

# Comparison Document

## Board Bylaw

### Conflict Of Interest

BB 9270

#### Board Bylaws

The Board of Trustees desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the district and the public. ~~In accordance with law, Accordingly, no Board members and member, district employee, or other person in a designated employees position shall disclose any conflict of interest and, as necessary, shall abstain from participating 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)

Even if a prohibited conflict of interest does not exist, a Board member shall abstain from voting on personnel matters that uniquely affect his/her relatives. However, a Board member may vote on collective bargaining agreements and personnel matters that affect a class of employees to which his/her relative belongs. Relative means an adult who is related to the Board member by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree. (Education Code 35107)

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

The Board shall adopt ~~a resolution that specifies the terms of the district's~~ 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 changed circumstances, such as the creation of new designated positions, changes to the duties assigned to existing positions, amendments, or revisions, the amended 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 code, the Superintendent/Principal or designee shall provide officers, employees, consultants, and members of the community adequate notice and a fair opportunity to present their views. (Government Code 87311)

(cf. 9320 - Meetings and Notices)

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, ~~87500~~87302.6)

(cf. 4117.2/4217.2/4317.2 - Resignation)

(cf. 9222 - Resignation)

#### Conflict of Interest under the Political Reform Act

A Board member ~~or~~, designated employee, or other person in a designated position shall not make, participate in making, or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know that he/she has a disqualifying conflict of interest. ~~—A disqualifying conflict of interest exists if the decision will have a "reasonably foreseeable material financial effect" on one or more of the Board member's or designated employee's "economic," which is distinguishable from the effect on the public generally, on the Board member, designated employee, or other person in a designated position, his/her immediate family, or any financial interest described in 2 CCR 18700. (Government Code 87100, 87101, 87103; 2 CCR 18700-18707)~~

~~interests," unless the effect is indistinguishable from the effect on the public generally or the Board member's or designated employee's participation is legally required.—(Government Code 87100, 87101, 87103; 2 CCR 18700-18709)~~

A Board member ~~or~~, designated employee, or other person in a designated position makes a governmental decision when he/she, acting within the authority of his/her office or position, ~~he/she votes authorizes or directs any action~~ on a matter, ~~appoints a person, obligates or commits the district to any course of action, or enters into any contractual agreement on behalf of the district.—(2 CCR 18702.1)~~

~~A Board member who has a disqualifying conflict of interest on an agenda item that will be heard in an open meeting of the Board shall abstain from voting on the matter.— He/she may remain on the dais, but his/her presence shall not be counted towards achieving a quorum for that matter.— A Board member with a disqualifying conflict of interest shall not be present during a closed session meeting of the Board when votes or provides information or opinion on it, contacts or appears before a district official for the purpose of affecting the decision is considered and~~

~~shall not obtain, or review a recording or takes any other nonpublic information regarding the issue. (action specified in 2 CCR 18702.1)18704.~~

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.

#### Conflict of Interest under Government Code 1090 - 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 district is barred from entering into Board, the contract is void. (Government Code 1090; ~~Klistoff v. Superior Court, (2007) 157 Cal.App. 4th 469~~)

~~A Board member shall not be considered to be financially interested in a contract if his/her interest is a "noninterest" as defined in Government Code 1091.5. — One such noninterest is when a Board member's spouse/registered domestic partner has been a district employee for at least one year prior to the Board member's election or appointment. (Government Code 1091.5)~~

~~A Board member shall not be considered to be financially interested in a contract if in which he/she has only a "remote interest" in the contract,~~ as specified in Government Code 1091 ~~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 or district official to enter into the contract. (Government Code 1091)

~~Even if there is not a prohibited conflict of interest~~In addition, a Board member shall ~~abstain from voting on personnel matters that uniquely affect his/her relatives. — However, a Board member may vote on collective bargaining agreements and personnel matters that affect a class of employees~~not be considered to be financially interested in a contract in which his/her relative belongs. — Relative means an adult who is related to the Board member by blood or affinity within the third degree;~~interest is a "noninterest" as determined by the common law, or an individual in an adoptive relationship within the third degree. (Education defined in Government Code 35107)~~

~~A relationship within the third degree~~1091.5. Noninterest includes an individual's parents, grandparents, great grandparents, children, grandchildren, great grandchildren, brothers, sisters, aunts, uncles, nieces, nephews, and the similar family of the individual'sa 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 unless the individual is widowed or divorced 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.

## 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.

### ~~Rule of Necessity or Legally Required Participation~~

~~On a case-by-case basis and upon advice of legal counsel, a Board member with a financial interest in a contract may participate in the making of the contract if the rule of necessity or legally required participation applies pursuant to Government Code 87101 and 2 CCR 18708.~~

## 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)

(cf. 4136/4236/4336 - Nonschool Employment)

## 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 limitation on gifts 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 current gift limitation, except ~~as described in when:~~ (Government Code 89506-)

1. The travel is in connection with a speech given by a Board member or designated employee, provided the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech and the travel is within the United States.

2. The travel is provided by a person or agency specified in Government Code 89506, including a government, governmental agency or authority, bona fide public or private educational institution, as defined in Revenue and Taxation Code 203, or nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

Gifts of travel exempted from the gift limitation, as described in items #1 and 2 above, shall nevertheless be reportable on the recipient's Statement of Economic Interest/Form 700 as

required by law.

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 conference, convention, meeting, social event, meal, or like gathering, ~~in accordance with law.~~ (Government Code 89501, 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

Legal Reference:

EDUCATION CODE

1006 Qualifications for holding office

35107 School district employees

35230-35240 Corrupt practices, especially:

35233 Prohibitions applicable to members of governing boards

41000-41003 Moneys received by school districts

41015 Investments

FAMILY CODE

297.5 Rights, protections, and benefits of registered domestic partners

GOVERNMENT CODE

1090-1099 Prohibitions applicable to specified officers

1125-1129 Incompatible activities

81000-91014 Political Reform Act of 1974, especially:

82011 Code reviewing body

82019 Definition, designated employee

82028 Definition, gift

82030 Definition, 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

PENAL CODE

85-88 Bribes

REVENUE AND TAXATION CODE

203 Taxable and exempt property - colleges

CODE OF REGULATIONS, TITLE 2

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

18702.5 Public identification 18700-18707 General prohibitions

18722-18740 Disclosure of a interests

18753-18756 Conflict of interest for Section 87200 filers 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)

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

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

Management Resources:

CSBA PUBLICATIONS

Conflict of Interest: Overview of Key Issues for Governing Board-of-Trustees Members, Fact Sheet, July 2010

FAIR POLITICAL PRACTICES COMMISSION PUBLICATIONS

Can I Vote? A Basic Overview of Public Officials' Obligations Under the Conflict-of-Interest Rules, 2005

INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

Understanding the Basics of Public Service Ethics: Personal Financial Gain Laws, 2009

Understanding the Basics of Public Service Ethics: Transparency Laws, 2009

WEB SITES

CSBA: <http://www.csba.org>

Fair Political Practices Commission: <http://www.fppc.ca.gov>  
Institute of Local Government: <http://www.ca-ilg.org>

Bylaw VISTA DEL MAR UNION SCHOOL DISTRICT  
Adopted: April 9, 2014  
Revised: September 12, 2018  
Gaviota, California