

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Board of Supervisors

BOARD AGENDA # \*A-4a

Urgent  Routine

AGENDA DATE December 7, 2010

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Adopt Amendments to the Conflict of Interest Code of the Riverbank Unified School District

STAFF RECOMMENDATIONS:

Adopt amendments to the Conflict of Interest Code of the Riverbank Unified School District.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

BOARD ACTION AS FOLLOWS:

No. 2010-729

On motion of Supervisor O'Brien, Seconded by Supervisor Monteith

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Grover

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

ATTEST:

  
CHRISTINE FERRARO TALLMAN, Clerk

File No.

SUBJECT: Approval to Adopt the Amendments to the Conflict of Interest Code Riverbank  
Unified School District  
page 2

**DISCUSSION:**

As the Conflict of Interest Code Reviewing Body for all local government agencies within Stanislaus County the Board of Supervisors must approve amendments to an agency's Conflict of Interest Code. After a holding public meeting the Riverbank Unified School District approved amendments to their Conflict of Interest Code. After an agency adopts an amendment to their Code they must submit it to the Board of Supervisors. Upon receiving the amendments to the Conflict of Interest Code from the agencies the Board of Supervisors places the amendments on their agenda for approval.

**POLICY ISSUE:**

The Board of Supervisors is the Conflict of Interest Code Reviewing Body for all agencies whose boundaries are solely within Stanislaus County.

**STAFFING IMPACTS:**

There are no staffing impacts associated with this item.

**CONTACT PERSON:**

Christine Ferraro Tallman, Clerk of the Board of Supervisors Telephone: 209-525-4494



BOARD OF SUPERVISORS  
2010 NOV 29 P 12:50

Riverbank Unified School District  
Office of the Superintendent  
6715 Seventh Street  
Riverbank, California 95367  
Phone (209) 869-2538  
Fax (209) 869-1487

November 24, 2010

Clerk of the Board of Supervisors  
Stanislaus County  
1010 10<sup>th</sup> Street, Suite 6700  
Modesto, CA 95354

Enclosed find a copy of the Riverbank Unified School District's Board Bylaw #BB 9270, Conflict of Interest. This copy shows recent changes to the bylaw, including changes in positions that have been deleted or renamed. Bylaw #BB 9270 was approved by the Board of Trustees at their meeting of November 23, 2010. It is understood that this amended policy/code is not effective until it has been approved by the Board of Supervisors.

Shown on BB 9270(f), the terms *Governing Board* and *Superintendent of Schools* are deleted, replaced by ***Riverbank Unified School District Governing Board Members, Riverbank Language Academy Charter Governing Board Members, and District Superintendent.***

In Category 1, the term *Associate* has been deleted, as well as the term *Purchasing Agent*. Added are the terms ***Director of Business*** and ***Director of Facilities.***

Shown on BB 9270 (g), the terms *Director, Principal and Assistant Principal* have been made plural. Deleted are the terms *Program Coordinator, Project Specialist, Supervisor and Dean of Students.*

We believe all amendments are non-substantive and "designates all district positions that make up or participate in the making of governmental decisions; the disclosure categories assigned to those positions accurately require the disclosure of all investments, business positions, interests in real property, and sources of income which may foreseeably be affected materially by the decisions made by those holding the designated positions; and the code includes all other provisions required by Government Code Section 87302."

Sincerely,

A handwritten signature in cursive script, appearing to read "Ken Geisick", written over a horizontal line.

Ken Geisick, Ed.D.  
Superintendent  
(209) 869-2538

**RIVERBANK UNIFIED SCHOOL DISTRICT  
BOARD BYLAW 9270**

**BB 9270(a)**

**BYLAWS OF THE BOARD**

**Conflict of Interest**

**Incompatible Activities**

Governing 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 1126)

**Conflict of Interest Code**

The district's conflict of interest code shall comprise of the terms of California Code of Regulations, Title 2, Section 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 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 designated employees in accordance with the conflict of interest code shall be available for public inspection and reproduction. (Government Code 81008)

**RIVERBANK UNIFIED SCHOOL DISTRICT  
BOARD BYLAW 9270**

**BB 9270(b)**

**BYLAWS of the Board**

**Conflict of Interest**

Financial Interest

**The determination of whether a financial interest exists involves a review of statutes, court decisions and attorney general opinions as they apply to the particular facts at issue. The analysis can be complex and legal counsel should be consulted as appropriate.**

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 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

**RIVERBANK UNIFIED SCHOOL DISTRICT  
BOARD BYLAW 9270**

**BB 9270(c)**

**BYLAWS OF THE BOARD**

**Conflict of Interest**

6. That of a noncompensated 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 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

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)

***It is recommended that the district consult legal counsel when situations arise involving financial interests in contracts or the rule of necessity.***

**RIVERBANK UNIFIED SCHOOL DISTRICT  
BOARD BYLAW 9270**

**BB 9270(d)**

**BYLAWS OF THE BOARD**

**Conflict of Interest**

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**

**AB 1797 (Ch.233, Statutes of 2003) added Government Code 87105 to require an "official who manages public investments" and has a financial interest in a decision to take the following actions. 2 CCR 18702.5, as added by Register 2003, No. 24, further clarifies the conditions upon which the Board member must recuse himself/herself, as well as the content and timing of the identification of the conflict.**

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;2CCR 18702.5)

**RIVERBANK UNIFIED SCHOOL DISTRICT  
BOARD BYLAW 9270**

**BB 9270(e)**

**BYLAWS OF THE BOARD**

**Conflict of Interest**

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)

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 mater 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 mater with members of the public. (Government Code 87105; 2CCR 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)



**RIVERBANK UNIFIED SCHOOL DISTRICT  
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**BB 9270(f)**

**BYLAWS OF THE BOARD**

**Conflict of Interest**

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 :

~~Governing Boards~~

~~Superintendent of Schools~~

**Riverbank Unified School District Governing Board Members**

**Riverbank Language Academy Charter Governing Board Members**

**District Superintendent**

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

~~Assistant / Associate Superintendent~~

~~Purchasing Agent~~

**Director of Business**

**Director of Facilities**

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

**RIVERBANK UNIFIED SCHOOL DISTRICT  
BOARD BYLAW 9270**

**BB 9270(g)**

**BYLAWS OF THE BOARD**

**Conflict of Interest**

(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:

Directors  
Principals  
Assistant Principals  
Maintenance and Operations Director  
Program Coordinator  
Project Specialist  
Supervisor  
Dean of Students

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

**RIVERBANK UNIFIED SCHOOL DISTRICT  
BOARD BYLAW 9270**

**BB 9270(h)**

**BYLAWS OF THE BOARD**

**Conflict of Interest**

- 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)

**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

**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 Disclosure  
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

**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