

Bylaws of the Board

COUNTY OF SAN DIEGO

BB 9270(a)

CONFLICT OF INTEREST

2015 JUN 07 AM 9: 14

CLERK OF THE BOARD
OF SUPERVISORS

The Board of Education 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.

(cf. 9005 – Governance Standards)

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)

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. (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)

(cf. 9320 – Meetings and Notices)

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, 87500)

(cf. 4117.2/4217.2/4317.2 – Resignation)

(cf. 9222 – Resignation)

Conflict of Interest under the Political Reform Act

A board member or designated employee 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 conflict of interest exists if the decision will have a "reasonably foreseeable material financial effect" on one or more of the board member's or designated employee's "economic interests," unless the effect is distinguishable from the effect on the public generally or the board member's or designated employee's participation is legally required. (Government Code 87100, 87101, 87103; 2 CCR 18700-18709)

Approved and/or authorized by the Board of Supervisors of the County of San Diego.	
Meeting Date: 7/21/15	Minute Order No. 6
By: Diana Lopez	Date: 7/21/15
Deputy Clerk of the Board Supervisors	

CONFLICT OF INTEREST (continued)

A board member or designated employee makes a governmental decision when, acting within the authority of his/her office or position, he/she votes on a matter, appoints a person, obligates or commits the district to any course of action, or enters into any contractual agreement on behalf of the district. (2 CCR 18702.1)

A board member who has a disqualifying conflict of interest on an agenda item that will be heard in an open meeting of the board shall abstain from voting on the matter. He/she may remain on the dais, but his/her presence shall not be counted towards achieving a quorum for that matter. A board member with a disqualifying conflict of interest shall not be present during a closed session meeting of the board when the decision is considered and shall not obtain or review a recording or any other nonpublic information regarding the issue. (2 CCR 18702.1)

Conflict of Interest under Government Code 1090

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, the district is barred from entering into the contract. (Government Code 1090; Klistoff v. Superior Court, (2007) 157 Cal.App.4th 469)

A board member shall not be considered to be financially interested in a contract if his/her interest is a "noninterest" as defined in Government Code 1091.5. One such noninterest is when a board member's spouse/registered domestic partner has been a district employee for at least one year prior to the board member's election or appointment. (Government Code 1091.5)

A board member shall not be considered to be financially interested in a contract if he/she has only a "remote interest" in the contract as specified in Government Code 1091 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 members to enter into the contract. (Government Code 1091)

Even if there is no prohibited conflict of 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, grandparents and great-grandparents, children, grandchildren and great-grandchildren, brothers, sisters, aunts and uncles, nieces and nephews, and the similar family of the individual's spouse/registered

CONFLICT OF INTEREST (continued)

domestic partner unless the individual is widowed or divorced.

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.

Rule of Necessity or Legally Required Participation

On a case-by-case basis and upon advice of legal counsel, a board member with a financial interest in a contract may participate in the making of the contract if the rule of necessity or legally required participation applies pursuant to Government Code 87101 and 2 CCR 18708.

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)

(cf. 4136/4236/4336 – Nonschool 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 current gift limitation 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 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 gathering, in accordance with law. (Government Code 89501, 89502)

The term honorarium does not include: (Government Code 89501)

CONFLICT OF INTEREST (continued)

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

**CONFLICT OF INTEREST CODE OF THE
ESCONDIDO UNION SCHOOL DISTRICT**

The provisions of 2 CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with the attached Appendix specifying designed positions and disclosure categories, are incorporated by reference and shall constitute the district's conflict of interest code.

Board of Education members and designated employees shall file a Statement of Economic Interest/Form 700 in accordance with the disclosure categories listed in the attached Appendix. The Statement of Economic Interest shall be filed with the district's filing officer and/or, if so required, with the district's code reviewing body.

Pursuant to Government Code 82019(a)(3), "designated employees" means "any officer, employee, member or consultant of any agency whose position with the agency . . . (3) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest." A scope of work shall determine whether certain consultants are designated employees who must disclose financial interests as determined on a case-by-case basis by the superintendent or designee.

APPENDIX

Disclosure Categories

1. **Category 1:** A person designated Category 1 shall disclose:
 - 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.
 - b. Investments or business positions in or income from sources which are engaged in the acquisition or disposal of real property within the district, 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 manufacture or sell supplies, books, machinery, or equipment of the type used by the district.

CONFLICT OF INTEREST (continued)

- 2. **Category 2:** A person designated Category 2 shall disclose:
 - a. Investments or business positions in or income from sources which are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs.
 - b. Investments or business positions in income from sources which manufacture or sell supplies, books, machinery, or equipment of the type used by the department which the designated person manages or directs. For the purpose of this category, a principal's department is his/her entire school.

Designated Positions

<u>Designated Position</u>	<u>Disclosure Category</u>
Board of Education Members	1
Personnel Commission Members	1
Superintendent of Schools	1
Assistant/Deputy Superintendent	1
Purchasing Director	1
Consultants	1
Directors	2
Coordinators	2
Network Manager	2

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

FAMILY CODE

- 297.5 Rights, protections, and benefits of registered domestic partners

GOVERNMENT CODE

- 1090-1099 Prohibitions applicable to specified officers
- 1125-1129 Incompatible activities
- 81000-91014 Political Reform Act of 1974, especially:
- 82011 Code-reviewing body
- 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

CONFLICT OF INTEREST (continued)

Legal Reference: (continued)

PENAL CODE

85-88 Bribes

CODE OF REGULATIONS, TITLE 2

18110-18997 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)

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: <http://www.csba.org>

Fair Political Practices Commission: <http://www.fppc.ca.gov>

Institute of Local Government: <http://www.ca-ilg.org>

Bylaws
adopted: October 23, 2003
revised: October 26, 2006
revised: October 11, 2012
revised: April 30, 2015

ESCONDIDO UNION SCHOOL DISTRICT
Escondido, California