

*NOTE: Footnotes are for reference only. They should be eliminated from an individual board's policy.*

## **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 solicit or receive personal financial gain from the school system by means of intimidation, undue influence, or misuse of school system employees in violation of G.S. 14-234.2.<sup>1</sup>
2. A board member will not derive a personal benefit from a contract with the school system in violation of G.S. 14-234. 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<sup>2</sup> 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.

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<sup>1</sup> This statute does not apply to financial gain received from the school system for acting in the board member's official capacity or financial gain received with the approval of the board.

<sup>2</sup> Obtaining a direct benefit from a contract that a board member is involved in making or administering on behalf of the board generally is prohibited by G.S. 14-234(a)(1). However, G.S. 14-234(b) lists exceptions to G.S. 14-234(a)(1). In addition, G.S. 14-234(d1) provides an exception to G.S. 14-234(a)(1) for city board of education members in cities with populations of 20,000 or less and county board of education members in counties in which there is no city with a population of more than 20,000, provided (1) the contract between the board and board member is entered into publicly and does not exceed \$60,000 for goods or services or \$20,000 for medically related services within a 12-month period; (2) the board member does not vote on the contract or participate in any way; and (3) the contract is specifically disclosed in the board's audited financial statement and in a conspicuous public posting. This exception for board members in sparsely populated communities does not apply for contracts that are subject to G.S. 143, art. 8, Public Building Contracts.

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.<sup>3</sup> 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.

A board member derives a direct benefit from a contract if the board member or his or her spouse<sup>4</sup> 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 (1) deliberate or vote on the spouse's employment contract; (2) attempt to influence any other person who is involved in making or administering the contract; or (3) participate in, deliberate on, vote on, or attempt to influence any person with respect to any other matter pertaining to the board member's spouse's employment with the school system, including but not limited to hiring, contract renewal, transfer, promotion, demotion, suspension, discipline, performance evaluation, or review or investigation of a complaint of any kind.

3. A board member who is also a director, officer, or governing board member of a nonprofit<sup>5</sup> will not (1) knowingly vote on, participate in deliberations on, or administer any contract with that nonprofit; (2) influence or attempt to influence the deliberation or vote of others on any such contract; or (3) solicit or receive any gift, reward, or other benefit in exchange for recommending, influencing, or attempting to influence the award of such contract in violation of G.S. 14-234.3.<sup>6</sup> Once the board member's recusal is recorded in the minutes of the board, the board may enter into or administer the contract.
4. 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

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<sup>3</sup> 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.

<sup>4</sup> While North Carolina law only prohibits conflicts of interest involving contracts benefitting the board member or his or her spouse, the board may wish to expand this paragraph to include categories of family members whose contracts with the board could create an ethical conflict of interest for the board member.

<sup>5</sup> For purposes of G.S. 14-234.3, a nonprofit is a nonprofit corporation, organization, or association, incorporated or otherwise, that is organized or operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes, excluding any board, entity, or other organization created by the State or by any political subdivision of the State.

<sup>6</sup> The exceptions to G.S. 14-234(a)(1), described in footnote 2, are also exceptions to this statute. See G.S. 14-234.3(b).

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.<sup>7</sup> 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 interest in or receives a tangible personal benefit<sup>8</sup> from a firm considered for the contract. Any such conflict must be disclosed to the awarding agency.<sup>9</sup>

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.<sup>10</sup>

5. <sup>11</sup>A 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)<sup>12</sup> and is one of the following: an advertising item or souvenir that is widely

<sup>7</sup> This standard is imposed by regulations governing the expenditure of funds from federal grants or awards. See 2 C.F.R. 200.318.

<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> 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 attorney and/or finance officer. Any modification made should be consistent across all board policies addressing conflict of interest.

<sup>11</sup> 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 a 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.”

<sup>12</sup> 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.”

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.<sup>13</sup>

Multiple permitted items from a single contractor, subcontractor, or supplier may not exceed an aggregate value of \$100 in a twelve-month period.<sup>14</sup>

6. 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.<sup>15</sup>
7. 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.<sup>16</sup>

Legal References:<sup>17</sup> 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, -234.2, -234.3; 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)

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<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> 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.

<sup>16</sup> Violation of G.S. 14-234.1 is a criminal offense.

<sup>17</sup> Specify any local legislation regarding conflicts of interest.