



## SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 10.3

**Meeting Date:** November 15, 2012

**Subject:** Proposed Revisions to Board Bylaw 9270, Conflict-of-Interest

- ☐ Information Item Only
- ☐ Approval on Consent Agenda
- ☐ Conference (for discussion only)
- ☒ Conference/First Reading (Action Anticipated: December 6, 2012)
- ☐ Conference/Action
- ☐ Action
- ☐ Public Hearing

**Division:** Human Resource Services/Legal Services

**Recommendation:** Review and discuss proposed revisions to Board Bylaw 9270, Conflict-of- Interest.

**Background/Rationale:** The District must review its conflict-of-interest code biennially in even-numbered years. In addition, since the last biannual review the District made changes to its organizational structure that included updating and revising position descriptions, eliminating and/or reclassifying positions. The affected position descriptions were reviewed to determine the need to include the position as a designated filer in the District's Conflict-of-Interest Code, Board Bylaw 9270. The proposed revisions have been reviewed by the Parent Advisory Committee (DAC) and the Student Advisory Committee (DAC), the Superintendent, Cabinet members and legal counsel.

As required, the District notified its code reviewing body, the Sacramento County Board of Supervisors, that a revision of our conflict-of-interest code was needed. The revisions must be adopted by December 30, 2012.

**Financial Considerations:** The District must comply with Government Code section 87300 et seq. and Fair Political Practice Commission (FPPC) regulations or face court action by the FPPC.

**Documents Attached:**

1. Proposed Revisions to BB 9270, Conflict of Interest.

**Estimated Time of Presentation: 5 minutes**

**Submitted by:** Jess Serna, CHRO/Susan Pointer, Legal Services

**Approved by:** Jonathan P. Raymond, Superintendent

# Board of Education Executive Summary

## Human Resource Services/Legal Services

### Board Bylaw 9270, Conflict-of-Interest

November 15, 2012



#### I. OVERVIEW / HISTORY

The Political Reform Act requires every local government agency to review its conflict-of-interest code biennially in even-numbered years. If amendments to an agency's conflict-of-interest code are necessary, the amended code must be forwarded to the agency's code reviewing Board (the Sacramento County Board of Supervisors) for approval. An agency's amended code is not effective until it has been approved by the Board of Supervisors.

In addition, since the last biannual review the District made changes to its organizational structure that included updating and revising position descriptions, eliminating and/or reclassifying positions. The Political Reform Act requires public officials of governmental agencies (board/commission members, employees and consultants) to disclose assets and income which may be materially affected by their official actions. Designated positions generally make or participate in making decisions such as, voting on matters, negotiating contracts, or making recommendations on purchases without substantive review. The affected position descriptions were reviewed to determine the need to include the position as a designated filer in the District's conflict-of-interest code, Board Bylaw 9270.

#### II. DRIVING GOVERNANCE

- The Political Reform Act of 1974 (Gov. Code sections 8100-9104) requires that each state and local government agency adopt and implement a separate conflict-of-interest code.
- Conflict-of-interest codes must be reviewed every two years and when necessary to add or delete designated positions and disclosure categories. This is the biennial review of the District's conflict-of-interest code.

#### III. BUDGET

The District must comply with Government Code section 87300 et seq. and Fair Political Practice Commission (FPPC) regulations or face compliant action by the FPPC. Compliant action would most likely take the form of a fine.

#### IV. GOALS, OBJECTIVES, AND MEASURES

The District must keep its conflict-of-interest code accurate and up-to-date and review its code biennially in even-numbered years. There have been changes to the District's organizational structure and some of the designated filer positions already listed in the code have undergone name and/or responsibility changes and the code must reflect these changes.

# **Board of Education Executive Summary**

**Human Resource Services/Legal Services**

**Board Bylaw 9270, Conflict-of-Interest**

November 15, 2012



## **V. MAJOR INITIATIVES**

After the District adopts the proposed changes, the conflict-of-interest code must be presented to the Sacramento County Board of Supervisors for approval by that Board. This must be completed by December 30, 2012.

## **VI. RESULTS**

The proposed revisions have been reviewed by the District Advisory Committee, Student Advisory Committee, the Superintendent and his Cabinet, and Legal Counsel. Board Bylaw 9270, Conflict-of-interest, is before the Board at this November 15, 2012 Board meeting as a Conference/First Reading Item. It is scheduled to be on the December 6, 2012 Board meeting Agenda as an Action item.

## **VII. LESSONS LEARNED / NEXT STEPS**

Continue to monitor Board Bylaw 9270, Conflict-of-Interest for necessary revisions.

Next Steps: Make any suggested revisions submitted by the Board and bring back for approval at the December 6, 2012 meeting. Submit approved BB 9270, Conflict-of-Interest, to the County Board of Supervisors for approval by December 30, 2012.

# Sacramento City USD

## Board Bylaw

### Conflict-of-Interest

BB 9270

#### Board Bylaws

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. In accordance with law, Board members and designated employees shall disclose any conflict-of-interest and, as necessary, shall abstain from participating in the decision.

#### Conflict-of-Interest Code

The district's conflict-of-interest code shall be comprised of the terms of the 2 CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with an Appendix specifying designated positions and the specific types of disclosure category required for each position. This Bylaw is to work in concert with GC-8, which also addresses Board members' conflict-of-interest concerns.

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, the changed code shall be submitted to the code reviewing body within 90 days. (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)

(cf. 9320 – Meetings and Notices)

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 statement and the date of leaving office or district employment. (Government Code 87302, 87500) A newly elected Board member or a newly hired employee in a designated position shall, within 30 days, file an Assuming Office statement

covering the 12 months prior to the date the assuming office or position date. These statements shall be available for public inspection and reproduction. (Government Code 81008)

Upon receiving the statements from designated employees, the district shall make and retain copies and shall forward the originals to the appropriate county agency.

#### Financial Interest

Board members and designated employees shall not be financially interested in any contract made by the Board or in any contract they make in their capacity as Board members or designated employees. (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 s/he is a member, on the same terms and conditions as if he/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 a public agency if his/her spouse's employment or officeholding has existed for at least one year prior to his/her election or appointment
5. That of a nonsalaried 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 noncompensated officer of a nonprofit, tax-exempt corporation which, as one of its primary purposes, supports the functions of the district and its Board 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 governmental entity that employs the officer or employee, provided that such interest is

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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

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In addition, a Board member or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his/her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor. (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. 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. 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)

A Board member may enter into a contract if the rule of necessity or legally required participation applies as defined in Government Code 87101.

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.

#### Disqualification for Board Members Who Manage Public Investments

A Board member who manages public investments pursuant to 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:

1. Publicly identify the 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. (Government Code 87105)
2. Recuse himself/herself from discussing and voting on the matter, or otherwise acting in violation of Government Code 87100. This Board member shall not be counted toward achieving a quorum while the item is discussed. (Government Code 87105; 2 CCR Section 18702.5)
3. Leave the room until after the discussion, vote and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters. (Government Code 87105)

If the item is on the consent calendar, the Board member must recuse himself/herself from discussing or voting on that matter, but the Board member is not required to leave the room during the consent calendar. (2 CCR Section 18702.5)

A Board member who has recused himself/herself from participating in a matter may speak on the matter during the time that the general public speaks on the matter. The Board member shall recuse himself/herself from voting on the matter and leave the dais to speak from the same area as members of the public. He/she may listen to the public discussion of the matter with members of the public. (Government Code 87105; 2 CCR 18702.5)

If the Board's decision is made during closed session, the public identification may be made orally during the open session before the Board goes into closed session and shall be limited to a declaration that his/her recusal is because of a conflict-of-interest pursuant to Government Code 87100. The Board member shall not be present when the decision is considered in closed session or knowingly obtain or review a recording or any other non-public information regarding the Board's decision. (2 CCR 18702.5)

(cf. 3430 - Investing)

#### Incompatible Activities

Board members or employees 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 or with the employee's position in the district. (Government Code 1099, 1126)

(cf. 4136/4236/4336 – Nonschool Employment)

#### 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)

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

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#### APPENDIX

##### DESIGNATED POSITIONS/DISCLOSURE CATEGORIES

###### Category 1

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

Members of the Board of Education  
Superintendent  
Chief Academic Officer  
Chief Accountability Officer  
Chief Business Officer  
Chief Communications Officer  
Chief Family and Community Engagement Officer  
Chief Human Resources Officer

Designated persons in this category 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 shall include any leasehold, beneficial or ownership interest or option to acquire such interest in real property;

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B. Investments or business positions in or income from sources which:

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1) Are engaged in the acquisition or disposal of real property within the district;

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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

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3) Manufacture or sell supplies, books, machinery or equipment of the type used by the district.

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## Category 2

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Persons occupying the following positions are designated employees in Category 2:

### Superintendent's Office

- Chief of Staff
- Director, 501(c)3

### Academic Office

- Assistant Superintendent, Curriculum and Instruction
- Director, Child Development
- Director, Multilingual Literacy
- Director, Special Education
- Director, High School Reform Initiatives
- Coordinator, State and Federal Programs

### Accountability Office

- Area Assistant Superintendent
- Assistant Superintendent, Information Education Technology
- Director, Adult Education
- Director Assessment, Research and Evaluation
- Director, Enrollment Center
- Director, Network, Telecommunications and Technology Support
- Director, Student Services/Alternative Education

### Administrative Services

- Director, Accounting Services
- Director, Budget Services
- Director, Compensation and Benefits

- Director, Distribution Services
- Manager, Nutrition Services
- Manager, Purchasing and Warehouse

#### Capital Asset Management Services

- Director, Facilities and Maintenance
- Director, Operations and Planning

#### Family and Community Engagement

- Director, Integrated Support Services
- Director, Youth Development

#### Human Resource Services

- Director, Human Resource Services

Designated persons in this category must report investments or business positions in or income from sources which:

- Are contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs; or
- 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.

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#### Consultants

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Consultants are designated employees who must disclose financial interests as determined on a case-by-case basis, as recommended by General Counsel to the Superintendent and the Board of Trustees. The determination shall be written and 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 consultant is an individual who, pursuant to a contract with the district, makes a governmental decision whether to: (2 CCR 18701)

- Approve a rate, rule or regulation
- Adopt or enforce a law
- Issue, deny, suspend or revoke a permit, license, application, certificate, approval, order or similar authorization or entitlement
- Authorize the district to enter into, modify or renew a contract that requires district approval

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- 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

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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)

#### Legal Reference:

##### EDUCATION CODE

1006 Qualifications for holding office

35107 School district employees

35230-35240 Corrupt practices, especially:

35233 Prohibitions applicable to members of governing boards

41000-41003 Moneys received by school districts

##### FAMILY CODE

297.5 Rights, protections, and benefits of registered domestic partners

##### GOVERNMENT CODE

1090-1099 Prohibitions applicable to specified officers

1125-1129 Incompatible activities

81000-91014 Political Reform Act of 1974, especially:

82011 Code reviewing body

87100-87103.6 General prohibitions

87200-87210 Disclosure

87300-87313 Conflict of interest code

87500 Statements of economic interests

89501-89503 Honoraria and gifts

91000-91014 Enforcement

##### PENAL CODE

85-88 Bribes

##### CODE OF REGULATIONS, TITLE 2

18110-18997 Regulations of the Fair Political Practices Commission, especially:

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

##### COURT DECISIONS

Klistoff v. Superior Court, (2007) 157 Cal.App.4th 469

Thorpe v. Long Beach Community College District, (2000) 83 Cal.App.4th 655

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

##### ATTORNEY GENERAL OPINIONS

92 Ops.Cal.Atty.Gen. 26 (2009)  
92 Ops.Cal.Atty.Gen. 19 (2009)  
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)  
81 Ops.Cal.Atty.Gen. 327 (1998)  
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)  
63 Ops.Cal.Atty.Gen. 868 (1980)

Management Resources:

CSBA PUBLICATIONS

Conflict of Interest: Overview of Key Issues for Governing Board Members, Fact Sheet, July 2010

FAIR POLITICAL PRACTICES COMMISSION PUBLICATIONS

Can I Vote? A Basic Overview of Public Officials' Obligations Under the Conflict-of-Interest Rules, 2005

INSTITUTE FOR LOCAL GOVERNMENT PUBLICATIONS

Understanding the Basics of Public Service Ethics: Personal Financial Gain Laws, 2009

Understanding the Basics of Public Service Ethics: Transparency Laws, 2009

WEB SITES

CSBA: <http://www.csba.org>

Fair Political Practices Commission: <http://www.fppc.ca.gov>

Institute of Local Government: <http://www.ca-ilg.org>

Bylaw SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

adopted: November 16, 1998 Sacramento, California

revised: April 2, 2001

revised: March 3, 2005

revised: November 6, 2008

revised: December 10, 2009

revised: November 4, 2010

revised: December, \_\_ 2012