is the Commission's understanding that the primary use of the funds allocated to the pilot program was for funding the Basics coordinator position.

Ms. Jones waiver request details the hiring process for the Basics coordinator position:

In January 2021 I applied to Non Profit Montgomery to be the Basics Coordinator as my qualifications, experience and passion in the early childhood education field seemed like a perfect fit for this position. Nonprofit Montgomery posted the position description for the Basics Coordinator position in January 2021 for approximately 4 weeks. The description was posted on Indeed; Idealist; posted on the Universities of Shady Grove Job Board; circulated via the Nonprofit Montgomery E-News; was a 'pop up' on the Nonprofit Montgomery website; was disseminated via Montgomery Moving Forward's Leadership Group network; and shared among staff personal and professional networks. All applications were first reviewed by Nonprofit Montgomery's Operations Manager; then by Montgomery Moving Forward's Program and Administrative Coordinator who developed a short-list of eligible applicants. Eligible applicants were reviewed and contacted by Montgomery Moving Forward's Program Manager for an interview. Eligible applicants were invited for a preliminary interview with Montgomery Moving Forward's Program Manager. Top candidates were then invited for an interview with Nonprofit Montgomery's Executive Director, Montgomery Moving Forward's Director and Program Manager. Following this interview, top candidates were asked to provide at least 3 professional references and Montgomery Moving Forward's Program Manager called at least 2 of these, sharing feedback with Nonprofit Montgomery's Executive Director and Montgomery Moving Forward's Director who considered all the information prior to making a final decision about who would be offered the position. I was selected and hired as The Basics Coordinator in February 2021 (a contract position).

The Commission met with the Executive Director of the Community Action Agency (CAA) and the CAA's Head Start program manager to the CAB. They further described the

interrelationships between the relevant County and non-profit organizations in the deployment of the pilot Basics program. The pilot program was by design intended to expire by June 30, 2021, with Non-profit Montgomery transitioning the program to an entity that would hopefully operate the Basics program on a more permanent basis. In June of 2021, there was a proposal for the CAB to dedicate an additional \$25,000 dollars to the Basics program in order to fund the program an additional three months so that there was additional time for the program to transition to a different entity to operate. As a more permanent program, the Basics would then operate under the Early Care and Education Initiative without any involvement or oversight of the CAB, which would no longer have a funding role, either. In connection with the proposal to provide an additional \$25,000, a representative of Early Childhood Services identified Ms. Jones's simultaneous role as the Basics program coordinator for Non-profit Montgomery and as a CAB member as an ethics issue. At that time, the CAA reached out to counsel for the Ethics Commission for guidance.

As previously mentioned, the CAB member who was affiliated with Non-profit Montgomery abstained from voting on the reallocation of funds to the Basics pilot program. After the hiring of Ms. Jones to be the Basics coordinator, both of these persons were recused from any CAB activity pertaining to the operation of the Basics program.

When the ethics issue was presented to the counsel to the Ethics Commission, counsel confirmed that there were conflict of interest issues presented. After obtaining some additional information, counsel recommended that Ms. Jones "sit out" CAB activities until the ethics issues were resolved. This advice was followed, and Ms. Jones has been in an "inactive" status with the CAB since June of 2021.

In October of 2021, a waiver from the Ethics Commission was sought to allow Ms. Jones to continue with responsibilities to the CAB while still being engaged as the Basics coordinator. The request for a waiver was submitted internally at DHHS in August 2021 but was not submitted to the Ethics Commission until October 15, 2021. The waiver request was accompanied by a detailed statement of support from DHHS.

As of October 2021, the Basics program is transitioning from a pilot program to a permanent program under Early Childhood Services with no continuing role for the CAB. The funding sources for the Basics program will be different, and the program will operate under a different provider. It will no longer be conducted by Non-profit Montgomery, but instead the program will be operated by the Collaboration Council of Montgomery County. Whether Ms. Jones will have a continuing role as Basics coordinator or in some other capacity will be a matter for the new administering entity to decide.

The Executive Director of the CAA explained the great contribution Ms. Jones had made in connection with development and administration of the Head Start and related community service programs under the auspices of the CAB and the volunteer assistance that had been provided by Ms. Jones in other contexts as well. There was no sense by either the CAA Executive Director or the CAA liaison to the CAB that there had been an effort to use public

office for private gain. Rather, in the face of the pandemic's impact on early child education, Ms. Jones was hired by Non-profit Montgomery because she was the best person to be the Basics coordinator.

### Analysis

The Ethics Commission has reviewed the matter and determined that the issues presented are for the most part mooted by the course of events. In particular, the CAB no longer has any responsibility for funding or oversight of the Basics program. As a consequence, there is no continuing potential for conflict of interest between Ms. Jones's role as a CAB member and her role as Basics coordinator. Nonetheless, given the close working relationship of the CAB with the different elements of DHHS, including Early Childhood Services, the Commission believes the outside employment would be prohibited by 19A-12(b)(1) which bars engaging in outside employment with an entity that contracts with the County agency where an employee works, unless the prohibition is waived.

A waiver of 19A-12(b) can be issued upon a finding by the Commission that:

- (1) the waiver is needed to ensure that competent services to the County are timely and available;
- (2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (3) the proposed employment is not likely to create an actual conflict of interest.

Upon review of the waiver request, including the statement of support from DHHS, the Commission finds that all three of these bases are present with respect to Ms. Jones's request for a waiver. Therefore, the Ethics Commission issues this waiver of the prohibition of 19A-12(b). This waiver applies to any continuing employment of Ms. Jones with Non-profit Montgomery or any outside employer who is charged with the continuing operation of the Basics program, such as the Collaboration Council of Montgomery County. The waiver is conditioned on Ms. Jones not participating in any matter where her outside employer is a party to the matter or where the matter has any impact on the conduct of the Basics program.

The Commission notes that while the CAB appears to have been sensitive to assuring that members did not work on matters before the CAB directly affecting their actual outside employers, CAB members and County employees appear to be unaware of the provisions of the ethics law pertaining to outside employment of CAB members. The Commission also notes that the issues concerning outside employment were eventually identified by persons associated with Early Childhood Services in June 2021. Ms. Jones, the CAB as a whole, and the DHHS employees familiar with the employment by Non-profit Montgomery of Ms. Jones should have had greater awareness that an ethics issue was presented when Ms. Jones sought and secured employment funded by action of the CAB pursuant to a vote that Ms. Jones herself had been involved in. Here there was a nexus between the allocation of funds for the Basics program and

Ms. Jones's rather immediate application for the position those very funds financed, but no one asked about the propriety of her seeking or obtaining the CAB-funded position. The Ethics Commission intends to work with DHHS and its advisory boards to promote a better understanding of the requirements imposed by the County's ethics laws.

For the Commission:

A handwritten signature in cursive script that reads "Susan Beard".

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Susan Beard, Chair