

West Central School District 49-7

CONFLICT DISCLOSURE AND AUTHORIZATION

SDCL 3-23-6 states

CONFLICT DISCLOSURE AND AUTHORIZATION

“[n]o board member, fiscal agent, officer, or executive 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 that the local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity is a party to the contract except as provided in § 3-23-8.”

This policy prohibits school board members, the school district fiscal agent (business manager), school officers and executives (school administrators) from having an interest in a contract, or receiving a direct benefit from a contract, if the school district is a party to that contract or has a separate contract which is related to the contract of the school board member, business manager or school administrator, unless the school board grants a waiver. Disclosure requirements apply to public contracts for labor or services to be rendered, the purchase of commodities, materials, supplies, or equipment of any kind, and any kind of contract related to facilities.

Disclosure is required by the school board member, the business manager or a school administrator in each of the following situations:

1. when the school board member, business manager or school administrator has an interest in a contract or receives a direct benefit from a contract.
2. if the spouse of the school board member, business manager or school administrator has an interest in a contract or receives a direct benefit from a contract.
3. if another person with whom the school board member, business manager or school administrator lives and commingles assets has an interest in a contract or receives a direct benefit from a contract.

A school board member, business manager or school administrator derives a direct benefit from a contract, or their spouse or other person with whom assets are commingled derives a direct benefit from a contract:

1. if the person has more than a five percent ownership or other interest in an entity that is a party to the contract;
2. if the person derives income, compensation, or commission directly from the contract or from the entity that is a party to the contract;
3. if the person acquires property under the contract; or
4. if the person serves on the board of directors of an entity that derives income directly from the contract or acquires property under the contract.

A person does not derive a direct benefit from a contract based solely on the value associated with the person's investments or holdings, or the investments or holdings of other persons the state officer or employee lives with and commingles assets.

If in doubt whether an actual conflict exists, this policy also requires disclosure of possible or potential conflicts.

If other specific conflict of interest laws or administrative regulations relating to school board members, school administrators and the school business manager apply in addition to SDCL Ch. 3-23 and this policy, the more restrictive conflict of interest law shall apply.

Any school board member, school administrator or school business manager who knowingly violates SDCL Ch. 3-23 commits a criminal offense (Class 1 misdemeanor). Any school board member who knowingly violates the provisions of this policy is subject to being removed as a school board member. Any school administrator or business manager who knowingly violates the provisions of this policy is subject to his or her employment relationship with the school district being terminated. Unless the school board has granted a waiver, the contract in which the school board member, school administrator or school business manager has an interest or receives a direct benefit is voidable by the school board and any benefit received by the school board member, school administrator or school business manager is subject to forfeiture.

A waiver may be granted by the school board to authorize a school board member, school administrator or school business manager to receive a direct benefit from the school district's contract with a person or entity (public, private, for-profit, non-profit) if the following conditions are met:

1. the school board member, school administrator or school business manager provides a full written disclosure to the school board;
2. the school board reviews the essential terms of the contract or transaction and the school board member's, school administrator's or school business manager's role in the contract or transaction;
3. the school board determines that the transaction and terms of the contract are fair and reasonable and not contrary to the public interest; and
4. the authorization of the school board is in writing and filed with the Auditor-General.

The public records laws (SDCL Ch. 1-27) apply to all requests for a waiver.

APPLYING FOR A WAIVER:

1. If the potential for a conflict exists, the school board member, school administrator or school business manager having the potential conflict of interest must submit the Request for School Board Waiver form, Exhibit AH-E(1).
2. The request should be submitted to the school board before entering into a conflicted contract or transaction.
3. Disclosures and requests for a waiver should be submitted to the President/Chairperson 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 agenda and acted upon at the next scheduled meeting. Disclosures and requested received by the President/ Chairperson of the School Board, the Superintendent or the Business Manager less than 5 calendar days before the scheduled meeting may be deferred until the following school board meeting.
4. The person applying for the waiver must describe the relationship to the contract in question and why the applicant believes the contract may be subject to disclosure, including how person, his/her spouse or anyone with whom he/she lives and commingles assets might benefit from the contract. Examples of persons other than a spouse might include a girlfriend, boyfriend, roommate, or an adult child.
5. The person requesting the waiver identify and describe the essential terms of the contract:
 - (a) all parties to the contract,
 - (b) the person's role in the contract or transaction,
 - (c) the purpose(s)/objective(s) of the contract,
 - (d) the consideration or benefit conferred or agreed to be conferred upon each party,
 - (e) the length of time of the contract,
 - (f) any other relevant information.
6. The person requesting the waiver should briefly describe why he/she believes a waiver would not be contrary to the public interest (i.e., the contract was part of a competitive bidding process, there are other school district people involved in the decision-making process to enter into the contract, or the terms of the contract are consistent with other, similar contracts).
7. The School District Attorney may answer general questions about the applicability of SDCL Ch. 3-23 or about the other laws that address conflict of interest. However, the school district attorney represents the school district and the school board, and not school board members, school administrators, or the school business manager, in their individual capacities. School board members, school administrators, and the school business manager should contact a private attorney if they have questions as to how SDCL Ch. 3-23 and this policy apply to their individual interests and contracts.

BOARD ACTION ON A REQUEST FOR WAIVER:

1. School Boards will have a regular agenda item at the beginning of the school board meeting agenda when the school board will address disclosures and requests for a waiver.
2. Disclosures and requests for a waiver submitted to the President/Chairperson of the School Board, the Superintendent or the Business Manager, at least 5 calendar days before the scheduled meeting will be included in the posted agenda and acted upon at the next scheduled meeting.
3. Disclosures and requests received by the President/Chairperson of the School Board, the Superintendent or the Business Manager less than 5 calendar days before the scheduled meeting may be deferred until the following school board meeting.
4. If possible, waiver requests will be acted upon at the meeting in which the request is brought forth. If the school board believes the request form information is incomplete, the school board must ask the person requesting the waiver for additional information. The Board will avoid using an incomplete request form as the basis for extending the time for review and decision on the waiver request; the school board may receive the needed information from the requesting party at the school board meeting when the waiver request is being addressed.
5. When considering a waiver request, the school board should be able to determine the requesting party's relationship to the contract, the requesting party's relationship to the outside contracting party, whether the contract terms are reasonable and in the public interest, and any other factors the school board believes will help establish the relevant facts and circumstances surrounding the contract(s) and the request for waiver.
6. At the meeting when the waiver request will be considered by the board, the school board member, school administrator or school business manager submitting the waiver request must be present and prepared to answer questions from the school board about the request for a waiver.
7. The request and the Board's determination must be included in the minutes of the meeting.
8. If the authorization is granted, a written authorization [Exhibit AH-E(2)] shall be prepared following the meeting and signed by the President/Chair of the School Board or other authorized School Board Member, and filed with the Auditor General.

Notes: School Boards need to consult with their school attorney before the school board goes into executive session to discuss a disclosure and waiver request. Only upon the recommendation of the school attorney should the School Board discuss the disclosure and request in executive session.

Legal References:

SDCL 3-23-6 (Prohibition against contract conflict of interest)
SDCL 3-23-7 (Circumstances resulting in contract conflict of interest) SDCL 3-23-8 (Exceptions to contract conflict of interest)
SDCL 3-23-9 (Consequences for violation of contract conflict of interest law)
SDCL 1-27 (Public records and files)

Cross References:

BBF: Board Member Code of Ethics
BBFA: Board Member Conflict of Interest
GBC: Staff Ethics
GBCA: Staff Conflict of Interest

Established by law

LEGAL REF: Constitution of the State of South Dakota, Art. III, Sec. 23
Art. VIII, Sec. 17
SDCL 3-16-1;
6-1-1
6-1-2
6-1-17
13-7-3
13-20-2.1
13-43-1

Policy:

Adopted: 8/31/2016