

Incompatible Activities

Government Code Section 1126(a) specifies that “a local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties functions or responsibilities of his or her appointment power or the agency by which he or she is employed. The officer or employee shall not perform any work, service, or counsel for compensation outside of his or her local agency employment where any part of his or her efforts will be subject to approval by any other officer, employee, board, or commission of his or her employing body, unless approved in the manner prescribed by subdivision (b).”

Under this law, the appointing power/local agency has the authority to determine those outside activities which, for employees under its jurisdiction, are inconsistent with, incompatible to, or in conflict with their duties as local agency officers or employees. The general definitions are described in GC Section 1126 and Policy 4136. The Office of Education’s Conflict of Interest Policy for its officers and designated employees is described in Policy 9270/2300.

Prior to accepting secondary employment with an entity other than the Office of Education, entering into an outside-of-employment enterprise, or accepting a position as a local agency officer or director, the employee shall inform his/her immediate supervisor and Division Assistant Superintendent. The supervisor and Division Assistant Superintendent shall consider the employee’s duties with the Office of Education and determine, in consultation with the employee, if a conflict or potential for conflict, would exist if the employment/enterprise/office were entered into by the employee.

Upon determining that a conflict would exist, the employee shall be informed that engaging in the outside activity would be inconsistent, incompatible, in conflict with, or inimical to his or her duties with the Office of Education. The employee may appeal the determination to the Superintendent. The Superintendent’s decision is final.

An employee may not engage in a prohibited activity, as to do so would be grounds for termination. However, the Superintendent may approve changes in the employee’s duties, hours of employment, or assignment if such changes would eliminate the conflict while insuring that no Office of Education services would be compromised.

Examples of activities that have the potential for conflict with Office of Education employment include, but are not limited to:

- An employee providing private consultation or services to a client that

the employee serves in his/her capacity as an Office of Education employee

- An employee accepting a “second job” with hours that interfere with the employee’s performance of Office of Education assigned duties
- An employee accepting appointment to the board of directors of an agency that influences how Office of Education resources are spent or whose mission is to serve the same clientele that the employee serves in his/her role with the Office of Education
- An employee entering into a private enterprise to market a product or service that he/she developed in his/her capacity as a Office of Education employee
- An employee participating in the promotion of a product or business using his/her employment with the Office of Education to influence potential consumers