

Fresno Unified School District Board Bylaw (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 the Board member's, district employee's, or other designated persons 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 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 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 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 – Meeting 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 their official position to influence a governmental decision in which they knew or has reason to know that 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 district official, the district official's immediate family, or any financial interest described in 2 CCR 18700 (Government Code 87100, 87101, 87103; 2CCR 18700-18707)

A district official makes a governmental decision when, within the authority of the office or position, 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 shall participate in the making of a contract in which the district official has a financial interest if such 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 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. Not discuss or vote on the matter, or otherwise act in violation of Government Code 87100. This 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. 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 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 their interest orally during the open session preceding the closed session. This disclosure shall be limited to a declaration that 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.

(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 there is only a “remote interest” in the contract 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 their interest is a "noninterest" as defined in Government Code 1091.5.

Noninterest includes a Board member's interest in being reimbursed for their actual and necessary expenses incurred in the performance of their 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 the Board member's private or personal interest may conflict with 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 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)

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:

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/Form700 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.

Fresno Unified School District prohibits discrimination, harassment (including sexual harassment), intimidation, and bullying based on actual or perceived race, color, ethnicity, national origin, immigration status, ancestry, age (40 and above), religious creed, religion, political belief or affiliation, gender, gender identity, gender expression, genetic information, mental or physical disability, sex, sexual orientation, marital status, pregnancy or parental status, childbirth, breastfeeding/lactation status, medical condition, military and veteran status, or association with a person or a group with one or more of these actual or perceived characteristics or any other basis protected by law or regulation, in its educational program(s) or employment.

Legal Reference:

EDUCATION CODE

1006 Prohibition against school district employees serving on county board of education
35107 School district employees
35230-35240 Corrupt practices
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
52334-53235.2 Ethics training
81000-91014 Political Reform Act of 1974, especially:
82011 Code reviewing body
82019 Definition of designated employee
82028 Definition of gifts
82030 Definition of income
82033 Definition, interest in real property
82034 Definition, investment
84308 Campaign disclosure
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

PUBLIC CONTRACT CODE

6102 Awarding of contracts

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:
18438.1-18438.8 Campaign contribution-based conflicts of interest
18700-18760 Conflicts of Interest
18722-18740 Disclosure of interests
18753-18756 Conflict of interest codes

COURT DECISIONS

McGee v. Balfour Beatty Construction, LLC, et al. (2016) 247 Cal.App.4th 235
Davis v. Fresno Unified School District (2015) 237 Cal.App.4th 261
Klistoff v. Superior Court, (2007) 157 Ca.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

105 Ops.Cal.Atty.Gen. 69 (2022)
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

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

Bylaw FRESNO UNIFIED SCHOOL DISTRICT

adopted: September 26, 1991 Fresno, California

revised: September 27, 2000

revised: March 10, 2004

revised: September 22, 2004

revised: February 12, 2013

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Policy Section: 9000 Bylaws