

Bylaw 9270: Conflict Of Interest

Status: DRAFT

Original Adopted Date: 10/16/2007 | Last Revised Date: 06/19/2018 | Last Reviewed Date: 06/19/2018

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~~**the Board member's, district employee's, or other designated persons** 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~~**the Board member's** relatives. However, a Board member may vote on collective bargaining agreements and personnel matters that affect a class of employees to which his/~~her~~**the Board member's** 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 by ~~due to~~ **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~~ **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 ~~required~~ **required** statement and the date of leaving office or district employment. (Government Code 87302, 87500)
87302.6)

Conflict of Interest under the Political Reform Act

A district official, including 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~~**an** official position to influence a governmental decision in which he/~~she~~**the district official** knows or has reason to know that he/~~she~~**has** ~~there is~~ **there is** 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,~~ **district official, the district official's** immediate family, or any financial interest described in 2 CCR 18700. (Government Code 87100, 87101, 87103; 2 CCR 18700-18707)

A ~~Board member, designated employee, or other person in a designated position~~ **district official** makes a governmental decision when he/~~she~~, ~~acting~~, within the authority of his/~~her~~**the** office or position, ~~the district official~~ **the district official** authorizes or directs any action on a matter, votes or provides information or opinion on it, contacts or appears

before ~~another~~ district official for the purpose of affecting the decision, or takes any other action specified in 2 CCR 18704.

However, a Board member ~~district official~~ shall participate in the making of a contract in which he/she ~~the district official~~ has a financial interest if his/hersuch participation is required by the rule of necessity or legally required participation pursuant to Government Code 87101 and 2 CCR 18705.

Conflict of Interest from Campaign Contributions

To avoid improper influence over the Board's decision-making involving the issuance of a license, permit, or other entitlements for use, including a contract, district officers, which includes Board members or agency heads, shall comply with Government Code 84308, including the following: (Government Code 84308)

- 1. A district officer is prohibited from accepting, soliciting, or directing a contribution of more than \$250 from any party or participant to a proceeding involving a license, permit, or other entitlement for use, including a contract, or from that person's agent, while the proceeding is pending before the Board and for 12 months following the date a final decision is rendered in the proceeding, if the Board member knows or has reason to know that the party or participant has a financial interest in the Board's decision.**
- 2. Any district officer who received a contribution of more than \$250 from a party or participant in the preceding 12 months shall disclose that fact on the record of the proceeding prior to the Board rendering a decision in the proceeding. If the district officer willfully or knowingly received the contribution and knows or has reason to know that the participant has a financial interest in the Board's decision, the district officer shall not make, participate in making, or in any way attempt to use the official position to influence the Board's decision.**
- 3. A district officer who receives a contribution that would otherwise require disqualification as described in Item #2 above may participate in the proceeding if the contribution is returned within 30 days from the time the district officer knows or should have known about the contribution and the proceeding.**
- 4. A district officer who unknowingly accepts, solicits, or directs a contribution of more than \$250 during the 12 months after the date of the Board's final decision on the proceeding may cure the violation by returning the contribution, or the portion exceeding \$250, within 14 days of accepting, soliciting, or directing the contribution, provided the district officer did not knowingly or willfully accept, solicit, or direct the prohibited contribution. The district officer shall maintain records of curing the violation.**

The provisions in Government Code 84308 as specified above do not apply to labor contracts, competitively bid contracts, and personal employment contracts. (Government Code 84308)

Additional Requirements for Boards that Manage Public Investments

Any 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: (Government Code 87105; 2 CCR 18702.5) ~~18707~~

- 1. Publicly identify each 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 ~~Not discuss or vote~~ on the matter, or otherwise acting ~~act~~ in violation of Government Code 87100. The Board member shall not be counted toward achieving a quorum while the item is discussed.**

However, the Board member may speak on the issue during the time that the general public speaks on it and may leave the dais to speak from the same area as members of the public. He/she ~~The Board member~~ may listen to the public discussion **and deliberations** of the matter with members of the public.

- 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.**

If the item is on the consent calendar, the Board member must recuse himself/herself from discussing or voting on that matter, ~~but shall either make a motion to remove the item from the consent calendar or the Board member shall abstain from voting on the consent calendar. In any event, the Board member shall refrain from discussing or voting on the item.~~ However, the Board member is not required to leave the room during consideration of the consent calendar.

4. If the Board's decision is made during closed session, disclose his/her ~~the~~ interest orally during the open session preceding the closed session. This disclosure shall be limited to a declaration that his/her ~~the~~ recusal is because of a conflict of interest pursuant to Government Code 87100. The Board member shall not be present when the item is considered in closed session and shall not knowingly obtain or review a recording or any other nonpublic information regarding the Board's decision. ~~(2 CR 18702.5)~~

Conflict of Interest under Government Code 1090 - Financial Interest in a Contract

Board members, employees ~~and, 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 in which he/she has only a "remote interest" in the contract and if the remote interest ~~there~~ 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. A Board member shall not be considered to be financially interested in a contract in which 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 the interest is a "noninterest" as defined in Government Code 1091.5. Noninterest includes a Board member's interest in being reimbursed for actual and necessary expenses incurred in the performance of official duties, in the employment of a 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 ~~the~~ Board member's 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)

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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)~~ **(Government Code 82028)**

Gifts of travel and related lodging and subsistence shall be subject to the current gift limitation, except when: (Government Code 89506)

~~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~~**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)

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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:

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 References

Description

2 CCR 18110-18997	Regulations of the Fair Political Practices Commission - https://simbli.eboardsolutions.com/SU/ckslshwToJGinoK4QivBltJug==
2 CCR 18438.1-18438.8	Campaign contribution-based conflicts of interest
2 CCR 18700-18760	Conflicts of Interest - https://simbli.eboardsolutions.com/SU/h6CnVsMHk2STR4xUUmlXdQ==
2 CCR 18722-18740	Disclosure of interests - https://simbli.eboardsolutions.com/SU/oS5ntBvYlBsRzRhpXMufw==
2 CCR 18753-18756	Conflict of interest codes - https://simbli.eboardsolutions.com/SU/OvAHLXqDg5JTYYSZlpYE9A==
Ed. Code 1006	Prohibition against school district employees serving on county board of education - https://simbli.eboardsolutions.com/SU/Qnj8IKKU84qMv8ZX5ZPu1w==
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 52334-53235.2	Ethics training
Gov. Code 81000-91014	Political Reform Act of 1974
Gov. Code 82011	Code reviewing body
Gov. Code 82019	Definition; designated employee - https://simbli.eboardsolutions.com/SU/zplus8Q3o2R2NLwPmnxGAmkxg==
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 - https://simbli.eboardsolutions.com/SU/YaObxMYA749OVplusgURs6YDA==
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
Public Contract Code 6102	Awarding of contracts
Rev. & Tax Code 203	Taxable and exempt property - colleges

Management Resources References

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 Publication	Can I Vote? A Basic Overview of Public Officials' Obligations 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 - https://simbli.eboardsolutions.com/SU/UdykszdmPETuDsIshXk6R5akQ==
Website	Institute for Local Government - https://simbli.eboardsolutions.com/SU/U2G2edhR1agbQ5dqpPtfmA==
Website	Fair Political Practices Commission - https://simbli.eboardsolutions.com/SU/C2dGDtcJnwsIshMnGhy8IJcbw==
Website	CSBA - https://simbli.eboardsolutions.com/SU/W3QxkK2FPsDsQBnMIENxGg==

Cross References

Description

1340	Access To District Records - https://simbli.eboardsolutions.com/SU/ilradJh510f82Bjhbu4vRw==
1340	Access To District Records - https://simbli.eboardsolutions.com/SU/zrxxplusFTeTpg8XDnadUSa6Q==
1700	Relations Between Private Industry And The Schools - https://simbli.eboardsolutions.com/SU/ENsaEZnFslshbfDue5uvAGxYw==
3230	Federal Grant Funds - https://simbli.eboardsolutions.com/SU/U7QTeU9Soli935xKxaXdplusQ==
3230	Federal Grant Funds - https://simbli.eboardsolutions.com/SU/Oh3eMwsYd7zIFD5Ox2rsg==
3300	Expenditures And Purchases - https://simbli.eboardsolutions.com/SU/yYy1CH64rE6t4GfplusXglZzA==
3311	Bids - https://simbli.eboardsolutions.com/SU/J4XkQpluspDuFoUxMKd4ZKyMA==
3311	Bids - https://simbli.eboardsolutions.com/SU/a4y4guyMC9pHn8Kcpluse1nWw==
3430	Investing - https://simbli.eboardsolutions.com/SU/aw1pAEvBG9RIQaa5IUESZQ==
3430	Investing - https://simbli.eboardsolutions.com/SU/9Spluse6ISX1ixU4nEzMTyg2A==
3600	Consultants - https://simbli.eboardsolutions.com/SU/19Y2YhOrjiSGxS8QOUWGnA==
4117.2	Resignation - https://simbli.eboardsolutions.com/SU/VQ5Cxoy9ESHbNplusdRxJX8qw==
4217.2	Resignation - https://simbli.eboardsolutions.com/SU/6lkaqAcCF8QGjmrkiuxKYA==

4317.2	Resignation - https://simbli.eboardsolutions.com/SU/ErkdwOWuUEq6BCQupwplusHLg==
6161.1	Selection And Evaluation Of Instructional Materials - https://simbli.eboardsolutions.com/SU/GmQp0w7DhRvK1m3vP0cXFw==
6161.1	Selection And Evaluation Of Instructional Materials - https://simbli.eboardsolutions.com/SU/36O7I0MprITMVXSH2aUCslshA==
6161.1-E PDF(1)	Selection And Evaluation Of Instructional Materials - https://simbli.eboardsolutions.com/SU/b9DR42M1EdCANrzwKB7O8g==
7140	Architectural And Engineering Services - https://simbli.eboardsolutions.com/SU/DkQOWrUIJwkFf2h3Gaw1ew==
7140	Architectural And Engineering Services - https://simbli.eboardsolutions.com/SU/q00ubQVXZM722nswfQpOZw==
7214	General Obligation Bonds - https://simbli.eboardsolutions.com/SU/RuWpIR0Hyg9zd1a1uLLplusJg==
7214	General Obligation Bonds - https://simbli.eboardsolutions.com/SU/5H9WP4YrKfWbYiJpZDAC7Q==
9000	Role Of The Board - https://simbli.eboardsolutions.com/SU/yCFHLIFLUDCtfppluseQHTjg==
9005	Governance Standards - https://simbli.eboardsolutions.com/SU/DaF2m6ImSeyu1yItj5WuoA==
9140	Board Representatives - https://simbli.eboardsolutions.com/SU/iy0rML7s540pAslshkX2HdIAQ==
9200	Limits Of Board Member Authority - https://simbli.eboardsolutions.com/SU/0hKRSAtVLHUJ2u41Y5PPKQ==
9220	Governing Board Elections - https://simbli.eboardsolutions.com/SU/aslshH63kKslshyYG3dNXbIPWGVw==
9222	Resignation - https://simbli.eboardsolutions.com/SU/mklhBnEU1SF483DULP9mQ==
9230	Orientation - https://simbli.eboardsolutions.com/SU/4qcNnLdU11insCheApKTew==
9320	Meetings And Notices - https://simbli.eboardsolutions.com/SU/O70wY0BUVD9cI4jLHNLjSQ==
9321-E PDF(1)	Closed Session - https://simbli.eboardsolutions.com/SU/JouF3slshdp1t8S6jR9jTrVg==
9321-E PDF(2)	Closed Session - https://simbli.eboardsolutions.com/SU/R7DIbSlsh4Z8zkiT8c3evrPAg==
9321	Closed Session - https://simbli.eboardsolutions.com/SU/eQxvTE4sunzJru8wB8gc1g==
9323	Meeting Conduct - https://simbli.eboardsolutions.com/SU/XO5XSujJK74GwuOSsfILDg==