

**Waco Independent School District  
Child Nutrition Services Code of Conduct**

# **Waco Independent School District**

## **Child Nutrition Services Code of Conduct**

Waco ISD seeks its employees, officials and agents that act on behalf of the district to comply with the stated code of conduct in addition to the regular employee standards of conduct, as noted in the annual Waco ISD employee handbook.

### **Program Integrity**

Program integrity is defined as an organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds. This type of financial management system provides safeguards that improve the stewardship of program income and costs and reduces fraud and improper payments by the use of internal controls.

Waco ISD has procedures and policies in place to encourage and support program integrity that establishes ethical standards for the operation and management of Child Nutrition Program (CNP). These procedures must ensure that Waco ISD personnel do not circumvent federal and state regulations-no matter the reason, well intentioned or fraudulent.

For this section, the term procedure is used to refer to processes, protocols, standards of behavior, expectations, or any other written method of describing actions staff are to take.

These procedures (1) guide staff by defining the roles and responsibilities for all involved and (2) address the code of conduct that governs the performance of Waco ISD's employees, officers, and agents as required by local, state, and federal regulations.

### **Those Who Act on Behalf of Waco ISD**

Waco ISD will communicate its expectations and applicable procedures related to program integrity to any agency, organization, group, business, food service management company staff, food processor, contractor, distributor, vendor, or other entity acting on Waco ISD's behalf. This information is included in solicitations, agreements, contracts, and other communications as appropriate.

### **Real or Apparent Conflict of Interest**

A real or apparent conflict of interest occurs when any action allows an individual to receive a benefit at the expense of the public interest or the expense of their employer. When there is a conflict of interest, the employee, official or agent cannot participate in the selection, award, or administration of a contract supported by federal funds. If a school nutrition program employee, officer, or agent of Waco ISD or entity acting on behalf of Waco ISD has a real or apparent conflict of interest, the employee, officer, or agent of Waco ISD cannot participate in the selection, award, or administration of a contract. A decision based on a personal relationship or friendship with a possible contractor is also

a conflict of interest. Waco ISD has set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value, as explained further in this Code of Conduct.

Chapter 176 of the Texas Local Government Code requires local government officers, including school board trustees, superintendents, and school district employees or agents who exercise discretion in the planning, recommending, selecting, or contracting of a vendor, to disclose relationships with certain district vendors.

These officers must file a sworn disclosure statement with respect to a district vendor if: (1) the vendor has entered into a contract with the district or the district is considering entering into a contract with the vendor, and (2) the vendor provides certain income or gifts to the officer or first degree relatives of the officer, or a family relationship exists between the officer and the vendor's employees or agents.

If the vendor has an employment or other business relationship with the official or the official's first-degree relative, then the relationship must be disclosed if the relationship generates taxable income for the officer or family member exceeding \$2,500 during the 12 months preceding the date the officer becomes aware of the contract or prospective contract. Also, the officer must disclose the relationship with a district vendor if the officer or the officer's first-degree relative has accepted one or more gifts from the vendor that total over \$100 in the 12-month period preceding the date that the officer becomes aware of the contract or prospective contract.

The relationship need not be disclosed if the gift is (1) offered on account of kinship or a personal, professional or business relationship independent of the officer's official status, (2) a political contribution, or (3) food accepted as a guest. Unless covered by another exception, lodging, transportation, and entertainment, even if accepted as a guest, are not exceptions to the gift disclosure requirements.

Finally, CIS disclosure is triggered by a family relationship, which means the vendor's employees or agents are related to the officer within the third degree by consanguinity (blood) or the second degree by affinity (marriage), as those relations are defined by Chapter 573 of the Texas Government Code.

A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement.

Please see the Local Government Code, Section 176, (attached) that provides more detailed information about this mandate as well as some frequently asked questions/answers.

Complete the Local Government Officer Conflicts Disclosure Statement (Form CIS) **only** if you have a relationship and/or have received a gift that needs to be disclosed. I do not need this form returned if you have nothing to disclose. This form will

need to be **notarized** prior to being submitted. Please return these forms to the Business Services Department through the inner-office mail. Please email the Director of Business Services if you have any questions and she would be glad to assist you.

### **Incentives, Gratuities, or Kickbacks**

In accordance with the State of Texas Department of Agriculture (TDA) “Administrative Review Manual” (ARM) Section 16, 16.18, Waco ISD Food Services Department employees; officials; agents acting on the Waco ISD Food Services Department behalf; any member of the immediate family of the Waco ISD Food Services Department employee, officer, or agent acting on the Waco ISD Food Services Department behalf; or business partner of the employee, officer, or agent acting on Waco ISD Food Services Department behalf cannot accept anything of value from a vendor. Incentive, gratuities, or kickbacks include, but are not limited to, personal gifts or gratuities that may be construed to have been given to influence the purchasing process.

### **Gifts received from vendors**

Trustees and public school employees are public servants. A public servant is “a person elected, selected, appointed, employed, or otherwise designated as one of the following...an officer, employee, or agent of government.” Consequently, all individuals serving on behalf of public school districts- including trustees, employees, and agents – are public servants subject to restrictions on accepting gifts.

A gift, or benefit, is defined as anything “reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest”. (Texas Penal Code §36.01(3)). Items of minimal value are not benefits if they are not solicited or offered in exchange for official action. These items may include trinkets such as caps, t-shirts, mugs, a cup of coffee, and similar items of minimal value.

In addition to items of minimal value, the Texas Penal Code includes a number of sale harbors that do not constitute impermissible gifts to public servants. The exceptions include:

- Gifts based on independent relationship
- Political contributions
- Payment for reason unrelated to school business
- Items less than \$50, excluding cash, cash equivalent, gift card or a negotiable instrument
- Food, lodging, transportation, or entertainment as a guest as long as the donor makes any reports required by law. To meet the guest exception, an event must provide an opportunity for direct contact between the host and the recipient throughout the event.

The Texas Penal Code does not prohibit gifts received from vendors (assuming the gift was not offered as a bribe) if the value of the gift is less than \$50. The receipt of certain gifts from a district vendor is one way to create a reportable conflict of interest. Disclosure is required if the local government officer or any of their family members have accepted one or more gifts from the vendor that have an aggregate value of more than \$100 in the 12-month period preceding the date that the local government officer becomes aware of the vendor's contract or prospective contract. No disclosure would be required unless the aggregate value of gifts received by a single school official from a single vendor exceeded \$100.

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting (improper under Texas Penal Code section 36.08) may donate the benefit to the district.

Disciplinary actions will be applied for violations of such standard.

### **Appearances of Undue Influence**

Individuals must disclose in writing any possible situations is provided where there is an appearance of incentives, gratuities, or kickbacks being received.

### **Benefits Received**

Waco ISD employees; Waco ISD officials; agents acting on Waco ISD's behalf; any member of the immediate family of the Waco ISD employee, Waco ISD officer, or agent acting on the Waco ISD's behalf; or business partner of the Waco ISD employee, Waco ISD officer, or agent acting on Waco ISD's behalf must not solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

When incentives are offered by the contractor and accepted by an individual, the incentive must become the property of Waco ISD. Under no condition can the incentive become the property of an individual.

### **Food Taken from Schools**

No food, not even leftover food (including milk) can be taken from the premises by Waco ISD employees, officials or agents for personal use, personal gain or benefit to another person or entity.

### **Procurement Procedures**

Waco ISD will communicate its expectations and applicable procedures related to program integrity to individuals and entities acting on Waco ISD's behalf. Waco ISD will review all solicitations, agreements, contracts, and other communications prepared on their behalf to ensure compliance with all Federal and State requirements and regulations as well as local district policy and procedures.

### **Certification Regarding Lobbying**

Lobbying certification requirements are applicable to grants, sub-grants, cooperative agreements, and contracts exceeding \$100,000 in federal funds.

Waco ISD Food Services Department uses the following procedures

1. **Documentation:** Waco ISD Food Services Department will take actions to ensure that the proper documentation is prepared, shared as required, and retained.
2. **Use of Funds:** Waco ISD Food Services Department requires that federal funds must not be paid by or behalf of the Waco ISD Food Services Department to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

### **Debarment and Suspension**

Waco ISD and their subcontractors must not make or permit any award, sub-award, sub-grant, or contract with an individual or entity that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs, per the TDA Administrative Review Manual (ARM), Section 16.20.

- Waco ISD Food Services Management Department will include a debarment and suspension certification in every written agreement with subcontractors.
- Waco ISD Food Service Management Department will print the page from the System for Award Management (SAM) which indicates the subcontractor is not presently debarred or otherwise excluded from participation in the contract by any federal department or agency or by the State of Texas and will maintain that document on file with the contract documents. The System for Award Management can be accessed at [www.sam.gov/portal/SAM/#1](http://www.sam.gov/portal/SAM/#1)

### **Staff Purchase of Items on Awarded Contracts**

Waco ISD Food Service Management Department does not allow any employee, officer or agent acting on behalf of Waco ISD Food Service Management Department to take advantage of Waco ISD Food Service Management Department's procurement by purchasing off an awarded contract.

Per the ARM, Section 16.22, Confidentiality and Program Integrity, this type of activity as actually accepting the cash difference between the bid or discount price and the amount the individual would have paid for the item in the regular retail market. This is a financial incentive. When an individual pays for the purchase, the payment does not remove the financial incentive. Even if the contractor were to charge retail price, the individual would still be receiving the convenience of a personal delivery and would be accepting a favor from the contractor—therefore, this is an unallowable practice. Incentives may result in higher prices, lower quality, or both and special prices are sometimes offered on old merchandise that the contractor wants to move.

### **Contracting with Persons and Companies for Assistance in Developing a**

## **Solicitation**

Per the ARM, Section 16.22, Confidentiality and Program Integrity, when acquiring goods and services, contracting entities (CEs) may contract with agents or companies that provide technical information in drafting procurement specifications and/or technical requirements. This provision is intended to encourage program administrators to obtain information from as many sources as possible to assist them in drafting procurement documents.

- Potential Offerors or Interested Parties Involved in Developing a Solicitation  
Waco ISD Food Service Management Department will not accept a contractor or other interested party's offer if the contractor or other interested party assisted with or drafted the procurement specifications and/or technical requirements, procedures, or documents.

## **Reporting of Fraud, Bribery, and Gratuity Violations**

Waco ISD will report, in writing to TDA, all violations of federal criminal law – fraud, bribery, or gratuity.

The non-Federal entity or applicant for a Federal award must 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. Failure to make required disclosures can result in any of the remedies described in CFR 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200.113; 31 U.S.C. 3321).

Waco ISD defines fraud as:

*Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall, if such funds, assets or property are of a value of \$100 or more, be fined no more than \$25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than \$100, be fined not more than \$1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.*

## Definitions:

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<i>Code of Conduct</i>	<p>Set of written standards Waco ISD developed that outline the responsibilities_or proper practices for, an individual or organization and which governs the following:</p> <ol style="list-style-type: none"><li>1. Performance of the officers, employees, or agents engaged in contract awards and administration when the contract is funded in whole or in part by Food and Nutrition Service (FNS) program funds.</li><li>2. Methods of procurement including the requirement that Waco ISD perform a cost or price analysis for every procurement (including contract modifications) and determination of which contract clauses certifications are required in Waco ISD's contracts.</li></ol>
<i>Conflict of Interest</i>	<p>Any action that allows a person to benefit at the expense of the public interest or the expense of their employer.</p>
<i>Ethics</i>	<p>Principles of conduct governing and guiding an individual or a group.</p>
<i>Incentives</i>	<p>Rewards or benefits received as a result of performing requested actions and/or meeting predetermined milestones.</p>
<i>Internal Controls</i>	<p>Processes or procedures established by Waco ISD that (1) define actions related to the procurement process, (2) establish standards of ethical conduct, and (3) provide full and open competition.</p>
<i>Procedures and Policies</i>	<p>Processes, protocols, standards of behavior, expectations, or any other written method of describing actions staff are to take related to specific events or financial transactions.</p>
<i>Procurement</i>	<p>Act of obtaining of goods or services in exchange for money or value.</p>
<i>Program Integrity</i>	<p>An organized and structurally sound financial management system that promotes program efficiency and prevents the inappropriate use of program funds.</p>
<i>Value</i>	<p>Something of monetary or material worth or something that has usefulness that can be exchanged for something of worth, merit or importance.</p>
<i>Tangible Benefit</i>	<p>A special offer for a particular item in order to incentivize a purchase which includes, but is not limited to, offering (1) a special item at much lower price than the price structure for a current contract, (2) an item not presently used at a special price that is below market value; or (3) an incentive, such as equipment or other prizes for purchasing items</p>



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