Bylaw 9270: Conflict Of Interest **Status:** ADOPTED

Original Adopted Date: 07/01/2010 | **Last Revised Date:** 12/01/2024 | **Last Reviewed Date:** 12/01/2024

CSBA NOTE: Pursuant to Government Code 87300, the Governing Board is mandated to adopt a conflict of interest code, as specified in "Conflict of Interest Code" below. Additionally, pursuant to Government Code 1126, the Board is mandated to adopt policy regarding incompatible offices and activities, as specified in "Incompatible Offices and Activities" below.

Determining whether a conflict of interest exists requires an analysis under (1) the conflict of interest provisions of the Political Reform Act (PRA) (Government Code 87100-87505), as specified in "Conflict of Interest under the Political Reform Act," (2) Government Code 1090-1098, as specified in "Conflict of Interest under Government Code 1090 - Financial Interest in a Contract," and (3) the common law doctrine against conflict of interest, as specified in "Common Law Doctrine Against Conflict of Interest" below. Additionally, different conflict of interest law provisions apply to different officials and positions. Therefore, it is strongly recommended that districts consult CSBA's District and County Office of Education Legal Services or district legal counsel, and staff from the Fair Political Practices Commission (FPPC), as soon as a potential conflict is identified.

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 "District Official," defined as a Board member or position designated in the district's conflict of interest code, shall participate in the making of any decision for the district when the decision will or may be affected by the District Official's financial, family, or other personal interest or consideration, as defined by law.

Additionally, 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 common law, or an individual in an adoptive relationship within the third degree. (Education Code 35107)

CSBA NOTE: The following paragraph reflects the common law definition of "relative 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.

Conflict of Interest Code

CSBA NOTE: The Board is required to adopt a conflict of interest code in compliance with Government Code 87300-87313. Pursuant to Government Code 87303, the district's conflict of interest code is required to be approved by the appropriate code reviewing body. For districts located entirely in one county, the code reviewing body is the board of supervisors of the county in

which the district is located. The FPPC is the code reviewing body for those school districts located in more than one county.

Pursuant to 2 CCR 18730, the requirements of the Government Code are satisfied if a district adopts a conflict of interest code that incorporates 2 CCR 18730 by reference, along with a list of District Officials and disclosure categories. The accompanying exhibit contains a sample resolution that includes an appendix with District Officials and disclosure categories which, once adopted by the Board, will comprise the terms of the district's conflict of interest code that should be submitted to the code reviewing body.

The Board shall adopt a conflict of interest code for the district that incorporates the provisions of 2 CCR 18730 by reference, delineates the District Officials, 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.

Upon direction by the code reviewing body, the Board shall review its 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 District Officials or changes to the duties of District Officials, the Board shall amend the code, which shall then 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)

Conflict of Interest under the Political Reform Act

CSBA NOTE: The FPPC has adopted an eight-step analysis, detailed in Government Code 87100-87500, 2 CCR 18700-18707, and interpretive opinions, to determine whether a conflict of interest exists under the PRA for a District Official. When such a conflict exists, the individual with a conflict is required to disclose the interest and not participate in the decision, as specified below. Because Family Code 297.5 grants a registered domestic partner the same rights, protections, and benefits as a spouse under state law, analysis of a conflict of interest with regard to a Board member's spouse is also applicable to a registered domestic partner.

A District Official shall not make, participate in making, or in any way use or attempt to use an official position to influence a governmental decision in which the District Official knows 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's immediate family, or any financial interest described in 2 CCR 18700. (Government Code 87100, 87101, 87103; 2 CCR 18700-18707)

A District Official makes a governmental decision when, acting 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 other District Officials for the purpose of affecting the decision, or takes any other action specified in 2 CCR 18704.

CSBA NOTE: 2 CCR 18705 permits a District Official who is financially interested in a contract to participate in making a decision on the contract if (1) the District Official discloses the existence of the conflict and describes with particularity the nature of the financial interest in the contract, (2) gives a summary description of the circumstances under which the District Official believes the conflict may arise, and (3) either the District Official, or another District Official, discloses the legal basis for concluding that no alternative source of decision exists for the district.

However, a District Official is not prohibited from participating 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

CSBA NOTE: Government Code 84308, as amended by SB 1181 (Ch. 785, Statutes of 2024) and SB 1243 (Ch. 1017, Statutes of 2024), imposes specified disclosure requirements and restrictions on accepting, soliciting, or directing campaign contributions of more than $500 by board members and superintendents from a party or participant to a proceeding before the district involving a contract, license, permit, or other entitlement for use, as defined, or from an agent of such a party or participant, with limited statutory exceptions. Some disclosure requirements and restrictions apply before the district's decision on the proceeding is made, some apply while the decision is pending, and some apply after the decision has been made.

Prior to the district rendering a decision in a proceeding before the district involving a contract, license, permit, or other entitlement for use, as defined by Government Code 84308, a Board member whose campaign committee received a contribution of more than $500 from any party or participant to the proceeding, or from an agent of such a party or participant, in the prior 12 months, and the party who made such a contribution, shall both publicly disclose that fact on the record of the proceeding. Additionally, if a Board member willfully or knowingly received a contribution to the Board member's campaign committee of more than $500 from any party or participant to such a proceeding, or from an agent of a party or participant, in the prior 12 months, and knows or has reason to know that the participant has a financial interest in the district's decision, the Board member shall not make, participate in making, or in any way attempt to use the Board member's official position to influence the district's decision in the proceeding. However, a Board member may make, participate in making, or attempt to use the Board member's official position to influence the decision if the contribution is returned within 30 days after the decision was made or after the Board member knows or should have known about the contribution and the proceeding, whichever is later.

All Board members and the Superintendent are prohibited from accepting, soliciting, or directing a contribution of more than $500 to a candidate or ballot measure campaign committee from any party or participant to a proceeding before the district involving a contract, license, permit, or other entitlement for use, as defined by Government Code 84308, or from an agent of a party or participant, while the proceeding is pending before the district and for 12 months following the date the district renders a final decision in the proceeding, if the Board member or Superintendent knows or has reason to know that the participant has a financial interest in the district's decision. However, if a Board member or the Superintendent does accept, solicit, or direct such a contribution during those 12 months but did not do so knowingly or willingly, the Board member or the Superintendent may cure the violation by ensuring that the contribution, or the portion exceeding $500, is returned within 30 days of accepting, soliciting, or directing the contribution. The Board member or Superintendent shall maintain records of curing the violation. (Government Code 84308)

For a Board member or the Superintendent, a proceeding becomes "pending" when an item

involving the contract, license, permit, or other entitlement for use, as defined by Government Code 84308, is placed on a Board agenda for discussion or decision or when it is reasonably foreseeable that the proceeding will come before the district for a decision. For a party or participant, and the agent of a party of participant, a proceeding becomes "pending" when an application is filed with the district, or, if the proceeding process does not require an application, when the proceeding is before the district for a decision or other action. (Government Code 84308)

The contributions disclosure requirements and restrictions above do not apply to contracts that are required to be competitively bid, labor contracts, personal employment contracts, contracts valued under $50,000, contracts where no party receives financial compensation, or contracts with another governmental agency. (Government Code 84308)

Form 700

CSBA NOTE: Government Code 87500 requires all District Officials to annually file a Form 700 (also known as a Statement of Economic Interest). Under the PRA, there are two separate categories of Form 700 disclosure requirements. For the first category, pursuant to Government Code 87302, which is applicable to most school districts, the disclosure requirements are determined by the district and set forth in its conflict of interest code. The second category, pursuant to Government Code 87200, is applicable to Board members, district employees, or district consultants who "manages public investments." Individuals in such positions, referred to by the FPPC as Government Code 87200/Article 2 filers, are required to file broader disclosure statements in accordance with the disclosure requirements specified in law and FPPC regulation. See "Additional Requirements for Boards that Manage Public Investments" below.

Each District Official 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. An individual who ceases to be a District Official 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 the individual ceased to be a District Official. (Government Code 87302)

Additional Requirements for Boards that Manage Public Investments

CSBA NOTE: The following optional section is for use only by districts with Government Code 87200/Article 2 filers and should be deleted by all other districts. See the accompanying exhibit for further information.

According to the FPPC, Government Code 87200/Article 2 filers are those positions which manage the investment of district surplus or special reserve funds in permitted securities and investments pursuant to Education Code 41015. Such filers include board members on boards that direct the investment of these funds, formulate or approve policies for the investment of these funds, even if the boards delegate day-to-day investment decisions to staff, or approve investment transactions involving these funds. Such filers do not include board members on boards where the district does not have any surplus or special reserve funds to invest and merely deposits all funds it receives (1) in the county treasury pursuant to Education Code 41001-41002.5 or (2) in a fund where a Tax and Revenue Anticipation Note (TRANs) is issued.

Any Board member, district employee, or district consultant who manages public investments, as defined by 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

   For a Board member, the Board member shall not be counted toward achieving a quorum while the item is discussed.

3. Leave the room until after the discussion, vote, and any other disposition of the matter is concluded

   However, the Board member, district employee, or district consultant who manages public investments, as defined by Government Code 87200, may speak on the issue during the time that the general public speaks on it. Additionally, for a Board member, if the matter has been placed on the consent calendar, the Board member shall abstain from voting on the consent calendar or, if the Board removes the item from the consent calendar, the Board member shall abstain from voting on the item. 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 a decision is made during closed session, disclose the 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, district employee, or district consultant who manages public investments, as defined by Government Code 87200, 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 decision.

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

CSBA NOTE: Pursuant to Government Code 1090, if a District Official has a financial interest in a contract, it is an absolute bar for that district to enter into the contract. The Attorney General has opined in 69 Ops.Cal.Atty.Gen. 255 (1986) that, unlike the PRA, the prohibitions in Government Code 1090 cannot, in most instances, be resolved by having the financially interested District Official recuse themselves from participating in the matter. However, there are two categories of exceptions, "remote interest" and "noninterest", both of which are specified below.

The prohibitions in Government Code 1090 generally apply to District Officials. However, the Attorney General has opined in 63 Ops.Cal.Atty.Gen. 868 (1980) that, in contrast to a Board member, an employee's financial interest would not prohibit the district from entering into a contract as long as the employee has not participated in the making of the contract, such as in discussions and planning, as detailed below.

Government Code 1090 does not define financial interest, but courts have held that, for the purposes of this statute, the definition of "financial interest" is not the same as the definition in the PRA which requires a "material financial effect" in order for a conflict to exist.

Violators of Government Code 1090 may be subject to a fine or, unlike the PRA, even criminal charges and/or imprisonment.

A District Official shall not be financially interested in any contract made by the district, including in the development, internal discussions, negotiations, modifications, planning, deliberation of issues,

and specifications and solicitations for bids. If a District Official has such a financial interest in a contract made by the district, the contract is void. (Government Code 1090)

Remote Interest Exception to Government Code 1090

CSBA NOTE: When the "remote interest" conditions specified in Government Code 1091 are satisfied (e.g., Board member is an employee of a nonprofit organization), then the district may enter into the contract as long as the affected Board member discloses the remote interest and abstains from the matter. The "remote interest" exception only applies to Board members and not to other District Officials.

A Board member shall not be considered to be financially interested in a contract in which there is only a "remote interest," 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 to enter into the contract. (Government Code 1091)

Noninterest Exception to Government Code 1090

CSBA NOTE: Pursuant to Government Code 1091.5, certain financial interests are defined as "noninterests," meaning a conflict of interest does not exist and the district can enter into the contract. The "noninterest" exception applies to all District Officials.

One of the noninterests listed in Government Code 1091.5 is when a Board member's spouse has been employed by the district for at least one year prior to the Board member's election or appointment. If the spouse has not been employed by the district for at least one year prior to the Board member's election or appointment, the Attorney General opined in 80 Ops.Cal.Atty.Gen. 320 (1997) that the exception does not apply. The Attorney General, in 92 Ops.Cal.Atty.Gen. 26 (2009) and 87 Ops.Cal.Atty.Gen. 23 (2004), and case law have further clarified the application of this noninterest exception when a previously employed spouse changes to a different position during the Board member's term. Generally, these opinions have held that a lateral transfer or change of classification that does not require Board approval (e.g., second year probationary teacher automatically achieving permanent status, step increase) is the same employment not requiring a new contract and thus constitutes a noninterest.

However, the Attorney General has also opined in 69 Ops.Cal.Atty.Gen. 255 (1986) that when a new contract is involved (e.g., promotion from classroom teacher to principal, substitute employee becoming a probationary employee), the exception in Government Code 1091.5 does not apply and the action would be prohibited under Government Code 1090 because Board approval of the contract is required.

A District Official shall not be considered to be financially interested in a contract if the interest is reimbursement for actual and necessary expenses incurred in the performance of 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 "noninterest" specified in Government Code 1091.5.

Common Law Doctrine Against Conflict of Interest

CSBA NOTE: Even when there is not a conflict pursuant to the PRA or Government Code 1090, the Attorney General has found that special situations may still exist under the common law doctrine against conflict of interest which, unlike the statutes, extends to noneconomic interests. In 92 Ops.Cal.Atty.Gen. 19 (2009), the Attorney General opined that a redevelopment board member

should abstain from voting on a loan agreement where the recipient of the loan was a corporation owned by the board member's adult son. Although the board member was not financially interested in the contract under the PRA or Government Code 1090, the Attorney General determined that abstention was advisable under the common law doctrine against conflict of interest.

A District Official shall abstain from any official action in which the District Official's private or personal interest may conflict with official duties pursuant to the common law doctrine against conflict of interest.

Incompatible Offices and Activities

CSBA NOTE: Government Code 1099 and 1126 prohibit Board members and employees from engaging in any employment or activity which is inconsistent, incompatible, in conflict with, or inimical to their duties with the district. Government Code 1126 mandates that the district adopt procedures regarding this prohibition. See BP 4136/4236/4336 - Nonschool Employment for language implementing this mandate relative to employees.

The Attorney General indicated in 105 Ops.Cal.Atty.Gen. 69 (2022), 85 Ops.Cal.Atty.Gen. 60 (2002), 68 Ops.Cal.Atty.Gen. 171 (1985), and 65 Ops.Cal.Atty.Gen. 606 (1982) that it would be incompatible for Board members to serve on other elected or appointed boards, councils, or commissions that have interests which may conflict with the interests of the district. If a Board member is sworn into an incompatible office, then the Board member's position in the prior office is automatically terminated.

Pursuant to Education Code 35107, an employee of a school district may not be sworn into office as an elected or appointed member of that district's Board unless the employee resigns. If the employee does not resign, the employment automatically terminates when the employee is sworn into office. See BB 9220 - Governing Board Elections.

The determination as to whether an activity or office is incompatible is complex and requires a case-by-case analysis of the particular activities or duties of the office; therefore, it is recommended that CSBA's District and County Office of Education Legal Services or district legal counsel be consulted as appropriate.

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)

Gifts

CSBA NOTE: Pursuant to 2 CCR 18940.2, the gift limit is $630 for the term January 1, 2025 through December 31, 2026. Pursuant to Government Code 89503, Board members and candidates are subject to gift limits for gifts from all sources unless exempted by law or regulation. For those Board members who file a Form 700 based on the disclosure categories specified in the district's conflict of interest code pursuant to Government Code 87302 (see the accompanying exhibit), the gift limit is only applicable to those individuals and entities that are disclosed on the Form 700.

Several exceptions exist within the Government Code's definitions of gifts, income, interest in real property, and investment; see Government Code 82028, 82030, 82033, and 82034. If questions arise as to such exceptions, the district may seek clarification from the FPPC through email to advice@fppc.ca.gov or consult CSBA's District and County Office of Education Legal Services or

district legal counsel.

District Officials may accept gifts only under the conditions and limitations specified in law including, but not limited to, Government Code 89503 and 2 CCR 18730.

CSBA NOTE: District Officials may, in the circumstances described in Government Code 89506, receive payments, advances, or reimbursements for travel and related lodging and subsistence, which will not be subject to the gift limit set in Government Code 89503.

Gifts of travel and related lodging and subsistence shall be subject to the current gift conditions and limitations, except when: (Government Code 89506)

1. The travel is in connection with a speech given by a District Official, 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/Form 700 as required by law.

A gift of travel does not include travel provided by the district for District Officials. (Government Code 89506)

Honoraria

District Officials 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

Advice

Any District Official, who, in good faith, believes that they may be subject to the requirements of this Bylaw and has questions, is unclear, or is unsure regarding the application of the requirements of this Bylaw to any particular instance or situation, may seek advice from the district's legal counsel with the permission of the Superintendent, Board President, or majority of the Board.

Training

CSBA NOTE: Government Code 53234-53235.2 require a Board member, except for a member whose term of office ends before January 1, 2026, to receive specified training in ethics by January 1, 2026, and at least once every two years thereafter, and for the district to maintain records of such training. Additionally, Government Code 53235, as amended by AB 2631 (Ch. 201, Statutes of 2024), requires the FPPC, in consultation with the Attorney General, to create, maintain, and make an ethics training course available to local agency officials, including Board members.

Unless a Board member's term expires prior to January 1, 2026, each Board member shall complete ethics training in accordance with Government Code 53234-53235.2 by January 1, 2026, and at least once every two years thereafter as specified in Board Bylaw 9240 - Board Training.