

This policy is amended to add definitions consistent with the Idaho Ethics in Government Act (Idaho Code §§74-401 *et seq.*) and Idaho prohibitions against contracts with officers (Idaho Code §§74-502 *et seq.*) and to more fully reflect the state of current Idaho law. It is also updated to ensure compliance with the Education Department General Administrative Regulations (EDGAR), 2 CFR Part 200, which requires school districts receiving federal funds to have written conflicts of interest policies.

DEFINITIONS

For the purposes of this policy, the following definitions apply:

“Business” means any undertaking operated for economic gain, including, but not limited to, a corporation, partnership, trust proprietorship, firm, association or joint venture.

“Business with which a public official is associated” means any business of which the public official or member of his household is a director, officer, owner, partner, employee or holder of stock over five thousand dollars (\$5,000) or more at fair market value.

“Conflict of interest” means any official action or any decision or recommendation by a person acting in a capacity of a board member, the effect of which would be the private pecuniary benefit of the board member, a member of his or her household, a relative, or a business with which the board member, a member of his or her household, or a relative is associated.

“Members of a household” means the spouse and dependent children of the board member and/or persons whom the board member is legally obligated to support.

“Official action” means any decision on, or proposal, consideration, enactment, defeat, or making of any rule, regulation, rate-making proceeding or policy action or non-action by the board or any other policy matter which is within the official jurisdiction of the board.

“Relative” means as a person related to the board member by blood or marriage within the second degree.

“Remote interest” means an interest of a board member in a contract that is of: (i) a non-salaried officer of a non-profit corporation; (ii) an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary; (iii) a landlord or tenant of a contracting party; or (iv) a holder of less than one percent (1%) of the shares of a corporation or cooperative which is a contracting party.

“Spouse” means a board member’s husband or wife by lawful marriage.

GENERAL PROHIBITIONS

It is unlawful for any board member to have pecuniary interest, directly or indirectly, in any contract or other transaction pertaining to the maintenance or conduct of the district or to accept any reward or compensation for services rendered as a board member except as otherwise provided by law. It is also unlawful for any board member to be a purchaser at any sale or a vendor at any purchase made by the board member in his/her official capacity.

The receiving, soliciting, or acceptance of district monies for deposit in any bank or trust company, or the lending of money by any bank or trust company to any district, will not be deemed to be a contract pertaining to the maintenance or conduct of the district. The board's payment of compensation to any bank or trust company for services rendered in the transaction of any banking business with the board will also not be deemed the payment of any reward or compensation to any officer or director of any such bank or trust company.

DISCLOSURE

Board members must disclose any actual or potential conflict of interest before taking official action, or making a formal decision or formal recommendation in any matters in which the effect would be the private pecuniary gain of the board member, a spouse, a relative, a dependent, or any person the board member is obligated to support or a business association of any such person. Disclosure of a conflict by a board member does not affect the board member's authority to be counted for purposes of determining a quorum and to debate and to vote on the matter, unless the board member requests to be excused from debate and voting at his or her discretion.

CONTRACTS WITH BOARD MEMBERS OR THEIR SPOUSES OR RELATIVES

It is unlawful for a board member to be interested in any contract made by him/her in his/her official capacity, or for the board to enter into or execute any contract with a board member, or his or her spouse or relative, where the terms of said contract requires or will require the payment or delivery of any district funds, money, or property to such board member, or his or her spouse or relative, unless the contract meets the requirements set forth in Idaho Code §§18-1361, 18-1361A or 74-502, and this policy.

Non-Compensated Board Member

The board may accept and award district contracts in which a board member, or his or her spouse or relative, has a direct or indirect interest if the board member receives no salary or fee as compensation for his service on the board and if the following procedures are strictly observed:

1. The contract is competitively bid and the board member, or his or her spouse or relative, submits the low bid;
2. Neither the board member nor his or her spouse or relative takes part in the preparation of the contract or bid specifications, and the board member takes no part in voting on or approving the contract or bid specification;

3. The board member makes full disclosure, in writing, to all members of the board of his or her interest, or the interest of his or her spouse or relative, and sets forth his or her intention, or the intention of his or her spouse or relative, to bid on the contract; and
4. Neither the board member nor his or her spouse or relative has violated any provisions of Idaho law pertaining to competitive bidding or improper solicitation of business.

Compensated Board Member

In the event a board member is the clerk or treasurer of the board and is compensated for his or her service, the board may accept and award district contracts in which that board member, or his or her spouse or relative, has a direct or indirect interest if:

1. Less than three (3) suppliers of a good or service exist within a fifteen (15) mile radius of where the good or service is to be provided and the contract is necessary to respond to a disaster; or
2. Less than three (3) suppliers of a good or service exist within a fifteen (15) mile radius of where the good or service is to be provided and the following procedures are strictly observed:
 - a. The contract is competitively bid and the board member, or his or her spouse or relative, submits the low bid;
 - b. Neither the board member nor his or her spouse or relative takes part in the preparation of the contract or bid specifications, and the board member takes no part in voting on or approving the contract or bid specification;
 - c. The board member makes full disclosure, in writing, to all members of the board of his or her interest, or the interest of his or her spouse or relative, and sets forth his or her intention, or the intention of his or her spouse or relative, to bid on the contract; and
 - d. Neither the board member nor his or her spouse or relative has violated any provisions of Idaho law pertaining to competitive bidding or improper solicitation of business.

Remote Interests

A board member will not be deemed to be interested in a contract if he has only a remote interest in the contract, as defined herein, and if the fact and extent of such interest is disclosed to the board and noted in the official minutes or similar records prior to the formation of the contract, and thereafter the board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the board member having the remote interest. A board member who has a remote interest in a contract must not influence or attempt to influence any other board member to enter into the contract. Any contract entered into in violation of this policy shall be void.

EMPLOYMENT OF SPOUSES OF BOARD MEMBERS

No spouse of any board member may be employed by a school district with a fall student enrollment of greater than one thousand two hundred (1,200) in the prior school year. For school districts with a fall student enrollment of one thousand two hundred (1,200) or less in the prior school year and for schools funded as separate schools pursuant to the provisions of Idaho Code §33-1003(2), such spouse may be employed in a nonadministrative position for a school year if each of the following conditions have been met:

1. The position has been listed as open for application on the school district website or in a local newspaper for at least sixty (60) days, unless the opening occurred during the school year, in which case the position will be so listed for at least fifteen (15) days. If the position is listed in a newspaper, the listing will be made in a manner consistent with the provisions of Idaho Code §60-106;
2. No applications were received that met the minimum certification, endorsement, education, or experience requirements of the position other than such spouse; and
3. The board member abstained from voting in the employment of the spouse and was absent from the meeting while such employment was being considered and determined.

The school district or school may employ such spouse for additional school years provided that the above conditions are met for each school year in which such spouse is employed. Any spouse of a board member employed as a certificated employee will be employed under a Category 1 contract.

The board member will abstain from voting in any decisions affecting the compensation, benefits, individual performance evaluation, or disciplinary action related to the spouse and must be absent from the meeting while such issues are being considered and determined. Such limitation includes, but is not limited to, any matters relating to negotiations regarding compensation and benefits; discussion and negotiation with district benefits providers; and any matter relating to the spouse and letters of reprimand, direction, probation, or termination. Such limitations will not prohibit the board member from participating in deliberation and voting upon the district's annual fiscal budget or annual audit report.

EMPLOYMENT OF RELATIVES OF BOARD MEMBERS

When a relative of a board member or relative of a board member's spouse is considered for employment by the district, such board member will abstain from voting in the election of such relative and will be absent from the meeting while such employment is being considered and determined.

GIFTS TO BOARD MEMBERS

Board members may not solicit, accept, or agree to accept any pecuniary benefit from any person known to be or likely to be interested in such contract, purchase, payment, claim, or transaction with the district. Nor may board members solicit, accept, or receive a pecuniary benefit as payment for services, advice, assistance, or conduct customarily exercised in the course of his or her official duties. This prohibition does not apply to trivial benefits not to exceed the value of fifty dollars (\$50) incidental to personal, professional, or business contracts and involving no substantial risk of undermining official impartiality.

A board member may accept an award of five hundred dollars (\$500) or less given to the board member by a nonprofit organization whose membership is limited to public servants as part of a public servant recognition program that is designed to recognize innovation and achievement in the workplace, provided that the organization awarding the funds discloses in advance on its website the nature of the program, the amount of the award, the names of any persons or entities that contributed to the award and the recipient of the award.

In addition to the provisions of this policy, any purchase of property and services with funds from a Federal award shall follow the provisions set forth in Policy 850.

VIOLATIONS

A board member who violates any of the conflict of interest policies set forth herein may be guilty of a civil offense as provided in Idaho Code §74-406(1) or a misdemeanor as provided in Idaho Code §§18-1360 and 74-509.



LEGAL REFERENCE:

Idaho Code Sections

- 18-1351 – Bribery and Corrupt Practices -- Definitions
- 18-1356 – Gifts to Public Servants by Persons Subject to Their Jurisdiction
- 18-1359 – Using Public Position for Personal Gain
- 18-1360 - Penalties
- 18-1361 – Self-Interested Contracts – Exception
- 18-1361A – Non-compensated Appointed Public Servant – Relatives of Public Servant
- 33-506 – Organization and Government of Board of Trustees
- 33-5204(6)-(7) – *Nonprofit Corporation – Liability - Insurance*
- 33-507 – Limitation Upon Authority of Trustees
- 33-1003 – Special Application of Educational Support Units
- 74-401 *et seq.* – Idaho Ethics in Government Act

Federal Regulations References

- 2 CFR 200.318 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Black’s Law Dictionary (9th ed. 2009)

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Note: This policy establishes a ground floor for conduct by board members and is not to be read or interpreted so as to provide “loopholes” or “technicalities” by which one can take advantage of government, the public, or other interested parties. The Idaho Ethics in Government Manual advises that when determining the proper answer to any ethical question, board members should be mindful of the impact a decision may have both legally and publicly.