

CONFLICT OF INTEREST

Board Bylaws

The Board of Trustees (Board) desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the Capistrano Unified School District (District) and the public. The Board requires its members, officers, employees, consultants and volunteers to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. The Board, recognizing that it is entrusted with public resources devoted to the education of its students, has adopted this conflict of interest code. The purpose of this conflict of interest code is to protect the District's interests when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a Board member, officer, employee, consultant or volunteer.

The District strives to avoid conflicts of interest to ensure that it continues to operate in accordance with highest standards of public trust. This policy is intended to supplement but not replace any state and federal laws governing conflicts of interest applicable to California public school districts. The Board expects that all of its members, as well as all of the District's officers, employees, consultants and volunteers comport themselves in an ethical manner that exceeds the minimum required under state and federal law. If there is any question or doubt about whether a certain situation or circumstance constitutes a conflict of interest, it is the expectation of the Board and the District that staff and legal counsel will be consulted before proceeding with the matter in question.

The Board shall adopt a resolution that specifies the terms of the District's conflict of interest code, the District's designated positions, and the disclosure categories required for each position. 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. Upon direction by the code reviewing body, (the Orange County Board of Supervisors) the Board shall review the District's conflict of interest code and submit any changes to the code reviewing body.

When reviewing and preparing the District's conflict of interest code, the Superintendent or designee shall provide officers, employees, consultants, volunteers and members of the community adequate notice and a fair opportunity to present their views.

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 (the Orange County Board of Supervisors) within 90 days. 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.

CONFLICT OF INTEREST (continued)

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.

Conflict of Interest under the Political Reform Act

A Board member or designated employee shall not make, participate in making, or in any way use or attempt to use his/her official position to influence a District decision in which he/she knows or has reason to know that he/she has a disqualifying conflict of interest. A conflict of interest exists if the decision will have a "reasonably foreseeable material financial effect" on one or more of the Board member's or designated employee's "economic interests," unless the effect is indistinguishable from the effect on the public generally or the Board member's or designated employee's participation is legally required. The following factors should be considered in making the determination: (1) the extent to which the Board member or designated employee or his/her source of income is engaged, or plans on engaging in business activity in the District's jurisdiction; (2) the market share held by the Board member or designated employee or his/her source of income in the District's jurisdiction; (3) the extent to which the Board member or designated employee or his/her source of income has competition for business in the District's jurisdiction; (4) the scope of the decision in question; and, (5) the extent to which the occurrence of the material financial effect is contingent upon intervening events (not including future governmental decisions by the District). (Title 2 of the California Code of Regulations (CCR) § 18701-18702.5.)

A Board member or designated employee makes a governmental decision when, acting within the authority of his/her office or position, he/she votes on a matter, appoints a person, obligates or commits the District to any course of action, or enters into any contractual agreement on behalf of the District.

A District decision is material to a nonprofit in which a Board member or designated employee has a financial interest when the reasonably foreseeable financial effect of that decision will provide the nonprofit a measurable financial benefit or loss, or the Board member or designated employee knows or has reason to know that the nonprofit has an interest in real property that will be financially affected under the standards applied to a financial interest in CCR § 18702.2. (CCR § 18702.3.)

A Board member or designated employee has an economic interest in any source of income that is either received by or promised to the official and totals \$500 or more in the 12 months prior to the decision in question. A conflict of interest results whenever either the amount or the source of an official's income is affected by a decision. (CCR § 18700.1.)

CONFLICT OF INTEREST (continued)

For example, a decision that foreseeably will materially affect a Board member's or designated employee's employer would necessitate disqualification even if the amount of income to be received by the individual were not affected. Detrimental, as well as positive effects, on the amount or source of income can create a conflict of interest.

Under Government Code § 87200, Board members and designated employees of districts in which the Board and Superintendent "manage public investments" must file broader disclosure statement pursuant to statute and Fair Political Practices Commission (FPPC) regulation. According to the FPPC, officials who manage public investments are Boards or designated employees who manage the investment of District surplus or special reserve funds in permitted securities and investments pursuant to Education Code § 41015.

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 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 acting in violation of Government Code § 87100 which precludes public officials from making, participating in making or in any way attempting to use their official position to influence a governmental decision in which he/she knows or has reason to know he/she has a financial interest. 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. He/she may listen to the public discussion 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 must recuse himself/herself from discussing or voting on that matter, but 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 his/her interest orally during the open session preceding the closed session. This disclosure shall be limited to a declaration that his/her recusal is because of a conflict of interest pursuant to Government Code § 87100.

CONFLICT OF INTEREST (continued)

He/she 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

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. If a Board member, employee or consultant has such a financial interest, the District is barred from entering into the contract.

Any contract entered into in knowing violation of this policy shall be void. Every contract made in violation of any of the provisions of Government Code § 1090 or this policy, whether knowing or not, may be avoided at the instance of any party except the interested party. In addition, any District official or employee who willfully commits a violation may be subject to criminal sanctions.

A Board member, employee or consultant shall not be considered to be financially interested in a contract if his/her interest is a "noninterest" as defined in Government Code § 1091.5. One such noninterest is when a Board member is an unsalaried member of a nonprofit corporation provided the interest is disclosed to the Board at the time the contract is first considered and is noted in the District's official records. The reference to "members" refers to persons who constitute the membership of an organization, rather than to those individuals that serve on its board of directors.

A Board member shall not be considered to be financially interested in a contract if he/she has only a "remote interest" in the contract as specified in Government Code § 1091 and if the remote interest is disclosed during a Board meeting and noted in the official Board minutes. An example of a remote interest is a Board member who is an officer or employee of a nonprofit corporation or Internal Revenue Code section 501(c)(3) entity because he/she has only a remote interest in the contracts, purchases, and sales of that nonprofit entity. A party's interest is not considered to be "remote" if the interested party influences or attempts to influence another member of the Board to enter into the contract. The affected Board members shall not vote or debate on the matter or attempt to influence any other Board member to enter into the contract.

A willful failure of an interested party to disclose the fact of his/her "remote" interest in a contract pursuant to this policy is punishable as provided in Government Code § 1097 by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in the State of California.

CONFLICT OF INTEREST (continued)

That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

In any specific situation, reference should be made to the provisions of Government Code §1091.

Even if there is not a prohibited conflict of interest, a Board member shall abstain from voting on personnel matters that uniquely affect his/her relatives. However, a Board member may vote on collective bargaining agreements and personnel matters that affect a class of employees to which his/her 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) The term "degree" means the distance, or number of removes, which separates two persons who are related by consanguinity.

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

Common Law Doctrine Against Conflict of Interest

A Board member shall abstain from any official action in which his/her private or personal interest may conflict with his/her official duties. The common law doctrine requires a public officer "to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public." Therefore, actual injury is not required. Rather, under the common law doctrine, the District's Board members, officials, and employees are obligated to discharge their responsibilities with integrity and fidelity. The common law doctrine applies to situations involving a nonfinancial personal interest.

Rule of Necessity or Legally Required Participation

On a case-by-case basis and upon advice of legal counsel, a Board member with a financial interest in a contract may participate in the making of the contract if the rule of necessity or legally required participation applies pursuant to Government Code § 87101 CCR § 18705. An example of this rule is where the Board must contract for essential services with an entity with which there is a conflict because there is no other source to contract with for those essential services.

CONFLICT OF INTEREST (continued)**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. Offices are incompatible when any of the following circumstances are present unless simultaneous holding of the particular offices is compelled or expressly authorized by law:

1. Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body.
2. Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.
3. Public policy considerations make it improper for one person to hold both offices.

Gifts

Board members and designated employees may accept gifts only under the conditions and limitations specified in Government Code §§ 87103, 89503 and CCR §§ 18702.4, 18728, 18730.1, 18940.2.

Currently, a public official has a financial interest in the donor of gifts aggregating \$250 or more in the 12 months prior to the decision in question. However, the \$250 threshold is adjusted on a biennial basis to correspond with the gift limit established in Government Code § 89503. For the years 2015 and 2016 the disqualification threshold is \$460. (CCR § 18940.2) If the gift limit in CCR § 18940.2 is adjusted at any time after the adoption of this Policy, then that new gift limit shall control this Policy. In addition to donors, this section also applies to persons who act as agents or intermediaries in the making of gifts.

Gifts aggregating \$50 or more in a calendar year from a single source generally must be reported. (Government Code § 87207.) Both the source of a gift and any intermediary in the making of a gift must be disclosed. (Government Code §§ 87210, 87313; CCR § 18945.3) The gifts of an individual donor are aggregated with any gift by an entity in which the donor is more than a 50 percent owner. (CCR § 18945.1.) When a gift is made by multiple donors, the group of donors must be generally identified, and any individual donors of \$50 or more must be named. (CCR § 18945.4.)

A gift is anything of value that provides a personal benefit, either tangible or intangible, to a public official for which the donor has not received equal or greater consideration. (Government Code § 82028, subd. (a).) Gifts frequently include money, food, transportation, accommodations, tickets, plaques, flowers and articles for household, office, or recreational use.

CONFLICT OF INTEREST (continued)

A gift also includes a rebate or discount in the cost of a product or service, unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. (Government Code, § 82028, subd. (a).) Under specified circumstances, a gift made to an official's spouse or children also may constitute a gift to the official or candidate. (CCR § 18944.)

Generally, the recipient of the benefit has the burden of demonstrating that any consideration paid was of equal or greater value than the benefit received. A gift is received when the recipient takes possession of the gift or exercises some direction or control over it.

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.

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

A gift of travel does not include travel provided by the District for Board members and designated employees.

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, CCR §§ 18930-18933)

The term honorarium does not include:

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.

CONFLICT OF INTEREST (continued)*Legal Reference:*EDUCATION CODE*I. 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**82019 Definition of "Designated Employee"**82028 Definition of "Gifts"**82030 Definition of "Income"**82033 Definition of "Interest in real property"**82034 Definition of "Investment"**87100-87103.6 General prohibitions**87200-87210 Disclosure**87300-87313 Conflict of interest code**87500 Statements of economic interests**89501-89503 Honoraria and gifts**91000-91014 Enforcement*CODE OF REGULATIONS, TITLE 2*18110 et seq. Regulations of the Fair Political Practices Commission*COURT DECISIONS:*Sweetwater Union High School District v. Gilbane Building Company et al. (2016) 245 Cal.App.4th 19**Davis v. Fresno Unified School District, et al. (2015) 237 Cal.App.4th 261**Los Angeles Memorial Coliseum Commission v. Insomniac, Inc. (2015) 233 Cal.App.4th 803**Thorpe v. Long Beach Community College District, (2000) 83 Cal.App.4th 655**Kunec v. Brea Redevelopment Agency, (1997) 55 Cal.App.4th 511**Clark v. City of Hermosa Beach (1996) 48 Cal.App.4th 1152**Witt v. Morrow (1977) 70 Cal.App.3d 817**Reagh v. Kelley (1970) 10 Cal.App.3d 1082**Terry v. Bender (1956) 143 Cal.App.2d 198**Noble v. City of Palo Alto (1928) 89 Cal.App.47*

CONFLICT OF INTEREST (continued)

Legal Reference continued

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)*
- 65 Ops. Cal. Atty. Gen. 41 (1982)*
- 63 Ops. Cal. Atty. Gen. 868 (1980)*

Bylaw

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revised: July 11, 2006

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CAPISTRANO UNIFIED SCHOOL DISTRICT

San Juan Capistrano, California

CONFLICT OF INTEREST CODE

Adoption

The Political Reform Act (Government Code §§ 81000 et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (title 2 of the California Code of Regulations (CCR) § 18730) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. The District's conflict of interest code shall be comprised of the terms of (CCR) § 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with Attachments A and B, which specify designated positions and the specific types of disclosure statements required for each position.

The definitions contained in the Political Reform Act of 1974 (Government Code §§ 81000 et seq.), regulations of the Fair Political Practices Commission (CCR §§18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code. (CCR § 18730)

Upon direction by the code reviewing body (Orange County Board of Supervisors), the Board shall review the District's Conflict of Interest code in even-numbered years. If no change 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 Conflict of Interest Codes, the District shall provide officers, employees, consultants, and members of the community with adequate notice and a fair opportunity to present their views. (Government Code § 87311)

If a Board member or designated employee determines that he/she has a financial interest in a decision, as described in Government Code § 87103, this determination shall be disclosed. The member shall be disqualified from voting unless his/her participation is legally required. (CCR §§ 18700 et seq.)

Statements of economic interest are submitted to the District by the Board Members and the designated employees in accordance with this Conflict of Interest Board Bylaw shall be available for public inspection and reproduction. (Government Code § 81008)

CONFLICT OF INTEREST CODE
(continued)

Designated Employees

Government Code §§ 87200 et seq. provides that all District officers and employees who foreseeably may materially affect private economic interests through the exercise of their public duties, must disclose such interests. Virtually all District officers and employees at every level are potentially covered. These disclosure requirements also encompasses non-employees who are “consultants” because they perform certain duties much like employees. (CCR § 18700.3 (a).) Some persons are required to file disclosure statements because of the positions they hold and others are required to file because of their job duties and/or based upon their power to affect financial interests through their official position.

District officers and employees disclose their private economic interests in a document entitled “Statement of Economic Interests” or the “Form 700.” The Form 700 shall be filed with the District (1) within 30 days of assuming office, (2) annually thereafter, and (3) within 30 days after leaving office. Each individual’s Form 700 shall remain on file at the District’s administrative office. The Form 700 must be made available, upon request, for inspection by any member of the public.

Employees of this District, including members of the Board, who hold positions which involve the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest shall be designated employees, Attachments A and B.

**ATTACHMENT A
Designated Positions**

- I. Persons occupying the following positions are designated employees and must disclose financial interest in all categories defined in Attachment B.

Board of Trustees
Superintendent
Deputy Superintendent
Associate Superintendents
Assistant Superintendents
Chief Communications Officer
Chief Facilities Officer
Chief Technology Officer
Director, Construction
Executive Directors/Directors – Contracts and Purchasing
Executive Directors/Directors – Facilities Planning
Principals
Consultants¹

¹Consultants shall be included in the list of designated employees and must disclose financial interests in Category 2 and 3 of Attachment B

- II. Persons occupying the following positions are designated employees and must disclose financial interests in Category 2 and 3 of Attachment B.

Activity Directors
Assistant Principals
Athletic Directors
Executive Directors
Directors

The District may determine in writing that a particular consultant, although a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure is a public record and shall be retained for public inspection by the Filing Officer.

ATTACHMENT B
Disclosure Categories

Category 1

1. An interest in real property which is located in whole or in part either (1) within the boundaries of the District, or (2) within two miles of the boundaries of the District, including any leasehold, beneficial or ownership interest or option to acquire such interest in all property, if the fair market value of the interest is greater than \$2,000.

(Interests in real property of an individual include a business entity's share of interest in real property of a business entity or trust in which the designated employee or his/her spouse owns, directly, indirectly or beneficially, a ten percent interest, or greater.)

2. Investments in or income from business entities which are contractors or subcontractors which are or have been within the previous two-year period engaged in the performance of building construction or design with the District.
3. Investments in or income from business entities which manufacture or sell supplies, books, machinery or equipment of the type utilized by the District.
4. Investments in or income from business entities that currently contract with the District or have contracted with the District within the previous two-year period.
5. Investments in or income from persons or business entities engaged in the acquisition or disposal of real property within the jurisdiction.

(Investment includes a financial interest in or security issues by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and a partnership interest in or other ownership interest.)

(Investments of any individual include a pro rata share of investments of any business entity or trust in which the designated employ or his/her spouse owns, directly, indirectly or beneficially, a ten percent interest or greater.)

(Investment does not include time or demand deposit in a financial institution, shares in a credit union, any insurance policy or any bond or other debt instrument issued by any government or government agency.)

(No investment or interest in real property is reportable unless its fair market value exceeds \$2,000. No source of income is reportable unless the income received by or promised to the public official aggregates \$500 in value or \$50 or more in value if the income was a gift, during the reporting period.)

ATTACHMENT B
Disclosure Categories
(continued)

Category 2

Investments in or income from business entities which manufacture or sell supplies, books, machinery or equipment of the type utilized by the department in which the designated position is an employee, manager, or director. Investments include interest described in Category 1.

Investments in or income from business entities that currently contract with the District or have contracted with the District within the previous two-year period for supplies, books, machinery or equipment used by the department in which the designated position is an employee, manager, or director.

Category 3

Investments in or income from business entities which are contractors or subcontractors engaged in the performance of work or services of the type utilized by the department for which the designated position is an employee, manager, or director. Investments include the interests described in Category 1.

Investments in or income from business entities that currently contract with the District or have contracted with the District within the previous two-year period for services used by the department in which the designated position is an employee, manager, or director.

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

Revised: September 8, 2004
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