



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item 10.1f

Meeting Date : November 1, 2018

Subject : Approve Update to Board Bylaw (BB) 9270 Conflict -of-Interest

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading Action Anticipated
- Conference/Action
- Action
- Public Hearing

Division : Legal Services

Recommendation: Adopt revisions to BB 9270 Conflict-of-Interest

Background/Rationale : The Political Reform Act requires every local government agency to review and revise if necessary, its conflict-of-interest bylaw biennially. As required, by October 1, 2018, the District submitted to the County Board of Supervisors a notice indicating that an amendment to the Bylaws and Appendix is necessary. After a review of Board Bylaw 9270, it is apparent that updates are needed in order to align it with the District's changes to positions and overall organizational structure.

Financial Considerations : None

LCAP Goal(s) : Operational Excellence

Documents Attached:

1. Red-lined version of BB 9270
2. Clean version of BB 9270

Estimated Time of Presentation: N/A

Submitted by: Raoul Bozio, In-House Counsel

Approved by : Jorge A. Aguilar, Superintendent

Sacramento City USD

Board Bylaw

Conflict-Of-Interest

BB 9270

Board Bylaws

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. In accordance with law, Board members and designated employees shall disclose any conflict of interest and, as necessary, shall abstain from participating in the decision.

Conflict-of-Interest Code

The district's conflict-of-interest code shall be comprised of the terms of the 2 CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with an Appendix specifying designated positions and the specific type of disclosure category required for each position.

in a designated position shall, within 30 days, file an Assuming Office statement covering the 12 months prior to the date the assuming office or position date. ~~Statements of Board members and the Superintendent shall be available through the Sacramento County Clerk of the Board Office~~ for public inspection and reproduction. (Government Code 81008)

Upon receiving the statements from ~~other~~-designated employees, the district shall make and retain copies ~~and shall forward the originals to the appropriate county agency~~

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 designoard members6[er[ea Tw 6.97 0 T16(em)-6nersi m nment Cod109081008) ntT* [(B)3(o)4(o)-4

entity that employs the officer or employee, provided that such interest is disclosed to the Board at the time of consideration of the contract, and provided further that such interest is noted in its official records

8. That of an attorney of the contracting party or that of an owner, officer, employee or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm or real estate firm

In addition, a Board member or employee shall not be deemed to be interested in a contract made

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, or otherwise 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 Section 18702.5)

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 provisions

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- a. Interests in real property located entirely or partly within district boundaries, or within two miles of district boundaries or of any land owned or used by the district. Such interests shall include any leasehold, beneficial or ownership interest or option to acquire an interest in real property;
- b. Investments or business positions in or income from sources which:
 - (1) Are engaged in the acquisition or disposal of real property within the district;
 - (2) Are contractors or subcontractors which are or have been within the past two years engaged in work or services of the type used by the district; or
 - (3) Manufacture or sell supplies, books, machinery or equipment of the type used by the district.

Category 2

Persons occupying the following positions are designated employees in Category 2:

Deputy Superintendent's Office

- ~~Area Assistant Superintendent~~
- ~~Assistant Superintendent of Equity~~ Assistant Superintendent of Student Support Services
- ~~Director, Integrated Support Services~~
- ~~Director, Enrollment Center~~ and Attendance Center
- ~~Director, Student Hearing and Placement~~ Student Services and Alternative Education
- ~~Director, Strategy and Innovation Office~~
- ~~Director Innovative Schools~~
- Director, Youth Development
- Director, Behavior and ReEntry
- ~~Director, Social and Emotional Learning~~
- ~~Manager, Legal Services~~ in-House Counsel, Legal Services
- Director, Safe Schools
- Director, Executive Community
- Director, Student Support & Health Services

Director, Student and Data Systems
Manager, Network Communications and Technology Services
Manager, Data Programmer

Communications

Manager, Community Engagement
Manager, Communications Officer

Designated persons in this category must report investments or business positions in or income from sources which:

- a. Are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs; or
- b. Manufacture or sell supplies, books, machinery or equipment of the type used by the department which the designated person manages or directs. For the purposes of this category, a principal's department is his/her entire school.

Consultants

Consultants are designated employees who must disclose financial interests as determined on a case-by-case basis, as recommended by General Counsel to the Superintendent and the Board of Trustees. The determination shall be written and include a description of the consultant's duties and a statement of the extent of disclosure requirements based upon that description. All such determinations are public records and shall be retained for public inspection along with this conflict-of-interest code.

A consultant is an individual who, pursuant to a contract with the district, makes a governmental decision whether to²(CCR 18701)

- a. Approve a rate, rule or regulation
- b. Adopt or enforce a law
- c. Issue, deny, suspend or revoke a permit, license, application, certificate, approval, order or similar authorization or entitlement
- d. Authorize the district to enter into, modify or renew a contract that requires district approval
- e. Grant district approval to a contract or contract specifications which require district approval and in which the district is a party

18750.118756 Conflict of interest codes

COURT DECISIONS

McGee v. Balfour Beatty Construction, LLC, et al. (4/12/16, No. B262850)

Davis v. Fresno Unified School District (2015) 237 Cal.App.4th 261

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)

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 9030 9030

Sacramento City USD

Board Bylaw

Conflict-Of-Interest

BB 9270

Board Bylaws

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. In accordance with law, Board members and designated employees shall disclose any conflict of interest and, as necessary, shall abstain from participating in the decision.

Conflict-of-Interest Code

The district's conflict-of-interest code shall be comprised of the terms of the 2 CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with an Appendix specifying designated positions and the specific type of disclosure category required for each position.

Upon direction by the code reviewing body, the Board shall review the district's conflict-of-interest code in even numbered years. If no change in the code is required, the district shall submit by October 1 a written statement to that effect to the code reviewing body. If a change in the code is necessitated by changed circumstances, the district shall submit an amended code to the code reviewing body. (Government Code 87306.5)

entity that employs the officer or employee, provided that such interest is disclosed to the Board at the time of consideration of the contract, and provided further that such interest is noted in its official records

8. That of an attorney of the contracting party or that of an owner, officer, employee or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate ~~broker~~, if individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage, ~~firm~~ insurance firm or real estate firm

In addition, a Board member or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his/her sole interest is that of an officer, ~~director~~, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor. (Government Code 1091.5)

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); they include, but are not limited to, the interest of a parent in the earnings of his/her minor child. (Government Code 1091)

A Board member ~~may~~ enter into a contract if the rule of necessity or legally required participation applies as defined in Government Code 87101.

Even if there is no prohibited or remote interest, 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 the individual's parents, grand~~parent~~ greatgrandparents, children, grandchildren and ~~great~~ grandchildren, brothers, 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 a 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:

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, or otherwise 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 Section 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)

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 the consent calendar. (2 CCR Section 18702.5)

A Board member who has recused himself/herself from participating in a matter may speak on the matter during the time that the general public speaks on the matter. 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~~ 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 ~~public~~ information regarding the Board's decision. (2 CCR 18702.5)

(cf. 3430 -Investing)

Incompatible Activities

Board members or employees shall not engage in any employment or activity which is inconsistent with, incompatible with, in conflict with or inimical to the Board member's duties as an officer of the district or with the employee's position in the district. (Government Code 1099, 1126)

(cf. 4136/4236/4336 Non-school Employment)

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 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 ~~provisions~~

two miles of district boundaries or of any land owned or used by the district. Such interests

Manager, Communications Officer

Designated persons in this category must report investments or business positions in or income from sources which:

- a. Are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs; or
- b. Manufacture or sell supplies, books, machinery or equipment of the type used by the department which the designated person manages or directs. For the purposes of this category, a principal's department is his/her entire school.

Consultants

Consultants are designated employees who must disclose financial interests as determined on a case-by-case basis, as recommended by General Counsel to the Superintendent and the Board of Trustees. The determination shall be written and include a list of the consultant's duties and a statement of the extent of disclosure requirements based upon that description. All such determinations are public records and shall be retained for public inspection along with this conflict-of-interest code.

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district's conflict-of-interest code. (2 CCR 18701)

Legal Reference:

EDUCATION CODE

1006 Qualifications for holding office

35107 School district employees

3523035240 Corrupt practices, especially:

35233 Prohibitions applicable to members of governing boards

4100041003 Money received by school districts

41015 Investments

FAMILY CODE

297.5 Rights, protections, and benefits of registered domestic partner

GOVERNMENT CODE

1090-1099 Prohibitions applicable to specified officers

1125-1129 Incompatible activities

8100091014 Political Reform Act of 1974, especially:

82011 Code reviewing body

82019 Definition, designated employee

82028 Definition, gift

82030 Definition, income

82033 Definition, interest in real property

82034 Definition, investment

8710087103.6 General prohibitions

8720087210 Disclosure

8730087313 Conflict of interest code

87500 Statements of economic interests

8950189503 Honoraria and gifts

89506 Ethics travel

9100091014 Enforcement

PENAL CODE

85-88 Bribes

REVENUE AND TAXATION CODE

203 Taxable and exempt properties colleges

CODE OF REGULATIONS, TITLE 2

18110-18997 Regulations of the Fair Political Practices Commission, especially

18700-18707 General prohibitions

18722-18740 Disclosure of interests

18750.118756 Conflict of interest codes

COURT DECISIONS

McGee v. Balfour Beatty Construction, LLC, et al. (4/12/16, No. B262850)

Davis v. Fresno Unified School District (2015) 237 Cal.App.4th 261

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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)
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