

ORANGE COUNTY
BOARD OF EDUCATION

AGENDA ITEM ABSTRACT

Meeting Date: February 21, 2011

AGENDA ITEM No. 11-02-(2)-16

ACTION ITEM: (Y/N) Y

SUBJECT: Board Member Conflict of Interest Policy #2121 - New – 1st Reading Approval

INFO. CONTACT: D. Michael Parker, Attorney PHONE: 919-732-8141

ATTACHMENTS: 1. Board Member Conflict of Interest Policy #2121.

PURPOSE: To present for 1st Reading Approval a new Board Member Conflict of Interest Policy #2121.

BACKGROUND: The ethics policy for board members, Policy #2120, includes the expectation that board members will “avoid being placed in a position of conflict of interest, and refrain from using the Board member’s position on the Board for personal or partisan gain.” However there is no policy that explains what constitutes a conflict of interest. This proposed policy defines a conflict of interest in accordance with the statutory prohibitions set forth in NCGS 14-234 (Public Officers or Employees Benefiting from Public Contracts) and 133-32 (Gifts and Favors Regulated). The proposed policy uses the language from 14-234 to define a direct benefit to include any interest of a public officer or spouse exceeding 10% in an entity contracting with the public body, receiving a commission directly from a contract or acquiring property under the contract.

The last paragraph goes beyond the statutory limitations to cover those situations where a conflict of interest or perhaps the appearance of a conflict exists if a board member would otherwise participate in a decision involving a family member other than a spouse. It uses the same guidelines as 14-234 to define a conflict of interest and the definition of immediate family member from Policy 7185 on Employment of Relatives.

FINANCIAL IMPACT: N/A

RECOMMENDATION: The Superintendent recommends the Board of Education approve the new Board Member Conflict of Interest Policy #2121 for 1st Reading Approval.

Board members are expected to maintain high standards in exercising their judgment in decisions affecting the education of the children entrusted to the Orange County Schools and the efficient operation of the school system. Board members owe their loyalty to the public trust invested in them for these purposes and thus have a duty to disclose any interest that might conflict with the exercise of their judgment or any interest that might give the appearance of such a conflict pursuant to this policy.

All board members are subject to the criminal laws related to conflicts of interest in public office, including strict restrictions against having a pecuniary interest in any business of the board. In addition, board members will not let any personal or business interest interfere with their duties as public officials, including ethical duties as specified in policy 2120, Code of Ethics for School Board Members.

A member of the board will not do any of the following:

1. obtain a direct benefit from a contract that he or she is involved in making or administering on behalf of the board, unless an exception is allowed pursuant to G.S. 14-234 or other law;
2. influence or attempt to influence anyone who is involved in making or administering a contract on behalf of the board; or
3. solicit or receive any gift, favor, reward, service or promise of reward, including a promise of future employment, in exchange for recommending, influencing or attempting to influence the award of a contract.

A board member is involved in administering a contract if he or she oversees the performance of the contract or has authority to interpret or make decisions regarding the contract. A board member is involved in making a contract if he or she participates in the development of the specifications or terms of the contract or participates in the preparation or award of the contract.

A board member derives a direct benefit from a contract if the board member or his or her spouse does any of the following: (1) has more than a 10 percent ownership or other interest in an entity that is a party to the contract; (2) derives any income or commission directly from the contract; or (3) acquires property under the contract. An exception is allowed for employment contracts between the board of education and the spouse of a board member. However, the board member involved will not deliberate or vote on the contract or attempt to influence any other person who is involved in making or administering the contract.

A board member has a clear conflict of interest in any decision where an immediate family member does any of the following: (1) has more than a 10 percent ownership or other interest in an entity that is a party to the contract; (2) derives any income or commission directly from the contract; or (3) acquires property under the contract. An exception is

allowed for employment contracts between the board of education and an immediate family member. However, the board member involved will not deliberate or vote on the contract or attempt to influence any other person who is involved in making or administering the contract. An immediate family includes not only the spouse of a board member, but also a child, parent, brother, sister, mother-in-law, father-in-law, daughter-in-law, son-in-law, sister-in-law, brother-in-law, grandmother, grandfather, grandson, granddaughter, stepmother and stepfather of a board member.

Legal References: G.S. 14-234; 133-32

Cross References: Code of Ethics for School Board Members (policy 2120), Employee Conflict of Interest (policy 7730)