

Dell Rapids School District #49-3

Policies and Regulations Code A: Foundations



AH Conflict of Interest

This policy prohibits School Officials board members, business manager, superintendent, and any other person who has the authority to enter into a contract or spend money on behalf of the school district from having an interest in a contract or receiving a direct benefit from one or more contracts between the school district and a third party, if the total contract amount is more than \$5,000 within a 12 month period, unless the School Official discloses to the school board his or her interest in the contract, or in the case of a direct benefit from the contract, discloses the direct benefit and receives school board authorization to receive the benefit.

DEFINITIONS

School Official- a school board member, business manager, chief financial officer, superintendent, chief executive officer, or other person with the authority to enter into a contract or spend money in an amount greater than five thousand dollars.

Interest In a Contract- when (1) a School Official, the spouse of a School Official or any other person with whom the School Official lives and commingles assets, is employed by a party to any contract with the school district; or (2) the School Official, the spouse of a School Official, or any other person with whom the School Official lives and commingles assets, receives more than nominal compensation or reimbursement for actual expenses for serving on the board of directors of an entity that derives income or commission directly from the contract or acquires property under the contract.

Direct Benefit from a Contract- when a School Official, the spouse of a School Official or any other person with whom the School Official lives and commingles assets (1) is party to or intended beneficiary of the contract between the school district and a third party, or (2) has more than a five percent ownership interest in an entity that is a party to the school district contract, or (3) acquires property under the contract with the school district, or (4) receives compensation, commission, promotion, or other monetary benefit directly attributable to any contract.

DISCLOSURE

A School Official who has an interest in a contract or who receives a direct benefit from a contract must disclose to the school board the existence of a contract in which the person has an interest or receives a direct benefit.

Disclosures must be in writing and include the following information regarding the contract:

- all parties involved
- each individual's role
- purpose or objective
- consideration or benefit conferred or agreed to be conferred upon each party
- duration

To the extent circumstances allow, disclosure must be given prior to entering into any contract that requires disclosure, and if circumstances do not permit disclosure prior to entering into the contract then within forty-five days after entering into the contract, and if the contract extends into consecutive fiscal years, disclosure shall also be made at the annual reorganization meeting.

The school board will have a regular agenda item at the beginning of the school board meeting agenda at which time the school board will address conflict of Interest disclosures. Conflict of Interest disclosures must be submitted to the President of the School Board, the Superintendent or the Business Manager, at least 5 calendar days before the scheduled meeting in order to be included in the posted meeting agenda for the next school board meeting. Conflict of interest disclosures submitted to the President of the School Board, the Superintendent or the Business Manager after the proposed agenda has been posted may be deferred until the following school board meeting.

BOARD ACTION UPON DISCLOSURE:

1. Interest in the Contract

The school board is not required to authorize a School Official's interest in a contract. The interest disclosure must be included in the official minutes of the school board but do not need to be sent to the auditor-general and attorney general.

2. Direct Benefit from the Contract

- a. The school board shall review the disclosure and decide if terms of the contract are fair and reasonable, and if the contract is contrary to the public interest.
 - i. If the school board determines the contract terms from which a direct benefit is derived are fair and reasonable, and that the contract is not contrary to the public interest, the school board shall vote to authorize the School Official to derive a direct benefit from the contract.
 - ii. After the school board authorizes a School Official to derive a direct benefit from a contract, no further disclosure or authorization related to the contract is required unless the contract extends into consecutive fiscal years. If the contract extends into consecutive fiscal years, disclosure must be made at the annual reorganization meeting but no new authorization is required.
- b. If the school board determines the contract terms from which a direct benefit is derived are not fair and reasonable, or is contrary to the public interest, the school board shall vote to not authorize the School Official to derive a direct benefit from the contract. If the school board votes to not authorize a direct benefit, the contract is voidable and subject to disgorgement (i.e., the act of giving up on demand or by legal compulsion something that was obtained by illegal or unethical acts) or the person may resign from the school district.
- c. The disclosure and school board action is public record.
- d. The official minutes of the school board shall include the school board action on each disclosure and request for authorization to derive a direct benefit from a contract.
- e. A copy of the official school board minutes shall be sent to the auditor-general and attorney general within thirty (30) days of board approval of the minutes.
- f. No school board member may participate in or vote upon a relating to a matter in which the school board member derives a direct benefit.

EXCEPTIONS

If any of the following apply, the School Official does not have an interest in the contract and does not derive a direct benefit from a contract, and disclosure (and authorization, if a direct benefit) is not required under the following situations:

1. person's relationship to the contract is based solely on the value associated with the person's publicly-traded investments or holdings, or the investments or holdings of any other person with whom the board member, business manager, chief financial officer, superintendent, or chief executive officer lives or commingles assets;

2. person's relationship to the contract is due to participating in a vote or a decision in which the person's only interest arises from an act of general application;
3. person's relationship to the contract is due to the person receiving income as an employee or independent contractor of a party with whom the local service agency, school district, cooperative education service unit, or education service agency has a contract, unless the person receives compensation or a promotion directly attributable to the contract, or unless the person is employed by the party as a board member, executive officer, or other person working for the party in an area related to the contract;
4. contract is for the sale of goods or services, or for maintenance or repair services, in the regular course of business at a price at or below a price offered to all customers;
5. contract is subject to a public bidding process;
6. contract is with the official depository as set forth in SDCL 6-1-3;
7. person only receives income or compensation, a per diem authorized by law or reimbursement for actual expenses incurred; or
8. contract or multiple contracts with the same party within a twelve-month period with whom the school district contracts in an amount less than five thousand dollars.

MISCELLANEOUS

A school official who knowingly violates the conflict of interest laws set forth in SDCL Ch. 3-23 may be removed from office or employment and disqualified from holding any public office, elective or appointive. Any benefit obtained would be subject to forfeiture and contracts made under violation of this policy may be voided.

School officials should consult with their own private attorney when they have questions about individual interests and contracts.

LEGAL REFERENCES

SDCL: Ch. 1-27 Public Records

SDCL: 3-23 Conflict of Interest

"3-23-6. No board member, business manager, chief financial officer, superintendent, chief executive officer, or other person with the authority to enter into a contract or spend money in an amount greater than five thousand dollars of a local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity that receives money from or through the state may have an interest in a contract nor receive a direct benefit from a contract in amount greater than five thousand dollars or multiple contracts in an amount greater than five thousand dollars with the same party within a twelve-month period to which the local service agency, school district, cooperative education service unit, or education service agency is a party except as provided in § 3-23-8."

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