

Board Bylaws
CONFLICT OF INTEREST

BB 9270 (a)

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 Board member, District employee, or other person in a designated position shall participate in the making of any decision for the district when the decision will or may be affected by the Board member's, District employees, or other designated persons financial, family, or other personal interest or consideration.

Even if a prohibited conflict of interest does not exist, a Board member shall abstain from voting on personnel matters that uniquely affect his/her 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 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/registered domestic partner unless the individual is widowed or divorced.

Conflict of Interest Code

The Board shall adopt for the district a conflict of interest code that incorporates the provisions of 2 CCR 18730 by reference, specifies the District's designated positions, 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. (Government Code 87303)

Board members and designated employees shall adhere to the district's conflict of interest code adopted pursuant to the provisions of Government Code Section 87300.

Conflict of Interest Code for the Orcutt Union School District

The provisions of 2 CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with the attached Appendix specifying designated positions and disclosure categories, and Board Bylaw 9270, are incorporated by reference and shall constitute the district's conflict of interest code.

Each person holding a "Designated Position" shown below shall file a Statement of Economic Interest/Form 700 in accordance with the disclosure categories listed in the attached Appendix. The Statement of Economic Interest shall be filed with the district's filing officer. The district's filing officer shall make the statements available for public review and inspection.

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Upon direction by the code reviewing body, the Board shall review the district's 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 designated positions, changes to the duties assigned to existing positions, amendments, or revisions, the amended code shall 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)

Board members and designated employees shall submit statements of economic interests to the district in accordance with requirements of the conflict of interest code. These statements shall be available for public inspection and reproduction. (Government Code Section 81008)

Board members and the Superintendent shall file statements with the Clerk of the Board office via the electronic filing system. The district shall make and retain copies. Statements for all other designated employees shall be retained by the district.

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)

Conflict of Interest under the Political Reform Act

A district official, including 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 an official position to influence a governmental decision in which a district official knows 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, 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 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 a district official for the purpose of affecting the decision, or takes any other action specified in 2 CCR 18704.

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However, a district official shall participate 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. 8705.

Conflict of Interest from Campaign Contributions

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

1. A district 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 Board and for 12 months following the date a final decision is rendered in the proceeding, if the Board member knows or has reason to know that the party or participant has a financial interest in the Board's decision.
2. Any district 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 Board rendering a decision in the proceeding. If the district officer willfully or knowingly received the contribution and knows or has reason to know that the participant has a financial interest in the Board's decision, the district officer shall not make, participate in making, or in any way attempt to use the official position to influence the Board's decision.
3. A district 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 district officer knows or should have known about the contribution and the proceeding.
4. A district officer who unknowingly accepts, solicits, or directs a contribution of more than \$250 during the 12 months after the date of the Board's final decision on the proceeding may cure the violation by returning the contribution, or the portion exceeding \$250, within 14 days of accepting, soliciting, or directing the contribution, provided the district officer did not knowingly or willfully accept, solicit, or direct the prohibited contribution. The district 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)

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Additional Requirements for Boards that Manage Public Investments

Any 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: (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. Recuse himself/herself from discussing and voting on the matter, or otherwise act in violation of Government Code 87100. The Board member shall not be counted toward achieving a quorum while the item is discussed.

However, the Board member may speak on the issue during the time that the general public speaks on it and may leave the dais to speak from the same area as members of the public. The Board member may listen to the public discussion and deliberations of the matter with members of the public.

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.

If the item is on the consent calendar, the Board member shall either make a motion to remove the item from the consent calendar. 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 the Board's 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 the recusal is because of a conflict of interest pursuant to Government Code 87100. The Board member 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 Board's decision.

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

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for bids. If a Board member has such a financial interest in a contract made by the Board, the contract is void. (Government Code 1090)

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 or District official to enter into the contract. (Government Code 1091)

In addition, a Board member shall not be considered to be financially interested in a contract in which the 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 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 applicable circumstance specified in Government Code 1091.5.

Common Law Doctrine Against Conflict of Interest

A Board member shall abstain from any official action in which the Board member's private or personal interest may conflict with his/her official duties.

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 district. (Government Code 1099, 1126)

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 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)

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 current gift limitation except when: (Government Code 89506)

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1. The travel is in connection with a speech given by a Board member or designated employee, provided the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech and 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 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, conference, convention, meeting, social event, meal or like 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.

State

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

2 CCR 18438.1-18438.8: Campaign contribution-based conflicts of interest

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: Prohibition against school district employees serving on 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

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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 52334-53235.2: Ethics training
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 91000-91014L: Enforcement
Pen. Code 85-88: Bribes
Public Contract Code 6102: Awarding of contracts
Rev. & Tax Code 203: Taxable and exempt property - colleges

Management Resources

Attorney General Opinion 105 Ops.Cal.Atty.Gen.69 (2022)
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 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. (2016) 247 Cal. App. 4th 235
Court Decision Thorpe v. Long Beach Community College District, (2000) 83 Cal.App.4th 655
CSBA Publication: Conflict of Interest: Overview of Key Issues for Governing Board Members, Fact Sheet, July 2010
Fair Political Practices Commission Publication: Can I Vote? A Basic Overview of Public Officials' Obligations Under the Conflict-of-Interest Rules, 2005
Institute For Local Government Publication: Understanding the Basics of Public Service Ethics: Personal Financial Gain Laws, 2009
Institute for Local Government Publication: Understanding the Basics of Public Service Ethics: Transparency Laws, 2009
Website: CSBA District and County Office of Education Legal Services
Website: Institute for Local Government
Website: Fair Political Practices Commission

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Website: CSBA

Bylaw Adopted: 5/10/23

ORCUTT UNION SCHOOL DISTRICT
Orcutt, California