

Bylaws of the Board

CONFLICT OF INTEREST

Incompatible Activities

Governing Board Members shall not engage in any employment or activity that is inconsistent with, incompatible with, in conflict with, or inimical to the Board Member's duties as an officer of the District. (Government Code 1126)

Conflict of Interest Code

Board Members and designated employees shall adhere to the District's Conflict of Interest Code adopted pursuant to the provisions of Government Code 87300. This code shall comprise the terms of the California Code of Regulations, Title 2, Section 18730, and any amendments to it adopted by the Fair Political Practices Commission, together with a District attachment specifying designated positions and the specific types of disclosure required for each position.

Board Members and designated employees shall submit Statements of Economic Interests to the District in accordance with requirements of the Conflict of Interest Code. These statements shall be available for public inspection and reproduction. (Government Code 81008) Upon receiving the statements of Board Members and the Superintendent, the District shall make and retain copies and shall forward the originals to the code reviewing body. Statements for all other designated employees shall be retained by the District.

When reviewing and preparing Conflict of Interest Codes, the District shall provide officers, employees, consultants, and members of the community adequate notice and a fair opportunity to present their views. (Government Code 87311)

The Board shall review the District's Conflict of Interest Codes in even-numbered years and notify the code reviewing body by October 1 of that year whether changes are or are not necessary. If changes are necessary, the Board shall send the code reviewing body a copy of the amended Conflict of Interest Code by the established deadline. (Government Code 87306.5)

Financial Interest

Board Members and designated employees shall not be financially interested in any contract made by the Board or in any contract they make in their capacity as Board Members or designated employees. (Government Code 1090)

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CONFLICT OF INTEREST (continued)

A Board Member shall not be considered to be financially interested in a contract if any of the exceptions set forth in Government Code 1091.5 apply.

A Board Member shall not be deemed to be financially interested in a contract if he/she has only a remote interest in the contract and if the remote 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 to enter into the contract. Remote interests are specified in Government Code 1091(b) and include the interest of a parent in the earnings of his/her minor child. (Government Code 1091)

If a Board Member or designated employee determines that he/she has a financial interest in a decision, this determination shall be disclosed and made a part of the official Board minutes. In the case of a designated employee, this announcement shall be made in writing and submitted to the Board. (Code of Regulations, Title 2, Section 18700)

A Board Member shall abstain from voting on personnel matters that uniquely affect a relative of the Board Member. A Board Member may vote, however, on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs. "Relative" means an adult who is related to the person 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 that individual's parents, grandparents, and great-grandparents; children, grandchildren, and great-grandchildren; brothers and sisters; aunts and uncles; nieces and nephews; and the similar family of the individual's spouse unless the individual is widowed or divorced.

Disqualification for Board Members Who Manage Public Investments

A Board Member who manages public investments pursuant to Government Code 87200 and who has financial interest in a decision shall, upon identifying a conflict or potential conflict of interest and immediately prior to the consideration of the matter, do all of the following:

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1. Publicly identify the financial interest that gives rise to the conflict or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required. (Government Code 87105)
2. Recuse himself/herself from discussing and voting on the matter, to avoid acting in violation of Government Code 87100. This Board Member shall not be counted toward achieving a quorum while the item is discussed. (Government Code 87105; 2 CCR 18702.5)
3. Leave the room until after the discussion, vote, and any other disposition of the matter is concluded unless the matter has been placed on the portion of the agenda reserved for uncontested matters. (Government Code 87105)
4. If the item is on the consent calendar, the Board Member must recuse himself/herself from discussing or voting on that matter, but the Board Member is not required to leave the room during action on or discussion of the consent calendar. (2 CCR 18702.5)

The Board Member may speak on the issue during the time that the general public speaks on the issue. The Board Member shall recuse himself/herself from voting on the matter and leave the dais to speak from the same area as members of the public. He/She may listen to the public discussion of the matter with members of the public. (Government Code 87105; 2 CCR 18702.5)

If the Board's decision is made during closed session, the public identification may be made orally during the open session before the Board goes into closed session and shall be limited to a declaration that his/her recusal is because of a conflict of interest pursuant to Government Code 87100. The Board Member shall not be present when the decision is considered in closed session or knowingly obtain or review a recording or any other nonpublic information regarding the Board's decision. (2 CCR 18702.5)

Gifts

Board Members shall not accept from any single source in any calendar year any gifts in excess of the prevailing gift limitation specified in law. (Government Code 89503)

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CONFLICT OF INTEREST (continued)

Designated employees shall not accept from any single source in any calendar year any gifts in excess of the prevailing gift limitation specified in law if the employee would be required to report the receipt of income or gifts from that source on his/her statement of economic interests. (Government Code 89503)

The above limitations on gifts do 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)

Gifts of travel and related lodging and subsistence shall be subject to the above limitations except as described in Government Code 89506.

A gift of travel does not include travel provided by the District for Board Members and designated employees. (Government Code 89506)

Honoraria

Board Members 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 gathering. (Government Code 89501, 89502)

Designated employees shall not accept any honorarium as defined above if the employee would be required to report the receipt of income or gifts from that source on his/her statement of economic interests. (Government Code 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.

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CONFLICT OF INTEREST (continued)

Legal Reference:

EDUCATION CODE

1006 Qualifications for holding office
35107 School district employees
35230-35240 Corrupt practices, especially:
35233 Prohibitions applicable to members of governing boards
41000-41003 Moneys received by school districts

GOVERNMENT CODE

1090-1098 Prohibitions applicable to specified officers
1125-1129 Incompatible activities
81000-91015 Political Reform Act of 1974, especially:
82011 Code reviewing body
82019 Definition of designated employee
82028 Definition of gifts
82030 Definition of income
87100-87103.6 General prohibitions
87200-87210 Disclosure
87300-87313 Conflict of interest code
87500 Statements of economic interests
89501-89503 Honoraria and gifts
91000-91014 Enforcement

CODE OF REGULATIONS, TITLE 2

18100-18997 Regulations of the Fair Political Practices Commission, especially:
18702.5 Public identification of a conflict of interest for Section 87200 filers

COURT DECISIONS

Klistoff v. Superior Court, (2007) 157 Cal.App.4th 469
Thorpe v. Long Beach Community College District, (2000) 83 Cal.App.4th- 655
Kunec v. Brea Redevelopment Agency, (1997) 55 Cal.App.4th 511

ATTORNEY GENERAL OPINIONS

92 Ops.Cal.Atty.Gen. 26 (2009)
92 Ops.Cal.Atty.Gen. 19 (2009)
89 Ops.Cal.Atty.Gen. 217 (2006)
86 Ops.Cal.Atty.Gen. 138 (2003)
85 Ops.Cal.Atty.Gen. 60 (2002)
82 Ops.Cal.Atty.Gen. 83 (1999)
81 Ops.Cal.Atty.Gen. 327 (1998)
80 Ops.Cal.Atty.Gen. 320 (1997)
69 Ops.Cal.Atty.Gen. 255 (1986)
68 Ops. Cal. Atty.-Gen. 171 (1985)
65 Ops. Cal. Atty.-Gen. 606 (1982)
63 Ops.Cal.Atty.Gen. 868 (1980)

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Management Resources:

CSBA PUBLICATIONS

Conflict of Interest: Overview of Key Issues for Governing Board Members, Fact Sheet, July 2010

FAIR POLITICAL PRACTICES COMMISSION PUBLICATIONS

Can I Vote? A Basic Overview of Public Officials' Obligations Under the Conflict-of-Interest Rules, 2005

INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

Understanding the Basics of Public Service Ethics: Personal Financial Gain Laws, 2009

Understanding the Basics of Public Service Ethics: Transparency Laws, 2009

WEB SITES

CSBA: www.csba.org

Fair Political Practices Commission: www.fppc.ca.gov

Institute of Local Government: www.ca-ilg.org

Bylaw

Adopted: 09/27/94

Revised: 02/21/95

Revised: 12/12/95

Revised: 09/03/96

Revised: 09/14/04

Revised: 10/24/12

CHULA VISTA ELEMENTARY SCHOOL DISTRICT
Chula Vista, California