

CONFLICT OF INTEREST

The Board desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the Office of Education and the public. In accordance with law, Board members and designated employees shall disclose any conflict of interest and, as necessary, shall abstain from participating in related 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 County 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 County 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. (Government Code 87306)

When reviewing and preparing the conflict of interest code, the County Board shall provide members of the community, the County Superintendent of Schools, COE staff, and consultants of the County Board adequate notice and a fair opportunity to present their views. (Government Code 87311)

Board members shall not be financially interested in any contract made by the Board or any contract made acting in their capacity as Board members.

A Board member shall not be considered to be financially interested in a contract if any of the exceptions set forth in Government Code 1091.5 apply to the Board member.

A Board member who maintains a remote interest in a contract considered by the Board as defined in Government Code 1091 shall disclose the interest in a meeting of the Board and have the disclosure noted in the official minutes of the Board. 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.

Bylaw

adopted: September 4, 1996

Reviewed: July 10, 2024

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Board members and designated employees shall annually file a Statement of Economic Interest/Form 700. A Board member who leaves office, or a designated employee who leaves Office of Education employment shall, within 30 days, file a revised statement covering the period of time between the closing date of the last statement and the date of leaving office or employment.

Conflict of Interest from Campaign Contributions

To avoid improper influence over the County Board's decision-making involving the issuance of a license, permit, or other entitlements for use, including a contract, COE officers, which includes County Board members or agency heads, shall comply with Government Code 84308, including the following: (Government Code 84308)

1. A COE 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 County Board and for 12 months following the date a final decision is rendered in the proceeding, if the County Board member knows or has reason to know that the party or participant has a financial interest in the County Board's decision.
2. Any COE 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 County Board rendering a decision in the proceeding. If the COE officer willfully or knowingly received the contribution and knows or has reason to know that the participant has a financial interest in the County Board's decision, the COE officer shall not make, participate in making, or in any way attempt to use the official position to influence the County Board's decision.
3. A COE 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 COE officer knows or should have known about the contribution and the proceeding.
4. A COE officer who unknowingly accepts, solicits, or directs a contribution of more than \$250 during the 12 months after the date of the County Board's final decision on the proceeding may cure the

Bylaw
adopted: September 4, 1996
Reviewed: July 10, 2024

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violation by returning the contribution, or the portion exceeding \$250, within 14 days of accepting, soliciting, or directing the contribution, provided the COE officer did not knowingly or willfully accept, solicit, or direct the prohibited contribution. The COE 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)

Nepotism

No spouse or dependent of a Board member shall enter into employment with the County Office of Education except as provided below:

1. A Board member shall not be deemed to be financially interested in a contract between the Board and the Board member's minor child as long as the Board member's interest in the contract is disclosed to the Board, noted in the minutes of the Board, and thereafter the Board authorizes, approves or ratifies the contract by a vote sufficient for the purpose. The Board member shall abstain from voting on the contract and shall not attempt to influence other members of the Board to approve the contract.
2. A Board member shall not be deemed to be interested in a contract between the board member's spouse and the County Office of Education provided the Board member's spouse has been employed there for at least one year prior to the Board member's selection or appointment.

Board members shall adhere to the Conflict of Interest Code adopted pursuant to the provisions of Government Code 87300, et seq., and to the California Code of Regulations, Title 2, 18100, et seq. (Regulations of the Fair Political Practices Commission).

Conflict of Interest under the Political Reform Act

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

A Board member or designated employee 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 Office of Education to any course of action, or enters into any contractual agreement on behalf of the Office of Education.

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. He/she may remain on the dais, but his/her 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

Board members and designated employees shall not be financially interested in any contract made by the Board or Superintendent on behalf of the Office of Education, including in the development, preliminary discussions, negotiations, compromises, planning, reasoning, and specifications and solicitations for bids. If a Board member or designated employee has such a financial interest, the Office of Education is barred from entering into the contract.

Common Law Doctrine Against Conflict of Interest

A County Board member shall abstain from any official action in which the County Board member's private or personal interest may conflict with official duties. The County Board shall consult legal counsel whenever an actual or potential conflict of interest arises.

County Board members shall abstain from voting on personnel matters that uniquely affect relatives. Relative means an adult who is related to the County 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

Bylaw
adopted: September 4, 1996
Reviewed: July 10, 2024

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On a case-by-case basis and upon advice of legal counsel, a County 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.

Gifts

County 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. (Government Code 89503)

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 County Board for its members. (Government Code 89506)

Honoraria

County 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. (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 COE for donation into the

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general fund without being claimed as a deduction from income for tax purposes

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 Office of Education.

The Board shall review its Conflict of Interest Code biennially in even numbered years and report to the Humboldt County Board of Supervisors by October 1 of that year if amendments are to be made to its Code or if no amendments are necessary.

Legal Reference:

EDUCATION CODE

1006 Qualifications for holding office

35230-35240 Corrupt practices

GOVERNMENT CODE

1090-1098 Prohibitions applicable to specified officers

1125-1129 Incompatible activities

81000-91015 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 of "interest in real property"

82034 Definition of "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 Travel payments, advances and reimbursements

91000-91015 Enforcement

CODE OF REGULATIONS, TITLE 2

18100-18730 Regulations of the Fair Political Practices Commission

18702.5 Public Identification of a conflict of interest for Section 87200 filers

COURT DECISIONS

Kunec v. Brea Redevelopment Agency (1997) 55 Cal.App. 4th 511

ATTORNEY GENERAL OPINIONS

92 Ops.Cal.Atty.Gen. 26 (2009)

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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)

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)

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