

El Dorado County Board of Education Board Bylaw

BB 9270 - Conflict of Interest

The El Dorado County Board of Education (Board) desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the El Dorado County Office of Education (EDCOE) and the public. In accordance with law, Board members shall disclose any conflict of interest and, as necessary, shall abstain from participating in any decisions or discussions that could affect or be effected by those interests, especially, as prohibited by Government Code 1090, those interests related to contracts. The Board shall consult legal counsel whenever an actual or potential conflict of interest arises.

The Board shall adopt a resolution that specifies the terms of its conflict of interest code, designates any consultant positions required to complete conflict of interest reporting, and establishes disclosure categories required for each position. The conflict of interest code must be approved by the appropriate code reviewing body. Upon request by the code reviewing body, the Board shall review the conflict of interest code and submit any changes to the code reviewing body.

When a change in the conflict of interest code is necessitated due to changed circumstances, such as the hiring of a new consultant in a position that is not already designated in the conflict of interest code or a change to an existing consultant's scope of work in a manner that changes the consultant's position to a designated position, the amended code shall be submitted to the code reviewing body within 90 days.

When reviewing and preparing the conflict of interest code, the Board shall provide members of the community, the County Superintendent of Schools, EDCOE staff, and consultants of the Board adequate notice and a fair opportunity to present their views.

Board members shall annually file a Statement of Economic Interest/Form 700 in accordance with the disclosure categories specified in the conflict of interest code. A Board member who leaves office 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.

Conflict of Interest under the Political Reform Act

A Board member 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 "economic interests," unless the effect is indistinguishable from the effect on the public generally or the Board member's participation is legally required.

A Board member is involved in making 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 Board to any course of action, or votes to enter into or approve any contractual agreement on behalf of the Board.

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. Although he/she may remain on the dais, if they do choose to stay their 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

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

Board members shall not be financially interested in any contract made by the Board and shall not be included in the development, preliminary discussions, negotiations, compromises, planning, reasoning, and specifications and solicitations for bids for such contracts. If a Board member has such a financial interest, the Board is barred from entering into the contract.

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.

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 member’s vote.

To avoid the appearance of impropriety, Board members may decide not to participate in any discussion or action involving contracts where his/her interest is a “noninterest” or “remote interest” as described in Education Code 1091 and 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. The Board shall consult legal counsel whenever an actual or potential conflict of interest arises.

Board members shall abstain from voting on personnel matters that uniquely affect relatives. Relative means an adult who is related to the Board member by blood, affinity, or adoptive relationship within the third degree.

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.

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 18705.

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 COE.

Gifts

Board members 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.

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 EDCOE or Board for its members.

Honoraria

Board members 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.

The term honorarium does not include:

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 EDCOE for donation into the general fund without being claimed as a deduction from income for tax purposes

Legal References:

EDUCATION CODE

1006 Qualifications for holding office

35107 Membership

35230-35240 Corrupt practices, especially:

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:

82003 Agency definition

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

91000-91014 Enforcement

PENAL CODE

85-88 Bribes

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

First Reading: September 5, 2017

Second Reading: October 3, 2017

Adoption: October 3, 2017

Supersedes: BP 2710 Conflict of Interest Adopted May 5, 2015

APPENDIX

Disclosure Categories

1. Category 1: A person designated Category 1 shall disclose:
 - a. Interests in real property located entirely or partly within county boundaries, or within two miles of the county boundaries, or of any land owned or used by the Board.
 - b. Investments or business positions in or income from sources which are engaged in the acquisition or disposal of real property within the county, 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 Board, or manufacture or sell supplies, books, machinery, or equipment of the type used by the Board.
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.

Designated Positions

Designated Position	Disclosure Category
Board Members	1
Consultants to the Board	2

Disclosures for Consultants

Consultants who are hired pursuant to Education Code 1042 may be designated individuals who are required to disclose financial interests as determined on a case-by-case basis. The determination shall be in writing and 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 Board, makes a governmental decision pursuant to 2 CCR 18700.3.

First Reading: September 5, 2017

Second Reading: October 3, 2017

New Exhibit Adopted with BB 9270 Conflict of Interest Policy