

ALAMEDA COUNTY BOARD OF SUPERVISORS MINUTE ORDER

The following action was taken by the Alameda County Board of Supervisors on 01/10/2023

Approved as Recommended ☒ Other ☐

Unanimous ☐ Brown: ☐ Haubert: ☐ Miley: ☐ Valle: ☐ Carson: ☒ - ☐ 4

Vote Key: N=No; A=Abstain; X=Excused

Documents accompanying this matter:

Documents to be signed by Agency/Purchasing Agent:

File No. 30950
Item No. 79

Copies sent to:

Amy Robbins, Livermore Valley Joint Unified School District, 685 East Jack London Boulevard, Livermore, CA 94551

Special Notes:



I certify that the foregoing is a correct copy of a Minute Order adopted by the Board of Supervisors, Alameda County, State of California.

ATTEST:
Clerk of the Board
Board of Supervisors

By: _____

[Signature]
Deputy



LIVERMORE
SCHOOL DISTRICT

Livermore Valley Joint Unified School District

685 East Jack London Boulevard, Livermore, CA 94551

Tel (925) 606-3200 Fax (925) 606-3329

December 6, 2022

Alameda County Board of Supervisors
1221 Oak Street, Suite 536
Oakland, CA 94612

Honorable Board of Supervisors,

In 2021, the Livermore Valley Joint Unified School District (LVJUSD) updated its Board Bylaw 9270, Conflict of Interest, at a Board Meeting held on May 4, 2021.

We would like to get this updated version uploaded into the website for the Form 700 filings and any other places it needs to go per your direction.

The Board Bylaw 9270 Conflict of Interest Policy is included with this request, as well as a copy of the board agenda item from the date of the meeting. It is our hope that we can get this on the upcoming agenda for the Board of Supervisors for your approval.

Please let me know if you have any questions.

Sincerely,

Amy Robbins
Executive Director of Human Resources
Livermore Valley Joint Unified School District
arobbins@lvjUSD.org 925-606-3268

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Livermore Valley Joint

Unified School District

AGENDA ITEM


Meeting Date: 5/4/2021 - 7:00 PM
Category: DISCUSSION / ACTION ITEMS
Type: Action
Subject: 10.3 Board Bylaw 9270 Conflict Of Interest

:

Policy:

**Attachment
Summary:**

File Attachment:

 BB 9270 Conflict Of Interest - LVJUSD revised 5.4.21.pdf

Quick Summary / Abstract: Staff will present Board Bylaw 9270 Conflict Of Interest for the First Reading

Background: In order to keep our District up-to-date and in compliance with changes in the laws, new and revised policies and regulations are often recommended or adopted by our Board of Education.

Status: The following proposed revised Board Policy/Administrative Regulation is being presented according to current Board of Education Policy Bylaw 9310 – Policy Development and Adoption Process.

- Board Bylaw 9270 Conflict Of Interest - revised in accordance with the law

Board Bylaw 9270 Conflict Of Interest – revised to meet Federal Program Monitoring (FPM) requirements for disciplinary action in regards to conflict of interest violation.

Fiscal Impact: There is no impact to the General Fund.

Superintendent's Recommendation Approve Board Policy/Administrative Regulation from Series 9000 for the First Reading.

Approvals: **Recommended By:**

Signed By: *Signature*
Terri Saenz - Executive Secretary

Signed By: *Signature*
Darrel Avilla - Director of Student Services

Signed By: *Signature*
Kelly Bowers, Ed.D. - Superintendent

Vote Results:

Original Motion

Member **Anne White** Moved, Member **Emily Prusso** seconded to approve the **Original** motion 'Approve Board Policy/Administrative Regulation from Series 9000 for the First Reading.'. Upon a Roll-Call Vote being taken, the vote was: Aye: **5** Nay: **0**.
The motion **Carried 5 - 0**

Craig Bueno	Yes
Anne White	Yes
Emily Prusso	Yes

Kristle Wang	Yes
Yanira Guzman	Yes

Board Bylaw

Conflict Of Interest Board Bylaws

BB 9270

Incompatible Activities

Board of Education 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 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, 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 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. (2 CCR 18700)

Statements of economic interests submitted to the District by Board members and designated employees in accordance with the conflict of interest code shall be available for public inspection and reproduction. (Government Code 81008)

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 office-holding 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 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

9. The ownership of less than 3 percent of the shares of a corporation for profit, provided that the total annual income to him or her from dividends, including the value of stock dividends from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.

10. That of an officer or employee of, or a person having less than a 10-percent ownership interest in, a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower, depositor, debtor, or creditor.

11. That of (A) a bona fide nonprofit, tax-exempt corporation having among its primary purposes the conservation, preservation, or restoration of park and natural lands or historical resources for public benefit, which corporation enters into an agreement with a public agency to provide services related to park and natural lands or historical resources and which services are found by the public agency, prior to entering into the agreement or as part of the agreement, to be necessary to the public interest to plan for, acquire, protect, conserve, improve, or restore park and natural lands or historical resources for public purposes and (B) any officer, director, or employee acting pursuant to the agreement on behalf of the nonprofit corporation. For purposes of this paragraph, "agreement" includes contracts and grants, and "park," "natural lands," and "historical resources" shall have the meanings set forth in subdivisions (d), (g), and (i) of Section 5902 of the Public Resources Code. Services to be provided to the public agency may include those studies and related services, acquisitions of property and property interests, and any activities related to those studies and acquisitions necessary for the conservation, preservation, improvement, or restoration of park and natural lands or historical resources.

12. That of an officer, employee, or member of the Board of Directors of the California Housing Finance Agency with respect to a loan product or program if the officer, employee, or member participated in the planning, discussions, development, or approval of the loan product or program and both of the following two conditions exist: (a) the loan product or program is or may be originated by any lender approved by the agency; and (b) the loan product or program is generally available to qualifying

borrowers on terms and conditions that are substantially the same for all qualifying borrowers at the time the loan is made.

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 borrower 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. (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.

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 an adoptive relationship within the third degree. (Education Code 35107)

A relationship within the third degree includes the individual's parents, grandparents and great-grandparents, children, grandchildren and great-grandchildren, brothers, sisters, aunts and uncles, nieces and nephews, and the similar family of the individual's spouse 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 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 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 in violation of Government Code 87100. This Board member shall not be counted toward achieving a quorum while the item is discussed. (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 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)

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 limitations on gifts do 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 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 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

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 Education Members Superintendent of Schools

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

Deputy Superintendent
Assistant Superintendents

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:

All Directors
Assistant Directors
Principals
Vice Principals
Coordinators
Chief Technology Officer
Bond Program Administrator
Senior Program Manager
Construction Supervisor
Purchasing Manager
Consultants/New Positions

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)

Violation

Employees violating this policy will be subject to discipline up to and including termination. Contractors violating this policy will be subject to their contract termination and may not be eligible for future contract awards.

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

81000-91015 Political Reform Act of 1974, especially:

82011 Code reviewing body

82019 Definition of designated employee

82028 Definition of gifts

82030 Definition of income

87100-87103.6 General prohibitions

87200-87210 Disclosures

87300-87313 Conflict of interest code

87500 Statements of economic interests

89501-89503 Honoraria and gifts

91000-91014 Enforcement

CODE OF REGULATIONS, TITLE 2

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

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

COURT DECISIONS

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

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)

Management Resources:

WEB SITES

Fair Political Practices Commission: <http://www.fppc.ca.gov>

Bylaw LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT

adopted: January 22, 2008 Livermore, California

revised: November 18, 2014

revised: September 19, 2017

revised: October 2, 2018

revised: September 1, 2020

revised: XXX XX, 2021