

## STANDARDS OF CONDUCT IN PURCHASING AND CONTRACTING

The School Board is committed to purchasing and contracting processes that promote the responsible stewardship and expenditure of District funds (inclusive of local, state, federal, and all other sources), including the avoidance of conflicts of interest. Accordingly, in addition to all other applicable restrictions independently established by law or separately established by the District, the Board:

1. Directs the administration, through its procedures and evaluative processes, to consistently enforce the standards of conduct imposed by the Board and by related state and federal laws, including, as examples, the state's Code of Ethics for Local Government Officials ("Code"), the state's prohibitions against misconduct in office, the state's prohibitions against private interests in public contracts, and the federal government's minimum standards of conduct connected to any District officer's, employee's, or agent's participation in purchasing and contracting activities that involve the use of federal funds.
2. Extends the application of the state's Code such that the provisions of the Code (as well as its applicable exceptions and exclusions) shall be enforced as District standards of conduct with respect to all District employees who are involved in District purchasing and contracting activities in other than a purely ministerial capacity. Further, in applying and enforcing the various provisions of the Code as local employment standards in connection with such activities, the following broader definitions shall be used in place of the narrower definitions found in the state statutes:
  - a. "Immediate family" means all of the following: spouse, and parents thereof; children, and spouses thereof; parents, and spouses thereof; and siblings, and spouses thereof; financial dependents as identified in the state Code; or another adult sharing the same household as the employee of the District.
  - b. An organization with which the employee is "associated" means any organization with which the employee or his or her spouse is associated as an owner, partner, or director, as further defined by the Code; any organization for which the employee or his or her spouse serves as an authorized representative or agent; or any organization which employs or is about to employ either the District employee or any member of the employee's immediate family.
3. Requires any employee of the District to disclose to the Superintendent or Director of Business Services, clearly and as early in the contracting process as practical, the employee's desire to pursue in his or her private capacity (e.g., via bidding, negotiation, etc.) any contract with the District (a) in which the employee has a direct or indirect private pecuniary interest, and (b) that, but for the amount of the contract being below the dollar/cost threshold of the applicable criminal statute that prohibits private interests in public contracts, the employee would otherwise be criminally prohibited from pursuing even in his or her private capacity.
4. Prohibits any authorized agent of the District from participating in the submission of a bid or proposal for any District procurement or contracting decision that is to be made through the solicitation, receipt, and evaluation of competitive bids or competitive requests for proposals when the same agent's designated role on behalf of the District included advising the District regarding the same project's specifications, requirements, statements of work, or invitations for bids or requests for proposals.

As to any District-established standard of conduct applicable to District purchasing and contracting activities where the standard exceeds the minimum restrictions and prohibitions imposed by state or federal law, the Board may, at its

discretion, make an exception to the local standard through policy or via other official action. Any employee or authorized agent who wishes to request such an exception shall contact the Superintendent or Director of Business Services and disclose the specific circumstances relevant to the request.

Even where no law or District policy, regulation, or procedure requires an officer, agent, or employee of the District to take a specific action (or to refrain from specific conduct), the Board expects all officers, agents, and employees to use sound judgment in identifying possible conflicts of interest or other situations giving rise to a reasonable perception of impropriety that may detract from public confidence in the District's purchasing and contracting activities. Upon identifying such situations, the officer, agent, or employee should consult with the Board or administration as necessary and determine a reasonable course of action. Examples of potential resolutions to such situations include making express disclosures (e.g., of particular familial or social relationships) and/or abstaining from participation in particular District processes and transactions.

### **Consequences for Violations**

Any officer, employee, or agent of the District who violates the standards of conduct applicable to participation in District purchasing and contracting activities, as established by the Board or by applicable law, is subject to referral to law enforcement when the conduct is independently subject to possible legal prosecution. In addition:

- A Board member who violates any standards of conduct established by state or federal law is further subject to censure or other disciplinary sanction that is within the authority of the Board itself, and may also be subject to an action for removal from public office by the courts.
- Employees are further subject to possible disciplinary action, up to and including termination from employment.
- A non-employee agent of the District is further subject to termination of his or her authority to act as an authorized agent of the District.

A current or prospective vendor or contractor of the District who offers or provides gifts, favors, or gratuities to any officer, agent, or employee of the District that would constitute a violation of this policy or any applicable law is subject to possible disqualification as a future vendor or contractor of the District.

In setting forth such possible consequences, the Board neither absolves any officer, employee, or agent of the District from any other individual liability that may accrue to such representative of the District nor disclaims or waives any of the Board's or District's rights to void or terminate agreements or to pursue any other lawful claims or remedies.

ADOPTED: June 10, 2019

REVISED:

REVIEW DATE: June 10, 2019

LEGAL REFERENCES:

### **Wisconsin Statutes**

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|--------------------------------|--|
| <a href="#">Section 19.42</a>  | [statutory definitions related to the code of ethics for local government officials] |
| <a href="#">Section 19.59</a>  | [ethical standards for local government officials]                                   |
| <a href="#">Section 946.12</a> | [misconduct in public office]  |
| <a href="#">Section 946.13</a> | [private interests in public contracts prohibited]                                   |

**Federal Law**

[2 C.F.R. §200.318](#) [uniform guidance related to acceptance and use of federal funds by non-federal entities; written standards of conduct required]

[2 C.F.R. §200.319](#) [uniform guidance related to ensuring objective contractor performance and eliminating unfair competitive advantage]

CROSS REFS.: DJAA-R – Standards of Conduct in Purchasing and Contracting Procedures

## STANDARDS OF CONDUCT IN PURCHASING AND CONTRACTING PROCEDURES

This rule serves to clarify the School Board's standards of conduct for District-related purchasing and contracting activities as those standards relate to (1) the Board's modified application of the state's Code of Ethics for Local Government Officials ("Code") to District employees beyond those employees who are considered local public officials, and (2) specific federal restrictions on the conduct of District officers, employees, and agents who are involved in the selection, award, and administration of contracts (including procurement transactions) supported by federal funds.

This rule does not provide a complete list or explanation of all situations in which a conflict of interest may exist under applicable law or District policy. For example, this rule does not address any aspect of the state criminal statute that forbids private interests in public contracts. In addition, this rule's summary of the state Code is incomplete as to some specific details. Reliance on this clarifying rule or its authorizing policy does not excuse any violation of independently-applicable state or federal law. Accordingly, officers, agents, and employees of the District should approach conflict-of-interest issues conservatively and seek clarification of specific fact situations and restrictions prior to participating in related purchasing or contracting activities.

### **Application of the State Code as Standards of Conduct for District Employees**

In connection with District purchasing and contracting activities, Board policy expressly extends the application of the state Code by (1) adopting the Code's requirements and restrictions as local standards of conduct that apply to all District employees involved in such activities in other than a purely ministerial capacity, and (2) substituting broader definitions of "immediate family" and organizational "associations" in place of the Code's narrower definitions for those terms. In general, the state's Code and Board policy work together to jointly prohibit the following conduct:

1. No District employee may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated.
2. No person may offer or give to a District employee, directly or indirectly, and no District employee may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the employee's vote, official actions, or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the employee.
3. No District employee may take any non-ministerial action in connection with his or her duties or responsibilities as an employee that substantially affects a matter in which the employee, a member of his or her immediate family, or an organization with which the employee is associated has a substantial financial interest.
4. No District employee may use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the employee, one or more members of the employee's immediate family (either separately or together), or an organization with which the employee is associated.

The Board's policy otherwise adopts the state Code's applicable definitions and the Code's exceptions to and exclusions from the conduct that is generally prohibited by the Code. For example, the Board's extension of the Code to all employees involved in District purchasing and contracting activities in other than a purely ministerial capacity does not prohibit an employee's:

1. Negotiation and acceptance, on his or her own behalf, of his or her employment agreement and/or compensation arrangement with the District.
2. Acceptance of District-authorized compensation, benefits, or expense reimbursement.
3. Acceptance of any nominally-valued item(s) of the type that may be accepted by local public officials under the state Code (e.g., widely-distributed items of token value given away by an exhibitor at a conference or convention). While the state Code does not set a specific dollar value applicable to any and all situations, officers, employees and agents should treat any item valued at more than a few dollars as suspect and should be aware that acceptance of items valued as low as \$15 may violate the Code.
4. Receipt of any merely incidental amenities that are provided in connection with the representative's authorized participation in a conference, meeting, or similar activity, provided that such incidentals primarily facilitate the representative's efficient and effective performance of his or her District-related responsibilities and that, therefore, primarily benefit the District (rather than serving as a private benefit to the representative). An employee's immediate supervisor has authority to determine whether a particular amenity may be accepted, and employees are strongly encouraged to review program agendas/schedules with their supervisor in advance of work-related conferences and similar events.
5. Receipt of personal gifts for purposes completely unrelated to District activities/operations from a person with whom the representative of the District has a pre-existing familial or social relationship (such as a brother, sister, or close friend), even though the person giving the gift (or the person's business or employer) also is, or is seeking to become, a vendor or contractor of the District. (Note: Although such personal gifts may be accepted, the employee may be separately prohibited by law or by a District policy or directive from participating in purchasing or contracting processes involving the particular vendor or contractor.)

**Federal Restrictions on the Conduct of Officers, Employees, and Agents Involved in the Selection, Award, and Administration of Contracts Supported by Federal Funds**

Separate from any state or local standards of conduct that apply to officers, agents and employees of the District who are involved in purchasing and contracting activities in the District, federal regulations impose several minimum restrictions on the conduct of such representatives of the District whenever the transaction in question is supported by federal funds that are subject to the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Under the federal guidelines:

1. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a substantial financial or other interest in or would obtain a substantial tangible personal benefit from a firm considered for a contract.
2. The officers, employees, and agents of the non-federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

These minimum federal requirements are not waivable in connection with any transaction or contract to which they apply. In determining whether a financial or other interest is "substantial," or whether anything solicited or accepted for private benefit is of "value," the District follows the standards applicable to local public officials under similar provisions of the state Code.

**Responsibility for Dissemination of Standards of Conduct**

The Superintendent or Director of Business Services shall ensure that the District implements methods of informing its officers, employees, and agents who are involved in purchasing decisions or in the selection, award, or administration of a District contract of the standards of conduct set forth in this rule and its related policy. These standards should clearly be identified as being in addition to all other applicable restrictions independently established by law or separately established by the District. Such methods shall include, but are not limited to inserting an express reference to this policy in Employee Handbooks and posting information about the policy/ rule on the District website.

***6/10/19***