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References:	<i>Legally Advised</i>

## BP 2710 Conflict of Interest

*(Replaces current SBCCD BP 2260)*

The public office is a public trust created in the interest and for the benefit of the people. Members of the Board and employees of the District are expected to act with integrity, fidelity, and without bias for the primary benefit of the public.

### DEFINITIONS

**Financial Interest:** As defined in Government Code Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official (direct interest), a member of the official's immediate family (indirect interest), or on any of the following:

- a. Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- b. Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- c. Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.
- d. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- e. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating four hundred sixty dollars (\$460) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The gift limit shall be adjusted biennially by the Fair Political Practices Commission.

Financial interests may be direct or indirect. An indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

**Making a Decision:** As defined in Section 18704(a) of Title 2 of the California Code of Regulations (CCR), a public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a

person, obligates or commits the District to any course of action, or enters into any contractual agreement on behalf of the District.

**Participating in a Decision:** As defined in Section 18704(b) of Title 2 of the CCR, a public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision *without significant intervening substantive review*. This includes partaking in preliminary discussions, negotiations, planning, solicitation or evaluation of bids, voting, or debating that precedes the making of a decision.

**Using Official Position to Attempt to Influence a Decision:** As defined in Section 18704(c) of Title 2 of the CCR, a public official uses his or her official position to influence a governmental decision if he or she: (1) contacts or appears before any District official or in an agency subject to the authority or budgetary control of the District for the purpose of affecting a decision; or (2) contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of the District in making the contact.

*Note: Making, participating in, or influencing a governmental decision does not include activities listed under Section 18704(d) of Title 2 of the CCR.*

## POLICY STATEMENTS

Board members and employees must avoid conflicts of interest as well as the appearance of impropriety.

In accordance with the Political Reform Act of 1974 and Government Code Section 87100, Board members, employees and consultants must not make or participate in any governmental decision in which he or she knows or has reason to know he or she has a financial interest.

Pursuant to Government Code Section 1090, Board members and employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. All Board members are conclusively presumed to participate in the making of all contracts under the Board's jurisdiction. Hence, the aforementioned prohibition is absolute, and applies even if the contract is fair and equitable and the Board member abstains from all participation in the decision.

Where an employee, rather than a Board member, is financially interested in a contract, the District is only prohibited from making the contract if the employee was at any point involved in the process of making the contract.

A Board member or employee shall not be considered to be financially interested in a contract if his or her interest is limited to those interests defined as remote under Government Code Section 1091 or considered noninterest under Government Code Section 1091.5.

If a Board member or employee has a financial interest in a decision being considered by the Board, the financial interest must be disclosed in sufficient detail to the Board during a Board meeting, and noted in the official Board minutes. The Board member must disqualify him or herself from discussing and voting on the matter, and must leave the room until after discussion, vote, and any other disposition of the matter is concluded. A Board member or employee who has a financial interest must not influence or attempt to influence the decision.

### Collective Bargaining Agreements

Where a member of the Board receives health benefits from the District as a former faculty member in an amount that is required by contract to be equal to the amount of health benefits the District provides to current

faculty members under the terms of a collective bargaining agreement, the Board of Trustees may renegotiate the amount of health benefits provided under the current collective bargaining agreement so long as the financially interested Board member does not participate in the decision-making process.

### **Rule of Necessity**

The District may enter into a contract despite a conflict of interest under Government Code Section 1090 and Section 87100, where there is no other alternative for the procurement of essential goods or services, and the acquisition of such goods or services is a necessity. However, the financially interested Board member or employee must abstain from any participation in the decision.

Section 87100 does not prevent any public official from making or participating in the making of a governmental decision to the extent his or her participation is legally required for the action or decision to be made. The fact that an official's vote is needed to break a tie does not make his or her participation legally required for purposes of this section.

Whenever a public official who has a financial interest in a decision is legally required to make or participate in making such a decision, the potential conflict of interest and the legal basis for concluding that there is no alternative source of decision shall be disclosed to the Board in sufficient detail and noted in the official Board minutes.

### **Incompatible Activities & Offices**

Pursuant to Government Code Section 1126 and 1099, a Board member or employee shall not hold incompatible offices nor engage in any employment, activity, or enterprise for compensation which is inconsistent with, incompatible with, in conflict with or inimical to his or her duties as an officer of the District.

Offices are incompatible if there is any significant clash of duties or loyalties between the offices, if the dual office holding would be improper for reasons of public policy, or if either office exercises a supervisory, auditory, or removal power over the other.

When two offices are incompatible, a Board member shall be deemed to have forfeited the first office upon acceding to the second.

In accordance with Education Code Section 72103(b), an employee of the District may not be sworn in as an elected or appointed member of the Board of Trustees unless and until he or she resigns as an employee. If the employee does not resign, the employment will automatically terminate upon being sworn into office. This provision does not apply to an individual who is usually employed in an occupation other than teaching and who also is, at the time of election to the Board, employed part time by the District to teach no more than one course per semester or quarter in the subject matter of that individual's occupation.

### **Representation**

Pursuant to Government Code 87406.3, elected officials and the Chancellor shall not, for a period of one-year after leaving their position, act as an agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, the District, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

### **Conflict of Interest Code**

In compliance with the Political Reform Act of 1974 and Government Code Section 87300, the District shall establish a Conflict of Interest Code to provide for disclosure of reportable financial interests of Board

members and designated employees, who may be affected by their official actions, and to prevent them from making or participating in the making of governmental decisions which may foreseeably have a material effect on their financial interest.

Board members, designated employees, and consultants in designated positions shall file statements of economic interest with the filing officer identified by the Conflict of Interest Code.

Board members are encouraged to seek counsel from the District's legal advisor in every case where any question arises.

Also see AP 2712 titled Conflict of Interest Code

## References:

Government Code Sections 1090 et seq.; 1126; and 87200 et seq.;

## Attachments

[BP 2710 Conflict of Interest - Comments](#)

[BP 2710 Conflict of Interest - Legal Citations](#)

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