

Hill City School District	NEPN Code: AH
Policy Manual	

## CONFLICT DISCLOSURE AND AUTHORIZATION

*SDCL 3-23-6 states*

*~~“[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 in included in the posted agenda and acted upon at the next scheduled meeting.~~

- ~~3. Disclosures 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. 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.~~

~~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.~~

*SDCL 3-23-6 states*

*“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.”*

**I. DEFINITIONS:**

- a. “School Official” refers to 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.

- b. "Interest in a contract" is 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.
- c. "Direct benefit from a contract" is 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 a 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.

## **II. PROHIBITION:**

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.

## **III. 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:

1. when the 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. when the 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. when the 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. when the 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. when the contract is subject to a public bidding process;
6. when the contract is with the official depository as set forth in SDCL 6-1-3;
7. when the person only receives income or compensation, a per diem authorized by law or reimbursement for actual expenses incurred; or
8. when the 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.

#### **IV. 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.

1. the disclosure must include the following: (i) all parties to the contract, (ii) the person's role in the contract, (iii) the purpose or objective of the contract, (iv) the consideration or benefit conferred or agreed to be conferred upon each party, and (v) the duration of the contract;
2. the disclosure must be in writing;
3. 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.
4. 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.
5. 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.

#### **V. BOARD ACTION UPON DISCLOSURE:**

1. interest in the contract:
  - a. the school board is not required to authorize a School Official's interest in a contract;
  - b. the interest disclosure must be included in the official minutes of the school board (the official minutes are not required to be sent to the auditor-general and attorney general).
2. Direct benefit from a contract:
  - a. the school board shall review the disclosure and decide if the terms of the contract are fair and reasonable, and if the contract is contrary to the public interest.

1. 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.
  2. 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. 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.
  - e. 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.

## VI. MISCELLANEOUS:

1. Consequences for knowingly violating the conflict of interest laws set forth in SDCL Ch. 3-23:
  - a. It is a criminal violation for a *School Official* to knowingly violate the conflict of interest law.
  - b. A *School Official* who knowingly violated the conflict of interest law will be removed from office or employment and is disqualified from holding any public office, elective or appointive.
  - c. Any benefit which a *School Official* derived from the person's knowing violation of the conflict of interest law is subject to forfeiture.
  - d. Any contract made in violation of this policy may be voided by the school board.
2. The School District Attorney represents the school district and the school board and may answer questions about the law that address conflict of interest. As the school district attorney does not represent School Officials in their individual capacity, School Officials should consult with their own private attorney related to questions they may have regarding how this policy applies to their individual interests and contracts.

## Legal References:

SD Constitution, Article 8, §17 Interest in sale of school equipment prohibited

SDCL 1-27 Public records and files  
SDCL 13-20-2.1 Interest in sale of school equipment unlawful  
SDCL 13-43-1 Employment of board member in same district prohibited  
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 6-1-1 Local officer's interest in public purchase or contract unlawful  
SDCL 6-1-17 Prohibition from discussion or voting on issue if conflict of interest exists  
SDCL 6-1-2 Conditions which contract with local officer permitted

Cross Reference:

BBF BOARD MEMBER CODE OF ETHICS  
BBFA BOARD MEMBER CONFLICT OF INTEREST  
GBC STAFF ETHICS  
GBCA STAFF CONFLICT OF INTEREST

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