

CONFLICTS OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974 (GOVERNMENT CODE §§ 87100, ET SEQ.)

This Policy Tool Kit contains three conflicts of interest codes. Board Policy #7A is drafted only in compliance with the Corporations Code applicable to all California nonprofit corporations. Board Policy #7B is drafted in compliance with both the Political Reform Act (“PRA”) in the Government Code and the Corporations Code applicable to nonprofit corporations. There has been considerable debate as to the applicability of the PRA to charter schools. Though CSDC does not believe that the PRA governs charter schools, the Fair Political Practices Commission (the agency charged with enforcing the PRA) has opined that the PRA is applicable to charter schools. Thus, a charter school may want to act conservatively in adopting and maintaining a conflicts of interest code under the PRA. Additionally, charter schools may be bound to follow the PRA under the terms of their charter or their memorandum of understanding with the chartering authority. Board Policy #7C is drafted in compliance with Government Code section 1090, the PRA and the Corporations Code.

Most charter schools are operated as or by nonprofit corporations. The California Corporations Code also prescribes conflicts of interest rules for nonprofit corporations. Thus, this policy is drafted so that it is also compliant with the Corporations Code.

When drafting your conflict of interest policy under the PRA, it must do the following: 1) Provide reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented; 2) Provide each affected person a clear and specific statement of his/her duties under the PRA; and 3) Adequately differentiate between designated employees with different powers and responsibilities. This model policy is drafted to meet these requirements.

Under Title 5, Section 11963.2 (“SB740 regulations”), a nonclassroom based charter school is REQUIRED to certify to the State Board of Education that it has adopted and implemented conflict of interest policies as a condition to filing a request for a funding determination. Thus, a nonclassroom based charter may want to adopt the conflicts of interest code modeled after the PRA or the Corporations Code, as appropriate.

I. Adoption

Adoption Procedures for Charter Schools Operating in More than One County: *The California Code of Regulations provides for an elaborate procedure for the promulgation and adoption of a conflicts of interest code by local government agencies with jurisdiction in more than one county. These procedures are likely applicable to charter schools with schools in more than one county. If your school operates in more than one county, the board should adopt the policy under these procedures. This policy does not specifically address these procedures, which may be found at 2 C.C.R. § 18750.1.*

Initial Adoption of the Conflict of Interest Code for All Charters: *A conflict of interest code must first be approved by the code reviewing body, which is defined as the county board of supervisors for schools operating wholly within one county. The school must submit a proposed*

conflict of interest code to the code reviewing body by the deadline established for the agency by that body. The deadline for a new school cannot be later than six months after it comes into existence. The code reviewing body has 90 days to review and either approve, revise or return it to the school.

Amendments to the Conflict of Interest Code for All Charters: *The school must amend its conflict of interest code when change is necessitated by changed circumstances, including the creation of new positions that must be designated. Amendments shall be provided to the code reviewing body within 90 days after the changed circumstances necessitating the amendments have become apparent.*

Review of Conflict of Interest Code for All Charters: *The code reviewing body shall direct the school to review its conflict of interest code no later than July 1 of each even-numbered year. If a change in the code is necessitated by changed circumstances, the school shall submit an amended conflict of interest code. If no change is necessitated, the school must submit a written statement to that effect to the code reviewing body no later than October 1 of the same year.*

The Governing Board hereby adopts this Conflict of Interest Code (“Code”), in accordance with the Political Reform Act, Government Code section 87100, *et seq.*, which shall apply to all governing board members, candidates for member of the board, and all other designated employees of the **[insert name of charter school]** (“School”).

II. Definitions

“Designated Employees” are officers and employees of the School, Board members and candidates, who hold positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any Financial Interest. The designated positions are listed in Exhibit “A” attached to this policy and incorporated herein by reference.

“Common Directors” are those Board members that sit on the Board of Directors of the School and the board of directors of another corporation with which the School is considering entering a contract or transaction. **[Note: This section is included in accordance with the Corporations Code.]**

“Financial Interests” are when directors, officers and/or employees, or their family members, are compensated by the School for services rendered to it within the previous 12 months, whether as a full- or part-time employee, independent contractor or otherwise, excluding any reasonable compensation paid to a director as director. A director, officer and/or employee also has a Financial Interest if the person has, directly or indirectly, through business, investment or family: 1) an ownership or investment interest in any entity with which the Organization has a transaction or arrangement; 2) a compensation agreement with any entity or individual with which the School has a transaction or arrangement; or 3) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the School is negotiating a transaction or arrangement.

III. Disclosure Statements

A. Statement of Economic Interest

Each designated employee, including governing board members and candidates, shall file a Statement of Economic Interest (“Statement”) at the time and manner prescribed below, disclosing reportable investments, interests in real property, business positions, and income required to be reported under the category or categories to which the employee’s position is assigned in Exhibit A.

An investment, interest in real property or income shall be reportable if the business entity in which the investment is held, the interest in real property, the business position, or source of income may foreseeably be affected materially by a decision made or by participation in the decision by the designated employee by virtue of his or her position. The specific disclosure responsibilities assigned to each position are set forth in Exhibit B.

Contents of Statements

Initial Statements: Initial Statements shall disclose any reportable investments, interests in real property, business positions held on the effective date of the Code and income received during the twelve (12) months prior to the effective date of the Code.

Assuming Office Statements: Assuming Office Statements shall disclose any reportable investments, interests in business positions and real property held on the date of assuming office, and income received during the 12 months before the date of assuming office or the date of being appointed or nominated.

Annual Statements: Annual Statements shall disclose reportable investments, interests in real property, and income and business positions held or received during the previous calendar year or since the date the designated employee took office if during the calendar year.

Leaving Office Statement: Leaving Office Statements shall disclose reportable investments, , interests in real property, income and business positions held or received during the period between the closing date of the last statement required to be filed and the date of leaving office.

Timing of Filings

An initial Statement shall be filed by each designated employee within 30 days after the effective date of the Code. Thereafter, each new designated employee shall file a Statement within 30 days after assuming office. Each designated employee shall file an annual Statement by April 1. Every designated employee who leaves office shall file a Statement within 30 days of leaving office.

Statements Filed With the Charter School

All Statements shall be supplied by the Charter School on forms prescribed by the Fair Political Practices Commission. All Statements shall be filed with the Charter School. The Charter School's filing officer shall make and retain a copy and forward the original to the Charter School's code reviewing body.

B. Common Director Disclosure Statement

At the commencement of an individual's term with the Charter School and at the beginning of each fiscal year, each Board member shall complete a Common Director Disclosure Statement and provide it to the Charter School identifying all organizations for which he/she is a board member or committee member that are not otherwise disclosed in the Statement of Economic Interest. **[Note: This provision is not required by the Corporations Code, but provides an additional level of review for the Board to ensure that there are no conflicts of interest.]**

IV. Disqualification

Designated Employees: No Designated Employee may make, participate in making, or in any way use or attempt to use his/her official position to influence any Charter School decision when he/she knows or has reason to know he or she has a disqualifying financial interest. A Designated Employee has a "disqualifying financial interest" if the decision will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, directly on the Designated Employee or a member of his or her immediate family or on:

- Any business entity or real property in which the designated employee has a direct or indirect investment or interest worth two thousand dollars (\$2,000) or more.
- Any source of income totaling five hundred dollars (\$500) or more provided or promised to the designated employee within twelve months prior to the decision.
- Any business entity in which the designated employee is the director, officer, partner, trustee, employee, or holds any position of management.
- Any business entity that is a parent or subsidiary of, or is otherwise related to, a business entity in which the designated employee has an interest.
- Any donor, or intermediary or agent of a donor, of a gift or gifts totaling \$460 or more in value provided to, promised to, or received by the designated employee within twelve months prior to the time when the decision is made.
- Any investment or interest owned by the spouse or dependent child of the Designated Employee, by an agent on behalf of the Designated Employee, or by a business entity or

trust in which the Designated Employee, his/her agents, spouse and dependent children own directly, indirectly or beneficially at least a 10% interest.

[Note: Making decisions includes the following actions: 1) Authorizing or directing any action; 2) Voting; 3) Appointing a person; 4) Obligating or committing his/her agency to any course of action; 5) Entering into any contractual agreement on behalf of the agency.]

[Note: Participating in making a decision includes the following actions, unless there is significant intervening substantive review: Providing information, an opinion or recommendation for the purpose of affecting the decision.] [Note: An official is attempting to use his/her official position to influence the decision if, for the purpose of influencing the decision, the official: 1) contacts or appears before any official in his/her agency or in an agency subject to the authority or budgetary control of his/her agency for the purpose of affecting the decision; or 2) contacts or appears before any official in any other government agency for the purpose of affecting the decision, and the public official acts or purports to act within his/her authority or on behalf of his/her agency in making contact.] [These prohibitions do not extend to ministerial actions; appearances as a member of the general public (d)(2); terms of employment (d)(3); public speaking (d)(4); academic decisions (d)(5); architectural and engineering documents (d)(6); other consulting services (d)(7).]

Common Directors: No Common Director may make, participate in making, or in any way use or attempt to use his/her official position to influence any Charter School decision which involves the Common Director's other directorship. **[Note: This section is included in accordance with the Corporations Code.]**

Interested Directors: Not more than 49 percent of the persons serving on the Board of the Charter School may be Interested Directors. **[Note: This section is included in accordance with the Corporations Code.]**

Manner of Disqualification

Designated Employees and Common Directors: When a Designated Employee determines that he/she should not make a decision because of a disqualifying interest, he/she should submit a written disclosure of the disqualifying interest to his/her immediate supervisor. The supervisor shall immediately reassign the matter to another employee and shall forward the disclosure notice to the Charter School Director, who shall record the employee's disqualification. In the case of the Charter School Director, this determination and disclosure shall be made in writing to the Governing Board.

Governing Board members shall orally disclose a disqualifying interest at the meeting during which consideration of the decision takes place. This disclosure shall be made following the announcement of the agenda item, but before the discussion or vote commences. This disclosure shall be made part of the Board's official record. The disqualified Board member shall then

refrain from participating in the decision in any way, but may remain seated if desired.

If the decision is made during a closed session, the member's disqualification may be made orally during the open session before the body goes into closed session and shall be limited to a declaration that his/her recusal is because of a conflict of interest under Government Code section 87100. The declaration shall be made part of the official public record. The 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 decision.

The following must be confirmed in the affirmative prior to the Board's acceptance of a contract or transaction with a Designated Employee or Common Director: **[Note: This section is included in accordance with the Corporations Code, although it is drafted slightly more restrictively than required as it relates to Common Directors.]**

- That the transaction is entered into for the benefit of the Charter School;
- That the transaction was fair and reasonable for the Charter School at the time it enters into the transaction;
- That after reasonable investigation under the circumstances, the Board determines, in good faith, that the Charter School could not have obtained a more advantageous arrangement with reasonable effort. Documentation of the results of the investigation shall be retained either in the Board minutes and/or in the school's financial files.

Disqualified Designated Employees and Common Directors shall not be counted toward achieving a quorum while the item is discussed. **[Note: The Corporations Code permits an interested director to be counted in determining whether a quorum is reached. This policy, however, is written to ensure compliance with the Political Reform Act, which does not allow this practice.]**

Adopted:

Amended:

EXHIBIT A
Designated Positions

- I. Persons occupying the following positions are designated employees and must disclose financial interests in all categories defined in Exhibit B (i.e. categories 1, 2, and 3). **[Note: Government Code § 87302 requires that the conflict of interest code itself list the positions occupying “designated employee” status.]**
- A. Members of the Governing Board
 - B. Candidates for Member of the Governing Board
 - C. Members of Committees of the Governing Board¹
 - D. Director of Charter School
 - E. Assistant Director
 - F. Chief Business Officer
 - G. Director of Personnel Services
 - H. Assistant Director of Personnel Services
 - I. Consultants²
 - J. Other Employees³
- II. Persons occupying the following positions are designated employees and must disclose financial interests defined in Category 1 of Exhibit B.
- A. Purchasing Manager
 - B. Assistant Business Officer
 - C. Other Employees⁴

¹ This category must be included if the committee has members that are not otherwise covered by the other identified categories and the committee possesses decision making authority. Decision making authority is present when the committee: a. may make a final decision; b. may compel a governmental decision or it may prevent a decision either by reason of an exclusion power to initiate the decision or by reason of a veto that may not be overridden; or c. makes substantial recommendations that are, and over an extended period have been, regularly approved without significant amendment or modified by another designated employee.

² A consultant will occupy a “designated position” when he/she is contracting with the agency to do the following: 1) Make a governmental decision wither to, among other things, (a) authorize the agency to enter into, modify or renew a contract provided it is the type of contract that requires agency approval; (b) grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract; (c) grant agency approval to a plan, design, report, study or similar item; or (d) adopt or grant agency approval of, policies, standards or guidelines for the agency or for any subdivision thereof; or 2) Serve in a staff capacity with the agency and in that capacity participates in making a governmental decision or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a designated position.

³ “Other Employees” include any employee occupying a position that requires the employee to make a governmental decision that foreseeably and materially affects a personal financial interest, source of income, or a business position in a business entity.

⁴ “Other Employees” include any employee with authority to make purchases that may foreseeably and

III. Persons occupying the following positions are designated employees and must disclose financial interests defined in Categories 2 and 3 of Exhibit B.

- A. Information Systems Technician
- B. Contractor
- C. Other Employees⁵

materially affect an investment and/or business position in business entities or who are in a position to influence a governmental decision that may foreseeably and materially affect an investment and/or business position in a business entity.

⁵ “Other Employees include employees with authority to make purchases that may foreseeably and materially effect investments and business positions in business entities which provide services, supplies, materials, or equipment in which the employee has authority to purchase.

BOARD GOVERNANCE POLICY #7B – CONFLICT OF INTEREST CODE – POLITICAL REFORM ACT COMPLIANT

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EXHIBIT B
Disclosure Categories

Category 1 Reporting:

- A. Interest in real property which is located in whole or in part within the geographical service area of the School, including any leasehold, beneficial or ownership interests or option to acquire such interest in real 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 any business entity or trust in which the designated employee or his or her spouse owns, directly, indirectly, or beneficially, a ten percent interest or greater.)

- B. Investments in or income from persons or business entities (including gifts, loans and travel payments) which are contractors or sub-contractors which are or have been within the previous two-year period engaged in the performance of building construction or design within the geographical service area of the School.

- C. Investments in or income from persons or business entities engaged in the acquisition or disposal of real property within the geographical service area of the School.

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

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

(Investment does not include a 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 or more in value or \$50 or more in value if the income was a gift during the preceding 12-month reporting period.

Category 2 Reporting:

- A. Investments in or income from persons or business entities (including gifts, loans and travel payments) which manufacture or sell supplies, books, machinery or equipment of

the type utilized by the department for which the designated employee is Manager or Director. Investments include interests described in Category 1.

Category 3 Reporting:

- A. Investments in or income from persons or business entities (including gifts, loans and travel payments) which are contractors or sub-contractors engaged in the performance of work or services of the type utilized by the department for which the designated employee is Manager or Director. Investments include the interests described in Category 1.