Acalanes Union High School District Conflict of Interest Resolution No. 12-13-18

APPENDIX

Disclosure Categories

- 1. Category 1: A person designated Category 1 shall disclose:
 - 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.
 - b. Investments or business positions in or income from sources which are engaged in the acquisition or disposal of real property within the district, 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 manufacture or sell supplies, books, machinery, or equipment of the type used by the district.
- 2. Category 2: A person designated Category 2 shall disclose:
 - a. 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.
 - b. Investments or business positions in or income from sources which 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. Full Disclosure: Because it has been determined that the district's Board members and/or Superintendent "manage public investments," they and other persons designated for "full disclosure" shall disclose, in accordance with Government Code 87200:
 - 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.
 - b. Investments, business positions, and sources of income, including gifts, loans, and travel payments.

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Designated Position and Disclosure Category

Designated Position	Category
Governing Board Members	1
Superintendent of Schools	1
Associate Superintendent, Business Services	1
Associate Superintendent, Administrative Services	1
Purchasing Specialist	1
Director of Special Education and Auxiliary Services	2
Director of Adult and Alternative Education	2
Director of Fiscal Services	2
Principal	2
Associate Principal	2
Director of Food & Custodial Services	2
Director of Maintenance, Grounds & Transportation	2
Director of Technology	2
Coordinator, Education and Student Services	2
Coordinator, ACIS and Student Services	2
Coordinator of Aquatics	2
Director of Facilities and Construction	2
Technology Projects Director	2
Bond Project Coordinator	2

Disclosures for Consultants

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 consultant is an individual who, pursuant to a contract with the district, makes a governmental decision whether to: (2 CCR 18701)

- 1. Approve a rate, rule, or regulation
- 2. Adopt or enforce a law
- 3. Issue, deny, suspend, or revoke a permit, license, application, certificate,

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approval, order, or similar authorization or entitlement

- 4. Authorize the district to enter into, modify, or renew a contract that requires district approval
- 5. Grant district approval to a contract that requires district approval and in which the district is a party, or to the specifications for such a contract
- 6. Grant district approval to a plan, design, report, study, or similar item
- 7. 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)

Acalanes Union HSD

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.

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 Code

The district's conflict of interest code shall be comprised of the terms of 2CCR 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 Contra Costa County Board of Supervisors (Government Code 82011), 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, changes to the duties assigned to existing 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 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.

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 98302, 87500)

(cf. 4117.2/4217.2/4317.2 - Resignation) (cf. 9222 - Resignation)

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 governmental 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. (Government Code 87100, 87101, 87103; 2 CCR 18700-18709)

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. (2 CCR 18702.1)

A Board member who has a disqualifying conflict of interest on an agenda item that will be heard in an open meeting of the Board shall abstain from voting on the matter. He/she may remain on the dais, but his/her presence shall not be counted towards achieving a quorum for that matter. A Board member with a disqualifying conflict of interest shall not be present during a closed session meeting of the Board when the decision is considered and shall not obtain or review a recording or any other nonpublic information regarding the issue. (2 CCR 18702.1)

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. (2 CCR 18700)

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 \$1008)

Boards that 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:

(Government Code 87105; 2 CCR 18702.5)

- 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. 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.

 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.

(cf. 3430 - Investing)

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 has such a financial interest, the district is barred from entering into the contract. (Government Code 1090; Klistoff v. Superior Court, (2007) 157 Cal.App. 4th 469)

A Board member 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's spouse/registered domestic partner has been a district employee for at least one year prior to the Board member's election or appointment. (Government Code 1091.5)

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. The affected Board member shall not vote or debate on the matter or attempt to influence any other Board member to enter into the contract. (Government Code 1091)

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

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.

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 and 2 CCR 18708.

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)

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. (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

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 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 officeholding 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 a 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 renumeration, 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 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 horrower 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. (Covernment Code 1091)

A Board member may enter into a contract if the rule of necessity or legally required participation applies as defined in Government Codo 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 un 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, nunts 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 limmoin 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 inviolation of Government Code \$7100. This Board member shall not be counted toward achieving a quorum while the item is discussed. (Government Code \$7105; 2 CCR 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 18702.5)

(cf. 3430 - Investing)

The Board member may speak on the issue during the time that the general public speaks on the issue. 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)

Giffs

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

The limitations on gills do not apply to wedding gills and gills exchanged between individuals on birthdays, holidays and other similar occasions, provided that the gills exchanged are not substantially disproportionate in value. (Government Code 89503)

Gitts 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 asmy 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

It has been determined that persons occupying the following positions manage public investments and shall file a full statement of economic interests pursuant to Government Code 87200:

Governing Board Members Superintendent

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

Associate Superintendent Assistant Superintendent Purchasing Specialist

Designated persons in this entegory 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, muchinery or equipment of the type used by the district
2. ——Persons occupying the following positions are designated employees in Category 2:
Directors: Adult Education Human Resources Fiscal Services Curriculum and Student Services Special Education Technology Facilities and Construction Principals Associate Principals Coordinators: Custodial/Food Services and Safety Aquatics Designated persons in this category must report investments or business positions in or income- from sources which:
Ate contractors or subcontractors engaged in work or services of the type used by the department which the designated person manages or directs, or
o. — 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.
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 ecords 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-

a.— Adopt or enforce a law

e.— 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 centract or contract specifications which require district approval and in which the district is a party

f.— Grant district approval to a plant 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-

Legal Reference:

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1006 Qualifications for holding office

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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

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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

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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
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92 Ops.Cal.Atty.Gen. 26 (2009)
92 Ops.Cal.Atty.Gen. 19 (2009)
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69 Ops.Cal.Atty.Gen. 255 (1986)
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Institute of Local Government: http://www.ca-ilg.org
Legal Reference:
EDUCATION CODE
1006 Qualifications for holding office
35107 School district employees
35230-35240 - Corrupt practices
35233 Prohibitions applicable to members of governing boards
35239 Compensation for board members in districts under 70 ADA
GOVERNMENT CODE
1090-1098 Prohibitions applicable to specified officers
1125-1129 Incompatible activities
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81000-91015 Political Return Act of 1974, especially:
82011 Code reviewing body
82019 Definition of designated employee
82028 Definition of gifts
$2030 Definition of income
87100-87103.6 General prohibitions
87200-87210 - Disclosure
87300-87313 Conflict of interest code
87500 Statements of economic interests
89501-89503 Honoraria and vifts
91000-91014 - Enforcement
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Management Resources:
WEB SITES
Fair Political Practices Commission: http://www.fppc.ca.gov
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Bylaw ACALANES UNION HIGH SCHOOL DISTRICT

adopted:

September 28, 1998 Lafayette, California

revised:

August 26, 2009

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81000-91015 - Political Reform Act of 1974, especially:
 82011 - Code reviewing body
 $2019 Definition of designated employee
 82028 Definition of gifts
 82034 Definition of income
 87100-87103.6 General prohibitions
87200-87210 Disclosure
87300-87313 Conflict of interest code
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89501-89503 Honoraria and wifts
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Bylaw ACALANES UNION HIGH SCHOOL DISTRICT

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