

Orinda Union School District  
DRAFT 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. 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 his/her financial, family, or other personal interest or consideration.***

*(cf. 9005 - Governance Standards)*

**Relatives**

***Even if there is no a prohibited or remote conflict of interest does not exist, a Board member shall abstain from voting on personnel matters that uniquely affect a his/her relatives of the Board member. However, a Board member may vote, however, on collective bargaining agreements and personnel matters that affect a class of employees to which the his/her relative belongs. "Relative" means an adult who is related to the person 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, and great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, aunts, and uncles, nieces, 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 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.~~

***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)***

***Upon direction by the code reviewing body, the Board shall review the district's conflict of interest code in even-numbered years, and submit any changes to the code reviewing body or, if no change in the code is required, the district Board 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 ***due to*** changed circumstances, such as the creation of new designated positions, ***changes to the duties assigned to existing positions***, amendments, or revisions, ***the changed 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 codes, ~~the district~~ ***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)***

~~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 48700)~~

~~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)~~

***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)***

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

***(cf. 9222 - Resignation)***

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

***A Board member, designated employee, or other person in a designated position shall not make, participate in making, or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to***

**know that he/she has a disqualifying conflict of interest. A disqualifying conflict of interest exists if the decision will have a "reasonably foreseeable material financial effect," which is distinguishable from the effect on the public generally, on the Board member, designated employee, or other person in a designated position, his/her immediate family, or any financial interest described in 2 CCR 18700. (Government Code 87100, 87101, 87103; 2 CCR 18700-18709)**

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

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

Disqualification **Additional Requirements** for Boards Members Who ~~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 ~~the~~ **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. ~~(Government Code 87105)~~
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. ~~(Government Code 87105 ; 2 CCR 18702.5)~~

**However**, the Board member may speak on the issue during the time that the general public speaks on the issue. ~~it~~ The Board member shall ~~recuse himself/herself from voting on the matter and~~ **may** leave the dais to speak from the same area as members of the public. He/she may listen to the public discussion and deliberations of the matter with members of the public. ~~(Government Code 87105 ; 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 consideration of the consent calendar. (~~2 CCR 18702.5~~)

(~~cf. 3430 - Investing~~)

4. If the Board's decision is made during closed session, ~~the public identification may be made~~ the Board member shall **disclose his/her interest** orally during the open session ~~before the Board goes into~~ **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. ~~The Board member~~ **He/she** shall not be present when the item is considered in closed session ~~or~~ **and shall not** knowingly obtain or review a recording or any other nonpublic information regarding the Board's decision.

(~~cf. 3430 - Investing~~)

(~~cf. 9321 - Closed Session Purposes and Agendas~~)

(~~cf. 9321.1 - Closed Session Actions and Reports~~)

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

Board members, ~~and designated employees,~~ **or district consultants** 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~~ **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 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 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 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 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 remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm or real estate firm

In addition, A Board member or employee shall not be deemed **considered** to be **financially** 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 **in which his/her interest is a "noninterest" as defined in Government Code 1091.5. Noninterest includes a Board member's interest in being reimbursed for his/her actual and necessary expenses incurred in the performance of his/her official duties, in the employment of his/her spouse/registered domestic partner who has been a district employee for at least one year prior to the Board member's election or appointment, or in any other applicable circumstance specified in Government Code 1091.5. (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.

### **Common Law Doctrine Against Conflict of Interest**

**Members shall abstain from participating in a particular matter that would place themselves in a position where their private, personal interests may conflict with their ability to remain disinterested and diligent in their official duties under the circumstances of the matter.**

### **Incompatible Offices and Activities**

Board of Trustees 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)

### **(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 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 prevailing **current** gift limitation, except **when:** as described in (Government Code 89506)-

**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 the 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 **conference gathering, 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

## 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:

~~Board of Trustees  
Superintendent of Schools~~

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

~~Director, Business Services~~

~~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 include any leasehold, beneficial or ownership interest or option to acquire such interest in real property.~~

~~b. Investments or business positions in or income from sources which:~~

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

~~(2) Are contractors or subcontractors which are or have been within the past two years engaged in work or services of the type used by the district or~~

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

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

~~Director  
Principal  
Assistant Principal  
Maintenance and Operations Director~~

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



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

~~b. Manufacture or sell supplies, books, machinery or equipment of the type used by the department which the designated person manages or directs. For the purposes of this category, a principal's department is his/her entire school.~~

~~3. Consultants are designated employees who must disclose financial interests as determined on a case by case basis by the Superintendent or designee. The Superintendent or designee's written determination shall include a description of the consultant's duties and a statement of the extent of disclosure requirements based upon that description. All such determinations are public records and shall be retained for public inspection along with this conflict of interest code.~~

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

~~a. Approve a rate, rule or regulation~~

~~b. Adopt or enforce a law~~

~~c. Issue, deny, suspend or revoke a permit, license, application, certificate, approval, order or similar authorization or entitlement~~

~~d. Authorize the district to enter into, modify or renew a contract that requires district approval~~

~~e. Grant district approval to a contract or contract specifications which require district approval and in which the district is a party~~

~~f. Grant district approval to a plan, design, report, study or similar item~~

~~g. Adopt or grant district approval of district policies, standards or guidelines~~

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

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

~~35239 Compensation for board members in districts under 70 ADA~~

**41000-41003 Moneys received by school districts**

**41015 Investments**

**FAMILY CODE**

**297.5 Rights, protections, and benefits of registered domestic partners**

GOVERNMENT CODE

1090-10989 Prohibitions applicable to specified officers

1125-1129 Incompatible activities

81000-910154 Political Reform Act of 1974, especially:

82011 Code reviewing body

82019 Definition, of designated employee

82028 Definition, of gifts **gift**

82030 Definition, of income

**82033 Definition, interest in real property**

**82034 Definition, 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

**89506 Ethics; travel**

91000-91014 Enforcement

**PENAL CODE**

**85-88 Bribes**

**REVENUE AND TAXATION CODE**

**203 Taxable and exempt property - colleges**

CODE OF REGULATIONS, TITLE 2

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

**18700-18707 General prohibitions**

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

**18722-18740 Disclosure of interests**

**18750.1-18756 Conflict of interest codes**

COURT DECISIONS

**McGee v. Balfour Beatty Construction, LLC, et al. (4/12/16, No. B262850)**

**Davis v. Fresno Unified School District (2015) 237 Cal.App.4th 261**

**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 ORINDA UNION SCHOOL DISTRICT

adopted: April 7, 2008 Orinda, California

**Revised:**

Conflict of Interest Code of the  
Orinda 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, are incorporated by reference and shall constitute the district's conflict of interest code.

Governing Board members and designated employees 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 and/or, if so required, with the district's code reviewing body. The district's filing officer shall make the statements available for public review and inspection.

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.

**Designated Position and Disclosure Category**

Board of Trustees	Full Disclosure	
Superintendent of Schools	Full Disclosure	
Director, Business Services	1	
Director	2	
Principal	2	
Associate Principal	2	
Maintenance and Operations Director		2
Dean of Students	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 18700.3)

1. Approve a rate, rule, or regulation
2. Adopt or enforce a law
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, 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 18704, subsections (a) and (b), 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 18700.3)

(7/10) 5/16 12/16