



## **FIRST READING OF SCHOOL BOARD POLICIES**

### **POLICY ISSUE/SITUATION:**

Attached are OSBA and BSD staff suggested changes presented for a first reading. The following will be reviewed:

- **BBFA** – Board Member Ethics and Conflicts of Interest
- **BBFB** – Board Member Ethics and Nepotism
- **DN** – Disposal of District Property
- **GBM** – Staff Complaints
- **JFG** – Student Searches and Inspection

### **BACKGROUND INFORMATION:**

Departments are continuing to work to reach compliance of the policies pertinent to their areas. During this school year the district will continue to present various sets of new policy changes for review.

### **RECOMMENDATION:**

It is recommended that the School Board review these first readings.

**District Goal:** All students will show continuous progress toward their personal learning goals, developed in collaboration with teachers and parents, and will be prepared for post-secondary education and career success.

The Beaverton School District recognizes the diversity and worth of all individuals and groups. It is the policy of the Beaverton School District that there will be no discrimination or harassment of individuals or groups based on race, color, religion, gender, sexual orientation, gender identity, gender expression, national origin, marital status, age, veterans' status, genetic information or disability in any educational programs, activities or employment.



## LEGAL ADVISORY M E M O R A N D U M

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**TO:** School Board

**FROM:** Camellia Osterink, General Counsel

**SUBJECT:** Board Policy Revision Conventions

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The following are the conventions for editing school board policy.

- Eliminated words are represented by ~~striketrough~~.
- New language provided by Oregon School Board Association is represented by underlining.
- New language proposed by Beaverton School District staff or school board is represented by *italics and underlining*.
- Changes made for second reading should be highlighted in yellow.

**District Goal:** All students will show continuous progress toward their personal learning goals, developed in collaboration with teachers and parents, and will be prepared for post-secondary education and career success.

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## BOARD MEMBER ETHICS AND CONFLICTS OF INTEREST

No Board member will use his/her official position or office to obtain personal financial benefit or to avoid financial detriment for him or herself, relatives, or household members, or for any business with which the Board member, a household member or a relative is associated.

This prohibition does not apply to any part of an official compensation package, honorarium allowed by ORS 244.042, reimbursement of expenses, or unsolicited awards of professional achievement. Further, this prohibition does not apply to gifts from one without a legislative or administrative interest. Nor does it apply if the gift is under the annual \$50 gift limit from one who has a legislative or administrative interest in any matter subject to the decision or vote of the Board member. District-provided meals at board meetings are acceptable under the reimbursement of expenses exception.

### I. Conflicts of Interest

“Business” means any corporation, partnership, proprietorship, enterprise, association, franchise, firm, organization, self-employed individual or any legal entity operated for economic gain. This definition excludes any income-producing tax-exempt 501(c) not-for-profit corporation with which a public official or a relative of the public official is associated only as a member or board director or in a non-remunerative capacity.

“Business with which a Board member or relative is associated” means any private business or closely held corporation of which a Board member or relative is a director, officer, owner, employee or agent or any private business or closely held corporation in which a Board member or relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding year; any publicly held corporation in which a Board member or relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year; or any publicly held corporation of which a Board member or relative is a director or officer.

“Relative” means: 1) the Board member’s spouse, including domestic partners, parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law; 2) the spouse of the Board member’s parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law.

“Member of the household” means any person who resides with the public official.

No Board member will solicit or receive, either directly or indirectly, any pledge or promise of future employment based on any understanding that the Board member’s vote, official action or judgment would be thereby influenced.

No Board member will attempt to use or use for personal gain any confidential information gained through his/her official position or association with the District. A Board member will respect

individuals' privacy rights when dealing with confidential information gained through association with the District.

If a Board member participates in the authorization of a public contract, the Board member may not have a direct beneficial financial interest in that public contract for two years after the date the contract was authorized.

Individual Board members, and the Board as a public entity, are bound by the ethics laws for public officials as stated in Oregon law.

### **Potential Conflict of Interest**

"Potential conflict of interest" means any action or any decision or recommendation by a Board member that could result in a financial benefit or detriment for self or relatives or for a business with which the Board member or relatives are associated, unless otherwise provided by law.

A Board member must publicly declare a potential conflict of interest. A Board member may, after declaring his/her potential conflict of interest, either vote or abstain on the issue. Abstaining from a vote does not meet the legal requirement of publicly stating a potential conflict.

### **Actual Conflict of Interest**

"Actual conflict of interest" means any action or any decision or recommendation taken by a Board member that would result in a financial benefit or detriment to self or relatives or for any business with which the Board member or relatives are associated, unless otherwise provided by law.

A Board member must publicly declare an actual conflict of interest. The Board member may not vote lawfully if an actual conflict of interest exists unless a vote is needed to meet a minimum requirement of votes to take official action. Such a vote does not allow the Board member to participate in any discussion or debate on the issue out of which an actual conflict arises.

### **Class Exception**

It will not be a conflict of interest if the Board member's action would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged. For example, if a Board member's spouse is a member of the collective bargaining unit, the Board member may vote to approve the contract, as it will affect all members of that class to the same degree. However, if the collective bargaining unit is very small, the class exception may not apply. Similarly, if the contract contains special provisions that might apply only to particular persons, then the class exception may not apply. For example, if a Board member's spouse is the only one in the bargaining unit that has a doctorate and there is a pay differential for employees with doctorates in the collective bargaining agreement, the Board member should not vote on the contract.

## **II. Gifts**

Board members are public officials and therefore will not solicit or accept a gift or gifts with an aggregate value in excess of \$50 from any single source in a calendar year that has a legislative or administrative interest in any matter subject to the decision or vote of the Board member. All gift related provisions apply to the Board member, their relatives, and members of their household. The \$50 gift limit applies separately to the Board member, and to the Board member's relatives or members of the household, meaning that the Board member and each member of their household

and relative can accept up to \$50 each from the same source/gift giver. "Gift" means something of economic value given to a Board member without valuable consideration of equivalent value, which is not extended to others who are not public officials on the same terms and conditions.

"Relative" in the gift context means

1. The Board member's spouse, *including domestic partners*, parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law;
2. The spouse of the Board member's parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law.

"Gift" means something of economic value given to a Board member without valuable consideration of equivalent value, which is not extended to others who are not public officials on the same terms and conditions.

"Member of the household" means any person who resides with the Board member.

### **Determining the Source of Gifts**

Board members should not accept gifts in any amount without obtaining information from the gift giver as to who is the source of the gift. It is the Board member's personal responsibility to ensure that no single source provides gifts exceeding an aggregate value of \$50 in a calendar year, if the source has a legislative or administrative interest in any matter subject to the decision or vote of the Board member. If the giver does not have a legislative/administrative interest, the ethics rules on gifts do not apply and the Board member need not keep track of it, although they are advised to do so anyway in case of a later dispute.

### **Determining Legislative and Administrative Interest**

A legislative or administrative interest means an economic interest distinct from that of the general public, in any action subject to the decision or vote of a person acting in the capacity of a Board member. For example, everyone within a county has a general interest in the fire department, but the person who sells the uniforms to the fire department has a legislative/administrative interest in the fire department that is distinct from the general public.

### **Determining the Value of Gifts**

The fair market value of the merchandise, goods, or services received will be used to determine benefit or value.

"Fair market value" is the dollar amount goods or services would bring if offered for sale by a person who desired, but was not obligated, to sell and purchased by one who is willing, but not obligated, to buy. Any portion of the price that was donated to charity, however, does not count toward the fair market value of the gift if the Board member does not claim the charitable contribution on personal tax returns. Below are acceptable ways to calculate the fair market value of a gift:

1. In calculating the per person cost at receptions or meals the payor of the Board member's admission or meal will include all costs other than any amount donated to a charity.

For example, a person with a legislative or administrative interest buys a table for a charitable dinner at \$100 per person. If the cost of the meal was \$25 and the amount donated

to charity was \$75, the benefit conferred on the Board member is \$25. This example requires that the Board member does not claim the charitable contribution on personal tax returns.

2. For receptions and meals with multiple attendees, but with no price established to attend, the source of the Board member's meal or reception will use reasonable methods to determine the per person value or benefit conferred. The following examples are deemed reasonable methods of calculating value or benefit conferred:
  - a. The source divides the amount spent on food, beverage and other costs (other than charitable contributions) by the number of persons whom the payor reasonably expects to attend the reception or dinner;
  - b. The source divides the amount spent on food, beverage and other costs (other than charitable contributions) by the number of persons who actually attend the reception or dinner; or
  - c. The source calculates the actual amount spent on the Board member.
3. Upon request by the Board member, the source will give notice of the value of the merchandise, goods, or services received.
4. Attendance at receptions where the food or beverage is provided as an incidental part of the reception is permitted without regard to the fair market value of the food and beverage provided.

#### **Value of Unsolicited Tokens or Awards: Resale Value**

Board members may accept unsolicited tokens or awards that are engraved or are otherwise personalized items. Such items are deemed to have a resale value under \$25 (even if the personalized item cost the source more than \$50), unless the personalized item is made from gold or some other valuable material that would have value over \$25 as a raw material.

#### **Entertainment**

Board members may not solicit or accept any gifts of entertainment over \$50 in value from any single source in a calendar year that has a legislative or administrative interest in any matter subject to the decision or vote of the Board member unless:

1. The entertainment is incidental to the main purpose of another event (i.e. a band playing at a reception). Entertainment that involves personal participation is not incidental to another event (such as a golf tournament at a conference); or
2. The Board member is acting in their official capacity for a ceremonial purpose.

Entertainment is ceremonial when a Board member appears at an entertainment event for a "ceremonial purpose" at the invitation of the source of the entertainment who requests the presence of the Board member at a special occasion associated with the entertainment.

Examples of an appearance by a Board member at an entertainment event for a ceremonial purpose include throwing the first pitch at a baseball game, appearing in a parade and ribbon cutting for an opening ceremony.

#### **Exceptions**

The following are exceptions to the ethics rules on gifts.

3. Campaign contributions are not considered gifts under the ethics rules.
4. Gifts from “relatives” and “members of the household” are permitted in an unlimited amount; they are not considered gifts under the ethics rules.
5. Informational or program material, publications, or subscriptions related to the recipient’s performance of official duties.
6. Contributions made to a legal expense trust fund if certain requirements are met.
7. Food, lodging, and travel generally count toward the \$50 aggregate amount per year from a single source with a legislative/administrative interest, with the following exceptions:
  - a. Organized Planned Events. Board members are permitted to accept payment for travel conducted in the Board member’s official capacity, for certain limited purposes:
    1. Reasonable expenses (i.e. food, lodging, travel, fees) for attendance at a convention, fact-finding mission or trip, or other meeting do not count toward the \$50 aggregate amount IF:
      - (a) The Board member is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the district; AND
        - i) The giver is a unit of a:
          - a) Federal, state, or local government;
          - b) An Oregon or federally recognized Native American Tribe; OR
          - c) Non-profit corporation.
        - (b) The Board member is representing the district:
          - i) On an officially sanctioned trade-promotion or fact-finding mission; OR
          - ii) Officially designated negotiations or economic development activities where receipt of the expenses is approved in advance by the Board.
      - (2) The purpose of this exception is to allow Board members to attend organized, planned events and engage with the members of organizations by speaking or answering questions, participating in panel discussions or otherwise formally discussing matters in their official capacity. This exception to the gift definition does not authorize private meals where the participants engage in discussion.
8. Food or beverage, consumed at a reception, meal, or meeting IF held by an organization and IF the Board member is representing the district. Again, this exception does not authorize private meals where the participants engage in discussion. “Reception” means a social gathering. Receptions are often held for the purpose of extending a ceremonial or formal welcome and may include private or public meetings during which guests are honored or welcomed. Food and beverages are often provided, but not as a plated, sit-down meal.

9. Food or beverage consumed by Board member acting in an official capacity in the course of financial transactions between the public body and another entity described in ORS 244.020(6)(b)(I)(i).
10. Waiver or discount of registration expenses or materials provided to Board member at a continuing education event that the Board member may attend to satisfy a professional licensing requirement.
11. A gift received by the Board member as part of the usual or customary practice of the Board member's private business, employment or position as a volunteer that bears no relationship to the Board member's holding of public office.

### **Honoraria**

A Board member may not solicit or receive, whether directly or indirectly, honoraria for the Board member or any relative or member of the household of the Board member if the honoraria are solicited or received in connection with the official duties of the Board member.

The honoraria rules do not prohibit the solicitation or receipt of an honorarium or a certificate, plaque, commemorative token or other item with a value of \$50 or less; or the solicitation or receipt of an honorarium for services performed in relation to the private profession, occupation, avocation or expertise of the Board member or candidate.

### END OF POLICY

#### Legal References:

ORS 162.015 - 162.035

OAR 199-005-0003 to 199-020-0020

ORS 162.405 - 162.425

ORS 244.010 – 244.400

ORS 332 - 055

Opinions of the Attorney General, Vol. 38, p. 1995 (1978)

OR. ETHICS COMM'N, OR. GOV'T ETHICS LAW, A GUIDE FOR PUBLIC OFFICIALS (2008).



## Board Member Ethics and Nepotism

In order to avoid both potential and actual conflicts of interests, Board members will abide by the following rules when a Board member's relative or member of the household is seeking and/or holds a position with the district:

1. A Board member may not appoint, employ, promote, discharge, fire, or demote or advocate for such an employment decision for a relative or a member of the household, unless the Board member complies with the conflict of interest requirements of ORS Chapter 244;
2. This policy does not apply to decisions regarding unpaid volunteer positions unless it is a Board member position or another Board-related unpaid volunteer position (i.e. a Board committee position);
3. A Board member may not participate as a public official in any interview, discussion, or debate regarding the appointment, employment, promotion, discharge, firing, or demotion of a relative or a member of the household. A Board member may still serve as a reference or provide a recommendation.

For the purposes of this policy, a "member of the household" means any person who resides with the Board member and "relative" means:

1. The Board member's spouse or Oregon Registered Domestic Partner, parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law;
2. The spouse of the Board member's parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law.

### Class Exception

It will not be a conflict of interest if the Board member's action would affect to the same degree a class including the Board member's relative or household member. For example, if a Board member's spouse is a member of the collective bargaining unit, the Board member may vote to approve the contract, as it will affect all members of that class to the same degree. However, if the collective bargaining unit is very small, the class exception may not apply. Similarly, if the contract contains special provisions that might apply only to particular persons, then the class exception may not apply. For example, if a Board member's spouse is the only one in the bargaining unit that has a doctorate and there is a pay differential for employees with doctorates in the collective bargaining agreement, the Board member should not vote on the contract.

END OF POLICY

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**Legal Reference(s):**

ORS 244.010 - 244.400

ORS 659A.309

OAR 199-005-0003 to-199-020-0020

OR. ETHICS COMM'N, OR. GOV'T ETHICS LAW, A GUIDE FOR PUBLIC OFFICIALS (2008).

## DISPOSAL OF DISTRICT PROPERTY

The Board may, at any time, declare district property as surplus and authorize its disposal when such property is no longer useful to the district, unsuitable for use, too costly to repair or obsolete. Efforts will be made to find other uses for items declared surplus.

Items that are still usable, but no longer of use in the district, may be disposed of through approved state agencies. The monies are returned to the general fund. If the district property was purchased with state, federal or private grant funds, disposal of the property shall be made as outlined in the grant or by state or federal regulations.

No items purchased by district funds may be sold to employees or private agencies without public notice, with the exception of outdated books.

Specific information related to disposal of district property is delineated in the district **Purchasing Manual**, which is updated periodically.

END OF POLICY

Legal References:

ORS 279B.015

ORS Chapter 279A, 279B, and 279C

ORS 279.025

ORS 332.155

Education, Title 34 C.F.R. Part 80 Sec. 80.32(e)

STAFF COMPLAINTS

It is an unlawful employment practice for an employer to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported information in a manner as to disclose employer violations of any federal or state law, rule or regulation, mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety.

The superintendent or designee will develop a complaint procedure which will be available for all employees who contend they have been subject to a violation, misinterpretation or inappropriate application of district personnel policies and/or administrative regulations. The complaint procedure will provide an orderly process for the consideration and resolution of problems in the application or interpretation of district personnel policies.

The complaint procedure will not be used to resolve disputes and disagreements related to the provisions of any negotiated contract, nor will it be used in any instance where a negotiated contract provides a dispute resolution procedure. Disputes concerning an employee's dismissal or non-renewal will not be grieved under this procedure.

All reasonable efforts will be made to resolve complaints informally.

Regulations will be developed to outline procedural timelines and steps under this policy.

END OF POLICY

Legal References:

ORS 332.107  
ORS 659A.199  
OAR 581-022-1720

Anderson v. Central Point School District No. 6, 554 F. Supp. 600 (D. Oregon 1982); aff'd in part, 746 F. 2d 505 (9th Cir. 1984).  
Connick v. Myers, 461 U.S. 138 (1983).

## STUDENT SEARCHES AND INSPECTIONS

The Board seeks to assure a climate in the District which is appropriate for learning and which assures the safety and welfare of students and staff. To assist the Board in obtaining these goals, district officials are authorized to search a student's person and property ~~the person and his/her property,~~ including property assigned by the district for the student's use. ~~that property or facility provided by the district, and seize any property deemed injurious or detrimental to the safety and welfare of the students and staff,~~ if the district officials have reasonable suspicion to believe that an illegal act or a violation of school rules and regulations is being committed or is about to be committed.

All student searches conducted by the district shall be subject to the following requirements:

1. The district official conducting the search shall have individualized, "reasonable suspicion" based upon specific and articulated facts to believe that the student personally poses or is in possession of some item that poses an immediate risk or serious harm to the student, school officials and/or others at the school;
2. The search shall be "reasonable in scope." That is, the measures used are reasonably related to the objectives of the search, the unique features of the official's responsibilities, and the area(s) which could contain the item(s) sought and not excessively intrusive in light of the age, sex, maturity of the student and nature of the infraction.

Whenever feasible, the ~~person~~ student should be present when his/her property or district property which he/she used is being searched.

District officials may seize any item which is deemed injurious or detrimental to the safety and welfare of the students and staff, or is evidence of a violation of law, Board policy, administrative regulation or school rule, or which the possession or use of is prohibited by such law, policy, regulation or rule.

To further protect students and provide a safer school environment, random inspections of lockers and other student storage areas may also occur at any time. These areas remain in the possession and control of the school when they are assigned for student use. Students may use student storage areas for the limited purpose of temporarily keeping items needed for classes and other school activities. Students shall expect that lockers and other student storage areas will be inspected by the school from time to time without prior notice to assure that such areas are not being used for any unauthorized purpose. Prohibited items will be removed and held by the school and/or turned over to appropriate authorities in a timely manner. Any items removed during an inspection will be returned to the student, the student's parents or held for the police as necessary. Students will be disciplined if any prohibited items are found.

END OF POLICY

Legal References:

ORS 332.075  
ORS 332.107  
ORS 419B.010 ~~419B.045~~

~~OAR 581-021-0050 to 0075~~

~~Letter Opinion, Office of the Attorney General (May 25, 1984)~~  
~~Letter Opinion, Office of the Attorney General (August 18, 1986)~~

New Jersey v. T.L.O., 469 U.S. 325 (1985)

State ex. rel. Juv. Dept. v. M.A.D., 233 P3d. 437, 348 Or. 381 (2010)

State v. B.A.H., 263 P3d. 1046, 245 Or. App. 203 (2011)

State v. A.J.C., 326 P3d. 1195, 355 Or. 552 (2014)

Cross Reference:

Policy KN/KNA - Relations with Government Agencies