

CONFLICT OF INTEREST

Incompatible Activities

~~A member of the Board of Education shall not engage in any employment or activity which is inconsistent with, incompatible with, in conflict with or inimical to the Board member's duties as an officer of the district. (Government Code 1126)~~

The Governing Board desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the district and the public. Accordingly, no Board member, district employee, or other person in a designated position shall participate in the making of any decision for the district when the decision will or may be affected by his/her financial, family, or other personal interest or consideration.

(cf. 9005 - Governance Standards)

Conflict of Interest Code

~~Designated employees of the district, including Board members, shall adhere to the financial disclosure requirements of the district's conflict of interest code adopted pursuant to the provisions of Government Code 87300.~~

~~The district's conflict of interest code shall comprise the terms of the California Code of Regulations, Title 2, Section 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with a District attachment specifying designated positions and the specific types of disclosure statements required for each position.~~

The Board shall adopt for the district a conflict of interest code that incorporates the provisions of 2 CCR 18730 by reference, specifies the district's designated positions, and provides the disclosure categories required for each position. The conflict of interest code shall be submitted to the district's code reviewing body for approval, in accordance with Government Code 87303 and within the deadline for submission established by the code reviewing body. (Government Code 87303)

Upon direction by the code reviewing body, the Board shall review the district's conflict of interest code and submit any changes to the code reviewing body or, if no change is required, the Board shall submit a written statement to that effect. (Government Code 87306.5)

When a change in the district's conflict of interest code is necessitated due to by changed circumstances such as the creation of new designated positions, changes to the duties assigned to existing positions, amendments or revisions the amended ~~changed~~ code shall be submitted to the code reviewing body, within 90 days after the changed circumstances necessitating the amendments have become apparent. (Government Code 87306)

When reviewing and preparing the district's conflict of interest codes, the Superintendent or designee ~~District~~ shall provide officers, employees, consultants and members of the

community adequate notice and a fair opportunity to present their views. (Government Code 87311)

Board members and designated employees shall annually file a Statement of Economic Interest/Form 700 in accordance with the disclosure categories specified in the district's conflict of interest code. A Board member who leaves office or a designated employee who leaves district employment shall, within 30 days, file a revised statement covering the period of time between the closing date of the last required statement and the date of leaving office or district employment. (Government Code 87302, 87302.6)

Statements of economic interests submitted to the District by designated employees in accordance with the conflict of interest code shall be available for public inspection and reproduction. (Government Code 81008)

Federal Procurement Code of Conduct

Pursuit to Code of Federal Regulation (CFR) 2 CFR, sections 200.318 and 400.2, no designated employee may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. The employee may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts pursuant to the conditions and limitations specified in Government Code 89503 and 2 CCR 18730. These standards of conduct shall also apply to any District affiliate or subsidiary organization that is not a state, local or government or Indian tribe and impartial procurement actions related to these organizations must be strictly maintained. Disciplinary action shall be applied for violations of these standards.

Financial Interest

~~Board members and designated employees shall not be financially interested in any contract made by the Board or in any contract they make in their capacity as Board members or designated employees. (Government Code 1090)~~

~~A Board member shall not be considered to be financially interested in a contract if his/her interest is including, but not limited to, any of the following: (Government Code 1091.5)~~

- ~~1. That of an officer in being reimbursed for his/her actual and necessary expenses incurred in the performance of an official duty.~~
- ~~2. That of a recipient of public services generally provided by the public body or board of which he/she is a member, on the same terms and conditions as if he or she were not a member of the Board.~~

3. ~~That of a landlord or tenant of the contracting party if such contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special judicial or other public district of this state or an adjoining state unless the subject matter of such contract is the property in which such officer or employee has such interest as landlord or tenant in which even his/her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Government Code 1091.~~
4. ~~That of a spouse of an officer or employee of the district if his/her spouse's employment or office holding has existed for at least one year prior to his/her election or appointment.~~
5. ~~That of a non-salaried member of a nonprofit corporation, provided that such interest is disclosed to the Board at the time of the first consideration of the contract, and provided further that such interest is noted in its official records.~~
6. ~~That of a non-compensated officer of a nonprofit, tax-exempt corporation which, as one of its primary purposes, supports the functions of the nonprofit board or to which the school Board has a legal obligation to give particular consideration, and provided further that such interest is noted in its official records.~~
7. ~~That of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that such interest is disclosed to the Board at the time of consideration of the contract, and provided further that the interest is noted in its official record.~~
8. ~~That of an attorney of the contracting party or that of an owner, officer, employee or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm or real estate firm.~~

~~In addition, a Board member or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his/her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor. (Government Code 1091.5)~~

Conflict of Interest under Government 1099 – Financial Interest in a Contract

Board members, employees, or district consultants shall not be financially interested in any contract made by the Board on behalf of the district, including in the development, preliminary discussions, negotiations, compromises, planning, reasoning, and specifications

and solicitations for bids. If a Board member has such a financial interest in a contract made by the Board, the contract is void. (Government Code 1090)

A Board member shall not be deemed to be financially interested in a contract if he/she has only a remote interest in the contract and if the remote interest is disclosed during a Board meeting and noted in the official Board minutes. The affected Board member shall not vote or debate on the matter or attempt to influence any other Board member to enter into the contract. Remote interests are specified in Government Code 1091(b); they include, but are not limited to, the interest of a parent in the earnings of his/her minor child. (Government Code 1091)

In addition, a Board member shall not be considered to be financially interested in a contract in which his/her interest is a "noninterest" as defined in Government Code 1091.5. Noninterest includes a Board member's interest in being reimbursed for his/her actual and necessary expenses incurred in the performance of his/her official duties, in the employment of his/her spouse/registered domestic partner who has been a district employee for at least one year prior to the Board member's election or appointment, or in any other applicable circumstance specified in Government Code 1091.5.

~~A Board member may enter into a contract if the rule of necessity or legally required participation applies as defined in Government Code 87101.~~

However, a Board member shall participate in the making of a contract in which he/she has a financial interest if his/her participation is required by the rule of necessity or legally required participation pursuant to Government Code 87101 and 2 CCR 18705.

Even if there is no prohibited or remote interest, a Board member shall abstain from voting on personnel matters that uniquely affect a relative of the Board member. A Board member may vote, however, on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs. "Relative" means an adult who is related to the person by blood or affinity within the third degree, as determined by the common, or an individual in an adoptive relationship within the third degree. (Education Code 35107)

A relationship within the third degree includes the individual's parents, grandparents and great-grandparents, children, grandchildren and great-grandchildren, brothers, sisters, aunts and uncles, nieces, and nephews, and the similar family of the individual's spouse unless the individual is widowed or divorced.

Federal Procurement Code of Conflict

Pursuit to Code of Federal Regulation (CFR) 2CFR, sections 200.318 BSD 400.2 no designated employee may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. The employee may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts pursuant to the conditions and limitations specified in Government Code 89503 and 3 CCR 18730. These standards of conduct shall also apply to any District affiliate or subsidiary organization that is not a state, local or

government or Indian tribe and impartial procurement actions related to these organizations must be strictly maintained. Disciplinary action shall be applied for violations of these standards.

Common Law Doctrine Against Conflict of Interest

A Board member shall abstain from any official action in which his/her private or personal interest may conflict with his/her official duties.

Incompatible Offices and Activities

Board members shall not engage in any employment or activity or hold any office which is inconsistent with, incompatible with, in conflict with, or inimical to the Board member's duties as an officer of the district. (Government Code 1099, 1126)

~~Disqualification for Board Members Who Manage Public Investments~~

~~A Board member who manages public investments pursuant to Government Code 87200 and who has a financial interest in a decision shall, upon identifying a conflict or potential conflict of interest and immediately prior to the consideration of the matter, do all of the following:~~

- ~~1. Publicly identify the financial interest that gives rise to the conflict or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required. (Government Code 87105)~~
- ~~2. Recuse himself/herself from discussing and voting on the matter, or otherwise acting in violation of Government Code 87100. This Board member shall not be counted toward achieving a quorum while the item is discussed. (Government Code 87105; 2 CCR 18702.5)~~
- ~~3. Leave the room until after the discussion, vote and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters. (Government Code 87105)~~

~~If the item is on the consent calendar, the Board member must recuse himself/herself from discussing or voting on that matter, but the Board member is not required to leave the room during the consent calendar. (2 CCR 18702.5)~~

~~The Board member may speak on the issue during the time that the general public speaks on the issue. The Board member shall recuse himself/herself from voting on the matter and leave the dais to speak from the same area as members of the public. He/she may listen to the public discussion of the matter with members of the public. (Government Code 87105; 2 CCR 18702.5)~~

~~the Board's decision is made during closed session, the public identification may be made orally during the open session before the Board goes into closed session and shall be limited to a declaration that his/her recusal is because of a conflict of interest pursuant to~~

~~Government Code 87100. The Board member shall not be present when the decision is considered in closed session or knowingly obtain or review a recording or any other non-public information regarding the Board's decision. (2 CCR 18702.5)~~

Gifts

Board members and designated employees may accept gifts only under the conditions and limitations specified in Government Code 89503 and 2 CCR 18730.

The ~~above~~ limitations on gifts ~~do~~ **does** not apply to wedding gifts and gifts exchanged between individuals on birthdays, holidays and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value. (Government Code 89503)

In addition, the limitation on gifts does not apply to informational materials such as books, reports, pamphlets, calendars, and periodicals. (Government Code 82028)

Gifts of travel and related lodging and subsistence shall be subject to the above limitations except as described in Government Code 89506.

A gift of travel does not include travel provided by the District for Board members and designated employees. (Government Code 89506)

Honoraria

Board members and designated employees shall not accept any honorarium which is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private gathering, in accordance with law. (Government Code 89502)

The term "honorarium" does not include: (Government Code 89501)

1. Earned income for personal services customarily provided in connection with a bona fide business, trade or profession unless the sole or predominant activity of the business, trade or profession is making speeches.
2. Any honorarium which is not used and, within 30 days after receipt, is either returned to the donor or delivered to the District for donation into the general fund without being claimed as a deduction from income for tax purposes.

CONFLICT OF INTEREST (continued)

Legal Reference:

EDUCATION CODE

1006 *Qualifications for holding office*
 35107 *School district employees*
 35230-35240 *Corrupt practices*
 35233 *Prohibitions applicable to members of governing boards*
 35239 *Compensation for board members in districts under 70 ADA*

GOVERNMENT CODE

1090-1099 *Prohibitions applicable to specified officers*
 1125-1129 *Incompatible activities*
 81000-91015 **91014** *Political Reform Act of 1974, especially:*
 82011 *Code reviewing body*
 82019 *Definition of designated employee*
 82028 *Definition of gift*
 82030 *Definition of income*

82033 *Definition, interest in real property*

82034 *Definition, investment*

87100-87103.6 *General prohibitions*

87200-87210 *Disclosure*

87300-87313 *Conflict of interest code*

87500 *Statements of economic interests*

89501-89503 *Honoraria and gifts*

89506 *Ethics; travel*

91000-91014 *Enforcement*

CODE OF REGULATIONS, TITLE 2

18110-18997 *Regulations of the Fair Political Practices Commission, especially:*

18700-18707 *General prohibitions*

18722-18740 *Disclosure of interests*

~~18702.5~~ *Public identification of a conflict of interest for Section 87200 filers*

18750.1-18756 *Conflict of interest codes*

COURT DECISIONS

McGee v. Balfour Beatty Construction, LLC, et al. (4/12/16, No. B262850)

Davis v. Fresno Unified School District (2015) 237 Cal.App.4th 261

Klistoff v. Superior Court. (2007) 157 Cal.App.4th 469

Thorpe v. Long Beach Community College District, (2000) 83 Cal.App.4th. 655

Kunec v. Brea Redevelopment Agency, (1997) 55 Cal.App.4th 511

ATTORNEY GENERAL OPINIONS

92 *Ops. Cal. Atty. Gen. 26 (2009)*

92 *Ops. Cal. Atty. Gen. 19 (2009)*

89 *Ops. Cal. Atty. Gen. 217 (2006)*

86 *Ops. Cal. Atty. Gen. 138 (2003)*

85 *Ops. Cal. Atty. Gen. 60 (2002)*

82 *Ops. Cal. Atty. Gen. 83 (1999)*

81 *Ops. Cal. Atty. Gen. 327 (1998)*

80 *Ops. Cal. Atty. Gen. 320 (1997)*

69 *Ops. Cal. Atty. Gen. 255 (1986)*

68 *Ops. Cal. Atty. Gen. 171 (1985)*

BB 9270(h)

65 Ops. Cal. Atty. Gen. 606 (1982)

63 Ops. Cal. Atty. Gen. 868 (1980)

Management Resources:

WEB SITES

Fair Political Practices Commission: <http://www.fppc.ca.gov>

Bylaw

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Revised: September 27, 2010

SAN RAFAEL CITY SCHOOL DISTRICT
San Rafael, California