

## Mt. Diablo USD | BP 9270 Board Bylaws

### **Conflict Of Interest**

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.

#### Incompatible Activities

Governing Board members shall not engage in any employment or activity 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 1126)

#### Conflict of Interest Under the Political Reform Act

The district's conflict of interest code shall comprise of the terms of 2 CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with a district attachment specifying designated positions and the specific types of disclosure statements required for each position.

Upon direction by the code reviewing body, the Board shall review the district's conflict of interest code in even numbered years. If no change in the code is required, the district shall submit by October 1 a written statement to that effect to the code reviewing body. If a change in the code is necessitated by changed circumstances, the district shall submit an amended code to the code reviewing body. (Government Code 87306.5)

When a change in the district's conflict of interest code is necessitated by changed circumstances such as the creation of new designated positions, amendments or revisions shall be submitted to the code reviewing body within 90 days. (Government Code 87306)

When reviewing and preparing conflict of interest codes, the district shall provide officers, employees, consultants and members of the community adequate notice and a fair opportunity to present their views. (Government Code 87311)

Board members and designated employees 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. A Board member who leaves office or a designated employee who leaves district employment 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 or district employment. (Government Code 87302, 87302.6)

A Board member, designated employee, or other person in a designated position 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 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 Board member, designated employee, or other person in a designated position, his/her immediate family, or any financial interest described in 2 CCR 18700. (Government Code 87100, 87101, 87103; 2 CCR 18700-18707)

A Board member, designated employee, or other person in a designated position makes a governmental decision when he/she, acting within the authority of his/her office or position, authorizes or directs any action on a matter, votes or provides information or opinion on it, contacts or appears before a district official for the purpose of affecting the decision, or takes any other action specified in 2 CCR 18704.

However, a Board member shall participate in the making of a contract in which he/she has a financial interest if his/her participation is required by the rule of necessity or legally required participation pursuant to Government Code 87101 and 2 CCR 18705.

Statements of economic interests submitted to the district by designated employees in accordance with the conflict of interest code shall be available for public inspection and reproduction. (Government Code 81008)

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

Board members, employees, or district consultants shall not be financially interested in any contract made by the Board on behalf of the district, including in the development, preliminary discussions, negotiations, compromises, planning, reasoning, and specifications and solicitations for bids. 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. Any contract made in violation of Government Code Section 1090 is void and unenforceable and the Board member or employee is subject to: (1) criminal and/or civil penalties; and (2) potential disgorgement of any consideration received or any property acquired in the transaction. (Government Code 1090) A Board member shall not be considered to be financially interested in a contract if his/her interest includes, but is not limited to, any of the following: (Government Code 1091.5)

1. That of an officer who is being reimbursed for his/her actual and necessary expenses incurred in the performance of an official duty
2. That of a recipient of public services generally provided by the public body or board of which he/she is a member, on the same terms and conditions as if he or she were not a member of the board
3. That of a landlord or tenant of the contracting party if such contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial or other public district of this state or an adjoining state unless the subject matter of such contract is the property in which such officer or employee has such interest as landlord or tenant in which even his/her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Government Code 1091
4. That of a spouse of an officer or employee of the district if his/her spouse's employment or office holding has existed for at least one year prior to his/her election or appointment
5. That of a non-salaried member of a nonprofit corporation, provided that such interest is disclosed to the Board at the time of the first consideration of the contract, and provided further that such interest is noted in its official records
6. That of a non-compensated officer of a nonprofit, tax-exempt corporation which, as one of its primary purposes, supports the functions of the nonprofit board or to which the school Board has legal obligation to give particular consideration, and provided further that such interest is noted in its official records
7. That of a person receiving salary, per diem, or reimbursement for expenses from a governmental entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that such interest is disclosed to the Board at the time of consideration of the contract, and provided further that such interest is noted in its official records
8. That of an attorney of the contracting party or that of an owner, officer, employee or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an

ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm or real estate firm

In addition, a Board member shall not be considered to be financially interested in a contract in which his/her interest is a "noninterest" as defined in Government Code 1091.5. Noninterest includes a Board member's interest in being reimbursed for his/her actual and necessary expenses incurred in the performance of his/her official duties, in the employment of his/her 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 applicable circumstance specified in Government Code 1091.5. A Board member shall not be deemed to be financially interested in a contract if he/she has only a remote interest in the contract and if the remote interest is disclosed during a Board meeting and noted in the official Board minutes. Remote interests are specified in Government Code 1091(b); they include, but are not limited to, the interest of a parent in the earnings of his/her minor child. (Government Code 1091)

#### Board Member Vote Affecting "Relative"

Even if there is no prohibited or remote interest, a Board member shall abstain from voting on personnel matters that uniquely affect a relative of the Board member. A Board member may vote, however, on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs. "Relative" means an adult who is related to the person by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree. (Education Code 35107)

A relationship within the third degree includes the individual's parents, grandparents and great-grandparents, children, grandchildren and great-grandchildren, brothers, sisters, aunts and uncles, nieces and nephews, and the similar family of the individual's spouse unless the individual is widowed or divorced.

#### Gifts

Board members and designated employees may accept gifts only under the conditions and limitations specified in Government Code 89503 and 2 CCR 18730.

The limitations on gifts do 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) In addition, the limitation on gifts does not apply to informational materials such as books, reports, pamphlets, calendars, and periodicals. (Government Code 82028)

Gifts of travel and related lodging and subsistence shall be subject to the prevailing gift limitation except as described in Government Code 89506.

A gift of travel does not include travel provided by the district for Board members and designated employees. (Government Code 89506)

#### Honoraria

Board members and designated employees 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 district for donation into the general fund without being claimed as a deduction from income for tax purposes

## APPENDIX

### DESIGNATED POSITIONS/DISCLOSURE CATEGORIES

1. Persons occupying the following positions are designated employees in Category 1:

Governing Board Members

Superintendent of Schools

Chief Business Officer

Chief, Educational Services

Chief, Human Resources

Chief, Pupil Services and Special Education

Chief Accountant

Director, Fiscal Services

General Counsel

Purchasing Director

Director of Maintenance and Operations

Director of Facilities and Bonds

Director of Food Services

Designated persons in Category 1 must report:

- a. Interests in real property located entirely or partly within district boundaries, or within two miles of district boundaries or of any land owned or used by the district. Such interests include any leasehold, beneficial or ownership interest or option to acquire such interest in real property.
- b. Investments or business positions in or income from sources which:
  - (1) Are engaged in the acquisition or disposal of real property within the district
  - (2) 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 district or
  - (3) Manufacture or sell supplies, books, machinery or equipment of the type used by the district

2. Persons occupying positions with the following designations as part of their title are designated employees in Category 2:

Administrator

Director

Manager

Principal

Program Coordinator

Program Specialist

Supervisor

Designated persons in Category 2 must report investments or business positions in or income from sources which:

- a. Are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs, or
- b. Manufacture or sell supplies, books, machinery or equipment of the type used by the department which the designated person manages or directs. For the purposes of this category, a principal's department is his/her entire school.

3. Consultants are designated employees who must disclose financial interests as determined on a case-by-case basis by the Superintendent or designee. The Superintendent or designee's written determination shall 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. Approve a rate, rule or regulation
- b. Adopt or enforce a law
- c. Issue, deny, suspend or revoke a permit, license, application, certificate, approval, order or similar authorization or entitlement
- d. Authorize the district to enter into, modify or renew a contract that requires district approval
- e. Grant district approval to a contract or contract specifications which require district approval and in which the district is a party
- f. Grant district approval to a plan, design, report, study or similar item
- g. Adopt or grant district approval of district policies, standards or guidelines

A consultant is also an individual who, pursuant to a contract with the district, serves in a staff capacity with the district and in that capacity participates in making a governmental decision as defined in 2 CCR 18702.2 or performs the same or substantially all the same duties for the district that would otherwise be performed by an individual holding a position specified in the district's Conflict of Interest Code. (2 CCR 18701)

4. Designated persons in Category 3 must report:

Investments in any business entity, income from any source and status as a director, officer, partner, trustee, employee, or holder of a position of management in any business entity which, within the last two years, has contracted or in the future foreseeably may contract with the district to provide services, supplies, materials, machinery, or equipment which are related to the following areas:

- a. Special Education
- b. Physical Education
- c. Medicine and Health
- d. Buildings and Grounds Equipment and Supplies
- e. Buildings and Grounds Maintenance Services
- f. Data Processing and Computers
- g. Office Management
- h. Motor Vehicles
- i. Food and Food Service
- j. Books and Other Publications
- k. Pedagogical Supplies and Equipment
- l. Foreign Language Training
- m. Musical Instruments and Music Training
- n. Employment Agencies
- o. Vocational Training

Legal References:

## STATUTES

2 CCR 18110-18997 Regulations of the Fair Political Practices Commission

2 CCR 18700-18760 Conflicts of Interest

2 CCR 18722-18740 Disclosure of interests

2 CCR 18753-18756 Conflict of interest codes

Ed. Code 1006 Qualifications for holding office, county board of education

Ed. Code 35107 School district employees

Ed. Code 35230-35240 Corrupt practices

Ed. Code 35233 Prohibitions applicable to members of governing boards

Ed. Code 41000-41003 Moneys received by school districts

Ed. Code 41015 Investments

Fam. Code 297.5 Rights, protections, and benefits of registered domestic partners

Gov. Code 1090-1099 Prohibitions applicable to specified officers

Gov. Code 1125-1129 Incompatible activities

Gov. Code 81000-91014 Political Reform Act of 1974

Gov. Code 82011 Code reviewing body

Gov. Code 82019 Definition, designated employee

Gov. Code 82028 Definition, gift

Gov. Code 82030 Definition, income

Gov. Code 82033 Definition, interest in real property

Gov. Code 82034 Definition, investment

Gov. Code 87100-87103.6 General prohibitions

Gov. Code 87200-87210 Disclosure

Gov. Code 87300-87313 Conflict of interest code

Gov. Code 87500 Statement of economic interests

Gov. Code 89501-89503 Honoraria and gifts

Gov. Code 89506 Ethics; travel

Gov. Code 91000-91014 Enforcement

Pen. Code 85-88 Bribes

Rev. & Tax Code 203 Taxable and exempt property - colleges

#### ATTORNEY GENERAL OPINIONS

Attorney General Opinion 63 Ops.Cal.Atty.Gen. 868 (1980)

Attorney General Opinion 65 Ops.Cal.Atty.Gen. 606 (1982)

Attorney General Opinion 68 Ops.Cal.Atty.Gen. 171 (1985)

- Attorney General Opinion 69 Ops.Cal.Atty.Gen. 255 (1986)
- Attorney General Opinion 80 Ops.Cal.Atty.Gen. 320 (1997)
- Attorney General Opinion 81 Ops.Cal.Atty.Gen. 327 (1998)
- Attorney General Opinion 82 Ops.Cal.Atty.Gen. 83 (1999)
- Attorney General Opinion 85 Ops.Cal.Atty.Gen. 60 (2002)
- Attorney General Opinion 86 Ops.Cal.Atty.Gen. 138(2003)
- Attorney General Opinion 89 Ops.Cal.Atty.Gen. 217 (2006)
- Attorney General Opinion 92 Ops.Cal.Atty.Gen. 19 (2009)
- Attorney General Opinion 92 Ops.Cal.Atty.Gen. 26 (2009)

COURT DECISIONS

- Court Decision Davis v. Fresno Unified School District (2015) 237 Cal.App.4th 261
- Court Decision Klistoff v. Superior Court, (2007) 157 Cal.App.4th 469
- Court Decision Kunec v. Brea Redevelopment Agency, (1997) 55 Cal.App.4th 511
- Court Decision McGee v. Balfour Beatty Construction, LLC, et al. (4/12/16, No. B262850)
- Court Decision Thorpe v. Long Beach Community College District, (2000) 83 Cal.App.4th 655

WEBSITES

- Website Institute for Local Government
- Website Fair Political Practices Commission
- Website CSBA

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