

**FINAL DRAFT FOR APPROVAL:
September 2, 2020**

Berkeley Unified School District

Nonschool Employment and Incompatible Activities

This Board Policy applies to the Berkeley Unified School District.

In order to help maintain public trust in the integrity of District operations, the Board of Education expects all employees to give the responsibility of their positions precedence over any other outside employment. A District employee may not engage in any outside employment, activity or enterprise which is inconsistent, incompatible, in conflict with, or inimical to his/her District duties.

(cf. 4119.21/4219.21/4319.21 - Professional Standards)

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

(cf. 9270 - Conflict of Interest)

Incompatible Activities

An outside activity shall be considered inconsistent, incompatible, or inimical to District employment when such activity: (Government Code 1126)

1. Requires time periods that interfere with the proper, efficient discharge of the employee's duties.
2. Entails compensation from an outside source for activities which are part of the employee's regular duties.
3. Involves using the District's name, prestige, time, facilities, equipment, or supplies for private gain or advantage.
4. Involves service which will be wholly or in part subject to the approval or control of another District employee or Board member.
5. Results in employee's service to the District being less than satisfactory.

(cf. 1321 - Solicitation of Funds from and by Students)

(cf. 3300 - Expenditures and Purchases)

(cf. 4040 - Employee Use of Technology)
(cf. 4132/4232/4332 - Publication or Creation of Materials)
(cf. 4135/4235/4335 - Soliciting and Selling)
(cf. 6161.1 - Selection and Evaluation of Instructional Materials)

Advance Written Determination

An employee wishing to accept outside employment that may be inconsistent, incompatible, in conflict with, or inimical to the employee's duties shall file a written request with his/her immediate supervisor describing the nature of the employment and the time required. The supervisor shall evaluate each request based on the employee's specific duties within the District and determine whether to grant authorization for such employment.

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

The supervisor shall inform the employee in writing whether the outside employment is prohibited. The employee may appeal a supervisor's denial of authorization to the Superintendent or designee. An employee who continues to pursue a prohibited activity may be subject to disciplinary action.

(cf. 4118 - Suspension/Disciplinary Action)
(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)
(cf. 4144/4244/4344 - Complaints)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

Use of Prestige of Position

No employee may use his/her District title or designation in any communication for any private gain or advantage. District business cards, letterhead, email or any other District resource shall not be used for any communication or purpose that may lead the recipient of the communication to think that the employee is acting in an official capacity when the employee is not.

No employee may hold him/herself out as a representative of the District, or as an agent acting on behalf of the District, unless authorized to do so.

Service in After-School or Summer Programs

Employment with Community Based Organizations ("CBOs") to provide services to students in after-school and summer programs shall not be considered an incompatible activity provided:

1. The employee providing the service is neither an administrator nor a member of management;
2. The service does not interfere with the proper, efficient discharge of the employee's District duties, does not occur during the employee's contractual day, and does not result in the employee's service to the District being less than satisfactory.
3. The service does not include compensation for activities which the employee is obligated to provide as an employee of the District.
4. In performing the services, the employee does not hold him/herself out as a representative of the District, or as an agent acting on behalf of the District.

If an employee wishes to accept employment with a CBO but believes the employment may not meet the criteria listed above, the employee shall seek an advance written determination from his/her immediate supervisor in accordance with the procedure described above.

Administrative and Management Employees may not accept compensation from CBOs that are doing business with the District or from any other District contractor. Such activity is determined to be incompatible with District employment and a violation of this Board Policy.

Tutoring

INSERT

This section of the draft policy has been altered in response to feedback in several public meetings. This insert, not a part of the policy, is provided to help members of the public track these revisions. Presented below this insert is the "clean" policy language to be considered by the Board of Education at its September 2, 2020 meeting. Upon approval of the Board, this insert will be removed.

Yellow Highlighting: Introduced at August 19, 2020 Board meeting

Yellow Highlighting and Underlining or Strikeouts: Introduced at September 2, 2020 Board meeting

Crossed Out: Introduced and amended at August 13, 2020 Policy Subcommittee

The district has an interest in providing tutoring services to any student who may need them. An employee who wishes to tutor or provide services to another District

student shall first direct the family to other available tutoring resources and if these services do not meet the student needs, then request authorization from his/her supervisor in accordance with this Board policy. An employee who is requested by a family or student to provide tutoring services to a student in the District shall direct the family to any available tutoring resources. Unless previously authorized by his/her supervisor, employees shall not accept any financial compensation for tutoring or providing private lessons to a student who is enrolled in the district, school, or class to which the employee is assigned to work.

~~An employee who wishes to tutor or provide services to another District student shall first direct the family to other available tutoring resources, and then request authorization from his/her supervisor in accordance with this Board policy. If authorization is granted, the employee shall not use District facilities, equipment, or supplies when providing the tutoring service.~~

The district has an interest in providing tutoring services to any student who may need them. An employee who wishes to tutor or provide services for pay to another District student shall first direct the family to other available tutoring resources and, if these services do not meet the student needs, then request authorization from his/her supervisor in accordance with this Board policy. Unless previously authorized by his/her supervisor, employees shall not accept any financial compensation for tutoring a student who is enrolled in the school, or class to which the employee is assigned to work.

This prohibition shall not preclude an employee from providing services to students while employed by a CBO in accordance with the provisions set forth above.

Gifts

District employees are subject to the limitations and restrictions set forth in state law. (See Govt. Code Section.) This Board Policy imposes additional limits by prohibiting employees from accepting any gift that is given in exchange for doing the employee's District job.

Employees may not receive or accept gifts from anyone other than the District for the performance of a specific service or act the employee would be expected to render or perform in the regular course of his/her District duties.

As used in this Board Policy, the term gift has the same meaning as under the Political Reform Act, including the Act's exceptions to the gift limit. (See Govt. Code Sections 82028, 89503; 2 Cal. Code Regs. Sections 18940-18950.4).

The following gifts are considered de minimis and therefore exempt from the restrictions on gifts imposed by this Board Policy:

- a. Gifts, other than cash, with an aggregate value of \$25 or less per occasion; and
- b. Gifts such as food and drink, without regard to value, to be shared in the office among officers or employees.

Nothing in this policy shall be construed to preclude an employee's receipt of a bona fide award, or free admission to a dinner or similar event, to recognize exceptional service by the employee, and which is not provided in return for the rendering of service in a particular matter. Such awards are subject to the limitation on gifts imposed by the Political Reform Act and local law, if applicable to the employee.

This policy supersedes any prior board policy on this subject matter.

Legal Reference:

EDUCATION CODE

35160 Authority of governing boards

35160.1 Broad authority of school Districts

51520 Prohibited solicitation on school premises

GOVERNMENT CODE

1126 Incompatible activities of employees

1127 Incompatible activities; off duty work

1128 Incompatible activities, attorney

CODE OF REGULATIONS, TITLE 5

80334 Unauthorized private gain or advantage

ATTORNEY GENERAL OPINIONS

70 Ops.Cal.Atty.Gen. 157 (1987)

Management Resources:

WEB SITES

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

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