

BOARD MEMBER CONFLICT OF INTEREST

Policy Code:

2121

The board and each member of the board recognize that they are subject to North Carolina's criminal laws related to conflicts of interest in public office and that a board member may not use his or her office for personal benefit. The board and each member of the board further recognize that they are subject to the standards established by the federal government for recipients of federal grants as specified in policy 8305, Federal Grant Administration. The board and each member of the board understand that violation of state and federal laws and regulations on conflicts of interest may result in conviction of a crime, may render a contract of the board void, or may result in loss of federal funds. In keeping with the ethical duties specified in policy 2120, Code of Ethics for School Board Members, board members will not let any personal or business interest interfere with their duties as public officials.

All board members will abide by the following conflict of interest rules.

1. A board member will not derive a personal benefit from a contract with the school system in violation of state law G.S. 14-234.¹ Specifically, a board member will not:
 - a. obtain a direct benefit from a contract that he or she is involved in making or administering on behalf of the board, unless an exception is allowed pursuant to G.S. 14-234 or other law;
 - b. influence or attempt to influence anyone who is involved in making or administering a contract on behalf of the board when the board member will obtain a direct benefit from the contract; or
 - c. solicit or receive any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract.

For purposes of G.S. 14-234, a board member is involved in administering a contract if he or she oversees the performance of the contract or has authority to interpret or make decisions regarding the contract. A board member is involved in making a contract if he or she participates in the development of the specifications or terms of the contract or participates in the preparation or award of the contract.² A board member is also involved in making a contract if the board takes action on the contract, even if the specific board member did not actually participate in that action, unless the contract is approved under an exception to the law under which the board member is allowed to benefit and is prohibited from voting.

¹ G.S. 14-234(d1) exempts board members in sparsely populated communities (those with cities that have populations of 15,000 or less) from the restrictions in G.S. 14-234(a)(1).

² Because board members always have authority to make decisions about or interpret the board's contracts, contracts with board members are always potentially problematic. Excusing the board member from voting on the contract does not solve the problem.

A board member derives a direct benefit from a contract if the board member or his or her spouse does any of the following: (1) has more than a 10 percent ownership or other interest in an entity that is a party to the contract; (2) derives any income or commission directly from the contract; or (3) acquires property under the contract. An exception is allowed for employment contracts between the board and the spouse of a board member. However, the board member involved will not deliberate or vote on the spouse's employment contract or attempt to influence any other person who is involved in making or administering the contract.

2. A board member will not deliberate on, vote on, or otherwise engage in the selection, award, or administration of a contract supported in whole or part by federal funds when he or she has a real or apparent conflict of interest under federal rules as provided in 2 C.F.R. 200.318(c)(1) and policy 8305, Federal Grant Administration.³ For purposes of this paragraph, a conflict of interest arises when a board member or his or her spouse, immediate family member, or partner, or the employer or pending employer of any of those persons, has a financial or other interest⁴ in or receives a tangible personal benefit⁵ from a firm considered for the contract. Any such conflict must be disclosed to the awarding agency.⁶

For purposes of the previous paragraph, a "financial interest" means a financial interest which comprises more than five percent of the equity of the firm or business or more than five percent of the assets of the economic interest in indebtedness. It does not include an ownership interest held through a fiduciary, such as a mutual fund or blind trust, where the individual or individual's employer has no control over the selection of holdings.⁷

³ This standard is imposed by regulations governing the expenditure of funds from federal grants or awards. See 2 C.F.R. 200.318.

⁴ The board may set standards for situations in which the financial interest is not substantial. See 2 C.F.R. 200.318(c)(1). PLS policy 8305 defines "financial interest" to mean a financial interest which comprises more than five percent of the equity of the firm or business or more than five percent of the assets of the economic interest in indebtedness. Excluded from the definition is an ownership interest held through a fiduciary where the individual has no control over the selection of holdings, such as a mutual fund or blind trust. This definition is intended to avoid disqualifying board members and employees who have an incidental ownership interest in a contractor, such as through stock held in a retirement plan.

⁵ See 2 C.F.R. 200.318(c)(91). "Tangible personal benefit" is not defined in the law, but the U.S. Department of Education has indicated that the term refers to personal benefits such as improved employment opportunities, business referrals, or political influence, etc. See 80 Fed. Reg. 67261 (Nov. 2, 2015). None of the examples cited by the Department of Education appear to be "tangible" in the usual sense, so board members should be cautious about appearing to gain even intangible benefits from a contract supported with federal funds.

⁶ Disclosure of the conflict to the granting agency is required if the procurement is made with federal funds. See 2 C.F.R. 200.112.

⁷ The board may set standards for situations in which the financial interest is not substantial. See 2 C.F.R. 200.318(c)(1). Policy 8305 defines "financial interest" to mean a financial interest which comprises more than five percent of the equity of the firm or business or more than five percent of the assets of the economic interest in indebtedness. Excluded from the definition is an ownership interest held through a fiduciary where the individual has no control over the selection of holdings, such as a mutual fund or blind trust. This definition is intended to avoid disqualifying employees who have an incidental ownership interest in a vendor, such as through stock held in a retirement plan. The board may modify the standard established here, preferably with assistance of the board

3. ⁸A board member will not solicit or accept trips, meals, gratuities, gifts, favors, or anything of monetary value from (i) current contractors, subcontractors, or suppliers; (ii) any contractor, subcontractor or supplier that has performed under a contract with the board within the past year; or (iii) any contractor, subcontractor, or supplier that foreseeably may bid on a contract in the future, unless the item is an unsolicited gift of nominal value (\$50 or less)⁹ and is one of the following: an advertising item or souvenir that is widely distributed; an honorarium for participating in a meeting; a meal provided at a banquet; or other item that is clearly permitted by state and federal law.¹⁰

Multiple permitted items from a single contractor, subcontractor, or supplier may not exceed an aggregate value of \$100 in a twelve-month period.¹¹

4. A board member will not solicit or accept any gifts from a current or potential provider of E-rate services or products in violation of applicable federal E-rate program gifting rules.¹²
5. A board member will not misuse information in violation of G.S. 14-234.1. Specifically, a board member will not use knowledge of contemplated board action, or information known to the member in his or her official capacity and not made public, to:
- a. acquire a financial interest in any property, transaction, or enterprise or gain any financial benefit which may be affected by the information or contemplated action; or
 - b. intentionally aid another to acquire a financial interest or gain a financial benefit.¹³

attorney and/or finance officer. Any modification made should be consistent across all board policies addressing conflict of interest.

⁸ Board members must comply with both state and federal limits on gifting. G.S. 133-32 narrowly limits the items that may be accepted from contractors, subcontractors, and suppliers and makes violation a criminal offense if done by a government officer, employee, or agent who is charged with awarding or administering such contracts (such as a board member) or who have certain other duties relating to contracting or construction. The federal gift receipt rules established in 2 C.F.R. 200.318 and described in policy 8305, Federal Grant Administration, prohibit board members and other school system officers, employees, and agents from accepting anything but unsolicited items of “nominal value.” The board may establish the standard for “nominal value.”

⁹ This figure should be consistent with the dollar limit established in board policy 8305, Federal Grant Administration, which is \$50 or less for a single item, with an aggregate of \$100 or less in a 12-month period from the same contractor or subcontractor. The board may set a different standard for “nominal value.”

¹⁰ Applicable laws include G.S. 133-32 and 2 C.F.R. 200.318(c)(1). The specific items listed here are those permitted under G.S. 133-32.

¹¹ This limit is established in policy 8305, Federal Grant Administration. The board may set a different amount but should be consistent throughout all policies that address conflicts of interest.

¹² Under federal gifting rules specific to the E-rate program, gifts include meals, donated equipment, speaking opportunities, and trade show raffle prizes. The Federal Communications Commission (FCC) is clear that vendor gifts are subject to scrutiny for unfair influence on the competitive bidding process. See FCC Sixth Report and Order 10-175 issued September 2010 and 47 C.F.R. 54.503. At this time, the surest way for E-rate applicants to remain compliant with the federal gift rules is to prohibit employees and board members from accepting anything from an E-rate service provider.

¹³ Violation of G.S. 14-234.1 is a criminal offense.

Legal References:¹⁴ 2 C.F.R. 200.112 and 200.318(c)(1); 47 C.F.R. 54.503; FCC Sixth Report and Order 10-175; G.S. 14-234, -234.1; 133-32; Attorney General Opinion requested by L.W. Lamar regarding G.S. 133-32, the Applicability to Attorneys and Law Firms Providing Professional Services to Local Boards of Education, dated May 13, 1993

Cross References: Code of Ethics for School Board Members (policy 2120), Ethics and the Purchasing Function (policy 6401/9100), Employee Conflict of Interest (policy 7730), Federal Grant Administration (policy 8305)

Issued: June 1997

Revised: May 7, 2004; September 30, 2010; March 28, 2014; November 13, 2015; September 28, 2018

¹⁴ Specify any local legislation regarding conflicts of interest.