Bylaw 9270: Conflict Of Interest and Revolving Door Policy

Status: ADOPTED

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The Governing Board desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the district and the public. Accordingly, no Board member, district employee, or other person in a designated position shall 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.

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 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 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)

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 statement and the date of leaving office or district employment. (Government Code 87302, 87302.6)

Conflict of Interest under the Political Reform Act

A Board member, 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," 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 18700-18709)

A Board member, 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, authorizes or direct any action on a matter, votes or provides information or opinion on it, contacts or appears before a district official for the purpose of affecting the decision, or takes any other action specified in 2 CCR 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 Board, the contract is void. (Government Code 1090)

A Board member shall not be considered to be financially interested in a contract if he/she has only a "remote interest," as specified in Government Code 1091, if the 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)

In addition, a Board member shall not be considered to be financially interested in a contract in which his/her interest is a "noninterest" as defined in Government Code 1091.5. Noninterest includes a 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 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.

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)

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 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. (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

Revolving Door Restrictions

The purposes of this Revolving Door Policy are:

1. To prevent former Governing Board Members from using their positions with the District for personal gain.

2. To prevent private for-profit business entities from obtaining a perceived unfair advantage in dealing with the District by hiring former Board Members.

Definitions

For purposes of this Revolving Door Policy, the terms below shall have the following meaning:

1. "Board Member" shall mean any and all past, present and future members of the Governing Board of the Alum Rock Union Elementary School District.

2. "Employee" shall have the same meaning as set out in the Title 20 of the Code of Federal Regulations §404.1007(b).

3. "Nonprofit organization" shall mean an entity which would qualify as such under the Federal Internal Revenue Code and has engaged in programs or projects which have received financial or other formal support from the District within the past five years.

4. "Transitional services" shall mean services involving technical or specialized knowledge or skill required to complete a project or to provide temporary consulting services to the District.

5. "Work" shall mean any activity for which compensation is received (directly or indirectly) from any source, including, but not limited to, compensation received as an independent contractor. Work includes the supervision or direction of others performing work. Work for the District includes any action of any sort whatsoever taken in one's official capacity.

Prohibitions

For two (2) years immediately following the termination of office of any Governing Board Member for any reason (including but not limited to resignation, retirement or non-re-election), such person shall not:

1. Work on any legislative, administrative or business matter for the District.

2. Represent anyone else, whether or not for compensation, before the District or any staff of the District.

Applicability

1. The provisions of this Revolving Door Restrictions policy shall not apply to prevent a former Board Member from testifying as a percipient witness in any legal or administrative proceeding.

2. The provisions of this Policy shall not apply to prevent a former Board Member from working as a supervisor of a person or persons performing work that would be prohibited by this Policy, so long as the former Board Member supervisor is screened from any personal participation in the work and receives no compensation or part of any fee therefrom, either in wages, commission or other compensation.

Waiver

The Governing Board may waive the prohibitions of this Revolving Door Policy, upon full disclosure of the facts surrounding the proposed activity, if the Governing Board finds that such waiver is in the best interest of the District and that such waiver is not inconsistent with the purposes of this Policy.

Policy Reference Disclaimer:
These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
2 CCR 18110-18997	Regulations of the Fair Political Practices Commission
2 CCR 18438.1-18438.8	Campaign contribution-based conflicts of interest
2 CCR 18700-18760	Conflicts of Interest
2 CCR 18722-18740	Disclosure of interests
2 CCR 18753-18756	Conflict of interest codes
Ed. Code 1006	Prohibition against school district employees serving on county board of education
Ed. Code 35107	School district employees
Ed. Code 35230-35240	Corrupt practices
Ed. Code 35233	Prohibitions applicable to members of governing boards
Ed. Code 41000-41003	Moneys received by school districts
Ed. Code 41015	Investments
Fam. Code 297.5	Rights, protections, and benefits of registered domestic partners
Gov. Code 1090-1099	Prohibitions applicable to specified officers
Gov. Code 1125-1129	Incompatible activities
Gov. Code 53234-53235.2	Ethics training
Gov. Code 81000-91014	Political Reform Act
Gov. Code 82011	Code reviewing body
Gov. Code 82019	Definition; designated employee
Gov. Code 82028	Definition; gift
Gov. Code 82030	Definition; income
Gov. Code 82033	Definition; interest in real property
Gov. Code 82034	Definition; investment
Gov. Code 84308	Campaign Disclosure
Gov. Code 87100-87103.6	General prohibitions

Gov. Code 87200-87210	Disclosure
Gov. Code 87300-87313	Conflict of interest code
Gov. Code 87500	Statement of economic interests
Gov. Code 89501-89503	Honoraria and gifts
Gov. Code 89506	Ethics; travel
Gov. Code 91000-91014	Enforcement
Pen. Code 85-88	Bribes
Pub. Cont. Code 6102	Bribery of public official; voidable contract
Rev. & Tax Code 203	Taxable and exempt property - colleges

Management Resources	**Description**
Attorney General Opinion	105 Ops.Cal.Atty.Gen.69 (2022)
Attorney General Opinion	63 Ops.Cal.Atty.Gen. 868 (1980)
Attorney General Opinion	65 Ops.Cal.Atty.Gen. 606 (1982)
Attorney General Opinion	68 Ops.Cal.Atty.Gen. 171 (1985)
Attorney General Opinion	69 Ops.Cal.Atty.Gen. 255 (1986)
Attorney General Opinion	80 Ops.Cal.Atty.Gen. 320 (1997)
Attorney General Opinion	81 Ops.Cal.Atty.Gen. 327 (1998)
Attorney General Opinion	82 Ops.Cal.Atty.Gen. 83 (1999)
Attorney General Opinion	85 Ops.Cal.Atty.Gen. 60 (2002)
Attorney General Opinion	86 Ops.Cal.Atty.Gen. 138(2003)
Attorney General Opinion	89 Ops.Cal.Atty.Gen. 217 (2006)
Attorney General Opinion	92 Ops.Cal.Atty.Gen. 19 (2009)
Attorney General Opinion	92 Ops.Cal.Atty.Gen. 26 (2009)
Court Decision	Davis v. Fresno Unified School District (2015) 237 Cal.App.4th 261
Court Decision	Klistoff v. Superior Court (2007) 157 Cal.App.4th 469
Court Decision	Kunec v. Brea Redevelopment Agency (1997) 55 Cal.App.4th 511
Court Decision	McGee v. Balfour Beatty Construction, LLC, et al. (2016) 247 Cal. App. 4th 235
Court Decision	Thorpe v. Long Beach Community College District (2000) 83 Cal.App.4th 655
CSBA Publication	Conflict of Interest: Overview of Key Issues for Governing Board Members, Fact Sheet, July 2010
Fair Political Practices Commission	Can I Vote? A Basic Overview of Public Officials' Obligations

Publication	Under the Conflict-of-Interest Rules, 2005
Institute For Local Government Publication	Understanding the Basics of Public Service Ethics: Personal Financial Gain Laws, 2009
Institute for Local Government Publication	Understanding the Basics of Public Service Ethics: Transparency Laws, 2009
Website	CSBA District and County Office of Education Legal Services
Website	Institute for Local Government
Website	Fair Political Practices Commission
Website	CSBA

Cross References

Code	Description
1340	Access To District Records
1340	Access To District Records
1700	Relations Between Private Industry And The Schools
3300	Expenditures And Purchases
3311	Bids
3311	Bids
3400	Management Of District Assets/Accounts
3400	Management Of District Assets/Accounts
3430	Investing
3430	Investing
3600	Consultants
4112.8	Employment Of Relatives
4117.2	Resignation
4136	Nonschool Employment
4212.8	Employment Of Relatives
4217.2	Resignation
4236	Nonschool Employment
4312.8	Employment Of Relatives
4317.2	Resignation
4336	Nonschool Employment
6161.1	Selection And Evaluation Of Instructional Materials
6161.1	Selection And Evaluation Of Instructional Materials
6161.1-E PDF(1)	Selection And Evaluation Of Instructional Materials

7140	Architectural And Engineering Services
7140	Architectural And Engineering Services
7214	General Obligation Bonds
7214	General Obligation Bonds
9000	Role Of The Board
9005	Governance Standards
9140	Board Representatives
9200	Limits Of Board Member Authority
9220	Governing Board Elections
9222	Resignation
9230	Orientation
9320	Meetings And Notices
9321	Closed Session
9323	Meeting Conduct