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**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Marion McWilliams, General Counsel

**Board Meeting Date** March 14, 2018

**Subject** Amendment – Board Bylaws – BB 9270 Conflict of Interest

**Action Requested** Approval of updates to the Oakland Unified School District Board Bylaw BB 9270 Conflict of Interest

**Background and Discussion** Periodically modifications to board policies are recommended to align with changes in law or recommended best practices. The proposed modifications to the board policies reflect the District's standards.

The Bylaw is substantially reorganized and expanded. The Bylaw includes material on the "rule of necessity", expands material on "noninterests" in the section "Conflict of Interest under Government Code 1090 - Financial Interest in a Contract" to include additional examples of noninterests, and includes the exceptions to the gift limitation.

**Recommendation** Approval of updates to the Oakland Unified School District Board Bylaw BB 9270 Conflict of Interest

**Fiscal Impact** No direct funding implications

**Attachments** BB 9270 Conflict of Interest

# OAKLAND UNIFIED SCHOOL DISTRICT

## Board Bylaw

### Board Bylaws

BB 9270

#### Conflict Of Interest

##### Incompatible Activities

~~The~~ Governing Board members shall not engage in any employment or activity which is inconsistent with, incompatible with, in conflict with or inimical desires to maintain the Board member's duties as an officer of the district. — (Government Code 1126)

##### Conflict of Interest Code

The district's conflict of interest code shall be comprised of the terms of 2 CCR 18730 highest ethical standards 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 statements required for each position help ensure.

~~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~~ decisions are made in the code is necessitated by changed circumstances, best interest of 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 by changed circumstances, such as the creation of new designated positions, amendments or revisions, the changed code shall be submitted to the code reviewing body within 90 days. — (Government Code 87306)~~

~~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)~~

~~If~~ the public. Accordingly, no Board member or designated, district employee determines that he/she has a financial interest in a decision, as described in Government Code 87103, this determination shall be disclosed. — The member shall be disqualified from voting unless his/her participation is legally required. — (2 CCR 18700)

~~Statements of economic interests submitted to the district by designated employees in accordance with the conflict of interest code shall be available for public inspection and reproduction. — (Government Code 81008)~~

##### 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)~~

~~A Board member shall not be considered to be financially interested in a contract if his/her interest includes, but is not limited to, any of the following:—(Government Code 1091.5)~~

~~1. — That of an officer who is being reimbursed for his/her actual and necessary expenses incurred in the performance of an official duty~~

~~2. — That of a recipient of public services generally provided by the public body or board of which he/she is a member, on the same terms and conditions as if he or she were not a member of the board~~

~~3. — That of a landlord or tenant of the contracting party if such contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial or other public district of this state or an adjoining state unless the subject matter of such contract is the property in which such officer or employee has such interest as landlord or tenant in which even his/her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Government Code 1091~~

~~4. — That of a spouse of an officer or employee of the district if his/her spouse's employment or office holding has existed for at least one year prior to his/her election or appointment~~

~~5. — That of a salaried or nonsalaried member of a nonprofit corporation, provided that the Board member~~

~~—— 1. — Publicly identifies the financial interest that gives rise to the conflict or potential conflict of interest in detail sufficient to be understood by the public.—(Government Code 87105)~~

~~—— 2. — Recuses 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 18702.5)~~

~~—— 3. — Leaves 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 18702.5)~~

~~6. — That of a noncompensated officer of a nonprofit, tax-exempt corporation which, as one of its primary purposes, supports the functions of the nonprofit board or to which the school Board has a legal obligation to give particular consideration, and provided further that such interest is noted in its official records~~

~~7. — That of a person receiving salary, per diem, or reimbursement for expenses from a governmental entity, unless the contract directly involves the department of the government 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~~ in a designated position shall participate in the making of any decision for the district when the decision 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

or may be

~~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) by his/her financial, family, or other personal interest or consideration.

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

*(cf. 9005 - Governance Standards)*

Even if ~~there is no~~ a prohibited ~~or remote~~ conflict of interest does not exist, a Board member shall abstain from voting on personnel matters that uniquely affect his/her relatives. However, 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~~ his/her relative belongs. "Relative" means an adult who is related to the ~~person~~ 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 ~~the~~ an 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 domestic partner unless the individual is widowed or divorced.

## INTRODUCTION

The Oakland Unified School District adopted a Conflict of Interest Code on or about August 28, 1991, pursuant to the requirements of the Political Reform Act of 1974 as amended. (Gov. Code,

§ 81000 et seq.) In the interest of keeping the Code current with amendments to the Act and to regulations as they occur, the Fair Political Practices Commission has adopted a standard Conflict of Interest Code.

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. (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 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~~ [Disqualification for Board Members Who Manage Public Investments](#)

A, 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 18700-18707)

A Board member, designated employee, or other person in a designated position 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 18704)

On a case-by-case basis and upon advice of legal counsel, a Board member may 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.

#### 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 18707)

1. Publicly identify ~~the~~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 on the matter, or otherwise acting in violation of Government Code 87100. ~~This~~The Board member shall not be counted toward achieving a quorum while the item is discussed.—~~(Government Code 87105; 2 CCR 18702.5)~~

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 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.—~~(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 consideration of the consent calendar.—~~(2 CCR 18702.5)~~

~~(cf. 3430 Investing)~~

~~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)~~

4. If the Board's decision is made during ~~Closed Session, the public identification may be~~closed session, disclose his/her interest orally during the open session ~~before~~preceding the ~~Board goes into~~ closed session ~~and~~. This disclosure 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~~He/she shall not be present when the ~~decision~~item is considered in closed session ~~or~~and

shall not knowingly obtain or review a recording or any other ~~non-public~~nonpublic information regarding the Board's decision. ~~(2 CCR 18702.5)~~

*(cf. 3430 - Investing)*

*(cf. 9321 - Closed Session Purposes and Agendas)*

*(cf. 9321.1 - Closed Session Actions and Reports)*

### 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 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 ~~limitations~~limitation on gifts ~~de~~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 ~~prevailing~~current gift limitation, ~~except as described in 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 #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, ~~in accordance with law.~~ (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—

~~Persons occupying positions designated in the District's Conflict of Interest Code shall fill the required Statement of Economic Interest as required by law.~~

~~3. Consultants are designated employees who must disclose financial interests as determined on a~~



~~case by case basis by the Superintendent, upon consultation with the General Counsel.—The Superintendent, upon the General Counsel’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 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~~
- ~~f. — Grant district approval to a plan, design, report, study or similar item~~
- ~~g. — 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 18702.2 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 18701)~~

*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*

~~35239 Compensation for board members in 41000-41003~~ *Moneys received by school districts under 70 ADA*

~~41015 Investments~~

**FAMILY CODE**

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

**GOVERNMENT CODE**

1090-~~1098~~1099 *Prohibitions applicable to specified officers*

1125-1129 *Incompatible activities*

81000-~~91015~~91014 *Political Reform Act of 1974, especially:*

82011 *Code reviewing body*

82019 *Definition of designated employee*

82028 *Definition of gifts, gift*

82030 *Definition of 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:*  
18702.5 *Public identification*18700-18707 *General prohibitions*  
18722-18740 *Disclosure of a conflict interests*  
18753-18756 *Conflict of interest for Section 87200 filers*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

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

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

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

10/27/04; 12/16/09A; 3/28/18A (if adopted)

# OAKLAND UNIFIED SCHOOL DISTRICT

## Board Bylaw

### Board Bylaws

BB 9270

#### 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.

#### INTRODUCTION

The Oakland Unified School District adopted a Conflict of Interest Code on or about August 28, 1991, pursuant to the requirements of the Political Reform Act of 1974 as amended. (Gov. Code, § 81000 et seq.) In the interest of keeping the Code current with amendments to the Act and to regulations as they occur, the Fair Political Practices Commission has adopted a standard Conflict of Interest Code.

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. (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 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 18700-18707)

A Board member, designated employee, or other person in a designated position 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 18704)

On a case-by-case basis and upon advice of legal counsel, a Board member may 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.

### 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 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.

2. Recuse himself/herself from discussing and voting on the matter, or otherwise acting 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 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 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 interest orally during the open session preceding the closed session. This disclosure shall be limited to a declaration that his/her recusal is because of a conflict of interest pursuant to Government Code 87100. He/she 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.

*(cf. 3430 - Investing)*

*(cf. 9321 - Closed Session Purposes and Agendas)*

*(cf. 9321.1 - Closed Session Actions and Reports)*

#### 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 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 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*

#### *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  
18753-18756 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*

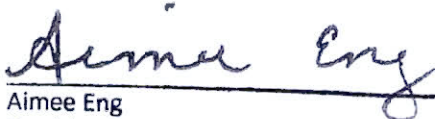
**WEB SITES**

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

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

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

10/27/04; 12/16/09A; 3/28/18A (if adopted)

  
Aimee Eng  
President, Board of Education

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By: \_\_\_\_\_

  
Kyla R. Johnson-Trammell  
Secretary, Board of Education