

No. 628

SECTION: Finances

TITLE: Conflicts of Interest

ADOPTED: April 11, 2017

CATASAUQUA AREA SCHOOL DISTRICT

628 – CONFLICTS OF INTEREST		1
1. Purpose	The Board of School Directors prohibits activities by officers and employees of the District that conflict, or raise a reasonable question of conflict, with the duties and/or responsibilities that come with office or employment with the District.	2 3 4 5 6 7
2. Authority School Code § 510; 65 Pa. Cons. Stat. § 1101 <i>et seq.</i> ; 2 CFR §§ 200.112, 200.318-(c)(1)	In accordance with statutes and regulations, the District maintains the following standards of conduct governing conflicts of interest, including standards governing the actions of officers and employees engaged in the selection, award, and administration of contracts.	8 9 10 11 12 13 14 15
3. Definitions	The following words and phrases, when used in this policy, shall have the meaning given to them below:	16 17 18
65 Pa. Cons. Stat. § 1102	<p>Business — means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, or any legal entity organized for profit.</p> <p>Business partner — means a person who, along with another person, plays a significant role in owning, managing, or creating a company in which both individuals have a financial interest.</p> <p>Business with which he/she is associated — means any business in which the person or a member of the person’s immediate family is a director, officer, owner, employee, or has a financial interest.</p> <p>Confidential information — means information not obtainable from reviewing a public document or from making inquiry to a publicly available source of information.</p> <p>Conflict of interest — means the use by a District school director or employee of the authority of his/her office or employment, or any confidential information received through holding office or employment, for the private pecuniary benefit of the school director or employee, an immediate family member of the school director or employee, or a business with which the</p>	19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40

school director, employee, or immediate family member is associated. The term does not include an action having a *de minimis* economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation, or other group which includes the school director, employee, an immediate family member of the school director or employee, or a business with which the school director, employee, or immediate family member is associated.

2 CFR §
200.318(c)(1)

Real or apparent federal conflict of interest — means a person, an immediate family member of the person, the person’s business partner, or an organization which employs or is about to employ the person or his/her immediate family member or business partner, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract with the District supported by a federal award.

Confidential information — means information not obtainable from reviewing a public document or from making inquiry to a publicly available source of information.

Contract — means an agreement or arrangement for the acquisition, use, or disposal by the District of consulting or other services, or of supplies, materials, equipment, land, or other personal or real property. The term does not include an agreement or arrangement between the District and a public official or employee concerning the official or employee’s expense, reimbursement, salary, wages, retirement or other benefits, tenure, or other matters in consideration of his/her employment with the District.

De minimis economic impact — means an economic consequence which has an insignificant effect.

Employee — means any individual employed by the District who is responsible for taking or recommending official action of a nonministerial nature with regard to (1) contracting or procurement, (2) administering or monitoring grants or subsidies, (3) inspecting, licensing, regulating, or auditing any person, or (4) any other activity where the official action has an economic impact of greater than a *de minimis* nature on an interest of any person. However, the term does not include individuals who are employed by the District in teaching as distinguished from administrative duties.

2 CFR § 200.38

Federal award — means (1) federal financial assistance that the District receives directly from a federal awarding agency or indirectly from a pass-through entity, (2) a cost-reimbursement contract under the Federal Acquisitions Regulations that the District receives directly from a federal awarding agency or indirectly from a pass-through entity, and (3) the instrument setting forth the terms and conditions of the Federal award, including the grant agreement, cooperative agreement, other agreement for assistance under 2 CFR § 200.40(b) (*i.e.*, loans, loan guarantees, interest

subsidies, and insurance), or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

65 Pa. Cons.
Stat. § 1102

Financial interest — means any financial interest in a legal entity engaged in business for profit which comprises more than five percent (5%) of the equity of the business or more than five percent (5%) of the assets of the economic interest in indebtedness.

Honorarium — means payment made in recognition of published works, appearances, speeches, and presentations, and which is not intended as consideration for the value of such services which are nonpublic occupational or professional in nature. The term does not include tokens presented or provided which are of *de minimis* economic impact.

Immediate family member — means a parent, spouse, domestic partner, child, brother, or sister, or the spouse or domestic partner of a parent, child, brother, or sister.

Nonministerial action — means an action in which the person exercises his/her own judgment as to the desirability of the action taken.

Person — means a business, governmental body, individual, corporation, company, union, association, firm, partnership, committee, club, or other organization or group of persons.

4. Standards of
Conduct

No school director or employee of the District shall—

65 Pa. Cons.
Stat. § 1103

1. Engage in conduct that constitutes a conflict of interest, including any such conduct in connection with the selection, award, or administration of a contract
2. Solicit or accept anything of monetary value, including a gift, loan, political contribution, reward, or promise of future employment, based on any understanding of that school director or employee that the vote, official action, or judgment of the school director or employee would be influenced thereby.
3. Accept an honorarium.
4. Represent a person, with promised or actual compensation, on any matter before the District within one year after the last date of employment with the District or service as a school director.
5. Use for any commercial purpose information copied from Statements of Financial Interests required by the Public Official and Employee Ethics Acts, 65 Pa. Cons. Stat. § 1101 *et seq.*, or from lists compiled from such statements.

2 CFR § 200.318

6. Participate in any activity relating to the selection, award, or administration of a contract supported by a federal award if he/she has a real or apparent federal conflict of interest.
7. Solicit or accept any gratuity, favor, or anything of monetary value from a District contractor, a party to a subcontract with the District, or a potential District contractor or party to a subcontract with the District, unless the gift is an unsolicited item with a fair market value not more than fifty dollars (\$50.00).

65 Pa. Cons.
Stat. § 1103(f)

No school director or employee of the District, spouse or child of a school director or employee of the District, or any business in which a school director or employee of the District is associated, shall enter into any contract valued at five hundred dollars (\$500.00) or more with the District, or any subcontract valued at five hundred dollars (\$500.00) or more with any person who has been awarded a contract with the District, *unless* the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, the school director or employee shall not have any supervisory or overall responsibility for the implementation or administration of the contract.

5. Voting
Conflicts65 Pa. Cons.
Stat. § 1103(j)

Any District school director, appointee, or employee who, in the discharge of his/her official duties, would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his conflict of interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, *provided that* whenever the Board of School Directors would be unable to take any action on a matter before it because the number of members required to abstain from voting under this provision makes the majority or other legally required vote of approval unattainable, then such members *shall* be permitted to vote if the disclosures described above are made.

6. Disclosure of
Financial
Interests65 Pa. Cons.
Stat. §§ 1104,
1105

- A. No member of the Board of School Directors shall be allowed to take the oath of office or enter or continue upon his/her duties, nor shall he/she receive compensation from public funds, unless he/she has filed a Statement of Financial Interests as required by law.
- B. Each employee and the District Solicitor shall file a Statement of Financial Interests every year as required by law.

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7. Federal Disclosures

For a federal award or a contract supported by a federal award—

A. An employee, prior to engaging in any activity relating to a federal award (including, but not limited to, the selection, award, or administration of a contract supported by a federal award) or an application for a federal award, must file a written disclosure form setting forth the nature of any real or apparent federal conflict of interest or potential conflict of interest with the Superintendent or his/her designee. The employee must obtain written approval from the Superintendent or his/her designee prior to engaging in any activity relating to the federal award (including, but not limited to, the selection, award, or administration of a contract supported by the federal award) or application for a federal award. The Superintendent or his/her designee should consult with the Solicitor if necessary. If the Superintendent is involved, the Superintendent shall file the written disclosure form with the President of the Board of School Directors and the Solicitor.

2 CFR § 200.112

B. The District shall disclose in writing any real or apparent federal conflict of interest or potential conflict of interest to the federal agency or pass-through entity in accordance with the applicable federal awarding agency policy.

C. The District shall disclose in writing any disciplinary action for violation of this Policy taken against an employee who is engaged in the selection, award, or administration of a contract supported by a federal award.

2 CFR § 200.113

D. The District shall disclose, in a timely manner, in writing to the federal awarding agency or pass-through entity, all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award, and shall make such other reports and disclosures as are required under the terms and conditions of the federal award.

8. Reporting

Any employee or other person who detects or suspects a conflict of interest, a real or apparent federal conflict of interest, or potential conflict of interest, or any violation of this Policy, shall report the same to the Superintendent.

If the Superintendent is the subject of the conflict or violation, the same shall be reported to the President of the Board of School Directors. If a member of the Board of School Directors is the subject of the conflict or violation, the same shall be reported to the Superintendent, and the Superintendent shall further report the same to the Solicitor.

No reprisal or retaliation of any kind shall be taken against any person who makes a good faith report of a potential conflict or violation under this Policy.

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9. Investigation

Investigations based on reports of potential conflicts of interest, real or apparent federal conflicts of interest, or violations of this Policy shall comply with applicable federal and state laws and regulations. No person sharing in a potential conflict being investigated shall be involved in conducting the investigation or reviewing its results.

In the event an investigation determines that a violation of this Policy has occurred in connection with an activity related to a federal award, the violation shall be reported to the federal awarding agency in accordance with that agency's policies.

In the event an investigation determines that any violation of this Policy has occurred, the District shall take prompt corrective action to ensure that such conduct ceases and will not recur, which may include disciplinary action under part 10 below. District staff shall document the corrective action taken and, when not prohibited by law, inform the complainant.

10. Discipline

A District employee who fails to file a mandatory disclosure form when required, or engages in a conflict of interest or a real or apparent federal conflict of interest, may be subject to disciplinary action by the District, up to and including termination of employment. Disciplinary actions shall be consistent with applicable state and federal laws, collective bargaining agreements, and Board policies and procedures.

11. Removal from Procurement Transaction

An employee who engages in a conflict of interest or a real or apparent federal conflict of interest shall be removed from any discussion or participation regarding the selection, award, and/or administration of the contract in which the conflict of interest or real or apparent federal conflict of interest exists. The Superintendent or his/her designee shall complete a recusal form documenting the employee's removal from the procurement process and administration of any awarded contract. The recusal form shall be maintained by the District for not less than five (5) years after the expiration of the contract term.

12. Acknowledgement of Policy

Within the first month of employment as an employee, and within the first month of each succeeding fiscal year, the Superintendent or his/her designee shall provide a copy of this Policy to each employee. Within the first month after taking office as a school director, and in December of each succeeding year, the Superintendent or his/her designee shall provide a copy of this Policy to each school director. The employee or school director shall sign a certification acknowledging receipt of this Policy. The certification shall be maintained by the District for not less than five (5) years following the employee's last date of employment or the school director's last date of service as a school director.

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13. Training

14. Other Obligations

15. Organizational Conflicts

2 CFR § 200.318(c)(2)

Training with respect to the obligations under this Policy shall be provided to all employees involved in the selection, award, and/or administration of District contracts and all other employees designated from time to time by the Superintendent, and shall be made available to members of the Board of School Directors.

Nothing contained in this Policy shall be deemed to define, limit, or in any way affect the obligations of District officers and employees pursuant to the Public Official and Employee Ethics Act, 65 Pa. Cons. Stat. § 1101 *et seq.*, or any other applicable federal or state laws or regulations.

An organizational conflict of interest may exist when, due to the District’s relationship with a subsidiary, affiliate, or parent organization (“**related organization**”) which is not a state, local government, or an Indian tribe, and that is a candidate for award of a contract in connection with federally funded activities, the District may be unable or appears to be unable to be impartial in conducting a procurement action involving the related organization.

In the event of a potential organizational conflict, the potential conflict shall be reviewed by the Superintendent or his/her designee to determine whether it is likely that the District would be unable or appear to be unable to be impartial in making the award. If such a likelihood exists, this shall not disqualify the related organization; however, the following procedures shall be followed:

1. The organizational relationship shall be disclosed as part of any notices to potential contractors;
2. Any District employee or official directly involved in the activities of the related organization are excluded from the selection and award process;
3. A competitive bid, quote, or other basis of valuation is considered; and
4. The Board of School Directors must determine that contracting with the related organization is in the best interests of the program involved.