

ALAMEDA COUNTY BOARD OF SUPERVISORS MINUTE ORDER

The following action was taken by the Alameda County Board of Supervisors on 11/22/2016

Approved as Recommended ☒

Other ☐

Unanimous ☐ Chan: ☐ Haggerty: ☐ 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. 29705

Item No. 49

Copies sent to:

Dr. Matt Wayne, Hayward Unified School District, 24411 Amador Street, Hayward, CA 94544

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: Rhonda Bailey
Deputy



HAYWARD UNIFIED SCHOOL DISTRICT

Building a Culture of Success



Dr. Matt Wayne
Interim Superintendent

Delia Ruiz
Assistant Superintendent,
Human Resources

Chien Wu-Fernandez
Assistant Superintendent,
Student & Family Services

Honorable Board of Supervisors
Administration Building
1221 Oak Street, Room 536
Oakland, CA 94612

Dear Board of Supervisors:

It is requested that your Board approve the amended Hayward Unified School District (HUSD) Conflict of Interest Code BB 9270. The Code, promulgated under the authority of the Political Reform Act, Government Code §§81000, et seq., was approved by the HUSD Board of Education at their regular meeting on September 28, 2016.

Sincerely,

Dr. Matt Wayne
Interim Superintendent

MW/jr

attachments: 2016 Local Agency Biennial Notice
Incorporation Page
BB 9270 Conflict of Interest Code revision date 10/27/2010
E 9270 Conflict of Interest Code revision date 05/06/2015
Strikeout/underscore version showing amendments
Agency Board 09/28/16 Agenda Item J.4
Agency Resolution 1617-12
Clean copy Conflict of Interest Code as of 09/28/2016 .

Hayward Unified School District



BOARD OF EDUCATION

Resolution No. 1617-12

ADOPTION OF A CONFLICT OF INTEREST CODE

WHEREAS, the Political Reform Act, Government Code 87300-87313, requires each public agency in California to adopt a conflict of interest code; and

WHEREAS, the Governing Board of the Hayward Unified School District has previously adopted a local conflict of interest code; and

WHEREAS, past and future amendments to the Political Reform Act and implementing regulations may require conforming amendments to be made to the district's conflict of interest code; and

WHEREAS, a regulation adopted by the Fair Political Practices Commission, 2 CCR 18730, provides that incorporation by reference of the terms of that regulation, along with an agency-specific appendix designating positions and disclosure categories shall constitute the adoption and amendment of a conflict of interest code in conformance with Government Code 87300 and 87306; and

WHEREAS, the Hayward Unified School District has recently reviewed its positions, and the duties of each position, and has determined that changes to the current conflict of interest code are necessary; and

WHEREAS, any earlier resolutions, bylaws, and/or appendices containing the district's conflict of interest code shall be rescinded and superseded by this resolution and Appendix; and

NOW, THEREFORE, BE IT RESOLVED that the Board of the Hayward Unified School District adopts the following Conflict of Interest Code including its Appendix of Designated Employees and Disclosure Categories.

PASSED AND ADOPTED this 28th day of September, 2016 at a regular meeting.

Ayes: Mrs. Brunner, Dr. Walker, Dr. Reynoso, Mr. McGee
Nays: *[initials]*
Abstentions: *[initials]*
Absent: Mr. Taylor

[Signature]
Clerk, Board of Education
Hayward Unified School District
Alameda County, State of California

HAYWARD UNIFIED SCHOOL DISTRICT CONFLICT OF INTEREST CODE

The Political Reform Act (Government Code §§81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 California Code of Regulations §18730) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations §18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendices, designating positions and establishing disclose categories, shall constitute the conflict of interest code of the Hayward unified School District (HUSD).

Individuals holding designated positions shall file their statements of economic interests with the District, which will make the statements available for public inspection and reproduction (Gov. Code Sec. 81008). Upon receipt of the statements for the Members of the Board, Superintendent, and Cabinet Members, the District shall make and retain copies and forward the originals to the Alameda County Board of Supervisors. All other statements will be retained by the District.

Conflict Of Interest

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, 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)

Even if a prohibited conflict of interest does not exist, 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.

Conflict of Interest Code

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 and submit any changes to the code reviewing body or, if no change is required, the Board shall submit a written statement to that effect. (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 positions, amendments or revisions, the 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 conflict of interest codes, 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)

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. (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 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" 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, acting within the authority of his/her office or position, he/she 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. (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.

Additional Requirements for Boards 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 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)

(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 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 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 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)

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, or in any other applicable circumstance specified in Government Code 1091.5.

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.

Incompatible Activities

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 1099 and 1126)

(cf. 4136/4236 - 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 above 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)

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 current gift limitation, except when: (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, convention, meeting, social event, meal, or like gathering. (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

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

41000-41003 Moneys received by school districts

41015 Investments

FAMILY CODE

297.5 Rights, protections, and benefits of registered domestic partners

GOVERNMENT CODE

1090-1099 Prohibitions applicable to specified officers

1125-1129 Incompatible activities

81000-91014 Political Reform Act of 1974, especially:

82011 Code reviewing body

82019 Definition, designated employee

82028 Definition, gift

82030 Definition, 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

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 HAYWARD UNIFIED SCHOOL DISTRICT

adopted: November 18, 1991 Hayward, California

revised: November 28, 1998

revised: October 27, 2010

revised: September 28, 2016

Hayward USD | E 9270 Board Bylaws
Conflict of Interest

Exhibit 1

RESOLUTION ADOPTING A CONFLICT OF INTEREST CODE

WHEREAS, the Political Reform Act, Government Code 87300-87313, requires each public agency in California to adopt a conflict of interest code; and

WHEREAS, the Governing Board of the Hayward Unified School District has previously adopted a local conflict of interest code; and

WHEREAS, past and future amendments to the Political Reform Act and implementing regulations may require conforming amendments to be made to the district's conflict of interest code; and

WHEREAS, a regulation adopted by the Fair Political Practices Commission, 2 CCR 18730, provides that incorporation by reference of the terms of that regulation, along with an agency-specific appendix designating positions and disclosure categories shall constitute the adoption and amendment of a conflict of interest code in conformance with Government Code 87300 and 87306; and

WHEREAS, the Hayward Unified School District has recently reviewed its positions, and the duties of each position, and has determined that (changes/no changes) to the current conflict of interest code are necessary; and

WHEREAS, any earlier resolutions, bylaws, and/or appendices containing the district's conflict of interest code shall be rescinded and superseded by this resolution and Appendix; and

NOW THEREFORE BE IT RESOLVED that the Hayward Unified School District Board adopts the following Conflict of Interest Code including its Appendix of Designated Employees and Disclosure Categories.

PASSED AND ADOPTED THIS _____ day of _____, _____ at a meeting, by the following vote:

AYES: _____ NOES: _____ ABSENT: _____

Attest:
Secretary/President

Conflict of Interest Code of the Hayward Unified School District

The provisions of 2 CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with this 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 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 Positions

The Administrative Assistant to the Superintendent and Board shall receive and maintain the statements of economic interests for:

Designated Position	Disclosure Category
Board Members	Full Disclosure
Superintendent	Full Disclosure
Assistant Superintendent, Business Services	Full Disclosure
Assistant Superintendent, Human Resources	1
Assistant Superintendent, Student & Family Services	1
Associate Superintendent, Academic Programs and Educational Services	1
Chief Facilities Officer	1
Chief Financial Officer	1
Maintenance, Operations, & Transportation Director-II	1
Manager of Purchasing and Warehouse	1

The Senior Executive Assistant for the Assistant Superintendent of Human Resources shall receive and maintain the statements of conflict of interest from the following designated employees:

Designated Position	Disclosure Category
Director(s)	2
Principal(s)	2
Assistant Principal(s)	2
Coordinator(s)	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 a 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 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) or (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)

Exhibit HAYWARD UNIFIED SCHOOL DISTRICT

version: March 1993 Hayward, California

revised: April 23, 2003

revised: September 10, 2008

revised: October 27, 2010

revised: May 6, 2015

revised: September 28, 2016

Exhibit 1 and Appendix

Exhibit HAYWARD UNIFIED SCHOOL DISTRICT

version: October 1994 Hayward, California

revised: April 23, 2003

revised: September 10, 2008

revised: October 27, 2010

revised: May 6, 2015

revised: September 28, 2016

Hayward USD | BB 9270 Board Bylaws
Conflict Of Interest

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, no Board members, ~~and designated employees shall disclose any conflict of interest and, as necessary, shall abstain from participating in the decision.~~ 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)

Even if a prohibited conflict of interest does not exist, 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.

Conflict of Interest Code

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

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 and submit any changes to the code reviewing body or, if no change is required, the Board shall submit a written statement to that effect. (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 positions, amendments or revisions, the 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 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 ~~contained in Exhibit A-9270~~. 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. (Government Code 87302, ~~87500~~87302.6)

(cf. 4117.2/4217.2/4317.2 - Resignation)

(cf. 9222 - Resignation)

~~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)

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 which is indistinguishable from the effect on the public generally, on the Board member, or the Board member's or designated employee's, or other person in a designated position, his/her immediate family, or any financial interest described in 2 CCR 18700, participation is legally required.~~ (Government Code 87100, 87101, 87103; 2 CCR 18700-18709)

A Board member, ~~or~~ designated employee, or other person in a designated position makes a governmental decision when, acting within the authority of his/her office or position, he/she authorizes or directs any action on a matter, votes ~~on a matter~~ 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. ~~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 18704)

Note: 2 CCR 18705 permits a Board member who is financially interested in a contract to participate in making a decision on the contract if (1) he/she discloses the existence of the conflict and describes with particularity the nature of his/her economic interest in the contract; (2) gives a summary description of the circumstances under which he/she believes the conflict may arise; and (3) either he/she, another Board member, or a district employee discloses the legal basis for concluding that no alternative source of decision exists for the district. In

general, this rule will permit a district to acquire an essential supply or service. CSBA strongly recommends that legal counsel be consulted when situations arise involving the rule of necessity, as strict compliance is required.

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.

Additional Requirements for Boards that Manage Public Investments

Note: The following optional section is for use only by districts in which the Board and/or designated employees are considered to be "officials who manage public investments" and who are required to file a full financial disclosure statement in accordance with Government Code 87200. It should be deleted by all other districts. See the accompanying exhibit for further information.

According to the FPPC, officials who manage public investments are boards or designated employees who manage the investment of district surplus or special reserve funds in permitted securities and investments pursuant to Education Code 41015. Those boards that direct the investment of these funds, formulate or approve policies for the investment of these funds, even if they delegate day-to-day investment decisions to staff, or approve investment transactions involving these funds are considered officials who manage public investments.

The Board does not manage public investments when the district does not have any surplus or special reserve funds to invest and merely deposits all funds it receives (1) in the county treasury pursuant to Education Code 41001-41002.5 or (2) in a fund where a Tax and Revenue Anticipation Note (TRANS) is issued. Board members and superintendents in these types of situations are not considered to have discretion regarding the investment of the district's money and are therefore not officials who manage public investments.

~~A Board member who has a disqualifying conflict of interest on an agenda item shall do all of the following: (Government Code 87105; 2 CCR sections 18702.1 and 18702.5)~~

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 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)

(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 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 in a contract made by the Board, the contract is void. ~~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 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)

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, or in any other applicable circumstance specified in (Government Code 1091.5).

~~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.~~

~~A Board member shall not be considered to be financially interested in a contract if his/her interest is including, but not limited to, any of the following: (Government Code 1091.5)~~

~~1. That of an officer in 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 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~~

~~5. That of a nonecompensated officer of a nonprofit, tax-exempt corporation which, as one of its primary purposes, supports the functions of the board or to which the board has legal obligation to give particular consideration, and provided further that such interest is noted in its official records~~

~~6. That of compensation for employment with a governmental agency, other than the governmental agency that employs the officer or employee, provided that the interest is disclosed to the board at the time of consideration of the contract, and provided further that the interest is noted in its official records~~

~~7. 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 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)~~

~~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 and made part of the Board's official minutes. In the case of a designated employee, this announcement shall be made in writing and submitted to the Board. (2 CCR 18700)~~

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 Activities

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 1099 and 1126)

(cf. 4136/4236 - Nonschool Employment)

Gifts

~~Board members and designated employees who manage public investments shall not accept from any single source in any calendar year any gifts in excess of the prevailing gift limitation specified in law. (Government Code 89503)~~

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

~~Designated employees shall not accept from any single source in any calendar year any gifts in excess of the prevailing gift limitation specified in law if the employee would be required to report the receipt of income or gifts from that source on his/her statement of economic interests. (Government Code 89503)~~

The above 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)

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 above limitations except as described in Government Code 89506.~~

Gifts of travel and related lodging and subsistence shall be subject to the current gift limitation, except when: (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 ~~gathering~~ Conference, convention, meeting, social event, meal, or like gathering. (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

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

41000-41003 Moneys received by school districts

41015 Investments

FAMILY CODE

297.5 Rights, protections, and benefits of registered domestic partners

GOVERNMENT CODE

1090-1099 Prohibitions applicable to specified officers

1125-1129 Incompatible activities

81000-91014 Political Reform Act of 1974, especially:

82011 Code reviewing body

82019 Definition, designated employee

82028 Definition, gift

82030 Definition, 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:

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

18700-18707 General prohibitions

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 HAYWARD UNIFIED SCHOOL DISTRICT

adopted: November 18, 1991 Hayward, California

revised: November 28, 1998

revised: October 27, 2010

Hayward USD | E 9270 Board Bylaws
Conflict of Interest

Exhibit 1

RESOLUTION ADOPTING A CONFLICT OF INTEREST CODE

WHEREAS, the Political Reform Act, Government Code 87300-87313, requires each public agency in California to adopt a conflict of interest code; and

WHEREAS, the Governing Board of the Hayward Unified School District has previously adopted a local conflict of interest code; and

WHEREAS, past and future amendments to the Political Reform Act and implementing regulations may require conforming amendments to be made to the district's conflict of interest code; and

WHEREAS, a regulation adopted by the Fair Political Practices Commission, 2 CCR 18730, provides that incorporation by reference of the terms of that regulation, along with an agency-specific appendix designating positions and disclosure categories shall constitute the adoption and amendment of a conflict of interest code in conformance with Government Code 87300 and 87306; and

WHEREAS, the Hayward Unified School District has recently reviewed its positions, and the duties of each position, and has determined that (changes/no changes) to the current conflict of interest code are necessary; and

WHEREAS, any earlier resolutions, bylaws, and/or appendices containing the district's conflict of interest code shall be rescinded and superseded by this resolution and Appendix; and

NOW THEREFORE BE IT RESOLVED that the Hayward Unified School District Board adopts the following Conflict of Interest Code including its Appendix of Designated Employees and Disclosure Categories.

PASSED AND ADOPTED THIS _____ day of _____, _____ at a meeting, by the following vote:

AYES: _____ NOES: _____ ABSENT: _____

Attest:
Secretary/President

Conflict of Interest Code of the Hayward Unified School District

The provisions of 2 CCR 18730 and any amendments to it adopted by the Fair Political Practices Commission, together with this ~~Administrative Exhibit~~ 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 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 Positions

The Administrative Assistant to the Superintendent and Board shall receive and maintain the statements of economic interests for:

Designated Position	Disclosure Category
Board Members	Full Disclosure
Superintendent	Full Disclosure
Assistant Superintendent, Business Services	Full Disclosure
Assistant Superintendent, Human Resources	1
Assistant Associate Superintendent, Educational Services	
Academic Programs and Educational Services	1
Assistant Superintendent, Student & Family Services	1
Chief Financial Officer	1
Chief Facilities Officer	1
Maintenance, Operations, & Transportation Director-II	1
Director Manager of Purchasing and Warehouse	1

The Senior Executive Assistant for the Assistant Superintendent of Human Resources shall receive and maintain the statements of conflict of interest from the following designated employees:

Designated Position	Disclosure Category
Category 2	
Director(s)	2
Principal(s)	2

Assistant Principal(s)	2
Coordinator(s)	2
Manager(s)	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~~ 18700.3)

1. Approve a rate, rule or regulation
2. Adopt or enforce a law
3. Issue, deny, suspend or revoke a 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 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~~ 18704, subsections (a) or (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 ~~18701~~ 18700.3)

Exhibit HAYWARD UNIFIED SCHOOL DISTRICT

version: March 1993 Hayward, California

revised: April 23, 2003

revised: September 10, 2008

revised: October 27, 2010

revised: May 6, 2015

~~Exhibit 2~~ Exhibit 1 and Appendix

9270

Exhibit HAYWARD UNIFIED SCHOOL DISTRICT

version: October 1994 Hayward, California

revised: April 23, 2003

revised: September 10, 2008

revised: October 27, 2010

revised: May 6, 2015