

COUNTY OF SAN DIEGO
2018 SEP 17 AM 9:22
CLERK OF THE BOARD
OF SUPERVISORS

2018 Local Agency Biennial Notice

Name of Agency: Poway Unified School District
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Email: amarshall@powayusd.com Alternate Email: _____

Accurate disclosure is essential to monitor whether officials have conflicts of interest and to help ensure public trust in government. The biennial review examines current programs to ensure that the agency's code includes disclosure by those agency officials who make or participate in making governmental decisions.

This agency has reviewed its conflict of interest code and has determined that (check one BOX):

An amendment is required. The following amendments are necessary:

(Check all that apply.)

- Include new positions
- Revise disclosure categories
- Revise the titles of existing positions
- Delete titles of positions that have been abolished and/or positions that no longer make or participate in making governmental decisions
- Other (describe) Adopted CSBA Board Bylaws 9270 on August 9, 2018.

The code is currently under review by the code reviewing body.

No amendment is required. (If your code is over five years old, amendments may be necessary.)

Verification (to be completed if no amendment is required)

This agency's code accurately designates all positions that make or participate in the making of governmental decisions. The disclosure assigned to those positions accurately requires that all investments, business positions, interests in real property, and sources of income that may foreseeably be affected materially by the decisions made by those holding designated positions are reported. The code includes all other provisions required by Government Code Section 87302.



Signature of Chief Executive Officer

September 14, 2018
Date

All agencies must complete and return this notice regardless of how recently your code was approved or amended. Please return this notice no later than **October 1, 2018**, or by the date specified by your agency, if earlier, to:

Clerk of the Board of Supervisors
Attn: Biennial Review
1600 Pacific Highway, Room 402
San Diego, CA 92101

PLEASE DO NOT RETURN THIS FORM TO THE FPPC.

Approved and/or authorized by the Board of Supervisors of the County of San Diego.	
Meeting Date: <u>12/11/2018</u>	Minute Order No. <u>41</u>
By: 	Date: <u>12/11/2018</u>
Deputy Clerk of the Board Supervisors	

www.fppc.ca.gov
FPPC Advice: advice@fppc.ca.gov (866.275.3772)
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CONFLICT OF INTEREST

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.

(cf. 9005 - Governance Standards)

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.

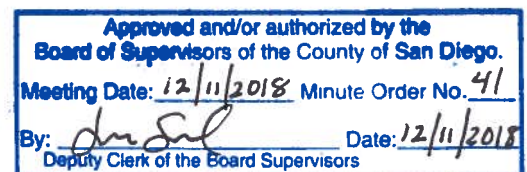
The Board shall adopt for the district a conflict of interest code that incorporates the provisions of 2 CCR 18730 by reference, specifies the district's designated positions, and provides the disclosure categories required for each position. The conflict of interest code shall be submitted to the district's 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)

(cf. 9320 - Meetings and Notices)



CONFLICT OF INTEREST (continued)

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

(cf. 4117.2/4217.2/4317.2 - Resignation)
(cf. 9222 - Resignation)

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 directs 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 in which he/she has only a "remote interest," as specified in Government Code 1091, if the interest is

CONFLICT OF INTEREST (continued)

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)

(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 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

CONFLICT OF INTEREST (continued)

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

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*

41015 *Investments*

FAMILY CODE

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

Legal Reference: (see next page)

CONFLICT OF INTEREST (continued)*Legal Reference: (continued)*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

82019 Definition, designated employee

82028 Definition, gift

82030 Definition, income

82033 Definition, interest in real property

82034 Definition, investment

87100-87103.6 General prohibitions

87200-87210 Disclosure

87300-87313 Conflict of interest code

87500 Statements of economic interests

89501-89503 Honoraria and gifts

89506 Ethics; travel

91000-91014 Enforcement

PENAL CODE

85-88 Bribes

REVENUE AND TAXATION CODE

203 Taxable and exempt property - 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

18750.1-18756 Conflict of interest codes

COURT DECISIONSMcGee v. Balfour Beatty Construction, LLC, et al. (4/12/16, No. B262850)Davis v. Fresno Unified School District (2015) 237 Cal.App.4th 261Klistoff v. Superior Court, (2007) 157 Cal.App.4th 469Thorpe v. Long Beach Community College District, (2000) 83 Cal.App.4th 655Kunec v. Brea Redevelopment Agency, (1997) 55 Cal.App.4th 511ATTORNEY GENERAL OPINIONS92 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: (see next page)*

CONFLICT OF INTEREST (continued)

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>

CONFLICT OF INTEREST (continued)

**Conflict of Interest Code of the
Poway Unified 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 designated positions and disclosure categories, are incorporated by reference and shall constitute the district's conflict of interest code.

Governing Board 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. The district's filing officer shall make the statements available for public review and inspection.

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.

Persons in this disclosure category shall complete the following economic interest schedules, which are available through the Superintendent's office:

- a. Common Reportable Interests:
 1. Schedule A-1: Investments – Stocks, Bonds, and Other Interests Including those held in an IRA or 401K (Ownership Interest is Less Than 10%)
 2. Schedule A-2: Investments – Income and Assets of Business Entities/Trusts (including certain independent contracting), sole proprietorships, partnerships, LLCs, and corporations (Ownership Interest is 10% or Greater)

CONFLICT OF INTEREST (continued)

3. Schedule B: Interests in Real Property: (Including Rental Property in the jurisdiction)
 4. Schedule C: Income, Loans, & Business Positions (Income Other Than Gifts and Travel Payments) (non-governmental salaries of public officials and spouse/registered domestic partner)
 5. Schedule D: Income – Gifts from non-family members (such as tickets to sporting events or entertainment events)
 6. Schedule E: Income – Gifts, Travel Payments, Advances, and Reimbursements from third parties (not employer)
- b. Common Non-Reportable Interests:
1. A-1: Insurance policies, government bonds, diversified mutual funds, certain funds similar to diversified mutual funds (such as exchange traded funds), and investments held in certain retirement accounts
 2. Schedule A-2: Savings and checking accounts and annuities
 3. Schedule B: A residence exclusively as a personal residence (such as a home or vacation cabin)
 4. Schedule C: Governmental salary (such as a school district)
 5. Schedule D: Gifts from family members
 6. Schedule E: Travel paid by your government agency
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 or 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 purposes of this category, a principal's department is his/her entire school.

Persons in this disclosure category shall complete the following economic interest

CONFLICT OF INTEREST (continued)

schedules, which are available through the Superintendent's office:

- a. Common Reportable Interests:
 1. Schedule A-2: Investments – Income and Assets of Business Entities/Trust (including certain independent contracting), sole proprietorships, partnerships, LLC's and corporations (Ownership Interest is 10% or Greater)
 2. Schedule B: Interests in Real Property: (Including Rental Property in the jurisdiction)
 3. Schedule D: Income – Gifts from non-family members (such as tickets to sporting events or entertainment events)
 4. Schedule E: Income – Gifts, Travel Payments, Advances, and Reimbursements from third parties (not employer)
 - b. Common Non-Reportable Interests:
 1. Schedule A-2: Savings and checking accounts and annuities
 2. Schedule B: A residence exclusively as a personal residence (such as a home or vacation cabin)
 3. Schedule D: Gifts from family members
 4. Schedule E: Travel paid by your government agency
3. **Category 3:** In keeping with the Fair Political Practices Commission regulations, persons in this designated disclosure category shall complete the following economic interest schedules, which are available through the Superintendent's office:
- a. Common Reportable Interests:
 1. Schedule D: Income – Gifts from non-family members (such as tickets to sporting events or entertainment events)
 2. Schedule E: Income – Gifts, Travel Payments, Advances, and Reimbursements from third parties (not employer)
 - b. Common Non-Reportable Interests:

CONFLICT OF INTEREST (continued)

1. Schedule D: Gifts from family members
2. Schedule E: Travel paid by your government agency

Designated Positions

<u>Designated Position</u>	<u>Disclosure Category</u>
Governing Board Members	1
Superintendent of Schools	2
Assistant/Associate Superintendent	2
Executive Directors - All	2
Directors - All	2
Principals - All	2
Director of Facilities, Maintenance and Operations	2
Director of Finance	2
Director of Food and Nutrition	2
Director of Information Technology	2
Director of Planning	2
Director of Purchasing	2
Director of Transportation	2
Project Manager – Construction	2
Personnel Commissioners	3
Director of Personnel Commission	3

Disclosures for Consultants

Consultants are designated employees who must disclose financial interests as determined on a case-by-case basis by the Superintendent or designee. The Superintendent or designee's written determination shall 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 to: (2 CCR 18700.3)

1. Approve a rate, rule, or regulation
2. Adopt or enforce a law
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement

CONFLICT OF INTEREST (continued)

4. Authorize the district to enter into, modify, or renew a contract that requires district approval
5. Grant district approval to a contract that requires district approval and in which the district is a party, or to the specifications for such a contract
6. Grant district approval to a plan, design, report, study, or similar item
7. Adopt or grant district approval of district policies, standards, or guidelines

A consultant is also an individual who, pursuant to a contract with the district, serves in a staff capacity with the district and in that capacity participates in making a governmental decision as defined in 2 CCR 18704, subsections (a) and (b), or performs the same or substantially all the same duties for the district that would otherwise be performed by an individual holding a position specified in the district's conflict of interest code. (2 CCR 18700.3)